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*From the Secretary of the Cabinet and Head of the Home Civil Service*

Sir Robert Armstrong GCB CVO

Ref. A085/360

SECRETARY OF STATE FOR ENERGY

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During this afternoon's debate, you should be aware that there could be questions during the course of it about certain contacts which I have had, with the Prime Minister's knowledge, with a representative of the sequestrators appointed by the court to carry out the order of the court for the sequestration of the funds of the National Union of Mineworkers.

2. The background to this matter is set out in a minute which I sent to the Prime Minister at the end of last week, a copy of which I attach herewith.

3. As you will see, it is certain that the knowledge of these contacts has come to the notice of the Irish lawyers representing the sequestrators, and it seems very likely that this has passed from them to the judge trying the case in Dublin and perhaps also to the counsel for the National Union of Mineworkers. The judge has already indicated that when the case resumes later this week he will be seeking information about contacts between the Attorney General and the sequestrators, and these questions could lead on to further questions about contacts with other Government Departments (the judge was originally reported to have said that he wanted information about contacts between the sequestrators and the British Government; but he later amended that to speak about contacts with the Attorney General).

SECRET AND PERSONAL

4. At a meeting which the Prime Minister held this morning with the Home Secretary and the Attorney General it was agreed it was of the utmost importance that no information should be given either in the court in Dublin or in the House of Commons or elsewhere in London about these contacts. Ministers agreed upon a line to take. I attach a copy of that line herewith. The first paragraph deals with the general point that the sequestrators take their instructions only from the court and not from the British Government; the second paragraph provides a line to take, and not to go beyond, in dealing with any questions about further contacts. The sequestrators are being advised themselves to stick to this line in giving evidence in the court in Dublin.

5. I am sending copies of this minute to the Prime Minister, the Home Secretary and the Attorney General.

Robert Armstrong

4 February 1985

Ref. A085/352

PRIME MINISTER

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As you know, I have over recent weeks had some contacts with a representative of the sequestrators appointed by the court to carry out the order of the court for the sequestration of the funds of the National Union of Mineworkers.

2. My contact was with a Mr Larkins, a partner in Price Waterhouse. Mr Larkins has been to see me on three or four occasions. The purpose of the contacts was, at a time when the sequestrators were finding it difficult to trace the movement of NUM funds, to provide information which might help them in their search. It was also thought that the sequestrators might have information which would in turn assist the efforts of those in the Security Service who are concerned to find out what overseas help the NUM might be seeking or getting. Mr Larkins was asked to keep the contact absolutely private to himself, and not to disclose the source of any information which he received as a result of the contact.

3. The need for discretion has not been respected. Mr Larkins's partners in the sequestration, some of the partners in the firm of solicitors which is advising the sequestrators in the Irish courts are aware that there has been contacts between Mr Larkins and the Secretary of the Cabinet, that the Secretary of the Cabinet was accompanied by an unnamed man, and that certain information was conveyed in these contacts. The information included such things as the names in which bank accounts to which NUM funds were being transferred might be registered.

4. The unnamed man was an officer of the Security Service, and the information concerned was obtained in the course of the inquiries into sources and movements of NUM funds particularly overseas. Mr Larkins was not told who the unnamed man was or what organisation he represented or the source of the information. But

it does not take a Sherlock Holmes to deduce that he was an officer of the Security Service, and that at least some of his material could have been, and probably was, obtained by interception of communications.

5. The NUM are fighting in the Irish courts an attempt by the sequestrators to get their hands on money deposited by the NUM in Dublin. I am advised that the case turns on whether the sequestration order was a penal order. If it was not, the Irish court might enforce it; if it was, the court would probably refuse to enforce it in Ireland.

6. The Judge has apparently given notice that at some stage in the proceedings he will wish to know what contacts there had been between the British Attorney General and the sequestrators. It is thought likely that that question will lead on to the question whether there have been any other contacts between the sequestrators and Her Majesty's Government; and that, if that question is put, the sequestrator will be on oath and must reply truthfully with what he knows.

