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PART

CLOSED

DATE CLOSED	6 JULY 2001

Series : **HOME AFFAIRS**

File Title : **CRIMINAL JUSTICE POLICY**

Part : **1**

Date	From	To	Subject	Class	Secret
08/06/2001	LC	WelshAss	Sir Andrew Leggatts Review of Tribunals	U	0
08/06/2001		PM	Criminal Courts Review:Letter from Lord Justice Auld	U	0
10/06/2001	SOC	PPS	Why Move the Court Service	U	0
11/06/2001	LC	PM	Shift Responsibility for the courts	U	0
11/06/2001	SS/NIO	LC	Implementation of the Criminal Justice Review	U	0
12/06/2001	HO	HA/PS	Thompson and Venables:Parole Board Hearings and the High Court	R	0
13/06/2001	PS/SOC	PPS	Dual Accountability for the Court Service	C	0
14/06/2001	LC	PM	Dual Accountability for the Court Service	U	0
14/06/2001	PM	SOC	Justice machinery	C	0
14/06/2001		PM	From Lord Chief Justice - court systems	C	0
15/06/2001	HO	FA/PS	Compensation for Wrongful Conviction: Nicholas Mullen	U	0
15/06/2001	PM		Criminal Courts Review:Letter of Reply to Lord Justice Auld	U	0
15/06/2001	AG	HS	Proceeds of crime bill	C	0
18/06/2001	PPS	SOC	Courts	C	0
21/06/2001	HO	HA/PS	Thompson and Venables: Parole Board Hearings and Handling Upda	R	0
22/06/2001	HO	HA/PS	Thompson and Venables: Parole Board Hearings	C	0
22/06/2001	PU	PM	Crime Stocktake	R	0
25/06/2001	SOC	EA/PS	Leggatt review of Tribunals	U	0
25/06/2001	LC	DPM	Section 1 of the Damages Act 1996: The Discount Rate	U	0
25/06/2001	FCS	HS	Sentencing Review	U	0
25/06/2001	PM	HS	Key Priorities on which we must focus	C	0
26/06/2001	PoW	LC	Increasing problem of "litigiousness"	C	
26/06/2001	NCIS	PM	Bimonthly Briefing: NCIS/NCS	S	1335
27/06/2001	PU	HO	(M) Criminal Justice Review	R	0
28/06/2001	HO	dpmo	Publication for consultation of the review of part 1 of the sex offender	C	0
28/06/2001	LC	DPM	Leggatt review of Tribunals	C	0
28/06/2001	SS/MOD	HS	Report of the Sentencing Review	U	0
28/06/2001	SOC	PM	courts	C	0
29/06/2001	PU	PM	Courts	U	0
02/07/2001	HS	HMT	level of funding for "organised Crime"	C	0
03/07/2001	DPM	HS	Sentencing review	C	0
04/07/2001	dpmo	LCD	Leggatt review of tribunals	C	0
05/07/2001	HO		Speech by home secretary on sentencing reform, National Probation	C	0
06/07/2001	PU	PM	Youth Justice Pledge	R	0
06/07/2001	PU	PM	Audit of Home Office Delivery Targets and Resources	U	0
06/07/2001	PD(JR)	PM	Criminal Justice Bill - First Session	U	

CJPT 1?01-05.

please feedback to HO. Best to doc note

1. CS
2. JR
3. (F)

From: **Justin Russell**
Date: **6 July 2001**

PRIME MINISTER

cc: **Andrew Adonis**
Alastair Campbell
Jeremy Heywood
Jonathan Powell
Olivia McLeod

CRIMINAL JUSTICE BILL – FIRST SESSION

We are still awaiting a formal response to our letter of the 12 June setting out the list of provisions which you wanted to see included in a first session criminal justice bill. However I have just seen a draft of the letter going in DB's box for the weekend which gives a pretty clear steer on Home Office tactics:

- They are continuing to resist including the bulk of Halliday (e.g. custody plus, review courts, generic community sentences) but are willing to include proposals on dangerous and sex offenders.

- They are resisting putting any of the rules of evidence measures in the first session bill and are proposing to kick it all in to touch with a self-contained second session bill (separate to the main Auld/Halliday legislation) which could be Parliament Acted in the third session.

- They are willing to include some politically attractive new measures from the Manifesto and election campaign (e.g. a register of drug dealers, new laws to stop on-line 'grooming' of children by paedophiles).

- They want to move quickly on new proposals to reform prison regimes and sentencing for 18 to 20 year olds and include this in the bill.

We will need to decide in the next week whether we continue to push our 'wish-list' of measures for the first session. We are arranging a meeting for you with DB and Derry in the week beginning 16 July and Home Office officials will need a clear signal before the recess that we intend to keep pressing on this.

I would suggest that we:

Concede on the Halliday issue. The consultation period does not finish until 31 October on the Halliday report and it is important to get the detail right on this. In any case we won't have the money to implement the new framework until 2004 at the earliest.

Continue to press on the rules of evidence measures. The Home Office are trying to hide behind Auld. He is unlikely to say what we want on this and we shouldn't feel constrained by what he offers. David Philip's ACPO submission to Auld makes a strong case for moving in this area and we should press the Home Office to get on and work up proposals on the assumption that they will go in the bill. We should also press on with the prosecution rights of appeal measures which the CPS are keen on. We can always make a decision closer to the time about whether they do go in the bill – the main thing is that officials get on and develop the policy. If they do go in the bill we will need an early discussion with Robin and with Gareth about handling arrangements (particularly over measures like admissibility of previous convictions).

Ask for more work to be done on the new initiative on 18 to 20 year old offenders before we go snap on this. I can see a strong case for changing the commissioning arrangements for custodial places for this group so that the prison service raises its game. But we need to look more closely at whether we should be treating 18 to 20 year olds as young offenders for sentencing purposes.

JUSTIN RUSSELL

But it means we still need extra resources - how are we to get down under this?

1. AA
2. ~~RJR~~ JR
3. (F)

From: Justin Russell
Date: 6 July 2001

PRIME MINISTER

cc: Jonathan Powell
Jeremy Heywood
Andrew Adonis
Michael Barber
Olivia McLeod
Alastair Campbell
Peter Hyman

AUDIT OF HOME OFFICE DELIVERY TARGETS AND RESOURCES

The Home Office had a generous settlement for 2001/02 and over the next year is on target to deliver significant increases in police numbers, delivery of the persistent youth offender pledge, falling property crime, faster asylum processing and more removals of failed asylum seekers. Violent crime is likely to continue rising (albeit at a slower rate) and asylum support pressures will continue.

In the longer term, we have set ambitious targets over the next four years for reducing burglary and vehicle crime, for increasing the proportion of crimes ending in an offender brought to justice and for increasing the removal of failed asylum seekers. Our commitments to reforming the police service, overhauling the criminal courts and implementing a new sentencing framework represent a major reform agenda with the potential for a real step change in the way that system deals with the 100,000 most hardcore persistent offenders.

Next 12 months

Delivery targets

Over the next year the Home Office and LCD should achieve:

Falling overall and property crime rates as the police service spend the significant extra resources we provided this year. (On the basis of a sample of crime statistics collated during the election campaign I would expect the next set of published statistics on 19 July to show overall crime down by just under 3%, burglary down 10%, vehicle crime down 7% but violent crime still on the way up by almost 6%)

Why is that some bollox?

Many more government funded local crime reduction programmes up and running as the bulk of the Crime Reduction Programme projects are rolled out. In 12 months time there should be 430 more CCTV schemes in operation; 500,000 more homes covered by a burglary reduction initiative and 30,000 more pensioners with extra locks fitted.

Delivery of the persistent young offender pledge. Average delay was down 6 days to 78 days in April – we should achieve 71 days by the end of the year.

Two and a half thousand more police officers by March 2002 to take overall numbers up to 128,000 – within 300 of record ever levels (128,290 in March 1993).

A reduction in the backlog of initial asylum decisions down to close to frictional levels (20,000 to 25,000); the appeals backlog down by 15,000 to 25,000 and 70% of applications turned around within the target time of two months for decision and four months for appeal. Removals increasing significantly towards our target of 30,000 a year helped by a national roll-out of IND arrest teams from this autumn, 1500 extra detention places, a national network of 11 reporting centres, extra immigration officers and extended use of charter flights.

Resources

The Home Office had a generous settlement for 2001/02 and our aim should be to maximise the pay-off we get this year from a 7% real terms increase in police funding; a 23% increase in CPS resources and large increases for probation and prison services.

There is an on-going issue about whether asylum support funding should be treated as AME rather than part of the Home Office DEL. David has submitted a claim on the reserve for £430 million to cover their shortfall on the NASS budget (which HMT always expected at the time of SR2000).

We should support DB's campaign for HMT to allow the Home Office EYF on a £169 million under-spend from the crime reduction budget from 2000-01. Charles did an excellent job at the end of last year in stimulating good quality CCTV and burglary reduction bids and there are plenty of good projects to fund which would give us some good early wins this year and keep us on track on our burglary and car crime targets.

If there is any flexibility on resources over the coming year the priority should be to keep the police service on side in the run up to the police reform bill. Presentationally, next year's funding settlement for the police (to be announced in the autumn) will look much less generous than this year's. Once central initiatives and services are top-sliced out, the headline real terms increase for police authorities for 2002/03 is only 0.7%. We should use any extra resources to keep the drive on numbers going (eg by offering new incentives for officers to stay on
past 30 years) – aiming at delivering the extra 300 officers which would give us record numbers of officers by next spring. And we should explore the potential for providing better rewards for frontline officers in high crime areas.

Longer term delivery

Criminal Justice – the Way Ahead sets out a clear set of targets for the next four years and outlines the package of CJS reforms which will be needed to deliver these outcomes.

By 2004

We should have reduced vehicle crime by 30% in comparison to 1999 levels; with burglary down 25% by 2005 and street robbery down by 14% in our five biggest cities.

100,000 more crimes recorded by the police should be ending in an offender brought to justice and there should be a clear ten year strategy for doubling the chance of a persistent offender being brought to justice. Every active criminal will be on the database (2 million more than at present) and detection rates will finally be rising – after years of decline.

There will be over 131,000 police officers and the 2002 Police Reform Bill will be well on the way to implementation with new career structures for police officers; new arrangements for selecting and developing chief officers; greater devolution of powers down to divisional commanders and new inspection and standards setting arrangements in place to drive through sustained performance improvement

We will have increased probation service resources by nearly a third with 1,450 extra probation officers and 3,000 other staff recruited. Reconviction rates for offenders should be down by 5% - preventing thousands of crimes.

We will be starting to roll out a new sentencing framework targeted at dangerous and persistent offenders with proper post-release supervision of everyone leaving prison – no matter how short their sentence. All this backed up with over 2,600 extra prison places, a 70% increase in funding for drug abuse treatment and extra resources to double the number of prisoners going into jobs after release.

We will have invested over £45 million in a new programme to intensively supervise the 2,500 most persistent young offenders and will have overhauled prison regimes for 18 to 20 year olds with new commissioning arrangements to lever up quality.

We will be starting the process of amalgamating two separate courts systems into a single, unified criminal courts structure with much clearer central strategic direction and closer monitoring of local performance. And there will be new rules of evidence in place to better balance the interests of victims and defendants.

We will have modernised and overhauled IT across the whole CJS so that victims can report crime on line and CJ professionals can finally e-mail each other. By 2005 we expect all the main CJ agencies to be transferring case files electronically and that victims will be able to track the progress of their case through the system online.

Resources

You will already have seen DB's extensive wish-list for the autumn statement – submitted last Friday. I think our immediate priorities should be to deliver our election pledge on police numbers by ensuring that the Crime Fighting Fund is expanded in 2003-04 to enable forces to recruit a further 3,000 officers (cost £90m in that year) and is continued to the end of this Parliament. We will also need to honour any deal on shift-allowances or pay that we do to keep the police service on board for the police reform bill.

Our second priority should be funding for early roll-out of the new sentencing framework – particularly those parts relating to post-release supervision of short sentence prisoners and dangerous offenders. Halliday estimates that all other things being equal his proposed reforms, once established would cost between £440m and £540m per annum to implement and require an increase of 3,000 to 6,000 in the prison population. If judges increase the severity of their sentencing

at the same time as the new framework is introduced then costs could be significantly higher.

No detailed costs are available on implementation of the Auld report. Theoretically, amalgamation of the magistrates and crown courts systems could lead to significant cost savings through reduction in number of jury trials, disposal of excess of court buildings and rationalisation of staffing structures – though there would be heavy up-front costs in the early years to cover redundancy packages etc.

JUSTIN RUSSELL

On Mta-917101 KE

1. OM/JR

2 (F)

RESTRICTED

From: Olivia McLeod
Date: 6 July 2001

PRIME MINISTER

Cc: Justin Russell
Jeremy Heywood
Andrew Adonis
Michael Barber
Tanya Joseph

YOUTH JUSTICE PLEDGE

Figures for April showed the average time from arrest to sentence for persistent young offenders down to 78 days, six days less than last month and within a week of the target of 71 days. Early indications for next month predict a further fall to the mid-70s. The trendline shows us hitting the pledge in Jan 2002 but if we sustain this improved progress we should achieve it before the end of the year.

This is evidence that the redoubling of effort over the past six months has paid off. However, there remain real risks to achievement of the pledge:

- Backlog of youth cases to be inputted on Police National Computer (PNC): as these are inputted some will turn live youth cases into PYOs. The impact could increase the average monthly figure by as much as 10 days.
- Complacency following improved performance, plus the perception that post election the pledge is no longer a priority; and summer slowdown as staff and witnesses go on holiday.

In order to ensure continued CJS focus on delivering the pledge we propose that you write to David, Peter and Derry as drafted (flag A) to:

- thank them and their staff for their hard work in speeding progress towards the pledge; and
- urge them to sustain energy and focus on the pledge until it is delivered, and underline this by putting it on the agenda for the next HO stocktake.

We need to think about how we are going to handle delivery of the pledge and how we continue to tackle delay in the CJS once we have reached 71 days. It will be important to find a way of building on the work on the pledge, without displacing effort from other CJS priorities. We suggest that you discuss this with David at the next stocktake, and will provide further advice at that time.

Are you content to write as drafted?

yes

Olivia

RESTRICTED

DRAFT

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THE PRIME MINISTER

I was very pleased to see the significant progress that has been made towards delivering the youth justice pledge in recent months. I understand that we have reduced the average time taken from arrest to sentence for persistent young offenders by 12 days since the beginning of the year, and that we are now within one week of the target of 71 days.

I am very grateful for the work of the three Criminal Justice Departments in driving forward this reform, and for the outstanding efforts of criminal justice practitioners on the ground who take the credit for the improved performance.

The level of commitment that has brought about this recent progress demonstrates the importance of sustained pressure at every level to delivering our pledge. Now more than ever it is vital that we continue to focus energy on achieving the target as soon as possible. We must not let complacency, or a slowing down over the summer months, stand in the way of that goal.

I would be grateful for an update on progress with the youth justice pledge at our next stocktake on the 17 July, including your plans for publicising achievement of the pledge and how we continue to tackle delay in the criminal justice system once we reach 71 days.

I am writing in similar terms to Derry and Peter.

F

Speech by the Home Secretary on sentencing reform
National Probation Service inaugural conference, 5 July 2001

1. The new National Probation Service is at the heart of the criminal justice system, and of our efforts to reduce crime and prevent re-offending. It has already been through recent major reforms, and I pay tribute to all of you and your teams for your professionalism in implementing what have been pivotal and wide-reaching structural changes to the organisation and operation of the Service. I know from my time as Education and Employment Secretary, particularly my work on the Connexions service for young people, how valuable your work is proving - and how much effort goes into it.

2. But these reforms are part of a much wider overhaul of the criminal justice system. One key issue within that process that I want to talk about today is our plans for sentencing reform.

3. We need to put sense back into sentencing. Layer on layer of legislation, change after change in direction and philosophy, have left both the goals and the practice of sentencing muddied. This has led to a serious loss of public confidence in the system. And that confidence must be re-gained.

4. So we are today publishing John Halliday's review of sentencing, conducted for the Home Office. On behalf of myself and the previous Home Secretary, I would like to thank John Halliday and his team, who have worked so very hard over the past year to produce this report.

5. It will act as a catalyst for us to examine what we do, and above all why we do it, in preventing tackling and punishing offending behaviour. But it is not – and was not intended to be - a blueprint. And so, over the coming months, we will be seeking the views not just of legal practitioners but of the public to help shape a new and transparent system that truly puts sense back into sentencing. The consultation process will continue until the end of October, and I want to hear your views.

6. We should start by asking this fundamental question: what can we do to build a sentencing regime that enjoys the confidence of the public and reduces crime?

7. We all worry about crime and its effect on our families, our communities, our homes. Reducing it is an absolute priority for the Government. Burglary and car crime are going down but violent crime has risen, particularly in our big cities. Through partnership and concensus, we can achieve a reduction in crime on all levels. That is my aim.

8. So today I want to float a number of ideas,and comment on the broader issues raised by the Halliday report. But first of all, let me set out the process and timetable for reform.

9. We intend to move ahead ~~immediately to pave the way for~~ full-scale reform. Ours will be a stepping stone approach. We will legislate in this session on ~~a paving measure to include~~ those aspects of change which do not need to wait for more fundamental reform to achieve.

10. But those measures must fit coherently within the longer-term reform process. This includes reforms to the Criminal Justice System emerging from the report of Lord Justice Auld, which is expected shortly. I would hope to publish a draft Bill for the second session of this Parliament.

11. I have already invited all political parties to join with us in this debate. We need to get this right: we need a sentencing system built to last, and one which is radical enough to have a real impact on both offending behaviour and public perception. These reforms could act as a first step towards drawing up a penal code, as promised in our manifesto.

12. At the same time we will be taking forward measures to reform the administration of the legal system. I have been asked by the Prime Minister to chair a committee to include the Lord Chancellor and the Attorney General, charged with examining the improvement needed in the administration and management of the court services and~~, through the Lord Chancellor's Department, to implement change~~. As part of this new framework, the Home Office will appoint a senior expert, responsible to me, as the new head of Information and Communication Technology, charged with pulling together existing measures and providing an effective way forward in this crucial area.

13. But today I want to focus on the broader case for reform and the options open to us. I want to set out the objectives of sentencing policy; the major Halliday recommendations; and my early thinking on them.

14. Each one of us probably has a view of what punishment fits a particular crime – often we feel it has not been tough enough; or at other times, that the punishment has been too tough or imprisonment has made the person's likelihood to re-offend even greater. But we need to ask first: what is sentencing supposed to do? With these reforms, for the first time, I intend to put the purpose of sentencing into law.

15. We can summarise the aims of sentencing with the three Ps and the three Rs: prevention, protection, punishment; and reparation, reducing crime, and rehabilitation.

16. Of course, these are linked together – and linked to the rest of our strategy of fighting crime. We want to prevent people getting into a life of crime in the first place and this also involves attacking the causes of crime and the factors that disempower and exclude communities – from the Sure Start programme for disadvantaged children through to the implementation of the Children's Fund, for which my colleague John Denham is responsible.

17. And let me say too that crime reduction is an issue for and about the whole community. It must involve central and local government, agencies and the community, through regeneration, in creating jobs, in housing, policing, and the effective operation of Youth Offending Teams and Crime and Disorder Reduction Partnerships.

18. What the sentencing regime can achieve on its own is evidently more limited. But we <u>can</u> say that at the moment, it is not achieving what we want. Our figures suggest that

around half of all crimes are committed by a hard-core of just 100,000 criminals. Most of them are in and out of court – over half of those sentenced to either custodial or community sentences are back in court being sentenced again within two years. Sentencing is not doing much to discourage them.

19. So for a start, sentencing needs to deter. It needs to turn petty offenders – especially young ones – away from crime. If you like, such sentences need to give a modern, legal version of the old-fashioned police constable's clip round the ear to the misbehaving youth. That has been the goal of our reforms to the youth justice system, and we can extend the principle. For example, I want to look at the idea of Acceptable Behaviour Contracts for young people in order to reduce anti-social behaviour on estates and in our schools, and to prevent them drifting further into a life of crime. These would be backed up with clear consequences if the Contract is broken, such as proceeding towards an Anti-Social Behaviour Order or through criminal or other sanctions.

20. I also want to extend the principles behind the youth justice reforms to older offenders, and integrate them with the range of current community sentences. Halliday suggests reform of non-custodial sentences so that the court can select from a 'menu' of options to meet the purposes of sentencing, and this is something we need to investigate. At present, youth courts have a wide range of orders they can impose – parenting orders, reparation orders, action plan orders, detention and training orders – but these need to work more clearly together with other community sentences as a menu of options for responding to different offences.

21. At the same time as deterring and diverting in this way, sentencing must also punish. Society has a right to retribution against those whose criminal behaviour harms us individually and collectively.

22. This is particularly important in dealing with the persistent offenders responsible for so much crime. Sentencing should send a clear message that the more you offend, the greater the punishment you can expect, with longer and more demanding sentences. In this respect I welcome Halliday's recommendation that judges should take persistent offenders' previous convictions into account in sentencing.

23. This does not mean that prison is the only way of sending a message to such offenders. Indeed Halliday draws particular attention to the failings of short custodial sentences of less than 12 months. I believe he does us a great service in doing so. Short custodial sentences provide little or no opportunity to change the behaviour and problems which put offenders there in the first place. And they can have a long term adverse effect on family cohesion, on employment and on training prospects – all of which are key to the rehabilitation of offenders.

24. Halliday's proposed remedy is what he calls "custody plus", where supervision in the community would continue to end of sentence, with an option for administrative recall to prison in the event of any breach. We would need to consider whether the custodial part of the sentence should have a maximum of 3 or 6 months.

25. Meanwhile for sentences of over 12 months. Halliday recommends that after serving half the sentence in custody, the remainder be served under strict supervision in the

community right up until the end of the sentence. That would be tougher than the current arrangements, where conditions only bite up until the three-quarters point.

26. This is important in terms of protecting the public. But is also crucial because both custody and community punishment should be an experience that puts individuals back on the straight and narrow. It should help prevent re-offending by using the whole period of an offender's sentence to tackle the underlying reasons that can influence criminality in the first place - drug or alcohol problems, mental illness and depression, or chronic lack of education and qualifications.

27. The challenges in this respect are clear. Nearly two thirds of prisoners lack the basic skills needed for more than ninety per cent of job opportunities. And research has shown that 29 per cent of all those arrested are heroin or crack cocaine abusers. We are already making promising progress in educating prisoners in basic skills, but we must build on this. And we must ensure that drug treatment courses reach more people if we are to reduce the number of crimes perpetrated to fuel drug addiction.

28. Throughout any sentence, however, protection of the public must remain a priority – and above all in dealing with the most dangerous and violent offenders. We must be toughest on these offenders. They require a regime that allows the authorities to keep them away from society if they continue to pose a threat.

29. I have already made clear that I want tougher sentences for the most dangerous offenders. So I welcome Halliday's suggestion to increase sentences for violent sex and dangerous offenders. Instead of having to be released after two-thirds of their sentence, he suggests that an offender could remain in custody for the full duration of the sentence if the Parole Board judged it necessary. In addition, the courts would have the power to impose up to a further 10-year supervision period where they pose a risk to the public. We need to know exactly where these people are when released, so that we can track their movements and their behaviour every step of the way. Ensuring that this intention is translated into practice will be an important area for further consultation and action.

30. All of these recommendations will inevitably have an impact on the size of the prison population. We have no intention of compromising our principles of toughness and safety of the public, especially in respect of dangerous offenders. But let me emphasise that whatever we do, I have no intention of implementing anything that pushes up the numbers of those in custody for its own sake.

31. That is why we need to make sure that these reforms prevent re-offending - and rehabilitate offenders effectively. For most offenders, once they had paid back their debt to society, the responsibility to support them back in the real world falls to the rest of us.

32. I have touched on Halliday's principal recommendations, and there is a good deal that I agree with. But let me now move on to the areas and recommendations which I believe deserve greater exploration.

33. Halliday talks about Custody Plus – but what about a 'Custody Minus' scheme? I think there may be merit in a type of sentence which sits between a community sentence and custody plus, so that we give the courts an option before moving

straight from a community to a custodial sentence. The court could impose a custodial sentence but suspend it on condition that the offender completes a demanding programme of activity in the community, including reparation to victims where appropriate. If he fails to complete this, he could be sent to prison to serve the remainder of his sentence. With this type of sentence, as with the others suggested by Halliday, what is important is that there is certainty of outcome for the offender - that he knows what the consequences are of breaking the terms of his sentence and that he knows they will be consistently and rigorously enforced.

34. In Halliday's presentation of review hearings, he envisages four functions: dealing with breaches of community sentences; hearing appeals against recall to prison; pre-release planning; and reviewing progress during community sentences or the community part of custodial sentences. While it is right that the courts should be involved in sentence management, I am concerned that this could clog up the courts unnecessarily – and they are already under enough pressure and subject to far too many delays. Review hearings are closely linked with Lord Justice Auld's review of the criminal courts, and we will need to consider then how they might work most effectively.

35. Halliday also explores the idea of partial release or intermittent custody for particular offenders. Some offenders serving custodial sentences could be released on condition that they return to prison overnight or at weekends. The prison estate is not currently well suited for this purpose, but I want to explore how we might introduce such arrangements.

36. It is important that we retain arrangements which enable the Prison Service to maintain control over offenders, at the same time as offering an opportunity for them to reintegrate themselves into the community successfully. Although Halliday envisages no further role for Home Detention Curfew in his suggested new framework, I want to explore whether and how some of its benefits can be retained.

