

To be aware of this story

AT 11/2



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Tel. 01-233 3000 (Switchboard)  
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TO THE SECRETARY OF STATE  
FOR WALES

11/2 February 1985

It is very long and

Dear Andrew

... I enclose a copy of the statement on the University Hospital of Wales Cardiff which, with the agreement of the Leader of the House, my Secretary of State intends to make tomorrow afternoon. If you have any comments I would be grateful if they could be with me by close of play today.

/ I am copying this letter to David Hayhoe (Leader of the House of Commons) and (Lord Privy Seal), the Prime Minister's Chief Press Secretary, Murdo MacLean (Government Whip's Office), Richard Hatfield (Cabinet Office), Richard Mottram (Ministry of Defence), Stephen Godber (Department of Health and Social Security), Dinah Nichols (Department of Transport), Hugh Taylor (Home Office), Elizabeth Hodgkinson (Department of Education and Science), David Beamish (Government Whip's Office, Lords), Mr Durant (Welsh Whip), Janet Lewis Jones (Lord President's Office), John Graham (Scottish Office), Richard Broadbent (Chief Secretary's Office), Jim Daniell (Northern Ireland Office), Viscount Long (Welsh Spokesman, Lords), Alex Galloway (Paymaster General's Office), Iain Jack (Lord Advocate's Department), John Ballard (Department of the Environment), and the Treasury Solicitor.

Yours ever

PAUL SKELLON

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In view of a number of misleading reports and unfounded allegations that have been published on the subject, I wish to make a statement about the defects at the University Hospital of Wales known as the Health Hospital.

The hospital was planned in the 1950's by The Board of Governors of the United Cardiff Hospitals. Messrs S W Milburn and Partners were appointed architects and Messrs W S Atkins and Partners engineers in 1961. F G Minter & Sons Ltd were appointed principal contractors for the main works in 1966.

The hospital was constructed between 1966 and 1972. Some faults - mainly arising from work carried out in the period 1966-1969, began to become apparent in December 1973, when the first piece of mosaic tile became detached and in 1974. In the meantime the hospital had been handed over to the Welsh Hospital Board in **October 1970** and became the responsibility of the new South Glamorgan Area Health Authority on reorganisation in 1974. The rights and liabilities of the Welsh Hospital Board passed to the Welsh Health and Technical Services Organisation (WHTSO) at the same time. The architect signed the final certificate of completion in November 1975.

The issue of this certificate was an event of crucial significance as it precluded claims against the contractors in contract or in tort in respect of defects patent at the time. At that stage, WHTSO took no specific steps to protect **its** legal position **and that of** the taxpayer against the contractors, the architects, or any other party.

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In February 1977 a **general** property survey of the **Heath complex** by the South Glamorgan Health Authority led to concern at the condition of the mosaic cladding. WHISO commissioned Ove Arup & Partners to carry out a survey to assess the extent of the problem and to produce recommendations. While that report was awaited the only legal action that was in hand was the defence by WHISO of a claim by F G Minter Limited and subcontractors Drake & Scull Ltd who were seeking to recover finance charges under the terms of their building agreements. At that stage, the mosaic defects were considered to be defects in workmanship rather than design, and for this reason consideration was given to their inclusion as a counter-claim against Minters' finance charges claim. However, Counsel advised in July 1977 that such a counter-claim could not be sustained. No other legal action was taken prior to 1979 to protect the interests of the taxpayer.

Ove Arup's first report was received in November 1978, and having identified defects in the concrete during the course of their mosaic study they were further commissioned to carry out remedial and survey work on the concrete. The full extent of the mosaic defects having also now been clearly identified, WHISO commissioned Bickerdike Allen Partners in January 1979 to advise them on the specification, supervision and execution of mosaic and related works. Their first report in April 1979 was addressed to these matters.

This report identified for the first time a possible claim against the architects (S W Milburn Partnership). The joint reference to Counsel was on 12 July 1979 when among other matters the question of

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limitations was considered. Following that meeting with Counsel Bickerdike Allen prepared a further report which was received in November 1979 and was concerned with responsibilities and liabilities. Meanwhile, Counsel had been instructed in October to settle a draft writ and statement of claim against the Milburn Partnership, and in the instruction to Counsel the need for urgency was emphasised. Counsel settled notices of arbitration and an endorsement for the writ by telex on 17 December 1979 and the writ issued the same day.

