(NEW FILE COVER)

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Confidential Filing

Committee to Consider Industrial Relations in the Civil Service

Industrial Action in DHSS

Civil Service

Sept. 1979.

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
18.9.79							
30.~~5~~.85.							
~~9.8.85~~							
14/10/85							

PREM 19/1662

Dd 8398366 2M 11/83 JET

TO BE RETAINED AS TOP ENCLOSURE

Cabinet / Cabinet Committee Documents

Reference	Date
CC(85) 3rd Meeting, item 4	24/01/1985
E(CS)(80) 2nd Meeting, Limited Circulation Annex	27/11/1980
E(CS)(80) 11	24/11/1980
E(CS)(80) 9	24/11/1980
E(CS)(80) 8	29/02/1980
E(CS)(80) 1st Meeting, Limited Circulation Annex	12/02/1980
E(CS)(80) 4	25/01/1980
E(CS)(80) 7	25/01/1980
E(CS)(80) 6	25/01/1980
E(CS)(80) 5	24/01/1980
E(CS)(80) 3	23/01/1980
E(CS)(80) 2	22/01/1980
E(CS)(80) 1	09/01/1980
E(CS)(79) 3rd Meeting, Limited Circulation Annex	20/11/1979
E(CS)(79) 11	16/11/1979
E(CS)(79) 10	16/11/1979
E(CS)(79) 9	16/11/1979
E(CS)(79) 8	15/11/1979
E(CS)(79) 2nd Meeting, Limited Circulation Annex	06/11/1979
E(CS)(79) 7	02/11/1979
E(CS)(79) 4	02/11/1979
E(CS)(79) 1	01/11/1979
E(CS)(79) 5	01/11/1979
E(CS)(79) 1st Meeting	03/10/1979
E(CS)(79) 3	01/10/1979
E(CS)(79) 2	25/09/1979

The documents listed above, which were enclosed on this file, have been removed and destroyed. Such documents are the responsibility of the Cabinet Office. When released they are available in the appropriate **CAB** (CABINET OFFICE) CLASSES

Signed J. Gray Date 16/6/2014

PREM Records Team

file

SKW

10 DOWNING STREET

From the Private Secretary

14 October 1985

INDUSTRIAL ACTION BY CPSA AT COMPANIES REGISTRATION OFFICE

The Prime Minister was grateful for your full report of the position on this dispute (letter of 11 October).

(DAVID NORGROVE)

Michael Gilbertson, Esq.,
Department of Trade and Industry.

DEPARTMENT OF TRADE AND INDUSTRY
1-19 VICTORIA STREET
LONDON SW1H 0ET
TELEPHONE DIRECT LINE 01-215 5422
SWITCHBOARD 01-215 7877

JU321
Secretary of State for Trade and Industry

11 October 1985

CONFIDENTIAL

Prime Minister 2

David Norgrove Esq
Private Secretary to the
Prime Minister
10 Downing Street
London SW1

Full explanation of the position

DJW
11/10.

Dear David,

INDUSTRIAL ACTION BY CPSA AT COMPANIES REGISTRATION OFFICE

The Prime Minister drew the enclosed press cutting to the attention of my Secretary of State at the Party Conference this week. I attach a short briefing note on this dispute, which the Prime Minister may find useful.

Yours ever,

Michael

MICHAEL GILBERTSON
Private Secretary

999-1

MANAGEMENT IN CONFIDENCE

INDUSTRIAL ACTION BY CPSA AT CRO CARDIFF

Scope of Strike Action

1 All 23 typists at the Companies Registration Office in Cardiff have been on official strike since 1 October. In addition approximately one half of CPSA's 450 other members at CRO responded to a call for a half day strike on the afternoon of 2 October. They have since returned to work. There are no pickets.

Cause of Strike

2 Ostensibly, the 23 typists have been called out on strike in response to the new Registrar of Companies' decision to install a word processor in his secretary's office. His predecessor's secretary had only a manual typewriter and all word processing work was undertaken in the main typing pool. CPSA maintain that the National and Departmental agreements on the use of word processors - which have been drawn up mainly with typing pools in mind - do not extend to the installation of word processors in secretaries' offices. DTI Management have never accepted this view, and word processors have been successfully installed in many secretaries' offices throughout the Department, including the Business Statistics Office which is a few miles from Cardiff.

3 It is clear to local and Departmental management that the precipitate strike action taken by the CPSA reflects other anxieties. Most importantly, there is some fear that a combination of the more intensive use of computerised technology and a new and firmer style of management may lead to job losses at Cardiff in the future. There is also fear of a general tightening up, following management studies that indicated the scope for this. There is also concern over the appointment of a non-union member of staff to the vacant post of secretry to the new Registrar, although this has been strictly in accordance with normal procedure.

Impact of Strike

4 The main procedure affected at CRO is the incorporation of new companies. Normally around 2000 applications are processed each week. This work has ceased, but applications are still being accepted with an acknowledgement note warning of delay. For several weeks, the private sector company formation agents will have enough "shelf" companies to satisfy most types of demand. Thereafter it will be possible, if necessary, for some extra companies to be formed in Edinburgh, Belfast and Dublin.

5 There has also been a temporary suspension in issuing other types of certificates and a more general effect on the work of other parts of the office at CRO which employs 850 in total.

999-80

Action to bring dispute to an end

6 Since the strike began, management have been trying to arrange a joint meeting of the Departmental Working Party on secretaries _ which is the normal forum for discussing issues surrounding the introduction of word processors into secretaries' offices - and local union representatives. After some initial delay on the part of the unions, this meeting has now been fixed for 15 October. It has a reasonable chance of resolving the dispute.

7 Meanwhile, the appointment of the new secretary has gone ahead and she will be operating her word processor from 14 October. Management have also made arrangements to attempt to get typing work done by other means if the meeting on 15 October fails to resolve the matter. This may lead to an escalation of the dispute and the possible use of Temporary Relief from Duty procedures. The advice of Treasury Counsel is being sought on the possibility of an injunction, but it seems likely that the CPSA will be able to mount a defence based upon their claim to have held a ballot under the 1984 Act.

8 It is quite clear to management and DTI Ministers that a firm stand is needed, especially in view of the programme for improvements in efficiency over the next several years.

ANDREW DUGUID

FINANCIAL TIMES
8. OCTOBER 1985

Strike hits companies registrar

By David Brindle, Labour Staff

A STRIKE by typists at Companies House, Cardiff, has forced the Trade and Industry Department to suspend registration of new companies or changes of company names.

The eight-day-old dispute involves 21 typists and two superintendents, members of the Civil and Public Services Association, who are protesting at the installation of a word processor.

The Department said yesterday the word processor was for the use of the Registrar of Companies. Although it admitted that feasibility studies were being conducted on computerisation, it said the issue was quite separate.

Because of the strike, the Department said, company formations and changes of registered titles could not be dealt with for the forseeable future.

The Association of Company Registration Agents yesterday stressed that its members' agencies could still provide off-the-shelf companies for would-be entrepreneurs. Mr Stanley Davis, the association's chairman, said agencies had plenty of ready-made companies available to tide clients over this difficult period.

2

Foreign and Commonwealth Office

London SW1A 2AH

9 August 1985

Prime Minister:

Dear Tim,

9/8

FCO Communications

The Foreign Secretary minuted on 17 May to the Prime Minister about negotiations with the Civil Service Union over changes in FCO communications.

I am glad to say that Treasury and FCO officials have reached a satisfactory agreement which the CSU have now accepted. There is, therefore, no longer a risk of industrial action on this issue affecting FCO communications.

I am copying this letter to the Private Secretary of the Chancellor of the Exchequer, the Secretaries of State for Defence, Trade and Industry, Energy, Northern Ireland, the Home Secretary, the Minister for Agriculture and to Sir Robert Armstrong.

Yours ever,

Peter Ricketts

(P F Ricketts)

Tim Flesher Esq
10 Downing Street

Ind. Relations: Civil Service. 9/79

TPM

2

Foreign and Commonwealth Office

London SW1A 2AH

30 May 1985

Prime Minister

Dear Charles,

Possible Industrial Action by FCO Communications Staff

In his minute (PM/85/49) of 17 May, the Foreign Secretary gave advance warning of the possibility of disruption to FCO communications from 31 May. Because of the illness of the Trades Union negotiator, a meeting planned for 23 May had to be postponed until 3 June. There will be no action by staff, at least until after the outcome of this meeting is known.

I am copying this letter to the Private Secretaries of the Chancellor of the Exchequer, the Secretaries of State for Defence, Trade and Industry, Energy, Northern Ireland, to the Home Secretary, the Minister for Agriculture, and to Sir Robert Armstrong.

Yours ever,

Len Appleyard

(L V Appleyard)
Private Secretary

C D Powell Esq
10 Downing Street

CIVIL SERVICE: Industrial Action: Sept 1979

30 MAY 1985

OD.

M8.11

CONFIDENTIAL

Charles Powell

NBPM
CDP
22/5

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

FOREIGN AND COMMONWEALTH SECRETARY

xref

POSSIBLE INDUSTRIAL ACTION BY FCO COMMUNICATIONS STAFF

In Box.

I have seen a copy of your minute of 17 May to the Prime Minister.

2. I wholly support the line which you advocate in paragraph 8 of your minute. It is extremely important that we should not be seen to be giving way in the face of industrial threats in this particular case. I gather that the negotiations to date have been bedevilled by the desire of the main union negotiator to indulge in a certain amount of politics. Agreement has just been reached with the staff representatives at GCHQ on a broadly parallel restructuring exercise and it would, as you point out, be extremely damaging if the Civil Service Union were to be seen to extract a better bargain than that which has already been accepted by the staff representatives at GCHQ.

3. My officials are of course working closely with yours over these negotiations, and we have certainly not ruled out a peaceful outcome. But I hope very much that we will be prepared to stand firm in the event that a work to rule does begin on 31 May. I note that while there could be some disruption affecting Departments, including my own, it should be possible for the FCO to make arrangements to ensure that a minimum of essential business continued. I think the inconvenience would be a price well worth paying for the wider principles at stake here.

4. I am copying this minute to the Prime Minister, to Michael Heseltine, Norman Tebbit and Michael Jopling, and to Sir Robert Armstrong.

N.L.

N.L.

21 May 1985

22 MAY 1985

(2)

Prime Minister
Disgraceful: but I expect they can be faced down.
CDP 17/5.

PM/85/49

PRIME MINISTER

POSSIBLE INDUSTRIAL ACTION BY FCO COMMUNICATIONS STAFF

1. The purpose of this minute is to give you and some other colleagues advance warning that the FCO's communications network could be affected by a work to rule by members of the FCO's specialist communications staff from the end of May.

2. The background is that the Treasury and my officials have been negotiating with the Civil Service Union (CSU) over pay and grading for staff to operate a new computerised Message Handling System (MHS) for the FCO's telecommunications network, together with associated changes in working arrangements and equipment at Posts overseas.

3. The MHS, which represents an investment of £5.7 million, is similar to ones already installed at GCHQ and the MOD and will provide for the automatic routing of the FCO's telegram traffic, giving us increased capacity and speed of operation to cope with the steadily increasing volume of work. We expect the new system to produce a saving of some 40 staff in the UK. It will also result in the replacement of 54 posts in the UK currently filled by Diplomatic Service Communications Branch staff with radio operating skills which will no longer be required, by operators without such skills.

4. In the wake of the introduction of this sytem, we are also planning a rationalisation of our radio and telecommunications

/technical

technical work overseas by introducing simplified radio equipment which is now available, and by redeploying technically skilled staff.

5. There will be no compulsory redundancies; the savings in staff will be met through natural wastage and a limited voluntary premature retirement scheme. There is no question in my mind that these developments are highly desirable and that we should not be deflected from implementing them.

6. The present round of negotiations with the Unions has been going on for a long time. They have been difficult because of the number of different interests and Unions involved. We have succeeded in obtaining agreement to the changes from the Institute of Professional Civil Servants (IPCS) who represent the technical staff involved, and have negotiated a pay agreement with the Society of Civil and Public Servants (SCPS) representing supervisory operational staff. But the CSU, representing the main body of operating staff, have so far refused to cooperate in the introduction of arrangements concerned with the introduction of the MHS. They have now held a secret ballot of their members in FCO communications serving in the UK which has given them a mandate to take industrial action in the form of a work to rule from 31 May unless agreement is reached on a package covering pay and grading for some staff and assurances on conditions of service for others who are affected by the proposed changes that I have referred to above.

7. The outlines of such a package have been put to the CSU and my officials believe that a negotiated agreement can be achieved and that the majority of staff will not, in the end, support industrial action. But management is also under some time constraints since the new equipment is now being

/installed

installed and we shall suffer both financial and operational penalties if training does not start soon. If we cannot reach agreement, or the Union indulges in delaying tactics, we may have to implement changes by administrative action, which could polarise opinion and result in a work to rule.

8. A work to rule would quickly result in the clogging of the FCO's telegram system. We should make all efforts to mitigate the results, but there would undoubtedly be serious disruption which would affect other Departments, especially the flow of telegrams on EC matters from Brussels. I believe that it would be worth facing this prospect to ensure that we get the necessary changes without paying an exhorbitant price or creating precedents which could damage sensitive management/staff relations elsewhere, including GCHQ. The latter point is particularly relevant since the Assistant Secretary of the CSU who has been leading the Trades Union Side in the negotiations was formerly responsible for communications staff at GCHQ. On past experience, our assessment is that we could make arrangements to ensure that a minimum of essential business continued despite a work to rule. I believe there is a fair chance that we shall avoid industrial action, and I shall keep you informed.

9. I am copying this minute to colleagues in those

/Departments

Departments which would be most affected should there be any disruption and to Sir Robert Armstrong.

Foreign & Commonwealth Office
17 May 1985

17 MAY 1985

CONFIDENTIAL

VC

File

10 DOWNING STREET

From the Principal Private Secretary

22 March 1985

INDUSTRIAL ACTION IN THE CIVIL SERVICE:
USE OF THE TRADE UNION ACT 1984

For the record, I am writing to confirm that the Prime Minister saw Mr. Hayhoe's minute of 20 March and agreed with the action proposed in it, subject to consultation between the Treasury, the Department of Employment and the Scottish Office on whether, in the light of the Lord Advocate's advice, separate action needed to be taken in Scotland.

I am copying this letter to David Normington (Department of Employment), John Graham (Scottish Office), Paul Thomas (Chancellor of the Duchy of Lancaster's Office), Iain Jack (Lord Advocate's Office) and Sir Robert Armstrong.

FERB

M.W. Norgrove, Esq.,
H.M. Treasury.

CONFIDENTIAL

ECA

SECRET

* contacting legal advice is set out in the attached notes. HMT are unnerved by the Lord Advocate's doubts

Prime Minister 21

Do you agree to this issue of a writ as proposed by Mr Hayhoe*

Yes MT

will request if req.

FROM: Minister of State

DATE: 20 March 1985

MINISTER OF STATE TREASURY

PRIME MINISTER

INDUSTRIAL ACTION IN THE CIVIL SERVICE: USE OF THE TRADE UNION ACT 1984

In my letter of 19 March to the Secretary of State for Employment, I noted that the CPSA Executive had decided to ignore the Trade Union Act 1984 in calling their members out on strike on 1 April. I believe we must therefore invoke the Act's provisions - and legal advice is that we have an excellent chance of success.

We must move fast and unless I hear to the contrary before noon tomorrow, 21 March, I propose to take the following course of action. The Treasury will issue a writ either tomorrow afternoon or at the latest Friday morning effectively warning the CPSA that we are likely to seek an interlocutory injunction against them if they fail to comply with the Act. If they ignore this, we will apply for the injunction on Monday, 25 March with the expectation that the hearing, in Chancery, will be on Thursday, 28 March.

If the union fails to comply with the injunction, we will have to ask the court to enforce the order which could mean sizeable penalties for contempt. On the other hand, I am advised that should the union have a change of heart at any time up to the hearing, we will be able to call off our action.

Copies of this minute go to all Cabinet Ministers, the Attorney General, the Lord Advocate, the Paymaster General and to Robert Armstrong.

BH.

BARNEY HAYHOE

SECRET

CIVIL SERVICE: Industrial Action: Sept 79

20 MAR 1985

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL

Telephone : Direct Line 01-212 0100
Switchboard 01-212 7676

MANAGEMENT IN CONFIDENCE

B Hayhoe MP
Minister of State
Treasury
Treasury Chambers
Parliament Street
LONDON

20 March 1985

TRADE UNION ACT 1984

in PM box

Thank you for copying to me your letter of 19 March to Tom King. I would wish to draw colleagues' attention to some legal considerations on the possible use of the 1984 Act against Civil Service Unions.

First, we have never admitted publicly that there is a contract of employment between the Crown and individual civil servants. To seek an interdict, or in England an injunction, against a Civil Service Union would necessarily involve such an admission. It may even be that one of the Civil Service Unions could attempt to provoke such an admission by deliberately ignoring the terms of the Act.

Second, if the Crown were to admit that there is such a contract for the purpose of obtaining an interdict or an injunction, it would not be possible for us to maintain in any subsequent action that no such contract exists. We must be consistent in our approach to the Courts. On the other hand, a union could properly maintain that there was no such contract, in response to our claim for an interdict or an injunction, and thereafter maintain that there was such a contract in another context, such as an attempt by us to alter terms and conditions of service.

Third, it is by no means certain that we would be successful in obtaining an interim interdict before a Scottish Court if we were to seek one. The law on this matter is not clear, and the Court might well refuse an interdict pending a full hearing on the legal issues. If that were to happen we should have shown our hand for no immediate advantage, and we might well be drawn into detailed submissions before we have ourselves reached a concluded view on the matter.

At the end of the day this is a question of policy, but colleagues should be aware of the legal implications of any decision to raise an action now.

I am copying this letter to the Prime Minister, all Cabinet Members, Michael Havers and Sir Robert Armstrong.

CAMERON OF LOCHBROOM

Civil Service : Ind. Action in DHSS: Sept 79

20 MAR 1985

EC 61

2

Prime Minister
To be aware

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Tom King MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
LONDON SW1H 9NF

19 March 1985

Dear Tom,

TRADE UNION ACT 1984

As I think you know we have been looking at the application of Part II of the Trade Union Act 1984 to the Civil Service in the context of the House of Lords judgement on GCHQ regarding civil servants' contractual position. Michael Havers has now advised that "a Government Department could, in order to bring an action against a trade union in reliance on Part II of the Trade Union Act 1984, argue that there is a contract of employment between the Crown and civil servants".

Official guidance to Civil Service management is now being issued and I thought you and other members of Cabinet should be aware of its main provisions. Clearly we will, as employer, want to make effective use of Part II of the Act but in view of the political and industrial relation sensitivities involved I believe that, at least initially, decisions about invoking its provisions should be for collective consideration.

The guidance going out to departments will, therefore, warn of the sensitivities involved and make it clear that in the case of departmental industrial action the responsible Minister will need to consider the use of the Act's provisions, and consult with colleagues as necessary. If, however, the industrial action is servicewide then the Treasury will take the lead.

The guidance also deals with management's interest in the other aspects of the Trade Union Act 1984. It makes it clear that the provisions of Parts I and III are essentially for the unions but draws attention to the need for management to make staff

aware of their rights and to make the necessary changes in the check-off arrangements. The Civil Service unions have also been put on notice about the position management would take (eg about the granting of facilities) if they fail to comply.

The test of the unions attitude comes sharply into focus in the current pay round. The early indications are that whilst the non-industrial Civil Service unions are shaping up for strike action, most seem committed to ensuring they retain immunity by organising ballots which meet with the Act's provisions. Recent press reports, however, indicate that the CPSA's Executive has decided to ignore the Act and my officials are therefore urgently taking legal advice about invoking the Act's provisions. I shall consult with interested colleagues as soon as this advice is available.

Copies of this letter go to the Prime Minister, all Cabinet Members, and Sir Robert Armstrong.

Yours ever
Barney

BARNEY HAYHOE

L.S.

9/77

10 MAR 1966

Oro

CONFIDENTIAL

NBPM FCB

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522 ext 6981

From the Permanent Secretary

Sir Kenneth Stowe KCB CVO

Sir Robert Armstrong, GCB, CVO,
Cabinet Office,
London SW1

18 March 1985

Dear Sir Robert,

'SUNDAY TIMES' ARTICLE - 17 MARCH 1985

... The Sunday Times article of 17 March at Annex A contained details from a report on the strike of DHSS computer staff at Newcastle which had been circulated under cover of Geoffrey Otton's letter of 4 February to all those who attended your Wednesday morning meetings. (Copies
... attached as Annexes B and C).

The article referred to the report as having been "seen by the Sunday Times", and the quotations made included a passage from Geoffrey Otton's covering letter. It seems clear therefore that possible sources of the leak must include the Departments which received copies.

Neither of the documents was security classified, but the disclosure is obviously most unwelcome and it would seem that an interdepartmental leak investigation conducted by a member of the MPO panel is called for. I should be grateful for your views.

Meanwhile, further enquiries will be made here, although at this stage I have no reason to suppose that the source of the disclosure lies in this Department rather than in any other.

As you will be aware a separate paper was prepared for MISC 67 and has not been referred to in Press coverage: it has not, we assume, been leaked.

Copies of this go to Robin Butler, to the Director General of the Security Service and to the Legal Secretary to the Law Officers.

Yours sincerely
for Alan Davis

SIR KENNETH STOWE
(approved by Sir Kenneth but signed in his

CONFIDENTIAL

SUNDAY TIMES - 17 MARCH 1985.

ANNEX A

Nation's computers 'at risk from unions'

by Donald Macintyre
Labour Editor

A TOP civil servant has advised the government to decentralise its computer network to reduce its vulnerability to crippling industrial action by trade unions.

