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ROINN AN TAOISIGH

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Unresolved claims by persons whose property was damaged by bridge cratering operations by the British Army in September, 1974, at Kiltyclogher, Co. Leitrim.

Taoiseach,

I submit for your consideration a draft letter re the above which you might consider sending to the Minister for the Environment. It might be thought that we have given disproportionate attention to the cases dealt with in these papers. We have gone into the matter in some detail because it appeared from representations made to you that those affected were at a loss due to no fault of their own and that, in at least one case, [REDACTED]

[REDACTED]. In addition, there is the general principle, already accepted in Government decisions, that citizen should be compensated for any loss incurred as a result of the overspill effects of the Northern conflict: it can be held that State's obligation in this respect is particularly binding when the damage has been caused by the operations of the British Army.

2. You have received representations in respect of these cases from Deputy James Gallagher and from a Mr. Thomas J. Feely, a 78 year old veteran of the Pre-truce I.R.A. and of the Defence Forces. Deputy Gallagher first brought the cases to your notice in his letter of 12th June last: you replied on 14th June to this letter and a previous one in which the Deputy had referred to a rumour that the previous Government had agreed with the British Army and the Northern Secretary of State that the bridge at Kiltyclogher could be blown up. In your reply, you assured the Deputy that every effort would continue to be made to redress the difficulties arising from the incident in question; that when the roads in Kiltyclogher were closed in July, 1974 no prior consultations with the Irish authorities had taken place; and that strong protests had immediately been made to the British authorities. Deputy Gallagher acknowledged receipt of your letter in a further letter of June 16th in which he commented that the outstanding 1974 claims must, on humane grounds alone, be dealt with as expeditiously as possible. He wrote again on 30th June enclosing a copy of a letter received from Mrs. Sealy together with a demand she had received for almost £500 in respect of the County Council's costs in her unsuccessful court action to secure a malicious damages decree. The Deputy's letter was received here on 4th July and acknowledged by Mr. McCarthy on 7th July. He indicated that the representations would be brought to your

ROINN AN TAOISIGH

Uimhir.....

-2-

notice as soon as possible. The Department of Foreign Affairs whose advice was sought referred to the advice given to the unsuccessful claimants that it was open to them to seek compensation from the British Ministry of Defence Claims Commission. This line was also adopted by the Private Secretary to the Minister for Foreign Affairs in replying to a letter sent directly to the Minister by Deputy Gallagher. In the course of further correspondence between the Minister and the Deputy relating to the procedures to be followed in pursuing claims against the British authorities, the Deputy expressed it as his personal view that the matter should be taken up at higher Government level. There has been no further communication with the Deputy from this Department subsequent to the letter of acknowledgement issued to him on 7th July. The letter from Mr. Feely, although dated 27th June, 1978, was received here only on 21st August, apparently because he did not post it until shortly before then, having spent some time collecting the several enclosures to his letter. It should be mentioned that the Department of Foreign Affairs received a letter early in September from the Leader of the Opposition about compensation for the Kiltyclogher claimants. We advised them that they might reply in similar terms to those they had used in previous correspondence on the matter but that they might add that, in response to representations by Deputy Gallagher and other interested parties, the matter was under review in this Department. The various items of correspondence referred to above with the exception of Deputy FitzGerald's letter to Foreign Affairs are beneath on this folder. I should explain that the matter has not been disposed of before now because of its complexity, with background papers spread over a number of files going back over a period of years. Pressure of other business made it difficult to set aside the time required for the necessary research.

3. Piecing together items of information from various sources, the facts of the incident which gave rise to the damage at Kiltyclogher appear to be as follows:

on the morning of 15th September, 1974 the British Army blew up an old bridge spanning the border between Counties Leitrim and Fermanagh at Kiltyclogher. Before doing so, they crossed the border and warned the residents of nearby houses within the State that the bridge was going to be blown up and that they should evacuate their homes. The people concerned protested that they would have to see the Gardaí but were informed by British Army personnel that the Gardaí were already aware of their intentions, as were the Irish military authorities. The explosion damaged a number of houses. Severe damage was caused to the house and out-offices of the Sealy family to such an extent that

ROINN AN TAOISIGH

Uimhir.....

