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Committee

Decision to Cease Stormont Prosecutions

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The Northern Ireland Affairs Committee

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Decision to Cease Stormont Prosecutions

1. On 8 December 2005 a decision was made by the Director of the Public Prosecution Service for Northern Ireland not to proceed with the prosecutions of those alleged to have been involved in an IRA spy ring at Stormont. The uncovering of an alleged spy ring in October 2002 had precipitated the collapse of the Northern Ireland Executive.

2. On 14 December, the honourable Member for Belfast, South and the Right honourable Member for North Antrim pressed the Prime Minister for further information on the decision not to continue with the prosecutions¹. At our meeting on 14 December, we decided to write to the Prime Minister to press further for as much information as possible to be placed in the public domain².

3. With this Report, we publish the Chairman's letter to the Prime Minister together with the Attorney General's reply to the Committee of 9 January³.

Appendix 1

Chairman's letter to the Prime Minister dated 15 December 2005

The Northern Ireland Affairs Committee discussed the recent decision that had been taken by the Director of the Public Prosecution Service for Northern Ireland not to proceed with the prosecutions of those alleged to have been involved in an IRA spy ring at Stormont. Given that the uncovering of the alleged spy ring was responsible in large part for the suspension of devolved government in Northern Ireland, the Committee was concerned that a decision not to proceed with prosecution is of enormous political significance.

You said in the House yesterday in Answer to a question from the honourable Member for North Antrim, that you were "happy to see how much more information can be put in the public domain". I would be grateful if you could ask the Director of Public Prosecutions Northern Ireland to provide you with as much information as possible relating to the rationale behind the decision not to proceed with the prosecutions. Given the importance of the decision for future negotiations for the restoration of devolution, I would greatly appreciate a reply that the Committee could consider at its next meeting on Wednesday 11 January.

I am copying this letter to Rt Hon Peter Hain MP and to Sir Alasdair Fraser CB QC, the Director of the Public Prosecution Service for Northern Ireland.

1 Official Report, 14 December, columns 1296-7.

2 Appendix 1.

3 Appendix 2.

Appendix 2

Attorney General's reply to the Committee dated 9 January 2006

The Prime Minister has asked me to reply to your letter of 15th December addressed to him concerning the decision of the Director of Public Prosecutions for Northern Ireland to discontinue the prosecution of Denis Donaldson, Ciaran Kearney and William Mackessy. The Director of Public Prosecutions for Northern Ireland is the head of an independent prosecuting authority subject only to my superintendence and direction. It is for that reason that I reply to your letter.

As in England and Wales, the Director of Public Prosecutions for Northern Ireland will initiate or continue with proceedings if the test for prosecution is met, and continues to be met. In Northern Ireland that test is whether there is sufficient evidence to afford a reasonable prospect of conviction and, if there is, whether prosecution is in the public interest. As was made clear in the statement made in court the Director's decision to discontinue the prosecution was based on his assessment of the public interest. In reaching his decision, the Director was informed by facts and information received from the Chief Constable. Having regard to that information, and his duties as a public authority under the Human Rights Act, the Director concluded that the prosecution was no longer in the public interest. It necessarily follows that in withdrawing a prosecution on that basis the Director's view was that the evidential test continued to be met.

The Director had kept me informed about the case and I had seen and considered the facts and information provided by the Chief Constable. I understood the Director's reasoning and I agreed with it.

Since then there has been considerable speculation about the case and the reasons for its discontinuance. The defendant Denis Donaldson has also claimed that he was a police informant. I cannot comment on that: you will understand, I know, that it has long been the practice of successive governments neither to confirm nor deny such claims on the basis that to do so may jeopardise national security. That practice is well understood and I will not depart from it.

The Director and I recognise the potential this decision has - particularly the limited explanation that has been given for it - to damage confidence in the new Public Prosecution Service. If it were possible for further explanation to be given, the Director and I would have provided it in order to avoid that very risk. Regrettably, to do so might be liable to give rise to the very damage the decision to discontinue was intended to avoid. I therefore particularly welcome your letter so that I may give you, and the Committee, my absolute assurance that there was no political interference and there was no question of the decision being taken to cover any possible embarrassment to the Government. Political considerations did not form any part of, or in any way affect, the decision.

Clearly events have moved on a great deal since you drafted your letter and given the way in which they have been reported in the media, it would be unrealistic not to confirm that there was sensitive and confidential information that was the subject of disclosure hearings.

In saying that, you will, I hope, understand that I may make no comment on what the content or nature of that information was. But the following explanation may assist.

In many cases, the prosecution will hold information and documents that do not form part of the prosecution case. It is under a duty to consider any value this material may have to the defence. If it might reasonably be considered capable of undermining the case for the prosecution against the accused, or of assisting the case for the accused, then such material is disclosed. However, some material may be of a sensitive and confidential nature and disclosure would cause a real risk of prejudice to an important public interest such as national security or putting an individual's life at risk. Where this happens the prosecution will place the material before the court and seek a ruling from a judge on whether the material needs to be disclosed. The duty of the judge is to ensure a fair trial and he will order disclosure if that is what he considers is necessary to achieve that all-important objective. Occasionally a judge facing this task will ask me to appoint a special counsel to assist him. The role of special counsel is to represent the interests of a defendant when issues relating to the question of disclosure are argued in the absence, necessarily, of the defendant and his legal representatives. The presence of special counsel provides an adversarial element to the proceedings that would otherwise be absent.

The Court of Appeal has made it clear that the court rather than the prosecution is the final arbiter as to whether the prosecution is entitled to avoid disclosure on the basis of public interest immunity. Where disclosure of such information is ordered, the prosecution must decide whether to disclose and continue the prosecution or whether to end it because of the risk of prejudice to an important public interest. There is also a requirement placed upon the prosecution, as a public authority, to comply with the duties imposed by the Human Rights Act 1998.

I am not able to explain the nature of the sensitive and confidential information that was considered in this case, nor give details of individual disclosure hearings, but I can assure you that the prosecution was properly vigorous in pursuing the interests of justice and that all proper steps, including the appointment of special counsel by me, were taken during the course of the criminal process to bring this matter to trial.

Questions have also arisen over the issue of consultation. The process of seeking information from Ministerial colleagues is now well established and is known as a Shawcross exercise after the Attorney General who explained it to Parliament in 1951. You may well be familiar with the process, but should you wish to read the explanation given by Sir Hartley Shawcross, you will find it in Hansard at *OR 29 January 1951 col 681*.

In January 2005, as part of the trial process, I consulted Ministerial colleagues in this way as to whether they had information that might bear on the consideration of the public interest by the Director. In the event, having regard to ongoing developments in the trial process, no decision was required to be taken at that time and the information obtained formed no part of the Director's decision to discontinue the prosecution in December 2005. That decision was informed by facts and information provided by the Chief Constable in November 2005 following upon further development of the trial process. No further ministerial consultation took place. As a matter of course, given the profile of this case, I did inform No 10 and the Secretary of State of the decision once it was made but before it became public.

I hope this explanation in general terms assists you to understand the process by which this case came to be withdrawn.

I acknowledge the Committee's proper interest in the effects this decision may have on the progress of devolution in Northern Ireland and its desire to better understand the Director's reasoning and I welcome the opportunity to write. I hope you will accept the assurances I have made in my letter and my regret that neither the Director nor I are able to provide further information. As I have explained, to do so would risk giving rise to the very damage the decision to discontinue was intended to prevent.