That is a key finding in a confidential report which reveals for the first time that the 9-month strike by computer operators at the social security centre in Newcastle-upon-Tyne cost £200m. The efficiency measures that sparked off the dispute were expected to save about £50,000.

The report, part of a wide-ranging appraisal of the strike, admits that the costs were "far beyond anything that could have been foreseen at the outset". It will take the social security department "at least a year" to deal with the backlog and the "mess in local offices is unlikely to be cleared up until the end of 1985."

The report comes at a sensitive time, since all the main civil service unions are consulting their members on possible strikes over the Treasury's offer of 3.9% on average. In the long term the government has yet to reveal the final details of the £700m expansion of the DHSS computer network.

The concentration of "industrial power in large computer installations is a clear source of risk and future computer planning must aim to reduce the risk, e.g. by dispersing work, providing back-up facilities etc.," the report says. Historically, the Whitehall computer network has been concentrated in a handful of main centres.

A covering letter with the report, sent by Sir Geoffrey Otton, one of the department's two permanent secretaries, to Sir Robert Armstrong, head of the home civil service, says the strike was a "long and bitter dispute – overshadowed throughout by the miners' strike, but having some interesting points of resemblance.

The 21-paragraph report which has been seen by The Sunday Times, amounts to a rare official insight into a dispute that contained the explosive ingredients of a union branch dominated by the Militant Tendency, genuinely felt grievance by employees, an uncompromising management and none of the cost constraints that would apply in the private sector.

The report recounts how the strike by 400 staff started over the introduction of new shift patterns. It says "it became a confrontation staged by a determined and politically motivated group defying their own national leadership" to prevent more efficient and demand-related use of equipment. Some senior Treasury officials are thought to be dismayed by the costs of the strike. But the report says that once the decision had been taken to secure efficiencies "it was not considered a realistic option to give up in the face of escalating costs."

It says that if costs are not "an overriding factor" and the union fails to spread the strike to "an impossibly damaging" extent, management can "sit out an affair of this kind." But it warns that "it is extremely difficult to tighten the screw on the unions to precipitate an early resolution."

The report reveals that management "exhaustively explored – with the government's law officers – ways of unilaterally varying employment contracts, or simply ending them with an offer to re-engage employees on the new terms. This course was "fraught with legal risk as well as political difficulty." Further disputes, it says, for example over the DHSS pay claim, could follow. "Goodwill will not be easy [illegible]," the report says.

ANNEX B.

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522 ext 6618

From the Second Permanent Secretary

SIR GEOFFREY OTTON

Sir Robert Armstrong GCB CVO
Cabinet Office
70 Whitehall
London SW1A 2AS

4 February 1979

Dear Robert,

DHSS NEWCASTLE STRIKE

When I last mentioned this at a Permanent Secretaries' Meeting, the strike was still drawing to its close. I said I would send round a narrative after the end of the affair, in case it was of general interest. I imagine most colleagues will not be directly interested in the particular issues about shift working times which lay at the heart of the dispute : these were complicated at the beginning, and got more so as the negotiations progressed. But this has, in civil service experience, been a long and bitter dispute - over-shadowed throughout by the miners' strike but having some interesting points of resemblance. I hope the enclosed account of the affair will be of some general interest to colleagues : I am sending it to all those who attend your Wednesday morning meetings.

We shall of course be undertaking more detailed studies of the lessons of the strike, and my Secretary of State intends to circulate a paper about this to E(PSP).

Yours ever,

Geoffrey

ANNEX C.

NEWCASTLE SHIFT WORKING DISPUTE

1. This dispute had its origin in a Management Services Report which, following up a query by internal auditors, suggested in June 1983 ways in which the computer installations at Newcastle Central Office could be run more efficiently and economically. The essential features were:-

a. the introduction of three-shift working in some areas, in place of two-shift working, to maximise the output from expensive computer equipment;

b. reduction from three to two-shift working in another area, where more modern equipment was able to secure the necessary output in a shorter period of time; and

c. alterations in the timing of certain shifts, to avoid two-shift workers earning the maximum allowance intended for night shift workers. (The central point here was bringing back the finishing time for the evening shift to before 12.30am).

The objective was to secure economies in administrative expenditure estimated at £700,000 a year (mainly achieved through staff savings and the cutting out of overtime).

2. The MS Report was copied to the Trade Union Side in June 1983; but management proposals were not formally put to them until November. (These proposals did not follow the report exactly.) The TUS were given time to consider these proposals, and negotiations started in January 1984.

3. During the negotiations, Management recognised at an early stage that the cash losses involved for some shift workers through reduction in shift-working allowances - particularly when changes to less convenient working times were also involved - would be a heavy penalty. Generous transitional concessions were offered. The effect of these was that no existing shift worker need lose any remuneration provided the new pattern of working was accepted. New workers coming into the two-shift working areas would get less remuneration than the existing workers. Existing workers in those areas who retained the

maximum allowances would accept an obligation to move to three-shift working as vacancies occurred in other shift-working areas. It was proposed to review these arrangements in another two years.

4. During this period the TUS had meetings at various levels, including one presided over by the Second Permanent Secretary, and one with Ministers (Dr Boyson and Mr Newton). It was evident that the national leadership of CPSA (which was the key union in these negotiations) recognised that the concessions on offer were a valuable prize : but they could not persuade their local union (dominated by the Militant Tendency), who were intent on maintaining the existing shift working patterns and thus perpetuating entitlement to the maximum shift allowances for two-shift working. There was also a strong resistance to the introduction of a third shift, even though emerging operational requirements made one necessary.

5. On 14 May 1984 the TUS broke off negotiations and brought their shift working members at the Newcastle site out on strike. Three unions were involved (the SCPS, CPSA and CSU) and a total of 268 staff in the shift working areas came out on strike. On 26 June 1984 members at the Washington site were called out, and numbers on strike increased to almost 400. Throughout the dispute about 80 staff defied their unions and stayed at work, providing a very limited service from the computers, the exception being at the child benefit centre at Washington where non-striking staff managed to produce 50% of all child benefit order books.

6. The Department put emergency arrangements in hand to maintain payments - mainly to pensioners and child benefit families - through Post Offices. These arrangements were cumbersome and expensive, but secured that benefits continued to be paid weekly. They entailed the use of the covers of order books, once the payable orders in the books were exhausted. The transaction at Post Office counters took longer, and therefore queues began to pile up in Post Offices. Before the end of the dispute the majority of the benefit population was being paid through emergency procedures, and the delays in Post Offices were a matter of quite serious inconvenience to the public. One area which caused particular concern involved some 600,000 people who were paid pensions periodically, by monthly or quarterly payable orders; roughly half of these were resident outside the UK. It was not possible to identify these pensioners without the computer records. An exhaustive publicity campaign both at home and abroad resulted in all but a handful coming forward by the end of the strike, and

being put on emergency payment arrangements. A third group affected were beneficiaries who get their money paid by Automated Credit Transfer (ACT) into their bank account. These continued to receive their payments because it was possible to continue to work on the last computer-produced ACT tape. But we were unable to correct the tape, for subsequent changes of circumstance, and one unfortunate side effect was that some payments continued to be made to pensioners who had died.

7. The emergency procedures were not in general "blacked" in any part of the organisation outside the shift-working areas immediately affected by the strike. From a fairly early stage it became apparent that we could adapt these procedures to carry through the November uprating, provided other staff did not black the work and Post Office counter staff co-operated. The Post Office did not let us down, although there were various attempts by the PO unions to seek extra payments for the extra work they were doing (which in itself earned them substantial amounts of overtime). The operation to complete both the uprating and the Christmas bonus payments was successful, largely thanks to the ingenuity of Newcastle management in adapting the procedures and the co-operation of staff at Newcastle Central Office, in local offices and the Post Office.

8. In July the Department agreed to a request from the CPSA for conciliation by ACAS (Mr Graham of the CPSA had been seeking this for some time). It was without precedent for ACAS to be involved in a civil service dispute. Two whole day meetings were held at ACAS in London on 24 and 25 July, attended on the union side by large numbers of strikers from Newcastle. The Militant Tendency sway over the Newcastle group was such that no constructive progress was made during those two days, although a slightly revised offer did emerge from the talks.

9. Faced with the fact that the main bulk of the enterprise was keeping going, the CPSA looked for escalation of the strike in other areas. Their main target was the unemployment benefit computer centres at Reading and Livingston. In early August 1984 they secured votes from the CPSA staff in both places to support the strike, but because of the effect strike action at Reading and Livingston would have on unemployment benefit offices (UBOs) the National Executive Committee of the CPSA decided to consult their members in UBOs before pulling out the unemployment benefit computers. The result of this consultation revealed that support for the dispute was minimal. One CPSA official responsible for the Department of Employment

Section bravely challenged the call for an extension of the strike. His motion to overturn the NEC decision to escalate was accepted and the NEC voted not to spread the strike to the computer centres. Instead they asked the DHSS and DE Sections of the union to explore the possibility of backing the strike up with selective action in inner city local offices of the two departments - which, to be effective, had to rely on the staff of both departments acting in concert. These discussions came to nothing, because there was no local enthusiasm for action in either department.

10. Through August the local CPSA continued with its abortive attempts to spread the strike. There was some escalation caused by management action, when staff asked to carry out some emergency operations at Newcastle also went out on strike. At one period the number on strike approached 500 - though the "new strikers" drifted back to work fairly quickly after the completion of the work which they objected to doing.

11. During September there was a series of meetings between the TUS and management - both at Newcastle and in London - which led to further refinements of the small print of the management offer made under the auspices of ACAS. In particular the Department was prepared to allow a good deal of scope for voluntary switching of working times and shifts to suit the individual preferences of members of staff. By the end of this process the unions had a very generous offer on the table. Nevertheless they continued to reject it. From that point onwards there was little doubt that the MT-led element in the CPSA at Newcastle were intent on prolonging the strike at all costs.

12. During October, in face of the clear indication that management could keep the system running indefinitely <u>and</u> secure the uprating, the CPSA element at Newcastle persisted with efforts to get the strike spread. The NEC voted down a further motion to involve the Reading and Livingston computer centres. As a sop to the strikers, the NEC agreed upon a consultative exercise, involving all staff in DHSS, who were to be asked:-

a. whether they supported their colleagues at Newcastle; and

b. whether they would "black" the emergency procedures.

This was mainly a face-saving device, and had a fairly predictable outcome. There was in general a disposition to agree with a. but disagree with b..

Most significantly, CPSA members on one of the Newcastle sites (the Child Benefit Centre) even voted against a..

13. In November the strike finally began to crumble, when the SCPS and CSU voted to accept what was on offer. This followed a great deal of private, behind-the-scenes discussion with management. It led to some 46 strikers returning to work on 28 November, and left the CPSA isolated.

14. Despite this, there was virtually no trickle back to work by CPSA members; less than 20 out of more than 300 still on strike came back in small numbers, and the bulk of the strikers remained solidly behind their MT leadership. Throughout this strike CPSA members were getting 50% of net pay through their strike pay which, though augmented by a special allocation of £10,000 a week from the NEC, meant that they were incurring some financial hardship. Passions were high, and there was some violent picketing which put the working shift workers under considerable strain.

15. The result of the CPSA consultative exercise was reported to the NEC on 6 December. It was apparent that there was no more than minimal support for escalation of the dispute in any other part of DHSS, or for that matter in any other civil service computer installation. The NEC resolved that a delegation of its members should go to NCO to talk to the leaders of the strike there. They did this on 12 December, led by Alistair Graham, and were rebuffed by the strike committee. On Thursday 13 December the strikers met, and although no vote was taken (it was probably deliberately avoided) there was still considerable solidarity behind the strike, and hostility to the NEC and Mr Graham in particular.

16. On Friday 14 December this outcome was reported back to the NEC in London. Mr Graham moved a vote - which he evidently expected to win - which would have put a time limit on the strike, with the implied threat of withdrawal of strike pay thereafter. The MT element were still seeking escalation. Mr Graham lost this vote by 14 to 12. Later in the meeting he put a new resolution which did not put a time limit on the dispute nor indicate any withdrawal of strike pay, but did firmly rule out escalation of the dispute. This was carried by 12 votes to 6.

17. On Monday 17 December Mr Graham went back to Newcastle, and faced the strike committee there with the situation. There was a complete about

turn, and they capitulated. A general meeting of the strikers voted almost unanimously to return to work. There was great acrimony at both meetings against their national leadership, and a motion of no confidence in it was passed. The votes were not for an immediate return to work, but for a resumption of negotiations with management, expected to lead to a return to work in January.

18. The local CPSA leadership dragged out the negotiations on the return to work arrangements for a further four weeks - but finally settled on the same terms as were accepted by the other two unions and the CPSA national executive at the end of November 1984. A full resumption of work took place on 22 January 1985.

19. The strike has imposed [illegible] on DHSS and DE Department staff in local offices throughout the country, and on the bulk of NCO staff who have kept working and operated emergency clerical procedures. It has created a backlog of work which will take the Department at least a year to overcome. Computer-based processes are likely to be back to normal by next June - including those for the payment of DHSS staff salaries - but the mess in local offices is unlikely to be cleared up until the end of 1985.

20. The costs of the strike have also been large. To the end of November it is estimated that the strike will have cost about £65 million in extra administrative expenditure, at a rate of about £4.5 million a week. The costs of recovery will amount to about £100 million. The total cost will be of the order of £200 million.

21. We shall be assessing rather more carefully the lessons to be drawn from this dispute : but a number of broad points can be made at this stage:-

1. This has been a particularly significant dispute in industrial relations terms. It has lasted longer than any previous civil service strike, and became a confrontation staged by a determined and politically-motivated group, defying their own national leadership, in order to prevent departmental management from introducing revised patterns of working necessary to meet changing demands and to make greater use of modern technology. The outcome is important as an assertion of management's determination to introduce necessary changes made possible by modern technology.

2. The unions clearly under-estimated the Government's resolve to face a long strike over this issue. The local leadership over-played their hand, and were defeated in the end not least by their inability to get the dispute spread to other areas - local offices, unemployment benefit offices of DE, and (most important) other computer centres. The dispute eventually led to a split in the Militant Tendency/Broad Left alliance on the National Executive Committee of the CPSA; the consequences of this for the future of the Association (and of any larger union resulting from the proposed CPSA/SCPS merger) remain to be seen. The CPSA national officials had a very difficult time, were sometimes virtually excluded from the negotiations, and finished by being reviled by the strikers as the main cause of their defeat. The NEC was not prepared at any time to disown the strike to the extent of withdrawing strike pay : the moderate union leaders constantly looked for ways of bringing the strike to an end, including intervention by ACAS.

3. The unions under-estimated the Department's capacity to maintain services. Emergency arrangements held up much better than we could have hoped - they had not been devised to carry the burden for so long a time. Management's ability to maintain these emergency procedures for a long period, and to adapt them so as to carry through the uprating of benefits, was a significant factor in defeating the strike. The emergency procedures depended entirely upon co-operation by staff in Post Offices and in DHSS and DE local offices; this was forthcoming throughout.

4. The area of staff pay was not sacrosanct, and the Department's payroll computer programme was caught up in the strike. Emergency payments procedures ensured that all 90,000 staff continued to be paid at safe rates (close to their full entitlement) throughout the dispute. Tax changes and pay awards were also coped with on a rough-and-ready basis. Although we owe it to the main body of staff who have sustained the emergency procedures throughout the strike to give a high priority to reconciliation of the payroll to get everyone straight again, this will take some time.

5. The costs of the strike are far beyond anything that could have been foreseen at the outset. But once a decision had been taken to secure change in the interests of more efficient and

economical operations, it was not considered a realistic option to give up in the face of escalating costs. This illustrates the difficult decision faced by management in balancing the risk of a costly strike against the desirability of introducing changes; once the decision has been taken, the consequences have to be faced.

6. Provided cost is not an over-riding factor, and the unions fail to spread the strike to an impossibly damaging extent, management can sit out an affair of this kind. It is extremely difficult, however, to tighten the screw on the unions in order to precipitate an early resolution. Possibilities explored exhaustively during this dispute (with advice from the Law Officers) included both unilateral variation of contracts, and termination of contract with an offer of immediate re-engagement on new contractual terms. Both were fraught with legal risk as well as political difficulty, and both would have required periods of notice, during which the dispute might have escalated. All staff not directly engaged in the dispute were required to keep the emergency procedures running, and there was virtually no under-employment throughout the dispute (most staff had to work unusually hard). This therefore was not a dispute where it would have helped to have power to lay off under-employed staff.

7. The concentration of industrial power in large computer installations is a clear source of risk, and future computer planning must aim to reduce the risk eg by dispersing work, providing back-up facilities etc.

8. The negotiations revealed clearly to us that the existing transitional provisions, where shift-workers are faced with the need to make changes in shift patterns or shift hours which affect earnings, do not meet the circumstances of individual members of the staff.

9. The strikers have returned to work in a non-co-operative mood, feeling badly let down by their union and hostile to management. Further local provocations are to be expected, and the prospects for further disputes - eg about pay in 1985 - are not encouraging. Restoring goodwill will not be easy.

18 MAR 1985

4.12

CONFIDENTIAL

CCNO.

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

4 February 1985

Steve Godber Esq.
Principal Private Secretary to the
Secretary of State for Social Services

1) Mr Turnbull: to see
2) whole paper
5/2
with DB?

Dear Steve,

NEWCASTLE SHIFT WORKERS' DISPUTE

As Mr Hayhoe has already told your Secretary of State (his letter of 29 January), the Treasury welcomes Mr Fowler's intention to discuss the lessons to be learned from the Newcastle shift workers' dispute with interested colleagues.

The Chancellor has been considering how this might best be arranged and suggests the discussion might take place in the Ministerial Group on Civil Service Pay Negotiations (MISC 66). Officials could then usefully run over the ground first in the corresponding Official Group (MISC 67). The Chancellor would accordingly be grateful if you could arrange to let John Wiggins in the Cabinet Office Secretariat know when your paper is ready for circulation, so that he can arrange the necessary meetings.

I am sending copies of this letter to the Private Secretaries to the Prime Minister, Lord President of the Council, Secretary of State for Employment, Chancellor of the Duchy of Lancaster and Sir Robert Armstrong.

Yours sincerely,

Margaret O'Mara

MISS M O'MARA
Private Secretary

DHSS Dispute

-5 FEB 1985

5 FEB 1985

Prime Minister (4)

To note. I will ask the Treasury to keep us in touch.

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Norman Fowler MP
Secretary of State
Department of Health & Social Security
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

29 January 1985

Dear Norman,

NEWCASTLE SHIFTWORKERS DISPUTE

I have seen a copy of your recent minute to the Prime Minister.

I am glad that this long running and very costly dispute has now been brought to a conclusion. With my particular interest in industrial relations in the Civil Service, I was also pleased that the emergency arrangements worked so well and I think all your people who were involved in these should be congratulated on the level of service which they continued to provide to the public.

You said that you will be discussing the lessons learnt with your colleagues. We, of course, have a very close interest in this and my officials will be getting in touch with yours in due course. We will be particularly interested in the cost of the dispute, the implications for the Civil Service as a whole of the settlement; the conduct of the dispute and the tactics adopted by the strikers, and the implications for the future of the CPSA.

I am sending copies of this letter to the Prime Minister, Willie Whitelaw, Tom King, Grey Gowrie and to Sir Robert Armstrong.

Yours ever
Barney

BARNEY HAYHOE

CS: Industrial Relations Sept 79

0 JAN 1985

CONFIDENTIAL

ECL

10 DOWNING STREET

From the Private Secretary

24 January 1985

Newcastle Shiftworkers Dispute

The Prime Minister was grateful for the Secretary of State's minute received on 23 January about the Newcastle shiftworkers dispute. She has noted its contents with satisfaction.

(David Barclay)

TMS.

S.A. Godber, Esq.,
Department of Health and Social Security.

CONFIDENTIAL

CONFIDENTIAL

Prime Minister (2)

Good.

23/1

Prime Minister

NEWCASTLE SHIFTWORKERS DISPUTE

I am glad to be able to report that work has now resumed at the Newcastle computer centre.

The local CPSA strikers have, after dragging out negotiations on the return to work arrangements for four weeks, settled on the same terms as were accepted by the other two unions and the CPSA national executive at the end of November.

This long dispute has been costly but it has achieved an important result in demonstrating our determination to make change where change is necessary - as it will be on a large scale as our computerisation programme develops. We have also exposed more clearly the political factionalism within the CPSA. These results will be of importance to the whole of the Civil Service and I shall be discussing the lessons we have learnt with colleagues.

The immediate task however is to restore services to the public. Our emergency arrangements have worked much better than we could have expected - enabling us to carry through a full uprating of benefits on time despite the strike - but it will take some time to get fully back to normal. I shall give high priority in the recovery programme to providing the fullest information to the public about how they will be affected.

I am copying this to Cabinet colleagues and to Sir Robert Armstrong.

N F

rec'd 23/1

CF

CONFIDENTIAL

70 Whitehall, London SW1A 2AS Telephone 01-233 8319

Secretary of the Cabinet and Head of the Home Civil Service

Sir Robert Armstrong GCB CVO

Ref. A085/53

8 January 1985

Dear Stephen

Newcastle Computer Centre Strike

The Prime Minister's Office has agreed that this correspondence need no longer be CMO and that the classification should be downgraded from SECRET to CONFIDENTIAL.

I am copying this to Andrew Turnbull (No 10), David Peretz (Hm Treasury) and David Normington (Department of Employment).

Yours sincerely

Rosalind Mulligan

(Rosalind Mulligan)
Assistant Private Secretary

Stephen Godber Esq

CONFIDENTIAL

9 JAN 1985

SECRET

CONFIDENTIAL

01-405 7641 Extn 3407

ROYAL COURTS OF JUSTICE.
LONDON, WC2A 2LL

12 December 1984

The Lord President of the Council
Privy Council Office
Whitehall
LONDON SW1

Dear Willie.