37. Halliday also makes important recommendations for new sentencing guidelines, to be drawn up by a new body. This is a central part of the proposed reforms, and we will want to explore the options very carefully. So far, sentencing policy has been translated into the practice of the courts by guidelines, ECHR judgements, and those of the Court of Appeal. But so many of the guidelines are just that: non-mandatory, not even having to be taken into account in Magistrates Courts, never mind at higher level. We need to think about the ways in which Parliament and the public might have an influence on the way guidelines are drawn up.

38. Parliament has an important role to play. For example, we need to look at the way in which specific sentences for dangerous violent and sexual offenders are working. Permissive powers for the courts to impose extended sentences on these offenders, provided for in the 1998 Act, have not been well used. We need to consider whether Parliament should make clear the circumstances in which these sentences apply. I am particularly concerned to make sure that we have ways of managing the risks posed by offenders of this sort, some of whom, if they have been sentenced under pre-1991 legislation, are currently released without supervision.

39. In addition, we will want to take forward with the secretary of state for health measures set out in the white paper published last december on reforming mental

health legislation to detain indefinitely those who pose a risk, but are adjudged not to be treatable.

40. I have touched today on a wide range of issues and measures, some of which I know full well will be contentious. In fact I am pretty sure that we will be caught in the crossfire between those who see any custodial sentences as an affront to human rights, and those who want to 'lock 'em up and throw away the key'.

41. But the public are driven crackers with frustration by such futile posturing, and I am determined to hammer out what they deserve - a reformed, common-sense sentencing system. Because public confidence is key. The law must reflect the will of people. Respect for the law, and thus the cohesion of our society, rests on general acceptance of it. And to gain consent for an enlightened approach to avoiding re-offending and to rehabilitation, we need genuine trust and confidence in the Criminal Justice System as a whole, and in sentencing policy in particular.

42. This is the very real challenge posed today and in the months ahead. I hope that we can conduct that dialogue with dignity and with respect for those with opposing views.

43. I also know that many of the measures I have talked about today will have a significant impact on the National Probation Service and on the Prison Service. This debate comes at an important time for the NPS. In a reformed criminal justice system, the Service can expect a higher national profile. I want better public recognition of the hard, often thankless job that you do, keeping the public safe from sometimes dangerous offenders. But at the same time, you must earn their confidence.

44. I want your views and your engagement with the debate. It is you who will have to deliver what is finally agreed. And I know too that it is likely to mean an expansion of your service and the resources to go with it. The sentencing review is an opportunity to redefine probation in the public mind - one that we should welcome. Community sentences must command public credibility if our reforms to sentencing as well as to the wider criminal justice system are to succeed.

45. This is an unprecedented opportunity to get sentencing right and to reduce crime. Between us, I am convinced that we can do just that.

Ends

MCU CABINET OFFICE

DEPUTY PRIME MINISTER

OFFICE OF THE
DEPUTY PRIME MINISTER
Dover House
Whitehall
London
SW1A 2AU

***Tel:* 020 7270 0400**
***Fax:* 020 7270 0196**

From the Private Secretary

IR
cc: OJ
SV

Debora Matthews,
Principal Private Secretary,
Lord Chancellor's Department,
Selborne House,
54-60 Victoria Street,
SW1E 6QW

4 July 2001

Dear Debora,

LEGGATT REVIEW OF TRIBUNALS

As you know, the Deputy Prime Minister and the Lord Chancellor spoke on Monday about Lord Irvine's letter of 28 June concerning Sir Andrew Leggatt's Review of Tribunals and the Government's response. They agreed that some form of Ministerial discussion was likely to be necessary. The Prime Minister has now asked the Deputy Prime Minister to convene a Ministerial meeting to make recommendations about handling the report and how it should be taken forward. This note is to confirm that we will be in touch very shortly to canvass dates for such a meeting, to take place as soon as possible after the Deputy Prime Minister's return from overseas.

I am copying this letter to Simon Virley at No 10, the Private Secretaries to the Chancellor of the Exchequer, the Home Secretary, the Foreign Secretary, the Secretary of State for Work and Pensions, the Secretary of State for Transport, Local Government and the Regions, the Secretary of State for Trade and Industry, the Secretary of State for Health, the Secretary of State for Education and Skills, the Secretary of State for Environment, Food and Rural Affairs, the Secretary of State for Defence and Richard Abel in Sir Richard Wilson's Office.

Yours,

MILES BEALE

JR
cc OM

DEPUTY PRIME MINISTER

OFFICE OF THE
DEPUTY PRIME MINISTER
Dover House
Whitehall
London
SW1A 2AU

Tel: 020 7270 0400
Fax: 020 7270 0196

RESTRICTED: POLICY

The Rt Hon David Blunkett MP
Secretary of State for the Home Department
50 Queen Anne's Gate
London
SW1H 9AT

3 July 2001

SENTENCING REVIEW

This letter gives you DA clearance to proceed as proposed in your letter to Cabinet colleagues of 20 June, subject to the views of colleagues recorded below.

You sought agreement to the publication of the report: "Sentencing Review". Replies were received from Derry Irvine, Jack Straw, Stephen Byers, John Reid, Geoff Hoon, Andrew Smith and Patricia Hewitt.

All were content, but the following points were raised. Derry agreed that in welcoming the report you should be open-minded about the specific proposals, including "review courts," which are linked to the forthcoming work of Sir Robin Auld on court structure. Andrew also asked that in welcoming the concept of "custody plus", you avoid being drawn into specifics and make clear that final decisions on resources could not be taken prior to SR2002. Geoff asked that his officials be kept informed of any developments arising from the Review and, more generally, of changes in the criminal justice system. Patricia said that if the conclusion of the review was that evidence showed that there were no perceptible gender differences, and that sentencing should remain gender-neutral, then this should be clearly stated.

I am copying this letter to the Prime Minister, members of DA Committee, and Sir Richard Wilson.

JOHN PRESCOTT

Web site: www.cabinet-office.gov.uk
Email: john.prescott@cabinet-office.x.gsi.gov.uk

CONFIDENTIAL

10 DOWNING STREET
LONDON SW1A 2AA

THE PRIME MINISTER

PERSONAL MINUTE

HOME SECRETARY

At the start of the new Parliament I am writing to Cabinet colleagues setting out the key priorities on which I believe we must focus. Over the next few weeks I would like you to discuss this letter with your ministerial team and your Permanent Secretary as well as with the relevant No.10 advisers.

The areas of policy development and implementation which I would like to highlight are:

Crime reduction including a reduction in violent crime

There are existing targets on vehicle crime, burglary and robbery. We need to work up a credible action plan for reducing violent crime and tackling the fear of crime. I am also far from convinced that we have sufficient measures in place to deal with anti-social behaviour and would like to see what more we can do here.

Police Reform

We have a Manifesto commitment on police numbers which forms the backdrop to discussions on how far and how fast we move with police reform. We should decide on and announce this agenda in the first session. We should be prepared to consider all options, including new freedoms for those on the frontline, new structures and organisations and a beefed up inspectorate. I absolutely agree with

you that we need to drive up the performance of the poorest areas through the identification, adoption and dissemination of best practice with a firmer approach to the worst performing forces.

Implementation of the criminal justice plan "The Way Ahead"

If we are to put in place changes over the next 4 years to really focus on persistent offenders and crime reduction, we need progress in the first session on the criminal courts both on the rules of evidence and on modernisation of the courts themselves. And we need to take early decisions on how to implement the sentencing review and what further policy development is needed to do this. It would be useful if you could talk to John Birt about his ideas in this area and come up with firm proposals. Implementation will require legislation on Auld, sentencing and the confiscation of the proceeds of crime. The latter is already scheduled for the first session and should be introduced before the summer break.

Drugs and crime

I would like to talk to you about the national effort on reducing drugs availability as well as testing and treatment in the CJS.

Asylum

Another area where we will need to take swift action is on asylum. Are we right to wait for progress at EU level or should we take domestic action now? What is the evidence on the dispersal system?

Delivery

In each of these areas I would be grateful if you could work with Gus Macdonald and my new Delivery Adviser, Michael Barber, together with my Senior Policy

Adviser, Justin Russell, to develop an agreed set of objectives for the Parliament, consistent with the existing PSAs, which can then form the basis for the monthly meetings I will want to hold with you to drive forward our reform agenda.

If at all possible I would like to meet with you before the summer break to sign off this "Delivery Contract".

In the meantime I would be grateful if you could copy this letter only to John Denham and John Gieve.

Tony

25 June 2001

Josh Russell CC/JH AA

Left a TL for him

FROM THE HOME SECRETARY

STRICTLY PRIVATE & CONFIDENTIAL

FROM: Home Secretary
Queen Anne's Gate

DATE: 2 July 2001

JOHN GIEVE

COPY: Hilary Jackson
Nicky Roche
Sophie Linden
Nick Pearce
Katharine Raymond

Dear John

I am appalled at the level of funding for "organised crime".

The Treasury have announced and released £200m for Customs and Excise to fight smuggling of low level risk (but high level revenue evasion) of cigarettes, liquour, and fuel.

They have approved very little money for the organised crime against those things that matter most in terms of tackling crime, avoiding vice and organised threat to the person, or self-inflicted misery and death (drugs).

On drugs the spread over the Spending Review appears to be £18.7m, £22.5m, £26.3m. On "people smuggling", which is one of the Prime Minister's highest priorities, the figures appear to be £6.3m, £7.5m, £8.7m.

I intend to draw these figures to the attention of the Prime Minister. They appear to be in flagrant breach of his own priorities and extremely low in terms of anything that we would have countenanced as being acceptable. We will need to raise this separately with Number 10 and Number 11, but frankly it indicates the mismatch between political priorities on the one hand and reality on the other.

There appears to have been (and this is clear from the warrants) an absolute and clear priority devoted to the smuggling of high revenue but low priority goods. I would be grateful to know who has authorised this and why?

Best wishes

David

DAVID BLUNKETT

From: Justin Russell
Date: 29 June 2001

PRIME MINISTER

cc: Sir Richard Wilson
Jonathan Powell
Simon Virley
Andrew Adonis
Michael Barber

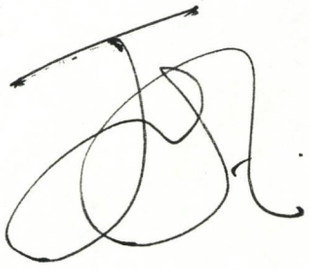
COURTS

Draft letter from Richard Wilson to Home Secretary attached. I agree with membership and functions of CJS Ministerial Committee. Also important to send an early signal to all CJ ministers that the core function of the new Committee should be raising the performance of the system as a whole. I would suggest that letter also:

Set an early task for the new Committee of agreeing a CJS wide strategy for delivering the ten-year goal set out in the Manifesto of "doubling the chance of a persistent offender being caught and punished". Need to emphasise that all potential reforms to the system (eg post Auld) should be measured against whether they help achieve this core goal.

Ask for proposals for revamping the CJS Strategic Planning Group which is the group of senior officials which is supposed to drive forward CJS performance improvement. In particular press for this group to include service heads as well as civil servants (eg head of prison service, head of probation and a senior police representative) plus a representative from Michael Barber's Delivery Unit.

Content to amend letter as suggested?



JUSTIN RUSSELL

Secretary of the Cabinet and Head of the Home Civil Service

PRIME MINISTER

cc Jonathan Powell
Simon Virley
Justin Russell
Michael Barber

COURTS

I attach a draft letter to the Home Secretary setting out and confirming the conclusions which you have reached on criminal justice.

--- 2. I attach a draft, which makes it clear that the you do not accept the "constitutional" arguments against structural change put forward by the Lord Chancellor and the Judges, but that you are willing to accept on managerial grounds that we should have one more try at a joined-up approach, with the additional strengthened Home Office lead which you have discussed. The letter emphasises that a small Ministerial Committee chaired by David Blunkett should take the overall lead on the implementation of the Auld report, but, as agreed at Tuesday's delivery stocktake, the Bill team should be a joint HO/LCD team.

3. I understand that there has been some suggestion that the Committee on the Criminal Justice System should be simply the present informal group continued without change. In my view it would give all the wrong signals to those concerned if, after all the debate of the last few weeks, we simply ended up continuing the present arrangements. We need a step change in performance, and my advice is that the new Committee proposed in the attached draft is essential, as you agreed when we discussed this.

4. I will let you have separately a response to the letter from Lord Justice Woolf.

RJW.

RICHARD WILSON
28 June 2001

Ref. AO2001/1845

GR

DRAFT LETTER FROM THE PRIME MINISTER TO THE HOME SECRETARY

~~JUSTICE MACHINERY~~

CRIMINAL JUSTICE SYSTEM

I have been reflecting on the discussions which we have been having about possible approaches to achieving the comprehensive reform of the criminal justice system to which the Government is committed. Our objective is absolutely clear. We must bring about a step change in the performance of the criminal justice system, in line with the Government's clear commitments. There must be clarity of Ministerial accountability; equal clarity in the signals which we give, in particular about targets and priorities, to those who work on the ground and actually deliver the service; and a drive for effective co-operation between all parts of the system without unnecessary delays. Reform of the whole of the criminal justice system, including those changes likely to be recommended by Sir Robin Auld, must be achieved effectively and swiftly.

I am ~~still~~ not persuaded that there is any constitutional objection to changes in the structure of Government in this area. I do, however, recognise that the Court Service is likely to face major structural change over the next couple of years, with the implementation of the relevant Auld recommendations. Given these challenges, I am prepared to have one last attempt at reinforcing the current arrangements for close joint working.

To ensure that the criminal justice reforms, and the full programme of Government targets in the criminal justice area, are delivered effectively, I would like you to chair a small, tightly focussed, Ministerial Committee (CJS) to oversee modernisation of the criminal justice system and drive up its performance: to ~~oversee the delivery of~~ the reorganisation of the criminal courts and other changes which may be agreed following the Auld Report; ~~and to~~ take the lead responsibility for delivering the targets in the cross-cutting Public Service Agreement for the criminal justice system; ~~The Committee should~~ oversee the work of a joint Home Office/LCD unit managing implementation of the wide-ranging reforms likely to be recommended by Sir Robin Auld and the joint Home Office/LCD Bill team likely to be needed to take forward the Auld and Halliday recommendations. As you will see from the attached notice of composition and terms of reference, I would like Derry Irvine, Peter Goldsmith, Gus Macdonald, Andrew Smith, Charles Clarke and Keith Bradley, the Minister for Criminal Justice, to be members of the Committee. I would also like you to chair a Ministerial Sub-Committee on Crime Reduction (CJS(CR)), which will bring together a wider range of departments and report to CJS Committee. I would be grateful for your early proposals on the implementation of real performance management for the criminal justice system and arrangements

for allocating and administering funding from the criminal justice system reserve.

I am convinced that the current arrangements for integrating information technology systems through the criminal justice system need to be further strengthened. I am aware that a new IBIS Programme Director is about to take up post, but I would like John Gieve to make arrangements to appoint a top level Information Technology Director within the Home Office with authority over information technology development across the criminal justice system. He would be accountable to the Home Secretary and through him to the Committee on the Criminal Justice System.

I am copying this letter to Derry Irvine, Peter Goldsmith, Gus Macdonald, Andrew Smith, Charles Clarke, Keith Bradley and to Richard Wilson, David Calvert-Smith, Hayden Phillips and John Gieve.

CJS – Ministerial Committee on the Criminal Justice System

Composition

Home Secretary (Chairman)
Lord Chancellor
Chief Secretary
Minister without Portfolio
Attorney General
Minister for the Cabinet Office and Chancellor of the Duchy of Lancaster
Minister of State, Home Office (Keith Bradley)

Terms of Reference

To oversee the delivery of the Government's policies for the management and reform of the criminal justice system.

CJS(CR) – Ministerial Sub-Committee on Crime Reduction

Composition

Home Secretary (Chairman)
Chief Secretary, Treasury
Solicitor General
Minister of State, Cabinet Office (Baroness Morgan)
Minister of State, Home Office (John Denham)
Minister of State, Department for Environment, Food and Rural Affairs (Alun Michael)
Minister of State, Department for Transport, Local Government and the Regions (Lord Falconer)
Minister of State, Department of Health (Jacqui Smith)
Minister of State, Scotland Office
Minister of State, Department for Education and Skills (Stephen Timms)
Minister of State, Department for Culture, Media and Sport (Richard Caborn)
Parliamentary Secretary, Leader of the Commons' Office
Parliamentary Secretary, Lord Chancellor's Department (Michael Wills)
Parliamentary Under-Secretary of State, Wales Office

The Secretary of State for Northern Ireland receives papers.

Terms of Reference

To oversee the Government's programme to reduce crime and to make recommendations to the Committee on the Criminal Justice System.

MINISTRY OF DEFENCE
ROOM 205, OLD WAR OFFICE BUILDING
WHITEHALL LONDON SW1A 2EU

Telephone 020 721 82111/2/3
Fax: 020 721 87140
E-mail: sofs-registry1@mod.gsi.gov.uk

SECRETARY OF STATE

MO 4/19H

28 June 2001

[Dear David]

Thank you for copying me your letter of 20 June about the report of the Sentencing Review. I have no difficulty with it being published.

We shall need to consider the extent to which any of the recommendations that are eventually adopted should be reflected in the powers of the Service courts. As you may be aware, these can in certain circumstances deal with civilians as well as members of the Armed Forces. I should be grateful therefore if you could ensure that MoD officials are kept abreast, in a timely manner, of future developments arising from the Sentencing Review.

Indeed, it would be helpful if the MoD could be given the earliest possible notice of significant changes in the criminal justice system more generally. This is always highly desirable, because we aim to keep Service discipline procedures in step with the civilian system to the extent that it is practical and sensible to do so. However, it assumes even greater significance at present, as the Department embarks on the wide-ranging review of legislation leading to the replacement of the three Service discipline Acts with a single piece of legislation. The MoD point of contact is Martin Fuller on 020-7218 9635.

The Rt Hon David Blunkett MP
Secretary of State for the Home Department

I am copying this letter to the Prime Minister, Cabinet colleagues, and to Sir Richard Wilson.

Yours sincerely,

Geoff

GEOFFREY HOON

The National Archives

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Extract details: Letter dated 26 June 2001 and enclosure	X
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Use the card for one piece or for each extract removed from a different place within a piece.

Enter the department and series,
eg. HO 405, J 82.

Enter the piece and item references, .
eg. 28, 1079, 84/1, 107/3

Enter extract details if it is an extract rather than a whole piece.
This should be an indication of what the extract is,
eg. Folio 28, Indictment 840079, E107, Letter dated 22/11/1995.
Do not enter details of why the extract is sensitive.

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Sign and date next to the reason why the record is not available to the public ie. Closed under FOI exemption; Retained under section 3(4) of the Public Records Act 1958; Temporarily retained; Missing at transfer or Number not used.

The National Archives

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From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

MATRIX

John Fuller Esq
Private Secretary to the Deputy Prime Minister
and First Secretary of State
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

28 JUN 2001

JR

Clone from

Dear John,

PUBLICATION FOR CONSULTATION OF THE REVIEW OF PART 1 OF THE SEX OFFENDERS ACT

The Home Secretary is seeking colleagues' agreement to publication of a public consultation document making recommendations from the review of Part One of the Sex Offenders Act 1997 (the register of sex offenders). I attach at Annex A the full report of the review for your consideration, including its recommendations. This is an important area of reform where we can make progress in tackling the risks posed by sex offenders in the community and one of great public interest. The report was cleared by HS before the election but in the event was not released because of the proximity to the election. None of the proposals nor any matters of substance in the report have been changed since it previously received HS clearance but it has been updated to reflect implementation of amendments to the Sex Offenders Act contained in the Criminal Justice and Court Services Act. The Home Secretary intends to take two of the proposals in the report forward in the Criminal Justice Bill planned for introduction in January 2002. The consultation paper therefore needs to issue by late July. The Home Secretary would be grateful for colleagues' agreement by 13 July please.

Current Position

2. Part One of the Sex Offenders Act 1997 (the 1997 Act) requires offenders cautioned for or convicted of certain sexual offences, listed in Schedule One to the Act, to notify the police of their names and addresses. They are required to do so for varying periods, depending on the length or type

228sh

of sentence they receive. Any sentence of longer than 30 months imprisonment will lead to a requirement of an indefinite length. The fact that the requirements are an **automatic** result of a caution or conviction for a relevant offence has enabled us successfully to defend the register before the European Court against the charge that it amounts to an additional punishment. A failure to comply with the Act's requirements is punishable by a maximum sentence of five years imprisonment.

3. Using information gained from the registration process, the police can be made aware when a sex offender moves into their area, and can monitor sex offenders and identify potential suspects in any future offence. Over 97% of the 15,000 offenders liable for registration have complied and currently slightly fewer than 4,000 offenders are added to the register per year. The legislation has provided impetus for closer joint action by the police and probation services to assess the risks posed by sexual offenders and devise plans to manage these. However, some aspects of the legislation had attracted criticism and merited examination.

Criminal Justice and Court Services Act 2000

4. The Criminal Justice and Court Services Act 2000 (the 2000 Act) contained a number of amendments to the 1997 Act, including:

(i) a new power for a court to make an order at the time of sentence placing restrictions on the offender, which will continue to have effect on release and can be of indefinite duration;

(ii) an increase to five years imprisonment in the maximum penalty for a failure to comply;

(iii) a requirement for initial registration to take place in person, within 72 hours;

(iv) a power to enable the police to photograph and fingerprint the offender when he registers; and

(v) a power to require offenders to notify the police of foreign travel.

These measures were all implemented on 1 June.

Setting the Boundaries: The report of the Review of Sex Offences

5. The report *Setting the Boundaries* (STB), which makes recommendations to Government for a revised framework of sexual offences, was published in July 2000. STB has now completed a period of public consultation and the responses are being analysed.

6. Subject to eventual agreement of Cabinet colleagues, the Home Secretary thinks it is sensible for the majority of the proposals from the review of the SOA to be taken forward jointly with those from the Review of Sex Offences as a single Bill since liability for registration under the SOA is determined by the offence committed. The nature and length of the sentence passed by the court also have an effect in terms of the duration of the requirement. The outcome of our decisions about *Setting the Boundaries* will, in part, therefore determine which offences render someone liable for registration. However, these details are not yet known. The review of the SOA has, therefore, taken stock of *Setting the Boundaries* but is not dependent on any of its recommendations being taken forward.

7. The Home Secretary has identified two aspects of the Review which merit early action. These measures are tightening the registration requirements on relevant offenders and introducing a mechanism to bring within the provisions of this legislation certain of those convicted overseas of sexual offences who then travel to this country. He is proposing to include these measures in the Criminal Justice Bill early in the New Year. Because of this, it is important that the consultation document is quickly launched.

Review

8. The policy review of the 1997 Act was announced in June 2000. The announcement included a statement that the findings and proposals of the review would be subject to a process of public consultation. A Steering Group composed of officials from interested departments, the Associations of Chief Police Officers, Chief Officers of Probation and of Directors of Social Services oversaw the review. A series of consultation groups took place involving a much wider group of organizations, including children's charities and other NGOs. These focused on some of the detail of the legislation and discussed where it could be improved. Although on many matters there was a great deal of consensus, on other matters views differed and could not be reconciled, which is reflected in the report.

Resources

9. We estimate that around an additional 300 offenders per year will become liable for registration as a result of the proposed changes. Only a small proportion of these would end up breaching their registration requirement. Any detailed analysis of the additional costs would depend on which of the proposed measures eventually are taken forward but we currently estimate they will be negligible.

Human Rights Act 1998

10. It is very important that the Act remains resistant to challenge under the Human Rights Act. There is no question that the additional requirements imposed by the recent amendments in the 2000 Act and these proposals will

increase the burden on offenders. However, the Home Secretary does not believe that they will increase it in an unreasonable or arbitrary way so as to conflict with Article 8 rights to privacy (and, in so far as there is any infringement with the sex offender's Article 8 rights, it falls within the exceptions to that Article, i.e. for public safety, to protect the rights and freedoms of others or for the prevention of crime), nor does he believe that the requirement amounts to an additional punishment as a result of these proposals. The sex offenders' register is intended to be a proportionate, automatic and above all administrative response to the fact of a conviction for a serious sexual offence. He believes that the Act remains compliant with the European Convention on Human Rights.

Intention to publish as a joint review with the Scottish Executive

11. Policy on sex offenders is, of course, a devolved matter in Scotland. There is, however, a common registration regime north and south of the border and there are strong arguments for continuing this. The Review was led by the Home Office but involved the active participation of officials from the Scottish Executive. When the Report was submitted previously to HS for clearance, the Secretary of State for Scotland indicated that she hoped the report should be published as a joint consultation document. It is now proposed that this be done.

Conclusion

12. As I said above, these are important reforms and we need to make quick progress on them and on issuing the consultation paper. The final decisions on any particular issue will of course depend on the outcome of that exercise.

13. The Home Secretary would therefore be grateful for agreement to issue the consultation paper as soon as possible, and anyway towards the end of July. Could I therefore ask for agreement by Friday, 13 July please.

14. I am copying this letter to Justin Russell (No 10), private secretaries to members of the Cabinet, First Parliamentary Counsel and Richard Abel (Cabinet Office).

Yours ever,

Steph

STEPHEN HARRISON

228sh

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

HA:CSP.

