

REVIEW OF HURD POLICY

INTRODUCTION

1. The purpose of this paper is to review the continuing need for the Hurd Policy in the context of the current ceasefires and the developing peace process. It sets out the background to the introduction of the Policy, its operation to date and the extent to which it has emerged as an issue in XD and LXD. It then discusses four options on the way forward. DFP Solicitor's Branch, Liaison, TFU, PAB, SEU and CJD have worked with Central Secretariat on this review and support its conclusion and recommendation that the Policy be replaced by other appropriate measures.

BACKGROUND

2. In 1985, following concern about the possible exploitation of public funds by, or to the benefit of, paramilitary organisations, the then Secretary of State, Mr Hurd, decided that, on the basis of a Secretary of State direction, public money should be withheld from community groups where there was evidence that payment could directly or indirectly improve the standing and further the aims of a paramilitary organisation. This decision was announced in a written Parliamentary answer on 27 June 1985 (copy attached at Annex B) which remains the basis of Government Policy.
3. The genesis of the Policy was concern that the application of the normal criteria governing financial assistance by the Government could result in public funds being used for purposes which might directly or indirectly assist paramilitary groups. The involvement of Sinn Fein in community projects seemed at

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the time to be part of a deliberate strategy to expand their influence in the deprived areas of West Belfast and designed to promote their image as an effective and hard-working community-based party. We feared that Government funding of community activities with which they were associated could help to legitimise the organisation in the eyes of the local community and provide them with a significant proportion of the resources they required for such purposes. The Hurd Policy was introduced because the ordinary administrative procedures and statutory criteria for grants were not enough to allow the Secretary of State to withhold grant on these grounds (ie, legitimisation).

4. The Policy has no statutory force. It is simply an expression of how, in the public interest, the Secretary of State will deal with applications for assistance made to Government Departments from groups that have paramilitary connections. It could be terminated or amended at the discretionary decision of the Secretary of State.
5. How the Policy is applied is also a matter for the discretion of the Secretary of State. Within the ambit of reasonableness the Secretary of State can apply the Policy heavily or lightly, or not at all. It is a matter for the Secretary of State to decide how best the public interest is served, and that can involve a balance of competing interests. The merits of any particular scheme, and the public benefit to be derived from it, might, for example, in his opinion outweigh the detriment to the public occasioned by the paramilitary connection and its consequences.
6. The Hurd Policy is applied to community groups partly to prevent them diverting public funds to paramilitary organisations, but its primary purpose is to prevent public funds being used to assist the legitimisation of paramilitary organisations in the eyes of their local communities. It is important to note that mechanisms of greater or lesser efficacy

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have always existed in ordinary administrative procedures to prevent the diversion of public funds. Furthermore since 1990 all Government Departments in Northern Ireland have, as part of their implementation of the recommendations of the UK Efficiency Scrutiny of Government Funding of the Voluntary Sector (April 1990), put in place certain features of good practice in relation to their grant-making activities. These are set out in the Government's Strategy for the Support of the Voluntary Sector and for Community Development in Northern Ireland (February 1993), and include arrangements for the monitoring, evaluation and financial control of every grant made. Departments, therefore, undertake a more systematic and rigorous examination of all aspects of each voluntary organisation's performance and financial affairs than previously and this has resulted in a tighter control of the expenditure involved. Moreover, all funded organisations are now aware that arrangements for monitoring, evaluation and financial control form an intrinsic part of their relationship with their respective funding Departments. Should a particular case arise in which it was considered that the ordinary audit requirements would not suffice to prevent paramilitaries from benefiting from public funds, then additional and specific arrangements could be put in place. This was done recently in relation to a housing association seeking grant for a project which involved the employment of a contractor convicted of paying protection money to paramilitaries. It would be unrealistic to suppose however that even these reinforced control mechanisms are utterly watertight against all types of misapplication of funds, for paramilitary or other purposes: the ingenuity of fraudsters makes a total proof against misappropriation impossible. (This is of course also the case with current arrangements.)

APPLICATION

7. The first groups denied support under the June 1985 Statement were based in Conway Mill, and indeed activities at the Mill

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lay close to the heart of the Government's motivation in adopting the Policy. These were the Conway Womens Self Help Group and the Conway Street Community Development Group (formerly known as the Conway Street Mill Group). Decisions on these cases as in all subsequent cases were taken personally by the Secretary of State in the light of intelligence-based evidence about paramilitary involvement in the Mill.

