CABINET

RACE RELATIONS LEGISLATION

Memorandum by the First Secretary of State

The Cabinet invited me on 21st December (CC(67) 74th Conclusions, Minute 2) to arrange for the Home Affairs Committee to give further consideration to the Home Secretary's proposals for legislation on race relations, with particular reference to the application of the proposed Bill to the sale of owner-occupied houses.

2. The Home Affairs Committee have considered the proposals in their present form. They reaffirmed their previous agreement that legislation was necessary to extend the scope of the Race Relations Act with the object not only of protecting immigrants against discrimination, but of educating public opinion and giving the support of the law to the majority of law abiding citizens who would be prepared to follow a firm lead from the Government in promoting toleration. The Committee considered, in particular, the sale of owner-occupied houses, the application of the Bill to the Crown, the Armed Forces and the police, and the legal machinery for applying sanctions.

Sale of owner-occupied houses

3. The Committee recognised that the application of the Bill to the sale of owner-occupied houses raises a number of difficulties. This is a highly sensitive area; but it will remain so whether the Bill is applied to it or not. From the point of view of the immigrant community housing is where discrimination hurts most. Nearly 50 per cent of houses in England and Wales are in the hands of owner-occupiers, and what we do here will be regarded as a touchstone of the Government's sincerity. The whole philosophy of the Bill and its educative effect would be greatly weakened if the owner-occupier were excluded.

4. The Committee consider, therefore, that the Bill should apply to the sale of owner-occupied houses, but that the Home Secretary should give informal guidance to the Race Relations Board (RRB) to ensure that in the conciliation work of the local committees and of the Board itself reasonable latitude is given to the exercise of legitimate discretion by the vendor and that legal proceedings are not taken unless there is such strong evidence of open and flagrant discrimination on grounds of racial prejudice that a court would have little difficulty in finding in the Board's favour. It would also be necessary that in the
Second Reading debate on the Bill the Home Secretary should be able to explain in detail how the machinery would work in relation to owner-occupied houses in order to prevent the exploitation by the Opposition of fears that any owner-occupier who sells his house to a white man in preference to a coloured will be in danger of being publicly pilloried and mulcted in damages.

5. We think that, subject to these safeguards, the application of the Bill to owner-occupied houses will not prevent an owner-occupier from selling to a white man notwithstanding that he has received an equal or better offer from a coloured man, provided that he has plainly not been actuated by racial prejudice. For example, he should be free to sell to a white man on grounds of friendship or personal preference and to take into account his obligation to his neighbours to prevent the house being used in a manner detrimental to them, for example for multi-occupation. We were informed that it is not uncommon in Scotland to make a condition of sale that the house shall be occupied only by the purchaser and his family. Restrictive covenants with a similar purpose, though rare in England and Wales, are not impossible, and we do not think that the imposition of such a condition should in itself be regarded as racial discrimination.

6. The Committee were informed that while the procedure had not been worked out in detail the intention would be that if a complaint were made of refusal to sell on grounds of racial prejudice the local conciliation committee would invite the comments of the vendor, either in writing or by interview, and if satisfied that he had legitimate reasons for his choice of purchaser and was not actuated by prejudice they would explain to the complainant that no discrimination was involved. If the complainant were not satisfied, the RRB would similarly investigate and would not take legal proceedings unless satisfied that the case was one of flagrant discrimination. Unless and until legal action were taken there would be no proceedings in public.

7. The Committee also considered whether in a flagrant case in which a court found discrimination proved the sanctions available to it would be adequate. The court will have power to order the defendant to pay damages to the complainant on whose behalf proceedings are taken in respect not merely of actual out-of-pocket expenses (as originally proposed), but of any provable loss resulting from the act of discrimination. This could, for example, enable damages to be awarded in respect of a job which the immigrant had been unable to take because he could not get accommodation locally. In addition the court could order the defendant to pay the costs of the action. The Committee recognised that these were unlikely to be large sums, and that the complainant who could prove no identifiable loss would not receive any tangible recompense. But the purpose of the Bill is not primarily either to inflict penalties or to provide monetary compensation for sufferers from acts of discrimination; its main purpose is to foster a climate of opinion and, on balance, we think that, provided in flagrant cases the law can be vindicated, it is better that the courts should not have power to inflict what could be regarded as Draconian penalties. Where a course of discriminatory conduct has been proved
the court will have power to issue an injunction to restrain the
defendant from such conduct in the future, and disregard of such an
injunction would be subject to the penalties of contempt of court.
But while this could apply to a person dealing regularly in property,
it would not apply to a single sale by an owner-occupier.

8. The Committee accordingly recommend by a majority that the
Bill should apply to the sale of a house by an owner-occupier.

Application to the Crown

9. The Committee found that the arguments in applying the
provisions of the Bill to the Crown were evenly balanced. The Home
Secretary proposes that the Bill should bind the Crown as employer,
landlord or provider of public services, with the exemptions necessary
to preserve the rules as to nationality and length of residence for entry
to the Civil Service and the Diplomatic Service and to protect the
Crown’s discretion where security is involved. Special arrangements
would have to be made for the RRB to investigate allegations against
the Crown. The Crown should not be subject to legal proceedings
(the Crown cannot in any event be bound by an injunction), but it would
be open to the RRB to draw cases of discrimination to the attention of
the Minister concerned and, if not satisfied that appropriate action had
been taken, to report the case in their annual report to Parliament. It
is argued that unless the Bill binds the Crown at least to this extent it
will not be politically acceptable and will not have the necessary impact
on public opinion. Those who take this view attach overriding importance
to the assertion of a universal principle of law to which the Government
as well as the public at large will be subject.

