

Ref. AO98/122



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

**PRIME MINISTER**

*File  
h2/1*

## **INQUIRY INTO THE EVENTS OF BLOODY SUNDAY**

I attach an annotated agenda for your meeting tomorrow setting out the main questions which need to be answered. It may be helpful if I suggest some answers.

### **Do you really want an inquiry?**

2. You will know that inquiries tend to offer limited short-term benefits while creating more serious problems for the longer-term.
3. In this case you may well have to set one up because of the Solicitor General's opinion and the strength of political considerations. But you may nonetheless want to run over the issues, in particular:
  - i. the likely reaction of the judiciary, given that the Inquiry would call into question the integrity of a previous Lord Chief Justice;
  - ii. the real risk of the Inquiry coming up with no definite result (would this matter?);
  - iii. the effect which setting up the Inquiry will have on morale of troops in Northern Ireland. The Secretary of State for Defence still thinks that the best option is an apology coupled with a police investigation;



- iv. the risk of heightening tension in Northern Ireland as people relive the events of Bloody Sunday.

### **Form of the Inquiry**

4. Assuming that there is to be an inquiry the arguments point strongly to setting it up under the Tribunal of Inquiries (Evidence) Act 1921. The Widgery Inquiry itself was set up under this Act and it would be hard to defend doing anything less. If we have to have an Inquiry we had better do it properly.

### **Head of the Inquiry**

5. A Tribunal of Inquiry has all the powers of a High Court judge (compelling witnesses, evidence on oath, contempt of Court etc.). This points strongly to having it headed by a senior judge from England, Wales or Scotland. Hence the importance of securing the co-operation of the judiciary.

6. The choice of judge must be for the Lord Chancellor. His immediate reaction today has been that "it is unsafe to assume that the judiciary will necessarily play ball although their tradition has always been to do so": see B. He is also doubtful about the suggestion of a Scottish judge because they are mostly Protestant (you may wish to explore the logic of this: most English judges are also likely to be either Protestant or Roman Catholic).

7. The Lord Chancellor will want to avoid discussing names: his concern will be to leave himself as much freedom of manoeuvre as possible for his negotiations with the Lord Chief Justice. Even so, the choice of judge will be of crucial importance to the whole exercise.



## Involve a foreign judge?

8. You may want to discuss the possibility of involving a foreign judge. It would be very difficult to have such a judge heading the Tribunal of Inquiry, both because he/she would exercise the powers of a High Court judge and because it would be a very obvious vote of no confidence in the ability of present judges to do the job. But it would be possible to have a foreign judge from a system based on English law - a Commonwealth country or the United States - as a side-member of the Tribunal, with a third side-member perhaps being selected from the judiciary for some other skill or background. You may like to discuss this.

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## Terms of reference

9. The Solicitor General argues against limiting the terms of reference to a review of the findings of the Widgery Inquiry in the light of the evidence and the criticisms made of its report, essentially on the grounds that it will not necessarily put an end to further demands for further inquiries. I agree.

10. It seems to me that the aim of the exercise should be to establish exactly what happened on Bloody Sunday, so far as this is possible at this distance in time. Commenting on the adequacy of the Widgery report is important but secondary to that main task. If you agree, you may want to consider using the same terms of reference as were used for the Widgery Inquiry itself. It is hard to improve on them. The resolution passed by Parliament (necessary to set up such a Tribunal) read as follows:

"That it is expedient that a Tribunal be established for inquiring into a definite matter of urgent public importance [*nb. I understand that these words formally have to be used*] , namely the events on Sunday 30 January 1972 which led to a loss of life in connection with the procession in Londonderry on that day".



## Immunities

11.

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OF THE PUBLIC RECORDS ACT

12. This is difficult territory: it is thought that no undertakings of this kind have been given before in relation to the possible commission of acts of murder. The main options available to the Attorney, assuming that he is willing to co-operate, seem to be:

an undertaking that no evidence given by an individual will be used against him/her in a criminal prosecution. This would mean that the individual might still be prosecuted on the basis of evidence from others, and others might similarly be prosecuted on the basis of his/her evidence. If very serious offences were revealed by the Inquiry there might be great pressure for prosecutions when it had reported. The Government would have to be prepared for this.

full immunity from criminal prosecution for any crimes revealed in evidence to the Inquiry. This would give witnesses every reassurance that they could want and every incentive to reveal the full truth. Equally it might turn out with hindsight to have been a very big blank cheque to have given - one which became hard to defend when the Tribunal had reported.

13. You will want to ask the Attorney what he intends to do. My own instinct would be to go for the undertaking rather than full immunity. Whatever is decided there is a lot to be said for making it public early on,

(This) slightly misses the point. Immunity for all would help to allay any concern about reopening the Inquiry. But it may be too difficult 'tho' we could say that we were looking for...



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while the Government has the credit for setting up the Inquiry, rather than being forced into concessions later on in the teeth of nationalist criticism.

### Other matters

14. There is a further raft of issues which will need to be settled before an announcement.

i. who does the Tribunal report to? I suggest that the report should go to the Secretary of State for Northern Ireland. (Widgery went to the Home Secretary who was the responsible Minister at that time). This does not preclude your making the announcement.

ii. where should the Tribunal be located? I think it is clear that it should sit in Northern Ireland. Beyond that you will probably want the Secretary of State to weigh up the options or leave it to the person heading the Tribunal to decide.

iii. cost. I have told the Northern Ireland Office informally that they will probably have to bear the cost.

iv. secretariat. The issue of who provides the secretariat is sensitive given the charges made against the secretary of the Widgery Inquiry. I suggest that the secretariat should be supplied by staff, including lawyers, from departments which have had absolutely no connection with Northern Ireland issues.

*Timeside — report well away from the current peace process framework.*

### Timing

15. You will want to sort out with Mo Mowlam whether any statement should be made by you or by her.

16. I understand that Mo Mowlam would like the announcement to be made on Monday. There is obvious urgency. You will want to discuss whether this timing is practicable given:

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Thursday.

- i. the need for the Lord Chancellor to negotiate with the Lord Chief Justice before anything can be said publicly;
- ii. the fact that the peace talks are coming to London on Monday next week.

RJW

**RICHARD WILSON**

21 January 1998