8. Conway Street Mill is located in the lower Falls Road area of West Belfast, and was formerly part of the Falls Flax Company which went into receivership in the early 1980s. In 1982 it was sold to Mr Gerry Adams and others for £35,000 and in February 1988 ownership passed to Conway Street Community Enterprises Ltd, a local limited company having as its Directors at that time Father Desmond Wilson, Mr Alfred Hannaway, Mr Colm Bradley and Mr Francis Cahill.
9. Subsequently, on the basis of confidential advice about strong paramilitary connections within the Mill complex, the then Secretary of State, Mr King, decided in September 1985 that Government assistance should not be provided for any activity based in the Mill. Following that decision, grants to a number of bodies operating in and out of the Mill were terminated; these included the Conway Education Project, and the Workers Educational Association.
10. The Policy in respect of the Mill has been criticised by MPs (mainly Labour MPs but also including Mr John Hume), local community groups, churches and others. This criticism was particularly vocal in late 1988 due to the International Fund for Ireland's rejection of an application from Conway Community Enterprises Ltd in compliance with advice from the Government that it would be inconsistent with the social and economic policies of HMG if the Fund provided assistance to any body operating in or out of the Mill. However, having regard to all the relevant considerations at the time, the then Secretary of State, Mr King, reaffirmed the application of the Policy to

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Conway Mill in January 1989. This decision was made public in a written Parliamentary answer on 9 February 1989, (copy attached at Annex C). The Fund has continued, on advice from the Government, to apply the Hurd Policy and in 1993 came under strong pressure from Fr Des Wilson and prominent US Congressmen over this. More recently the US Government Observer to the IFI, Mr James Lyons, has expressed the view that the Fund should stop operating the Policy and should support economic development activities within the Conway Mill.

11. Another controversial application of the Policy was to the West Belfast Committee of Glór na nGael in 1990 (funding was subsequently reinstated). This aroused strong criticism, particularly from reputable figures right across the political spectrum, mainly on the grounds that the Government was thereby allegedly expressing its hostility to Irish language and culture. Although a misguided criticism, this was difficult to counter as the nature of the information on which Hurd decisions are taken is such that the real explanation can never be disclosed. Given the ceasefires, that presentation problem is likely to be exacerbated should there be any further application of Hurd.
12. The Policy currently affects in total 22 groups. These groups (14 republican, and 8 loyalist) are listed at Annex D. A further 5 groups whose funding had been withdrawn, subsequently had it reinstated following changes in their organisation (Annex E). In each case decisions on withdrawal or reinstatement were made personally by the Secretary of State in the light of intelligence-based advice about each group.

PREVIOUS REVIEWS

13. The Policy and in particular its application to bodies operating in and out of the Conway Mill, or proposing to set up in the Mill, has been reviewed on a number of occasions, most notably January 1989, October 1989 and in September 1993. On

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each occasion it was decided that both the Policy and its application towards the Conway Mill should remain unchanged, despite changes in the activities carried out in the Mill, and notwithstanding the fact that some of these activities might be intrinsically acceptable, meeting a need in the area, and that the individuals involved in those specific activities had no paramilitary connections.

ACHIEVEMENTS OF POLICY

14. The purpose of the Policy is to ensure that Government support to community groups is not used to improve the standing or further the aims of a paramilitary organisation whether directly or indirectly. In applying the Policy to all activities carried out in the Conway Mill and to the organisations listed at Annex D, this objective has, at best, not been conspicuously successful and, more realistically, has brought the Government, for little political return, into disrepute in many nationalist, US and some loyalist eyes on account of its repressive nature. The potential benefit of denying financial assistance to projects which improve the standing of paramilitary organisations is difficult to measure. The Provisionals have developed political support in West Belfast through community action but this cannot be linked directly to Government community aid. In the post ceasefire environment this is no longer a significant consideration as groups such as Sinn Fein are being encouraged to operate like other legitimate political parties.
15. The Policy has also had limited effect even as a solely counter terrorist measure. It is an irritant and a sign of disapproval but paramilitary organisations have many alternative methods of fund raising, both legal and illegal, which often involve much larger sums of money than those to which Hurd has been applied. These are more effectively countered by anti-racketeering or other security measures.

