

Sir David Normington
Permanent Secretary
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

3 November 2005

Dear Sir David,

DfES MISMANAGEMENT: FAMILY POLICY – Shielding Mr Bruce Clark

Thank you for your letter of 27 October 2005 averring that “Ministers were not... misled; nor was family policy distorted.” It is a posture contradicted by the facts:

Public Law – The Distortion of Policy

The 2002 Guidelines on MSbP are predicated on Mr Clark’s belief that scores of innocent familial activities (set out in long lists) can be tokens of guilt which warrant referral to Social Services.

The Clark Guidelines replace the customary presumption of innocence with a presumption of guilt. Unless Ministers intended to cross this line, family policy is of necessity distorted.

Private Law – The Misleading of Ministers

The 2004 Green Paper Parental Separation is predicated on a basic legal error (that there already is a legal presumption of meaningful or reasonable contact between parents and their children¹).

There is no such presumption. The Green Paper, and the resulting Bill, are built on air.

It is assumed you do not seek to imply that Ministers over-rode Mr Clark - and elected of their own initiative to mislead the public on a point of fundamental importance.

Lord Adonis is currently taking a Bill through Parliament, unaware that two years ago Mr Clark jettisoned the presumption on which the Bill is supposedly founded.

Are you absolutely sure it is proper to withhold this information from your Ministers?

Yours sincerely,

David Mortimer

¹ Ministerial Foreward, *Parental Separation*, Cm 6273; page 2, para 2.

Lord Adonis
The Department for Education and Skills
Sanctuary Building
Great Smith Street
London SW1P 3BT

19 October 2005

Dear Lord Adonis,

DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: Undermining the Children and Adoption Bill

I should perhaps have mentioned that letters similar to the one to you - of 17 October - went to your colleagues. As a result, the other DCA and DfES Ministers are aware that in the Children and Adoption Bill, you were 'sold a pup'.

This same fact is known to Sir David Normington, and, as you will have noticed, to:

- the front bench of the Conservatives
- the front bench of the Liberal Democrats

It is a pity that one of those least informed about the Bill's provisions on contact should be the Minister presenting it:

- the information you seek can be found in the Consensus papers your staff have on file
- an alternative might be to establish what went wrong by asking Mr Clark

Could I prevail upon you to confirm that this letter has been drawn to your attention?

Yours sincerely,

David Mortimer

CONSENSUS

Family Law Reform

Lord Adonis
The Department for Education and Skills
Sanctuary Building
Great Smith Street
London SW1P 3BT

17 October 2005

Dear Lord Adonis,

DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: The Children and Adoption Bill

You will recall the letter of 7 October 2005 to the Permanent Secretary affirming that Government private law policy is based on 'an elementary factual error'.

A side-letter of even date to you stated:

'Ministers from whom this information has been withheld are at a disadvantage.'

This letter, in addition, identified a risk of:

'exposure - either after enactment or before, e.g. during parliamentary scrutiny'

In the wake of the 11-12 October sessions in Grand Committee, I wonder if you agree?

Yours sincerely,

David Mortimer

Sir David Normington
Permanent Secretary
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

14 October 2005

Dear Sir David,

**DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: The Children and Adoption Bill**

You will recall my letter of 7 October 2005 re the above affirming that Government policy in this area was based 'on an elementary factual error'.

A side-letter of even date to Lord Adonis identified a risk of:

'exposure - either after enactment or before, e.g. during parliamentary scrutiny'

Lord Adonis may now confirm that this prediction has been made good.

Perhaps you would like to have a word with him yourself? In which connection, you may first wish to have sight of Hansard (12 October 2005) starting at Column GC107.

Our letter to you of 7 October asserted: 'family policy is now inoperable'

I wonder if Lord Adonis agrees that the Children and Adoption Bill has fallen out of bed?

Perhaps Mr Clark should explain to him how this happened?

Yours sincerely,

David Mortimer

Lord Falconer of Thoroton
Department for Constitutional Affairs
Selborne House
54-60 Victoria Street
London SW1E 6QW

14 October 2005

Dear Lord Falconer,

DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: The Children and Adoption Bill

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Perhaps it is time to re-visit Sir David Normington's inquiry into Mr Clark?

Yours sincerely,

David Mortimer

Baroness Ashton of Upholland
The Department for Constitutional Affairs
Selborne House
54-60 Victoria Street
London SW1E 6QW

17 October 2005

Dear Lady Ashton,

DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: The Children and Adoption Bill

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Yours sincerely,

David Mortimer

The Rt Hon Ruth Kelly
The Department for Education and Skills
Sanctuary Building
Great Smith Street
London SW1P 3BT

14 October 2005

Dear Ruth Kelly,

DfES INTERNAL MISMANAGEMENT: Family Policy
Mr BRUCE CLARK: The Children and Adoption Bill

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Yours sincerely,

David Mortimer

Sir David Normington
Permanent Secretary
Sanctuary Buildings
Great Smith Street
London SW1P 3BT

14 October 2005

Dear Sir David,

DfES INTERNAL MISMANAGEMENT: Policy on Children

Thank you for your letter of 20 September 2005 proffering the results of your internal investigation. Perhaps you will accept that this inquiry evinces a certain lack of rigour?

I am sure we can agree your explanations do not (see over) cover the facts. The upshot is:

Private family law cases: Section 8 Contact Disputes

Two years' work, by two government departments, has been wasted:

- the benefits innate to the EI project (killed by its Fam Res substitute) are the stated objective of Government policy
- you concede that EI was replaced by Family Resolutions before work on EI started

Government family policy is now inoperable: it is based on an elementary factual error.