At this point I must emphasise that despite allegations to the contrary, this writ was not out of time on the basis of the law as it then was. This provided that the 6-year limitation period ran from the date when damage was discovered or was reasonably discoverable by the plaintiff; and the relevant date for that purpose cited by Counsel in the Statement of Claim, was 18 December 1973. The law as to the limitation period for a claim in negligence was changed by the Pirelli decision of December 1982, but I repeat that at the time of issue of the writ it was in time for the claim in negligence. It was in time, both before and after the Pirelli decision, for the claim in contract, where the limitation period was and is twelve years.

I turn now to the outcome of the legal action, details of which were given on 6th February in an answer to my Hon Friend, the member for Cardiff Central. I shall deal with the allegation that there has been some kind of cover-up and the suggestion that in settling the action at about £300,000 the taxpayer has been negligently left with a liability for work costing £4m - or as is further alleged as much as

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£8m. Let me say first that it has not been the usual practice under any Government to disclose full details of commercial settlements of this kind except to the Public Accounts Committee and in summary form in published accounts. In this case the total cost of remedial works of about £2.8m was attributable to structural defects other than the mosaic cladding. The Department's Accounting Officer reported to the PAC as long ago as 14 November 1983 Counsel's advice that legal action about this should not be pursued. He **had previously been** cross examined in some detail about this matter **by the PAC on 17th March 1982.** [and given full details of the amounts and the reasons for the decision.]

The settlement that was finally reached on the mosaics will be reflected in the summary of losses and compensation that forms part of the summary accounts of health authorities that are published every year as a **House of Commons paper**, and it was always the position that the Department's Accounting Officer would provide the PAC with any further information that it requires. There has therefore been no 'cover-up'; nor indeed could there have been. But in view of the outrageous statements that have been made on this subject in recent weeks, I have made available to the House, and my Permanent Secretary has passed to the PAC, a very great deal of material both about the settlement and about the events of the years that preceded it.

I turn now to the relationship between the Secretary of State and WHISO. WHISO is a Special Health Authority [established under S.11 of the 1977 NHS Act.] It is a body corporate with separate legal

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identity; and it is entitled in the conduct of litigation to act "in all respects as if it were acting as a principal." It is thus a free standing body in this respect, and is not required to seek my approval to settlements of legal actions in which it may be engaged. It is perfectly normal for WHISO and other Health Authorities to engage in litigation and to reach settlements without reference to Ministers and this has been the practice under successive Governments; but given the public and Parliamentary interest in this particular case and the particular terms of the non-disclosure clause I think it would have been better had I personally been informed, **particularly since one of my officials was a member of the WHISO board.** I regret that this was not done; and I am sure that in these exceptional circumstances I was right to immediately arrange that the fullest information should be given to Parliament.

I will now deal with the suggestion that the cost of putting right the defects at the University Hospital of Wales may amount to as much as £8m. As my Hon Friend the Parliamentary Under Secretary said in Answer to a Question on 1 February this year, the total cost of the remedial work is expected to amount to a little under £4m. Of this, £2.7m has already been carried out and the remainder will be completed during the next two years. Once again the Accounting Officer has already given evidence on this matter to the PAC and the information was also given to the House in a Parliamentary Answer on 19 April 1982. A joint working party of the Welsh Office, WHISO and the Health Authority agreed on the works that were necessary and did not accept all the recommendations of the Ove Arup report.

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I regret that the Hon Member for Pontypool who has been responsible for most of the wilder allegations made did not at any stage communicate with me or attempt to check the facts with my Department.

I have had to answer this afternoon for events involving a hospital conceived in the 1940's, planned in the 1950's, largely built in the 1960's, before I entered the House and completed under a previous Conservative Government. I have had to report on the absence of any protective legal measures during the whole period of the last Labour Government, on the outcome of complex legal actions concluded under this Government and on measures to repair the damage that will be a burden on the Health Service for several years to come. I will accept such responsibility as is mine. I trust that others will **accept theirs as well.**

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