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PUBLIC PERCEPTION

16. The Policy has, since its introduction, been subject to a sustained opposition campaign. In addition to those mentioned at paragraph 10 above, organisations such as SACHR, the Northern Ireland Council for Voluntary Action and the Northern Ireland Voluntary Trust have consistently opposed it. The kernel of opposition to the Policy is (1) that it is politically motivated and directed (to damage the standing of Sinn Fein in particular) rather than designed to staunch misapplication of public funds to terrorist purposes; and (2) that it is not possible for affected groups to look behind the Secretary of State's direction. This has hindered public acceptance of a Policy which has been applied sparingly - only once in the past three years - and in which the political allegiance or aspiration of the members of any organisation has never been considered a relevant factor in any decision to apply Hurd.
17. The alleged arbitrariness of its application has continued to make the Policy a significant issue for both republicans and loyalists. Since the announcement of the IRA ceasefire on 31 August a number of Sinn Fein representatives have written to Ministers and senior officials seeking a review of the Policy and its application to Conway Mill. In addition applications seeking financial assistance have been submitted to both LEDU and the International Fund of Ireland from bodies operating in the Conway Mill. The issue has also been raised in XD and LXD. Criticism in XD has focussed on the extent to which the application of the Policy hampers constructive economic and social activity; loyalist representatives are concerned that the Policy will hamper the successful reintegration of prisoners.

OPTIONS

18. Previous reviews of the Hurd Policy were carried out against a

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background of continuing terrorist violence. This review is being undertaken in the unique circumstances of the ceasefires and the possibility of establishing a permanent peace. This allows for the consideration of more options than were available in previous reviews. The main options are considered below.

Options

- I. Continue to apply the Policy;
- II. Apply the Policy only to those paramilitary groups that have not declared a ceasefire;
- III. Suspend the Policy for 6/12 months and review position in light of developments in the peace process; and
- IV. Withdraw the Policy and rely on other safeguards.

19. Option I - Continue Policy

In the absence of a permanent peace which was fully recognised as such, and given the continued existence of paramilitary organisations, it would be feasible to continue to apply this Policy.

20. However, the ceasefire declarations by republican and loyalist paramilitaries and the initiation of XD and LXD have dramatically changed the circumstances in which this review must be addressed. The Government has promised to respond imaginatively to the ceasefires. Accordingly, to continue to apply the Hurd Policy, particularly given its very limited effectiveness as an anti-terrorist measure, would be widely criticised as inconsistent with that public commitment and interpreted as unwillingness on the part of the Government to move the peace process forward. It would also continue to provide a propaganda platform for Sinn Fein to accuse the

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Government of political vetting which could have a damaging effect both locally and internationally. Nor would criticism be confined to Sinn Fein and loyalists close to paramilitary groups. The SDLP, in particular, would also be likely to criticise Ministers strongly, not only on points of principle but also, in political terms, so as not to be outdone by Sinn Fein.

21. A further consideration is the important issue of how the Government responds to mounting pressures for new and more radical approaches to the provision of facilities for the reintegration into the community of released paramilitary prisoners. This is an issue which is high on the agenda of the parties - particularly on the loyalist side - who are involved in the current exploratory discussions. If the Government is to respond imaginatively and in a way that carries weight with the paramilitaries it will need to be open to the concept of self-help in reintegration proposals with some schemes involving a significant degree of ownership and management by ex-prisoners. There is a danger therefore that such proposals, seeking public sector support, would be likely to fail scrutiny under the terms of the Hurd Policy; and the existence of the Policy would inhibit officials in encouraging and developing ideas in this direction.
22. On balance, officials are agreed that option I should be rejected.
23. Option II - Apply only to groups with no declared ceasefire

The main focus of the Hurd Policy is to deny paramilitary organisations opportunities to improve their standing and further their aims within the wider community. Those paramilitary organisations that have not yet declared a ceasefire, while representing a serious threat, do not command the same degree of community support. Furthermore, none of the

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decisions to apply Hurd has involved groups associated with these paramilitary organisations. It would also be difficult to sustain this categorisation as some groups who might fall within it, eg, INLA, appear to be observing a de facto, if unannounced, ceasefire. Any decision to apply Hurd to groups associated with paramilitary organisations which have not declared a ceasefire would serve only to give them the oxygen of publicity that would be wholly counter productive in terms of the Government's objectives. For the reasons outlined in consideration of Option I, such a move could also be interpreted as indicative of a lack of Government commitment to the peace process.

24. Officials are therefore agreed that this option should also be rejected.

25. Option III - Suspend and review later

A time limited suspension of the Policy followed by a review with the possibility of its ultimate abandonment is assessed as unnecessarily cautious. It also by implication commits Ministers to complete resumption of the Policy if XD and LXD do not progress the peace process, when, in any case, even if a decision was now taken to terminate the Policy, it could be reimposed by Ministerial decision at any time. Given the limited effectiveness of the Hurd Policy as a counter terrorist measure, and the impact of the ceasefires, XD and LXD on local, national and international political perceptions, this option would most likely to be seen as wholly inadequate and spurious and so leave HMG vulnerable to continuing criticism of its overall response to the ceasefire, not least abroad.

