

PREM 19/1291



Confidential filing

Farrell versus Ministry of Defence

IRELANDNovember 1979

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>7.11.79</del>							
<del>22.6.83</del>							
<del>30.6.83</del>							
<del>1.7.83</del>							
<del>27/2/84</del>							
<del>2.3.84</del>							
<del>8.3.84</del>							
<del>12.3.84</del>							
<del>16/7/84</del>							
<del>19.7.84</del>							
1.8.84							





MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000  
DIRECT DIALING 01-218 2111/3

MO 19/3/12

1st August 1984

*De Li*

EUROPEAN COMMISSION FOR HUMAN RIGHTS: FARRELL V UK

Thank you for your reply of 25th July to my letter of the 12th.

I am glad to be able to let you know that a friendly settlement has now been reached in this case at £37,500 for compensation and £20,000 for costs. The scope for agreeing a level of compensation below this figure was virtually removed by statements made by the President of the European Commission during the course of negotiations that the Commission's preliminary view was that £40,000 would be reasonable; and that £37,500 was the minimum which he could recommend his fellow members of the Commission to endorse. The figure for costs was also arrived at following his proposal for a compromise, and an undertaking was given that there would be no claw-back by the Legal Aid Fund.

The Commission's report of the settlement will report that the death of the applicant's husband was an unfortunate mistake which would not have occurred had the soldiers not mistakenly believed that the husband was attempting a terrorist attack on the Provincial Bank. It will also say that the British Government is acting on compassionate grounds and that the settlement does not imply any

The Rt Hon James Prior MP

*NSP 17*  
*CDD 3/10*





admission of a violation of the Convention or any reproach against the soldiers. The amount of our contribution to legal costs will not appear in the report.

The settlement still has to receive the blessing of the Commission, which cannot take place until the beginning of October, but it is very likely that, with the President's recommendation, which he said he would give, the Commission will approve the settlement. I regard the outcome of the case as very satisfactory in view of the difficulties in which an adverse finding by the Commission would have placed us.

I am sending copies of this letter to the Prime Minister, the Foreign and Commonwealth Secretary, the Home Secretary, the Attorney General and to Sir Robert Armstrong.

40  
Michael Heseltine

Michael Heseltine

McCand: Farrell  
Nov 79

3 AUG 1984





CONFIDENTIAL



NORTHERN IRELAND OFFICE  
WHITEHALL  
LONDON SW1A 2AZ

SECRETARY OF STATE  
FOR  
NORTHERN IRELAND

NRPM  
COD 25/7.

The Rt Hon Michael Heseltine MP  
Secretary of State for Defence  
Main Building  
WHITEHALL  
LONDON SW1A 2HB

25 July 1984

*Dear Michael*

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL V UK

Thank you for your letter of 12 July.

For the reasons set out in your letter, and Michael Havers' of 16 July, I agree that we should allow our negotiators to settle for up to £40,000 plus reasonable costs. While we obviously wish to keep the settlement as low as possible - both for financial reasons, and because a high settlement would tend to imply an admission of liability - it would be very undesirable to let the chance of a friendly settlement elude us for the sake of an extra £15,000: the possible alternative of an adverse finding by the Commission, and possibly the need to change the law on the use of reasonable force, would be very unfortunate. A friendly settlement with no liability - especially since it seems to have the Commission's support - seems an attractive option.

I understand that during the course of the negotiations last month, the President of the Commission suggested that the report of the settlement should include a statement of the fact that the shooting of Mr McLaughlin was a mistake: if the security forces had not thought that he was a terrorist, they would not have shot him. It seems to me that such a statement might provide a useful protection and I hope our negotiators might be able to secure some statement on these lines as part of the settlement package.

I am copying this letter to those who received yours.

*Yours*  
*John*  
CONFIDENTIAL



IRLAND: Farnell - v - MMB

MM 79



26 JUL 1982



FCS/84/211

SECRETARY OF STATE FOR DEFENCE

ECHR: Farrell V UK

1. ✓ Thank you for sending me a copy of your minute of 12 July to Jim Prior. I agree with the line you propose and in particular that our negotiators should be given authority to settle on the best terms available within the revised, and substantially reduced, offer from the representatives of the applicant at the recent meeting.
2. As to the desirability of settlement, I very much agree with what you say in your minute. I understand the Commission has confirmed its previous confidential provisional indication that it is minded to find the United Kingdom in breach of Article 2. A finding that we were in breach of the Article guaranteeing the right to life would be most serious and damaging to our general position on Human Rights issues. Specifically, if the case then went to the Court, as must be expected, and the finding were confirmed in a judgement, that would probably entail a change in UK law and practice on the use of force in response to serious crime, which would be most unwelcome. Now that the applicant's representatives have dropped their demand for an admission of liability we have the opportunity to avert this by payment of money and the recent demands are far more reasonable. I do not think we should allow this opportunity to slip by driving too hard a bargain.
3. As to quantum, I understand that the Commission, having apparently put pressure on the applicant's representatives to moderate their excessive demands, is not minded to exert itself to help us to beat them down further. This does not mean we should not use every argument at our disposal to achieve the lowest possible figure. But it is further  
/argument

CCPE

NRPM

CDP 19/7





argument for giving our negotiators discretion.