Public family law cases: Social Services and MSbP

The DfES's agreed objective was to develop diagnostic criteria for MSbP to protect the innocent and identify the guilty. Instead, and as you concede, the DfES launched a nationwide protocol - on the basis that innocent activities are indicators of guilt.

In one sector, Ministers were misled. In both, family policy is distorted. The problem, which remains unaddressed, passes in enlarged form to Ministers, professionals and the public.

Yours sincerely,

David Mortimer
c.c. various
Encl.

MISMANAGEMENT of FAMILY POLICY (Private Law)

The DfES Internal Investigation: 20 September 2005

Sir David Normington, Permanent Secretary, DfES (re Mr Bruce Clark)

What Went Wrong: - the EI project went into the DfES - but the Fam Res project (the opposite of EI) came out. Government policy is based on EI - but work on EI never started

CHALK: Sir David's Explanation

"At no point did the responsible Minister agree to pilot the NATC (Early Interventions) project"

This assertion is used as a platform for Sir David to concede an otherwise inexplicable fact (hitherto denied): that work on the NATC EI project never started. This new stance underpins the denial that Ministers were misled – because, according to this version, Ministers never believed that the NATC EI project was being progressed.

CHEESE: The Stated View of the Ministers

"In no sense has there been any abandonment of the Early Interventions initiative proposed by the NATC"

Lord Filkin, Parliamentary Under Secretary for State, Children and Families (13 April 2005 2005/0015774 POLF). This assertion is one of an extended line of documented official pronouncements made, and Ministerial meetings held, on the basis that the EI project, and/or the principles in the EI project, continued in progress.

The Central Mistake

Sir David, in giving his departmental officials a clean bill of health, writes:

'[The] pilot project had been outlined in a paper submitted by the ad hoc group chaired by District Judge Nicholas Crichton... This was the project which was implemented by DfES officials'

The project proposed to Government by the ad hoc group *was* the NATC Early Interventions project² - submitted in fully-defined form by the Ad Hoc Group on 8.10.03 in the NATC document (entitled *Early Interventions: Towards a Pilot Project*) endorsed by the judiciary.³

What Actually Happened

After Mr Bruce Clark decided (in or around October 2003) to ignore the EI project, the EI papers were mislaid, possibly without being read. Instead, Mr Clark consulted almost exclusively with those opposed to, or ignorant of, the EI project. The project name was changed amidst assurances that this was no more than a name-change. Mr Clark (unaware of first principles in this area) then began a different project, from scratch, unwittingly reversing the specific EI (or 'Florida') principle adopted by Government.

Meanwhile - as DJ Crichton confirms - Mr Clark maintained that the principles in the original EI project (which he had buried) continued under development. The judiciary, and hundreds of others, were misled.

The Government remains under the misapprehension that the cornerstone presumption on which its policies are based, and which it supports, and which EI *would have* introduced, is already in place.

² Suggestions to the contrary face insurmountable difficulties. If the project submitted by the Ad Hoc group was significantly different from the NATC EI project it submitted, it would follow that (if Sir David is to be believed) the EI proposal endorsed by the judiciary and embraced by Ministers was never even submitted.

³ Ministers accepted and routinely stated, first, their policy was based on the specific benefits to be derived from the EI project; second, that the EI project (or a project adopting core principles identical to EI) was under continuing DfES development. The Green Paper, and the empty Bill now before the House, are on this basis.

MISMANAGEMENT of FAMILY POLICY (Public Law)

The DfES Internal Investigation: 20 September 2005
Sir David Normington, Permanent Secretary, DfES (re Mr Bruce Clark)

What Went Wrong: the Government undertook to develop diagnostic criteria to establish if-and-when parents were 'guilty' of MSbP. Instead, the DfES launched a nationwide scheme enabling innocent parents to be processed for MSbP on an *assumption* they *might be* guilty.

Sir David's Explanation? : To offer no defence

Sir David's response merely recounts the salient facts, agreeing them with no particular demur. In this vein, he cites a new text - which re-confirms that the DfES's remit was to find ways of correctly identifying MSbP cases.

Otherwise, Sir David's inquiry advances nothing to counter the main charge (which is, by virtue of what the Guidelines say, impossible to deny).

The Obvious Difficulty

The Guidelines introduced by Mr Bruce Clark:

- (i) define swathes of ordinary domestic behaviours as possible indicators of MSbP
- (ii) say a *possibility* that MSbP *may* be involved *should* lead to a referral to Social Services

Guidelines based on these twin premises [(i) and (ii)] are irresponsible and dangerous.⁴

A Mitigating Factor ?

The DfES Internal Inquiry puts forward the point that, in preparing and launching these Guidelines, Mr Clark (who led the small and inappropriate Working Group) did not mislead Ministers.

The question at issue is not whether Mr Clark misled Ministers⁵.

Elementary Error

The actual issue is due diligence.

It is not easy to understand how the obvious problem with the Guidelines was overlooked. Irrespective of whether Mr Clark omitted elementary safeguards from the Guidelines deliberately - or whether Ministers were misled - the Guidelines are misconceived, substandard and untenable⁶.

⁴ The obvious dangers of the Guidelines (e.g. wrongful removal of a child) flowing from (i) and (ii) above are compounded by the facts that (a) Social Service investigations are innately damaging to families (b) the Guidelines concede in passing that there is no significant MSbP problem (c) the Guidelines promulgate on a national basis the work of a medical practitioner struck off the register for his medical work.

⁵ Consensus has no firm information on whether Ministers were misled about the nature of Guidelines. However, it must be a possibility in Britain that fully-briefed Ministers are unlikely to approve Guidelines based on a *de facto* presumption of guilt.

⁶ These Guidelines were, as the Inquiry acknowledges, adopted by Local Authorities nationwide. This is not a cause for comfort; it underlines the need for care in formulating government policy prior to its issue.