MATRIX

28 June, 2001

JR
c: Ollie

John Prescott Esq. MP
Deputy Prime Minister and First Secretary of State
Cabinet Office
70 Whitehall
LONDON SW1A 2AS

Dear John,

The Leggatt Review of Tribunals

This letter seeks colleagues' agreement on how to take forward Sir Andrew Leggatt's Review of Tribunals. It proposes that we should publish Sir Andrew's Report, together with a short Consultation Paper, before the Recess. The Consultation Paper should state that the Government shares Sir Andrew's objectives for improving the services that tribunals provide their users; and that we believe that tribunals as currently structured meet Human Rights Act requirements on independence and impartiality. It should then highlight Sir Andrew's main recommendations, including the recommendation that improvements are best delivered through a unified Tribunal Service, and seek views on them while remaining strictly neutral on the pros and cons. I enclose a draft Consultation Paper along these lines, and seek colleagues' agreement in principle to publish it. I am seeking responses by 9 July.

There have been two meetings of Permanent Secretaries to discuss the Report, and there was an intention that a meeting of Ministers should take place, originally planned to be chaired by Charlie Falconer. What I am now proposing instead is that we should have a very open form of consultation, rather than trying to take decisions at this stage on whether or not we agree with the scope and detail of the Report, ie any meeting is better post rather than pre-consultation. This is the better approach for the reasons set out below. It is also now probably the only way to publish Leggatt before or shortly after Parliament rises for the Summer.

We commissioned Sir Andrew's Review in May 2000 with broad Terms of Reference to examine all aspects of the tribunals system. Sir Andrew reported to me, on time, on 31 March 2001; this is public knowledge. Our Manifesto contained a firm statement that: "we would examine reform of tribunals in the light of the Leggatt Report." We should clearly publish the Report soon. The broad thrust of the Report is likely to be politically attractive to our backbenchers, making it highly desirable to publish before Parliament rises for the Summer. We are likely to attract criticism for suppressing the Report if we delay until the Autumn.

announce our decisions on all the main issues, and I hope to obtain a slot for the necessary legislation in the 2003-04 Session.

I am copying this to the Prime Minister, Gordon Brown, David Blunkett, Jack Straw, Alistair Darling, Stephen Byers, Patricia Hewitt, Alan Milburn, Estelle Morris, Margaret Beckett, Geoff Hoon, and to Sir Richard Wilson.

Yours ever,

Derry

Equally clearly, we should consult on Sir Andrew's Report. The Report focuses on improving services to users, and we should decide the way forward on modernising tribunals in a way that allows us to take all users' views into account. Departments have expressed a number of concerns about Sir Andrew's detailed recommendations, including his central recommendation that unifying the administration of tribunals in a single Agency is the only effective way of delivering the service improvements he seeks. Leggatt's proposals also support tribunals continuing to operate with the maximum informality, and suggestions to the contrary are incorrect; his watchwords for every tribunal are: informality, simplicity, efficiency, and proportionality. We will clearly need to discuss all these issues collectively. But that should not delay early publication of the Report. The better way forward is to seek views on Sir Andrew's main recommendations, without the Government, subject to the two exceptions set out below, giving any present indication of its thinking at this stage; and then to reach fully informed conclusions in the light of all users' views. I enclose a draft Consultation Paper for that purpose.

In order to publish the Report and Consultation Paper before the Recess, I will need colleagues' agreement to this approach, and any comments on the drafting of the Consultation Paper, by 9 July. My officials will contact their colleagues in other departments about the text of a Press Notice and the other detailed handling arrangements for publication. We will also be setting up arrangements to ensure that Departments' concerns are fully taken into account when we come to discuss and resolve the detailed issues over the Summer and Autumn.

The Consultation Paper makes only two explicit statements of the Government's view. The first (paragraphs 2 and 5) is that we agree, in general terms, with Sir Andrew's objectives for improving the tribunal services across the entire system. I am sure all colleagues will subscribe to this. The second (paragraph 8) is that we do believe that the existing structures comply with the Human Rights Act. I know colleagues will welcome this clear statement.

The Consultation Paper then goes on to seek views on Sir Andrew's wider proposition that, although the institutions are human rights compliant, there is a widespread perception among users that tribunals are not fully independent where they are administered by the Department whose decisions are being challenged. This is an important argument which we cannot ignore, not to be confused with the issue whether they are already independent in ECHR sense, which we believe them to be.

We need to undertake a great deal more analysis, including the views expressed on consultation, before coming to a view on Leggatt's detailed recommendations, including for a unified Tribunal Service. My Department has commissioned consultants to assist with assessing the costs and benefits of delivering service improvements through a unified Service compared to the structural *status quo*. The aim is to produce a rigorous option appraisal to inform a decision in principle in the context of SR2002. We will therefore be seeking more detailed information from departments about the cost of their tribunals during the Summer.

At the same time, we will need to think through all the other policy issues, including the precise scope of any unified Service and how it should be funded. I recognise that particular considerations apply to local authority and party v party tribunals. And I have some sympathy with the view that Leggatt's recommendation on funding may be impractical. But the Consultation Paper should remain neutral on these points, as on others, at this stage. I envisage a White Paper next year to

Tribunals for Users

Consultation Paper about the Report of the Review of Tribunals by Sir Andrew Leggatt

CP 01/01

July 2001

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A consultation produced by the Lord Chancellor's Department
This information is also available on the LCD website www.lcd.gov.uk/

Contents

Introduction

This paper seeks views on the main recommendations in the Report of the Review of Tribunals by Sir Andrew Leggatt. The consultation is aimed at people who use or work in all the tribunals in the UK. This consultation is being conducted in line with the Code of Practice on Written Consultation issued by the Cabinet Office. It falls within the scope of the Code. The Code criteria set out on page 23 have been followed.

Copies of the consultation paper are being sent to the 290 people and bodies who responded to the consultation paper issued by Sir Andrew's Review Team in June 2000. This includes 100 representative, user and advice groups, 23 legal professional bodies and 22 Government Departments or agencies. The full list can be found at Annex A to the Leggatt Report, or a copy can be obtained from:

Ron Thorpe
Lord Chancellor's Department
Review of Tribunals Division
Room 5.54
Selborne House
54-60 Victoria Street
London SW1E 6QW

Tel: 0207 210 8886
Fax: 0207 210 0681
Email: ron.thorpe@lcdhq.gsi.gov.uk.

How to respond

Please send your response by **30 November 2001** to:

Frances Mascoll
Lord Chancellor's Department
Review of Tribunals Division
Room 5.54
Selborne House
54-60 Victoria Street
London SW1E 6QW

Tel: 0207 210 8886
Fax: 0207 210 0681
Email: frances.mascoll@lcdhq.gsi.gov.uk

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

The Department may wish to publish responses to this consultation document in due course. **Please ensure your response is marked clearly if you wish your response or name to be kept confidential**. Confidential responses will be included in any statistical summary of numbers of comments received and views expressed.

Further copies of this consultation paper can be obtained from **Ron Thorpe** at the above address or by phoning **020 7210 8886**.

Foreword

The Government is today launching the next stage of its examination of reform of the Tribunal System, with the publication of the report of Sir Andrew Leggatt's Review of the System together with this consultation paper.

I would like to thank Sir Andrew and his team for their Report. They have put forward a far-reaching set of recommendations that we will want to consider, in consultation with user groups and other interested parties, before deciding finally on the way ahead.

Tribunals deal with over a million cases a year – more than all the civil courts put together.

Most tribunals deal with cases that involve the rights of private citizens against the State. Many deal with issues that are central to the fight against social exclusion (for example, social security, child support and employment). Tribunals are a large and important part of the justice system, that have not in the past received the attention and recognition they deserve.

The Government has already demonstrated its commitment to improving the services that tribunals give their users. We have created the unified Appeals Service, with executive agency status, to deal with social security and child support appeals; expanded and reformed the Immigration Appellate Authorities to deal more speedily with the increased number of asylum appeals; and we are undertaking a comprehensive review of the tax appeal system. The Leggatt Report provides the opportunity to press forward with the reform of tribunals in a more coherent way.

The Government is determined to modernise tribunals so they provide the best possible service to their users. We will judge Sir Andrew's recommendations against the criterion of whether they will contribute to improving the service that users receive. We will also take particular account of the objective that Sir Andrew rightly stresses of ensuring that tribunals operate in a way that allows most users to prepare and present their cases themselves.

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Executive summary

Background

There are some 70 tribunals in England and Wales, administered by 10 Government departments and by local authorities. They deal with over a million cases a year, mainly appeals by individual citizens against administrative decisions by departments and other arms of the State. They range in size from the Appeals Service, which deals with over 200,000 social security appeals, to the 20 or so regulatory tribunals that rarely if ever sit. It costs over £170 million to run these tribunals each year.

In May last year, the Government commissioned an independent review of the tribunals system, led by Sir Andrew Leggatt, a former Lord Justice of Appeal, "to look at the administrative justice system as a whole: its coherence, its accessibility, its organisation ...". The Terms of Reference for the Review are at Annex A. The Review Team submitted its Report to the Lord Chancellor in March 2001.

The Government is today publishing the Report, and seeking views on its principal recommendations to inform final decisions on the way forward. It will announce its conclusions in Summer 2002, and subsequently bring forward any necessary legislation.

Summary

The Government accepts in principle the range of recommendations in the Leggatt Report designed to improve the services that tribunal users receive. These include better access to information and advice, a Customer Charter setting out service standards, improved tribunal procedures, and IT to meet the Government's target of offering all its services on-line by 2005 (paragraphs 1-5).

The Government believes that tribunals meet the standards of independence and impartiality required under the Human Rights Act. But it seeks views on the Report's recommendation that tribunals should be administered separately from the departments whose decisions they oversee, in order to enhance users' confidence in their independence (paragraphs 6-10).

The Government seeks views on whether service improvements would be delivered more effectively by establishing a unified Tribunal Service or within existing structures (paragraphs 11-14).

The Government seeks views on the status, scope, structure, governance and funding of a unified Tribunal Service, should one be established (paragraphs 15-26).

The Government seeks views on a number of other important recommendations in the Report, which do not depend on the establishment of a unified Tribunal Service. These recommendations concern:

second appeals, precedent and judicial review (paragraphs 28-30);

judicial appointments (paragraphs 31-32);

procedural rules (paragraph 33); and

public funding for representation (paragraph 34).

This paper does not deal with Report's specific recommendations about particular tribunals or those which are not directly concerned with tribunals. Where appropriate, responsible departments will consult on these separately, and the Government will announce its conclusions in due course.

Nor does the paper discuss in detail the special arrangements that would be needed if the recommendations of the Report were to apply where a tribunal's jurisdiction extends to areas of devolved responsibility in Scotland, Wales or Northern Ireland. The Government will consult the devolved administrations about whether and how changes should be implemented there.

Tribunals for users

1 When he announced the Sir Andrew Leggatt's Review of Tribunals, the Lord Chancellor said "Our drive for a more modern, integrated Government, puts the emphasis on what the user needs, not the provider. We must ensure that tribunals really are ... responsive to the needs of a modern, diverse society". The title of Sir Andrew's Report, *Tribunals for Users*, reflects this emphasis, and the majority of its 361 recommendations are concerned with aspects of the service that tribunals provide to their users.

2 In particular, the Report stresses that "the distinctive procedures and approach of tribunals should operate so that there are few exceptions to the principle that tribunal users should be able to prepare and present their cases themselves" **(recommendation 23)**. The Government agrees with this emphasis.

3 The Report's recommendations about service to users fall into five main categories:

- Users should have access to the information they need to understand their rights and the tribunal process, and to enable them wherever possible to proceed without representation **(recommendations 13, 22, 24-40, 79, 243-4, 271, 276-7, 282, 305, 321, 324, 331 & 358)**. These recommendations require both decision-making departments and tribunals to provide appropriate information to users.

- Similarly, users should have timely access to the independent advice (and, where necessary, legal representation) they need **(recommendations 41-54, 296 & 325)**. The recommendation about funding legal representation is considered in more detail in paragraph 34 below.

- Tribunals should be subject to a Customer Charter setting out service standards (including standards for information provision), underpinned by arrangements to spread good practice, a range of administrative

performance measures and systems for appraising judicial performance **(recommendations 64, 77, 78, 82, 83 & 161-7)**.

- Tribunals should adopt an 'enabling approach' giving the parties confidence in their ability to participate and in the tribunal's capacity to compensate for any lack of skills or knowledge; improved training for tribunal judiciary and staff should focus in particular on the skills needed to implement this approach **(recommendations 68, 118-20, 135, 140, 141, 149-60)**.

- Procedures should be fair, economic, speedy and proportionate to the issues at stake **(recommendations 16, 17, 80, 81, 88, 132, 134, 138 & 183-233)**. These recommendations cover the end-to-end process, including initial review of decisions by decision-making departments, the encouragement of alternative forms of dispute resolution in appropriate cases and feedback from tribunals to departments about systemic problems. Tribunals should actively manage the progress of cases, ensuring that weak cases are weeded out an early stage.

4 The Report also stresses the importance of coherent modern technology in delivering better and more efficient services **(recommendations 234-249)**. New IT will also be needed, in many cases, if all tribunals are to meet the Government's target of offering all its services on-line by 2005.

5 The Government shares the objectives summarised above for maintaining and improving the services that tribunals provide to their users.

Independence

6 The Report also stresses the need for tribunals, like the ordinary courts, to be independent and impartial. The Government agrees.

7 The Government has already taken steps to ensure that tribunals meet the standards of independence and impartiality required by the Human Rights Act. For example, it changed the terms of appointment of part-time judicial tribunal members to ensure their independence, following the case of *Starrs and*

Chalmers v Procurator Fiscal. Recent court decisions have confirmed that Employment Tribunals[1] and Education Panels[2] meet the required standards.

8 The Government is not aware that further changes are needed to meet human rights requirements, but it would take the necessary steps if the arrangements in any particular tribunal were found to be inadequate in future.

9 The Report argues that, regardless of human rights considerations, it is better for tribunals to be administered separately from the Department whose policies and decisions they consider. This is because, whatever arrangements are in place to ensure that a tribunal is in reality independent and impartial, there is a risk that users will not perceive it as independent. This, in turn, could undermine the user's confidence in the tribunal's decision and the system as a whole.

10 The Government intends to assess the recommendations in the Report on the basis whether or not they will improve the service that tribunals provide to users. So it is seeking views about the Report's conclusions on independence against that background.

Do you think there are real benefits for users if different Ministers are accountable for the tribunal on the one hand, and the relevant policies and administrative decisions on the other?

[1] *Link v Secretary of State for Trade and Industry,* 23 March 2001.
[2] *R v Alperton Community School ex parte B; R v Wembley High School ex parte T; and R v the Cardinal Newman Roman Catholic School ex parte C,* 27 March 2001.

Delivering better services: a unified Tribunal Service?

11 A central theme of the Report is the establishment of a unified Tribunal Service to administer almost all the tribunals with jurisdiction in England and Wales. The Report argues that this is the only way to deliver, across the board, the service standards that it wishes to see. In particular, the benefits the Report sees in a unified structure are that:

- only an institution of that sort would have the weight and focus to drive through the necessary improvements;
- it would enhance users' confidence in the system by removing any perception that tribunals are not totally independent;
- it is the simplest and most certain way to provide:
  - a single focus and point of contact for users;
  - a higher profile, status and authority for tribunals, better enabling them to influence the quality of initial decision-making by departments;
  - electronic access to tribunals' services
  - more challenging and fulfilling careers for staff, making it easier to attract and retain better quality staff;
  - better geographical access to hearing centres, particularly for users of smaller tribunals and those living in rural areas; and
  - larger centres enabling legally-qualified chairmen to sit in a number of jurisdictions;

and

- in the medium term, it would offer better value for money, for example through rationalising accommodation and a common IT system.

1 There are two main arguments against a unified Tribunal Service. It would:

- involve major structural changes that could distract attention and resources from delivering service improvements; and
- break the existing close links between some tribunals and the departments responsible for the relevant administrative decisions and underlying policy. This could make it harder to manage the end-to-end process efficiently or to draw on the tribunal's expertise when developing policy.

2 An alternative approach would be to pursue the improvement of standards without changing the existing structure. Delivering the service improvements described in paragraphs 2-4 above without creating a unified Tribunal Service is likely to involve:

- a commitment that all tribunals will develop and implement Customer Charters and the other service improvements outlined above, with an inter-departmental committee to drive and monitor progress;
- joined-up arrangements for sharing best practice, accommodation and, possibly, IT;
- a new role for the Judicial Studies Board in training tribunal judiciary; and
- an enhanced role for the Council on Tribunals to monitor and report on service standards from a user perspective.

3 The Government's over-riding aim is to improve the services that tribunals provide to users. This question is whether this can be achieved more effectively by creating a unified Service or through the structural status-quo. So the Government is seeking views on the balance between the arguments in paragraphs 11 and 12 above. It also intends to conduct research into the views of past and potential tribunal users on the benefits to them of a single institution; and to estimate the likely costs of establishing one and the potential for securing best value.

Do you think that improved tribunal services would be secured most effectively and efficiently by (i) a unified Tribunal Service (covering all or most of the tribunals listed in the Report) or (ii) through the structural *status-quo*?

4 The rest of this section considers issues that would arise if the Government decided to establish a unified Tribunal Service.

Status and accountability

5 The Report recommends that a Tribunal Service should be an executive agency responsible to the Lord Chancellor, the minister responsible for the rest of the justice system in England and Wales **(recommendation 63)**. It should be separate from the Court Service because a combined agency would be unwieldy. As an executive agency, the Tribunal Service would have published standards, performance indicators and targets; it would be directly accountable to a minister; and its annual report would be published and laid before Parliament.

Do you agree that any unified Tribunal Service should be an executive agency responsible to the Lord Chancellor, or is there a better option?

Scope of a Tribunal Service

6 The Report contains a list of some 70 tribunals that should constitute the Tribunal Service. Annex B of this paper repeats that list, and also lists a few other recently or soon-to-be established tribunals.

7 The Report envisages that the Tribunal Service should only include tribunals constituted to make independent judicial decisions. It should not be responsible for bodies that are nominally tribunals but which take decisions that are part of an administrative process, for example the Patent Office tribunals **(recommendation 21)**.

8 The Report discusses whether a national Tribunal Service should include tribunals that are currently administered by local authorities. It recommends that it should **(recommendation 7)**.

9 The Report discusses whether a Tribunal Service should include tribunals that deal with disputes between private parties, or concentrate solely on those which hear appeals by citizens against decisions of the State. It recommends that party v party tribunals should be included **(recommendation 10)**.

10 The Report recommends that the Investigatory Powers Tribunal[3] should not form part of a Tribunal Service because of the sensitive nature of its work **(recommendation 6)**.

Do you agree with the Report's recommendations about the scope of any Tribunal Service. In particular, should a Tribunal Service include (i) local authority tribunals; (ii) party *v* party tribunals; and (iii) the Investigatory Powers Tribunal?

Structure & Governance

11 The Report recommends that the Tribunal Service should be structured in Divisions **(recommendation 89)**. Each Division would be a grouping of related tribunal jurisdictions headed by a judicial President **(recommendation 110)**. A Senior President would head the Tribunal Service as a whole **(recommendation 108)**. The Report argues that a divisional structure will benefit users by making the system easier to understand and therefore more accessible

12 The role of the Presidents would be to promote consistency of decision-making and uniformity of procedure and practice. They would be responsible for the composition of the panels to hear individual cases, liaison with the Judicial Studies Board about training requirements, the system for appraising judicial performance within the Division, and the promotion of more consistent decision making.

13 The Report recommends that the Presidents and the Chief Executive[4] should constitute a Tribunals Board to direct the system **(recommendations 112-113)**. It also proposes a number of specific functions for the Board, for example advising on judicial training and appointments **(recommendation 114)**. The Board should encourage user groups and consider how best to take advantage of their knowledge and experience **(recommendations 55-56)**.

14 The Report recommends an enhanced role for the Council on Tribunals **(recommendations 168-182)**. The Council should have the primary role of championing the cause of users. Its specific roles should include monitoring

[3] This recently-established tribunal has replaced the Interception of Communications Tribunal, the Intelligence Services Tribunal and the Security Service Tribunal.

judicial training, the development of IT, the usefulness of the information provided to users and the adequacy of independent sources of advice **(recommendation 172)**.

Do you agree with the Report's recommendation that the tribunals system should have a divisional structure, with each Division headed by a judicial President?

Do you agree that a Tribunal Service should be directed by Tribunals Board? Do you agree with the Report's recommendations about the functions of the Board?

Do you agree that the Council on Tribunals should have an enhanced role to champion the cause of users? Do you agree with the Report's detailed recommendations about the functions of the Council?

Funding

15 The Report recommends that the Tribunal Service should be funded by charging departments (and local authorities) on the basis of the number of appeals against their decisions **(recommendation 86)**. The intention is to provide incentives to improve initial decision-making **(recommendation 85)**. The Report argues that a system of this type need not be excessively complex and bureaucratic.

Do you agree with this recommendation?

[4] Plus the Chairmen of the Council on Tribunals and the Tribunals Committee of the Judicial Studies Board.

A more coherent and effective tribunals system

16 This section seeks views on some important recommendations that are intended to make the tribunals system more coherent and effective, but which do not depend on the creation of a unified Tribunal Service to administer the system.

Second appeals, precedent and judicial review

17 At present, there is a right to a further appeal against the decisions of some tribunals, but not others. The grounds on which these 'second-tier' appeals can be made vary. Decisions by second tier tribunals sometimes bind future decisions by first tier tribunals in similar cases; and sometimes not. A few second tier tribunals have an equivalent status to the higher courts, so their decisions cannot be challenged in the courts by way of judicial review; most tribunals can be challenged in this way.

18 The Report recommends that:

- there should be a right to a further appeal to a second tier tribunal in all tribunal jurisdictions, but the grounds for a second appeal should be limited to points of law only **(recommendations 95 & 98)**; this would create a new appeal right in some cases (for example Mental Health Review Tribunals) and limit the scope of existing appeal rights in others (for example immigration and asylum);

- second tier tribunals should be able to specify that certain of their decisions are binding on the lower tier in future cases **(recommendations 104-105)**; and

- tribunals should be expressly excluded from judicial review **(recommendations 106-107)**.

19 The changes are intended to secure a more coherent system; clearer and more consistent decision-making; and a simpler, cheaper and quicker means of correcting flawed decisions where the only recourse now is judicial review.

Do you agree with these recommendations?

Are there jurisdictions that should not have a second tier appeal? Are there jurisdictions where the grounds for a second tier appeal should be wider than a point of law?

Should only selected second tier decisions be binding; or, given that they are limited to points of law, should they all second tier decisions be binding?

Should tribunals be excluded from judicial review, or should only second tier tribunals be excluded; or should the judicial review remain available as now?

Judicial appointments

20 The current arrangements for appointing tribunal members are complex. The Lord Chancellor makes a large number of appointments, including to tribunals that are not administered by his department. In some cases, the minister for the administering department or the local authority appoints all tribunal members. In some cases, the Lord Chancellor appoints legally-qualified chairman, but the minister for the administering department appoints lay members. Various different arrangements apply to tribunals that sit in Scotland, Wales or Northern Ireland.

21 The Report recommends that all tribunal members currently appointed by Westminster ministers should in future be appointed by the Lord Chancellor (in consultation, as necessary, with other members of the UK Government and members of devolved administrations) **(recommendation 4)**. The Government assumes that this recommendation is also intended to apply to appointments made by local authorities. The appointments system and procedures should be subject to oversight by the new Judicial Appointments Commission **(recommendations 127 & 129-131)**.

Do you agree that all appointments should be made by the Lord Chancellor? Do different considerations apply to the appointment of expert lay tribunal members compared to legally-qualified chairmen?

Procedural rules

22 The Report recommends that tribunals' procedural rules should be as consistent as possible, and generally based on the Council on Tribunal's model rules. But it recognises that there will remain some significant differences between jurisdictions **(recommendations 199-200)**. The Report envisages that all procedural rules should be made by the Lord Chancellor (subject to consulting devolved administrations, the Council on Tribunals and others).

Do you agree?

Funding representation

23 The Report stresses that tribunals should operate in a simple and accessible way that ensures that the great majority of appellants are able to represent themselves. But it recognises that there will be some cases, for example some second-tier appeals on a complex or novel point of law, where this is not possible. The Report therefore recommends extending the scope of Community Legal Service funding to cover Legal Representation in exceptional circumstances before all tribunals **(recommendation 48-49 & 52)**. Funding would be subject to a strict merits test in the Legal Service Commission's Funding Code. This might require that cases have good prospects of success and that there are objective reasons why the appellant can not reasonably be expected to represent him or herself (for example language or mental difficulties, or complex legal issues).

Do you agree with this recommendation, or are there any tribunals for which public funding for representation should not be available?

Are the proposed elements of the merits test appropriate?

Annex A – Terms of Reference

The Terms of Reference for Sir Andrew Leggatt's Review of Tribunals were

"To review the delivery of justice through tribunals other than ordinary courts of law, constituted under an Act of Parliament by a Minister of the Crown or for the purposes of a Minister's functions; in resolving disputes, whether between citizens and the state, or between other parties, to ensure that:

There are fair, timely, proportionate and effective arrangements for handling those disputes, within an effective framework for decision-making which encourages the systematic development of the area of law concerned, and which forms a coherent structure, together with the superior courts, for the delivery of administrative justice;

The administrative and practical arrangements for supporting those decision-making procedures meet the requirements of the European Convention on Human Rights for independence and impartiality;

There are adequate arrangements for improving people's knowledge and understanding of their rights and responsibilities in relation to such disputes, and that tribunals and other bodies function in a way which makes those rights and responsibilities a reality;

The arrangements for the funding and management of tribunals and other bodies by Government departments are efficient, effective and economical; and pay due regard both to judicial independence, and to ministerial responsibility for the administration of public funds;

Performance standards for tribunals are coherent, consistent, and public; and effective measures for monitoring and enforcing those standards are established; and

Tribunals overall constitute a coherent structure for the delivery of administrative justice.

