



DEPARTMENT OF FINANCE AND PERSONNEL

Solicitor's Department

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Telephone Belfast 227661/5 ext

Solicitor W E M Reid

Mr T Pearson ^{My p 21/5/86.}
 Central Secretariat
 Stormont Castle
 BELFAST BT4 3TA

In reply please quote

Your reference

Our reference

Date 20 May 1986

Dear Mr Pearson

COMMUNITY GROUPS

I enclose a copy of the further opinion of Senior Crown Counsel in this matter, together with a copy of the case to advise which was put to him.

While Counsel has not replied to the specific questions which were asked of him, the general import of his opinion is quite clear. The policy outlined in the parliamentary statement of 27 June 1985 need not be confined to community groups, but can be applied to other organisations and individuals, provided that there is a risk that the grant aid, if given, would assist a paramilitary organisation either directly or indirectly.

It may of course be that the criminal record would be such as to indicate that there was a risk that the giving of grant aid would assist a paramilitary organisation; however, if it cannot be said that there was any such risk, the record alone would not provide sufficient grounds on which to withhold grant. In such circumstances, Counsel advises that a decision to withhold grant is likely to be quashed by the court on judicial review.

Counsel refers only to spent convictions, by which I think he means convictions for which custodial sentences have run their course, rather than convictions which are spent in terms of the Rehabilitation of Offenders (NI) Order 1978. However I would expect that his comments in respect of decisions made on the basis solely of criminal record would apply also in circumstances in which the objection was based on information gained from intelligence sources. That information must be such as to give rise to the risk that grant aid would assist a paramilitary organisation; otherwise a decision to withhold grant would be vulnerable on review.

This presupposes that the Court would refuse to accept the mere assertion, made on affidavit, that there was a belief that the assistance would further the aims of a paramilitary organisation, and insisted on examining the grounds on which the belief was based. Though the point is not made in the opinion, in subsequent discussions Counsel advised that the argument that the Court should accept that assertion, without more, is presentationally much more difficult in circumstances in which the organisation has some other clear and avowed aim as a commercial undertaking (or sporting institution), and was less readily perceivable as an instrument of paramilitary policy.

You will also note Counsel's opinion concerning the Sinn Fein advice centre. I am not sure how in practice "the Armalite aspect" of the activities of Sinn Fein could be so clearly separated

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Mr T P Pearson (contd)

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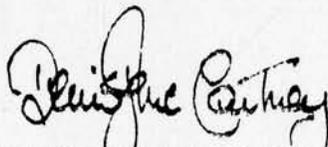
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from its other activities as to enable a decision to withhold grant to be sustained against a claim of contravention of section 19 of the Northern Ireland Constitution Act 1973. That aspect of the policy and aims of Sinn Fein seems too intermingled with its other activities, and accordingly any decision to withhold grant would be at risk for the reasons outlined in paragraph 8 of the opinion.

Counsel has drafted replies to Mr Hume and Mr Kelly, and copies are enclosed. The content of the last paragraph in the letter to Mr Kelly may not factually be correct; in any event I think I would prefer to see the point made in terms of the amendment incorporated on the enclosed draft, and Counsel is agreeable to this.