-3-

their house was uninhabitable. They were provided with temporary accommodation by Leitrim Co. Council.

[REDACTED]. He subsequently acted for a number of claimants when they sought malicious damages decrees against Leitrim Co. Council. He failed to give the necessary preliminary notice to the Gardaí and the local authority within seven days of the occurrence. It appears that his handling of the cases gave rise to considerable dissatisfaction on the part of residents affected. It was represented at the Court proceedings in Manorhamilton Circuit Court that the solicitor did not go ahead with the proceedings because there was no precedent for bringing such an action against the British Government. There was also a suggestion that it was felt initially that the action was not malicious, presumably on the basis that the British forces were acting lawfully. Eventually, after a lapse of seventeen months proceedings were commenced against Leitrim Co. Council. This apparently arose from the interpretation put upon communications from the Department of Foreign Affairs relating to possible recoupment of the expenditure involved, by the Irish Government in the first instance and possibly eventually by the British Government. Two of the claimants together with the solicitor representing all the claimants went to Carrick-on-Shannon in September, 1977 and met the Acting County Manager for Co. Leitrim and the solicitor for the Co. Council. As a result, it was apparently agreed that if the Co. Council received a letter from the Department of the Environment stating that they would be rather than might be recompensed, they would not oppose the claims in Court. It does not appear that the Co. Council received any such letter from the Department of the Environment.

[REDACTED]. The Judge did not agree to the application for an extension of time to serve notice, commenting that the Co. Council was not prepared to give its consent and that the period of extension requested was the longest he had come across in his experience. This judgement gave rise to what were described as unprecedented

ROINN AN TAOISIGH

Uimhir.....

-4-

scenes, with your correspondent, Mr. Feely requesting that the Judge commit him for contempt of court, as a method of protesting at the inept presentation of the case by the legal representatives of the Kiltyclogher claimants. Mrs. Sealy has received numerous demands from Leitrim Co. Council asking when she can vacate the temporary accommodation provided for her and re-occupy her own house. It is stated that Minister of State McSharry has been to see Mrs. Sealy's damaged premises.

4. Official and Government consideration of the procedure to be adopted in relation to damage caused by road cratering operations by the British forces in Border areas and to damages arising in all parts of the State from politically motivated crimes goes back to the early 1970s. Following various preliminary consultations between Ministers, the Minister for Local Government, Mr. Molloy wrote to you on 31st August, 1972. At that stage, it had already been decided, following consultation with the I.D.U. on Northern Ireland, what arrangements should be followed in relation to damage caused to local authority property. The Minister suggested that it was imperative that damage caused to the property of persons and bodies other than local authorities by the actions referred to above should be isolated from the normal malicious injuries arrangements and dealt with under some ^{separate} ~~certain~~ arrangement. He put forward a number of specific suggestions, including one that the full amount of compensation for damage arising in the State from road cratering and other activities of the British security forces in border areas should be met by the State from Exchequer funds pending the settlement of a claims submitted by individual persons or bodies, or by the State on their behalf, against the British Government or the authorities in Northern Ireland. You raised the matter informally at a Government meeting on 12th September, 1972 and it was arranged that the Minister for Local Government would submit a Memorandum. This was submitted on 18th September, 1972 and although it was described as being for information, it gave rise to an informal Government decision, on 14th November, 1972. Subsequently, some doubt arose as to the ambit of the decision. It was subsequently agreed that the decision was that the Exchequer would assume the burden of compensating private individuals for damage arising from cratering operations along the Border by the British Army. It appears that no public announcement of this Government decision was made. The Department of Finance interpreted the decision subsequently as relating to recoupment to local authorities of the full amount of any decrees given under the malicious injuries code in respect of damage to private property as a result of road cratering in border areas. It is not clear at what stage this interpretation became current or whether there was any authority for it. There is at least considerable doubt on the latter score.

ROINN AN TAOISIGH

Uimhir.....