THE NEWCASTLE SHIFT DISPUTE

1. At the meeting on 4 December I was invited to advise on the legal position of the Government in the event of a successful challenge, either in an industrial tribunal or in the courts, to a unilateral variation of the strikers' contracts.

REMEDIES FOR UNFAIR DISMISSAL

2. If an employee succeeded in a claim for unfair dismissal, either because he has been dismissed or for constructive dismissal, the industrial tribunal could make an order of reinstatement, or of re-engagement, or an award of compensation.

3. The industrial tribunal has no power to compel the Crown to comply with either an order of reinstatement or of re-engagement, and if it failed to comply the employee would then be entitled to the basic award and the compensatory award referred to in paragraphs 4 to 9 below, and, in addition, to an additional award of between 13 and 26 weeks' pay.

.../If

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ROYAL COURTS OF JUSTICE.
LONDON, WC2A 2LL

01-405 7641 Extn

4. If the industrial tribunal did not order reinstatement or re-engagement, but simply ordered compensation, the compensation would be calculated on the following principles. The employee would be entitled to a basic award calculated by reference to his age, length of service and pay (subject to a maximum of £145 per week). The maximum basic award is £4,350.

5. The basic award would be calculated as follows:-

   (a) For each year of continuous employment in which the employee was not below the age of 41, one and a half week's pay;

   (b) for each year of continuous employment in which the employee was not below the age of 22, one week's pay;

   (c) for each year of continuous employment in which the employee was below the age of 22, half a week's pay.

6. Deductions are made for the extent to which the employee contributed to his dismissal, the amount of any redundancy payment, any other amount of money paid by the employer and accepted by the employee and referable to the basic award, and in respect of conduct prior to dismissal which makes it just and equitable to reduce the award to any extent.

7. In addition he will be entitled to a compensatory award determined by reference to the amount the tribunal considers just and equitable, having regard to the loss sustained by the employee in consequence of dismissal, in so far as that loss is attributable to the employer's action. The maximum compensatory award is at present £7,500.

.../The

ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

01-405 7641 Extn

8. The compensatory award would be calculated under the following heads:-

(a) Loss of earningsto date of hearing. This will be based on take home pay, including regular overtime and bonus earnings. Net earnings from any new employment would be deducted.

(b) Estimated future loss of earnings. The starting point is the employee's take home pay. Account must be taken of prospective changes in earnings had he stayed in employment, and a deduction must be made for any earnings likely to be received in a new job. An average figure for loss of earnings per week is thus arrived at, and this can be multiplied by the number of weeks which the tribunal estimates as the probable period of unemployment caused by the dismissal, after taking into account any failure by the employee to mitigate his loss. There may also be a discount in respect of the accelerated receipt of earnings.

(c) Loss of statutory industrial rights. A small conventional amount is awarded in recognition of the fact that it will take the employee at least 52 weeks to obtain protection against unfair dismissal in any new employment.

(d) Loss of pension rights.

(e) Expenses, including expenses in looking for new employment.

9. From the above would be deducted any amount in respect of contributory fault of the employee, and any remaining excess of a redundancy payment over the basic award.

.../DAMAGES

ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

01-405 7641 Extn

DAMAGES AT COMMON LAW

10. If the employee does not accept the variation, remains in employment and successfully brings an action for damages at common law, damages will be assessed on the principle that he is entitled to such money to cover his loss as arises naturally in the ordinary course of things from the breach. The damages would be the difference between his pay before the variation and after it.

CONSEQUENCES OF A DECLARATION IN FAVOUR OF THE STRIKERS

11. The remedy of a declaration simply determines the rights of the parties, without any order of the court for their fulfilment. The consequence is that the DHSS would be faced by a declaration that its purported variation of the contract was unlawful. No order of specific performance could be made against the DHSS. The DHSS would have to decide whether to accept the position, to persuade the employee to vary his contract of employment, or to dismiss him. If it were to dismiss him, it would face a claim for unfair dismissal, and would be in the disadvantageous position of having dismissed an employee who had had a declaration made in his favour that the variation of his contract was unlawful.

SUMMARY

INDUSTRIAL TRIBUNAL

12. Basic award plus compensatory award: no enforceable obligation to re-employ (the employees would have either been first dismissed or have thrown up their jobs).

.../COMMON

01-405 7641 Extn

ROYAL COURTS OF JUSTICE,
LONDON, WC2A 2LL

COMMON LAW - DAMAGES

Proven lost earnings: employee continues in employment, but with DHSS no longer able to contend entitlement to vary terms of employment.

COMMON LAW - DECLARATION

In practice this would be coupled with a claim for damages. DHSS no longer able to contend entitlement to vary terms of employment.

13. I am copying this letter to the Prime Minister, the Secretaries of State for Social Services and Employment, the Minister for Social Security, the Minister of State (Treasury) and Sir Robert Armstrong.

Yours,

Patrick

12 DEC 1984

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

Miss Janet Lewis-Jones
Private Secretary to
The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
68 Whitehall
LONDON
SW1A 2AT

11 December 1984

Dear Janet,

NEWCASTLE SHIFTWORKERS' DISPUTE

This is to let you know that the meeting between the representatives of the CPSA's National Executive Committee and the local strike committee is expected to take place tomorrow (Wednesday). A mass meeting of the strikers is scheduled for the following day.

Ministers here will be keeping the situation under review. If it appears that a further meeting of the group chaired by the Lord President is necessary we will get in touch.

I am copying this to Private Secretaries to the Secretary of State for Employment, the Solicitor General, the Minister of State (Treasury) and to Andrew Turnbull (No 10) and Richard Hatfield (Cabinet Office).

Yours sincerely,

Stephen

S H F Hickey
Private Secretary

12 DEC 1984

SECRET

Prime Minister (2)

To note.

DMB 4/12

pa DMB 6/12

MR BARCLAY

4 December 1984

NEWCASTLE SHIFT DISPUTE

Viscount Whitelaw held a meeting this morning to discuss next steps in this long-running dispute. The problem is that nobody has yet come up with a way of breaking the stalemate which is both legally secure and keeps on our side the civil servants who are working.

If we did decide to act, the best option would be unilateral variation of contract. But the risk with this is that the strikers might take us to court and win. "Government defeated in court case by Militant Tendency activists" is hardly an appetising headline. So the mood was cautious.

Fortunately, there was a good reason not to decide anything yet. The CPSA National Executive meet tomorrow to discuss whether to extend the strike. They are likely to decide against. Mrs Purvis, the activist behind the Newcastle dispute, is quoted in today's Telegraph as saying that if so, she will have to allow the 330 strikers to "reconsider". The hope is that their resolve will crumble.

Ministers agreed to meet again next week to see if the striker was weakening, and then to report to Cabinet on Thursday, 13 December.

David Willetts

DAVID WILLETTS

SECRET

SECRET

CONFIDENTIAL

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

4 December 1984

Dear Steve,

THE NEWCASTLE SHIFT DISPUTE

I attach minutes of this morning's meeting under the chairmanship of the Lord President.

I am sending copies of this letter and the minutes to the Private Secretaries to the Ministers who attended the meeting, to Andrew Turnbull in the Prime Minister's Office and to Richard Hatfield in Sir Robert Armstrong's office.

Yours sincerely,

Janet Lewis-Jones

JANET A LEWIS-JONES
Private Secretary

S Godber Esq
Private Secretary to the
Secretary of State for
Social Services

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SECRET

MINUTES of a Meeting of Ministers
held in the Privy Council Office on
Tuesday 4 December 1984 at 9.15 am

PRESENT

The Rt Hon Viscount Whitelaw
Lord President of the Council
(In the Chair)

The Rt Hon Norman Fowler MP
Secretary of State for Social Services

The Rt Hon Tom King MP
Secretary of State for Employment

Sir Patrick Mayhew QC MP
Solicitor General

Mr Barney Hayhoe
Minister of State, Treasury

Mr Antony Newton MP
Minister of State, Department of
Health and Social Security
(Minister for Social Security)

ALSO PRESENT

Mr D Willett
Prime Minister's Office

SECRETARIAT

Mr P L Gregson
Mr J F Stoker

SUBJECT

THE NEWCASTLE SHIFT DISPUTE

NEWCASTLE SHIFT DISPUTE

The Meeting discussed the strike of Department of Health and Social Security (DHSS) employees over proposals to alter shift working arrangements for computer operations at the Department's Newcastle central office.

THE SOLICITOR GENERAL said that the further advice for which he had been asked at a previous meeting on 29 November was contained in his minute of 3 December to the Lord President of the Council. The Government had three effective options for action.

i. Dismissing strikers. This was the safest of the options against legal challenge, though initially it had been ruled out on management grounds. Dismissed strikers would have no claim either for unfair dismissal or at common law.

ii. Dismissing strikers with an offer of re-engagement. It would be possible for strikers to challenge dismissal on this basis either in an Industrial Tribunal or at common law in the Courts. There was a significant risk that a challenge might be successful in an Industrial Tribunal, but it was unlikely that it would succeed at common law.

iii. Giving notice to strikers amending unilaterally their terms and conditions of service. The risk of challenge in an Industrial Tribunal would be less than in the case of option ii. because employees would have to show that they had been constructively dismissed, to do which they would have to resign. The risk of challenge at common law, however, was higher than under option ii. because there was doubt whether the Crown had the right unilaterally to vary the terms and conditions of civil servants. The position of the Crown had been strengthened by the statements in the judgements of the House of Lords in the Government Communications Headquarters (GCHQ) affair, but it was far from clear how far those statements could be taken. There was, therefore, still a significant risk of a successful challenge at common law to unilateral variation.

Taking into account all the arguments, including the management arguments against dismissals, unilateral variation of terms and conditions of service appeared on balance to be the best of the three options.

In discussion, it was pointed out that Miss Purvis, the Newcastle Branch Secretary of the Civil and Public Servants' Association (CPSA), was reported in the press that morning as saying that she would have to allow her members to "reconsider" if the National Executive of the CPSA did not agree at a meeting on the following day to escalate the dispute. This might be no more than an attempt to bring pressure to bear on the National Executive to support the strikers, but it could be a genuine sign that the strike might end within the next few days.

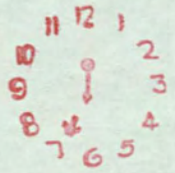
THE LORD PRESIDENT OF THE COUNCIL, summing up a brief discussion, said that the Group were agreed that it would be premature to take action which would raise the temperature in the dispute and carry a risk of legal challenge while there was a chance that the strike might end shortly of its own accord. The Group had not decided what action to take if the strike continued. Some members took the view that early action was necessary to try to end disruption of services and prevent the cost of the dispute from increasing further, others that it might still be inadvisable to proceed with any action carrying a strong risk of legal challenge. It would be necessary for the Group to consider, once the outcome of the meeting of the CPSA National Executive on 5 December and the reaction of the strikers were known, whether it would be possible for them to agree a unanimous recommendation which he could commend if necessary to Cabinet at their meeting on 13 December. In the meantime, the Solicitor General should consider the position in which the Government would find itself and the courses of action open to it in the event of a successful challenge either in an Industrial Tribunal or in Court to unilateral variation of the strikers' contracts; and advise further.

The Meeting -

1. Took note, with approval, of the Lord President of the Council's summing up of their discussion.

2. Invited the Solicitor General to advise further on the matters indicated by the Lord President of the Council in his summing up.

-4-



CONFIDENTIAL

SECRET

PRIVY COUNCIL OFFICE

WHITEHALL. LONDON SW1A 2AT

18

30 November 1984

① Please copy to David Willetts
② Please p.a.

Dear Steve,

THE NEWCASTLE SHIFT DISPUTE

I attach minutes of last evening's meeting under the chairmanship of the Lord President. I have been in touch separately with those concerned in order to set up a resumed discussion at 9.15 am on Tuesday 4 December, in the Privy Council Office.

I am sending copies of this letter and the minutes to the Private Secretaries to the Ministers who attended the meeting, to Andrew Turnbull in the Prime Minister's Office and to Richard Hatfield in Sir Robert Armstrong's office.

Yours sincerely,
Janet Lewis-Jones.

J A LEWIS-JONES

S Godber Esq
Private Secretary to
the Secretary of State for
Social Services

SECRET

CONFIDENTIAL

SECRET

MINUTES of a Meeting of Ministers held in the Leader's Room, House of Lords, on Thursday 29 November 1984 at 5.00 pm

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PRESENT

The Rt Hon Viscount Whitelaw
Lord President of the Council
(In the Chair)

The Rt Hon Norman Fowler MP
Secretary of State for Social Services

The Rt Hon Tom King MP
Secretary of State for Employment

Sir Patrick Mayhew QC MP
Solicitor General

Mr Barney Hayhoe MP
Minister of State, Treasury

Mr Antony Newton MP
Minister of State, Department of Health and Social Security
(Minister for Social Security)

SECRETARIAT

Mr J F Stoker

SUBJECT

THE NEWCASTLE SHIFT DISPUTE

SECRET

NEWCASTLE SHIFT DISPUTE

The Meeting discussed the strike of Department of Health and Social Security employees over proposals to alter shift working arrangements for computer operations at the Department's Newcastle central office.

THE SECRETARY OF STATE FOR SOCIAL SERVICES said that the strike was now in its 28th week. The strikers, who received strike pay equal to about 50 per cent of normal net pay, were led by a small number of Militant Tendancy supporters. They showed no signs of agreeing to resolve the dispute despite an offer by the Government on the basis of which members of the Civil Service Union (CSU) and Society of Civil and Public Servants (SCPS) who had taken part in the strike had agreed to return to work, and which was recommended by the national officers of the Civil and Public Servants Association (CPSA), the strikers' union.

Despite the strike action, Department of Health and Social Security (DHSS) management had successfully completed the annual uprating of benefits. However, the cost of the dispute was £5 million per week. Those working at the centre were under considerable pressure and sickness rates were increasing. For these reasons, it was desirable to bring the issue to a head. Three options had been identified, in addition to sitting out the strike:

i. dismissing the strikers with an offer of re-engagement;

ii. recruiting casual labour; or

iii. unilateral variation of strikers' contracts.

The preference of DHSS management at Newcastle, and initially of the colleagues whom he had consulted, had been option iii. A decision rested largely, however, on legal advice, which was that there was a significant risk of successful challenge to unilateral variation of contracts either in an Industrial Tribunal or in the Courts.

THE SOLICITOR GENERAL said that any appeal by strikers to an Industrial Tribunal against unilateral variation of contract would be on the grounds that it

constituted constructive dismissal. This course was perhaps unlikely, because it would require the employee concerned to resign first. It would be for the Tribunal to decide, first, whether the variations did constitute constructive dismissal; and, if so, whether the employer had nevertheless acted reasonably. An action in the Courts seeking a declaration that the purported variations were unlawful as being in breach of contract, perhaps coupled with a claim for damages, would not require the employees to resign first. His advice, which was consistent with legal advice to the Secretary of State for Social Services from other sources, was that the chances that the Government would be able successfully to contest an action in either an Industrial Tribunal or the Courts were no better than 50-50. Losing a case would probably lay the Government open to a liability to pay either redundancy compensation (following a case in an Industrial Tribunal) or damages plus a payment reflecting contractual entitlement to notice (following a Court action). Ultimately, however, it was not possible for the Government to be compelled to continue to employ the strikers.

In discussion the following were the main points made.

a. Losing an action in the Courts or in an Industrial Tribunal would be severely damaging for the Government and would be seen as a victory for the Militant Tendancy. The strikers, however dubious the justification, would almost certainly claim that the substantial costs of resisting the strike had been incurred by the Government in pursuit of unlawful ends.

b. The option of dismissing the strikers might have been too lightly dismissed in earlier discussion. The Government would be within their legal rights at present in taking this course because the strikers had withdrawn their labour without good cause. The strikers might, however, be able successfully to argue that any steps which might be taken by the Government with a view to the unilateral variation of contracts constituted good cause for continuing with their action. For this reason, dismissals would be open to a more substantial risk of successful legal challenge if they were associated with an offer of re-employment on revised terms.

c. The option of dismissal, however, was contrary to the advice of DHSS management at Newcastle. It was likely to carry severe risks of damage to industrial relations in the Civil Service and perhaps more widely, though it could be argued that a broad spectrum of opinion - perhaps including employees at the centre who had not struck or who had returned to work - would accept such action as necessary and justified.

d. As an additional option to those already identified, it would be possible for the Government to consult on the substance and timing of possible variations in the terms of strikers' contracts prior to giving notice of an intention to introduce such variations. This would be consistent with the emphasis placed on the need to consult in the judgements of the Courts on the Government Communications Headquarters (GCHQ) affair. It would also strengthen the ability of the Government to argue that they had acted reasonably should a case alleging constructive dismissal subsequently be brought by strikers in an Industrial Tribunal.

THE LORD PRESIDENT OF THE COUNCIL, summing up the discussion, said that the handling of the handling of the dispute posed a clear dilemma. On the one hand, it was obviously undesirable for the Government to be seen to take no action while substantial costs continued to be incurred and DHSS working staff continued to be under pressure. On the other hand, any major risk of successful challenge to the legality of action taken by the Government in the field of industrial relations was deeply undesirable following the controversy over GCHQ. The Solicitor General, consulting the Secretary of State for Social Services, should urgently consider both the implications of the option of unilateral variation of contract preceded by consultation and the precise nature of the variations involved; and provide further advice. He would arrange for those present to resume their discussion early on the morning of Tuesday 4 December to decide how to proceed in the dispute. He would himself arrange to report their decision to Cabinet on 6 December.

The Meeting

1. Took note, with approval, of the Lord President of the Council's summing-up of their discussion and invited the Solicitor General and Secretary of State for Social Services to be guided accordingly.

2. Took note that the Lord President of the Council would arrange for them to resume their discussion early on the morning of Tuesday 4 December.

30 November 1984

SECRET

CONFIDENTIAL

JKRAMR

17

10 DOWNING STREET

From the Private Secretary

19 November 1984

THE NEWCASTLE SHIFT DISPUTE

The Prime Minister was grateful to the Secretary of State for Social Services for his minute of 9 November about the Newcastle Shift Dispute. She has also seen the comments of the Secretary of State for Employment and the Solicitor General.

The Prime Minister understands that the Lord President will be chairing a meeting on the further handling of the dispute later this week. She would be grateful for a further report in the light of the discussion.

I am sending copies of this letter to David Peretz (HM Treasury), Steve Godber (DHSS), David Normington (Department of Employment), Henry Steel (Law Officers' Department) and Richard Hatfield (Cabinet Office).

(DAVID BARCLAY)

Miss Janet Lewis-Jones,
Lord President's Office.

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ROYAL COURTS OF JUSTICE.

LONDON. WC2A 2LL

01-405 7641 Extn 3407

1) Mr Butler FCSB

2) Prime Minister (2)

16th November 1984

There is a "significant risk" of legal challenge if the Government goes for unilateral variation of the strikers' contracts (Mr Fowler's preferred option). The Lord President is chairing a meeting on this next week, and will report to you then.

Dans 16/11

PRIME MINISTER

NEWCASTLE SHIFT DISPUTE

The Secretary of State for Social Services copied to the Attorney General his minute of 9th November.

This note considers the prospects of legal challenge should the Government decide to vary unilaterally the present terms and conditions of service of the employees concerned.

My conclusion is that the employees may be expected to bring either an action for compensation for constructive dismissal, or an action for a declaration that the purported variation of the terms and conditions of service is unlawful. The latter action might also include a claim for damages. There is a significant risk that actions of either kind would succeed. I set out the relevant criteria below. I should need to know more about the existing terms of service, and the proposed amendments, to assess the severity of that risk.

CONSTRUCTIVE DISMISSAL

If the employer's conduct is such as to entitle the employee to throw up his job without notice, and he does so, the employee shall be treated as dismissed by the employer. The conduct complained of must be conduct which is "a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound

by one or more of the essential terms of the contract".

A common example of a significant breach is a reduction in pay. Another example is where the employer insists on the employee working hours which he was not contractually obliged to do. But there will be no breach at all if the employee's job is varied within the bounds permitted by the contract, even if as a result there is less opportunity to work and earn overtime pay. Breaches of clear contractual terms are generally treated as sufficiently fundamental to justify the employee resigning and claiming constructive dismissal.

If the employee can establish constructive dismissal, an Industrial Tribunal must go on to consider the question whether the dismissal was fair or unfair. This will turn on whether in all the circumstances the Tribunal considers that the employer, although in breach of the contract, nevertheless acted fairly.

In determining this, the decisive factor is the reasonableness of the employer's conduct. A Tribunal will, for example, examine whether or not the unilateral variation of the contract was in all the circumstances properly handled. Proper handling may involve consultation with employees and the taking into consideration of the interests of individual employees. A re-organisation of an employer's business may be reasonable, and it may be reasonable to require an employee to adapt his working hours and working practices to it. An Industrial Tribunal has to consider whether the employer was acting reasonably in deciding that the advantages to the employer of implementing the proposed re-organisation outweighed any disadvantages to the employees.

These criteria are plainly relevant to the origins of the Newcastle dispute.

ACTION FOR A DECLARATION AND/OR DAMAGES

Since an employee must resign before he can bring an action for constructive dismissal, it is perhaps more likely that the Newcastle strikers would bring an action for a declaration that the purported variation of the contract was unlawful as being in breach of contract. Such an action might be coupled with a claim for damages. The employee does not have to prove that the breach is one going to the root of the contract; he has only to show that there has been a breach. He does not have to resign in order to sue.

