

DEFENCE, PRESS AND BROADCASTING ADVISORY COMMITTEE

RECORD OF A MEETING HELD IN THE MINISTRY OF DEFENCE ON TUESDAY 26 JUNE 2001

1. Present :

Mr K R Tebbit, Chairman	Mr R Hutchinson, Vice-Chairman
Mr J Gieve	Mr S Anderson
Mr S L Wright	Mr G Brock
Sir Roger Jackling	Mr R Esser
	Mr J Grun
	Mr J McLellan
	Mr R G Tait
	Mr S Whittle
Rear Admiral N J Wilkinson	- Secretary
Captain N R Hodgson	- Deputy Secretary

2. Apologies: Mr J D Bishop, Mr T H S Cole, Mr A Goode, Mr W Wilson.

3. The Chairman welcomed Mr Stephen Whittle (BBC) and Mr John Gieve (HO) to their first meeting; and he thanked those who had left the Committee since the last meeting, Mr Phil Harding (BBC), Mr Pat Pilton (NPA), and Sir David Omand (HO). Members asked the Chairman to convey their best wishes for a full recovery from illness to Sir David.

Agenda Item 1 – Minutes of Meeting held 5 December 2000

4. Accepted.

Agenda Item 2 – Matters Arising from Previous Meeting

5. MOD had appealed against the New Zealand Court decision on the Special Forces Confidentiality Agreement, the NZ Court of Appeal had considered the case, and their decision was expected in the second half of July.

6. Official Members confirmed that they had drawn the attention of officials concerned with the administration of Acts involving National Security to the guidance in the DA-Notices. The Committee were also briefed on the recent changes in Departmental responsibility, including for FOIA and DPA (but the application of these Acts in the context of, for example, Public Order and Policing, would be retained by Home Office).

Agenda Item 3 – Secretary’s Report

7. General. The Secretary reported normal levels of activity in the past six months in advice to media and officials, in briefing incoming editors and civil servants, and in responding to members of the public. There had been no Parliamentary Questions about the DA-Notice system, and a reduced number of books. Briefings had been given to delegations from China and the USA, and to the MOD Press Office. The website (www.dnotice.org.uk) had received about 2800 visits, from 30 countries (principally UK and the USA), and continued to be praised by users for its clarity and informativeness.

8. Examples of Prior Advice being Accepted. Included:

- a. Omission of details of imminent SF exercise from newspaper article on MOD use of Brecon Beacons.
- b. Omission of name of junior FRU officer from all UK national media, despite being on internet, on grounds of personal security.
- c. Omission of Security Service names from speculative newspaper story on links between them and two Boards of Directors.
- d. Omission of details of current operational performance shortcomings of Sea Harrier from newspaper report on leaked Naval document.

9. Examples of Corrective Action. Included:

- a. Correction published on Lockerbie website, in response to untrue story of DA-Notice gag on S African links.
- b. Untrue newspaper story stopped re DA-Notice gag on Saddam link to foot and mouth.
- c. Correction sent to magazine on regurgitation of incorrect story on DA-Notice/Geraghty link.
- d. Reminder sent to newspaper that publishing stories of SF deployment to Macedonia, were it true, would endanger the operation.
- e. Letter sent to defence journal correcting impression in previous article that editors do not refrain from reporting operations even when national security is at stake.

10. Definition of In the Public Domain. The Secretary reported on advice he had given at the time of the Tomlinson book publication in January/February, including his written statement to Newsnight, that information on a widely-known website being

ipso facto in the public domain. Only in exceptional and temporary circumstances would he advise editors to withhold details in the public domain, for example to ensure the personal safety of an agent. In response to a question, he confirmed that how widely known and credible a source, and how much more widely re-publication might increase any danger, were also considerations taken into account. It was also pointed out that, for journalists, information on websites still had to be verified before being used further.

11. Editor's Risk. The Secretary reported the Court's opinion (also in the Tomlinson case) that it was not for Government to pre-vet the work of the media, but for editors to decide what to publish, having first ascertained the Government view; and that the editor would face the consequences if he/she got it wrong, by being in breach of an Act or in contempt of Court. The Press Gazette had welcomed this opinion, but called it a double-edged sword, because of the risk to the editor. The Secretary had therefore had published a letter in the Press Gazette, pointing out that the risk to editors could be greatly reduced, where national security was concerned, by use of the DA-Notice system. This point had been picked up subsequently in 'Media Lawyer' and would be incorporated in the new edition of 'McNae's Essential Law for Journalists'.

12. Examples of Where Secretary Declined to Intervene. Included:

- a. Newspaper report including name of SF Wing Commander, where information had come from RAF.
- b. TV news filming of Security Service personnel leaving court, where interest had been created by intervention of government 'minders'.

13. ISPs. No further progress had been made on discussions with ISPs, because they were still preoccupied with matters other than national security.

14. Examples of DA-Notice Advice Accepted by Media Being Insufficient to MOD.

a. A book on Northern Ireland had been discussed in detail by the Secretary with the author and publisher, and some changes made. However, the MOD view was that, without seeing the complete work, it could not accept the author's assurances that there was no material in the book that would endanger life or operations. Ultimately MOD decided not to proceed to litigation, and the book will be published later this year.

b. An independent TV company had consulted the Secretary in January and in April about planned programmes on agent-handling in Northern Ireland, and made adjustments in the light of his advice. MOD considered however that without previews, it could not be certain that there was nothing damaging in the programmes, and obtained orders from a judge accordingly. The April

injunction remained in place, and the programme had not gone out, although it was understood that other media had subsequently published more widely the new matters contained in the TV programme, without damaging national security. In discussion, concern was expressed that the media would not be inclined to use the DA-Notice system, if they considered MOD would still seek an injunction in any case, and that this negated the *raison d'être* of the DPBAC. The concern of MOD to protect the personal security of its operators and agents was acknowledged, but some aspects as reported were unsatisfactory, and the Chairman asked MOD to investigate as a matter of urgency, and to report back to the Committee.

15. NUJ Journal. The Editor of the NUJ Journal had asked if, in the spirit of DPBAC openness, he might sit in on a DPBAC meeting. After consultation, the Secretary had replied that, while there was no problem in principle, in practice there were others who would wish to sit in subsequently and this would prevent the frank and non-attributable discussion on which the Committee depended. The Secretary would however be happy to provide the Editor with information additional to that in the website record of DPBAC meetings.

16. Data Protection Act. Information had been provided from DPBAC electronic and file records to two applicants.

17. Official D-Notice History. The previous Deputy Secretary, Commander Ponsonby, had now started his research. The History would take about a year to write, and it was hoped that permission would be given for it to be made widely available.

18. Reporting on Special Forces. The Secretary commented that, despite previous DPBAC clarifications, Editors continued to find confusing the borderline between what they could and should not publish on Special Forces. The Secretary gave some examples of grey area stories, including a report of the hostage release in Sierra Leone, and a TV game show involving ex-SF personnel.

19. Health of DA-Notice System. The Secretary reported that the DA-Notices as revised a year ago were increasingly well understood by media and officials and that the system was well used.

Item 4 – Any Other Business

20. There was no other business.

Next Meeting

21. The Secretary was asked to arrange the next meeting for late November/early December. He reminded Members that the DPBAC office would move to Metropole Building, Northumberland Avenue on 20 July, but that the telephone numbers would remain unchanged.