



10 DOWNING STREET

*From the Private Secretary*

24 October, 1983

Prison Adjudication System

The Prime Minister has seen a copy of your Secretary of State's letter of 20 October to the Lord President about the prison adjudication system.

The Prime Minister is content for your Secretary of State to announce a review of the system on Monday, 24 October. She understands that your Secretary of State proposes to make a written statement in the House on the same day.

DE  
For Hansard

DAVID BARCLAY

M. Gillespie, Esq.,  
Home Office

fy

4081

PRIME MINISTER

PRISON ADJUDICATION

The Home Secretary proposes to announce a review of the present system for dealing with disciplinary offences in prisons. He would like to do this next Monday, 24 October at the Annual Conference of Boards of Visitors.

The present system of adjudication, under which decisions rest with prison Governors and in the more serious cases with Boards of Visitors, has been subjected to some cogent criticism and no longer commands the full confidence of all Board members.

The Home Secretary proposes an external committee of enquiry with the terms of reference at Flag A.

Although his letter does not say so, I have checked that he intends to make a written statement to the House on 24 October, if his proposals are agreed.

Content?

Yes not

DMS

20 October, 1983

see  
add for you  
SofS to announce a review of  
the pa system. I included  
WS in the House



QUEEN ANNE'S GATE LONDON SW1H 9AT

20 October 1983

*2 Willie,*

THE PRISON ADJUDICATION SYSTEM

I propose to announce the establishment of a Departmental Committee to undertake a study of the prison adjudication system, with the terms of reference attached. Unless you, or any of our colleagues, sees difficulty in this I would like to take the opportunity of the Annual Conference of Boards of Visitors, which is due to take place next Monday, 24 October, to make the necessary announcement.

It may be helpful if I explain the background. Under the Prison Rules there has for many years existed a self-contained disciplinary code to assist in maintaining order in Prison Department establishments. Some of the offences under the code comprise behaviour which would also amount to an offence under the criminal law; others would not. The disciplinary offences are dealt with by a two-tier system, involving Governors and Boards of Visitors. Governors conduct a preliminary inquiry in all cases and carry out adjudications themselves on the great majority (some 64,000 in 1982). They have discretion to refer serious or repeated offences to the Boards of Visitors; and the most serious cases must be so referred.

The system has provided a speedy and effective means of dealing with disciplinary offences and since the Divisional Court began to exercise its supervisory jurisdiction over Board cases the proceedings have been expressly required to meet the test of natural justice. The system, at least as respects Boards, has been questioned for a good many years (for example by the Committee under Lord Jellicoe established jointly by NACRO, Justice and the Howard League which reported in 1975). More recently it has come under direct challenge. There are a number of strands to this:

- (i) a number of commentators, including some members of Boards, find it wrong in principle that Boards of Visitors should combine the adjudication function with the pastoral or watchdog role. The Association of Boards of Visitors, to which a minority of Board members belong, appears to take this view;
- (ii) there is litigation now before the courts attempting to establish that a prisoner before a Board should have the benefit of legal representation, at least in the more serious cases. Whatever the final outcome of that there is clearly a widespread feeling that, whatever might have seemed appropriate in the past, adjudications which result in a man staying much longer in prison (through loss of remission) should have greater procedural and other safeguards than the present system affords;
- (iii) judgment is awaited in a case before the European Court of Human Rights in Strasbourg. In this case the Commission reported its conclusion that Article 6 of the Convention should apply in the case of especially grave offences under the Prison Rules where the amount of remission which can be removed is limited only by the amount available. It is also suggested that Boards lacked the necessary institutional independence of the Home Secretary to qualify as appropriate tribunals under the Article. Even if the final judgment is to the effect that Article 6 should apply only to the most serious cases, that observation is likely to prove damaging in the long term to the Board's role in respect of all cases;

- (iv) there has been a good deal of criticism in the press, and indeed to some extent in the learned journals, about the system, particularly following the bringing of charges of mutiny following the riots at Albany prison earlier this year;
- (v) partly because of this, some members of Boards are themselves losing their confidence and believe that the system needs to be changed. (At least one Chairman has indicated that he would not feel happy conducting adjudications on any especially grave offences; and the plaintiff in the litigation referred to at paragraph (ii) above has been able to parade evidence from a member of the Board expressing dissatisfaction with the system.)

It is essential to the maintenance of order in prison that there should be a relatively swift and effective disciplinary procedure. That view is shared by management and staff. It must also be fair both as an end in itself and also because only then can it command the necessary confidence of staff, inmates and the general community and survive challenge in the courts. My judgment is that against the background I have described a full review of the whole system is now inescapable and is needed as a matter of some urgency.

I also believe that this review should be undertaken by an external Committee, since only then will its recommendations - whether they amount to some minor modification of the present system or something quite different - command the necessary credibility both within and without the prison system. The cost of the review itself can be accommodated within existing resources. As to the future system, the terms of reference expressly require the Committee to consider the implications for prison and other criminal justice resources.

As I have said, unless there is some objection I propose to make the necessary announcement on Monday, 24 October.

A copy of this letter goes to the Prime Minister, members of H Committee and to Sir Robert Armstrong.

*W. C. M.*

A

Draft terms of reference

To consider the disciplinary offences applying to prisoners, and the arrangements for their investigation, adjudication and punishment, having regard in particular to:

- (i) the extent to which it is appropriate to use the ordinary criminal law, courts and procedure to deal with serious misconduct by prisoners;
- (ii) the need within custodial institutions for a disciplinary system which is swift, fair and conclusive;
- (iii) the connection with the investigation of related allegations by prisoners about their treatment;
- (iv) the pressure on prison and other criminal justice resources :

and to make recommendations.

20 OCT 1983