26. In these circumstance officials are agreed that Option III should also be rejected.

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27. Option IV - Withdraw the Policy and rely on other safeguards

A decision to withdraw* the Hurd Policy as it stands and rely on other safeguards would have significant advantages and few, if any, disadvantages. Apart from its continued application to the Conway Mill, the Policy has been applied sparingly, only once in the past 3 years. Nonetheless it remains a major source of concern to many bona fide organisations who see it as an undemocratic form of political vetting. A decision by the Secretary of State to discontinue the Policy and rely on conventional measures could be presented as a bold, imaginative decision, not without risks, but taken as a considered act of faith in the peace process. It would be wholly and quickly reversible, thus fitting our generally followed line on security-related changes. It would also have positive PR benefits both locally and internationally. It may be that Unionist parties, and particularly the DUP, will seek to present the termination of the Hurd Policy as yet another concession to terrorists. But the Policy's limited success as a counter terrorist measure, the existence of administrative mechanisms for staunching any flow of public funds to paramilitary organisations and its sparing use in recent years means that in practice, replacement of the Policy would be a relative minor measure.

- * There has been debate amongst officials as to whether the term "withdraw" is accurate, on the grounds that we will continue to take steps, if necessary including an SofS direction, to combat paramilitary fraud. We have retained the term "withdraw" as we would be terminating the major part of the Policy (legitimisation) and it will always be a proper objective to prevent paramilitary, as other, fraud; to do so we will be relying on accepted administrative procedures; and we must be seen to withdraw the Policy if political points are to be scored.

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28. It is possible that this option could be held to be incompatible with continued British pressure on the US Government to continue to prohibit Mr Adams from fund-raising in the USA. A decision to withdraw Hurd would not be inconsistent with HMG's stance on Sinn Fein fundraising in the US, provided that stance set its face not against such fundraising per se, but the diversion of receipts for paramilitary purposes.
29. This option would not however leave Ministers exposed to invariable authorisation of the giving of assistance to groups which intelligence showed had close links with paramilitary organisations. In the exercise of a discretionary power, such as a power to give grants, the public interest (of which the Hurd Policy is itself an expression) is always a relevant and lawful consideration to take into account. Ministers could still decide (the withdrawal of the Hurd Policy notwithstanding) on the basis of information available to them that grant must still be withheld should any particular and pressing case present itself that public funds would otherwise be diverted, eg, to the enhancement of paramilitary capabilities.
30. In such a case the Secretary of State could direct the department concerned not to pay, or to discontinue paying, assistance. But the mischief being remedied would be misapplication of public funds, not political legitimisation, so the sting would be drawn from the most prevalent criticism. That would however be in rare cases of particular emergency; it would be improper, and challengeable in law, publicly in effect to abandon the Policy, and then simply to continue to apply it. But since the Policy itself, whatever the expectations in 1985, turned out to be rarely applied, that should not arise.
31. This option would mean that organisations in the Conway Mill, the owners of the Mill, and the other groups still denied funding under the Policy would be free to apply for support

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Under any Government schemes for which they are eligible. However these applications would be executive matters for the Departments/agencies concerned who would consider any applications on their individual merits against the criteria of the schemes. (Many of the applications were to the ACE scheme. Its administrative arrangements have changed in the meantime so that new applications from such groups are no longer made directly to the T&EA.) There would normally be no role for the centre in these cases. However, where Departments uncover instances of fraud or suspect that public funds are being diverted to paramilitary organisations they can impose appropriate additional constraints described at paragraph 6 above which should provide a similar level of defence against paramilitary fraud as now. [REDACTED]

[REDACTED]

32. It is possible, though unlikely, that Sinn Fein (and maybe others) could seek to embarrass HMG by submitting applications which would be designed to force us to rely on a Secretary of State direction, thus bringing odium back on to the Government. This would require a remarkable degree of subtlety and risk-taking which is assessed to be improbable.
33. Officials recommend that Ministers adopt this option in principle.

NEXT STEPS AND TIMING

34. While there is no legal imperative to announce a decision to

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withdraw the Hurd Policy, there are good political reasons for a public announcement soon, taken on the initiative of Ministers rather than in response to a Sinn Fein campaign. If Ministers agree with the recommendation in paragraph 33, it would be appropriate to announce this publicly (probably in the form of a written reply to an arranged PQ), and to time that announcement so as to maximise the benefit which could be obtained. An announcement would clearly have to set out the means open to the Government to prevent misapplication of public funds, but with the right timing, this significant policy development could add to the momentum of progress in the exploratory dialogue with Sinn Fein, the PUP and UDP, especially perhaps in the key area of arms decommissioning. If Ministers are content, further advice on the optimum timing for an announcement will therefore be submitted in the context of an assessment of progress in XD and LXD.