4. I was glad to learn that the other potentially damaging application against the UK in Strasbourg alleging a breach of Article 2 arising from events in Northern Ireland - the application by Mrs Stewart concerning the death of her son after being struck by a plastic baton round - was last week ruled inadmissible by the Commission as being manifestly ill-founded. By settling the Farrell case we have a chance to remove this awkward issue from the Strasbourg agenda for the present at least.

5. I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Attorney General, the Home Secretary and Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office

19 July, 1984



Ireland Nov 79

Farrer vs MOD



File with CP 17.1



file  
copy

10 DOWNING STREET

From the Private Secretary

16 July 1984

Dear Richard,

European Commission on Human Rights: Farrell v UK

The Prime Minister has considered the arguments in the Defence Secretary's letter of 12 July to the Northern Ireland Secretary. Subject to the views of colleagues, she agrees that our negotiators should be given authority to strike the best bargain they can in terms of both compensation and costs below the revised claim.

I am sending copies of this letter to Len Appleyard (Foreign and Commonwealth Office), Hugh Taylor (Home Office), Henry Steel (Law Officers' Department) and Richard Hatfield (Cabinet Office).

Yours sincerely,  
Charles Powell

Richard Mottram Esq  
Ministry of Defence.



Helaine

W. G. M. S.  
Nov 79



CONFIDENTIAL



01-405 7641 Extn 3201

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

16 July 1984

The Rt Hon Michael Heseltine MP  
Secretary of State for Defence  
Ministry of Defence  
Main Building  
Whitehall  
LONDON S W 1

NRPT

CDP 16/7.

*Dear Michael,*

EUROPEAN COMMISSION OF HUMAN RIGHTS : FARRELL

Thank you for sending me a copy of your letter to the Northern Ireland Secretary of 12 July.

In the light of the circumstances in which it now seems that a settlement can be achieved - in particular, that it will be described, by agreement, as made on compassionate grounds and with no attempt by Mrs Farrell's representatives to gloss it as carrying any implication of acceptance of a breach of the Convention - I think that it is safe to go substantially above what we previously thought to be our ceiling for compensation and I share your view that even a full settlement of what Mrs Farrell's lawyers now ask for would be a cheap price to pay for averting a certain adverse finding by the Commission.

So far as the compensation is concerned, therefore, I recommend that our negotiating team should be authorised to settle for the best figure that they can achieve below £40,000, the negotiating tactics being left to their discretion. I would hope that they could achieve a settlement in the region of £35,000 but I would not set that as a ceiling or tie them to any figure.

As regards costs, I am sure that the request that the compensation paid to Mrs Farrell should not be raided

/by

CONFIDENTIAL



CONFIDENTIAL



by the Legal Aid Fund for contributions in respect of the cost of her domestic proceedings is reasonable. I recommend that we agree to it without demur. The claim for sums of £10,000 plus VAT in respect of Counsel's fees and £15,000 plus VAT in respect of solicitor's fees does not strike me at first glance as manifestly extravagant but we shall need to see their itemised bills which can then be scrutinised by the Treasury Solicitor's litigation experts. If the bills bear out my impression that we are not being taken for a ride, I recommend that our negotiating team should be authorised to accept the claim without further quibbling. If, however, the bills show that the sums claimed are excessive beyond reasonable argument, I suggest that our negotiators should be authorised to make a counter-claim of whatever our litigation experts advise is a reasonable (but not ungenerous) sum. This could be coupled with an offer to abide by an independent assessment (e.g. by a High Court Taxing Master) in default of agreement.

I am copying this letter to the Prime Minister, the Northern Ireland Secretary, the Foreign and Commonwealth Secretary, the Home Secretary and to Sir Robert Armstrong.

Yours Gr.  
Michael.

CONFIDENTIAL

IRELAND : Fawell v MOD : Nov 79

17-6 JUL 1984

11  
12  
1  
2  
3  
4  
5  
6  
7  
8  
9  
10





MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000  
DIRECT DIALING 01-218 2111/3

MO 19/3/12

12th July 1984

Prime Minister  
 Agreed, subject to views of colleagues,  
 to negotiate best deal possible  
under £4,000 damages + £25,000 costs?  
 Yes no C.D. P. 13/7

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

Since I wrote to you on 22nd February 1984 about this case, the President of the European Commission on Human Rights has chaired a meeting between the legal representatives of the Government and of Mrs Farrell. The outcome is that the latter have rejected our opening offer of £15,000 but have dropped their claim for £100,000 compensation (including an award of exemplary damages) and for an acknowledgement of a violation of the Convention, and have expressed willingness to settle for £40,000 plus costs. The latter are stated by Mrs Farrell's lawyers to be £25,000 in respect of expenses connected with the European Commission, and they also want us to protect Mrs Farrell against any claim on her award which might be made by the Legal Aid Fund. They are also ready to see the settlement described as a compassionate payment and as '£40,000 plus costs as agreed between the parties' so as not to inflate the apparent size of the overall figure. This offer has been noted by the UK negotiators, who have promised a response at a further meeting on 26th July.