-5-

In the course of correspondence relating to the form of the malicious injuries code generally, the former Minister for Justice said in the course of a letter of 11th March, 1974 to the former Minister for Local Government:

"I have looked at the papers and I cannot see (and my Department here cannot find any evidence) that that position /i.e. the November, 1972 decision/ was linked with a malicious injury award. It seems to me a matter of chance if road cratering north of the Border results in a situation where a malicious injury claim is sustainable in the State and it does not seem that the former Government's decision was linked to a case where an award is made. Indeed it seems clear that the matter was considered as a wholly separate issue, as may be seen from the fact that my Department was not even sent a copy of your Department's memorandum or of the Government decision at the time."

5. Throughout 1973 and the early part of 1974, there was a growing number of requests that the Exchequer meet the cost of a bomb damage in border counties arising out of the Northern disturbances. This led to a considerable volume of correspondence among Ministers on the subject generally and on the responsibility for the delay in bringing forward a scheme whereby the Exchequer would in fact assume such responsibility. In a letter dated 13th May, 1974 addressed by the former Minister for Finance to the former Minister for Local Government, Mr. Ryan recalled that a Government decision was taken in November 1972 to initiate, through the Department of Local Government, a scheme of compensation to private property owners for damage arising from cratering operations along the Border. He said that so far a scheme had not emerged and that as far as he could gather the time had been spent in fruitless discussion between the Departments of Local Government and Justice as to which Department should prepare and operate the scheme. Following the intervention of the former Taoiseach, further Memoranda were prepared by those two Departments and a Government decision was taken and announced on 24th May, 1974. This was to the effect that the Exchequer would recoup in full the cost to local authorities of malicious damages injuries to property caused by the use of explosives and attributable to the disturbances in Northern Ireland. Claims in respect of such damage would require to be submitted, processed and paid in the same way as malicious injury claims generally are at present. State recoupment to local authorities would be made on foot of a certificate from the Chief Superintendent for the area to the effect that the damage had been, in his opinion, caused by the use of explosives and was attributable to the disturbances in Northern Ireland. The question as to whether the decision was regarded as superceding the informal decision of

ROINN AN TAOISIGH

Uimhir.....

-6-

November, 1972 was not adverted to.

6. I think that the cases which are the subject of the representations made to you deserve more sympathetic consideration than they have yet been given. Apart from the hardship which it seems has been suffered by Mrs. Sealy, my reasons for this view are reflected in the draft letter to the Minister for the Environment. I think, moreover, that there is a certain amount in what Deputy Gallagher says in his letter of 12th June viz. that action to make good the loss suffered by those concerned in the Kiltyclogher area would reassure them that the Government was prepared to vindicate their rights and not leave them without protection against damage caused by external agencies. It is unlikely that favourable treatment of the Kiltyclogher claimants would give rise to many requests from people in similar circumstances in other areas. Most such people would have given the notice required under the malicious injuries code and been compensated by the local authorities, who would in turn have been recouped from the Exchequer under the 1974 scheme. We may reasonably hope that there will not be a substantial recurrence of road cratering operations by the British Army. In addition, the approach suggested in the draft letter is for a fresh Government decision on the same lines as that taken in November, 1972. A decision relating to cases where the damage was caused by British Army operations could scarcely give rise to requests for sympathetic treatment in other cases, whether "political" or not, where there was a failure to give the seven days notice.

7. If you agree with the course of action proposed, I would recommend that you indicate orally to Deputy Gallagher that you have taken the matter up with the Minister for the Environment on a sympathetic basis, mentioning, however, that there could be legal difficulties and that it may be some length of time before you can indicate the final decision in the matter.

W. K. ...

3# October, 1978.

P.S. The ambit of Subhead 0 of the Environment Vote, referred to in the draft letter to the Minister is, as set out in this year's Book of Estimates:

"Recoupment to Local Authorities (my emphasis) of the cost of compensation for malicious damage to property attributable to the disturbance in Northern Ireland and portion of the cost of compensation for other malicious injuries to property. If it is not desired to work through local authorities, (7474)114199. 3,000. 11-76. FP.-G. for their engineers to assess value of damage - it might be