THE POSITION OF THE CROWN

There has been discussion as to whether the Crown has by reason of its constitutional position the right to alter any terms of service unilaterally. Modern letters of appointment to the Civil Service expressly inform civil servants of this claimed right from the commencement of their employment. But the right referred to in the letter of appointment is wholly unspecific in its terms. The Law Officers have previously advised that the prospects of the Crown successfully arguing before a modern court that it has the right to vary unilaterally the conditions of service for civil servants are poor.

CONCLUSION

There is clearly some significant risk of successful legal challenge if the Government decides to adopt the unilateral variation approach. That risk is, however, less than the risk attached to dismissing the strikers with an offer of re-engagement.

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I am copying this minute to the Lord President, the Chancellor of the Exchequer, the Secretaries of State for Employment and Social Services and Sir Robert Armstrong.

Patrick Mayhew

16 NOV 1984

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19/11

cc DW

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Prime Minister

Treasury Chambers, Parliament Street, SWIP 3AG

The Rt Hon Norman Fowler MP
Secretary of State
Department of Health and Social Security
Alexander Fleming House
Elephant & Castle
LONDON SE1 6BY

15/11

15 November 1984

Dear Mr Fowler,

DHSS NEWCASTLE : SHIFT-WORKING DISPUTE

with AT

I am responding on behalf of Nigel Lawson to your minute of 9 November.

I agree that matters should now be brought to a head. Apart from anything else, the costs involved are estimated to be approaching £80 million, and this is before the costs of recovery are taken into account.

Like you, I was at first attracted to the notion of employing casuals but on balance I agree that unilateral variation of contract seems best provided we are on reasonable legal ground. It would presumably be based on the latest management offer which has been commended to the strikers by their own national officers and has indeed been accepted by the leaders and the members of the two other unions involved in the dispute. It should isolate the CPSA militants and the strikers, while at the same time giving them a brief pause for thought. This course of action should also give less risk of jeopardising negotiations over the return to work agreements with the other two unions, assuming that an announcement has to be made before those agreements are finalised. I can see an argument for seeking to get them out of the way first, but not if this means more than a few days delay.

It will of course be important to ensure that when we take action the position is properly presented. We must stress the unreasonableness of the strikers' stand and the harm they are doing to social security beneficiaries. We must also think about the rest of the Civil Service, both generally and in order to try to defuse any efforts the CPSA may make to try to whip up action elsewhere in support. There are potential

SECRET

trouble spots around, and of course another part of the CPSA are already currently threatening trouble in GIRO. No doubt your officials will keep in close touch with mine.

I am copying this to the Prime Minister, Willie Whitelaw, Tom King, Michael Havers and Sir Robert Armstrong.

Yours sincerely,

MWM

for BARNEY HAYHOE

(Approved by the Minister of State and signed in his absence)

Civil Service Sept 79
Ind Action in DHSS

15 NOV 1984

~~SECRET~~ CONFIDENTIAL

14

Ref. A084/3040

MR TURNBULL

Newcastle Shift Dispute

The Secretary of State for Social Services sent me a copy of his minute of 9 November to the Prime Minister.

2. I agree with the choice of option proposed by the Secretary of State. But I think that it might be as well to hold this up for a few days, to see whether (as seems likely) the other unions involved in the dispute sign up on the new DHSS offer.

RTA

ROBERT ARMSTRONG

15 November 1984

CONFIDENTIAL

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13

PRIME MINISTER

Newcastle Shift Dispute

I have seen the minute which the Secretary of State for Social Services sent you on 9 November.

I am very strongly in favour of proceeding with the variation of contracts option, provided the legal advice is reasonably favourable.

I am sending copies of this minute to the Chancellor of the Exchequer, the Secretaries of State for Social Services and Employment, the Attorney General and Sir Robert Armstrong.

12 November 1984

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13 NOV 1984

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Prime Minister:

Mr Fowler sees two options of the strike continues: unilateral variation of the strikers contracts or bringing in casuals. He prefers the former but wishes to discuss in E(PSP)

9/4

PRIME MINISTER

NEWCASTLE SHIFT DISPUTE

Although you and colleagues are well aware of this dispute, its background is summarised for convenience in the Annex to this minute.

At the end of October after further prolonged discussion between officials and unions a possible basis for agreement seemed to have emerged. This was accepted by two of the unions involved in the strike, overwhelmingly in the case of the SCPS and unanimously by the Civil Service Union. But on 1 November the CPSA members on strike voted overwhelmingly to reject it, despite advice to the contrary by the union's General Secretary, Alastair Graham. This union - led in Newcastle by a small number of militant tendency supporters - wishes to see existing shift patterns retained for all time; and throughout the negotiations it has proved completely intransigent.

The CPSA public posture seems to be to seek clarification of part of the offer and if so my officials will provide it quickly. However, I am sure that the CPSA union leaders at Newcastle are using this as a ploy to create further delays and seek further concessions. We have made it clear to the CPSA members that there must be early acceptance of the offer by them since we have now undoubtedly reached the "bottom line" and no further concessions can be made. I am satisfied from the latest CPSA strike circular that acceptance will not be forthcoming and that the dispute is in effect in stalemate. We have shown the unions that we are willing to meet the cost of the emergency procedures and that we will complete the uprating exercise; and they have failed to involve the Reading and Livingston Unemployment Benefit Centres in the strike. But because of the increasing costs and the strains on the system I do not believe that we can continue merely to sit out the dispute. Nor I suspect will the unions, who are already investigating means of escalating the strike by involving

CONFIDENTIAL

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inner city offices of both DHSS and Department of Employment.

There are three main options open to us: to dismiss the strikers with an offer of re-engagement; unilaterally to change their present contracts; or to recruit casuals to restore a service until the strikers return. I think the dismissal option too extreme in its possible effects on industrial relations in the Civil Service and perhaps more widely. The other two options are:

Variation of contract

Under the unilateral variation approach we would write to all those who have not accepted the proposals saying that we intend to implement the new arrangements in, say, six weeks; and that unless they return to work they would be liable to be moved out of the shift working area since after that time we would start to fill their posts with new permanent staff and would, therefore, in a relatively short timescale be able to restore a full service. The additional attraction of this course is that it puts pressure on the individual strikers to make a choice - at present they can simply go on securing their strike pay, without much personal penalty and we would still be offering them a job, although not necessarily on shift working. We have of course taken legal advice on this option and it is not without its drawbacks since it might leave us open to a claim for constructive dismissal and compensation before an industrial tribunal. Whether such a claim would succeed is hard to predict and I would certainly hope that the fairness of the offer we have made would weigh heavily against. There is also the point that to make such a claim the individual would first have to resign, with the risk of losing his job permanently. On balance, and subject to the views of the Attorney General and colleagues, I feel it is a risk we can accept.

Recruitment of casuals

The other most practicable short-term step would be to recruit a limited number (around 40 initially) of casual staff to restore at least a minimum service. This would be done not through Jobcentres but by drawing on individual names known by local management to be interested. At first sight the step may appear to be less "provocative" than varying the contract since the casuals would be

E.R.

on short-term contracts only. However, recruiting casual staff would be presented by the CPSA as bringing in "strike breakers", which is traditionally an emotive step in industrial disputes and tends to command wide union support. It might increase the risk of industrial action in inner city offices, and I cannot rule out the possibility that the CPSA would be able to gain support in some areas which are socially sensitive.

I am convinced that we cannot let the dispute drift on indefinitely. Post Offices, DHSS local offices and Newcastle Central Office itself are all coming under severe strain and the costs escalate. We need to take the initiative. It is essentially a matter of judgement which of the two main options is the better but, on balance, assuming the legal advice we have received is sound, I think that the unilateral variation of the contract option is probably the best way of putting pressure on the individual striker to accept what is an eminently reasonable offer without undermining the position of the moderate national officials in CPSA. Is is the only step which could lead to a resumption of normal services without necessarily achieving a settlement of the strike.

Given the sensitivity of the issues, I would welcome an opportunity to discuss, either with the Ministers most closely concerned, or at E(PSP). I am copying this minute to the Lord President, the Chancellor of the Exchequer, the Secretary of State for Employment, the Attorney General and Sir Robert Armstrong.

9 November 1984

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ANNEX

NEWCASTLE SHIFT WORKING DISPUTE

1. The strike at the Department's Newcastle and Washington offices, which started in May 1984, concerns proposals to alter shift working arrangements in the computer operations area at Newcastle Central Office. The changes would improve efficiency, make better use of expensive computer equipment and meet current and emerging operational requirements. The need for the changes was brought to management's notice in an internal audit report which questioned the arrangements then in existence. In response to the report management initiated a review which found that the arrangements (which had been in operation since the early 1970s) were no longer appropriate to current operational needs.

2. The proposed changes would require the introduction, in some areas, of a rotating night shift to make full use of very expensive computer equipment whilst in other areas an existing night shift would be discontinued. Starting and finishing times would be adjusted so that staff on evening shifts would not receive a full night's allowance for working until only shortly after 12.30am. These changes would save the taxpayer £700,000 a year as well as provide a better service to beneficiaries. The savings would be derived from three main elements - reductions in the staff employed; elimination of expensive overtime working in some areas, and reductions in others - an objective we share with the unions; and less expenditure on shift allowances.

3. Management commenced negotiations with the unions in January this year which were then broken of by the unions who called for a strike from 14 May 1984. Since then approximately 400 of the computer operations staff have been on strike - a small minority of the 10,500 or so staff at Newcastle Central Office. For a few shift workers the changes could have resulted in a loss of take home pay. However management has been anxious to safeguard the earnings of existing shift workers. Since before the strike began management have made a series of offers which enabled existing shift workers who accepted the new arrangements to avoid any loss of take home pay. In their efforts to achieve a negotiated settlement management have always been more than willing to talk to the unions, and indeed agreed to the previously unprecedented step of involving ACAS.

9 NOV 1984

CONFIDENTIAL

pa
12/9

Prime Minister (2)

11 September 1984

MR BARCLAY

THE COMPUTER STRIKE AT DHSS NEWCASTLE

Good news. The management at the Newcastle computer centre have reassessed their need for extra staff to carry out the uprating of benefits in November. Although only about 15 strikers have gone back to work in the past week, management now think that with suitable redeployment of other staff already working, they will be able to carry out the uprating without recruiting new casual workers as "strike-breakers". This new attitude may be a response to the nervousness of Mr Fowler's ministerial colleagues.

When the strikers discover that they are not able to stop DHSS doing the uprating, they will realise they are in for a long struggle, and we hope that the drift back to work will continue.

David Willetts

DAVID WILLETTS

CONFIDENTIAL

SECRET CONFIDENTIAL

pa DMB 10/9

Prime Minister: A decision on whether to recruit casuals to do the strikers' work cannot be long delayed. Norman Fowler will report further to you next week.

DMB 7/9

MR FLESHER

3 September 1984

12

THE COMPUTER STRIKE AT DHSS NEWCASTLE

1. This dispute has been rumbling on since the middle of May. So far Norman Fowler has succeeded in his tactics of avoiding too much media attention and the activists running the strike have failed to extend it beyond Newcastle. But it is now entering a crucial phase when it will either crumble or escalate. You might therefore find this background note helpful.

The Issue

2. Chickens are coming home to roost after weak management in the 1970s. About 10 years ago faced with shortages of computer operators managemnt conceded to what was in effect a fiddle on overtime bonuses to boost their pay. Workers who stay after 12.30 am are entitled to an anti-social hours bonus of 20% originally intended to recompense those working the third night-shift. Newcastle only operated a two-shift system but the times for the second shift were adjusted so that workers on it finished at 1.00 am, giving them the full overtime bonus. Internal auditors criticised this and the DHSS management, to their credit, have tried to end the abuse whilst doing the maximum possible to protect existing workers. They have offered that:

SECRET

- staff moving to three-shift working will maintain their existing earnings.

- staff who, on agreed hardship grounds, are unable to work three-shifts, will also maintain existing earnings for working two-shifts.

- Staff who are unwilling to work three-shifts will have their existing earnings protected until management need to recruit more staff and then their earnings will be reduced by 10% over a generous transitional period.

3. Negotiations on these issues had been going on for five months when the unions broke them off in May and after a vote on a show of hands the workers operating the computers keeping details of contribution records and handling new passbooks for pensioners came out on strike. The operators handling child benefit passbooks subsequently came out as well as they claimed they were having to do extra work because of the strike.

Effects of the Strike

4. 400 computer operators are now out on strike. About 60 are still working and braving the pickets who are unruly and throw eggs, though do not descend to NUM types of behaviour. The following services are being affected:

E.R.

- replacement of used child benefit books and issue of books for new-born

- replacement of used pension books

- access to contribution records needed to pay unemployment benefit etc

- payment of benefits to people abroad

5. Contingency arrangements for re-using old benefit books, are holding up well though many recipients of benefit are being inconvenienced. Thre is a cost of about £4 million per week in higher payments to the Post Office which is having to do more manual work. To some extent this cost is offset by a cash flow benefit as not all benefits due are being paid.

6. Militant Tendency activists are running the strike, though it has to be conceded that they could not be effective unless some moderate workers felt they had a grievance. Alastair Graham and the moderate leadership of the CPSA - the main union involved - appear to recognise that the management have moved a long way towards the strikers' demands but they have lost control of the local situation. Various devices, including calling in ACAS, have failed to get the militants to move their position at all, though negotiations re-opened last month.

7. So we have reached a stalemate with the workers proving difficult to budge, the contingency arrangements holding up fairly well, and attempts by the activists to escalate the dispute to other computer centres having no success.

8. But we cannot carry on like this because of the social security uprating in November. The DHSS do not have enough staff at present to increase pensions and child benefits in line with inflation. Even using their contingency arrangements they need an extra 50 staff. The strikers are calculating that the Government will be severely embarrassed if it has to concede that because of the strike 9 million pensioners will not get the extra money due in November. So Mr Fowler has somehow to find extra staff to carry out the uprating, then he will be in a strong position as the strikers will see they are in for a long fight. But he runs the risk of escalating the dispute. He has two main options.

9. First, and most attractive, is direct appeal to the workers. The strike leaders have not clearly explained to the workforce how generous the existing terms are, so the management have written again to all the workers explaining the offer, and asking them to return to work. They hope that some moderates, fed up with the activists, will go back, especially as strike pay at 50% of net take-home pay may mean that some of them are beginning to feel the pinch. Nine have gone back today, having picked up their monthly

Some more have now returned, but probably not enough.
DMB
7/9

strike pay last Friday. We will know by the end of next week whether this ploy has succeeded. If it has, then the strike should begin to crumble.

10. But if sufficient workers do not return, the second option is to recruit people to do the work of the strikers. They will be employed on a casual basis until the strikers return. Job Centres will be used to advertise the posts. The DHSS believe that they should be able to get the extra men. But obviously the risk is that it will provide the activists with the issue they need to intensify the strike. The DHSS assessment is that they will not succeed, as there is little sympathy for the strikers elsewhere, but it is a risk.

11. Mr Fowler will need to take a decision on recruiting new workers as soon as he returns from his holidays on Monday 10 September. Given its sensitivity in the wider industrial scene the Prime Minister might want a wider Ministerial discussion before final decisions are taken.

David Willetts
DAVID WILLETTS

a AW

Treasury Chambers, Parliament Street, SW1P 3AG

Dr Rhodes Boyson MA MP
Minister of State
Department of Health & Social Security
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

Dr 29/8

28th August 1984

Dear Rhodes.

DHSS NEWCASTLE SHIFTWORKING DISPUTE

- will report if required

I am replying to your letter of 22 August since Nigel Lawson is away.

Clearly we must hope that your letter setting out management's offer persuades sufficient strikers to return to carry out the basic uprating work. But recruiting casual staff may well, as you recognise, give the militants a chance to extend disruptive action to the Department of Employment and perhaps elsewhere.

I understand that your people have made further approaches to the General Secretaries of the SCPS and the CPSA, and presumably you will see whether these bear fruit before proceeding further. As you know, we are not yet out of the wood on the 1984 central pay claim. The unions have now received my letter refusing arbitration and it is clearly desirable to keep the temperature down as far as possible.

For these reasons, it would be helpful if you would await the outcome of your initiatives before taking steps to recruit additional staff but I recognise that these arguments may be outweighed by the operational necessity of meeting a restricted timetable to carry out the benefits uprating exercise. And you are best placed to make this judgment.

I am sending copies of this letter to the recipients of yours.

Yours ever
Barney

BARNEY HAYHOE

CIVIL SERVICE: Industrial Action in the C.S.

Sept 79

CABINET OFFICE

From the Minister of State

Lord Gowrie

MANAGEMENT AND PERSONNEL OFFICE
Great George Street
London SW1P 3AL
Telephone 01-233 8610

Paul Murphy Esq
Private Secretary to the Minister of State
for Social Security
Department of Health and Social Security
Alexander Fleming House
Elephant and Castle
London SE1 6BY

28 August 1984

Dear Paul,

THE DHSS NEWCASTLE SHIFT-WORKING DISPUTE

Lord Gowrie was glad to have the latest report on this dispute contained in your Minister's letter of 22 August to the Chancellor. He agrees that we must hope that the making of a direct offer to those on strike will result in enough of them returning to work to carry out the uprating programme.

For the rest Lord Gowrie has only one question. If the direct approach is not successful and your department seeks to recruit new staff would you envisage taking them on as casuals or on a permanent basis - and if the latter what happens to the strikers? There are issues here which need to be thought through and no doubt Ministerial colleagues will be consulted again before major decisions are taken.

Copies of this letter go to David Barclay (No 10), Margaret O'Mara (Chancellor's Office), David Normington (DEm), the Private Secretaries to members of E(PSP) and to Richard Hatfield.

Yours sincerely,

Mary Brown.

MRS M E BROWN
Private Secretary

CONFIDENTIAL

cc D. Scott

DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

G.T.N. 2915

From the Minister of State for Social Security

The Rt Hon. Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
London SW1P 3AG

22 August 1984

NBPM
pending
Bring up with me
on Friday 31/8

Dear Nigel,

THE DHSS NEWCASTLE SHIFTWORKING DISPUTE

In Norman Fowler's absence I thought I should let you know about our thinking on the handling of this dispute, now in its 15th week. Norman wrote to the Prime Minister on 13 July and this led to two days' talks at ACAS, in itself an unprecedented step. Since then officials here have twice conducted extensive and prolonged negotiations direct with the Unions but attempts to obtain a settlement of the dispute broke down at a meeting on 21 August. It is a sad commentary that the CPSA national leaders, who had themselves suggested using ACAS, now seem to have dropped out of the picture, other than to act as paymasters to the 400 or so strikers who are being represented by some of the best-known militants in CPSA politics.

Our next step is to make what we have regarded as a very reasonable offer, tabled on 1 August, direct to the strikers. It is difficult to judge the response, but it may persuade sufficient of the strikers to return to work to enable us to carry out the bulk of the benefit uprating programme on time, using contingency procedures. This is of course, a most important factor in our thinking. However, we need to consider the position if the direct offer fails to persuade sufficient of the strikers to return. The next step in our minds is to seek to recruit the minimum number of new staff to be trained quickly to do the basic uprating work. I know that Norman intended to write to colleagues before taking this step because although it is the next logical step, it holds out the possibility of escalating the dispute. I say "possibility" because our assessment is that staff on other work at Newcastle are unlikely to take industrial action in support of the shift-workers and that staff in Local Offices are also unlikely to act. (Both groups have in fact done well in coping with the effects of the strike in keeping services going for the public.) However, it is possible that efforts will be made to call for support at the two computer centres, at Reading and Livingston, which make payments to the unemployed. The risks of industrial action at Reading where the unions have already made

CONFIDENTIAL

soundings cannot be ruled out particularly if the CPSA make strike pay available.

I think our officials have been remarkably patient in the negotiations and I think it is time for us to take the initiative by the steps I have indicated. I am copying this letter to Number 10, Tom King, members of E(PSP) and Sir Robert Armstrong. A reply by Tuesday 28 Augus would be necessary if we are to meet the uprating timetable.

All good wishes
Yours ever
RB

Dr Rhodes Boyson

Civil Service: Long-Term Pol Pt 16

29 AUG 1984

PRIME MINISTER

Content for Mr Fowler to allow ACAS into the Newcastle dispute?

AT 13/7

Yes mt

NEWCASTLE COMPUTER CENTRE STRIKE

You will want to know of a further development in this dispute which has stopped the national insurance computers at Newcastle.

The local strikers are still taking an intransigent line although we have increased the pressure on them. Before resorting to further steps, I felt it right to make a final effort to end the dispute yesterday. There is one possibility - although not much more than that - which does not involve any real concession on our part.

In private talks with the national union leaders, officials have, with my agreement, identified a modest adjustment to the transitional arrangements. Alistair Graham and Gerry Gillman are anxious to find a way through but feel that the only way the new formula would persuade the local militants to agree was if it emerged from a process of "conciliation" involving a third party - probably ACAS.

With some reluctance I think we should pursue this approach. It would be so arranged that we and the unions were responding to an offer from ACAS to see if they could help. Our stance would be that we were taking advantage of a reasonable offer to help - with no strings - in the interest of preventing any potential threat to the uprating programme.

I think this course is the best now available for resolving the dispute in an agreed way quickly while maintaining our managerial and public stance.

But you and colleagues will wish to be aware of how I intend to proceed.

I am copying this to Nigel Lawson and Tom King and to Sir Robert Armstrong.

13 July 1984

NF

Computer Shine

1 JUL 1984

4.72

CONFIDENTIAL
SECRET

NAPM

AT 19/6

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

18 June 1984

The Rt. Hon. Norman Fowler MP
Secretary of State for Social Services

Dear Norman

DISPUTE AT DHSS NEWCASTLE

You wrote to me on 15 June about your plans for tackling the Newcastle dispute. We must clearly be seen to be watching the situation closely. But I think at present we should leave it to departmental management to announce any fresh moves of the kind you have in mind. I need hardly stress how carefully we have to handle the position at Newcastle, now that the current Civil Service pay negotiations have reached such a critical stage. No doubt your people will continue to keep in touch with mine.