We now need to decide what authority to give our negotiators, bearing in mind that we have already agreed to go to £25,000 if necessary, but have not addressed the question of costs. The figure of £40,000 is related to an optimistic view of the deceased's earning

The Rt Hon James Prior MP





potential and the detailed assessment now being made by our litigation experts of the figures provided by Mrs Farrell's lawyers could well give grounds for a significantly lower offer. It is usual to make a contribution to costs when settling Strasbourg proceedings, and the Commission has indicated that a payment in respect of costs would be appropriate in this case. The size of this contribution (subject of course to scrutiny of itemised accounts) would be a matter for legal negotiation.

I believe the best course, now that we are entering into a period of hard bargaining in which it would be impracticable for us to consult at every stage, would be to give our negotiators authority to strike the best bargain they can in terms of both compensation and costs below the revised claim, bearing in mind the need not to agree to terms which might be interpreted as a tacit admission of liability. I would hope that we might still find it possible not to go much above £25,000 for compensation, but I do not think it would be helpful to set hard and fast limits now that the extravagant claims for exemplary damages and admission of liability have been dropped. While we obviously wish to achieve a settlement on the most advantageous financial terms, we also need to remember that it would not be in our interests for negotiations to fail and for the case to proceed on the basis of an adverse finding by the Commission to the European Court, where a judgement against us would be likely to compel us to change our law on the use of force to prevent crime and effect arrest. It is important that the settlement should not lend itself to interpretation as an admission of a violation of the Convention, and I consider that the terms now on offer are satisfactory in this respect. We hope to be able to settle for less, but in my view even if we paid what Mrs Farrell's lawyers now ask for in full, it would be a cheap price to pay for averting what we must now expect to be a certain adverse finding by the Commission if the case were allowed to proceed.





I should be grateful to know if you agree. I am sending copies of this letter to the Prime Minister, the Attorney General, the Foreign and Commonwealth Secretary, the Home Secretary and to Sir Robert Armstrong.

Yours  
w  
Michael Heseltine

Michael Heseltine



CONFIDENTIAL

CS/C



QUEEN ANNE'S GATE LONDON SW1H 9AT

12 March 1984

Dear Secretary of State,

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL v UK

N. B. P. R.

Thank you for sending me a copy of your letter of 22 February to Jim Prior. I have also seen the response from the Prime Minister's Office of 27 February.

13/3

I agree generally with your proposed line. As I indicated on the previous round of correspondence, I am concerned at the implications of this case for our domestic law on the reasonable use of force, and I am thus heartened at the initial signs of success for the tactics being adopted. The level at which the initial offer should be pitched should obviously be high enough to show that we are seriously interested in a settlement, without implying thereby a doubt as to the ability of our own procedures to stand up to independent scrutiny.

I am sending copies of this letter to the Prime Minister, Geoffrey Howe, Jim Prior and Michael Havers.

Yours sincerely,

Nigel Partridge

APPROVED BY THE SECRETARY OF STATE  
AND SIGNED IN HIS ABSENCE

The Rt Hon Michael Heseltine, MP

CONFIDENTIAL



(Ireland) : Farrell v M.O.D. Nov. 79

113 Nov 1979

11 12 1 2 3 4 5 6 7 8 9 10 11 12 1 2 3 4 5 6 7 8 9 10 11 12



CONFIDENTIAL



NORTHERN IRELAND OFFICE  
WHITEHALL  
LONDON SW1A 2AZ

SECRETARY OF STATE  
FOR  
NORTHERN IRELAND

The Rt Hon Michael Heseltine MP  
Secretary of State for Defence  
Main Building  
Whitehall  
LONDON  
SW1 2HB

N.B.P.D.

A.J.C.  $\frac{8}{3}$

8 March 1984

*Michael Heseltine*

EUROPEAN COMMISSION ON HUMAN RIGHTS : FARRELL VERSUS THE UK

Thank you for your letter of 22 February. I have also seen the letters of 27 February and 2 March from the Prime Minister's Private Secretary to yours, Michael Havers' letter of 28 February and Geoffrey Howe's of 2 March.

I agree that the course we decided on last June remains the best one to pursue and that the response you now propose to make to the Commission is the correct one.

Although, as your officials will be aware, my officials have been trying to refine the best estimate of the damages Mrs Farrell might have received in a successful domestic action for damages they have not been able to improve on the original estimate of £30,000 to £40,000. For the reasons set out in Michael Havers' letter, I therefore support your proposal to incorporate an offer of £15,000 in our response to the Commission.

Copies of this letter go to the recipients of yours.

*Michael Heseltine*

CONFIDENTIAL



IRELAND : Farrell : NOV 79



8 MAR 1984





DG

10 DOWNING STREET

*From the Private Secretary*

2 March 1984

*Dear Michael,*

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v. THE U. K.

In my letter of 27 February I explained that the Prime Minister agreed generally with the proposals that Mr. Heseltine planned to put to the European Commission but wanted to see further legal advice on the size of our opening offer.