10. The argument against applying the Bill to the Crown is that,
since it is accepted that there must be some exceptions, enactment of
them in the Bill will be seen to weaken the generality of the principle
and the exceptions will in themselves appear to be discriminatory.
It is suggested that the impact which the holders of both points of view
want to produce would therefore be more effective if the Home Secretary
announced on the Second Reading of the Bill that while there were
technical difficulties in applying the Bill to the Crown, the Crown
nevertheless accepted and would be governed by the principles of the
Bill and would submit its actions to the scrutiny of the RRB.

11. A particular difficulty of making the Bill binding on the Crown
lies in the problem of its application to the Armed Forces which already
have their own statutory machinery for dealing with grievances with
rights of appeal to the appropriate Service Board, the Minister, or, in
some cases, The Queen. It is argued that it would be inappropriate to
provide separate machinery through the RRB for dealing with grievances
based on alleged racial discrimination and that the Armed Forces should
therefore be excluded from the scope of the Bill, leaving the Secretary of
State for Defence to establish an informal relationship with the RRB.
To exclude this area from the scope of the Bill, however, would add
substantially to the necessary exceptions, and to that extent further
weaken its impact. The Home Affairs Committee were not convinced
that there was no room for compromise here; and they asked the Home Secretary to consult with the Minister of Defence for Administration with a view to finding some means, while applying the Bill in principle to the Armed Forces, of ensuring that the existing statutory machinery for dealing with grievances continued to operate and that the Secretary of State for Defence was not made formally answerable in respect of the operation of this machinery to the RRB.

12. If it is decided in principle that the Bill should apply to the Crown it will be necessary for further consideration to be given to the position of the Royal Household and the Royal Duchies, but although legal and constitutional problems may arise here such limited exemptions as may be required would not have the same effect in weakening the principle of the Bill as the total exemption of the Crown. On balance and by a small majority the Committee accordingly recommend that the Bill should bind the Crown on the lines proposed by the Home Secretary.

The Police

13. Police officers occupy an independent position and are not employees either of the Crown or the Police Authority. The question how far the Bill should bind the police does not therefore turn on its application to the Crown. The Home Secretary proposes that the Bill should apply to the police in all respects except in their operational dealings with the public. In this field the existing statutory procedure should apply. This provides for the investigation of complaints against the police and for the punishment of police officers found guilty either of criminal or of disciplinary offences. It is consequently both more appropriate and more effective than the machinery of the Race Relations Bill, which will provide for no direct punishment of persons proved to have committed acts of discrimination.

14. The argument to the contrary is that, as with housing, the treatment of immigrants by the police in the execution of their duty is a sensitive area, and that immigrant opinion will not be satisfied that complaints are fairly dealt with by a procedure which does not usually result in investigation by an officer from outside the Force in question. The Committee concluded by a majority that, provided that acts of discrimination were made specific offences under the police discipline code, the balance of advantage lay in leaving complaints against the police in their operational aspect to be dealt with by the existing statutory machinery.

Appointment of assessors to sit with courts hearing proceedings brought by the RRB

15. The Home Secretary proposes that proceedings brought by the RRB to establish that an act of discrimination and contravention of the Bill has occurred should in England and Wales be brought before county courts specially designated for the purpose sitting with two assessors drawn from a panel appointed by the Lord Chancellor. It is argued that the presence of assessors, who may be either white or coloured but will be chosen for their experience of the relevant problems, is essential to give immigrant communities confidence that the court will deal with the case without bias. But to the extent that
the assessors are seen to be present to correct a bias against 'the immigrant they may be assumed by the white man whose conduct is complained of to be exercising an influence on the court prejudicial to himself; and their mere appointment can be said to be a reflection on the integrity of the judiciary. It was represented that the appointment of assessors would be particularly difficult to justify in Scotland where it is proposed that cases brought by the RRB should be heard by sheriffs whose jurisdiction is wider than that of county courts in England and Wales.

16. The Committee appreciated the difficulty of holding the right balance in this matter, but agreed by a majority that in the context of a measure designed to create confidence in the ability of the community to condemn racial discrimination it was presentationally important that the party most likely to fear that the machinery of the court would be biassed should have the reassurance provided by assessors. It was agreed that if assessors were to be appointed in England and Wales they must also be appointed by the Lord Advocate in Scotland.

Conclusions

17. The Home Affairs Committee were divided on several of the major issues that arise on the proposed Race Relations Bill. The arguments are fairly evenly balanced, and the Committee reached its conclusions by a majority. The importance attributed to the various considerations depends largely on how much weight is to be given to the need to give a striking public demonstration of the Government's determination to condemn racial prejudice and to reassure immigrant communities that the machinery which applies the ultimate sanction is not biassed against them. The Home Affairs Committee attach high importance to the demonstration of principle and to the impact which the Bill might be expected to have on public opinion.

18. I therefore invite the Cabinet to agree -

(a) that the Bill should apply to the sale of owner-occupied houses;

(b) that the Bill should bind the Crown, subject to necessary exemptions on recruitment to the Civil and Diplomatic Services and to exemption from legal proceedings;

(c) that the Home Secretary and the Secretary of State for Defence should consult further with a view to finding means of applying the Bill to the Armed Forces without prejudice to the operation of the existing statutory machinery for dealing with grievances;

(d) that the Bill should apply to the police except in their operational capacity;

(e) that assessors should be appointed to sit with county court judges in England and Wales and corresponding courts in Scotland.

M.S.

70, Whitehall, S.W.1.

8th January, 1968