7. When I discussed this with a representative of the Law Officers' Department and the Treasury Solicitor two days ago, the view was taken that the public interest against having this question asked and answered in the Irish court was such that serious consideration would have to be given to instructing the sequestrators to withdraw the case, if matters seemed to be reaching that point. That itself would have been an unattractive course, since it would have strongly suggested that there was something to hide. It was hoped to avoid getting into this situation by asking the Receiver to proceed in the first instance: whatever the result of the proceedings in that case, the sequestrators would then have been able to say that there was no point in proceeding with their case. The Receiver has, however, declined to proceed, and the case goes ahead with the sequestrators in the front line.

8. I understand that the Attorney General reviewed the matter this morning, and came to the conclusion that he should not seek to intervene in the proceedings but allow the sequestrators and their lawyers to deal as they thought fit with whatever questions were put to them. I understand that three considerations were particularly relevant to this view:

1. enough people probably know enough about the contacts to ensure that the withdrawal of the case would not prevent the information coming out by other means;

2. withdrawal of the case would strongly suggest something to hide, and would be little better than disclosure in court;

3. withdrawal of the case could land the Attorney General in considerable cost under the indemnity which he has given to the sequestrators.

9. I have indicated to the Law Officers' Department that in my view, before this decision is confirmed, the Attorney General should give you and the Home Secretary an opportunity of expressing a view on the public interest in the matter.

10. I am not particularly concerned about my own name coming out in this context. I am, I suppose, under the same duty as any other person to assist the sequestrator, as the officer of the court, in carrying out the order given to him. I am, however, concerned about the conclusions that will be drawn about the involvement of the Security Service and about the activities in which it was engaged in connection with the NUM dispute. And I am concerned about the impact of the handling of the Interception Bill of any conclusions that might be drawn to the effect that the information conveyed was obtained by interception. It could be argued, I think, that it was a legitimate use of interception to seek to discover what assistance the NUM was receiving from

overseas in the provisional movement of funds; it would be more difficult to justify the use of information obtained by interception to assist the searches of the sequestrators.

11. I understand that questions about contacts between the sequestrators and the Attorney General and other parts of the Government will not arise before Tuesday 5 February. There will therefore be an opportunity on Monday 4 February for the Attorney General to receive and to take account of any views which his colleagues may wish to express about the public interest in these matters.

12. I am sending copies of this minute to the Home Secretary and the Attorney General.

**ROBERT ARMSTRONG**

ROBERT ARMSTRONG

1 February 1985

## SEQUESTRATORS

The sequestrators are officers of the court and take their instructions from the court. They have had contacts with the Attorney General and the Treasury Solicitor in connection with the indemnity, but there have of course been no instructions from these or any other Government Departments to the sequestrators about how they should carry out their duties, and no attempts by the Government to influence the sequestrators as to the manner in which they discharge those duties.

[If asked about other contacts with Government Departments] The sequestrators have had contacts with the Government as well as with others in the course of obtaining information relevant to the discharge of their duties to the court, but I am not prepared to say more about them, because they were private and in confidence, and any disclosure could prejudice the ability of the sequestrators to give effect to the court's instructions.

PRIME MINISTER

The Home Secretary and Attorney General are coming to discuss the attached problem with you at 1000 on Monday.

I gather from the Law Officers' Department that the information that Mr. Larkins met Sir Robert Armstrong and "an unnamed man" is known to the Irish lawyers as well as the British lawyers dealing with the case; and also that there are some indications that the press are already sniffing round the story. It is therefore likely to come out in some form whether or not the sequestrators abandon the case.

The Home Secretary's view is therefore that it would be wrong for the sequestrator to abandon the case; this would suggest that we have something to hide and is unlikely to protect the information in the end anyway. Mr. Brittan's view is that the sequestrator should confirm, <sup>if necessary,</sup> that there have been contacts with Sir Robert Armstrong but stand on the position that the content of any exchange with Sir Robert Armstrong is confidential.

For your background information, I attach a note (Flag A) on the Irish case prepared about a week ago by the Deputy Treasury Solicitor (Mr Hosker). This is now out of date, but you will see that one solution being considered at the time the note was written was that the Receiver would take over the case from the sequestrator. It was thought that the Receiver had a much better chance of winning in any case. Sir Robert Armstrong says that the Receiver has declined to proceed, and you may like to ask why.