You refer to the sensitive question of laying off staff whose work is affected by an industrial dispute. I agree we should take another considered look at this issue for the future and I will arrange for this to be done in association with other interested departments.

I am sending copies of this letter to the Prime Minister, the members of E(PSP) and Sir Robert Armstrong.

Yours
Nigel

NIGEL LAWSON

19 JUN 1984

Copy 2

10

DEPARTMENT OF HEALTH & SOCIAL SECURITY

Alexander Fleming House, Elephant & Castle, London SE1 6BY

Telephone 01-407 5522

From the Secretary of State for Social Services

The Rt Hon Nigel Lawson MP
Chancellor of the Exchequer
HM Treasury
Parliament Street
LONDON
SW1P 3AG

15 June 1984

Dear Nigel.

INDUSTRIAL ACTION - NEWCASTLE CENTRAL OFFICE

In the uprating statement on Monday 18 June I shall mention, albeit briefly, the fact that the completion of the uprating programme could be jeopardised if industrial action which is currently being taken at the computer installation at Newcastle Central Office continues much longer. If I am pressed on this point I shall say that I am considering what action is needed to bring about a resolution of the dispute. I am taking this opportunity to advise you and other colleagues of the steps we propose to take.

The dispute is now entering its sixth week and during this time we have kept our options open in the hope that the unions would return to the negotiating table. This has not happened and we now consider that management should take some positive steps towards a conclusion. The dispute is beginning to have an effect on the service we provide to the public. I will stress that we are taking action now in order to limit the risk to the uprating programme and to restore the service to pensioners and contributors.

Next week, therefore, we propose to try and restore a limited service from the Newcastle computers. This will involve as a first step management transferring about 50 data processing staff (who at the moment, because of the dispute, have very little work to do) into the computer operations area. We anticipate this will result in an immediate reaction from the unions who can be expected to accuse us of strike breaking. They may attempt to escalate the dispute, perhaps by trying to bring the Washington Child Benefit computer staff out on strike. They may also seek to involve the

E.R.

other computer installations at Reading and Livingston in some sympathetic strike action but this is likely to be limited to a token gesture. Action on a wider front - affecting local offices - will probably not be sought but in any event substantial support there is unlikely.

Despite the obvious risks, I am satisfied that it is worth restoring a limited service in the affected computer areas. The alternative, inaction, would be impossible to defend since it would result in a progressively deteriorating service to pensioners and a growing danger to the uprating programme.

I would also like to remind colleagues that we still have one serious handicap in disputes of this kind - our inability to lay off staff rendered idle by the industrial action of others. The timing never seems right to grasp this nettle but I do think we should consider the issue again.

I am copying this to the Prime Minister, members of E(PSP) and to Sir Robert Armstrong.

Yours ever, Norman

NORMAN FOWLER

15 JUN 1984

File

Civil Service

CF

19 August 1981

This is just to thank you for sending the Prime Minister a copy of your circular letter on the formation of the MOD Staff Association. I am sure she will be interested to see this.

WR

G. H. Lawton, Esq.

This is just to thank you for sending me P-M- a copy of your circular letter on the formation of the MOD Staff Association. I'm sure she will be interested to see this.

FROM G.H. LAWTON, Hon. Secretary the MOD STAFF ASSOCIATION

7 Cedar Court,
Sheen Lane,
East Sheen,
London SW14 8LY
Telephone 01-876-3794

R 19/8

16 August 1981

Dear Prime Minister,

INDUSTRIAL RELATIONS IN THE MINISTRY OF DEFENCE: FORMATION OF THE MOD STAFF ASSOCIATION

1. I am writing to inform you that a group of us, loyal to the Crown and recognising the need for a strong and efficient defence capability which can only be achieved by the closest co-operation between the Serviceman and MOD civilian staff who provide his immediate support, have set up the MOD Staff Association. I enclose a copy of the letter addressed to all non industrial staff currently being circulated to MOD offices and establishments around the world which explains the aims of the Association and the reasons for setting it up.

2. The success of this venture, which seeks to bring about a much more united and dedicated Defence Service, depends very much on the willingness of the Government to respond constructively to a new initiative which can benefit all concerned; the Nation, the Services and MOD Civilian employees. Answers to letters to Members of Parliament from constituents working in the MOD have revealed in several cases an ignorance of the duties carried out by civilian staff. A common reply states in positive terms that civilians should not be paid as much as Servicemen because they were never in danger and only worked from nine to five. We are not seeking parity with Servicemen but the fact of the matter is that civilians provide the first line support for the Navy which includes service at sea in a prime target vessel, the Royal Fleet Auxiliary, and serve wherever the Navy serves. Civilians in the RAF serve on air stations and may fly, although not normally in combat roles. There is less operational activity for civilians in the Army Department but even there they carry out base support roles wherever the Army serves. Neither is it true to say that civilians only work normal office hours. We are paid for a specific number of hours work a week (this varies slightly depending on where you are and what you are doing) but civilian staff provide a twenty four hour service for every day of the year as necessary and, in operational support departments can be called out at any time and sent anywhere at short notice. Some can be put into uniform at the equivalent military rank; this happened frequently in the last war whilst the last occasion in peace time occurred to 'naval' civilians during the Aden crisis. The Service and Civilian elements of the MOD are totally interdependent and there is a need for this to be recognised.

3. The vast majority of MOD civilians are loyal to the Crown and abhor strike action. However, there is a deep resentment at the way both the Government and the Unions have handled the recent pay dispute. Our canvasses show that there is widespread interest in the proposals put forward in the attached letter but everyone is insistent that whatever pay structure is finally agreed and accepted, it is backed by STATUTORY safeguards which any Government will find it difficult to break. The record of successive Governments over the last twenty years in setting aside or breaking pay agreements with its employees has caused even the most dedicated Public Servant to place no trust whatever in the words of politicians whatever their political colour.

4. The aims of the Association provide a new initiative which seeks to bring an end to industrial relations problems in the MOD. I hope we may be able to count on your support for a constructive response from the Government which recognises that the Service and Civilian wings of the Ministry are part of the same team.

Yours sincerely,

G H Lawton

Hon Treasurer
MOD Staff Association
Room
St Giles Court
London WC2

01-632 7806

Hon Secretary
MOD Staff Association
Room 419
Empress State Building
London SW6 1TR

01-385 1244 Ext 2685

August 1981

TO: ALL NON-INDUSTRIAL CIVIL SERVANTS IN THE MINISTRY OF DEFENCE

Dear Colleague,

THE FORMATION OF THE MINISTRY OF DEFENCE STAFF ASSOCIATION

1. This letter proposes the setting up of a Ministry of Defence Staff Association with the purpose of looking after the interests of ALL non-industrial staff in the Ministry more EFFECTIVELY and for LOWER SUBCRIPTIONS than the current Civil Service Unions.

WHAT IS WRONG WITH THE CURRENT CIVIL SERVICE UNIONS?

2. The Ministry of Defence is an organisation with responsibilities and problems found in no other part of the Civil Service. The security of the United Kingdom rests upon it. Its effectiveness depends upon the closest co-operation and mutual trust between the Serviceman and the Civilian who provides his support and upon whom his life may depend. The MOD is unique and needs a system of dealing with industrial relations problems adapted to its special circumstances.

3. The current Civil Service Unions are not geared to cope with exceptions. Whilst the MOD Sections in the Unions purport to do so, they have to follow national policies decided by Annual Conferences and National Executive Councils, often politically motivated, and many of which are directly against the interests of MOD members.

4. Every year, motions are put up at Annual Conferences seeking reductions in defence spending or affiliation to politically motivated passivist organisations. Recent examples include the affiliation by the CPSA to the Campaign for Nuclear Disarmament and the acceptance of a motion in the SCPS for 'plans to be developed for the use of (MOD) manpower ... (THAT MEANS YOU) to be diverted to 'socially useful purposes'. The latter debate argued strongly for unilateral disarmament. It is YOUR JOB that is being offered up by YOUR UNION (or so it claims to be) looking after YOUR INTERESTS ?? for which you pay YOUR SUBSCRIPTION.

5. The Civil Service Unions have campaigned strongly to persuade MOD personnel to take long term industrial action in key areas of defence over the last two years. Whatever the justification for so doing, it is MOD PERSONNEL who will have to suffer the consequences. The Armed Services will not tolerate continual disruption of vital support services. The inevitable consequence will be a loss of civilian jobs on a large scale, reduced prospects of promotion and less interesting work for those that remain. Whatever the outcome of the current dispute, YOUR FUTURE has been put at grave risk by YOUR UNION.

6. THERE IS AN URGENT NEED FOR A CHANGE OF ATTITUDES ON ALL SIDES AND A NEW INITIATIVE. A MOD STAFF ASSOCIATION OFFERS JUST THAT.

PROPOSED AIMS FOR THE MOD STAFF ASSOCIATION

7. The proposed aims of the MOD Staff Association are:

a. The offer of a 'no strike agreement' and full Staff Side co-operation in the introduction of new technology and improved working methods in return for:

(1) A satisfactory method of determining pay backed by statutory safeguards which any Government would find difficult to break. This might be done by embodying the Agreement in an Act of Parliament: there are other constitutional mechanisms which could be used. A possible method of determining pay would be to relate civilian pay to service pay after taking account of differences in conditions of service. To overcome pay relativity problems, we would press for a unified pay structure into which all specialisations would be slotted. This system works well in the Diplomatic Service.

(2) A satisfactory method of dealing with possible redundancies resulting from the introduction of new technology or whatever. We feel that there would be no lack of volunteers for premature retirement given reasonable terms.

(3) The maintenance of the Principal Civil Service Pension Scheme.

b. Subject to a satisfactory agreement on 'a', an amendment to civilian conditions of service which would require all non industrial staff to sign an undertaking not to take industrial action. This is a condition of service in the Civil Services of several European Countries and the USA.

c. The normal rights and facilities to represent our members on personal cases and in all matters relating to their welfare and legitimate interests. A prime aim of the Association would be to provide a much improved personal service to members.

d. Within the Association:

(1) All elections and major decisions to be decided by SECRET BALLOT of all members at Branch and National level.

(2) No affiliations to any form of political body or outside pressure group such as the TUC, CND, Anti-Nazi League, etc: neither would we contribute to any organisation other than (with membership agreement) recognised Civil Service Charities.

(3) To seek advantageous discount agreements for members with retail outlets, insurance firms, etc and mortgage facilities.

THE COST OF MEMBERSHIP

8. By careful economy in administration, no affiliations and, except in special circumstances, by confining circulation of information to a monthly 'house magazine' which would give a factual account of the activities of the Executive Council, agreements reached and problem areas to be dealt with as well as providing a forum for members' views, it is considered that the Association could be run on a subscription of TWO POUNDS (£2.00) paid monthly or at a discounted annual rate of TWENTY POUNDS (£20.00) a year provided that the full annual payment was made by 31 January each year. There would be a reduced rate for young members until they reached their twenty first birthday. This subscription rate compares favourably with that of most Trade Unions and is considerably cheaper than most of the Civil Service Unions.

WHAT HAPPENS NEXT?

9. THIS IS UP TO YOU. Attached you will find a pre-addressed series of proformas. If you are interested in joining, please tick the appropriate boxes/insert the required information and forward them. Please indicate whether you are prepared to play an active part in your area eg by joining or setting up a Branch Committee.

10. On receipt of your application to join and your subscription, you will be sent a Membership Card. In consultation with those who are prepared to play an active role, membership meetings will be arranged so that Branches can be set up. A draft Constitution and Rule Book are currently being prepared for discussion and agreement.

11. Subject to a satisfactory response, the Association will apply for 'listing' and ultimate registration as a Trade Union in accordance with the legal requirements. At the same time, formal approaches will be made to MOD Management to obtain negotiating rights. Informal approaches have already been made to Civilian Management (Industrial Relations) who has stated that any Staff Organisation 'should have in membership a substantial proportion of the Staff in the class(es) or grade(s) for which recognition is sought'. Obviously, the greater the response from YOU, the better the chances of obtaining recognition.

12. The setting up of an organisation of this kind costs money. Financial contributions will be gratefully received. The initial membership fee to cover the period to 31 December 1981 will be TEN POUNDS (£10.00) for everyone over the age of TWENTY ONE on 31 AUGUST 1981. The fee for members under the age of twenty one on 31 August 1981 will be FIVE POUNDS (£5.00). Cheques/Postal Orders should be made payable to:

The MOD STAFF ASSOCIATION

and crossed. Cheques should be endorsed 'Not Negotiable!

NB. PLEASE DO NOT SEND CASH THROUGH TRANSIT OR BY POST.

FINALE

13. The proposal to set up a Staff Association is a radical departure from anything which has happened in the Public Service in living memory. However, there are precedents. Inland Revenue has its own Staff Federation; the Diplomatic Service has a unified pay structure; Civil Servants in several Foreign Countries, relatively better paid than we are and enjoying much more respect in their communities, have 'no-strike' agreements. The proposals provide a new iniative which, given your backing and goodwill on all sides, is realistic and can work. It will take a lot of hard work to set up the Association and hard negotiation to achieve our aims: we do not underestimate the difficulties which will not be overcome immediately. BUT WHAT IS THE ALTERNATIVE? Do you want the current type of confrontation to go on year after year? There is every indication that it will unless there is a change of attitudes on ALL sides. The proposals offer an opportunity for all concerned to benefit. FOR YOU, better pay, retention of civilian posts and prospects of further civilianisation and improved promotion opportunities; FOR THE SERVICES, a guarantee of high quality support; FOR THE NATION, a highly efficient and cost effective DEFENCE SERVICE to protect their freedom. THE DECISION IS YOURS.

Yours sincerely

Tom Lawton

(G H LAWTON)
Hon Secretary

Paul Ledbrook

(P LEDBROOK)
Hon Treasurer

Sponsors

To: The Hon Secretary
MOD Staff Association
Room 419
Empress State Building
London SW6 1TR

Tel No 01-385 1244 Ext 2685, 2130

From: (Full Name) .....

Title: Mr, Mrs, Miss, Ms (other)

Honours/Qualifications .....

BLOCK CAPITALS PLEASE

OFFICIAL ADDRESS

.....

..... GRADE .....

HOME ADDRESS

.....

.....

Official Tel No ..... Ext .....

PLEASE READ CAREFULLY

1. I have read and understood the attached proposals for setting up a MOD Staff Association. I agree in principal with its stated aims and hereby apply to become a Member. I agree to further the aims of the Association and to abide by any agreement made by the Association on behalf of the Membership or my particular Class or Grade.

2. I enclose a cheque/postal order/money order for £10.00 (TEN POUNDS), (£5.00 (FIVE POUNDS) for those under 21 years of age on 31 August 1981) being my 'Founder's Subscription' covering the period ending 31 December 1981 for which a receipt will be issued. (If no receipt has been received after one month, please contact the Hon Treasurer Tel No 01-632 7806 or the Hon Secretary). Thereafter, I agree to pay the annual/monthly subscription at the rate agreed from time to time at Annual Conference. For 1982/83, the subscription will be TWO POUNDS paid monthly or TWENTY POUNDS for the year provided that full payment is made by 31 January 1982: half these rates will be charged to those under 21 on the date of payment.

NB: All applications for membership received before 31 December 1981 will entitle the applicant to a special FOUNDER MEMBER's membership card.

3.* I certify that I am under 21 years old ☐/over 21 years old ☐ on 31 August 1981 (Please tick appropriate box).

4. I understand that my 'Founder's Subscription' will be used to meet costs in setting up the organisation necessary to pursue the aims of the Association and will not be recoverable in full under any circumstances. Professionally audited accounts will be rendered at the first Annual General Meeting of the Association.

5. I may terminate my Membership of the Association at any time after 31 December 1981 by giving one month's notice in writing to either the Branch Secretary or the Hon/General Secretary.

6. Until annual election procedures are instituted, I am prepared to:

a. Help set up a Branch Committee in my area ☐

b. Act as Chairman ☐, Secretary ☐ Treasurer ☐, Branch Committee

c. Member ☐, Distributor of Association Literature ☐, Auditor ☐ in my area.

c. Serve on the National Committee of the Association ☐

(please tick appropriate box(es)).

I understand that no official facilities will be granted until the MOD Staff Association has been formally recognised by the Official Side.

* If under 21 years old, please state date of birth

.....

Signed.....

Date .....

To: CPRO(B)
DGDA Acs 5
'B' Block
Warminster Road
Bath BA1 5AA

From: Full Name .....
(in caps)

Official Address .....

.....

..... Tel No .....

Staff No .....

Pay Roll No .....

Dear Sir

I am resigning from my Union the ..... Will you please arrange for my subscription to be stopped with effect from ..... 198 ...

Signature .....

Date .....

2

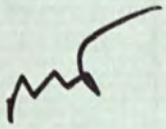
Prime Minister

Civil Service

Mr Ingrid

Mr Vorse

PRIME MINISTER



9/12

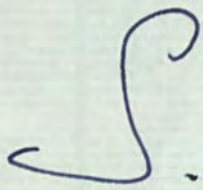
CIVIL SERVICE PROTEST MEETINGS

The recent meetings by the Council of Civil Service Unions, during working hours, to protest at the breaking of the Civil Service Pay Agreement, were attended by 30,000 non-industrial civil servants (about 6% of the total). Those who attended did so without authority and will lose pay. Additionally, some meetings, not originally planned by the CCSU, took place outside working hours - we do not know how many civil servants attended these meetings in their own time, but the Unions are claiming a further 20,000.

The planned meetings were held at centres throughout the country; the degree of absenteeism varied - 8,000 staff in Scotland took part, nearly 6,000 in the North-West of England and nearly 5,000 in the North-East. All Departments were affected, some more than others (11,000 Inland Revenue staff, for example) and there was inevitably some short-term disruption to services to the public.

The extent of support for the meetings was higher than we could have expected for this type of demonstration - only 11,700 non-industrial civil servants took part in the TUC day of action in May. It is a pointer to the likelihood of industrial action in the early months of next year.

I am copying this to the Chancellor of the Exchequer, members of E(CS) and to Sir Robert Armstrong.



SOAMES

8 December 1980

JS

Civil Service

MR. WRIGHT
CABINET OFFICE

Thank you for your minute, reference A02222, of 21 May about the civil servants' contracts of employment.

I look forward to hearing about the timescale for the Lord President's paper. The Prime Minister is taking a considerable interest in the progress of this work.

MAP

22 May 1980

GC

JS

Civil Service

BF

MR. WRIGHT
CABINET OFFICE

Thank you for your minute, reference A02222, of 21 May about the civil servants' contracts of employment.

I look forward to hearing about the timescale for the Lord President's paper. The Prime Minister is taking a considerable interest in the progress of this work.

MAP

22 May 1980

GC

Mr Pattison

Thank you. I hope x| will not be too long. MAW 21/V

Ref: A02222

CONFIDENTIAL

CAW to see. Official Committee papers attached returned to RTA 23/5

MR. PATTISON MAP 21/V

Civil Servants' Contracts of Employment

You spoke to me last week about the meeting of E(CS) on 20th November last year at which the Official Committee on Industrial Relations in the Civil Service was asked to examine further the possibilities of altering civil servants' conditions of employment.

2. The last meeting of the Official Committee on 9th May considered a paper on this subject prepared by the Civil Service Department in conjunction with advice from Treasury Counsel. Discussion of this paper revealed that the scope for radical change in the contracts of employment of civil servants seems to be limited. The Civil Service Department were asked to revise the paper to bring out more clearly the potential advantages and disadvantages of attempting to change contracts of employment. When ready, the paper would be circulated by the Lord President to colleagues with his own recommendations for action. We are consulting the Civil Service Department as to when this is likely to be. x|

D. J. Wright

(D. J. Wright)

21st May 1980

CONFIDENTIAL

21 MAY 1960

Civil Service Department,
Whitehall,
London, SW1A 2AZ

With the Compliments

of the

Lord President of the Council

Civil Service

Civil Service Department
Whitehall London SW1A 2AZ
01-273 4400

6 December 1979

Mr Nigel Lawson, MP
Financial Secretary to the Treasury
HM Treasury
Parliament Street
LONDON SW1P 3AG

12 7/12

Dear Nigel,

Thank you for your letter of 29 November reporting that staff at the National Savings Bank, Glasgow, who had been suspended from duty, had returned to work. This is a satisfactory outcome of the firm stance taken by management.

As you say, it would not be sensible to attempt to predict the likely effect of the events you describe on future union activities. Nevertheless the action taken at the National Savings Bank must have demonstrated to the CPSA, and to other Civil Service unions, our readiness to take a firm line in answer to various forms of industrial action.

I am copying this, together with your letter, to the Prime Minister, E(CS) colleagues, and to Sir Robert Armstrong.

Yours ever

Christopher

SOAMES

- 7 DEC 1979

MANAGEMENT IN CONFIDENCE

Civil Service

Treasury Chambers, Parliament Street, SW1P 3AG

29 November 1979

The Rt Hon The Lord Soames GCMG GCVO CBE
Lord President of the Council
Civil Service Department
Whitehall
LONDON
SW1

Dear Chris, Very Best

TL
29/11

NATIONAL SAVINGS BANK GLASGOW

In my letter of 16 November I described the situation which had resulted at the National Savings Bank at Glasgow from the blacking by some staff of work done by branches working overtime or where substitution was in operation.

The extent of the action taken by the management in suspending staff (after due warning) for blacking was evidently becoming a serious embarrassment to the Civil and Public Services Association (CPSA) whose strike fund was already depleted by earlier general Civil Service and Post Office industrial action. On 20 November (when total suspension had reached 418) 2 CPSA HQ representatives approached DNS HQ management to discuss the possibility of a formula for a return to normal working being put before a meeting of the CPSA National Executive later that day.