The review may examine, insofar as it considers it necessary, administrative and regulatory bodies which also make judicial decisions as part of their functions."

Annex B – List of Tribunals

Tribunals listed in the Report by proposed Divisions

Division	First-tier tribunals	Appeal tribunals[a]
Immigration	Immigration Adjudicators	Immigration Appeal Tribunal
	Special Immigration Appeal Commission	
	Immigration Services Appeal Tribunal	
Social Security & pensions	Appeals Service	Social Security and Child Support Commissioners
	Criminal Injuries Compensation Appeal Panel	
	Pensions Appeal Tribunal	
	Fire Service Pensions Appeal Tribunal	
	Police Pensions Appeal Tribunal	
Land & valuation	Valuation Tribunal	Lands Tribunal
	Rent Assessment Committees	
	Leasehold Valuation Tribunal	
	Commons Commissioners	
	Rent Tribunal	
	Agricultural Lands Tribunal	
Financial	General Commissioners of Income Tax	Special Commissioners of Income Tax
	VAT and Duties Tribunal	
	Section 703 Tribunal	
	Financial Services and Markets Tribunal	
Transport	Parking Appeals Service	Transport Tribunal
	National Parking Adjudication Service	
Health & social services	Mental Health Review Tribunal	
	Mental Health Review Tribunal (Wales)	
	Protection of Children Act Tribunal	
	Family Health Service Appeal Authority	
	Registered Homes Tribunal	
Education	Admission Appeal Panels	
	Exclusion Appeal Panels	
	Special Educational Needs Tribunal	
	Registered Inspectors of Schools Tribunal	
	Registered Nursery Education Inspectors Appeal Tribunal	

Division	First-tier tribunals	Appeal tribunals[a]
	Independent Schools Tribunal	
Regulatory	Competition Commission Appeal Tribunal Copyright Tribunal Consumer Credit Licensing Appeals Discipline Committees Estate Agent Appeals Wireless Telegraphy Appeal Tribunal Aircraft & Shipbuilding Industries Arbitration Tribunal Arbitration Tribunal Central Arbitration Committee Insolvency Practitioners Tribunal Chemical Weapons Licensing Appeal Tribunal Industrial Training Levy Exemption Referees Mines and Quarries Tribunal Registered Designs Appeal Tribunal NHS Medicines (Control of Prices & Profits) Appeal Tribunal Information Tribunal Betting Levy Appeal Tribunal Misuse of Drugs Tribunal Foreign Compensation Commission Antarctic Act Tribunal Conveyancing Appeal Tribunal Justices and Clerks Indemnification Tribunal Meat Hygiene Appeals Tribunal Dairy Produce Quota Tribunal Forestry Committees Plant Varieties and Seeds Tribunal Sea Fish Licence Tribunal Local Government Adjudication Panels London Building Acts Tribunal	
Employment	Employment Tribunal Police Appeal Tribunal Reserve Forces Appeal Tribunal Reinstatement Umpires	Employment Appeal Tribunal

a The Report proposes that the scope of existing second tier tribunals should be extended to cover all tribunals in the relevant Division, and that new appeal tribunals should be created for Divisions where they do not exist now.

New tribunals not listed in the Report

Proscribed Organisations Appeal Commission
Investigatory Powers Tribunal
Asylum Support Adjudicators

Protection of Vulnerable Adults Tribunal

Questionnaire

We would welcome responses to the following questions set out in this consultation paper. Please send your response to the address on page 2.

Do you think there are real benefits for users if different Ministers are accountable for the tribunal on the one hand, and the relevant policies and administrative decisions on the other (paragraph 10)?

Do you think that improved tribunal services would be secured most effectively and efficiently by (i) a unified Tribunal Service (covering all or most of the tribunals listed in the Report) or (ii) through the structural *status-quo* (paragraph 14)?

Do you agree that any unified Tribunal Service should be an executive agency responsible to the Lord Chancellor, or is there a better option (paragraph 16)?

Do you agree with the Report's recommendations about the scope of any Tribunal Service (paragraphs 17-21).

In particular, should a Tribunal Service include:

(i) local authority tribunals (paragraph 19);

(ii) party *v* party tribunals (paragraph 20); and

(iii) the Investigatory Powers Tribunal (paragraph 21)?

Do you agree with the Report's recommendation that the tribunals system should have a divisional structure, with each Division headed by a judicial President (paragraph 22-23)?

Do you agree that a Tribunal Service should be directed by Tribunals Board (paragraph 24)?

Do you agree with the Report's recommendations about the functions of the Board (paragraph 24)?

Do you agree that the Council on Tribunals should have an enhanced role to champion the cause of users (paragraph 25)?

Do you agree with the Report's detailed recommendations about the functions of the Council (paragraph 25)?

Do you agree that a Tribunal Service should be funded by departments in proportion to the number of appeals against their decisions (paragraph 26).

Do you agree with the Report's recommendations about second appeals, precedent-setting powers for second tier tribunals, and excluding tribunals from the scope of judicial review (paragraphs 28-30)?

Are there jurisdictions that should not have a second tier appeal (paragraph 29)?

Are there jurisdictions where the grounds for a second tier appeal should be wider than a point of law (paragraph 29)?

Should only selected second tier decisions be binding; or, given that they are limited to points of law, should they all second tier decisions be binding (paragraph 29)?

Should tribunals be excluded from judicial review, or should only second tier tribunals be excluded; or should the judicial review remain available as now (paragraph 29)?

Do you agree that all appointments should be made by the Lord Chancellor (paragraph 32)?

Do different considerations apply to the appointment of expert lay tribunal members compared to legally-qualified chairmen (paragraph 32)?

Do you agree that procedural rules should be as consistent as possible and made by the Lord Chancellor (paragraph 33)?

Do you agree with that public funding for representation should be available for exceptional cases before all tribunals, or are there any tribunals for which public funding for representation should not be available (paragraph 34)?

Are the proposed elements of the merits test appropriate (paragraph 34)?

Name:

Organisation:

Address:

If you are a representative groups please give a summary of the people and organisations you represent:

Consultation Co-ordinator

If you have any complaints or comments about the consultation process, you should contact the Lord Chancellor's Department's consultation co-ordinator, Bruce Eadie, on 020 7210 1344 or email him at **beadie@lcdhq.gsi.gov.uk**. Alternatively, you may wish to write to the address below:

Bruce Eadie
Head of Corporate Services Secretariat,
Room 9.54
Lord Chancellor's Department
Selborne House
54-60 Victoria Street
London SW1E 6QW

General principles of consultation

The criteria in the Code of Practice on Written Consultation issued by the Cabinet Office are:

A Timing of consultation should be built into the planning process for a policy or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left for it at each stage.

B It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

C A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks questions on. It should make it as easy as possible for readers to respond, make contact or complain.

D Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

E Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

F Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and reasons for decisions finally taken.

G Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.

File -

10 DOWNING STREET
LONDON SW1A 2AA

From the Prime Minister's Senior Policy Adviser

27 June 2001

Dear Hilary

CRIMINAL JUSTICE STOCKTAKE

The Prime Minister met the Home Secretary and John Denham yesterday for a criminal justice stocktake meeting. Sir Richard Wilson, John Gieve, Chris Mace, Sophie Linden, Michael Barber, Peter Hyman, Andrew Adonis, Olivia McLeod and myself were present. Lord McDonald entered the meeting during item four.

1. Oldham and Burnley

The Home Secretary outlined his plans for responding to the riots in Oldham and Burnley and for pre-empting further problems.

2. Chief Constable of Sussex

The Prime Minister asked about the resignation of the Chief Constable of Sussex Police. The Home Secretary said that problems in the force had gone on for over three years, and went much further than this single case. A peer review by the Chief Constable of Hampshire and an Assistant Commissioner of the Met Police had been damning. The Home Secretary had sent a letter to the Police Authority on Friday, which he had made public on Monday. The Chief Constable had resigned overnight.

3. Thompson and Venables

The Home Secretary said that following the ECHR ruling on Thompson and Venables, there were a number of similar cases which were now seeking judicial review, and he provided the Prime Minister with briefing on these. The Lord Chief Justice had written to the Home Secretary to suggest holding hearings on 68 of these cases during August though in practice only 12 are ready to be

dealt with then. The Home Secretary had not responded yet, but had concerns about the timing of this work.

4. Asylum and Immigration

The Prime Minister summarised the current situation on asylum and acknowledged the radical improvements in the system. He said that the key now was to reduce the number of people entering the system. The aspiration should be to halve the number. Tough measures were needed to send a message to the international community. The UK had to respond quickly to changes in other countries which have a significant impact, for example the Dutch rule change on Afghans. The Home Secretary said he was ready to consider any proposals to reduce the numbers. It would be possible to accelerate the development of detention centres like Oakington. Chris Mace said that they were increasing investigation at the point of entry because this provided intelligence and acted as a deterrent. Measures at the point of disembarkation and duties on airlines not to carry those without documents were also important. The Prime Minister asked the Home Secretary to revisit the list of potential action points developed by Liz Lloyd before the election to see if any of these could be taken forward.

The Prime Minister asked about the blockage on removals. The Home Secretary said there was currently no system to track and remove failed asylum seekers. Such a system required the cooperation of local authorities and the police. Individual police forces were not cooperating on removals, and the Home Secretary planned to raise that with them at his meeting with Chief Constables. A unit of around forty police officers had been established to work on removals, but a much larger unit of specially trained police was required. Chris Mace said that to date work on removals had been undisciplined and old fashioned. Involving the police in a more significant way, with a Deputy Chief Constable to lead the removals programme, would bring discipline and credibility to the process, and would enable more sophisticated risk assessments of community relations issues. The Prime Minister said that removals must be accelerated in order to send out the right message. The political fallout was manageable because the public recognised the need to remove failed asylum seekers.

The Home Secretary said that the PSA target of 30,000 by April 2001 was unrealistic. It could be achieved by the end of 2002, and this would be within the manifesto target of 30,000 by 2003-04. He proposed to be up front about not meeting the PSA target. The Prime Minister said that it crucial to deliver the Manifesto target of more than 30,000 removals.

The Home Secretary suggested a new approach to those who had been in the system for a long time. The Prime Minister said that any move in this direction would only be possible as part of a broader package of measures to restrict the number of unfounded applicants entering the country and if it could be shown that this would release resources and energy to pursue other key IND objectives. He asked about the scale of the problem. Chris Mace said that there were currently 25,000 in the decisions backlog (this should be cleared within a few months) and 40,000 in the appeals backlog, but the real problem was the removals backlog.

The Home Secretary said that the voucher system was causing problems. An alternative would be to provide cash support for asylum seekers, but only in return for a 'contract' between the asylum seeker and NASS which would reinforce their obligation to keep in touch with IND and their responsibilities to the local community. Another idea would be to attach conditions to entitlement to other services. Chris Mace said that such a civil contract would be workable, and would provide a way to better track asylum seekers. Legislation would be required to change the voucher system.

The Home Secretary said that these ideas could only be developed as part of a package of measures which together sent out a tough message, and must remain confidential until they are deliverable.

The Home Secretary raised an issue about a £500m shortfall in funding for asylum support. John Gieve said the Home Office would be exploring with HMT releasing this money from the reserve.

5. Police numbers

The Home Secretary said that the existing commitment to increase the number of police by 6,000 referred to recruits rather than a net increase in officers. He proposed to announce in the Queen's Speech debate a commitment to increase the overall number of police officers by 6,000 by 2004. The Prime Minister said that it had been made clear in the past and during the election campaign that the target referred to recruits and there would be significant risks to being bound to a new target. Justin Russell said that the previous Home Secretary had already made a commitment during the election campaign to 130,000 officers. The Home Secretary agreed to reconsider his commitment on

numbers in the light of the discussion and Jack Straw's commitment during the election campaign.

6. Police Reform

John Denham outlined the six strands of police reform, on which he will have further work ready by the beginning of September:

- Investigative capacity, which includes the question of whether forces should recruit specialist detectives.
- Reassurance/anti-disorder, for example, negotiating the relationships between police, specials, security industry and neighbourhood wardens.
- Leadership.
- Science and technology, in particular IT.
- Employment conditions. The message from the Police Federation was that they were willing to discuss radical change, though this would have a price. Management in the police service, which is currently geared around regulations, needed to be modernised to support reformed employment contracts.
- Tackling variations in performance including whether there is a need for new reserve powers to deal with under-performance.

Michael Barber questioned the capacity of the system to identify and disseminate best practice and the need to sharpen the inspection regime. John Denham said that the new standards unit would be critical for driving up performance, and the Inspectorate would need to be aligned to that agenda. Funding is available to establish the standards unit as a matter of urgency. The Crime Reduction funding could be used more effectively to be used as a lever for best practice.

7. Home Office Structure

The Home Secretary said that restructuring of the Home Office was required to focus it on delivery. John Gieve said that there would be a smaller executive board comprising the main agencies and policy heads, and including external non-executive members. Its main job would be to drive performance across the Home Office and improve the department's influence over the rest of Whitehall and wider agencies which contributed to delivering long-term reductions in crime. Ministers would be organised around the same newly-focused aims as the department. More external expertise would be brought in to manage large projects, for example an outside person would lead on CJS IT.

8. Crime

The Home Secretary said he proposed to place a new emphasis on tackling anti-social behaviour and on violent crime, while continuing to meet the PSA targets on burglary and car crime. The proposals would link to John Birt's ideas, and the Home Secretary planned to meet with Lord Birt. John Denham said that he would be developing a strategy on disorder and anti-social behaviour which involved other agencies than the police. The structure of Crime Reduction Partnerships was right but their performance needed to be more consistent. At the same time the police and Home Office needed to improve their ability to target persistent offenders.

The Prime Minister said that tough, common sense measures to tackle crime must be pushed forward. The Home Office should be robust on ECHR issues, and be willing to take risks to push through common-sense policies, such as the confiscation of assets. Sending out the right signals to criminals was key, and could be enough in itself to deter youths involved in street crime. John Denham said that there was currently no coherent response to youths responsible for street crime. Industry needs to play its part, for example in preventing mobile phone theft.

The Home Secretary said that he would welcome the chance for a further discussion on drugs where the focus should be category A drugs. The Prime Minister said there was a problem of drug using offenders going back on the street without being treated and re-offending . Drug Treatment and Testing Orders began to tackle this, but more action was needed.

9. CJS reform

The Home Secretary said he would publish Halliday shortly. These ideas should be taken forward in the context of work to deliver a more efficient system. John Gieve said there should be a single bill for Halliday and Auld, with the key priorities identified and implemented as quickly as possible. The Prime Minister said that a small, focused committee, chaired by the Home Secretary, should agree a practical agenda for reform of the Criminal Justice System. The key thing was to deliver real change on the ground.

10. Finance

The Home Secretary said that a Home Office £169m underspend from the crime reduction budget had been clawed back by HMT. Negotiations are ongoing with the Treasury to reclaim that money.

10. Delivery Contract

The Prime Minister and the Home Secretary agreed that a delivery contract containing key headline priorities would be agreed by the end of July. Michael Barber would work with Justin Russell and the Home Secretary's team to take this forward.

JUSTIN RUSSELL

Hilary Jackson,
Home Office

135010

FCS/01/082

HOME SECRETARY

Sentencing Review

1. I welcome your decision to publish the Sentencing Review conducted by John Halliday and his team. It is an excellent piece of work. I also agree that there should be a period of public consultation about it before we bring forward any legislation.

2. I am copying this minute to the Prime Minister, Cabinet colleagues and Sir Richard Wilson.

(JACK STRAW)

Foreign and Commonwealth Office

26 June 2001

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

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CS
cc: AA.

The Right Honourable John Prescott MP
Deputy Prime Minister and First Secretary of State
Cabinet Office
70 Whitehall
London
SW1A 2AS

25 June 2001

Dear John,

SECTION 1 OF THE DAMAGES ACT 1996: THE DISCOUNT RATE

It is my responsibility to set a discount rate under section 1 of the Damages Act 1996. This determines the return to be expected from the investment of a sum awarded as damages for future pecuniary loss in an action for personal injury. I am writing to let you know that I have decided to set the rate at 2.5%. I intend to lay a Statutory Instrument on 27 June, with the new rate coming into effect on 28 June. The new rate will apply to England, Wales and Northern Ireland.

Last year I issued a Consultation Paper seeking views on the exercise of my power under section 1 of the Damages Act 1996. I have now considered the responses to the consultation and sought additional evidence, including reports from independent financial consultants. Following careful and detailed consideration, I have concluded that the discount rate should be 2.5%. My reasons for this decision are set out in the attached document.

I consider it vital that the Order should come into force immediately after being made since, if there is an interval between the making and laying of the Order, and its commencement, there will be uncertainty as to the rate which courts should apply when deciding the quantum of damages in personal injury cases during that interval, and there will be a risk that the delay will have a distorting effect on pending litigation. For this reason it will be necessary to infringe the normal rule whereby a Statutory Instrument should be laid at least 21 days before it comes into force.

As I have made clear in previous correspondence, in setting the rate I have to apply the appropriate legal principles laid down authoritatively by the courts. I must ensure that I set a rate calculated to avoid over- or under- compensation of claimants. I cannot take account of the effect on business, nor on the Government's purse. This raises difficulties in producing a Regulatory Impact Assessment (RIA). Following discussions between officials, the Regulatory Impact Unit accept the argument that if an RIA were produced before the decision on the discount rate is

announced, it would leave me vulnerable to very heavy criticism, and legal challenge. For the same reasons, it is not possible to collect the information required to prepare the RIA before the rate is known. I will therefore provide an assessment of the impact in due course, after the rate has been announced.

I am copying this letter to the Prime Minister, members of HS Committee, First Ministers of Northern Ireland and Scotland, First Secretary of Wales and Sir Richard Wilson.

Yours ever,

Derry.

SECTION 1 OF THE DAMAGES ACT 1996: REASONS FOR DECISION

It is my responsibility to set a discount rate under section 1 of the Damages Act 1996.

In doing so, I have applied the appropriate legal principle laid down authoritatively by the courts, and in particular by the House of Lords in *Wells v Wells* [1999] 1 AC 345.

I also consider that it is highly desirable to exercise my powers under the Act so as to produce a situation in which claimants and defendants may have a reasonably clear idea about the impact of the discount upon their cases, so as to facilitate negotiation of settlements and the presentation of cases in court. In order to promote this objective, I have concluded that I should:

(a) set a single rate to cover all cases. This accords with the solution adopted by the House of Lords, which was considered to be appropriate in *Wells v Wells* [1999] 1 AC 345. It will eliminate scope for uncertainty and argument about the applicable rate. Similarly, I consider it is preferable to have a fixed rate, which promotes certainty and which avoids the complexity and extra costs that a formula would entail;

(b) set a rate which is easy for all parties and their lawyers to apply in practice. For this reason, I consider it appropriate to set the discount rate to the nearest half per cent., so as to ensure that the figure will be suitable for use in conjunction with the Ogden Tables, which are a ready means for parties to take into account actuarial factors in computing the quantum of damages;

(c) set a rate which should obtain for the foreseeable future. I consider it would be very detrimental to the reasonable certainty which is necessary to promote the just and efficient resolution of disputes (by settlement as well as by hearing in court) to make frequent changes to the discount rate. Therefore, whilst I will remain ready to review the discount rate whenever I find there is a significant and established change in the relevant real rates of return to be expected, I do

not propose to tinker with the rate frequently to take account of every transient shift in market conditions.

The legal principle which must guide me in setting the discount rate is clear: "...the object of the award of damages for future expenditure is to place the injured party as nearly as possible in the same financial position he or she would have been in but for the accident. The aim is to award such a sum of money as will amount to no more, and at the same time no less, than the net loss" (*Wells v. Wells* [1999] 1 AC 345, 390A-B *per* Lord Hope of Craighead). I must set a rate calculated to avoid over- or under-compensation of claimants. In doing so, I have had regard to the legitimate concerns of claimants who are seriously injured to ensure that they have a stream of income in the future adequate to meet their needs, as identified by the House of Lords in *Wells v Wells*.

Setting a single rate to cover all cases, whilst highly desirable for the reasons given above, has the effect that the discount rate has to cover a wide variety of different cases, and claimants with widely differing personal and financial characteristics. Moreover, as has become clear from the consultation exercise (including responses by expert financial analysts to questions which I posed them), the real rate of return on investments of any character (including investments in Index-Linked Government Securities) involves making assumptions for the future about a wide variety of factors affecting the economy as a whole, including for example the likely rate of inflation. In these circumstances, it is inevitable that any approach to setting the discount rate must be fairly broad-brush. Put shortly, there can be no single "right" answer as to what rate should be set. Since it is in the context of larger awards, intended to cover longer periods, that there is the greatest risk of serious discrepancies between the level of compensation and the actual losses incurred if the discount rate set is not appropriate, I have had this type of award particularly in mind when considering the level at which the discount rate should be set.

The House of Lords in *Wells v Wells* set the discount rate by reference to the average gross redemption yield on Index-Linked Government Stock (at, it appears, an

assumed rate of inflation of 5% - see Lord Hope at p. 393E-F), adjusted to reflect the impact of taxation. The majority of their Lordships considered that it was appropriate for this average to be taken over a period of 3 years.

The average gross redemption yield on Index-Linked Government Stock for the 3 years leading up to 8 June 2001 was 2.61% (again, assuming a rate of inflation of 3%, on the basis of which figures are readily available). Purely on the basis of this average value, as adjusted to take account of tax, it would appear that a discount rate of between 2% and 2.5% would be appropriate.

I recognise that claimants in personal injury cases are in a different position from most other investors. Such claimants require a regular and dependable source of income without significant investment risk. I accept that the yields on Index Linked Government Stock provide a valuable insight into the real rates of return that claimants can reasonably be expected to achieve through low risk investment. But they are not necessarily the only indicator of such rates of return, and in setting the discount rate I have taken account of a wide range of information about the rates of return and degrees of risk associated with a range of different types of investment.

In the light of all this information, I have concluded that the discount rate should be set at 2.5%.

In doing so, I have noted that the real rate of return to be expected from Index-Linked Government Securities tends to be higher the lower the rate of inflation is assumed to be (figures at assumed rates of inflation of 3% and 5% are readily available for comparison). The average gross redemption yield figure of 2.61% assumes an inflation figure of 3% extending into the future. But over recent years inflation has been kept close to or below the 2.5% target set by the Government, and Government policy and the function of the Bank of England remains firmly to maintain inflation according to that target. Although economists differ as to what inflation rates may be expected for the future, I note that the market's general expectation as to the rate of inflation for the future (as implied by market valuations of gilts) is well below 3%. I

consider that it is reasonable to assume an inflation rate for the foreseeable future somewhere below 3%, and this in turn provides comfort that a discount rate set at 2.5% is reasonable.

I am further supported in my conclusion that a discount rate of 2.5% is reasonable by indications that the rate of return in respect of Index-Linked Government Securities does not represent a pure and undistorted measure of the real rate of return which markets would afford in relation to investments with minimal risk, which have emerged from the information which was provided in the responses to the consultation paper and the responses from expert financial analysts which I obtained, and by consideration of rates of return on other investments which are available at low risk to claimants. I have treated the following points as significant.

First, some responses to the consultation maintained that the market in Index Linked Government Securities is at present distorted so that the prevailing yields are artificially low, and do not necessarily give a reliable indication of the real rate of return which markets would afford in relation to investments with minimal risk. The expert financial analysts whom I consulted concurred that the market is distorted at present. This appears to be a result of the minimum funding requirement introduced by the Pensions Act 1995 (which has, in effect, created additional demand for such securities on the part of pension funds) combined with a reduced supply of government securities generally, as the Government has reduced the national debt. The market in Index Linked Government Securities has changed significantly since *Wells v Wells* was argued and decided. It is widely held that the continuing high demand for Index Linked Government Stock and the scarcity of supply has led to yields being artificially low as compared with both past record and the yields presently available on similar investment instruments issued by other, comparable, national governments. I consider that the fact that yields in Index Linked Government Stock appear to be artificially low at present militates against the suggestion that these yields over recent years should be taken as the sole indication of the rates of return that can be achieved through low risk investment in the market. Also, I consider that there is some reasonable prospect of a return to higher rates of return in respect of

Index-Linked Government Securities when the Government's already announced plans to abolish the minimum funding requirement are carried into effect.

Second, I have noted that the Court of Protection, even in the wake of *Wells v Wells*, has continued to invest, on the behalf of claimants, in multi-asset portfolios, including an equity element. Investment in this manner could be expected to produce real rates of return well in excess of 2.5%. The Court of Protection has specific responsibility to ensure that the financial needs of those for whose benefit it acts will be met, ie its investment objectives are closely similar to those of the prudent claimant which the House of Lords identified in *Wells v Wells*. The Court of Protection takes competent financial advice as to the investment strategy which will best secure those objectives. Despite the decision of the House of Lords in *Wells v Wells* to set the discount rate by reference to yields on Index Linked Government Securities, the Court of Protection has continued its former policy, with the agreement of the families concerned, of investing in portfolios comprising of a mixture of equities, gilts and cash. Master Lush of the Court of Protection has stated that none of the families of the Court's patients have chosen to invest in Index Linked Government Stock since *Wells v Wells*, despite having been offered that option. Thus it appears that there are sensible, low risk investment strategies available to claimants which would enable them comfortably to achieve a real rate of return at 2.5% or above, without their being unduly exposed to risk in the equity markets.