Mrs. Thatcher has since seen the Attorney General's letter of 28 February. She is now inclined to accept Sir Michael Havers' view that our opening offer should be £15,000.

I am sending copies of this letter to Roger Bone (Foreign and Commonwealth Office), John Lyon (Northern Ireland Office), Henry Steel (Law Officers' Department) and Hugh Taylor (Home Office).

*You are  
LH Cole.*

Richard Mottram, Esq.,  
Ministry of Defence.



FCS/84/66

SECRETARY OF STATE FOR DEFENCE

European Commission on Human Rights: Farrelll -v- the United  
Kingdom

1. Thank you for sending me a copy of your letter of 22 February to the Northern Ireland Secretary.
2. I agree with your proposal that the Government should make a counter offer. Not to do so would make our original willingness to consider friendly settlement appear hollow, and lose us valuable credit with the Commission. Conversely I think we have much to gain with them from showing willingness to put reasonable sums of money on the table. I therefore favour the Prime Minister's suggested starting figure of £20,000. Subject to that alteration I agree with the terms in which you propose to write.
3. I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Attorney General and the Home Secretary.

A handwritten signature in dark ink, appearing to be 'G. Howe'.

(GEOFFREY HOWE)

Foreign and Commonwealth Office

2 March 1984



Ireland : Farrell v M.O.D. Nov. 79

11 Nov 1984

11 12 1 2 3 4  
5 6 7 8 9 10



CONFIDENTIAL



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

01-405 7641 Extn 3201

28 February 1984

The Rt Hon Michael Heseltine MP  
Secretary of State for Defence  
Ministry of Defence  
Main Building  
Whitehall  
LONDON S W 1

Prime Minister

contact?

RR 29/2

Yes no

Dear Michael.

EUROPEAN COMMISSION OF HUMAN RIGHTS : FARRELL

Thank you for sending me a copy of your letter to Jim Prior of 22 February. I have now also seen the letter of 27 February from the Prime Minister's Private Secretary to yours.

I agree with your analysis of the situation and with the tactics which you propose. As regards the amount to be offered, I do see some force in the Prime Minister's hesitation about our initial offer. Nevertheless, my considered view is that you are right to suggest that we should keep our opening offer down to £15,000 but should be prepared to be pushed up to a maximum of £25,000 in the course of negotiations if the applicant and her advisers show any genuine interest in settlement. From what I know of this case, I have to say that I doubt very much whether the other side have any intention of settling except on terms which would involve our explicit or implicit admission of full liability. (There may be a difference of attitude between the applicant herself and her lawyers, but I think that it is going to be difficult for us to exploit this though we shall be alert for opportunities to do so.) If I am wrong, and they can be tempted to enter into genuine negotiations, I think that an initial offer of £15,000 is just as likely to tempt them as an offer of £20,000. On the other hand, an initial offer of £20,000

/would

CONFIDENTIAL



CONFIDENTIAL



would leave us very little negotiating room before we hit our ceiling of £25,000 and I really do think that it would be dangerous to go much above that if we wish to present the settlement as made purely on compassionate grounds with no implicit acceptance of liability. So far as concerns the impact of our opening offer on the Commission, I do not think that they would be unfavourably impressed by an offer of £15,000. The question of the impact on the public should not arise since these "friendly settlement" negotiations are kept confidential whether or not they succeed. But even if they were leaked, I would not expect the public to regard an initial offer of £15,000 as derisory or to attach much significance to the difference between that and an offer of £20,000.

For all these reasons, therefore, I myself would endorse your proposals in their entirety.

I am copying this letter to the other recipients of yours.

Yours ever,  
Michael

CONFIDENTIAL

Ireland Nov 29 Farrell

29 FEB 1984







FILE

67

10 DOWNING STREET

*From the Private Secretary*

27 February, 1984

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v. U.K.

The Prime Minister saw over the weekend your Secretary of State's minute to the Secretary of State for Northern Ireland about the above case.

Mrs. Thatcher is in general agreement with the proposals that Mr. Heseltine plans to put to the European Commission but she is inclined to think that it would be a mistake to open with an offer as low as £15,000. She believes that an offer of this size might alienate those concerned and would therefore be inclined to start with £20,000. But she would like to see further legal advice on the opening amount - perhaps the Attorney General could take this into account in commenting on your Secretary of State's letter.

I am copying this letter to John Lyon (Northern Ireland Office), Hugh Taylor (Home Office), Roger Bone (Foreign and Commonwealth Office) and to Henry Steel (Attorney General's Office).

A.J. COLES

R. Mottram, Esq.,  
Ministry of Defence

CONFIDENTIAL





MINISTRY OF DEFENCE WHITEHALL LONDON SW1A 2HB

TELEPHONE 01-218 9000  
DIRECT DIALLING 01-218 2111/3

MO 19/3/12

Prime Minister

22nd February 1984

This case stems from an incident in Norway in 1971 (see attached letter) Subject to colleagues, agree to proposal overleaf to handling?