A broad formula emerged, which was approved by the National Executive, and a subsequent joint management/CPSA statement provided the basis for a local mass CPSA meeting on 22 November to vote in favour of a return to normal working. The joint statement provided for a return to normal working on 26 November, to be followed by local joint discussions about the extent of overtime during which, for a few days, overtime working would be suspended, but with management's right to resume it thereafter recognised.

The issue of suspension notices continued until 22 November, when the total reached 524. The local impression is that many who courted suspension did so because of the prospect of a holiday at union expense.

Yesterday the return to normal working took place as envisaged, and there have been no reports of any subsequent incidents.

It would be unwise to predict what effect, if any, these events might have in dampening or restraining local militancy, given that the forthcoming announcement about reductions in the Civil Service may provide militants, or unions acting officially, with further pretexts for disruption in various places in the Service. However, the resolute counter measures taken by the Glasgow managment (which comprised not only mass suspensions but also the collection and moving of mail by hired van and volunteer senior staff through picket lines) can hardly have failed to leave some impression. As I said in my earlier letter, the risk that the situation would escalate to the point of virtually halting Bank operations had to be faced, and taken.

Yours ever
Nigel

NIGEL LAWSON

29 NOV 1979

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

28 November 1979

The Rt Hon Patrick Jenkin MP
Secretary of State for Social Services
Department of Health and Social Security
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

R 29/11

Dear Patrick

HANDLING OF INDUSTRIAL DISPUTES IN THE NHS

I refer to your letter of 22 November to Christopher Soames enclosing a draft circular and guidance on this subject. You kindly extended to close of play today the time limit for comments on these drafts.

On these documents I have a number of drafting suggestions which mainly reflect points made in the joint Opinion of 22 October, sent with my letter to you of 23 October. In the time available it has not been possible for all of these to be taken up at official level, as would normally be desirable in matters of detail, but if any of my suggestions cause difficulty on your side no doubt this can be resolved between the Solicitor to your Department and my officials prior to issue of the documents. I do not think it should be necessary to revert to colleagues on E(CS).

Circular

Para 2. I think it should be made clear that what is in issue is all forms of industrial action. In the first sentence I suggest replacing "if they strike" by "in the event of industrial action, whether or not amounting to a strike".

Para 5. I am unable to advise on the legal position in the area of bonus payments or overtime or shift allowances, or in relation to the other matters dealt with in paras 4, 5 and 8-16 of the guidance - this was accepted at the outset. On the face of it what is said on these topics is entirely reasonable.

Para 5(ii). I think a more accurate description of the management responses here would be "sending staff home without pay or stoppage of pay" rather than "suspension of staff or withholding of pay".

/Para 5(iii).

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

Para 5 (iii). For "the strike" substitute "industrial action" (see comment on para 2, above).

Para 5(iv). I think the object here may be to point out that it is undesirable for staff who refuse to work normally, or at all, to be paid as if they were working to contract, but not to criticise those who are deprived of useful work by the industrial action of others. If that is correct I suggest instead the words "apart from the legal position, that it is undesirable for staff to be paid for work which they have refused to carry out".

Para 5(v). At this point I think it is extremely important to stress the need for legal advice. See, especially, paragraph 5 of my letter to you of 23 October. It might well seem to management in a particular case that the law is clear, when further enquiry would reveal that it is not. It will also be vital to establish, for any outbreak of industrial action, that it <u>does</u> amount to conduct that is in substantial breach of contract, since that is the premise on which the joint Opinion of 22 October, and now the NHS guidance, is based. To meet these points I suggest that this sentence be redrafted as a separate paragraph to read -

> "In addition to the four points listed above, it will be essential for the authorities to bear in mind and (whenever time permits) to take advice on the exact legal position of the staff or groups of staff who are involved. In particular the authorities should satisfy themselves that in taking industrial action those staff are in substantial breach of contract and hence properly the subject of one or more of the management responses suggested in paragraphs 2-7 of the Annex."

Para 6. To my knowledge the NHS guidance is not issued under any statutory powers. Assuming this to be correct, there is still a danger that the authorities might seek to hold your Department responsible in a particular case where their response to industrial action, alleged by them to have been based on the guidance, failed to have the desired results. To guard against this I suggest that the last sentence be strengthened to make it clear that the guidance is nothing more than advice on the options to be followed by the authorities and that the responsibility in individual cases rests with them. The exact wording is, I think, a matter for your Department.

/<u>Annex</u>

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

Annex

Para 1. For much the same reasons as those stated in my comments on paragraph 5(v) of the circular, I suggest deleting the words "in general" at the start of the last sentence, and adding the words "such as would have justified his dismissal at common law" at the end.

Para 3. If I understand this correctly it deals with two distinct cases, where the management responses are also distinct. Therefore it might be better if this paragraph were split. One case dealt with is where there is a single "lightning" strike, to which the appropriate response is stopping pay for the period of the strike. The other case dealt with is where short stoppages take place frequently over a period, and here it appears you are suggesting the response known as "TRD" (temporary relief from duty) in the Civil Service. It is also possible, but not clear, that TRD is the response suggested in paragraph 6(ii). To the extent that TRD is to be used in the NHS I think it is important that the TRD procedures suggested in the joint Opinion of 1 October (on the status of Civil Servants), designed to give the maximum security to this response within the Civil Service, should also be followed - with adaptations where called for - in the NHS. To this end I think the guidance, and probably also the circular, needs to be amplified by reference to these procedures and the Civil Service TRD guidance in Annex B to E(CS)(79)(8), with its two appendices, would be the starting point. We considered and approved this material at E(CS) on 21 November, for use in the Civil Service.

Para 6. It would be a more accurate statement of the law if the second sentence read -

> "An employee is not entitled to his remuneration for any pay period unless he can prove substantial performance of his contractual obligations during that pay period."

Para 6(i). The first sentence is a little unclear and I suggest the following redraft -

> "if less than the full range of duties is acceptable to management in the sense that it is willing to accept specific but limited services, the staff concerned should at the outset of the action be given notice (say 24 or 48 hours in advance of the sanctions being applied) that while they refuse to undertake normal working they are in breach of contract and are not entitled to full contractual pay."

/I

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

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I have three other drafting points on this paragraph -

(i) delete "ex gratia" in line 6;

(ii) delete "is" in line 15 and substitute "should be expressed to be"; and

(iii) add "while the industrial action continues" after "stopped" in line 19.

Para 6(ii). Similarly I suggest altering the first sentence to read -

"if less ... (say 24 or 48 hours in advance of the sanctions being applied) that while they refuse to undertake normal working they are in breach of contract and will not be paid; and their pay should then be stopped on the expiry of the notice."

I am sorry this letter is a long one but I have necessarily had to go into matters of detail. Copies go to all the recipients of your letter to Christopher Soames.

Yours ever.

Michael

29 NOV 1979

Copied to:

✓The Prime Minister
10 Downing Street SWI

The Lord President of the Council
Civil Service Department
Whitehall SWI

The Secretary of State for Wales
Welsh Office
Gwydyr House
Whitehall SWI

The Secretary of State for Northern Ireland
Northern Ireland Office
Great George Street SWI

Sir Robert Armstrong
Cabinet Office
Whitehall SWI

The Secretary of State for Defence
Ministry of Defence
Main Building
Whitehall SWI

The Secretary of State for Employment
Caxton House
Tothill Street SWI

The Secretary of State for Scotland
SCOTTISH OFFICE
Dover House
Whitehall SWI

~~The Secretary of State for Social Services~~
~~Dept of Health & Social Security~~
~~Alexander Fleming House~~
~~Elephant & Castle SEI~~

The Financial Secretary
HM Treasury
Parliament Street SWI

29 NOV 1979

MBPM
Civil Service

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

12 26/11

The Rt Hon The Lord Soames GCMG GCVO CBE
The Lord President of the Council
Civil Service Department
Whitehall
London SW1

22 November 1979

Dear Christopher,

HANDLING OF INDUSTRIAL DISPUTES IN THE NHS

At the meeting of E(CS) on Tuesday 6 November - E(CS)(79) 2nd Meeting - I promised to circulate our draft guidance to NHS authorities on handling industrial disputes. This guidance is attached. I am anxious to issue this circular as soon as possible and would be grateful therefore if comments could reach me by mid-day Monday 26 November.

I am copying this letter to the Prime Minister, members of E(CS) Committee, the Secretaries of State for Wales and Northern Ireland, the Attorney General, and to Sir Robert Armstrong.

Yours ever
Patrick

ENC

EF

CONFIDENTIAL.

DRAFT CIRCULAR

HC(79)

November 1979

For Action:

Regional Health Authorities
Area Health Authorities
Boards of Governors

For Information:

Community Health Councils

HEALTH SERVICES MANAGEMENT
IF INDUSTRIAL RELATIONS BREAK DOWN

SUMMARY AND INTRODUCTION

The care and cure of sick people is the whole purpose of the NHS. All the staff work together for this aim. It cannot be achieved with real consideration and comfort for the ill unless there are good relations between all the staff, whatever their jobs.

2. People need to be clear as to their jobs and their rights, and what happens if they strike. Both the management and the staff need to be absolutely clear where they stand. A draft agreement on procedures for the handling of local disputes is being discussed by the General Whitley Council.

3. This is a guidance note on handling any dispute that may arise.

HOW SHOULD THE MANAGEMENT RESPOND TO INDUSTRIAL ACTION?

4. Industrial action varies from full-scale strikes to restrictive working, overtime bans and the like. These are set out more fully in the Annex. Not every member of the staff realizes that most forms of industrial action are a breach of contract.

5. Staff who are on strike are not entitled to be paid, or to have bonus payments or overtime or shift allowances that are not earned. Beyond that, it is for Authorities themselves to decide in the light of local circumstances the timing and precise nature of their response. In reaching decisions they will wish to bear in mind -

i. the need to maintain services to patients;

ii. the possibility that in some cases the suspension of staff or withholding of pay would lead to an earlier return to normal working (even though there might be an escalation of industrial action in the first place);

iii. that when the strike is over the health service will continue, and staff will need to work together again;

iv. the undesirability of paying for work which has not been carried out; and

v. the exact contractual position of groups of staff taking industrial action; Authorities should take early legal advice if there is doubt about contractual matters.

6. None of these factors is overriding, although some will have more weight than others according to circumstances. In particular, there may well be occasions when the proper response to industrial action will be to accept that services to patients cannot be fully maintained, for instance, where staff in dispute make unacceptable demands or a condition for remaining at work. In such circumstances, the responsibility for the assessment of priorities between, and the clinical management of, patients must lie with doctors concerned. Authorities will however be aware that their prime function is to provide treatment for patients and that consequently their response to industrial action must take account of the need to maintain those services in the long as well as in the short term. Authorities should strike a balance between the various factors according to their own particular circumstances. Ministers want NHS management to know that, having issued this guidance, they would hope not to intervene in their decisions.

7. It is also important that Authorities make known in advance to staff and their trade union representatives the general policy which the Authority will follow in the event of industrial action. Such a policy is unlikely to cater for every contingency and it should be reiterated or supplemented in the light of prevailing circumstances when industrial action takes place. It is important, too, that Authorities should have regular contacts with trades union officials and staff representatives both before and during a dispute; to be fair and to be seen to be fair, the policy of management must be fully explained.

VOLUNTARY HELP

8. Authorities should, if they feel it necessary during a dispute, make such use of volunteers as they think fit - whether recruited from existing members of staff or from the general public. Decisions on whether, when and how to use volunteers can only be taken at local level in the light of local circumstances, but it is clear that, properly organised, volunteers can make a valuable contribution to the maintenance of services to patients. Authorities should consider now how they can tap the help the general public are usually and spontaneously prepared to offer in response to the needs of sick people. Ministers will support any authority which makes use of volunteers during industrial action. The position of "regular" volunteers (those whose volunteering will continue after the dispute is over) may need special consideration and Authorities are urged early in a dispute to consult voluntary organisations about the role of their members.

9. Authorities are similarly free to make use of agency staff or contractors during a dispute. They should, however, seek to ensure that their own staff do not work as agency staff during a dispute.

CONTINGENCY PLANNING

10. It is essential that Authorities should give high priority to contingency planning against the event of industrial action. Although Authorities will be aware that plans for assistance from the Services are in existence (and were implemented in the case of the Ambulance Service earlier this year) such assistance must not be regarded as a substitute for adequate planning by the Authorities themselves.

11. The precise nature of an Authority's contingency planning will be dictated by local considerations such as the past history of industrial disputes, the geographical location of NHS premises and the pattern of services. But in general terms a review of contingency planning should:

a. identify those services which are susceptible to disruption by industrial action;

b. assess in consultation with clinicians and nursing staff the extent to which such services need to be maintained in order to provide basic essential clinical and support services; and

c. make plans for the maintenance of such services to the extent required.

In some cases it will be found that action can be taken in advance of industrial action - for example, the provision of outside telephone lines, independent of an exchange, for key personnel, and the nomination of an officer with responsibility for co-ordinating and directing the activities of volunteers.

ACTION

12. Authorities are asked to let all staff know the policy which they intend to follow in the event of industrial action.

From:

Regional Liaison Division 5B
Euston Tower
286 Euston Road
London NW1 3DN

Enquiries: Circular: Mr M G McCurry, Room 1722 Euston Tower
Tel: 01-388 1188 Ext 938

Annex: Mr G R F Balderson, Room 70, Hannibal House
Tel: 01-703 6380 Ext 3606

Further copies of this Circular may be obtained (by written request wherever possible, please) from

DHSS Store
Scholefield Mill
Brunswick Street
Nelson
Lancs BB9 OHU Tel: Nelson (0282) 62411/2 Ext 17

ANNEX

FORMS OF MANAGEMENT RESPONSE TO INDUSTRIAL ACTION

This Annex spells out the various forms of management response to certain forms of industrial action (see para 4 of the covering Circular). This annex, and the covering Circular, have been prepared in the light of legal opinion available to the Government, but do not purport to be a full statement of the law. Authorities should look at the terms of individual contracts before deciding what action to take and should if necessary seek specific legal advice. This should be done quickly, lest by delay or inaction Authorities are seen as acquiescing in a breach of contract by their staff. In general the advice given in paras 2-7 is based on the premise that the conduct of the employee to whom the advice applies amounts to a substantial breach of his contractual obligations.

2. COMPLETE WITHDRAWAL OF LABOUR

Those on strike should not be paid for the appropriate period of time and there should be no subsequent payment for the period of the strike.

3. LIGHTNING STRIKES

Pay should be stopped for the period of the lightning strike. Where constant short-duration stoppages are so disruptive as to affect the whole work pattern, management should consider sending staff home without pay, providing it is clear that this is not being applied as a disciplinary measure under which employees could claim that the prescribed procedure ought to have been followed. Se also paragraph 6 below.

4. BONUS SCHEMES

There are no specific rules in NHS productivity schemes referring to industrial action. Nevertheless the codes explicitly relate the payment of bonus to performance. Where performance is affected by industrial action, local management

should assess the reduction in bonus that is appropriate under the terms of the scheme and give staff notice that, failing resumption of normal working, bonus will be adjusted from the next pay period. There will usually be provision for similar action in respect of bonus schemes for ambulancemen which form part of their transferred terms and conditions of service devised by former local authorities. It will, however, be necessary to examine the details of such schemes. The "lead-in" pay agreement for ancillary staff (applicable equally to lead-in for works maintenance staff) provided for the payment to cease "in the event of staff co-operation being withdrawn or undertakings broken". This should present grounds for withdrawal of "lead-in" payments in the event of industrial action. Conditions attaching to "lead-in" payments for ambulancemen are not laid down and these should be treated on the same basis as pay.

5. OVER-TIME, SHIFT ALLOWANCES, UNITS OF MEDICAL TIME AND OTHER ALLOWANCES

In the event of an over-time ban, over-time payment should not, of course, be made. In the case of guaranteed or regular over-time, shift allowances, units of medical time and other allowances, where employees do not carry out the duties to which the allowances relate, pay should be stopped for the appropriate period and no subsequent payment made. In general, it is only in cases where the contract of employment requires over-time or shift working that refusal to work over-time or shifts is a breach of contract, but this point can be resolved only by examination of the contracts concerned.

6. RESTRICTED PERFORMANCE OF DUTIES

Where staff report for duty normally but refuse to carry out their normal duties by means of working to rule, "blacking" certain areas of work, by selecting those duties they will carry out, or by deliberately restricting production, they are usually in breach of contract. An employee is not entitled to his full remuneration unless he can prove substantial performance of his contractual obligations. Appropriate forms of management response where there has been a breach of contract will depend on local circumstances but will usually consist of one of the following courses of action:

i. if less than the full range of duties is acceptable to management the staff concerned should at the outset of the action be given notice (say 24 or 48 hours) that unless they resume normal working they are in breach of contract and are not entitled to pay although management is willing to accept limited services on terms that would be specified. These would be one of the following. Terms (a) would be for staff to be offered ex-gratia such proportion of normal payments as the authority considers reasonable for the proportion of normal duties performed. Management should be careful to ensure that there has been a clear and valid direction to the employee to perform his full duties and that any payments made should not be taken as an acceptance of or acquiescence in the employee's action. It is not necessary for authorities to devise complicated formulae for assessment purposes and a standard proportion of normal wages for groups of staff would usually be appropriate. It is sufficient that the authority should offer a payment which they consider reasonable. The offer is ex-gratia and should not be the subject of negotiation. In very exceptional circumstances, authorities may consider that it is justifiable to continue full pay for partial working, but this should not be the normal course of action. Terms (b) would be to make clear that pay will be stopped but that management are prepared to pay (on a full-time basis) that number of staff required to maintain the level of service offered. The remainder of the staff would be sent home without pay, provided it is made clear that this is not a disciplinary procedure (see paragraph 3);

ii. if less than full service is NOT acceptable to management, staff should be given notice (say 24 or 48 hours) that unless they resume normal working they will not be entitled to any pay, which should be stopped. Again, it should be made clear that such action is not being applied as a disciplinary measure (see paragraph 3).

7. WORKING RESTRICTED HOURS

On any day when an employee works less than his contractual hours he is in breach of contract and loses his right to be paid for that day. Management may exercise their right to withhold pay for such time as the employee was in breach of his contract or may offer an ex-gratia payment, based upon the proportion of the day which was worked.

8. PICKETING AND ACCESS

Picketing must be kept within the law, and management should not allow pickets to operate on NHS premises or to use normal staff facilities such as canteens or toilets. Staff who refuse to cross picket lines and as a consequence are in breach of contract should not be paid.

9. SICKNESS PAYMENT DURING INDUSTRIAL ACTION

Staff who are taking strike action (or action short of strike action which has resulted in a breach of contract) are not entitled to sickness payments. Staff who have reported sick prior to the announcement or commencement of industrial action should receive sickness payments in accordance with the regulations on production of medical certificates as required. Staff taking industrial action who become sick and who continue sick after its end should be paid from the date they would otherwise have resumed normal work.

10. ANNUAL LEAVE DURING INDUSTRIAL ACTION

Where annual leave, lieu days or Bank Holidays have been granted in advance of the notification of industrial action, staff should be paid for such days in the normal way. Staff who request leave, lieu days or payment for Bank Holidays after industrial action has been notified should not have such requests granted as normally their services will be required.

11. RELATIONS WITH AGENCY STAFF, CONTRACTORS OR VOLUNTEERS

Staff who refuse to co-operate with agency staff, contractors or internal or external volunteers should be considered to be working restrictively as in paragraph 6 above.

12. TIME OFF FOR UNION ACTIVITIES DURING INDUSTRIAL ACTION

Where staff are in breach of contract through taking industrial action, facilities for trade union activity should normally be withdrawn, except where management consider, for example, that reasonable time off to attend a trade union meeting might lead to an improvement in the situation.

13. SAFETY

Staff who take any form of industrial action still have an overriding legal responsibility for the health and safety of themselves and people at work. Any member of staff who through his actions during a dispute endangers either himself, his colleagues, patients or other people at the work place will be subject to the normal Safety Rules and Regulations which operate within an Authority and should be subject to disciplinary action for any breach of those Rules.

14. USE OF NHS EQUIPMENT

Staff taking industrial action, particularly strike action, should not have the use of NHS equipment. Any use of NHS equipment during action, eg a hospital vehicle, will not be covered by Crown immunity and staff will not be able to claim indemnity from the employer as a result of any occurrence arising during the action.

15. ENTITLEMENT TO ACCRUED BENEFITS DURING INDUSTRIAL ACTION

Annual leave entitlement will not accrue during periods of industrial action for which no payment is made. Superannuation contributions will not be made and superannuation entitlement will not accrue for that period.

16. CONTINUITY OF EMPLOYMENT

Continuity of employment is not broken by strike action. Continuity in this context means that employment prior to the strike counts as continuous with the service following the strike; but any week during which the employee is on strike for all or part of that week does not count as a period of employment for those statutory purposes which require periods of employment to be calculated by adding up weeks of employment (eg the service to be completed before entitlement to a redundance payment, statutory maternity pay etc is established).

22 NOV 1979

File ~~Ind Pol.~~ DSG
Civil Service

MR. VILE
CABINET OFFICE

A TEMPORARY CHAIRMAN FOR E(CS)

Sir Robert Armstrong minuted the Prime Minister about this yesterday. The Prime Minister would like Mr. Prior to take over the Chairmanship of E(CS) in Lord Soames' absence.