Third, I consider that it is likely that a real claimant with a large award of compensation, who sought investment advice and instructed advisers as to the particular investment objectives which the advisers needed to fulfil (as a real claimant could reasonably be expected to do), would not be advised to invest solely or even primarily in Index-Linked Government Securities, but rather in a mixed portfolio. This view is supported by the experience of the Court of Protection as to the independent financial advice they receive. It is also supported by the responses of the expert financial analysts whom I have consulted. No one responding to the consultation identified a single case in which the claimant had invested solely in Index Linked Government Securities, and doubts were expressed as to whether there was

any such case. This suggests that setting the discount rate at 2.5% would not place an unacceptable burden on claimants to take on excessive risk in the equity markets, and would be a rate more likely to accord with real expectations of returns, particularly at the higher end of awards.

Finally, in setting a single rate of 2.5% as I do, I bear in mind that it will, of course, remain open for the courts under section 1(2) of the Damages Act 1996 to adopt a different rate in any particular case if there are exceptional circumstances which justify it in doing so.

Irvine of Lairg

The Right Honourable The Lord Irvine of Lairg

Secretary of the Cabinet and Head of the Home Civil Service

From the Private Secretary

SIMON VIRLEY

LEGGATT REVIEW OF TRIBUNALS

Your minute of 19 April to Debora Matthews repeated the Prime Minister's request that Lord Falconer should chair a small Ministerial group to consider the issues raised in the Leggatt report and make recommendations on how to proceed. The Lord Chancellor's Department are preparing a paper to put to Ministers and hope to circulate it for a meeting of the group in early to mid-July. However, with the post-Election reshuffle and Lord Falconer's move to DTLR (which has a departmental interest in the issues), Sir Richard does not think that it is still appropriate for him to take the meeting.

2. The obvious replacement for Lord Falconer would be Lord Macdonald, who would have the political weight to manage the competing interests at the meeting. Sir Andrew Leggatt's report focuses on the public service provided by tribunals to their users. It will, however, be essential to balance the report's somewhat theoretical approach to this issue with the Government's practical focus on delivery, on which Lord Macdonald takes the lead.

3. Sir Richard therefore recommends that the Prime Minister should ask --- Lord Macdonald to take on this responsibility. I attach a draft minute.

RA

pp **RICHARD ABEL**
25 June 2001

Ref. A02001/ 1799

DRAFT MINUTE FROM NO.10 TO PS/LORD MACDONALD

SIR ANDREW LEGGATT'S REVIEW OF TRIBUNALS

As you know, the previous Minister of State in the Cabinet Office, Lord Falconer, was due at the Prime Minister's request to chair a Ministerial meeting to consider the issues raised by Sir Andrew Leggatt's report on the system of Tribunals and the options for improving its performance. The Prime Minister would be grateful if Lord MacDonald, as part of his role in improving the delivery of public services, would now take this meeting and make recommendations to him and the Lord Chancellor on how the Government should take forward the publication of, and the Government response to, this report. The Central Secretariat in the Cabinet Office, who will provide the secretariat for the meeting, are ready to provide briefing.

2. I am copying this note to Ashley Ibbett.

From: Liz Lloyd
Date: 22 June 2001

PRIME MINISTER

cc: Olivia McLeod
Jeremy Heywood
Andrew Adonis
Michael Barber
Justin Russell (o/a)

CRIME STOCKTAKE

You are meeting David Blunkett, John Denham and John Gieve on Tuesday. David wants to give you an overview of his emerging thinking on all areas of Home Office policy, including on asylum and workpermits.

There are some important decisions to be taken on police numbers which will have implications for the next 4 years.

If you would like to, we could focus the agenda more narrowly on police reform and numbers and asylum.

Proposed Agenda

1 Queen's speech debate – police numbers, police reform and crime statistics

2 Development of priorities in tackling crime prevention, crime reduction and community involvement

3. Delivery issues (standard unit and departmental restructuring)

4. Questions of asylum and the development of work permits

5. Home Office budget and financial update

6. Criminal justice system – Halliday Report and forthcoming report from Lord Justice Auld (and boundary issues)

7. Government social policy, civil society and democratic renewal

8 Role of drugs unit and forward thinking

He would also like some private time with you.

Police numbers and crime stats

On police numbers, David Blunkett wants to provide further particulars of the election pledge of "6,000 extra recruits bringing police numbers to their highest ever level"(130,000). You will remember that Jack Straw wanted to use the formulation of *recruits* (over which the Home Office have rather more control) rather than *actual numbers* (which depend heavily on the behaviour of individual police forces, wastage levels and other less controllable factors). The Treasury team were even more cautious and did not even want to commit to "the highest ever level".

Reaching 130,000 would be a net increase on today's figures (125,500) of 4,500. In fact the predictions of the rise under the crime fighting fund show that we could reach a peak of 131,500 by 2003, which would be a net increase of 6,000.

David Blunkett therefore would like to set this as his target in the Queen Speech debate next week.

The advantages are obvious as the pledge would be a clear 6,000 additional officers in post, rather than a more clumsy formulation using recruits.

The downside is that if for any reason (eg police reform) recruitment levels came in under prediction or wastage increased, the Home Office would be left with very little leeway on resources. Either they would have to devote all additional resources from year one of the next spending review to the police to keep numbers up, or they might even have to look at trimming back other programmes.

The recent recruitment figures are promising, and it does look like we will hit this figure in which case there is every advantage in saying that now. If you are satisfied that DB is confident he will reach 131,500 they will nevertheless need HMT consent

Crime Statistics/Targets

He would also like to announce in the Queen's Speech debate his decision to publish the recorded crime and BCS figures at the same time from 2002. This is sensible.

On crime targets, we already have targets on vehicle crime, domestic burglary and robbery in major cities. The Home Office Ministers have a strong appetite for also focussing on violent crime and anti-social behaviour. In principle this is right, but there are so many data quality issues that we need to be very careful before declaring public targets. ACPO and HMIC are focussing on improving data quality this year which has already led to e.g. an increase in 8% in recorded violent crime in Lancashire and which is likely to be replicated in other forces in the next year. This would imply that we should use BCS data, which is more robust but does not enable force to force comparisons, let alone BCU to BCU.

Police Reform

DB is quite rightly concentrating on the goals of police reform rather than getting into it for its own sake.

He is thinking about it from 2 perspectives: a) what can be done to improve performance in tackling crime and providing public reassurance, and b) the "offer" to the typical police officer.

Crime Reduction and Public Reassurance

For the past 4 years our approach has been to look principally at improving the crime reduction ability of the police (through the DNA database, better leadership, comparisons of BCU level performance, targets for individual forces). Our argument has been that if crime reduces so will the fear of crime.

The question at this stage is whether we need to add public reassurance as the second, twin goal of the police. This would mean most obviously an investment in more officers, but also encouraging the deployment of highly visible police, perhaps away from crime hotspots. The classic example of the current policy has been to focus on tackling hotspots, for example in town centres. That has led to a reduction in visible policing in suburban and rural areas (we made a grant of £30m last year specifically to compensate for this). Do we think it is a function of the police to provide a visible presence and reassurance to the public? Of course, this can be delivered in partnership with other organisations - neighbourhood and street wardens and private security firms. And visible policing can also have an impact on crime and disorder, although the Audit Commission would argue it is not the most efficient use of resources.

The police reps at the Lancaster House meetings have been arguing strongly that it is their purpose. The Fed, especially are keen on visible policing.

If it is to be a goal, then two questions arise. The first is how to measure it. Without a target the police will continue to work to their existing targets which put a premium on crime reduction. And, if we add targets for disorder or violent crime that pressure will increase. The second is whether we will raise expectations for an unquenchable demand for bobbies on the beat. The Mayor

and the Met Commissioner have already got a private target of 40,000 officers (up from the low point of 28,000). If this was replicated nationwide we would have to have 180,000 officers.

If we are to have this as a twin goal we need to do so with our eyes wide open as to the implications.

Improving Performance

The types of reform which should be on the table are:-

- increasing the skills of the force to tackle criminality (through specialist detectives, direct entry and wider powers for civilians and better training for the police)
- greater flexibilities and freedoms (allowances for frontline officers or those in tough areas, new pension arrangements to allow for greater retention, the rules on discipline/ the powers of managers to move or remove poor performers)
- focusing resources (tackling the growing pension costs, discrepancies in sickness rates and medical retirements)
- leadership at BCU level and decentralisation of power/budgets

You might like to discuss with DB

1) what type of policy package you would like to see in the proposed White Paper in the Autumn
2) his and your involvement in discussing the issues with the police between now and then - perhaps through breakfasts/receptions at No10
3) the potential impact on delivery and increasing staff numbers of a radical package

Delivery

On delivery in general, it would be helpful if you could outline to the Home Office team how you envisage the system working with Michel Barber's new delivery unit. John Gieve has also been thinking about developing a "contract" with the centre. It is also an opportunity for you to hand over and discuss the letter on key priorities.

We have still finally to resolve the question on courts. DB is likely to return to this.

Criminal Justice System Reform and legislation

The Home Office are still very nervous about their ability to deliver a thought-through and properly financed package of measures this session. DB is proposing to publish the Halliday report soon for consultation with little comment on what we accept or reject at this stage. This is the best option, delaying for a full government response could well hold up progress. We can draw all this together around the turn of the year.

However, we need to be sure that the HO (and LCD and the AG) have a proper project plan for managing this process in the next 12 months.

Asylum

The emerging Home Office Ministerial thinking seems to be developing along the lines of more reception centres and less dispersal. They would like to move away from the voucher system (perhaps announcing this in the summer) and provide employment opportunities for those in the system (either awaiting decision or

appeal) or those whose applications have been refused and have not been deported. They want to reprofile the target of 30,000 removals this year over a more realistic timetable.

These are potentially far-reaching changes. We need to be exceptionally careful about the message we send. The decision of the Netherlands to change their rules on Afgan asylum seekers is the principal reason for the doubling in Afgan applications to the UK. I think the current package is rather unbalanced in terms of the signals in the system.

They are open to discussion about an entitlement or ID card as recommended by the Home Affairs Select Committee, or other means of managing access to services which in other countries are reserved for citizens. This would be linked to a more positive grant of citizenship, perhaps through a ceremony.

The other option is to separate provision of services for asylum seekers from the mainstream. In Denmark education and health services are provided by the Red Cross. Once they were recognised refugees they would join mainstream services. The provision of education for asylum-seeker children is likely to form a significant part of the discussion of local government finance and the London campaign over the summer.

The other suggestion from the HOSC was for examination of a single border control agency - this would span the current set of responsibilities in Customs and the Immigration Service. It might also help with better identification of meat imports and better health screening of those entering the country - e.g. for TB.

But these two changes would takes years to implement.

On one specific they would like to extend the civil penalty to the Eurotunnel Freight shuttle wagons which through a loophole on the current rail fright regulation are currently excluded. There is no sign that the French Government have yet been lobbied on this by Eurotunnel, but it is possible that it might raise the temperature slightly. Providing this is being handled we should go ahead. ✓

Liz

THE LORD BIRT

HOUSE OF LORDS
LONDON
SW1A 0PW

COPY

L12: I think this is excellent. See my note. It will require abstraction.

The Rt Hon Tony Blair MP
Prime Minister
10 Downing Street
London SW1A 2AA

20th December 2000

Dear Tony,

Reducing Crime

I enclose an audit of the effectiveness of current measures against crime together with my recommendations on how crime, the number of victims, and the fear of crime can all be substantially reduced.

I also enclose

- new information on persistent offenders
- an analysis of the pathway to offending for young people
- and an account of the impact of organised crime.

These new analyses have been incorporated into the phase 1 data-pack you have already seen, and are flagged.

The key problem

We have established that there are:

- 14m serious offences each year causing substantial victim trauma
- 8m victims each year of these serious offences
- 100,000 persistent offenders who commit over half of these serious crimes; who on average each commit around 100 serious offences per year.

Our newly commissioned work on persistent offenders suggests that they come from the poorest families; that the majority have few or no qualifications; and that a significant number were once in care. Nearly 2/3 of persistent offenders were using hard drugs before they were imprisoned.

Effectiveness of the current system

Many government and public bodies have an impact on the level of offending – local authorities; social services; schools; the CPS; the YJB; the courts; the police; prisons; the Probation Service; the Parole Board; the NHS (because of drugs); Whitehall departments. This is not an exhaustive list.

Against the backdrop of the extraordinary, exponential rise in crime over the past 40 years, the harsh conclusion is that – despite the good intentions of many well-motivated and heroic individuals in the system – these bodies, individually and collectively, have failed over a long period to grip crime and its causes. Many parts of the system are demoralised

because no single part of it can succeed alone; and because the system as a whole seems impotent in the face of contemporary threats. In some parts of the country we are tolerating crime epidemics and flagrant persistent offending.

These many bodies involved in countering crime have a variety of objectives. None focuses aggressively on reducing crime and the number of victims. Their culture and attitudes were set in earlier and different times. There is no comprehensive, independent target setting. No-one in the system has had a cradle-to-grave holistic overview of crime.

Main recommendations

My main recommendations, therefore, address the need to remedy this chronic system failure. Incremental reform will not transform the position. Rather, I propose widespread and radical reform of the institutions; a re-alignment of institutional goals so that reducing serious crime and bringing down the number of victims become key objectives;

and the independent setting of comprehensive and coherent targets for these institutions to drive down crime by 2010 to half of current levels.

There may be scepticism about such a demanding target. But I am certain that the whole battery of measures recommended – if instituted – would deliver the goal. The evidence of the 90s in the private sector is that fundamentally reformed organisations and systems can deliver a step change in performance on this scale. If the CJS and the other organisations involved all raise their game and row together, their effectiveness will be transformed.

Stopping the first offence

- A huge number of children are offending, many persistently. Most persistent offenders start offending between 11 and 15. They are dangerous to themselves and to the community. It is difficult to save many young people by the time they are being dealt with by the CJS. The problems of children at risk need to be gripped at the earliest moment possible

- many valuable programmes to help children at risk, at different ages, have been introduced; or are being introduced. But many children fall between the cracks. Many young people also fail – for one reason or another – to become educated. A single body – a Children's Authority – should assume responsibility in each locality for tracking every child; for their education; for specialist support programmes; for provision for truants and the excluded; and for locating the un-enrolled. The Children's Authority should focus particularly on children in care, who form a significant part of the persistent offender population. The Authority should purchase not provide the services for which it is responsible. It should subsume the LEAs and children's social services and become the local mechanism for distributing the Children's Fund

- schools should be targeted by Ministers to reduce substantially the number of young people who commit any crime at all. This will mean focusing on the children who are most at risk; reducing truancy; and substantially raising the educational attainment of the bottom quarter. Schools should also promote an awareness of

why crime is wrong; and they should teach parenting skills to children who will be tomorrow's parents

- schools are the single most powerful institution in the community: a new vision for schools as pillars of the most vulnerable localities should be considered. They should operate for 52 weeks a year, 7 days a week, 16 hours a day as institutions which provide sporting, cultural and family support services and which meet the all-round needs of every child
- a new national body – Crime Awareness – would be charged with helping citizens to regain, over time, their sense of wrongdoing; and to stigmatise offending. It might also take on responsibility for a national communication programme on drugs.

<u>Catching offenders; reducing the number of victims</u>

- The police's prime target should be to focus on and to catch those persistent offenders who commit traumatic offences
- the police should also have the lead responsibility for pro-actively reducing the number of victims and repeat victims, and for

increasing the local community's sense of safety. These are critical new responsibilities

- the police should transform their capability to provide a customer service of high quality; and to market their services to – and to communicate with – local communities
- the police should be re-structured at national, regional and local level so that they have an organisational focus on their key tasks. The basic police organisational unit should become local (e.g. Hackney or Sheffield Police) because the crime that has the biggest social and economic impact is highly localised. This local unit should be led by a Chief of Police. The prime focus of local police should be reducing high volume socially traumatic crime; focusing on victims; increasing the sense of safety; and building strong links with the community.
- a small number of large regions (eg North-West Police) under Chief Constables, would be responsible for delivering police services that would be inefficient to provide locally. The regional police would be responsible for public order; for mobile resources; for complex,

specialist investigations; for traffic; and for HR, technology and support services for local police forces

- a new body – the National Investigation Agency – would fight national and international, organised and high-tech crime. The battery of existing agencies, units and forces operating at national level would be merged into the NIA. The prime, though not the only, focus of the NIA would be drugs – in effect a massive, nationwide, virtual industry which drives a high proportion of traumatic crime. Currently the various agencies together are estimated to intercept only 5% of heroin reaching the UK
- the police need fundamental cultural reform. They should become sophisticated, knowledge based organisations, using intelligence, information, technology and analysis to focus on offenders and to reduce the crime that matters most
- the police need an injection of external expertise: every force should recruit outside civilian specialists in strategy, technology, HR, finance and communications to be full members of their top management teams. Middle and high-ranking officers need to be of high calibre

and to be trained in modern management disciplines. The police need to recruit from a wider talent base: an Inspector-level entry point for graduates should be introduced

- the police at local, regional and national level should outsource support and non-core services
- the allocation of police resources should be informed by the incidence of traumatic crime: resourcing should be closely matched to need
- a tougher performance regime for the police should be established. Ministers should set targets for crime reduction at every level based on independent advice. Ministers would also set targets for modernisation, again based on independent advice. A Criminal Justice Inspectorate would audit the effectiveness of the police (and other CJS bodies) in every respect including the success of the modernisation process – and would have the power to recommend to the Regional or Local Police Authority that the Chief Constable or Chief of Police should be dismissed if the force is insufficiently effective

- other new organisations are proposed. A Police Standards Agency would identify and promulgate best practice in fighting crime, and supply training
- there is a striking lack of reliable information about offending, collected on a consistent, coherent and comprehensive basis across all the institutions involved. A new independent body – the National Agency for Crime Statistics (NACS) – would have statutory powers to collect information on crime at local and national level – via victim surveys and data collection from the police, prisons and other organisations – on offenders, offences, victims and fear of crime. The NACS would recommend targets to Ministers for all the organisations that have an impact on crime – including schools, the prisons and individual police forces at national, regional and local level. The targets set by Ministers would be consistent with the overall goal of halving serious crime by 2010, and reducing the number of victims from 8m to 5m. Among the objectives we have modelled that will deliver these goals are:

- reducing the number of children aged 16 and under who offend from 73% to 50%
- reducing the number of first offenders re-offending from 30% to 25%
- reducing the number of serious persistent offenders from 100,000 to 60,000
- increasing the proportion of high trauma crimes for which an offender is convicted from 6% to 12%

- NACS would recommend targets at local level for achieving these nationwide objectives
- I do not suggest that the target for halving serious crime by 2010 should necessarily be published or proclaimed, but rather that all secondary objectives should be consistent with the overarching target of halving crime
- the Crime & Disorder Partnerships should be further developed and democratised to galvanise the fight against crime. They should be based on local police units and draw together the Chief of Police; representatives of the courts, local government, the Children's

Authority, the youth offending team, social services, the NHS, the Offender Agency (see later). In addition, there would be democratically elected members. Ministers would set targets for the Crime & Disorder Partnerships to reduce crime and the number of victims; and to address the local causes of crime. The Partnerships would report annually to their communities on their success.

Dealing with Persistent Offenders

- The need for society to be protected from further serious offending by a persistent offender should become a key objective of sentencing policy. There needs to be a fundamental and historic shift from focusing largely on how to deal with the single offence before the court – ensuring that guilty offenders receive their just deserts – to a recognition that the courts need to offer society protection from a persistent offender causing serious trauma to victims. Magistrates in particular need to grip the problem of persistent offending by young as well as older offenders

this is the key idea of the CJ 2010

- when an individual offends a second time, and may therefore be a persistent offender, the sentence of the court should not only reflect an appropriate punishment for the crime committed, but the court should also prescribe – after advice – an Individual Offender Programme. An IOP would identify what the offender must do to address the causes of his/her offending, and to build a life without crime. This might mean acquiring vocational or educational qualifications; or completing programmes dealing with drugs or behavioural problems. At the end of the custodial part of the sentence, the court should validate that the offender has completed – or is on target to complete – the Individual Offender Programme, and should ratify the conditions under which the offender may serve the remainder of the sentence in the community. This might involve a curfew enforced by tagging, or continuous drug and alcohol testing
- persistent offenders need to receive sentences long enough for the IOP to have an effect; but there should be discretion, after an initial period of custody, for the offender to complete his/her IOP under supervision in the community

- young offenders are committing huge numbers of offences which have a traumatic impact on victims – so these principles should apply to persistent young offenders as well as to older offenders. The recent youth justice reforms have started to move in this direction

- a new body – the Offender Agency – would assume responsibility for the offender across the whole of the sentence, whether in or out of custody. The Offender Agency would advise the court about the appropriate Individual Offender Programme; and it would be responsible to the court for delivering the IOP (purchasing custodial, educational and other services from the Prison Service or from private providers). The Offender Agency would advise the court about the readiness of the offender at the end of the non-custodial part of the sentence to return to the community; and it would continue thereafter to supervise the non-custodial part of the sentence. (The Offender Agency would subsume the roles of the Probation Service and the Parole Board, which would close.) Ministers should set targets for the Offender Agency to reduce re-offending

I don't give set this. Is it a Home Office Probation service.

- the success of individual sentencers in reducing re-offending should also be measured
- the Offender Agency would need to be funded to institute a step change in the range, quantity and quality of programmes and facilities for dealing with offenders – both in custody and in the community. The watch-words would be quality, innovation and cost-effectiveness. The needs are for: small, secure and non-secure premises in the community for education or resettlement; a substantial increase in the range and quality of educational and vocational courses; the greater use of tagging to monitor and control offenders being re-introduced into the community; and the ability to re-settle offenders, with accommodation and a job, in the latter part of their sentence
- the current Prison Service should be renamed the Prison and Resettlement Service. It would offer custodial, educational and resettlement services for purchase by the Offender Agency, including new institutions in the community. These services would be offered

in competition with the private sector. The Prison and Resettlement Service would not be directly funded

- a plan should be framed for prisons for the 21st century – for premises which would enable a major increase in educational, vocational and other programmes in secure conditions. Some prisons that will never meet these standards should be closed.

how does this fit with RW's ideas?

Political Oversight

- A single Ministry, the Home Office, should focus on the overall goal of substantially reducing crime, and should assume responsibility for the YJB; the CPS; the Courts; the Police; the Prison and Resettlement Service; and the Offender Agency. The Home Office should shed its other responsibilities. Safeguards should ensure that there is a proper separation of powers; and that the CPS, the Police and the courts have operational independence on individual cases
- a cabinet committee chaired by the Prime Minister should monitor the performance of the Home Office and of other departments in reducing crime (Education; DSS; Environment; NHS)

Funding

- The overall cost of crime – both its direct impact and the cost of fighting it – is £70bn per annum
- we have audited the cost and the effectiveness of current measures. In some areas of high cost – like the police – evidence of cost effectiveness is weak. Conversely, in some areas of low spend – like target hardening – there is a high payback
- the programme of reform proposed implies extra investment in some areas – for example, for stopping children turning to crime; and for introducing rigorous Individual Offender Programmes. These investments should bring a substantial economic and social payback over ten years
- the extra investment would be offset by efficiency gains. Over ten years there is considerable scope for greater efficiency in the current institutions – particularly the police and prisons. The re-organisation of the police will produce efficiency benefits over the short to mid-term. But a substantial efficiency gain will only be achievable when

the main organisations are fully modernised and when market mechanisms and outsourcing have been introduced

- our preparatory estimate is that an average extra investment of £2bn per annum over ten years would halve crime and would reduce the overall cost of crime from £70bn now to £37bn by 2010.

My preliminary thoughts for phasing the reforms would be:

Spring 2001 White Paper

Announce:

- focus on persistent offenders
- new sentencing policy, including the Individual Offender Programme
- National Agency for Crime Statistics and a new independent targeting regime
- Crime Awareness

Signal the need in general terms (but without proposals) for:

- a focus on children

- a modern police force, with the right skills, focusing at every level on the crime that matters
- a new regime for managing offenders (The Offender Agency; the Prison and Resettlement Service)
- strengthened arrangements in Whitehall

Post Election

- announce new Whitehall focus on crime (re-fashioned Home Office)

Autumn 2001 White Paper on Policing

- set out a new organisational structure for policing in England and Wales
- set out new arrangements for the Crime and Disorder Partnerships

Autumn 2001 White Paper on Children

- set out a new organisational approach to providing services for children (Children's Authority etc)

Autumn 2001 White Paper on the Offender

- introduce Offender Agency
- announce Prison and Resettlement Service

I look forward to discussing these proposals with you. They will not be easy to introduce; but if instituted I have no doubt they will transform the fight against the chronic social and economic evil that crime in the UK has become. Thank you for giving me the opportunity to contribute to the thinking in this critically important area.

Kindest regards

John

Lord Birt

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

RESTRICTED – MANAGEMENT

(F)

David North
Private Secretary to the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

22 JUN 2001

Dear David,

THOMPSON AND VENABLES PAROLE BOARD HEARINGS

Summary

1. To alert you to the Parole Board's decision in the cases of Thompson and Venables.

Parole Board Hearings

2. As I indicated in my letter to you of 21 June, the Parole Board hearing for Jon Venables was held on Monday 18 June and the hearing for Robert Thompson took place on Wednesday 20 June. Both hearings were completed within the day.

