

Reference

*Pamela
For folder
for
20.7.81*

Mr Murray

COMMITTEE ON EX-GRATIA ASSISTANCE

As you will now be acting as alternative chairman of the Treasury Group Committee on Ex-Gratia Assistance I thought I should advise you of the current state of play.

I am now Secretary of the Committee in place of John MacQuarrie of Works Division. I have accordingly informed Finance Assistant Secretaries of the new arrangement.

The procedures, of which Departments are well aware, are set out in DAO 6/77 and DAO 1/80, and remain unchanged.

You may find the attached paper outlining the development of the Committee useful.

The only current case which may come before the Committee concerns a request from Gilbert Ash (NI) Ltd to the Department of Education for assistance on a major school building contract. This has been ongoing since 1979.

The Committee has yet to receive a submission from DENI but, as they are required to, DENI have written to all Departments asking them to advise the Committee of any existing or contemplated contracts with Gilbert Ash Ltd. DoE have advised the Secretary to the Committee that they are considering accepting a tender from the firm for the Richmond Centre in Londonderry. This will depend on a Ministerial decision which is expected in the next week or so, on whether or not to proceed with the project.

I have written to David Leeman the Contracts Officer in Works Division to find out if we need to take any steps as regards Richmond. We will keep you informed.

Peter Small

P J SMALL

3 July 1981

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COMMITTEE ON EX-GRATIA ASSISTANCE

A. Background To Setting-Up the Committee

1. In 1976 Departments faced increasing problems over the completion of several public sector construction contracts. These difficulties which were due to civil unrest resulted in pressures from the Builders Federation and the construction industry generally for a more sympathetic response from Government to claims for assistance from firms in serious difficulty. Government policy had been until then that no direct financial assistance should be given to construction firms incurring losses on particular contracts due to civil unrest, as such assistance would place these firms in a more favourable position than other sectors of commerce and industry.
2. In 1976 HM Treasury issued new guidelines to departments in GB revising the rules for dealing with claims for assistance from firms facing liquidity problems. It was considered by DOF that these guidelines should be applied as the vehicle for assessing "in hardship" claims from Northern Ireland firms which had been affected by Civil Unrest.
3. DOF made proposals along these lines and these were considered by PCC on 31 March 1976. (Minutes attached Tab A)

The outcome was a proposal from PCC which was agreed by the Secretary of State that contractors' losses on Government contracts due to civil unrest should be dealt with under the rules for ex-gratia assistance. The submission to PCC

1. CONFIDENTIAL

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envisaged the setting up of a "specialist body under Department of Finance chairmanship to advise on the validity of the claims under the ex-gratia rules". PCC endorsed the principle but preferred a widely based Committee to the specialist group suggested by DOF.

4. As explained in paragraph 3 above the original PCC decision envisaged that the Ex-Gratia Committee would be interdepartmental and bodies such as the Housing Executive and the Area Boards should have a place on it. Subsequently it was proposed by DOF that such a body would be too unwieldy to examine the detailed aspects arising. Also there was a possibility that such a Committee would detract from the responsibility of departments to satisfy themselves about each case and it might also impinge on an accounting officers ultimate responsibility.
5. It was agreed therefore by PCC at a meeting on 12 February 1977 (minutes attached Tab B) that a small committee should be established with a chairman and secretary from Treasury Group, an accountant and a contracts officer. The Committee was centered on Treasury Group because of that Group's responsibility for independent assessment and approval of expenditure.
6. Following this decision a DAO was circulated on 29 March 1977 (copy attached Tab C) setting out the procedures for dealing with ex-gratia claims from contractors. The DAO outlined the purpose of the Committee which is, inter alia, to determine the merits of a claim as regards both validity and quantum. If the Committee decides that a wider examination is necessary this

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is carried out by specialist members of the Committee or those appointed by it in conjunction with the Departmental representatives. The DAO also indicated that the DOF Deputy Secretary would be the Chairman of the Committee.