*De Lin*

*Yes - but  
A.J.C. 24 1/2  
a mistake to open as low  
at 11,000. I  
would start  
at 20,000.  
They may  
just  
consider  
that - but  
L11,000 may  
be  
Please  
ask for  
further  
by d  
advise  
opening  
amount  
no*

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

In our correspondence last June we agreed that in view of the likely attitude of the Commission on the merits of this case we should make it clear to the Commission and the other side that we would not be averse to a settlement although we also agreed that our terms for any settlement would have to be very strict.

So far our tactics have worked well and have I believe enhanced our standing with the Commission whilst lowering that of the other side. The Commission transmitted our offer to consider a settlement and the initial response from the other side was that the applicant would require a "clear holding of a violation of the Convention" together with substantial compensation to reflect this fact but they refused to name a sum arguing that we should make the first offer. The Commission replied that the applicant must state the amount of compensation required. In response the other side have asked for £100,000 based they argue on loss of earnings plus exemplary damages.

We now need to decide how to respond to this offer. First the claim for £100,000 is not serious and is probably not intended to be so. We could simply reject the proposal, make no counter-offer and let the case continue. However, I think our original aim of trying to reach a settlement on our terms if possible is still right





and that there is much to be said for making our settlement terms clear to the Commission and establishing the position that it is the other side who turn down a reasonable settlement offer. Also we must try and make sure that our offer is made known to Mrs Farrell who may well be attracted by a reasonable sum thereby isolating her legal advisers who we suspect are politically motivated.

I suggest that we should put the following position to the Commission:

- a. The claim for £100,000 is unjustifiable and out of the question.
- b. The demand that a violation of the Convention is admitted is unacceptable.
- c. HMG nevertheless remains willing to consider serious proposals for a settlement but only on the lines I set out in my letter of 17th June ie no admission of liability, no recognition that UK law is defective or in conflict with the Convention, no settlement high enough to imply such admission or recognition.
- d. We are prepared to meet representatives of the other side under the aegis of the Commission to consider an ex-gratia settlement on compassionate grounds.
- e. An indication of the sort of figure we have in mind.

On the last point I understand that leading Counsel's best estimate is that if an action for damages by the other side had been successful the award might have been about £30-40,000. This assessment rests on various assumptions in the Applicant's favour (as to her husband's personal circumstances at the time of his death) which are not well founded. Our offer therefore should be





significantly lower than this, though obviously not derisory. I suggest that we might open at £15,000 but be prepared to go up to £25,000 if a settlement looks possible.

I would be grateful for your, and colleagues agreement to this proposal.

Copies of this letter go to the Prime Minister, the Attorney-General, the Foreign and Commonwealth Secretary and the Home Secretary.

*yes in*  
A handwritten signature in cursive script, appearing to read "Michael Heseltine".

Michael Heseltine





Time limits  
 subject to colleagues' views, you

MO 19/3/12

Yes ml

SECRETARY OF STATE FOR NORTHERN IRELAND

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

This case stems from an incident in Newry in 1971. Information had been received that a terrorist attack would be made on a bank and soldiers were keeping watch from a nearby roof. They saw two men go to the night safe and then three other men cross the road and a scuffle started. The soldier in charge shouted 'Halt' but the three men ran off, after a further warning the soldiers opened fire killing the three men. None of the men was armed or carrying a bomb; they were not terrorists only petty thieves.

2. Mrs Farrell (the widow of one of the men involved) brought an action against MOD alleging that we were liable for the death of her husband. The case finally reached the House of Lords in December 1979 and their judgement upheld the verdict of the jury in the original trial that it was reasonable for the soldiers to believe that the three men had attempted to plant a bomb and for them to shoot to kill both to prevent a crime and to make an arrest.

3. Mrs Farrell then submitted an application to the European Commission. Although some of her contentions have been rejected by the Commission they have declared admissible the central part of her application. Put simply Mrs Farrell's argument is that the Criminal Law Act (Northern Ireland) 1967 (which is the same as English law in this respect) which allows "such use of force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders" is a subjective and





therefore less stringent test than the objective test contained in Article 2(2) of the European Convention "the use of force which is no more than is absolutely necessary". Although the UK has submitted a strong case informal indications from the Secretary of the Commission are that the Commission's provisional opinion, by a substantial majority, is that the UK is in breach of Article 2 and that our domestic law falls short of the standards imposed by the Convention. As the Convention requires the Commission have now asked both sides to consider a friendly settlement.

4. We are therefore faced with some unpalatable choices. If we fight on and Commission find against us the case will then be referred to the Council of Ministers and then the European Court. At this stage proceedings would be public and we must expect that the European Court will also find against the UK. This would be a major propaganda victory for the IRA and would also lead almost certainly to the requirement to change UK domestic law which on all past precedents we would have to follow. The effects of such a change would go far wider than the operation of the security forces in Northern Ireland and would involve the police throughout England and Wales.

5. On the other hand, although all our past policy has been to fight this case, there are arguments for exploring the possibility of a settlement now. First, there is the point that in order to defuse some of the sympathy that is evident in the Commission for Mrs Farrell and to maintain our relations with the Commission it would put us in a better light if we were to indicate that we would not oppose a settlement and ask what the other side have in mind. Since they already know of the preliminary conclusions of the Commission they may not want a settlement and their terms may lose them support at the Commission. Such a move on our part may also drive a wedge between Mrs Farrell and some of her more politically motivated advisers.