3. The Parole Board has informed the Home Secretary of their decision, subject to conditions, to direct the release on life licence of Robert Thompson and Jon Venables who were convicted in November 1993 of the murder of James Bulger. Thompson and Venables will be on licence for the rest of their lives. They will be subject to strict licence conditions and liable to immediate recall if there is any concern at any time about their risk.

4. The handling arrangements have now been put into operation.

5. I am copying this letter to Rupert Cazalet (Attorney General's office), the Principal Private Secretary to the Foreign Secretary and Richard Abel (Cabinet Office).

Yours ever,

Stephen

STEPHEN HARRISON

cc COS (Info)
PU (LL)
PU (Com)
Press

From: THE PRIVATE SECRETARY

RESTRICTED - MANAGEMENT

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

F

David North Esq
Private Secretary
10 Downing Street
London SW1

21 JUN 2001

BY FAX ONLY

Dear David,

THOMPSON AND VENABLES : PAROLE BOARD HEARINGS AND HANDLING UPDATE

Summary

To alert you to the fact that the Parole Board have considered these cases this week and to make you aware of the handling arrangements which the Home Secretary has decided.

Parole Board Hearings

2. The Parole Board Hearing for Jon Venables was held on Monday 18 June and the hearing for Robert Thompson took place on Wednesday 20 June.

3. The Home Secretary has carefully considered the best arrangements for handling an announcement of the Parole Board's decision. He sees clear advantage in making the speediest possible announcement that is consistent with the necessary arrangements, particularly by the National Probation Service and the Police, being put in place.

4. The Home Secretary has agreed to answer a Written Parliamentary Question to announce the Parole Board's decision. I attach a copy of the Written Answer which will be given on Friday afternoon at about 2:00 pm in response to a question which will be tabled on Thursday.

5. These arrangements are being put in hand on the assumption that the Parole Board directs the release of Thompson and Venables, that it gives its decisions in time and that there are no difficulties over licence conditions.

6. The Home Secretary has further decided that as this is a decision of the Parole Board which is binding on him, neither he nor other Home Office Ministers will be giving interviews. He will, however, keep this decision under review in case it is thought appropriate to make a statement warning of the danger of vigilante attacks on young men who might be mistaken for Thompson and Venables.

SKP 21/6/01

7. The Home Secretary has agreed that Eithne Wallis who is the National Director of the National Probation Service for England and Wales, should offer a pooled interview on supervising offenders in the community along with a written factual statement covering the same issues for print journalists. A copy of this statement is also attached.

8. I am copying this letter to Rupert Cazalet (Attorney General's Office), the Principal Private Secretary to the Foreign Secretary and Richard Abel (Cabinet Office).

Yours ever,

Stephen

STEPHEN HARRISON

RESTRICTED - MANAGEMENT

DRAFT PQ

Q. To ask the Secretary of State for the Home Department when he will receive Parole Board Decisions in the cases of Robert Thompson and Jon Venables and whether he will make a statement?

A. The Parole Board has informed me today of their decision, subject to conditions, to direct the release on life licence of Robert Thompson and Jon Venables who were convicted in November 1993 of the murder of James Bulger. At the time of the murder both were ten years old and James Bulger was two. I would wish to make it clear at the outset that this means that Thompson and Venables will be on licence for the rest of their lives. They will be subject to strict licence conditions and liable to immediate recall if there is any concern at any time about their risk.

First, I offer my deepest sympathy to the family of James Bulger. The circumstances of the killing were horrific and had a profound impact throughout the United Kingdom and beyond. We will never forget it and I can well understand how distressing it is for James's family now to hear this news. We all understand that their grief for the loss of their son in such horrible circumstances continues and our thoughts are with them as much today as over the whole period.

Decisions about the release of those convicted of murder when under the age of eighteen are the responsibility of the independent Parole Board. The Lord Chief Justice, Lord Woolf, decided on 26 October 2000 that the tariff for both Thompson and Venables should expire immediately. Before arriving at his decision he had carefully considered reports on Thompson and Venables and information provided by James Bulger's family. My predecessor, my right hon. friend the Foreign Secretary, accepted this recommendation as he was bound to do, for the reasons he gave in a statement to the House on 13 March 2000. (Official Report, columns 21-30.)

The tariff is the minimum period a person must serve for retribution and deterrence. Once it has expired an offender is released only where the Parole Board after a very thorough consideration is satisfied that there is no unacceptable risk to the public. A Parole Board panel under the chairmanship of a senior High Court judge and including a consultant psychiatrist and an experienced independent member considered both cases. I know that they will have given very careful attention to the detailed reports compiled in each of these cases. The panel also heard evidence from expert witnesses and will have reached its decisions about risk in accordance with its statutory responsibilities.

It is not appropriate for me to comment on the arrangements for the release of Thompson and Venables as there is a High Court injunction in force to protect their identities and whereabouts from being revealed. However, I can say

that the call on public funds will be the minimum necessary to ensure their self-reliance, further education and training and the safety of themselves and the public

The murder of young James Bulger was a terrible event for his family and the whole nation. But no public interest would be served by pursuing the perpetrators now that the Parole Board has decided that it is no longer necessary for the protection of the public that they should be confined. The injunction was granted because there was a real and strong possibility that their lives would be at risk if their identities became known.

Thompson and Venables are not free – as I have said they will remain on life licence for the rest of their lives and are liable to be recalled to custody at anytime if there is any evidence that they present a risk to the public. The life licences include conditions which prohibit Thompson and Venables, whether directly or indirectly, from contacting or attempting to contact the family of James Bulger or each other. They will also be prohibited from entering the Metropolitan County of Merseyside without the prior consent in writing of their supervising officers.

The National Probation Service now has the duty to supervise them and to review routinely the risk of re-offending. There are grave doubts about whether this duty could be carried out effectively without some degree of anonymity. I am assured that Thompson and Venables will be kept under very close supervision and scrutiny by the Probation Service whose principal aim is to ensure the protection of the public.

National Probation Service statement on the release of Robert Thompson and Jon Venables.

Commenting on the decision of the Parole Board in the cases of Robert Thompson and Jon Venables, Eithne Wallis, National Director of the National Probation Service for England and Wales, said:

"Following the decision of the Parole Board, to direct the release on life licence of Robert Thompson and Jon Venables they will now come under the close supervision of the National Probation Service.

"Robert Thompson and Jon Venables will remain on life licences for the rest of their lives and the National Probation Service will be responsible for enforcing the conditions of the licences. The objectives of this supervision are: to protect the public, to reduce further offending and to rehabilitate and resettle ex-offenders. Life licencees may be recalled to prison at any time. We ensure that risk to the public is continuously assessed and a change in behaviour that suggests an increase in risk is sufficient to warrant immediate recall to prison.

"In line with our statutory responsibilities to relatives of victims of serious offences, the probation service contacted Mrs Fergus and Mr Bulger to provide them with an opportunity to comment on the parole process so that their comments could be considered by the Parole Board. After the Parole Board has made a decision in cases like these, the probation service has a statutory duty to inform the relatives of the relevant conditions of the life licence if they have expressed a wish to be so informed. As requested by Mrs Fergus and Mr Bulger, information about the relevant life licence conditions has been provided to their solicitors.

"The release of all prisoners on life licence is a well-established and planned process carried out by experienced staff, dedicated to public protection. In carrying out our duty, the safe rehabilitation of released

prisoners depends on establishing a stable life so they can be closely supervised and monitored. The resources expended on these cases will be concentrated on four areas. Firstly on ensuring the public is protected. Secondly, that Robert Thompson's and Jon Venables' physical security is safeguarded. Thirdly, to allow them to develop self-reliance and undertake further education and training so that they can gain useful employment to maintain themselves independently. And fourthly, to provide continuing support to prevent their re-offending.

Ends

Note to editors:

Eithne Wallis is the National Director of the National Probation Service for England and Wales.

JR
KL/OML

Home Office

Home Secretary

The Rt Hon John Prescott MP
Deputy Prime Minister and First Secretary of State
Cabinet Office
70 Whitehall
LONDON
SW1A 2AS

DN PU

20 JUN 2001

Dear John,

SENTENCING REVIEW

Following consultation with colleagues, Jack Straw announced in May 2000 that he was establishing a fundamental review of the sentencing framework. He said that he expected the review to take about 12 months to produce recommendations, which would then be the subject of formal consultation. The review has now been completed and the report was delivered on 1 May. A copy is enclosed. Jack sought approval to publish but, although colleagues had no objections, we were unable to secure formal HS agreement before the calling of the election. In the absence of a successor to HS Committee being established, I am now writing to Cabinet colleagues to seek agreement to publish the report shortly. I would be grateful for agreement by 28 June.

2. The terms of reference for the review were:

"In light of the Government's objectives to protect the public by reducing crime and re-offending, and to dispense justice fairly and consistently, to consider:

(1) What principles should guide sentencing decisions;
(2) What types of disposal should be made available to the courts in order to meet the overarching objectives;
(3) The costs of different disposals and their relative effectiveness in reducing re-offending
(4) What changes therefore need to be made to the current sentencing framework, as established by the Criminal Justice Act 1991, so as more

effectively to reduce re-offending, including any transitional and consequential arrangements; and

(5) The likely impact of any recommendations in terms of costs and the effects on the prison population

In particular, the review should bear in mind the desirability of promoting flexibility in the use of custodial and community based approaches.

3. The review was led by John Halliday, a senior Home Office official, with input from a project group which included, among others, officials from the Lord Chancellor's Department, the Treasury, the National Audit Office and the Law Officer's Department, as well as sentencers, a police representative, and an academic lawyer. An external reference group, drawn from a wider community, was also used to provide a broader perspective. The review team has taken account of the views expressed during its work but the report itself is that of John Halliday rather than the project group.

4. The underlying rationale of the report is that more could be done to reduce re-offending if sentences were re-designed and targeted on the most persistent offenders and that public confidence should be increased through greater transparency.

5. The key recommendations are:

(i) A new sentencing framework which will do more to support crime reduction and reparation, while meeting the needs of punishment;

(ii) A new presumption that severity of sentence should increase when an offender has sufficiently recent and relevant previous convictions;

(iii) The majority of prison sentences of twelve months or more should be served half in custody and half in the community, with community supervision lasting right up to the end of the sentence, with liability to recall to custody;

(iv) Offenders serving prison sentences of twelve months or more for "dangerous" offences should not be released before the end of their sentence unless the Parole Board is satisfied it is safe to do so, coupled with the possibility of extended supervision after release;

(v) A new custodial sentence ("custody plus") for most short sentence prisoners comprising of up to three months in custody and a period under supervision in the community lasting a minimum of 6 months and a maximum which would take the whole sentence up to a period of twelve months;

(vi) A separate sentence of plain custody of up to three months (real time);

(vii) A single generic community sentence, enabling the court to select from a menu of options focussed on punishment, crime reduction and reparation;

(viii) New arrangements for managing sentences, including greater court involvement through the mechanism of a "review court" function, which among other things would determine the conditions and requirements to be imposed in the community on released prisoners. While I will consider any comments on this recommendation during the consultation period, I will also be seeking alternative ways of achieving the same goal. I am not convinced that at present the courts could take on this new responsibility in the way John Halliday recommends with all its attendant administrative, bureaucratic and financial burdens;

(ix) The creation of new, codified guidelines on sentencing in all criminal courts, and a new body for this purpose.

6. The report leaves policy choices to be made in some areas, and argues that its impact on costs, the prison population, and service workloads will depend on how the new framework is implemented. It also recognises that further work will be needed to refine the estimates of costs and benefits.

7. When Jack announced the establishment of the review, he gave a commitment to public consultation. I propose to allow a period for consultation the timing for which will need to be determined according to the timetable for producing legislation to take forward those recommendations which we decide to pursue.

8. When I publish the report, I propose to thank John Halliday for the valuable contribution the report has made to the debate on sentencing reform and indicate that I welcome comments on the report's proposals during the

consultation period. It is not my intention to give any indication at that stage of the extent to which we will implement the recommendations as they stand. But I do intend to make clear, in line with our manifesto commitments that we need to reform the sentencing framework to ensure that the public is protected from dangerous offenders; that persistent offending should lead to increased punishment and that we want to ensure proper supervision after release. I will also be giving a general welcome to the concept of 'custody plus' (see paragraph 5(v) of this letter) and the concept of reduced reoffending which underpins it.

9. I would be grateful for colleagues' agreement by 28 June.

10. I am copying this letter to the Prime Minister, Cabinet colleagues and Sir Richard Wilson. I am also writing in similar terms to the First Secretaries of the devolved administrations.

Best wishes,

David

DAVID BLUNKETT

File

From: Jeremy Heywood
Date: 18 June 2001

FAXED

SIR RICHARD WILSON

cc: Jonathan Powell
Liz Lloyd

COURTS

I attach the Prime Minister's comments on the Home Office's proposed "compromise". As you will see the Prime Minister does not think this is realistic. He believes that the best we can do now is:

- a Committee chaired by the Home Secretary that sets an agenda delivered by the LCD;

- a single person appointed to design and run IT across the whole CJS.

I would be grateful if you could prepare a draft letter for me to send out setting out the Prime Minister's conclusions.

9.

JEREMY HEYWOOD

10 DOWNING STREET
LONDON SW1A 2AA

No. May will refer this too. The only way is a committee, chaired by the Home Sec that sets an agenda delivered by LCD — plus one (I.T.) person across Whitehall

From the Principal Private Secretary

SIR RICHARD WILSON
JUSTICE MACHINERY

The Prime Minister was grateful for the advice which he has received on this subject.

The Prime Minister has considered carefully the arguments about whether the Court Service should transfer to the Home Office. He attaches a great deal of weight to the comment in Lord Justice Auld's second (October) progress report that the Criminal Justice System (CJS) as a whole lacks "any single and clear line of responsibility or ability to translate national generalisations of purpose into effective local action". The Prime Minister remains unconvinced that there would be any constitutional impropriety in transferring the Court Service to the Home Office. But he has decided that, for now, the Court Service should continue to be accountable to the Lord Chancellor, and that the arguments should be revisited once Lord Justice Auld has reported.

The Prime Minister considers, however, that it is essential that there should be a single lead Ministerial accountability for co-ordinating and driving the implementation of Auld, Halliday, and the other parts of the Manifesto commitment to modernise the criminal justice system and maintain an operational focus to ensure delivery. He would therefore like the Home Secretary to assume lead responsibility for considering Auld's recommendations and preparing implementation.

In line with this, the Prime Minister has decided that the functions of the Criminal Justice Directorate, LCD, should be moved to the Court Service and the Home Office. The Court Service should assume responsibility for the Magistrates' Courts Division and the Magistrates' IT Division. The Home Office should assume responsibility for the functions and resources of the Auld implementation team and the relevant parts of the Criminal Justice Division. The present arrangements involve a degree of duplication and the Prime Minister would like to see a more direct relationship between the Court Service and those

parts of the Home Office which have responsibility for criminal procedure and policy. These changes should be put in place by the end of July. It will be important to reassure Lord Justice Auld that they do not presuppose a particular model for unifying the criminal courts, but are simply part of the process of gearing up for his report and strengthening the lead responsibility for criminal justice modernisation.

The Prime Minister would like the Home Secretary to chair a strengthened Ministerial group to oversee modernisation of the CJS and drive up its performance, and to take lead responsibility for delivery of the targets to be agreed building on the cross-cutting CJS PSA and the Way Ahead.

The Group should comprise the Lord Chancellor, the Attorney General, [the Minister of State at the Cabinet Office (Lord Macdonald)], the Chief Secretary and the Minister for Criminal Justice. He should be supported in doing so by a powerful unit based in the Home Office. The Prime Minister would like to see the first proposals from the Home Secretary on the strategy for the next 12 months which covers the legislative changes, the performance management changes and the resourcing necessary to fulfil our desire to modernise the CJS and improve its performance in reducing crime.

The Prime Minister is convinced that the current arrangements for integrating IT systems through the CJS need to be significantly further strengthened. He is aware that a new IBIS Programme Director is about to take up post, but he would like John Gieve to make arrangements to appoint a top level IT Director within the Home Office with authority over IT development across the CJS. He would be accountable to the Home Secretary and through him to the CJS Committee.

I am copying this letter to the Lord Chancellor, the Home Secretary, the Attorney General, the Chief Secretary to the Treasury, the Director of Public Prosecutions, Sir Hayden Phillips and John Gieve.

JEREMY HEYWOOD

15 June 2001

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

15 JUN 2001

John Sawers Esq
Private Secretary to the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

cc: MT
JP
DN

Dear John.

**COMPENSATION FOR WRONGFUL CONVICTION:
NICHOLAS MULLEN**

... My letter to you of 14 March 2001 (a copy of which is attached for ease of reference) explained that the Home Secretary had refused an application for compensation from Nicholas Mullen under both the statutory and ex-gratia schemes for those wrongly convicted or charged. This is to notify you that on 11 June 2001 Mr Mullen's solicitors served us with a Judicial Review of this decision and we are just about to instruct counsel to contest it.

This action was anticipated in making the decision to refuse compensation. Indeed earlier consultations even took account of the fact that we might lose the Judicial Review. The Home Secretary's view (which you believed that the Prime Minister would support) was that he was only prepared to pay compensation in this case if the Courts insisted that he must. He based this on his belief that no miscarriage of justice had occurred in Mr Mullen's case. (The Court of Appeal quashed his conviction for conspiracy to cause explosions in February 1999 because it found that the way he was brought back to this country to stand trial constituted a serious abuse of process. However, no challenge was made to the conduct of the trial itself and the appeal "proceeded on the basis that, if it was fair to try him, the appellant was properly convicted").

I am copying this letter to Jillian Kay (LCD), Rupert Cazalet (Attorney General's Office), Kirsten McFarlene (NIO) and Richard Abel (Cabinet Office).

Yours ever,
Steph
STEPHEN HARRISON

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From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

John Sawers Esq
Private Secretary to the Prime Minister
10 Downing Street
London
SW1A 2AA

14 MAR 2001

Dear John,

COMPENSATION FOR WRONGFUL CONVICTION: NICHOLAS MULLEN

The Home Secretary was grateful for colleagues' comments on my letter of 11 February 2000 (a copy of which is attached for ease of reference). After allowing time for Nicholas Mullen's solicitors and Jeremy Corbyn MP to make further representations, the Home Secretary has now decided to refuse compensation to Mullen for wrongful conviction and our officials will be writing shortly to his solicitors to inform them of his decision.

2. My letter of 11 February 2000 informed you that, subject to any responses from you and/or copy recipients, the Home Secretary intended to refuse an application for compensation from Nicholas Mullen, a PIRA terrorist who was sentenced to 30 years' imprisonment in June 1990 for conspiracy to cause explosions. (The Court of Appeal quashed his conviction in February 1999 because it found that the way he was brought back to this country to stand trial constituted a serious abuse of process. However, no challenge was made to the conduct of the trial itself and the appeal "proceeded on the basis that, if it was fair to try him, the appellant was properly convicted"). You replied on 14 February that the Prime Minister would support the Home Secretary's decision. Claire Tracey replied on 29 February that the Lord Chancellor had no objection to what was proposed but thought that great care should be taken to avoid any suggestion that Mullen personally ever conceded that he was guilty of the offence with which he was charged. The Lord Chancellor thought that any comment on this aspect of the case should be as close as possible to the words of the Court of Appeal quoted in parentheses above.

3. Following further consultation with the Attorney General, Mullen's solicitors were informed on 6 March 2000 that his application had been refused

under the statutory scheme (section 133 of the Criminal Justice Act 1988), and that the Home Secretary was minded to refuse ex-gratia compensation too but would consider any representations they might wish to make as to why there should be no departure from his stated policy in this case. The solicitors made representations against both the decision under the statutory scheme and the proposed decision under the ex-gratia scheme. They argued that Mullen had at no stage conceded that he was "properly convicted" or guilty, and that the reversal of his conviction met the requirements of both the statutory and ex-gratia schemes. They did not, however, give any reasons why the Home Secretary should not depart from his stated policy on ex-gratia payments in this case.

4. Having considered the solicitors' further representations, the Home Secretary remains of the view that there has been no miscarriage of justice in this case. The fact that Mullen was unlawfully brought back to the United Kingdom to face very serious charges of which he was subsequently convicted, and had his conviction quashed because of the illegality of the circumstances of his return, does not, in the Home Secretary's view, mean that he was the victim of a miscarriage of justice within the meaning of section 133 of the Criminal Justice Act 1988. Whilst he accepts that Mullen did not explicitly accept that he was properly convicted or guilty, it seems clear to him that the remark quoted above, and others by the Court of Appeal, indicate that the appeal proceeded on the assumption that Mullen was properly convicted. The Home Secretary believes that, as the Court of Appeal proceeded on the assumption that Mullen was properly convicted, he is entitled to do so too. For the same reason, the Home Secretary remains of the view that he should depart from his usual policy in this case and should not make an ex-gratia payment of compensation to Mullen. He has accordingly refused compensation to Mullen under both the statutory and ex-gratia schemes and officials are now notifying Mullen's solicitors of the final decision.

5. I am copying this letter to Jillian Kay (LCD), Rupert Cazalet (Attorney General's Office), Kirsten McFarlane (NIO), Mark Langdale and Richard Abel (Cabinet Office).

Yours ever,

Stephen

STEPHEN HARRISON

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ATTORNEY GENERAL

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Lord Goldsmith, QC

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ajc.

Rt. Hon. David Blunkett, MP
Secretary of State for the Home Department
50 Queen Anne's Gate
London
SW1H 9AT

15 June 2001

Dear David

PROCEEDS OF CRIME BILL

As discussed at our helpful meeting yesterday, it follows from the Cabinet's decision to introduce the Proceeds of Crime Bill in July that the Home Office will be seeking Law Officers' advice on the compatibility of the Bill with the Convention on Human Rights and associated legal questions as a matter of urgency. I would like to assure you of my personal commitment to responding to these requests for advice with the utmost expedition. Officials are presently working out the precise timescales within which advice will be sought and given, to meet the new timetable.

As you and your advisers are very aware, the successful operation of the civil recovery scheme will depend – at least in legal terms – on whether the legislation is drafted sufficiently thoughtfully to persuade both Parliament and the courts - challenges will inevitably follow implementation - that the extra protections afforded to defendants in criminal proceedings are not required or justified and that the legislation is compatible with Convention rights.

This work will be given the highest priority.

ATTORNEY GENERAL

I am copying this letter to the Prime Minister, the Advocate General and Sir Richard Wilson.

LORD GOLDSMITH, QC

File (LCO-Inmates)

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cc LCO
HO
AGen

10 DOWNING STREET
LONDON SW1A 2AA

15 June 2001

THE PRIME MINISTER

Dear Robin,

Thank you for your recent letter reporting progress on the Criminal Courts Review.

You are right to say that criminal court reform is a top priority for this Government; it is at the heart of our strategy for modernising the Criminal Justice System. I am extremely grateful to you for all your work on what is a huge task. I look forward with great interest to receiving your report at the earliest opportunity.

Yours ever

Tony

The Right Honourable Lord Justice Auld

JC

THE RIGHT HONOURABLE THE LORD WOOLF

(F) JJH CJ JB DN

cc. Sir R. Wilson
Advice & draft
reply pl.

☎ 020 7947 7661
FAX: 020 7947 7512
thelordchiefjustice@courtservice.gov.uk

14 June 2001

Dear Prime Minister,

Thank you for seeing the Senior Law Lord, the Master of the Rolls, the Senior Presiding Judge and myself yesterday and listening so courteously to what we had to say.

You were good enough to indicate that we had made our views clear. However, the Secretary of the Cabinet at the end of the discussion said words to the effect that the arguments had crossed without meeting. If the comment of the Secretary of the Cabinet was correct then I fear this was due to the fact that although the proposal has major implications for the administration of justice, the judiciary has not been consulted. I had not heard of any proposal until Sunday evening and I still do not know precisely what is proposed or the precise reasons for the proposal. Is it the responsibility for the Court Service as a whole is to be transferred to the Home Office? Is it the responsibilities of the Court Service as to Criminal Justice only which are to be transferred?

My colleagues and I have explained our deep concern as to the constitutional propriety of what may be involved. We have also pointed out the difficulties the judiciary would have in working with the Home Secretary in the same way that we work with the Lord Chancellor. We have expressed our fear, based on our long experience of the working of the justice system, that instead of improving the position the proposal will make the position worse. If you are still considering the proposal could I please be informed precisely what is proposed, what the proposals are intended to achieve and given the explanation why it is thought the proposed change is necessary. Armed with this information my colleagues and I feel confident that we will be able to make suggestions which will meet your concerns and achieve your objectives. We

ROYAL COURTS OF JUSTICE STRAND LONDON WC2A 2LL
TELEPHONE: 020 7947 6001 FAX: 020 7947 7512

share with you and the Lord Chancellor the desire to make any improvement to the system which is desirable.

You mentioned the need to achieve co-ordination as to IT and the more efficient and flexible use of courts. These are both very desirable objectives but I am not clear as to why it is thought they cannot be achieved by, if necessary, modifying the existing arrangements. I would point out that a board on which a senior judge serves has been recently established precisely to meet your objectives.

I would urge you to at least defer implementation of the proposal until the judiciary and the public have had the opportunity of considering the information to which I have referred and Lord Justice Auld's report. We do fear that the proposal as we understand it could damage the public confidence in the justice system. It must be wrong in our view for the Minister who has responsibilities for the Police and the Prisons and who is involved as a defendant in judicial review proceedings more frequently than any other litigant to have any responsibility for the running of any court.