CONCLUSION

35. Ministers are asked to agree in principle to withdraw the Hurd Policy, relying instead on normal Departmental powers to prevent misapplication of public funds though with the possibility of using a Secretary of State direction limited to cases involving, or believed to involve, paramilitary fraud and not susceptible to normal procedures; and to agree to announce that decision at an appropriate stage in the light of wider political developments, and in particular in XD and LXD.

CENTRAL SECRETARIAT
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ANNEX B

27 June 1985

PARLIAMENTARY QUESTION

The Secretary of State, Rt Hon Douglas Hurd MP, today gave the following written parliamentary reply to Mr John M Taylor (Solihull), who had asked what plans Mr Hurd has to ensure that Government financial support for community activities is not used to foster the aims and objectives of paramilitary interests.

Mr Hurd: "It is the Government's policy to encourage voluntary and community-based activity which has the genuine aim of improving social, environmental or economic conditions in areas of need, and various grant-aid schemes exist for such purposes. However I am satisfied, from information available to me, that there are cases in which some community groups, or persons prominent in the direction or management of some community groups, have sufficiently close links with paramilitary organisations to give rise to a grave risk that to give support to those groups would have the effect of improving the standing and furthering the aims of a paramilitary organisation, whether directly or indirectly. I do not consider that any such use of government funds would be in the public interest, and in any particular case in which I am satisfied that these conditions prevail no grant will be paid."

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ANNEX C

9 FEBRUARY 1989

PARLIAMENTARY QUESTION

The Secretary of State, Rt Hon Tom King MP, today gave the following written parliamentary reply to Mr Greg Knight (Derby North) who had asked if he would indicate Government's policy on public funding of projects in Conway Mill with particular regard to applications for assistance from the International Fund for Ireland.

Mr King: "Government policy on the payment of public funds to community groups, where there is evidence that such payments could directly or indirectly further the aims of a paramilitary organisation, is set out in the parliamentary statement of 27 June 1985 by the then Secretary of State. The nature and extent of paramilitary influence within Conway Mill is such that this policy has been applied to groups operating in or out of the Mill. Whilst I have reviewed the situation I am satisfied from the information available to me that influence remains such as to justify the continued withholding of funds to such groups in accordance with the terms of the parliamentary statement.

Article 3 of the bilateral agreement of 18 September 1986 between the Governments of the United Kingdom and Ireland on the International Fund for Ireland provides that disbursements from the Fund shall be consistent with the economic and social policies and priorities of the respective Governments. I have accordingly indicated to the board of the fund that it would be inconsistent with the social and economic policies of this Government if the fund were to provide assistance to any body operating in or out of Conway Mill.

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It is, on the other hand a most important aspect of our policies to stimulate development and activity in the more deprived areas of Belfast, including, of course, west Belfast. In this context, we welcome the initiatives taken by the International Fund for Ireland, within its programmes, to provide extra help for disadvantaged areas, including west Belfast. I understand that they have further proposals to that end under consideration."

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HURD POLICY

GRANTS REFUSED OR TERMINATED

Since 1985 22 community groups/individuals/other bodies have been refused public funding in line with the Hurd Policy as follows:

- *Conway Street Mill Group, Belfast
- *Conway Women's Self-Help Group, Belfast
- *T S Kavanagh LEDU Project, Belfast
- *Top of the Hill Tenants Association, Londonderry
- *Lavelle, Higgins and McPhillips LEDU case
York Road Community Advice Centre, Belfast
- Skegoneil, Shore Road and Seaview Environmental Group, Belfast
- Woodvale Community Enterprises, Belfast
- *Sinn Fein Advice Centre Falls Road, Belfast
- *St Matthew's Tenants Association, Belfast
Glenbryn/Alliance Environmental Group, Belfast
- Westland and District Community Environmental Group, Belfast
- *MacAirt Nursery School (linked with St Matthew's), Belfast
- *Twinbrook Tenants and Community Association, Belfast
Glencairn Community Association, Belfast
- Ulster Adventure Club, Belfast
- *Westway Hotel Project (Mr P J Napier)
- *O'Hanlon Bros, Clogher, Co Tyrone
- *J J Higgins, Belfast
- *Glen Road Development (Mr P J Napier)
- *WAC Enterprises
Ulster Democratic Party

Of these 14 were republican (* above) and 8 loyalist.