6. If there is any prospect of a settlement then our conditions will need to be fairly stiff so that a settlement is on significantly





better terms than a defeat at the Commission and the Court. We would therefore have to insist on no explicit admission of liability, no explicit recognition that the UK law was defective or in conflict with the Convention and no payment to Mrs Farrell that was so high as to imply such an admission or recognition.

7. Such a settlement would receive no publicity from the Commission and if the other side attempted to make capital out of it we would argue that Mrs Farrell's husband was not a terrorist only a petty criminal and that she had so far been denied any compensation and we were therefore making a small gesture in recognition of her suffering which we had not been able to do earlier because wider legal issues had been involved.

8. None of these options is palatable and any settlement, however strict the conditions carries some implication that we are at fault. However my own preliminary view, taken with extreme reluctance, is that we should at least make it clear that we are not adverse to a settlement and if negotiations develop drive a hard bargain along the lines I have indicated above. If a settlement is not possible then we have no alternative but to fight on and put forward the best case we can. The Commission have asked for any proposals we might have by the end of the month and I would be grateful for your own views and those of my colleagues to whom I am copying this minute.

9. Copies of this minute go to the Prime Minister, the Attorney General, the Foreign and Commonwealth Secretary and the Home Secretary.

*WMS*  
Ministry of Defence  
17th June 1983





10 DOWNING STREET

*From the Private Secretary*

1 July 1983

European Commission on Human Rights: Farrell v UK

The Prime Minister has seen your Secretary of State's minute of 17 June, the Attorney General's minute of 22 June, the Foreign and Commonwealth Secretary's minute of 27 June and the Northern Ireland Secretary's minute of 28 June.

She agrees that we should explore the possibility of a settlement of this case on the lines suggested in paragraphs 5, 6 and 8 of Mr. Heseltine's minute.

I am copying this letter to the Private Secretaries to the Attorney General, the Foreign and Commonwealth Secretary, the Home Secretary and the Northern Ireland Secretary.

A. J. COLES

Richard Mottram, Esq.,  
Ministry of Defence.

NR





10 DOWNING STREET

~~BF 1.7.83~~

~~TO FERB.~~

~~see note attached~~

John Coles has  
given the PM's answer.

FERB



FERS



10 DOWNING STREET

I have told  
Mr. Evans that  
we will let him  
have a reply  
high thing tomorrow  
when the PM  
is likely to  
have read the  
papers.

Farrell v MOD

FERS  
30.6

Nick Evans have asked  
whether the PM has  
any comments on s/s MOD's  
~~to s/s NIO~~ minute of 17/6  
on the above. It went  
into folder 1 of the box  
last night and has not  
as yet been looked at.

Mr Evans said a reply  
would need to be sent  
urgently (ie this afternoon)  
but added that he



didn't expect the PM  
would have any comments.

Can I con him with  
Mr Evans that he  
can go ahead?

Mark  
30/6/83



CONFIDENTIAL



Mr. Gles - 16 see  
MR 1/2

NB PM 1 suggest.

FRB  
1-7.

SECRETARY OF STATE FOR DEFENCE

EUROPEAN COMMISSION OF HUMAN RIGHTS: FARRELL v U.K.

Thank you for sending me a copy of your minute of 17 June to the Northern Ireland Secretary. I have seen the subsequent responses of the Attorney General, the Foreign and Commonwealth Secretary and the Northern Ireland Secretary.

I should be very reluctant to see existing domestic law on the lawful use of force brought into question by the European Court. The present test on the lawful use of force found in section 3 of the Criminal Law Act 1967 is a proper one, and superior to the test apparently contended for by the applicants in the Farrell case. Properly understood, we think our law already requires the use of only such force as is absolutely necessary. What is unacceptable is that those words should be applied without reference to the circumstances in which the officer acted. It may have been necessary for him to use deadly force because of his reasonable perception of the situation.

Although no doubt we could argue as much before the European Court, the circumstances of the Farrell case are not likely to put our arguments in the best light. And it would be unfortunate to get ourselves into the position of allowing what might be seen as a hard case to lead to what would undoubtedly be bad law. I therefore agree with you that steps should be taken to secure a friendly settlement, and one which does not bring domestic law into dispute. It follows that if there is a balance to be struck in fixing the terms of a friendly settlement, I should naturally like reasonable priority to be given to the avoidance of bringing domestic law into dispute.

I am sending a copy of this minute to the Prime Minister, the Foreign and Commonwealth Secretary, the Northern Ireland Secretary and the Attorney General.

L.B.

30 June 1983

CONFIDENTIAL



Ireland  
Nov 29  
Famell 011200

29 JUL 1983

11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11  
11 12 11







10 DOWNING STREET

Prime Minister

European Commission on Human

rights : Farrell v U.K.

The Attorney - General, the Foreign Secretary and the Northern Ireland Secretary all agree that we should explore the possibility of a settlement of this case on the lines suggested in paras. 5, 6 and 8 of the Deane Secretary's minute (attached).