It is because of the serious implications of what is proposed for the administration of justice that, as I explained, I feel it would be my duty to make known to Parliament and the public the concerns which I have, which I believe would be shared by every member of the judiciary in the country both on constitutional and practical grounds.

This letter reflects not only my own views but those of the Senior Law Lord and the Heads of Division. I am copying the letter to the Lord Chancellor.

I look forward to your response.

Yours ever

Prime Minister
First Lord of the Treasury
& Minister for the Civil Service
The Rt. Hon. Tony Blair MP
10 Downing Street
London SW1A 2AA

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

PM to see

pl. fax to:
– JoP
+ Richard Abel

noted.

PRIME MINISTER

DUAL ACCOUNTABILITY FOR THE COURT SERVICE

The papers from Sir Richard Wilson of 13 June 2001 proposes a "half-way house" that the Court Service should become accountable to the Home Secretary for the Criminal Courts and to the Lord Chancellor for the Civil Courts. The Paper promised was one which would specify the efficiency gains likely to be achieved from the proposed transfer. The Paper provided simply fails to do that.

It is a truism that the court system, as a whole, should be as efficient as possible and in that sense the courts contribute to the battle against crime. The primary purpose of any court is to do justice, but, consistent with that, courts should also act as swiftly as possible. In that sense, the criminal courts contribute to confidence in the criminal justice system as a whole. Persistent Young Offenders should, of course, when prosecuted, be dealt with as swiftly as is consistent with justice. Dealing with young offenders as speedily as possible contributes significantly to preventing young people lapsing into a criminal way of life. What is completely unproved, however, is that the Home Office could secure better performance from the criminal courts than the Lord Chancellor, who enjoys the fullest co-operation of the judiciary.

Whether the deeply felt objections on grounds of constitutional principle to the transfer entertained by the higher judiciary and me are accepted or not, what is absolutely plain is that the hostility to this transfer across the whole of the judiciary, including the Crown Court judges, would not be conducive to securing maximum judicial co-operation in the criminal justice system. The very transfer itself would be a major impediment to greater efficiency.

In asserting that the proposal for change would lead to better target setting, greater clarity on priorities, and less negotiation, much is made of "attrition". "Attrition", however defined, includes:

i. a failure by the police to apprehend a criminal for crime;

ii. a failure by the police to obtain sufficient evidence against an alleged criminal to warrant their putting it forward to the Crown Prosecution Service

iii. a decision by the CPS that the evidence is insufficiently likely to secure a conviction to merit prosecution

iv. a prosecution brought which is ineffective because, for example the prosecution witnesses do not turn up on the day, or do, but fail to give the evidence which they were expected to give. Both these sets of circumstances may well be caused by intimidation of witnesses, which much more commonly takes place in the neighbourhood from which the witness comes, rather than at court – intimidation which, for whatever reason, the police are unable to prevent.

What is said in the Paper about better target setting is partial. A court system can only play its part in target setting once the other parts of the criminal justice system are able to predict the number of extra cases the courts will have to deal with, consequent upon their anticipated success in dealing with "attrition" in their areas of responsibility. Immediately they were able to do so, a target was in fact agreed by the three Departments. Thus, a transfer of responsibilities for the criminal courts to the Home Office would achieve nothing in relation to attrition.

It is untrue to say that there was disagreement about the target for attrition. The three Ministers agreed that attrition was a priority and agreed the allocation of resources from the Criminal Justice System "pot" to tackle it. In the example quoted, victims, it was a lack of clarity from the Home Office about the outcomes for victims which hampered agreement about funding. That lack of clarity was criticised both by the Treasury and the No. 10 representatives on the Strategic Planning Group. Both the LCD and the Home Office (and not the Home Office alone) have underwritten elements of the victims' programmes from their own budgets, allowing work to go ahead, whilst work continued to bring the planning and target setting on victims up to scratch. So, the "victims" example is one where, in fact, the existing departmental structure has promoted more rigorous scrutiny of the planning and target setting process than could be expected from within a single Department. That, however, is precisely the sort of rigorous scrutiny of the robustness of targets that is alleged (wrongly) in paragraph 5 (iii) of Sir Richard Wilson's Paper to be lacking.

It is important to remember that this is the first year that there has been an inter-departmental budget and to recognise that, as Sir Hayden Phillips pointed out, all three Ministers moved rapidly to an agreement that a priority for the fund was to deal with the historic underspending on the Crown Prosecution Service.

On performance management, it is asserted that the new Committee has been slow to bring in Chief Executives of criminal justice organisations. This is not so. The agreed position with the Home Office was to await Lord Justice Auld's recommendations for better co-ordination arrangements in the criminal justice system, but we can introduce change earlier if we want to do so. This is not an example that supports a change in accountability.

It is asserted that the transfer would entail less negotiations. But the Attorney General will still be involved, as will I, given my other responsibilities for the judiciary, and for the Criminal Defence Service. In addition, if the split proposed were made, a new set of negotiations would have to take place over priorities in the provision of judicial services in the courts, between criminal, civil and family business, risking damage at local level to flexibility in the use of resources and greater confusion, especially among junior staff, about priorities.

Of course, part of the Government's strategy in relation to crime is to boost public confidence in the criminal justice system, especially on the part of victims. But there is no argument that I can see in the Paper that indicates that a change in accountability for the criminal courts will itself make any difference to that. In particular you should know that the satisfaction levels of those who come to

court are very high. From surveys in 2000, overall witness satisfaction with court staff was 96%, and with judges/magistrates 95%; juror satisfaction was 95%. By any standards that is conspicuously high user satisfaction.

Much is made in the Annex to Sir Richard's paper of the Persistent Young Offender pledge. In fact, the statement, 'Crown Court performance has been the weakest link', is untrue. There is clear evidence that identified PYO cases are now proceeding more quickly, due to the case management practices that exist in the Crown Courts, than unidentified PYOs. Cases which reach the Crown Court are the most serious and difficult cases, often with an adult co-defendant, and are more likely to have been subject to delay at every stage – from arrest to committal, in preparation of the case by the CPS and in the execution by the Police of Bench warrants when defendants and witnesses fail to appear. A recent case in Manchester took, for example, 500 days to reach the Crown Court and persistent failure by the police to enforce Bench warrants has delayed the case by a further 500 days so far. And there have been serious failures on the part of the Police to identify PYO cases, which are not then fast-tracked until spotted by the Courts. The fact that in London alone there is a huge backlog of 86,000 cases waiting to be entered on the Police National Computer means that the Home Office should be promoting a major drive by the police to break it.

Successes elsewhere in the criminal court system do not get a mention. Let me give you two examples. First, delay in either way cases (where the work was led from this Department and there was no injection of resources comparable to the PYO initiative) has been reduced from 136 days to 107 days. There are 500,000 of these cases each year, as opposed to 13,000 PYO cases each year. Second, there was a target to reduce overall delay from arrest to sentence in all cases of 2 days (from 76 to 74 days) by March 2000. Actual performance achieved was 66 days and the figures are improving.

Looking beyond the criminal justice system, the Home Secretary has responsibility for asylum but I have responsibility for the Immigration Appellate Authority (IAA). We and the Home Office have worked very successfully together to clear the Home Office backlog of decisions stuck in IND (which, as at my minute to you of 16 May 2000, stood at 95,000). This has entailed, among other things, a threefold increase in throughput in the IAA jurisdiction and a reduction in the time taken to process cases. This has been achieved by effective joint planning of the whole process. It has not required a single Department to have control of all stages of a process, which no one suggests should be brought together under a single Minister.

On constitutional propriety, my view and that of the higher judiciary has been made abundantly clear in my minute of 11 June 2001 and by the higher judiciary in their meeting with the Prime Minister on 13 June 2001.

There is an irrelevant comment in paragraph 9 of Sir Richard Wilson's Paper about the transparency for the process of the appointment of judges. I found the comment, in itself, however, very surprising, given the amount of time that you and I have spent on this issue, in particular in the exchanges that we have had about possible further consultation on expanding the role of the Judicial Appointments Commissioner in my memos to you of 15 November 2000, 22 February 2001, 6 March 2001, and 10 May 2001, and David North's memos to my Principal Private Secretary of 27 November 2000 and 10 April 2001. The appointment of a Commission for Judicial Appointments has, along with the use of open competition for all appointments up to Circuit Bench level (i.e. the vast majority of appointments) dramatically increased the transparency of the judicial appointments system. And, as David North's note of 10 April 2001 recognised, there are real issues about lack of accountability and politicisation of the judiciary which would need to

be thoroughly considered before moving towards a Commission for Judicial Appointments with a wider remit than Sir Colin Campbell's. None of this, however, has any relevance to the proposal currently under discussion.

The Paper, therefore, wholly fails to demonstrate that the proposed transfer would lead to any efficiency gains or make it more likely that our common aims would be achieved. On the contrary, split accountability would institutionalise judicial hostility and create a range of new problems of co-ordination which do not now exist.

LORD CHANCELLOR

14 June 2001

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

LORD CHANCELLOR

HOUSE OF LORDS,
LONDON SW1A 0PW

KJJH
C: DN

pl. fax to:
– JoP
– Rich, J Alc!

FAXED

PRIME MINISTER

DUAL ACCOUNTABILITY FOR THE COURT SERVICE

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LORD CHANCELLOR

14 **June 2001**

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

Received on file.

HOUSE OF LORDS,
LONDON SW1A 0PW

PRIME MINISTER

DUAL ACCOUNTABILITY FOR THE COURT SERVICE

The papers from Sir Richard Wilson of 13 June 2001 proposes a "half-way house" that the Court Service should become accountable to the Home Secretary for the Criminal Courts and to the Lord Chancellor for the Civil Courts. The Paper promised was one which would specify the efficiency gains likely to be achieved from the proposed transfer. The Paper provided simply fails to do that.

It is a truism that the court system, as a whole, should be as efficient as possible and in that sense the courts contribute to the battle against crime. The primary purpose of any court is to do justice, but, consistent with that, courts should also act as swiftly as possible. In that sense, the criminal courts contribute to confidence in the criminal justice system as a whole. Persistent Young Offenders should, of course, when prosecuted, be dealt with as swiftly as is consistent with justice. Dealing with young offenders as speedily as possible contributes significantly to preventing young people lapsing into a criminal way of life. What is completely unproved, however, is that the Home Office could secure better performance from the criminal courts than the Lord Chancellor, who enjoys the fullest co-operation of the judiciary.

Whether the deeply felt objections on grounds of constitutional principle to the transfer entertained by the higher judiciary and me are accepted or not, what is absolutely plain is that the hostility to this transfer across the whole of the judiciary, including the Crown Court judges, would not be conducive to securing maximum judicial co-operation in the criminal justice system. The very transfer itself would be a major impediment to greater efficiency.

In asserting that the proposal for change would lead to better target setting, greater clarity on priorities, and less negotiation, much is made of "attrition". "Attrition", however defined, includes:

i. a failure by the police to apprehend a criminal for crime;

ii. a failure by the police to obtain sufficient evidence against an alleged criminal to warrant their putting it forward to the Crown Prosecution Service

iii. a decision by the CPS that the evidence is insufficiently likely to secure a conviction to merit prosecution

iv. a prosecution brought which is ineffective because, for example the prosecution witnesses do not turn up on the day, or do, but fail to give the evidence which they were expected to give. Both these sets of circumstances may well be caused by intimidation of witnesses, which much more commonly takes place in the neighbourhood from which the witness comes, rather than at court – intimidation which, for whatever reason, the police are unable to prevent.

What is said in the Paper about better target setting is partial. A court system can only play its part in target setting once the other parts of the criminal justice system are able to predict the number of extra cases the courts will have to deal with, consequent upon their anticipated success in dealing with "attrition" in their areas of responsibility. Immediately they were able to do so, a target was in fact agreed by the three Departments. Thus, a transfer of responsibilities for the criminal courts to the Home Office would achieve nothing in relation to attrition.

It is untrue to say that there was disagreement about the target for attrition. The three Ministers agreed that attrition was a priority and agreed the allocation of resources from the Criminal Justice System "pot" to tackle it. In the example quoted, victims, it was a lack of clarity from the Home Office about the outcomes for victims which hampered agreement about funding. That lack of clarity was criticised both by the Treasury and the No. 10 representatives on the Strategic Planning Group. Both the LCD and the Home Office (and not the Home Office alone) have underwritten elements of the victims' programmes from their own budgets, allowing work to go ahead, whilst work continued to bring the planning and target setting on victims up to scratch. So, the "victims" example is one where, in fact, the existing departmental structure has promoted more rigorous scrutiny of the planning and target setting process than could be expected from within a single Department. That, however, is precisely the sort of rigorous scrutiny of the robustness of targets that is alleged (wrongly) in paragraph 5 (iii) of Sir Richard Wilson's Paper to be lacking.

It is important to remember that this is the first year that there has been an inter-departmental budget and to recognise that, as Sir Hayden Phillips pointed out, all three Ministers moved rapidly to an agreement that a priority for the fund was to deal with the historic underspending on the Crown Prosecution Service.

On performance management, it is asserted that the new Committee has been slow to bring in Chief Executives of criminal justice organisations. This is not so. The agreed position with the Home Office was to await Lord Justice Auld's recommendations for better co-ordination arrangements in the criminal justice system, but we can introduce change earlier if we want to do so. This is not an example that supports a change in accountability.

It is asserted that the transfer would entail less negotiations. But the Attorney General will still be involved, as will I, given my other responsibilities for the judiciary, and for the Criminal Defence Service. In addition, if the split proposed were made, a new set of negotiations would have to take place over priorities in the provision of judicial services in the courts, between criminal, civil and family business, risking damage at local level to flexibility in the use of resources and greater confusion, especially among junior staff, about priorities.

Of course, part of the Government's strategy in relation to crime is to boost public confidence in the criminal justice system, especially on the part of victims. But there is no argument that I can see in the Paper that indicates that a change in accountability for the criminal courts will itself make any difference to that. In particular you should know that the satisfaction levels of those who come to

court are very high. From surveys in 2000, overall witness satisfaction with court staff was 96%, and with judges/magistrates 95%; juror satisfaction was 95%. By any standards that is conspicuously high user satisfaction.

Much is made in the Annex to Sir Richard's paper of the Persistent Young Offender pledge. In fact, the statement, 'Crown Court performance has been the weakest link', is untrue. There is clear evidence that identified PYO cases are now proceeding more quickly, due to the case management practices that exist in the Crown Courts, than unidentified PYOs. Cases which reach the Crown Court are the most serious and difficult cases, often with an adult co-defendant, and are more likely to have been subject to delay at every stage – from arrest to committal, in preparation of the case by the CPS and in the execution by the Police of Bench warrants when defendants and witnesses fail to appear. A recent case in Manchester took, for example, 500 days to reach the Crown Court and persistent failure by the police to enforce Bench warrants has delayed the case by a further 500 days so far. And there have been serious failures on the part of the Police to identify PYO cases, which are not then fast-tracked until spotted by the Courts. The fact that in London alone there is a huge backlog of 86,000 cases waiting to be entered on the Police National Computer means that the Home Office should be promoting a major drive by the police to break it.

Successes elsewhere in the criminal court system do not get a mention. Let me give you two examples. First, delay in either way cases (where the work was led from this Department and there was no injection of resources comparable to the PYO initiative) has been reduced from 136 days to 107 days. There are 500,000 of these cases each year, as opposed to 13,000 PYO cases each year. Second, there was a target to reduce overall delay from arrest to sentence in all cases of 2 days (from 76 to 74 days) by March 2000. Actual performance achieved was 66 days and the figures are improving.

Looking beyond the criminal justice system, the Home Secretary has responsibility for asylum but I have responsibility for the Immigration Appellate Authority (IAA). We and the Home Office have worked very successfully together to clear the Home Office backlog of decisions stuck in IND (which, as at my minute to you of 16 May 2000, stood at 95,000). This has entailed, among other things, a threefold increase in throughput in the IAA jurisdiction and a reduction in the time taken to process cases. This has been achieved by effective joint planning of the whole process. It has not required a single Department to have control of all stages of a process, which no one suggests should be brought together under a single Minister.

On constitutional propriety, my view and that of the higher judiciary has been made abundantly clear in my minute of 11 June 2001 and by the higher judiciary in their meeting with the Prime Minister on 13 June 2001.

There is an irrelevant comment in paragraph 9 of Sir Richard Wilson's Paper about the transparency for the process of the appointment of judges. I found the comment, in itself, however, very surprising, given the amount of time that you and I have spent on this issue, in particular in the exchanges that we have had about possible further consultation on expanding the role of the Judicial Appointments Commissioner in my memos to you of 15 November 2000, 22 February 2001, 6 March 2001, and 10 May 2001, and David North's memos to my Principal Private Secretary of 27 November 2000 and 10 April 2001. The appointment of a Commission for Judicial Appointments has, along with the use of open competition for all appointments up to Circuit Bench level (i.e. the vast majority of appointments) dramatically increased the transparency of the judicial appointments system. And, as David North's note of 10 April 2001 recognised, there are real issues about lack of accountability and politicisation of the judiciary which would need to

be thoroughly considered before moving towards a Commission for Judicial Appointments with a wider remit than Sir Colin Campbell's. None of this, however, has any relevance to the proposal currently under discussion.

The Paper, therefore, wholly fails to demonstrate that the proposed transfer would lead to any efficiency gains or make it more likely that our common aims would be achieved. On the contrary, split accountability would institutionalise judicial hostility and create a range of new problems of co-ordination which do not now exist.

Iqbh

LORD CHANCELLOR

14 **June 2001**

Secretary of the Cabinet and Head of the Home Civil Service

From the Private Secretary

JEREMY HEYWOOD

DUAL ACCOUNTABILITY FOR THE COURT SERVICE

--- I attach a revised speaking note for the Prime Minister, which takes account of the points in your email of this morning.

ASHLEY IBBETT

13 June 2001

DUAL ACCOUNTABILITY FOR THE COURT SERVICE

The original proposal under consideration was that the Court Service should transfer to the Home Office with associated policy functions.

2. **The half-way house** now proposed is as follows.

i. The LCD's responsibilities for the Magistrates' Courts and their IT should transfer to the Court Service (sensible anyway because it prepares the way for Auld).

ii. The Court Service should from now on be jointly accountable to the Home Secretary and the Lord Chancellor, reporting to the Home Secretary on criminal courts and to the Lord Chancellor on civil courts. (The Court Service is already split between a civil and criminal division.) The Lord Chancellor would retain responsibility for appointing and training judges, legal aid and the Criminal Defence Service.

iii. The teams in the LCD dealing with criminal justice (Halliday etc) and the criminal courts review (Auld) should transfer to the Home Office.

iv. A new senior Director reporting to the Home Secretary should be appointed to direct the development of coherent IT systems throughout the criminal justice system.

3. The intention would be to bring all court administration together at an operational level while allowing integration between the civil and criminal sides of the Service (eg common buildings) if that makes sense. It would allow the Court Service to prepare for the integration of the criminal courts as Auld is expected to recommend.

Why do this?

4. The fundamental reason is that the Government wants to reduce crime. This requires a strategy which:

i. **tackles the 100,000 persistent offenders who commit 50 per cent of crime.** They require a 'whole system' which makes sure that they are caught, convicted, sentenced and punished quickly and effectively to reduce offending. An inefficient criminal justice system gives encouragement to offenders;

ii. **stops people becoming offenders in the first place.** Two thirds of the 100,000 persistent offenders begin offending before the age of 15. The youth justice reforms are tackling this by giving more direct drive to the system. But one of the lessons of efforts to deliver the pledge on persistent young offenders in the last manifesto was that

good performance management only happens if there is clarity between the centre and the front line in different agencies. Poor performance management means that the front line does not get the message and neither do young offenders;

iii. **boosts confidence in the criminal justice system.** At present 59 per cent of victims do not even bother to report crime. Fear of crime is a big problem. The ideal solution would be to make sure that the criminal justice system is effective at every point at which victims meet it. Poor performance management loses the confidence of victims.

But how will the proposal help?

5. The proposal would aim to help to improve the ability of the Home Office to manage the performance of the criminal justice system within one line of accountability through:

i. **better target setting.** There was funding for an action programme on attrition in SR 2000, but the two departments were unable to agree a formal target in July and October 2000. The formal SDA target was only agreed in March 2001. Slow progress (and disputes between departments inevitably take longer to resolve than disputes between divisions within a department) means poor performance management.

ii. **clarity about priorities.** There have been disagreements about priorities, for instance about the priority for attrition. The result is confusing for the front line. Lack of clarity at the centre weakens performance management at the front. The change would provide clearer Ministerial accountability by enabling individual Ministers, rather than a committee, to take responsibility for achieving targets;

iii. **less negotiation.** The present structure requires too much lengthy negotiation and 'fudges'. For instance, the allocation of the financial reserve of £525m for the criminal justice system was only achieved at the price of sacrificing rigorous scrutiny. Victims were meant to be a priority for the reserve but disagreement was only solved by the Home Office underwriting one element. Funds had to be set aside for workload consequences of attrition by accepting modelling assumptions most favourable to the Courts. Trilateral agreement takes time and needs compromise, and compromise weakens performance.

iv. **better IT.** Progress has been disappointing under the present structure. It is hard to do what is needed under a trilateral system: eg. key decisions on projects and programmes cannot afford to wait for trilateral Ministerial groups to be convened. A current review is likely to conclude that the present system IBIS is a flop and will not become

effective unless there is a unified management of the CJS. The reviewer has specifically recommended establishing single departmental responsibility. Attempts to introduce good IT have failed so far.

v. **better performance management.** The new committee (SPG) brought in to improve performance management has not made much progress yet: eg. it has been slow to bring in chief executives of criminal justice organisations. The frontline is still confused by conflicting performance indicators. The Court Service needs to be able to respond quickly to the demands of its full range of customers.

So what would it achieve in practical terms?

6. The aim would accordingly be to achieve:

i. more efficient decision-taking and better target-setting;

ii. more clarity about targets and clearer Ministerial accountability for achieving them;

iii. better, quicker decisions with fewer fudges;

iv. better, direct performance management, with clearer messages;

v. better IT.

7. The argument is not that these things can only be achieved under the new proposal but that they are more likely to be achieved under it. None of it would be easy. The proposal is not ideal. But it would be a step in the right direction.

Constitutionally improper?

8. It is not self-evident that there is any constitutional principle involved in improving performance. The main constitutional principle is the need to ensure that there is no political or improper pressure on the Judiciary to reach particular decisions in particular cases. This is not at stake under this proposal. It preserves the independence of the judicial and prosecution functions in the LCD and the Crown Prosecution Service and separates them from accountability for managing and driving the system as a whole.

9. Not surprisingly it is difficult to find comparators. The UK system is unlike other systems in many ways, most particularly the arrangement for the appointment of judges by a member of the Executive without transparency of process. Ireland, Scotland, Sweden and Norway all have single Ministries with combined responsibility for courts, police and prisons.

In the Netherlands, too, the Ministry of Justice has some policing responsibilities.

13 June 2001

PRACTICE DIRECTIONS, LISTINGS AND RULES OF PROCEDURE

Practice Directions in criminal justice are generally made by the Lord Chief Justice. They set out the practice the criminal courts should follow. They may be made at the suggestion of the administration. No question of any change here. No desire to interfere in judicial discretion, or compromise the independence of the judiciary.

Listings. These are judicial decisions. But general listing is in practice largely carried out administratively under rules decided with judicial involvement. In other countries listing is a prosecutorial or administrative rather than judicial function. No question under these proposals of interference in listing from the bench in individual cases. Agreed that it is wrong in principle for the executive to interfere. As to general listing, these proposals do not stand or fall on any change in the current position. Their rationale is to get more focussed Ministerial accountability and decision-taking. Would be possible to look down the track at improving general listing: eg greater prescription in statute, as in Narey hearings. But the proposal doesn't turn on any change here. No question of any Home Office involvement in questions about the performance or behaviour of the judiciary.

Rules of procedure. The Lord Chancellor is chairman of the Rule Committees which make rules of procedure for the courts. The rules take the form of statutory instruments, promoted by the Lord Chancellor for the approval of Parliament. Again, the proposals are not dependent on any change here. No doubt there could be a different arrangement for judicial agreement to and sponsorship of such rules. But the rationale for the proposal is not this, but rather Ministerial accountability and drive and speed of decision-taking. [An example of policy changes needing such Rules is implementing the vulnerable witnesses provisions in the Youth Justice and Criminal Evidence Act 1999. In practice there could be a different judicial sponsor – eg the Lord Chief Justice, who already plays a leading role under the current arrangements. But the proposals don't turn on this.]

THE PERSISTENT YOUNG OFFENDERS PLEDGE

The pledge was to halve the time taken from arrest to sentence (142 days to 71).

The pledge started well, floundered, but was revived in Autumn 2000 when the Home Secretary gave Sue Street a personal mandate to achieve the target.

Latest figures (published 8 June) show that we are now achieving an average of 83 days from arrest to sentence. Without the 5% longest running cases, we would be at 72 days.

Crown Court performance has been the weakest link. Ian Magee, Chief Executive, Court Service has closely participated (eg in the 8.30 meetings). But the effort would be even stronger if there were single Ministerial drive. (Example: there was sharp correspondence a few months ago between Ross Cranston and Jane Kennedy about resources.)

For instance, PA Consulting have been advising on business processes. Better if they had a single, clear customer and sponsor: the Home Office.