T. P. LANKESTER

SR

22 November 1979

Ref: A0710a

Prime Minister
Agree that Mr Prior should take this on?
Yes out
TL 21/11

PRIME MINISTER

A Temporary Chairman for E(CS)

If the Lord President has to be put on detached duty for a time, the Ministerial Sub-Committee on Industrial Relations in the Civil Service will be temporarily without a chairman at a time when industrial relations in the Civil Service could be under particular strain following the announcement of the Government's proposals to save Civil Service manpower. The two obvious candidates to fill the post in Lord Soames's absence are the Home Secretary and the Secretary of State for Employment.

2. The Home Secretary is the chairman of the Civil Contingencies Unit (CCU) and the two tasks march, in part, together. He is, however, heavily loaded already; and the Secretary of State for Employment is much more closely involved than the Home Secretary in trade union and industrial relations matters generally, and is, on that account, already familiar with the sorts of issues which may arise.

3. I should be grateful for your instructions, so that we may move quickly to fill the gap if and when Lord Soames becomes unavailable.

RTA

(Robert Armstrong)

21st November 1979

2

Prime Minister

To note: DHSS management have sent home more officials without pay for refusing to work normally.

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

cc Mr Wolfson

The Rt Hon The Lord Soames GCMG GCVO
The Lord President of the Council
Civil Service Department
Whitehall
London SW1

14 November 1979

TL 21/11

Dear Christopher,

INDUSTRIAL ACTION IN THE CIVIL SERVICE

I understand you wish to be informed of the current position on the management response in DHSS to industrial action by our staff and the effects this is having. The overwhelming majority of our 500 offices are unaffected by any action. Where there is trouble, my stance can best be summarised as ensuring that I and my colleagues here are quickly informed of industrial action, that we consider its nature and effects in each case, taking legal advice if appropriate, and then, if this analysis leads to the conclusion that staff should be temporarily relieved from duty until they are prepared to undertake their full range of duties, we take that course. I do take very seriously into account whether or not the action is affecting services and payments to the public. In effect, therefore, we are dealing with cases on their merits as they arise and trying to ensure that there is consistency of treatment.

You will of course have seen press reports recently of the latest instance of this kind, namely, the fact that we have relieved staff from duty at the supplementary benefits office at Kennington.

The details are as follows. Some of the staff at this office have been 'blacking' work undertaken by

(a) those of their clerical colleagues who, contrary to a union "ban" have been substituting for officers of a higher grade; and

(b) casuals (staff recently recruited to fill clerical assistant vacancies on a short term basis).

This 'blacking' resulted in payments of supplementary benefit to people in need being held up. All attempts by Management to persuade the staff concerned to call of their action having been rejected, I decided that staff who insisted

E.R.

on not doing work for which they were being paid should be sent home without pay. This led to two members of staff being sent home on 13 November, and to some 9,500 of their colleagues in local offices (less than 10 per cent of the total staff of this Department) walking out in protest. This was pretty much what we expected.

The following day (14 November) seven more staff were sent home from Kennington and another was 'suspended' yesterday making ten all told at this office. Supporting action at other offices was very limited on both days. A limited walk-out took place at Newcastle Central Office: but staff at the Child Benefit Centre at Washington decided to take no action.

Staff in the local office at Nuneaton have also been 'blacking' work done by a colleague who was substituting for an officer of higher grade. At this office a total of eight staff have been sent home. Supporting action in respect of this office has been limited to the West Midlands - usually the staff of two local offices walk out each day in that Region.

I think it more than likely that it will be necessary to send more staff home at both Nuneaton and Kennington. The industrial action at both offices has the full support of the CPSA at local, regional, departmental, and national levels: and of the SCPS at all levels in respect of Kennington. Since the action being taken is in furtherance of the Unions' campaign against the Government's plans to reduce civil service manpower, there seems little prospect of bringing it to an early end. This is bound to lead to some difficulties in maintaining the usual services to the public in both areas. Already claims for supplementary benefit are being seriously delayed and we are moving to the stage where, despite the co-operation at the local authorities, there could be hardship to some claimants. We are, of course, proceeding urgently with plans to keep this to the minimum.

You are already aware that we took similar action at a Liverpool office (Breckfield) where the staff eventually returned to work on our terms, following initial walkouts in other offices. All such walk-outs of course lead to loss of pay.

I repeat that there are over 500 local offices and that in the very great majority the Unions' campaign is having little or no effect. But where in the Breckfields, Nuneaton and Kenningtons of this world I judge that they have overstepped the line we are adopting the TRD approach.

I am copying this to the Prime Minister, colleagues on E(CS) and to Sir Robert Armstrong.

Yours ever

Patrick

20 NOV 1979

MANAGEMENT IN CONFIDENCE

2

Prime Minister

To please

Civil Service

Treasury Chambers, Parliament Street, SW1P 3AG

16 November 1979

The Rt Hon The Lord Soames GCMG GCVO CBE
Lord President of the Council
Civil Service Department
Whitehall
LONDON
SW1

Dear Christopher

NATIONAL SAVINGS BANK GLASGOW

This letter briefly describes the background to and the course of the current industrial action at the National Savings Bank (NSB) Glasgow, which is part of the Department for National Savings (DNS).

Background

The selective Civil Service strikes earlier this year left the DNS with a huge backlog of over one million delayed outpayments to savers (and the subsequent task of paying recompense for the delay) and associated heavy backlogs of work in certain correspondence areas, in particular death claims work. The backlog of delayed outpayments has been cleared (except for Premium Bond prize draws which will be up to date by the end of the year) and recompense payments have begun.

The backlogs of correspondence work require some overtime working to clear. Despite the unions' official ban on overtime (as part of their anti-Civil Service cuts campaign) there have been requests from the staff themselves for overtime to clear arrears, and taking the opportunity offered the management introduced voluntary overtime working at the Bonds and Stock Office in Lancashire in July and last month at the Savings Certificate Office in Durham. There were no untoward reactions.

Current Situation

However when (again following staff requests) voluntary overtime was recently introduced in the NSB there was strong union reaction. (The local Staff Side tend to be more militant than at the other 2 DNS locations and to secure more response from members.) The local branch of the union principally concerned, the Civil and Public Services Association (CPSA), passed a resolution calling for the blacking of work done by branches working overtime (and also by branches in which junior officers were substituting for absent supervisory staff - another on the current list of official union prohibitions).

The response to this blacking call rapidly reached a level at which strong management action was inevitable if the situation was not to get out of hand. With the prior approval of Treasury Ministers the prescribed procedure was put in train for staff refusing to undertake their normal duties, comprising an oral warning followed by an official warning letter and lastly an official notice of suspension without pay (until the person concerned agrees to work normally). The figures are changing all the time, but a total of 279 suspension notices were issued on Monday 12 November and Thursday 15 November. By close on 15 November, a further 104 had received formal warning letters. At this time about 140 further cases were at the oral warning stage. (The total staff of NSB Glasgow is just over 4,000.)

The union has not yet succeeded in deterring the voluntary overtime workers (between 50-60 worked overtime last week-end) but apart from effecting a walk-out of about 1,900 (just over half the clerical staff) on Monday appears to be concentrating its efforts on picketing to prevent the daily delivery of mail to the office. The management have however, so far, largely circumvented this by special measures. The flow of mail (which includes Bank books, transaction documents from post offices and repayment applications from customers) is vital to the operation of the Bank.

There are grounds for thinking that the growing scale of the action (to which must be added similar action in DHSS offices) is posing problems for CPSA HQ, whose strike fund has been depleted by the earlier Civil Service strikes and the long Post Office computer strike, and which they are now urgently seeking to replenish. This factor could work to management's advantage, in the short run, although CPSA tactics may be to husband their resources to finance action against the Civil Service cuts when announced.

So far the disruption at NSB is not seriously affecting the public, but further escalation or prolonged continuation could reproduce the situation earlier this year when the NSB was virtually at a standstill. But this risk had to be faced, sooner or later, if local militants were not to be allowed to have things their own way; and the widespread refusals to work normally left the management

with no option but to act as they are doing. Staff support for current action is moreover far from the virtual unanimity which union spokesmen are claiming.

I am copying this letter to the Prime Minister, to colleagues on E(CS) and Sir Robert Armstrong.

Yours ever
Nigel

NIGEL LAWSON

6 NOV 1979

Original in G/R

Mr. Pattison

PM

JS

CCCSD

10 DOWNING STREET

From the Private Secretary

13 November 1979

The Prime Minister has asked me to reply to your overnight telegram of 2 November.

I understand that paid time off for conducting the current referendum has been refused because it would be outside the scope of the national Facilities Agreement. I can assure you, however, that there is no question of DHSS management seeking to interfere with the conduct of the referendum.

M. A. PATTISON

Mr. Stevenson

Civil Service

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

cc Mr Hilton.

2 November 1979

The Rt Hon Lord Soames GCMG GCVO CBE
The Lord President of the Council
Civil Service Department
Whitehall
LONDON S W 1

PR
6/11

Dear Christopher.

INDUSTRIAL ACTION IN THE CIVIL SERVICE AND THE NATIONAL HEALTH SERVICE - APPORTIONMENT ACT 1870

I note that the joint Opinion of 22 October which deals with industrial action in the NHS is on the agenda of E(CS) for 6 November. Prior to that meeting I should like to add to the comments I made in my letter of 23 October to Patrick Jenkin which enclosed a copy of the NHS Opinion.

In the case of management options (1)-(4) described in paragraph 1 of the NHS Opinion, the Apportionment Act 1870 is relevant. Broadly speaking what this Act does for salaries is to make them accrue from day to day. As a result of this any employee who has taken part in industrial action but is able to show, in respect of work done on a particular day, that he was not in substantial breach of his contractual obligations on that day, will be able to claim for that day's work a rateable portion of his salary, and this will be a matter of right. This clearly affects management options (1)-(4) but not (5) ("TRD") because in the latter case there can be no question of substantial performance of the employment contract for any day on which the option of TRD is applied. The 1870 Act can be excluded by express agreement between the parties but I have found no evidence that this is so under the relevant NHS contracts.

A practical illustration of the working of the 1870 Act would be where an employee has a salary of £10,800 a year payable monthly, and for five days in a particular month of thirty days he engages in industrial action such that on those five days he has not substantially performed his contract. As a result of the 1870 Act, and in the absence of any term to the contrary in the contract of employment, he will be entitled to £750; that is, his salary for that month, £900, less £150 or one-sixth of £900 in respect of the five days out of thirty on which he has not substantially performed his contract.

Having discussed the matter with Counsel I am satisfied that the 1870 Act does not bind the Crown but that the NHS

/employing

ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

01-405 7641 Extn

employing bodies in question are not Crown bodies such that salaries paid by them would be excluded from the 1870 Act; accordingly I confirm the statement made by Counsel in paragraph 4 of the NHS Opinion that "the Act does apply to salaries of NHS employees".

But since the 1870 Act does not bind the Crown it follows that any application of management options (1)-(4) to Civil Servants - that is, Crown servants - would be on a different basis. I thought it as well to mention this since the possibility of extending these options outside the NHS to "appropriate sectors of the Civil Service" was mentioned in paragraph 5 of my letter of 23 October to Patrick Jenkin.

This difference can be expressed fairly simply, as follows. In a case where any of options (1)-(4) is applied to Civil Servants, and a portion of salary is paid to them under that option in circumstances where the 1870 Act would have given them a right to that payment had they not been Civil Servants, it will be an ex gratia payment in their hands and should be clearly expressed by management to be such a payment when it is made.

This may be a useful factor from management's point of view and indeed could strengthen its bargaining position in the sense that in some cases the exercise of an option would result in Civil Servants receiving payments to which they were not legally entitled. However I would not be in favour of withholding pay to which Civil Servants had no strict legal entitlement in cases where there would be such an entitlement in the private sector or, to put it more accurately, in cases where the 1870 Act applied. In other words, if management wish to apply any of options (1)-(4) to Civil Servants, I believe it should make all payments under these options as if the Crown were bound by the 1870 Act, making it clear at the same time that the payments are ex gratia.

In particular cases, both in the NHS and in the Civil Service, the application of options (1)-(4) may create difficulty not only in administrative terms but also from the legal standpoint. This reinforces the view, which I expressed in paragraph 5 of my letter of 23 October to Patrick Jenkin, that advice in this area will often be required from departmental lawyers and from me.

This letter is copied to the Prime Minister, all members of E(CS), the Lord Advocate and Sir Robert Armstrong.

Yours ever,

Michael

-4 NOV 1979

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Secretary of State for Social Services

The Rt Hon The Lord Soames GCMG GCVO CBE
The Lord President of the Council
Civil Service Department
Whitehall
London SW1

30 October 1979

Dear Christopher,

E(CS) MINISTERIAL SUB-COMMITTEE ON INDUSTRIAL RELATIONS ON CIVIL SERVICE: INDUSTRIAL ACTION AT THE LIVERPOOL (BRECKFIELD) LOCAL OFFICE

At our meeting on 3 October, the Committee agreed with my proposal that the next step I should take at the Breckfield office would be to require Clerical Officers there to undertake the work which should be done by the seven Clerical Assistants who had been relieved from duty. Two of the CAs had been back at work for some days, but I thought you would wish to know that the remaining five returned to duty on Tuesday 16 October, having indicated their willingness to carry out their normal duties in accordance with management instructions. Of course one can never be sure that there will not be further untoward developments, but as it happened the need did not arise to take the step envisaged by the Committee of getting the Clerical Officers to do the work, and it rather looks as though we have got the CPSA at all levels to accept the principle of management's responsibility for setting work priorities, in this instance at any rate.

I should add that following the meeting of E(CS) consultations between officers of the Law Officers' Department and my staff led to some doubts being cast over the ability to require Clerical Officers to undertake the work of a lower grade, and I have asked my officials to pursue this urgently.

I am copying this to other members of the sub-Committee and to the Prime Minister.

Yours ever

Patrick

31 OCT 1979

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

23 October 1979

The Rt Hon Patrick Jenkin MP
Secretary of State for Social Services
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

Dear Patrick,

MANAGEMENT RESPONSE TO INDUSTRIAL ACTION IN THE NHS

Not copied here

On 27 July you wrote to me seeking legal advice on a number of management options that were being considered in this area. By agreement, we deferred the matter pending consideration by the Law Officers and Treasury Counsel of a wide range of issues relating to industrial action in the public sector; see now the joint Opinion of 1 October copied to you as a member of E(CS).

2. Since it was not possible for the joint Opinion to cover all the NHS issues, Treasury Counsel have at my request and that of your Solicitor prepared an Opinion dealing specifically with the five options they identified from the papers you sent me, and I enclose a copy of this. I have discussed the subject with Treasury Counsel and I entirely agree with the views put forward, which may be taken as mine also. I understand that the Lord Advocate will advise separately on the law in Scotland.

3. The five options are clearly set out in the first paragraph of the Opinion and I do not need to repeat them here. Each is regarded as capable of lawful application but great care will have to be taken here, particularly in respect of options (3) and (5).

4. You will see from the underlined passage in the first paragraph of the Opinion that the advice on each option is based on the premise that the disruptive action by employees amounts to a substantial breach of their obligations. Although the words used are not identical, the premise is the same as that on which the advice on the lawfulness of "TRD" was given in the joint Opinion of 1 October - namely that the employees' action must have been such as would have justified summary dismissal by a private employer. References elsewhere in the Opinion to employees not having substantially performed their contracts, and similar expressions, should be read in the same way.

/5.

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

5. You will also note that the Opinion deals only with PTB staff in the NHS. It was agreed at an early stage that it would be impracticable for advice to be given on all categories of NHS staff because of the multiplicity of special and local agreements. Caution should therefore be exercised in applying any of the five options to NHS staff other than PTB staff, and in all such cases managers should first be satisfied that there is no relevant term of employment or other special factor which would rule out the valid use of any particular option. On this, managers should consult their departmental legal advisers who in turn should consult me in difficult cases. Subject to this I see no reason why all the options discussed in the Opinion should not be available for use in the NHS generally and indeed in appropriate sectors of the Civil Service.

6. I expect we will discuss the Opinion at a later meeting of E(CS). This letter and its enclosure are copied to the Prime Minister, all members of E(CS), the Lord Advocate and Sir John Hunt, and your Solicitor has already been sent the original of the Opinion.

Yours ever.

Michael.

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INDUSTRIAL ACTION IN THE N.H.S.

JOINT OPINION

1. We are asked to advise on the legality of the following suggested responses by management to industrial action by PTB staff in the N.H.S. :

(1) paying reduced pay to those who work fewer hours than are stipulated for in their terms of employment;

(2) not paying those on strike;

(3) after giving notice of management's intention, paying only a proportion of normal pay to those who while refusing to carry out full duties perform some normal duties;

(4) after giving notice of management's intention, not paying those who while refusing to carry out full duties perform some normal duties;

(5) after giving notice of management's intention, suspending without pay some (but not all) of those prepared to provide only limited services but not required by management for that purpose.

Before considering these responses in turn, we observe that the various actions taken by the employees as set out above appear to amount to substantial breaches of their obligations such as would justify their dismissal. We assume that the suggested responses are intended as alternatives to taking

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that course. CONFIDENTIAL

Paying reduced pay for reduced hours

2. We have no doubt but that this response is lawful. What management contemplates doing is not to make a deduction from salary already earned such as might fall foul of the Truck Acts but to make a payment only in respect of the hours that have been worked. In law for the reasons explained below the payment would be either ex gratia on the basis that the employee was not entitled to any payment, or if he was entitled to payment his entitlement would be to only a proportion of his full contractual pay by the application of the Apportionment Act 1870 or on a quantum meruit.

3. It is well arguable that those who fail to work the hours stipulated for in their terms of employment will have failed to satisfy the condition precedent to earning their right to receive any salary for the period in question. The basis of this argument is that the contract of employment of each employee is an entire contract in respect of each period of payment so that the employee paid weekly or monthly is entitled to be paid only if the full week or month has been worked (see Halsbury's Laws 4th ed. Vol.16 paras. 554 and 555). The N.H.S. employees who are required by their terms of employment to work a 38-hour week and are paid on a weekly or monthly basis (see Section XXIX of the Conditions of Service) would disentitle themselves on this argument to any pay should they work, for example, a 37-hour week; accordingly on this basis any sums paid to the employee would be ex gratia.

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4. An alternative view, which we are inclined to think is the correct view despite the absence of clear authority, is that the employee is entitled to a proportion of his salary, that proportion being based on the application of s.2 Apportionment Act 1870. It is an open question whether an employee who through his own misconduct does not work the full contractual period is able to take advantage of the Act. The suggestion of Lush J. in Moriarty v Regent's Garage Co.Ltd. 1921 1 K.B. 423 at p.435 that he was not so able has been criticised, we think correctly (see, for example, Encyclopedia of Labour Relations Law 1-206, Goff and Jones: The Law of Restitution 2nd ed. pp.387,8). The Act can be ousted by a contrary stipulation but we do not construe the Conditions of Service as containing any such stipulation to the contrary. If, as we are inclined to think, the Act does apply to salaries of N.H.S. employees, the salary would be deemed to accrue from day to day, each day being an entire contract. On this basis an employee who worked one hour less than a full day would lose his right to be paid for that day, but not for the other days on which he worked full hours. Accordingly to pay him 37/38ths of his salary for the week would on this basis be to pay him in part what he was entitled to and in part an ex gratia payment.

5. A further possible basis on which an employee might claim to be entitled to receive pay is on a quantum meruit. But it would be unusual for the party in breach of his contractual obligations to claim on a quantum meruit, and we doubt if such a claim would succeed unless the conduct of management amounted to the free acceptance of the reduced work by the employee such that a fresh contract might be implied (see, for example, Chitty on Contracts 24th ed. para.1283). Management should be careful to make it clear

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to employees that they are still required to work the full contractual period and that any payments made are not to be taken as an acceptance of and acquiescence in the employees' action.

Not paying those on strike

6. In our opinion plainly there is no obligation to pay those who are on strike and therefore perform no duties at all. In such circumstances management can properly withhold making any payment.

Paying a proportion of normal pay to those who perform some but not all of their normal duties

7. We understand that what is envisaged under this head is that the employee works the full contractual period but refuses to perform some of his normal duties, and in response thereto management after due notice pays what it considers a reasonable proportion of the employee's normal pay. Much will depend on the facts of each particular case. If the employee can prove substantial performance of his contractual obligations, he would be entitled to his full remuneration. But we assume that the duties which the employee is required but refuses to perform each day are sufficiently important to prevent the employee from claiming successfully that his contract of employment has been substantially performed by him. In our opinion in such circumstances management would be entitled to say to the employee that the condition precedent to his remuneration, that is to say substantial performance of his contractual obligations, had not been satisfied. A fortiori this is so when the employee sets out wilfully to disrupt, as might be the case in a work to rule (see Secretary

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of State for Employment v A.S.L.E.F. (No.2) 1972 2 Q.B. 443 at p.492 per Lord Denning M.R.). On this basis therefore any payments made to the employee would be ex gratia and management can decide on the appropriate quantum.

8. However there seem to us to be some practical difficulties in this course. There may well be problems in deciding on an appropriate basis for payment and obviously some consistency throughout the N.H.S. is desirable. Indeed there may be days when the employee can claim that on the application of the Apportionment Act 1870 he is entitled to some pay on the basis that he has substantially performed his contractual obligations on those days. No employee will be content at working full-time for only a proportion of his pay to be determined by his employers and there must be a high risk that management's action will be challenged. We repeat that each case has to be determined on its own facts. Particular care will be needed in giving notice of management's intentions, in making sure that in the case of an unperformed duty relied on by management there has been a clear and valid direction to the employee to perform that duty and that there is no acquiescence in the employee's conduct.

Not paying those who perform some but not all of their normal duties

9. In our opinion on the same assumptions and for the same reasons as those explained in paragraph 7 above, the employee is not entitled to be paid and the suggested response is therefore lawful. But save that the withholding of pay avoids the difficulty of deciding on an appropriate basis for payment, all the other practical considerations referred to in paragraph 8 above are pertinent.