Do you also agree?

A. S. C.  $\frac{29}{6}$ .

CONFIDENTIAL



NORTHERN IRELAND OFFICE  
GREAT GEORGE STREET,  
LONDON SW1P 3AJ

SECRETARY OF STATE  
FOR  
NORTHERN IRELAND

The Rt Hon Michael Heseltine MP  
Secretary of State for Defence  
Main Building  
Whitehall  
LONDON  
SW1 2HB

28 June 1983

*Dear Secretary of State*

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

Thank you for your minute of 17 June.

I agree that none of the options available in this case are particularly palatable, and that the balance of advantage lies in favour of our indicating a willingness to settle, with a view to an eventual settlement along the lines which you propose. I accept that a friendly settlement does not necessarily insure us against future cases which seek to bring a change in the law, but feel that it is nonetheless the best course to pursue in the present circumstances.

Copies of this letter go to the recipients of yours.


*Yours sincerely*

*David Hill*

JAMES PRIOR  
(Approved by the  
Secretary of State  
and signed in his  
absence)

CONFIDENTIAL

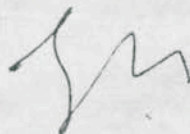


016  
  
FCS/83/116

SECRETARY OF STATE FOR DEFENCE

European Commission on Human Rights: Farrell v UK

1. <sup>PM's Box</sup> Thank you for sending me a copy of your minute of 17 June to the Secretary of State for Northern Ireland.
2. I share your view that we should indicate a willingness to contemplate a settlement even though our prospects of achieving satisfactory conditions seem slim. I agree too that we should follow the line in paragraph 6 of your minute if negotiations get underway. If a settlement were reached, the Commission would simply report its terms to the Committee of Ministers without giving any opinion as to the merits. An adverse finding would therefore be avoided. Nor would there be any obligation to change UK law or practice. It should be borne in mind however that the report would be a public document.
3. I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Attorney General and the Home Secretary.



(GEOFFREY HOWE)

Foreign and Commonwealth Office

27 June 1983

CONFIDENTIAL



Ireland  
Nov 19, 1900  
Farrall v. MVO

27 JUN 1883







SECRETARY OF STATE FOR DEFENCE

EUROPEAN COMMISSION OF HUMAN RIGHTS : FARRELL

Thank you for sending me a copy of your minute to the Northern Ireland Secretary of 17 June. <sup>requested</sup> I have, as you know, kept in close touch with this case throughout the domestic proceedings (where I myself represented the Ministry of Defence in the House of Lords) and in the current proceedings in Strasbourg.

I substantially agree with your analysis of the position in which we now find ourselves and I would support your recommendation that we should reply to the Commission to the effect that, while we are not ourselves making any specific offer, we would be willing to consider sympathetically any reasonable suggestion that the applicant might make for the friendly settlement of the case. I agree that, in any negotiations which might then ensue, we should be guided by the conditions indicated in paragraph 6 of your minute. I expect - and I think that this is your view also - that it will prove impossible to achieve a settlement consistent with these conditions but I think that, if we respond in this way, we shall finish up in a better position vis-a-vis the Commission than if we had refused even to contemplate the possibility of a settlement.

I understand that officials of all the Departments concerned are working closely together on the handling of this and other aspects of the case and are being assisted and advised by the Counsel whom I have nominated for the purpose (Senior Crown Counsel, Northern Ireland, and a

/very





very reliable Junior, from the English Bar) and I suggest that we might now leave the detailed handling of the negotiations to them. I myself would propose to continue to keep a very close eye on the matter and you and other interested colleagues would of course be consulted if (which, as I say, I do not really expect) a settlement compatible with our conditions seemed obtainable.

I am copying this minute to the Prime Minister, the Northern Ireland Secretary, the Foreign and Commonwealth Secretary and the Home Secretary.

M.H.

LAW OFFICERS' DEPARTMENT

22 June 1983



23 JUN 1983







Prime Minister

2

MO 19/3/12

Prime Minister  
Attorney's reaction  
at flag A.

FERB  
27.6.

*Advis' advised?*  
*and*

To note that Her  
Secretary of State for Defence is  
proposing to discuss a settlement,  
though on conditions which they do not  
expect the other side to accept.

SECRETARY OF STATE FOR NORTHERN IRELAND

FERB

24.6

EUROPEAN COMMISSION ON HUMAN RIGHTS: FARRELL v UK

This case stems from an incident in Newry in 1971. Information had been received that a terrorist attack would be made on a bank and soldiers were keeping watch from a nearby roof. They saw two men go to the night safe and then three other men cross the road and a scuffle started. The soldier in charge shouted 'Halt' but the three men ran off, after a further warning the soldiers opened fire killing the three men. None of the men was armed or carrying a bomb; they were not terrorists only petty thieves.

2. Mrs Farrell (the widow of one of the men involved) brought an action against MOD alleging that we were liable for the death of her husband. The case finally reached the House of Lords in December 1979 and their judgement upheld the verdict of the jury in the original trial that it was reasonable for the soldiers to believe that the three men had attempted to plant a bomb and for them to shoot to kill both to prevent a crime and to make an arrest.