ON REFLECTION DON'T (f)
THINK IT IS A GOOD IDEA
TO ASK A-G TO PUT OUT
A STATEMENT - WILL ONLY
ENCOURAGE STILL MORE
STORIES. HO/AG OFFICE/LCO
SHLD HAVE LINES TO
USE IF THEY GET
QUERIES - I WILL
E-MAIL REVISED ~~SUGGESTED~~ DRAFT
TJ.

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

RESTRICTED - MANAGEMENT

David North Esq
Private Secretary to the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

12 JUN 2001

DN cc Piers t.p.o
on
I wonder if the statement needs to be fuller. ie T&V have been detained for tariff period. If now decn of Parole Bd as to date may not be released. The High Ct has ruled inadmissible that no photo can be published which will allow for identification. We expect this to be upheld. Liz

DN
C. fu
Pres

Dear David,

THOMPSON AND VENABLES: PAROLE BOARD HEARINGS AND THE HIGH COURT INJUNCTION

SUMMARY

I am writing to alert you to the fact that the Parole Board will be considering these cases next week – further advice to follow; and in the meantime to alert you to the action which the Attorney General is being invited to take to remind the media about the importance of adhering to the injunction (which extends to publication on the internet). The Attorney General's statement will itself be very newsworthy.

PAROLE BOARD HEARINGS

2. I am writing to update you on developments in respect of the cases of Robert Thompson and Jon Venables who were sentenced in November 1993, at the age of 11, to Detention During Her Majesty's Pleasure (HMP) for the murder of 2 year old James Bulger. Thompson and Venables have since been detained in separate Local Authority Secure Units.

3. The sentence of HMP is an indeterminate one. Those serving such sentences may be released only after they have served the minimum period necessary to meet the requirements of retribution and deterrence ("the tariff"). Once the tariff has expired the offender's case is considered at an oral hearing by the panel of the Parole Board. Any direction by the panel for release is binding on the Home Secretary. An offender will not be directed for release unless the risk is considered acceptably low. The tariff which the previous Home Secretary set for Thompson and Venables on the recommendation of the Lord Chief Justice expired last October and both cases are due to be considered by the Parole Board in the course of the next week.

HIGH COURT INJUNCTION

4. After sentencing Thompson and Venables, the trial judge made an Order prohibiting publication of their location, treatment, progress and appearance

Rec 14/6 File

From: THE PRIVATE SECRETARY

HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

RESTRICTED - MANAGEMENT

David North Esq
Private Secretary to the Prime Minister
10 Downing Street
LONDON
SW1A 2AA

cc JJH Press

12 JUN 2001

Dear David,

THOMPSON AND VENABLES: PAROLE BOARD HEARINGS AND THE HIGH COURT INJUNCTION

SUMMARY

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HIGH COURT INJUNCTION

4. After sentencing Thompson and Venables, the trial judge made an Order prohibiting publication of their location, treatment, progress and appearance

until they were 18 years old. Last year a group of newspapers applied to the High Court for clarification as to whether the reporting restriction should be retained after their 18th birthdays (in August 2000). The newspapers' application was opposed by Thompson and Venables solicitors who sought to have the injunction extended beyond 18. Following the High Court proceedings in November, a further Order was granted on 8 January of this year. The effect of the Court's judgement was to extend the law of confidence to protect information regarding the identity and whereabouts of individuals of full age and capacity, where disclosure could lead to serious and irrefutable harm to both of them.

5. Counsel has confirmed that the Home Secretary has a duty in relation to the safety of Thompson and Venables which extends beyond their time in detention and which requires him to ensure that provision for their supervision is made. The Home Secretary has therefore given his agreement to contingency arrangements putting us in a position to intervene, in the event of our receiving intelligence that the media either in England and Wales, or Scotland, or overseas were proposing to publish material jeopardising their safety.

NEWSPAPER REPORTS OF INTENTION TO PUBLISH A PHOTOGRAPH OF THOMPSON ON THE INTERNET.

6. Our concerns have to a certain extent been justified.

7. Weekend press reports have added new information suggesting an intention to publish information about Thompson and Venables. Specifically papers have suggested that there is an intention on the part of protesters – members of the Justice for James Group – to publish a photograph of Thompson on the internet. It is said that such a photograph was shown to a Channel 4 reporter making a Dispatches programme to be shown this evening. This would be a clear breach of the existing injunction.

8. To counter this, we are proposing that the Attorney General be asked to issue a statement reminding publishers of the importance of adherence of the existing injunction. This reminder should include making it clear publicly that publication on the internet is caught by the present injunction. I enclose a copy of the draft statement (Annex A) which has yet to be approved by the in-coming Attorney General but has been seen by officials at his office.

9. We believe that a reminder on these lines would send a signal of the Government's interest in upholding the injunction. We think this will be proportionate to the risk of publication without itself precipitating legal proceedings. We did consider whether the Home Secretary or the Attorney General should seek reassurances from newspapers and others that they did not intend to publish material contrary to the injunction. However, we think that would be heavy handed and would involve us in legal action prematurely.

The Home Secretary has agreed the lines to take which are replicated at Annex B.

10. The Home Secretary has also agreed a proposal for our officials to write to colleagues in the Foreign and Commonwealth Office suggesting that they contact their missions in all Council of Europe and some other countries asking those missions to notify the FCO if they become aware of any actual or intended publication or broadcast which tends to identify Thompson and Venables current likeness or whereabouts. A copy of that draft telegram is at Annex C.

11. The Home Secretary will be considering handling proposals later this week and I will keep you in touch with developments. In the meantime you will want to be aware of the proposed action by the Attorney General, not least because it will be taken as a sign that the Government will intervene subsequently if the injunction is threatened.

12. I am copying this letter to Rupert Cazalet (Attorney General's Office), Sherard Cowper-Coles (FCO) and Richard Abel (Cabinet Office).

Yours ever,

Stephen

STEPHEN HARRISON

ANNEX A

PHOTOGRAPH OF ROBERT THOMPSON

DRAFT STATEMENT BY ATTORNEY-GENERAL

1. I have noted in the press reports that a recent photograph of Robert Thompson, one of those convicted of the murder of James Bulger, is to be posted on the Internet.

2. This would constitute a clear breach of the injunction made on 8 January this year by the High Court in relation to both young men convicted of this murder. It restrained the "publishing or causing to be published in any newspaper or broadcasting in any sound or television broadcast or by means of any cable or satellite programme or public computer network" of the matters covered by the injunction, including any such photograph. The injunction is widely drawn and must be respected.

3. It is particularly important that all media organisations act responsibly at this time. The Parole Board will shortly consider the cases of both young men convicted of this murder. The purpose of the injunction is to protect their lives and physical safety and to enable them in due course to be released on life licence and supervised in the community.

4. In these circumstances, I attach considerable importance to adherence to the terms of this injunction.

ANNEX B

LINES TO TAKE

- The Home Secretary has a duty in law in relation to the safety of Thompson and Venables. That duty extends beyond their time in detention and requires him to ensure that provision is made for their supervision in the community on licence and to take reasonable steps to ensure their safety on release.

- The High Court made an injunction in January this year aimed at protecting information regarding the identity and whereabouts of Thompson and Venables in order to protect them from harm.

- The Government intends to take all necessary measures in this case to fulfil its obligations to Thompson and Venables, the family of James Bulger and the wider public.

ANNEX C

Draft FCO Telegram to All Council of Europe and Anglophone Countries

The English courts granted an order on 8 January to prevent the publication or broadcasting of any material which might identify Jon Venables or Robert Thompson, or their whereabouts. This was to protect them from serious reprisals by members of the public.

Thompson and Venables are the young men convicted of murdering two year old James Bulger in Liverpool in 1993. Thompson and Venables are about to attend hearings of the Parole Board which will determine whether the risk they pose to society is sufficiently low for them to be released.

Heightened press interest in Thompson and Venables is expected in the UK in the next few weeks; and it is likely that this will be reflected to an extent overseas. Posts are asked to notify FCO immediately if they become aware of any actual or intended publication or broadcast which tends to identify the current likeness or whereabouts of these two young men. Consideration will then be given to legal action to prevent such identification or any repetition of it.

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

PRIME MINISTER

We have now spoken three times, shortly on Friday 8th, and on the telephone on Saturday 9th and Sunday 10th, about the proposal to shift responsibility for the administration of all the courts, civil and criminal, from LCD to the Home Office. I have sought, so far without success, to persuade you that this would be a retrograde step, would not produce efficiency gains but losses and would be perceived to be constitutionally wrong. Although I have given you my detailed reasons on the telephone, this issue is so critical for the effectiveness of the justice system that I put down my reasons in writing so that you can consider them again.

1. On the back of the acclaimed Beeching Royal Commission, the 1971 Courts Act centralised responsibility for the Courts under one Minister, the Lord Chancellor, who was already responsible for the judiciary. Before that the criminal courts, the Assizes and the Quarter Sessions, were essentially free standing and the responsibility of the local authorities. The Home Office had no responsibility for the criminal courts whatsoever, other than supervising the magistrates courts which were a local function. This was recognised to be anomalous and they were handed over to the LCD in the early nineties. All the civil courts were, of course, already the responsibility of the LCD. I have had no time to look into the detail, since the first I learned of this proposal was about 4.30pm on Friday, but to proceed as is proposed would involve unstitching at least three long standing Acts of Parliament (the Supreme Court Act, 1981, the County Courts Act 1984 and the Courts Act, 1971) all of which passed on a bi-partisan basis. The policy of locating in the Lord Chancellor responsibility both for the courts and the judiciary has never been criticised subsequently. Obviously the legislation would pass the Commons with ease but opposition in the Lords would be huge both from the Tories and the Liberal Democrats, who outnumber us, and in all probability from the Law Lords.

2. The judiciary are lead managers of the courts through the Lord Chancellor, the Heads of Division, the Presiding Judges in each Circuit and the Resident and Designated Judges in charge of the local court centres. They manage the courts in cooperation with the Court Service, an agency responsible to the Lord Chancellor for which about 10,000 people work. The Lord Chancellor, who is the Head of the Judiciary, appoints and promotes the Judges (save where the Prime Minister makes the recommendation to the Queen and then invariably on the advice of the Lord Chancellor) and for that reason is in a better position to run the courts effectively in cooperation with the judiciary, and with a Court Service accountable to him, than any Home Secretary could. The culture of cooperation which has advanced by leaps and bounds in recent years is one of the undoubted gains in the system and is dependent on shared objectives applying both to civil and criminal justice.

3. A huge change of this kind should be proposed only if there is evidence based research to support it and there is none. There is only a generalised assertion that efficiency gains are bound to come if the prisons, the police and the courts are brought under the Home Office. My firm belief is that there would be huge efficiency losses, but when a dramatic change of this kind is proposed it should be supported by a reasoned and detailed case and there is none.

4. The proposal is further deeply flawed because all that is desired is that the criminal courts go over, but, as Sir Richard Wilson said (and I agree) the civil and criminal courts are so intertwined physically and administratively that both the civil and the criminal courts would have to go over. Thus the civil courts would go over to the Home Office which has no civil expertise. The bizarre consequence would follow that the Royal Courts of Justice in the Strand where about 90 courts sit every day, about 85 of them on civil business, would become the responsibility of the Home Secretary, as would all the other civil courts sitting every day up and down the country.

5. Because of the priority the Home Office would inevitably give to the criminal justice system, the civil system would become the poor cousin and lose out in the competition for scarce resources with the police, prisons and the criminal justice system. Our flagship specialist civil courts, eg the Commercial Court, would lose in international standing.

6. At a more practical level, in the public mind, and rightly, the court system and the judiciary are inextricably intertwined and the shoals of complaints I receive from disappointed litigants mix up complaints about the judge and the court administration in such a way that for one Minister to deal with one aspect and another the other is impracticable. In practice only one Minister responsible for both can decide where responsibility lies when a well founded complaint is established.

7. The demand for and supply of judges of the right experience and quality in the right places across the country should be in a single set of Ministerial hands.

8. It is wrong for so far reaching change to be imposed without any consultation with the stakeholders in the justice system. The judiciary's hostility can be guaranteed and they will think, as I do, that it is wrong in principle for a Ministry of the Interior, which is responsible for the investigation of crime and the apprehension of alleged criminals, also to be responsible for the Courts which try them. No major European Country gives this responsibility to the Interior Ministry, because it is axiomatic that independent and impartial courts should not be seen to be in the hands of that Ministry. The exceptions in very small countries, Ireland and Scotland, are none to the point, because a proper separation of the powers is readily achievable in countries of our size.

Joph

LORD CHANCELLOR
11 June 2001

NORTHERN IRELAND OFFICE
11 MILLBANK
LONDON
SW1P 4PN

(b)

DN
cc: JS
JPO
MT
PN.

SECRETARY OF STATE
FOR
NORTHERN IRELAND

The Right Honourable The Lord Irvine of Lairg QC
Lord Chancellor
House of Lords
LONDON
SW1A 0PW

11 June 2001

Dear Derry,

IMPLEMENTATION OF THE CRIMINAL JUSTICE REVIEW

I was very glad to have an opportunity to meet you on 23 May to discuss your letter of 6 April, and the way forward on the Review more generally.

As I said at our meeting, I believe it is critically important for us to stick with the Review's recommendations as far as possible. While we may be able to build on the Review in matters of detail, where that is consistent with the spirit of the recommendations, I think that the more we ourselves depart substantively from the Review, the more difficult it will be to resist attempts by the local parties and the Irish Government to argue for unacceptable changes.

I appreciate implementing the Review in full will involve some difficult choices, *and* fully understand that you and the Lord Chief Justice have concerns in some areas. I believe that through our meeting we have agreed a way forward in the key areas.

Turning to the points raised in your letter, I thought it might be helpful to summarise these in turn.

CONFIDENTIAL

1. Possible Entrenchment of Judicial Issues

Your letter suggested we should consider entrenching the Bill's provisions relating to the judiciary and courts administration, and in particular judicial appointments. As we discussed, the Bill will make provision for the Review recommendation that "no vote, resolution or act of the Assembly on judicial matters should be valid unless it has cross-community support".

I indicated that I would also be prepared to put in place a concordat between the devolved administration and ourselves. This could encompass the core principles of the judicial and courts system and would be a way of setting out clearly that we expect key justice areas to retain their integrity after devolution. It might be possible *to* make an announcement on the concordat during the Parliamentary stages of the Bill. I also noted that, as a last resort, the Government has the option of legislating at Westminster should the Assembly change the arrangements in a way that compromised the core values set out in the concordat. I believe that these measures, taken together, will provide a significant safeguard.

As we discussed, entrenching large areas of the Review would go against the central recommendation that powers be devolved fully, and send unfortunate signals about our lack of trust in the local parties. In the case of judicial appointments, however, I would be prepared to note in the Implementation Plan that these are protected from modification in the Scottish legislation and to consider any views received on this point during the consultation period following publication. If there was evidence of broad support for replicating the Scottish arrangement here, we could include appropriate clauses in the Bill on introduction.

2. Judicial Appointments Commission

Similarly on the Judicial Appointments Commission, I believe the Review also contains considerable safeguards in the area of main concern, namely preserving judicial independence and the merit principle. Indeed, the principles of judicial independence and appointment on merit will be enshrined in the draft legislation. On membership of the Commission, we agreed that recommendation 78 could reasonably be interpreted so as to provide for six judicial members of the Commission, with the Lord Chief Justice in the chair, two from the legal professions and five lay members,.

With regard to the process for appointing members of the Commission, the Lord Chief Justice has expressed concern about open advertisement for lay posts. As I said at our meeting, any decision not to advertise these positions publicly would send out entirely the wrong signal and leave us open to the criticism that we are not seriously committed to achieving a more transparent and accountable criminal justice system. It would, of course, be possible for the Lord Chief Justice to encourage potential candidates to apply if he felt they possessed the right skills or had useful experience to offer the Commission.

3. Machinery for Senior Judicial Appointments, Post-Devolution

You made a strong case to me for the Lord Chief Justice to be consulted by the First and Deputy First Ministers before they make recommendations to the Prime Minister on senior appointments. I see no difficulty with this and should be happy to ensure the Bill includes appropriate provisions – provided of course that you confirm, when you have spoken to him, that the Lord Chief Justice is content with the proposal. *We* agreed the Bill should not have specific provisions in respect of informing the Prime Minister *as to* whether the Lord Chief Justice agreed or

disagreed with the recommendations. It would, of course, be open to the Prime Minister to take informal soundings if he chose.

4. Removal of Judges

Our officials are currently working on the details of how these provisions could work, and I will write to you further soon. Once again our aim is to stick as closely as possible to the terms of the Review, which recommended tribunals on the Scottish model, convened by the Lord chief Justice or the First and Deputy First Minister.

5. Law Commission for Northern Ireland

We discussed timing and commencement of the Bill's provisions on the Law Commission. The timing of commencement would be flexible, depending on the availability of resources and suitable and sufficient work. I would not intend to commence the provisions immediately on Royal Assent, and would wish to discuss the optimum timing with you. There will also be flexibility over whether there should be part or full time appointees, and flexibility over which tier of the judiciary the chair would be drawn from. The Implementation Plan will not be specific about when precisely these provisions are to be brought into force, merely noting that they are not dependent on devolution. Realistically, however, there is broad support for a Commission from across the political spectrum, and we are unlikely to be able to postpone commencement for long.

6. Symbols, Wigs and Gowns and Flags

At the meeting we agreed that court dress should be left to the legal profession and the judiciary to regulate. On flags, I understand that the Northern Ireland Court Service practice on the flying of flags already accords with that for other

Government buildings, though we may need to consider whether legislative provision is needed to address the position after devolution.

On the Coat of Arms, we agreed to stick to the strict letter of the Review, implementing in full its recommendations on symbols inside courtrooms and outside courthouses. We discussed the difficulties with screening, and in particular the controversy it might give rise to. Given the Court Service's recent survey which suggested symbols inside listed courtrooms could be removed altogether without causing permanent damage, we agreed this, rather than screening, would be the best approach.

7. Equity Monitoring

You confirmed that monitoring information would be sought from candidates for judicial appointment on a voluntary basis, and that proxy indicators would be used in circumstances where this information was not provided voluntarily. In line with the Review, we would not be asking existing members of the judiciary about their community background.

8. The Organisation of the Criminal Justice System Post-devolution

We briefly discussed the organisation of the criminal justice system post-devolution, including the idea, recommended by the Review, of a single Department

of Justice. This of course reflects the position in Scotland. In practice, however, future arrangements would be the subject of intense debate between the parties as and when we approach devolution, and would not be prescribed in detail in the Bill.

Conclusion

I would like to take this opportunity to thank you once again for the cooperation you and your officials have shown in preparing for implementation of the Review. In general the Review has been widely welcomed, and holds out the opportunity of valuable reforms to the system. I know some of the recommendations may present some difficulties, and am, of course, happy to meet at any time to discuss further points you may have as the implementation process continues.

Copies go to the Prime Minister, the Home Secretary and the Attorney General, and to Sir Richard Wilson.

Yours ever.

JOHN REID

JEREMY HEYWOOD

WHY MOVE THE COURT SERVICE?

I attach a note outlining the reasons for moving the Court Service and the practical benefits which we seek to achieve, as requested. It is drafted for the Prime Minister's eyes. I have not of course cleared it with others. But I believe it to be right.

Hope it helps.

RJW.

RICHARD WILSON
10June 2001

TRANSFER OF COURT SERVICE TO THE HOME OFFICE

There are two main questions: why are we doing this? and what are the practical improvements we are seeking?

Why are we doing this?

2. Because we want to reduce crime. This requires a strategy which:

i. **tackles the 100,000 persistent offenders who commit 50 per cent of crime.** They require a 'whole system' which makes sure that they are caught, convicted, sentenced and punished quickly and effectively to reduce offending. An inefficient criminal justice system gives encouragement to offenders;

ii. **stops people becoming offenders in the first place.** Two thirds of the 100,000 persistent offenders begin offending before the age of 15. The youth justice reforms are tackling this by giving more direct drive to the system. But one of the lessons of efforts to deliver the pledge on persistent young offenders in the last manifesto was that good performance management only happens if there is clarity between the centre and the front line in different agencies. Poor performance management means that the front line does not get the message and neither do young offenders;

iii. **boosts confidence in the criminal justice system.** At present 59 per cent of victims do not even bother to report crime. Fear of crime is a big problem. The solution is to make sure that the criminal justice system is effective at every point at which victims meet it. Poor performance management loses the confidence of victims.

But how will moving the Court Service help?

3. By improving the ability to manage the performance of the whole system. We need the following sorts of practical improvement:

i. **better target setting.** There was funding for an action programme on attrition in SR 2000, but the LCD opposed a formal target in July and October 2000. The formal SDA target was only agreed in March 2001. Slow progress means poor performance management.

ii. **clarity about priorities.** There have been disagreements about priorities. For instance, the LCD have tended to give higher priority to reducing delays ahead of attrition. The result is confusing for the front line. Lack of clarity at the centre weakens performance management at the front.

iii. **less negotiation.** The present structure requires too much negotiation and 'fudges'. For instance, the allocation of the financial reserve of £525m for the criminal justice system was only achieved at the price of sacrificing rigorous scrutiny. Victims were meant to be a priority for the reserve, but the Lord Chancellor queried parts of the package and in the end it was only solved by the Home Office underwriting one element. Funds had to be set aside for workload consequences of attrition by accepting modelling assumptions most favourable to the Courts. Trilateral agreement needs compromise, and compromise weakens performance.

iv. **present structure has hindered IT.** Key decisions on projects and programmes cannot afford to wait for trilateral Ministerial groups to be convened. It is hard to manage IT trilaterally. A current review is likely to conclude that the present system IBIS is a disaster and that there should be one gateway for the system (Cap Gemini costing £100m) rather than interfaces between different parts. Introducing good IT is difficult in the present trilateral system.

v. **The transfer is essential for performance management.** The new committee brought in to improve performance management has not made much progress yet: eg. it could have moved before now to bring in chief executives of

criminal justice organisations. The frontline is still confused by conflicting performance indicators.

So what do we want to achieve in practical terms?

4. It follows from the above that what we want to achieve is:

i. better target setting;

ii. more clarity about targets;

iii. better decisions with fewer fudges;

iv. better performance management, with clearer messages;

v. better IT.

Won't this undermine the independence of the judiciary?

5. No, it will not. We want to preserve the independence of the judicial and prosecution functions in the system so that fairness is completely preserved. That means anchoring any structural changes in the principle of separating these functions from accountability for managing and driving the system as a whole.

6. All this suggests clearer lines of accountability, more direct drive from one Secretary of State at the top, pooled budgets to target the system's weaknesses and more coherent messages to the front line about what they must do.

7. Hence the need to move the Court service into the Home Office.

10 June 2001

FROM THE RIGHT HONOURABLE THE LORD IRVINE OF LAIRG

HOUSE OF LORDS,
LONDON SW1A 0PW

(F) ~~DN~~
cc: PU

Edwina Hart AM MBE
Minister for Finance, Local Government
and Communities
The National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

8 June 2001

Dear Minister,

SIR ANDREW LEGGATT'S REVIEW OF TRIBUNALS

Thank you for your letter of 16 May 2001 about Sir Andrew Leggatt's Review of Tribunals.

I can reassure you and your colleagues that there will be full consultation with the National Assembly of Wales in determining how the recommendations of Sir Andrew's Review should be taken forward. This will be especially important because the arrangements for Tribunals in respect of devolution are complex and we will clearly need to consider extremely carefully the arrangements for Wales and the other devolved administrations.

As you know, the National Assembly has already been represented at the meetings of Whitehall Permanent Secretaries to consider the handling of the Report. This is indicative of our desire that devolution considerations are factored in from the outset of our considerations.

I am copying this letter to my Cabinet colleagues, the Attorney General, Lord Falconer, Henry McLeish, Jim Wallace, David Trimble, Seamus Mallon and to Sir Richard Wilson.

Yours ever,

Irvine of Lairg

CRIMINAL COURTS REVIEW

The Rt. Hon. Lord Justice Auld
E-mail: crimcourtsreview@lcdhq.gsi.gov.uk

ROYAL COURTS OF JUSTICE
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OMc
Yours...
DW

DN
cc: PJ

The Right Hon. Tony Blair, M.P.,
The Prime Minister,
10, Downing Street,
London, SW1A 2AA.

8th June 2001

Dear Prime Minister,

CRIMINAL COURTS REVIEW

I write to report on my progress, given the references made to the Criminal Courts Review during the Election Campaign, and the priority I know the Government attaches to Criminal Court Reform.

I have made steady progress with the Report, though the work has not proceeded as rapidly as I would have liked. I hope to deliver it to you during July. In part, the delay is attributable to the wide range of issues covered by my terms of reference, the many submissions (numbering over 1,000) that I have received from interested organisations and individuals. I have also received a large volume of material, including reports of similar reviews, from other Commonwealth jurisdictions and the U.S.A..

In addition, I have, as you know, had to deal during the period of the Review with a continuous flow of reports and initiatives of Government Departments and other bodies, of which the Government's wide-ranging proposals in its publication "Criminal Justice": The Way Ahead", John Halliday's Sentencing Review, the Plotnikoff and Woolfson research on Disclosure and the Law Commission's Review of the Law of Bail are the most recent in a long line. All of these must be considered and dealt with if the Report is properly to cover the ground.

I am sending copies of this letter to the Lord Chancellor, the Home Secretary and the Attorney General.

Yours sincerely,

Robin E. Auld