Yours sincerely


DENIS J. McCARTNEY

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GRANTS TO ORGANISATIONS WITH PARAMILITARY CONNECTIONS

FURTHER OPINION

1. In the joint opinion which I gave with Mr Laws, we considered whether or not Government Departments in Northern Ireland may withhold, on the ground of connection with paramilitary organisations, the payment of statutory grants to community groups which in all respects have satisfied the requirements subject to which grant is payable.
2. I am instructed that the policy has been applied to other organisations which could not be described as community groups. Assistance has been withheld from commercial undertakings and it would appear that denial of assistance is also under contemplation in cases in which the objection is to an individual or individuals prominent in the organisation or undertaking seeking assistance.
3. It is not difficult to imagine circumstances in which a company controlled by members of a paramilitary organisation could enhance the influence of that paramilitary organisation either by providing employment or by providing a source of funds. A company generally known to be controlled by a paramilitary organisation, might also benefit the organisation by demonstrating the breadth and strength of its influence. The withholding of public funds by way of grant aid from such a company would be consistent with the policy outlined by the Secretary of State in the reply in relation to community groups given to a parliamentary question.
4. There are also circumstances in which grant aid paid to an individual or individuals could in much the same way benefit a paramilitary organisation.
5. If an individual has been convicted of terrorist offences, but is no longer connected with a paramilitary organisation, then it would be difficult to refuse grant aid solely on the ground of his previous convictions. On judicial review I would expect a court to hold that a decision based solely on previous convictions that are now spent, should be quashed.
6. In my view, the test which should be applied is whether or not there is a real risk that the grant aid will assist a paramilitary organisation either directly or indirectly.

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7. I am instructed that the question of applying the policy to an application for urban development grant for premises used by Sinn Fein as an Advice Centre is also under consideration. In the application by Brendan Curran and Brian McCann for judicial review /1985/ NIJB No 7, Hutton J took judicial notice of the fact that "the policy and aims of Sinn Fein are to take power in Northern Ireland with a ballot paper in one hand and an Armalite in the other". In the application of French and Others reported in the same volume, Carswell J held that he was entitled to take judicial notice of the policy and aims of Sinn Fein on the same grounds. If an Advice Centre is to be used for what might be described as the "Armalite" aspect of Sinn Fein's activities, then grant aid could be refused without any fear of contravention of Section 19 of the Northern Ireland Constitution Act 1973. There would be no discrimination against any person or class of persons on the ground of political opinion.

8. A more difficult question arises if the Advice Centre is used only for the political activities of Sinn Fein. The party is not proscribed by law but if the Advice Centre helps the party to flourish, then it could be argued that it indirectly assists the other aspects of its activities. If grant aid were to be refused on that ground the court is bound to ask why the organisation has not been proscribed by the Secretary of State in the absence of clear evidence that a grant to Sinn Fein for its legitimate activities would assist its illegitimate activities. It is probable that a court would find a breach of Section 19 of the Northern Ireland Constitution Act 1973.

..... *W.A. Campbell*
W A CAMPBELL

Royal Courts of Justice
BELFAST

13 May 1986

DRAFT LETTER

Oliver J Kelly Steele & Co
Solicitors

Thank you for your letter of 16 April 1986 written in your capacity as Chairman of the Antrim County Board of the Gaelic Athletic Association and as a Member of the Central Council of the Gaelic Athletic Association.

The decision not to make available an Urban Development Grant to Michael Davitt Gaelic Athletic Club has been made after careful consideration of all the information available to the Department.

A decision is made in respect of each application made for grant aid and therefore this particular decision has no general application to clubs affiliated to the Gaelic Athletic Association. Any application made by such a club will be considered on its own merits and a decision made on the basis of the normal criteria and in accordance with the policy outlined by the Secretary of State in his reply to a parliamentary question on 27 June 1985.

In reaching its decision not to make available grant aid to the Michael Davitt's Gaelic Athletic Club, the Department was aware that the Royal Ulster Constabulary did not object to the renewal of a certificate to the - - Social Club in January 1986 under Schedule 3 paragraph 15 of the Registration of Clubs Act (NI) 1967.

I note the point you make about no objection having been made to the application by the Michael Davitt's Social Club for a renewal of licence. That however is a matter entirely for the police under the Registration of Clubs Act (NI) 1967, and is not relevant to the present issue.

DRAFT LETTER

John Hume Esq MP

"..... I consider that it is not in the public interest that Government funds should be made available by way of grant to any organisation or individual where such support may whether directly or indirectly assist a paramilitary organisation. The reply given by my predecessor to a parliamentary question on 27 June 1985 referred to in your letter, mentioned community groups. The inclusion of other organisations and individuals who may be the subject of grant aid from public funds is in accordance with that policy.

I am satisfied that the decision in this particular case has been made after proper consideration of all the information available. There is therefore no ground for re-consideration of the decision.