3. Mrs Farrell then submitted an application to the European Commission. Although some of her contentions have been rejected by the Commission they have declared admissible the central part of her application. Put simply Mrs Farrell's argument is that the Criminal Law Act (Northern Ireland) 1967 (which is the same as English law in this respect) which allows "such use of force as is reasonable in the circumstances in the prevention of crime or in effecting or assisting in the lawful arrest of offenders" is a subjective and





therefore less stringent test than the objective test contained in Article 2(2) of the European Convention "the use of force which is no more than is absolutely necessary". Although the UK has submitted a strong case informal indications from the Secretary of the Commission are that the Commission's provisional opinion, by a substantial majority, is that the UK is in breach of Article 2 and that our domestic law falls short of the standards imposed by the Convention. As the Convention requires the Commission have now asked both sides to consider a friendly settlement.

4. We are therefore faced with some unpalatable choices. If we fight on and Commission find against us the case will then be referred to the Council of Ministers and then the European Court. At this stage proceedings would be public and we must expect that the European Court will also find against the UK. This would be a major propaganda victory for the IRA and would also lead almost certainly to the requirement to change UK domestic law which on all past precedents we would have to follow. The effects of such a change would go far wider than the operation of the security forces in Northern Ireland and would involve the police throughout England and Wales.

5. On the other hand, although all our past policy has been to fight this case, there are arguments for exploring the possibility of a settlement now. First, there is the point that in order to defuse some of the sympathy that is evident in the Commission for Mrs Farrell and to maintain our relations with the Commission it would put us in a better light if we were to indicate that we would not oppose a settlement and ask what the other side have in mind. Since they already know of the preliminary conclusions of the Commission they may not want a settlement and their terms may lose them support at the Commission. Such a move on our part may also drive a wedge between Mrs Farrell and some of her more politically motivated advisers.

6. If there is any prospect of a settlement then our conditions will need to be fairly stiff so that a settlement is on significantly





better terms than a defeat at the Commission and the Court. We would therefore have to insist on no explicit admission of liability, no explicit recognition that the UK law was defective or in conflict with the Convention and no payment to Mrs Farrell that was so high as to imply such an admission or recognition.

7. Such a settlement would receive no publicity from the Commission and if the other side attempted to make capital out of it we would argue that Mrs Farrell's husband was not a terrorist only a petty criminal and that she had so far been denied any compensation and we were therefore making a small gesture in recognition of her suffering which we had not been able to do earlier because wider legal issues had been involved.

8. None of these options is palatable and any settlement, however strict the conditions carries some implication that we are at fault. However my own preliminary view, taken with extreme reluctance, is that we should at least make it clear that we are not adverse to a settlement and if negotiations develop drive a hard bargain along the lines I have indicated above. If a settlement is not possible then we have no alternative but to fight on and put forward the best case we can. The Commission have asked for any proposals we might have by the end of the month and I would be grateful for your own views and those of my colleagues to whom I am copying this minute.

9. Copies of this minute go to the Prime Minister, the Attorney General, the Foreign and Commonwealth Secretary and the Home Secretary.

*WDS*  
Ministry of Defence  
17th June 1983



IRELAND : Farrell - v - M&D

Nov. 1979.

24 JUN 1981







01-405 7641 Extn

ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

7th November 1979.

The Rt. Hon. Francis Pym, M.P.  
Secretary of State for Defence.

Dear Francis.

NBPM.  
RV  
EX

Farrell v. M.O.D.

We completed the hearing of this Appeal in the House of Lords yesterday morning and have succeeded on a narrow point, that is, that the Court of Appeal of Northern Ireland should not have ordered a retrial on the grounds that issues which were not pleaded should be tried.

I think this arose because the courts in Northern Ireland and the Bar are very sloppy about their pleadings and are not, apparently bound by the strict rules which apply in England. Although we have won we have not managed to persuade the House of Lords to rule upon the very difficult and important point whether the M.O.D. can be liable for the negligent planning and preparation of an anti-terrorist operation.

This issue may well be raised in some future case. If it is, the House of Lords has made it clear that we should take an objection, at the stage where the allegations are made in the pleadings, as a preliminary point, so that it can be decided. This means that we may have to go through the whole thing again - possibly on facts less helpful to us than those in the Farrell case. But try as I might, I could not persuade their Lordships to look at the wider issues. Accordingly, this is a somewhat limited victory, but in no way damaging to us.

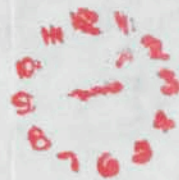
When I get the judgments, I will write again if I feel that they have implications for the security forces which should be considered.

Yours truly,

Michael.



8 NOV 1969





KODAK Q-60 Color Input Target

C M Y



IT8.7/2-1993  
2007:03

[FTP://FTP.KODAK.COM/GASTDS/Q60DATA](ftp://ftp.kodak.com/gastds/q60data)

Q-60R2 Target for  
KODAK  
Professional Papers