7. After a full consideration of a case the Committee recommends to the Department concerned the extent to which the claim merits support. It is for the Accounting Officer of the relevant department to agree with his Minister whether the recommendation should be accepted.
8. These procedures were updated by DAO 1/80 issued on 5 March 1980 but this did not substantially affect the operation of the Committee.

B. Membership of the Committee - Particular

9. At the outset Mr Clement was the Chairman of the Committee (and its sole member) with Mr Anderson (then a Supply Principal) being the Secretary. Mr Murray then a Supply Assistant Secretary was subsequently appointed but the Committee did not sit during his term. On his promotion to Assistant Secretary Mr Anderson became a full member of the Committee, although he had moved to Personnel Division, and his place as Secretary was taken by Mr MacQuarrie, a Deputy Principal in Contracts Branch. Mr McMurray became a member, and Mr Anderson subsequently was relieved because of pressure of work in Personnel. He was not replaced and the present membership remains as Mr McMurray with Mr McQuarrie as Secretary. (In addition Mr Treacy (DHSS) advised the Committee on accountancy aspects of a case in which DOF was the sponsoring department.) The guidelines in the DAO would suggest that as Head of

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Treasury Group you should be in the Chair if the Committee was required to meet.

C. Activities of the Committee

10. The Committee has to date considered three cases in detail. (Other potential claims have been rejected by the relevant departments before reaching the Committee.) These are:-

(a) McLaughlin & Harvey Ltd - Belfast City Hospital (DHSS)
(This case was settled on a basis other than ex-gratia payment);

(b) Hogg Brothers - Glencairn Primary School (DENI)
(Ex-Gratia payment of £30,000 recommended);

(c) P J Walls Ltd - Newtownabbey Social Security Office
and Courthouse (DOF)
(Since this was a DOF case the Accountant's assessment was carried out by Mr Treacy (DHSS). Payment of £75,000 recommended.)

There are no cases currently before the Committee. A potential claim from Gilbert Ash Ltd has been the subject of correspondence between the sponsoring department (DENI), the Area Board and the Company. It is not yet clear whether this case will come before the Committee.

D. Conclusion

11. The conditions and circumstances which led to the establishment of the current policy on ex-gratia payments still apply. The

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machinery for handling cases was set up after prolonged and careful consideration and there is no evidence that the decisions reached then now require to be amended. To achieve consistency of treatment cases ought to be looked at by a central body and it seems logical that Treasury Group, having overall responsibility for public funds in Northern Ireland, should undertake that work. It is essential however to maintain the existing rules whereby the Accounting Officer of the sponsoring department should make the final decision, based on the fundings of the Ex-Gratia Committee, and should defend in the normal way any payment so made. As regards the permanent make-up of the Committee I consider the following as important factors:-

- (a) the final recommendation should be approved by the Head of Treasury Group who should continue as Chairman of the Committee. (This would not necessarily entail attendance at all meetings);
- (b) the supply Assistant Secretary for the sponsor department should be present at all meetings;
- (c) the Secretary of the Committee should continue to be the Contracts Branch Deputy Principal responsible for Policy. (This would provide a constant expertise in the contractual aspects of the case by an officer who, while associated with Contracts Branch, is not responsible for individual cases); and
- (d) a Treasury Group Official should be an 'ever-present' at meetings of the Committee to provide briefing for the Chairman and to ensure consistency of approach.

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12. In addition professional advice should be sought as appropriate from suitably qualified officials. Also if a DOF (Departmental Group) contract was under consideration professional advice would have to be provided by another department.

E. Recommendation

13. I recommend that the Treasury Ex-Gratia Committee should continue in operation with the following members:-

Mr McAllister	-	Chairman
Mr McMurray)	-	Either to attend as appropriate
Mr Cole)		
Mr Small		
Miss Gill	-	Secretary. (Miss Gill has succeeded Mr MacQuarrie in Contracts Branch.)

I further recommend that the procedures laid down in DAO 6/77 and DAO 1/80 should remain unchanged. As Departments are fully aware of these procedures there is no necessity to contact them further on this matter.