R.R.B.

1 February 1985

VC4AAH



(2) Ireland

(a) The trial of the action in Dublin has been fixed for the 31st January and 1st February next.

(b) The action was started by the sequestrators but the Receiver applied successfully to be joined as a party in November. There are now five plaintiffs, namely the four sequestrators and the Receiver. The defendants are the National Union of Mineworkers and the Bank of Ireland (Finance) Limited.

(c) The defence alleges that the sequestration order is penal and therefore ought not to be enforced by the Irish courts. It is also alleged that the Receiver's claim should also be rejected as he is an emanation of the sequestrators.

(d) Messrs Clifford-Turner believe that the sequestrators' claim will fail but the Receiver's claim should not because he was appointed in separate proceedings in the United Kingdom. He is independent of the sequestrators and is manifestly not seeking to enforce a penal order.

(e) Recently the NUM sought to obtain the release of money from the Bank of Ireland (Finance) Limited in order to pay for the defence of the proceedings. They furnished an affidavit in support of their application and this indicates part of the basis of their defence, namely:

(i) The Attorney-General said in the House of Commons that the sequestration order was a penal order and

(ii) The involvement of the United Kingdom Government in the process

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of the court is evidenced by the indemnity given to the sequestrators.

(f) In the proceedings, the contacts between the sequestrators, the Attorney General and officials of HMG are very likely to be probed in cross-examination. Messrs Clifford-Turner think that it would be wise to avoid evidence being given on the subject, particularly as they have advised that the sequestrators will lose their claim any way.

(g) Messrs Clifford-Turner suggest that a tactical withdrawal should be made. If an application is made to the Irish Judge it will be for leave to discontinue. It would probably be granted on terms that:

(i) The sequestrators pay the costs of the NUM in the proceedings up to the discontinuance.

(ii) There should be an assessment of damages.

(h) The Receiver should win in respect of his action, according to Messrs Clifford-Turner. In the meanwhile however the interlocutory relief in favour of the sequestrators would fall if they withdraw. Therefore, there is no legal restriction on the Bank of Ireland (Finance) *acting on instructions* ~~interests~~ from the NUM in respect of the funds in the hands of B of I (F).

(i) Although in respect of the claim for damages, the NUM will probably allege that they could have invested the money in a particular way and were thus deprived of a considerable benefit, the sequestrators can show that they offered in writing to co-operate with the NUM in their investment of the funds while the interim order (as interlocutory relief) was in force.

(j) The Receiver's claim does not seek the same interlocutory relief but he might ask B of I (F) to undertake not to transfer the funds pending the hearing of the court action. The Receiver is entitled to do this as he has been appointed by the High Court in London to act for the NUM and therefore he, under English law, is the owner of the funds which are at present in Dublin.

(k) If the Bank were to pay out to the NUM on the instructions of the Union's officials, the Bank would face the prospect of an action for damages

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in England. The Receiver could <sup>sum</sup>~~order~~ them here as they have an address for service in the UK.

(3) George Staple of Clifford-Turner is seeing Mr Justice Nicholls this afternoon and he may agree that a tactical withdrawal from the Dublin proceedings is appropriate. If the consequence is an order for damages against the sequestrators, the Judge may grant an indemnity out of sequestered funds. At the moment, the sequestrators have no spare money.

(4) (a) George Staple is to discuss with the Irish solicitors acting for the sequestrators what are the appropriate tactics to adopt in the proceedings. A meeting had been scheduled in Dublin tomorrow.

(b) If there is to be a withdrawal from the proceedings, two days prior notice has to be given. In order for there to be two free days before the trial starts next week, the notice would have to be served on the NUM lawyers on Wednesday afternoon or Thursday morning at the latest.

(c) The application for withdrawal would be heard in open court on Monday or Tuesday of next week.

(d) Mr Staple will be at the offices of Messrs McCann Fitzgerald Sutton & Dudley in Dublin on Wednesday morning. The partner there dealing with the matter is Mr David Clarke (0001765881).

*G.A.H.*

G A Hosker

22.1.1985

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*R*

Approved by  
ROBERT ARMSTRONG  
*and signed in his absence*

1 February 1985