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Suspending without pay some employees prepared to provide only limited services

10. The power to suspend appears from para. 3 of Section XXXIV to be exceptional and limited and we doubt if it is applicable here. However as we have already advised the Treasury Solicitor in the Law Officers' and our Joint Opinion dated 1st October 1979 on the Status of Civil Servants, we think that what is known in the Civil Service as temporary relief from duty is lawful though we would urge that the procedures we have recommended in that Opinion be observed if this course is to be adopted. The fact that it is intended to send home without pay some but not all of the employees in default may pose administrative problems but does not affect the legality of what management does.

T.L. Sibian

Lincoln's Inn

Simon Brown

2 Garden Court,
Temple

Anthony Grabiner.

1 Essex Court,
Temple

22 October 1979

CONFIDENTIAL

22 October 1979

24 OCT 1979

INDUSTRIAL ACTION IN THE N.H.S.

JOINT OPINION

H. Knorpel, Esq.,
Solicitor to the D.H.S.S.

SECRET

C. MOD
LPO
DEMP.
SO
DHSS
Fin. Sec. (HMT)

CURL
SOURCE

5

10 DOWNING STREET

From the Private Secretary

8 October 1979

Industrial Relations in the Civil Service

The Prime Minister was grateful for the Lord President's minute of 3 October in which he reported the conclusions of the meeting on that day of the Ministerial Sub-Committee on Industrial Relations in the Civil Service.

The Prime Minister has noted the position which has so far been reached on the question of the status of civil servants; she has noted the Committee's views on the recent action at the child benefit centre in Newcastle; and she fully supports the line which the Secretary of State is taking in relation to the DHSS local office at Breckfield - and which the Committee endorsed.

I am sending copies of this letter to the Private Secretaries to members of E(CS) and to Martin Vile (Cabinet Office).

TPL

Jim Buckley, Esq.,
Lord President's Office.

SECRET

Prime Minister
To note - especially the robust line being taken in respect of the DHSS office at Brackfield (which must be right).
TL 3/10

cc Mr Wolfson
Mr James

SECRET

PRIME MINISTER

INDUSTRIAL RELATIONS IN THE CIVIL SERVICE

1. I should like to report to you the conclusions of a meeting today of the new Ministerial sub-Committee on Industrial Relations in the Civil Service.

The Status of Civil Servants

2. We considered legal advice from the Attorney General and the Lord Advocate on the actions that can be taken in the event of industrial action by civil servants. It seems clear that staff can be "temporarily relieved of duty" (TRD), and sent home without pay if their actions are such that they are in substantial breach of their contracts. This confirms earlier advice, and some cases of this kind are already current. But we have now asked the Official Committee to produce a paper setting out how this procedure can be carried into effect in a consistent manner in the different employing Departments.

3. It also seems clear that we cannot lay-off without pay non-industrial civil servants who are "innocent" of a breach of their conditions of employment, even if they have no work because others are striking. For industrial civil servants a practice of lay-offs has been established by past usage and can continue. We have therefore asked the Official Committee to examine what steps might be needed in order to change this situation for the non-industrials. In addition they will examine the industrials' case to see how the conditions of contract differ, if at all, and how the custom of lay-offs was established in the first place.

The Child Benefit Centre, Newcastle

4. We looked at a paper by Patrick Jenkin, to see whether any lessons can be learnt from the experience of the Child Benefit Centre case. We agreed that it was too late now to consider rescinding the decision. But there is a risk that the union will threaten the same action again and DHSS will prepare a contingency plan to cover that eventuality.

SECRET

We agreed that if there was time it would be valuable, for ensuring consistency, if Ministers could bring such plans to the sub-Committee. If time pressure prevented this they should at least consult me as Chairman. We also commissioned work from officials on how we might make our administrative system less vulnerable to local action of this kind.

Breckfield - DHSS Local Office

5. Patrick Jenkin did alert us to a case with which he is currently dealing. CPSA staff at the Breckfield DHSS local office on Merseyside have been conducting a campaign since August of what they call resistance to "work-sharing"; in protest against the Government's proposals for manpower cuts. This has included a refusal to handle mail that has not arrived that day - with the result that sometimes staff are idle, and sometimes mail is left without attention. After due warning last week 6 staff were temporarily relieved of duty on Friday and another 1 on Monday. There were protest "walk-outs" by CPSA members at Breckfield on Friday and Monday. They have returned on Tuesday, and walked out again today after lobbying from staff from another office at Kirby. There was a one-day walk out at about a dozen other offices on Merseyside, other isolated offices (Aberystwyth, Oxford, Leeds), and at a Department of Employment computer at Runcorn. In addition a local Unemployment Benefit Office at Kirby is said to be striking "until the staff are reinstated," and is picketing their building which causes other staff to refuse to enter.

6. In the main these seem to be token actions and as far as we know the Union is not supporting them financially.

7. The work at Breckfield is still disrupted, and the next step will be to instruct the next grade of staff, (CO's rather than CA's), to do the work of handling the mail, normally undertaken by the staff relieved of duty. If they refuse they too will be subject to TRD.

8. The sub-Committee felt that this was a clear case where TRD applied, and where management could not allow the staff to dictate to them. We recognised the risk that ultimately this office could close down temporarily, and that there could be more widespread token action elsewhere. The office pays out supplementary benefit to local people, and so some of them may well suffer hardship, although they could turn to the Social Services Department of the local authority for help.

9. The sub-Committee endorsed Patrick Jenkin's proposed course of action. They emphasised the importance of handling the publicity well, and suggested that in this, as in other cases the Paymaster General should be kept closely informed.

I am copying this minute to members of E(CS) and to Sir John Hunt.

S.

3rd October 1979

LORD SOAMES

3 OCT 1979

CONFIDENTIAL

Civil Service

Lord Advocate's Chambers
Fielden House
10 Great College Street
London SW1P 3SL
Telephone 01-~~930 6151, Ext~~ 212 0515

2 October 1979

Rt.Hon. Lord Soames, GCMG., GCVO., CBE.
Lord President of the Council
Civil Service Department
Whitehall
LONDON SW1

R 2/10

Dear Christopher,

INDUSTRIAL ACTION IN THE CIVIL SERVICE

I have seen the Attorney General's letter to you dated 1 October 1979. The request for advice from me on these matters has not as yet reached me. However, I have previously advised on the first two questions discussed by the Attorney in that letter and it may be helpful to colleagues if, for the meeting of E(CS) tomorrow, I were to summarise that advice and add my views on the third question. His advice, he has pointed out, relates to the law in England and the advice which I now give is on the law of Scotland.

For convenience I use the same system of notation that the Attorney General has used.

(A) Advice is requested on the lawfulness, or otherwise, of "TRD". My advice is that Civil Servants who are in substantial breach of their Contract of Employment may be sent home without pay, so long as it is understood that they may return to their jobs on full pay when they indicate that they are willing and able to resume performing their contractual obligations by doing their work. I am fortified in this view by a decision of the Court of Session at first instance (Laurie v. The British Steel Corporation, referred to at Page 3 of the Joint Opinion appended to the Attorney General's letter) in which the principle underlying this advice was affirmed. The case was sponsored by the union, Apex, and was not appealed and accordingly I think we may take it that the union was advised that the decision was correct according to the law of Scotland.

I am further reinforced in this view by the fact that TRD was taken in Scotland following advice from my predecessor on Scots law and so far, no challenge of its validity has been offered in the Scottish courts. I think that if the unions had any real hope of challenging its validity, they would have done so by now.

... Continued.

(B) I consider that employees who have committed no breach of contract, but are prevented from doing useful work by the industrial action of other employees (assuming, of course, that there is at the time no specific contractual term allowing this) would have an action for damages for breach of contract if they were sent home without pay. I think the damages would be equal to the pay they would have earned if they had been allowed to continue working, at least so long as no alternative employment was available to them.

(C) I consider that the Crown cannot unilaterally vary the terms and conditions of employment of its employees, so as to give itself the power to apply the procedure described in (B) above. As in England if the Crown gave proper notice that any new contracts were to have such a term in them and the employees continued to work on after the expiry of the period of notice, without protest, it could be implied that the new term had been agreed to. I do not suppose it likely that the employee would acquiesce in this way if such a change were proposed in present circumstances.

This letter is copied to the Prime Minister, all members of E(CS), the Secretary of State for Scotland, the Attorney General and Sir John Hunt.

Yours ever,

James.

MACKAY OF CLASHFERN

2 OCT 1979

CONFIDENTIAL

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

1 October 1979

The Rt Hon Lord Soames GCMG-GCVO CBE
Lord President of the Council
Civil Service Department
Whitehall
LONDON S W 1

Dear Christopher.

INDUSTRIAL ACTION IN THE CIVIL SERVICE

Prior to the first meeting of E(CS) on 3 October I am writing to advise on certain legal questions to which I understand colleagues need an early reply from me.

2. These questions were raised inter alia in a request for a joint Opinion of the Law Officers and Treasury Counsel and I enclose a copy of this Opinion, which has now been delivered to the Treasury Solicitor with a copy of this letter. The Opinion draws the following broad conclusions.

(A) Advice is requested on the lawfulness or otherwise of "TRD". This is the procedure for sending home without pay Civil Servants who are in substantial breach of their contracts, coupled with an undertaking that employees may return to their jobs on full pay when they indicate that they are willing and able to resume normal working. The advice is that if such a procedure were litigated the courts would be likely to accept its legality.

(B) Advice is also requested on the lawfulness or otherwise of sending home without pay employees who have committed no breach of contract but are prevented from doing useful work by the industrial action of other employees (assuming, of course, that there is at the time no specific contractual term allowing this). The advice is that if such a procedure were litigated the courts would almost certainly hold that it was unlawful.

(C) Finally, advice is requested on whether the Crown can unilaterally vary the terms and conditions of employment of its employees so as to give itself the power to apply the procedure described in (B) above. In the absence of agreement by the employee to be bound by a new term conferring the power (in which case it could not, of course, properly be described as unilateral)

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ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

the advice is that the chances of the courts upholding it in modern circumstances are poor. (I do not recommend this course of action but should the Government for any reason decide to adopt it, the Opinion suggests a way of minimising the legal risks).

3. I should mention that Patrick Jenkin wrote to me on 27 July for legal advice on a cognate but not identical problem involving industrial action by PTB staff in the NHS. A further Opinion is being prepared and on this I will write separately to colleagues on E(CS) in the next few days.

4. You will note that the enclosed Opinion deals only with the law of England. The Lord Advocate will be advising separately on the law of Scotland.

5. The law in this area is of great complexity and has required much careful thought. I should be grateful therefore for an early indication from colleagues of what further questions if any will call for legal advice.

6. This letter and its enclosure are copied to the Prime Minister, all members of E(CS), the Lord Advocate and Sir John Hunt.

Yours ever.

Michael

THE STATUS OF CIVIL SERVANTS

JOINT OPINION

1. In the Instructions recently submitted to us we are asked to advise on a number of questions relating to the status of civil servants. From these we have identified three issues which appear to be of central importance and to require an immediate answer.

TRD

2. The first issue raised in this extensive and difficult area of law is that of the lawfulness or otherwise of what is known in the Civil Service as temporary relief from duty ("TRD"). In our opinion TRD is a legally acceptable stance for the Crown, as an employer, to adopt. We think that there is justice, common sense and, indeed, useful (though, it must be conceded, not binding) authority in support of it, and that apparently contrary authority can be distinguished. Accordingly, we are on balance of the opinion that if this matter were litigated the courts would accept the legality of TRD. It is important to point out however that TRD cannot give the legal security which dismissal coupled with an offer of re-engagement would provide, but we recognise that the latter is a counsel of perfection and not a realistic line for management to adopt.

3. TRD involves an assertion of the principle of concurrent obligations. It is a principle well established in the field of commercial law (see Chitty on Contracts, 24th Edn., para 1501 and the cases there cited). We see no reason why the same principle should not apply to the field of employment. Applying that principle to that field the employer would be saying to his employee: "You may come to work and you will be paid therefor if and when you agree to perform your obligations as an employee but not otherwise". The following passage from the judgment of Winn L J in Denmark Productions Limited v Boscobel Productions Limited [1969] 1 Q B 699 at p.732 is in point:-

"..... if B elects.....not to treat the contract as at an end, he may require A to perform any contractual obligations as they fall due in the future (provided that he himself performs any simultaneous or precedent obligation), including, as a particular example, the making of payments for which the contract provides..... in its simplest form this proposition may be illustrated thus: A, having contracted to supply by instalments goods complying with a specification, intimates that he does not intend to make any further deliveries complying with that specification: B requires him to fulfil the contract: if B subsequently finds that A's goods whenever they may have been delivered do not comply with the contract description, he may then refuse to take any more or to pay

the contract price for them and he may obtain adjustment of any price he has already paid.

B's rights, in the hypothetical situation stated, do not depend, on analysis, on there having been any repudiation by A which he might have but did not treat as entitling him to determine the contract: he is able to assert immunity simply because A has not performed the contract and, therefore, cannot enforce it. For my own part, I do not regard a contract of employment as sui generis, but as a type of bilateral contract to which the same principles apply".

In Laurie v British Steel Corporation, an unreported Scottish case in 1978, it was held that TRD constituted a sound defence in law to a claim for salary arrears.

4. In short the practical question is whether the individual would, in the event of his being temporarily relieved from duty, succeed in a claim to be entitled to be paid wages or damages in a like sum for the period of absence from work. It is plain that he cannot recover wages because he has not done the work (see generally the notes to Cutter v Powell in Smith's Leading Cases Vol II at p.54-55). It seems to us to be strongly arguable that the individual would fail if he claimed damages on the basis of a contention that the Crown by requiring him to leave the premises prevented him from doing his work. That is because the individual

would only be expressing a willingness to work on his own terms, i.e. in breach of his obligations, which was not acceptable to the Crown. The Crown's defence would be that its obligation to permit the individual to enter the premises was concurrent with the individual's obligation to be willing and ready to perform his side of the contract. If the individual is unwilling to perform in accordance with his obligations the employer's obligation does not arise (cf. [illegible], Smith's Leading Cases ibid., at pp. 9-10; it is significant that that discussion appears in the notes to Cutter v Powell which supports the view that the same rules apply to employment contracts). In the event of litigation the Crown would plead by way of its defence that the employee was not willing and ready to perform his obligations and that therefore no claim for damages could succeed. The employee would then have to prove that he was so willing and ready (the Supreme Court Practice 1979 paras. 18/17/10 and 11).

5. We turn now to the authorities which it has been suggested run counter to the lawfulness of TRD.

(a) Hanley v Pease [1915] 1 K.B. 698 seems to us, on proper analysis, to have nothing to do with TRD. The word "suspension" as used in that case is inapplicable to the treatment of the employee inherent in TRD. That case involved punishment of the employee who was prevented from working for a day on which he was prepared to work in

accordance with his contractual obligations.

(b) Gorse v Durham County Council [1971] 1 W.L.R. 775 is at first blush more in point. But we take the view that it can properly be distinguished on the footing that it was decided exclusively by application of clause 11 of the relevant contract of employment. The only issue raised in that case was whether the employers had or had not suspended the teacher within the meaning of clause 11; if they had, then it followed from the provisions of that clause that upon reinstatement she was entitled to be paid during the period of such suspension. It seems to us that, even if the defendant had argued its case on the basis of concurrent obligations (i.e. on the footing envisaged in support of the concept of TRD), such an argument would not have availed it since TRD itself could well be said to constitute suspension within the meaning of clause 11 of that particular contract. We know of no comparable provisions affecting Crown servants. We would add that even if Gorse were not properly distinguishable, it is only a decision at first instance and was decided before Lord Denning expressed the views that he did in Secretary of State for Employment v ASLEF (No.2) [1972] 2 Q.B. 455 at p.492.

6. In our opinion TRD would only be justifiable in the same circumstances as would have justified summary dismissal by a private employer. Very considerable care would be needed

before TRD was operated in any given case. In particular it should be made clear to the employee that TRD was not being applied as a disciplinary measure. This is very desirable so as to reduce the possibility that employees could claim that prescribed disciplinary procedures ought to have been followed or the rules of natural justice observed. It should also be made clear that the Crown was ready willing and able both to permit the employee to perform his obligations and to remunerate him for such performance.

7. Even if the views we have expressed were held to be wrong, it seems to us that little would have been lost by invoking TRD. In considering this point it should be borne in mind that the only clear alternative to TRD is some form of dismissal with re-engagement (conditional or otherwise). Any variant of dismissal is recognised to be industrially provocative and administratively cumbersome. If the employees' conduct would <u>not</u> have justified dismissal, then it is difficult to see how the Crown could be worse off as a result of determining not to dismiss the employee than as a result of dismissing him. Rather it seems to us that the Crown would have the advantage of being able to argue with reasonable prospects of success that there was no dismissal (not even constructive dismissal) so that no question of wrongfulness (at common law) or unfairness (under statute) arose. At common law, moreover, the employee could in any event have no claim for wrongful dismissal because the Crown can dismiss at will (such position being inferentially preserved by s.138 of the

Employment Protection (Consolidation) Act 1978). Further, even if TRD was treated by the employee as dismissal and found by the Courts to be unfair dismissal, such dismissal would only entitle the employee to the minimum basic award of 2 weeks pay plus whatever compensatory award the tribunal found the employee had not disqualified himself from by reason of his misconduct. Moreover, whatever award was made under the statute, it would be no higher following TRD than following outright dismissal.

8. It seems to us that the only basis upon which an adverse finding on the issue of TRD could even arguably involve the Crown in greater financial liability than if it were to dismiss the relevant employee, would be upon the footing that the Crown was liable for the employee's wages - alternatively damages to the extent of such wages for depriving the employee of the right to earn them - during the period of TRD. As already stated, we would expect the claim to fail on the grounds that the Crown was entitled to insist upon his agreeing to perform his concurrent obligations (namely to work properly for his salary) i.e. he would be unable to establish that he had been ready, willing and able to work properly. Even if that is wrong, however, it is further arguable:

(i) that his claim for damages is in truth valueless because the work which he would in fact have carried

out would not have entitled him to any payment because he would not have substantially performed his contract, or alternatively

(ii) that his misconduct would have given rise to a counterclaim for damages.

Laying off of innocent civil servants

9. The second issue which arises is whether civil servants who are not in breach of contract can be laid off in circumstances where they cannot do useful work because of industrial action by other civil servants.

10. This postulates that the Crown would not exercise its right of dismissal but would not provide any work for, nor would it pay, the employee so laid off and that this would be done in the absence of a specific contractual term authorising the procedure. In our opinion such action would be inconsistent with the basic terms of employment and could be treated by the employee as constructive dismissal. It will be appreciated that the employee in such circumstances would be faced with an indefinite period without pay. More likely the employee would sue for, and in our view would probably succeed in obtaining, remuneration for the period he was laid off. Although there is authority for the proposition that where an employer fails to provide work due to circumstances beyond his control, he is not liable to pay the wages of

employees (see Browning v Crumlin Valley Collieries Ltd 1926 1 K.B. 522 and Encyclopedia of Labour Relations Law 1-216), that proposition is dependent on implying a term to that effect in the terms of employment. It is obviously easier to do so in the case of employees remunerated on a piece-work basis and in an industry where there is a custom of such lay-offs (as in the Browning case); furthermore we think it improbable that, in the case of the employment of a civil servant who would reasonably expect security of remuneration whilst he performed and was ready to perform his duties properly, it would be held that the intention of the Crown and the employee was such as to satisfy the criteria for the implication of this term - see for instance Chitty, 24th Edn., para 2573. (In our understanding the categories of civil servant to which our Instructions are directed are not paid on a piece-work basis or in an area where there is a custom of lay offs, but if there are any relevant employees in this class then for them the possibility of such a term being implied is of course greater). In summary, we would view with considerable unease the prospect of an innocent employee suing for his remuneration during the period he was laid off, as he would be likely to engage the sympathies of the Court whose decision in such circumstances might have wider repercussions on the legal relationship between the Crown and its employees.

Unilateral variation of contract

11. We now turn to the third question which we have found to be of very great difficulty. It is whether the Crown has any right, without the agreement of its employees, to vary their terms and conditions of employment so as to give a right to lay them off without pay in circumstances where they are not in breach of contract but cannot do useful work because of industrial action by other civil servants (the situation described in paragraph 9 above).

12. The Crown claims that by reason of its constitutional position it has the right to alter any terms of service unilaterally and it appears from modern letters of appointment with which we have been supplied that civil servants are now expressly informed of this claimed right from the commencement of their employment.

13. There is no lack of authority from cases not relating to the Crown for the view that where there is an express power given by contract for the employer to introduce a particular variation or variations of that contract at some time in the future, if the employer later introduces a variation within the scope of that power then it will be valid, no matter how extensive it is. But that authority is distinguishable on the ground that the Crown's claimed right

of variation is wholly unspecific in its terms. In Howard v Department of National Savings (1979 IRLR 231), which did relate to the Crown, there are passages from the judgement of the Employment Appeal Tribunal which tend to support the validity of the claimed right to vary the terms of service. But in that case it had been conceded that the terms of service could be changed.

14. It is arguable that a right to vary terms of service at will is a right concomitant with the Crown's well established right to dismiss the employee at will, both rights being based on the need for the Crown to be free to act in whatever manner is expedient in the public interest. But whilst it follows from the Crown's ability to dismiss its employees at will that it must also be able at any time to offer further employment on different terms, it does not follow that it could unilaterally impose those terms, at any rate when the new term would fundamentally alter the nature of the employee's rights, as would be the case with a variation of the kind we are considering. The employee must in our view have the opportunity to refuse further service on the new terms; we think it unlikely that any modern court would hold an employee against his will to continue in service on less favourable terms.

15. If the Crown wished to vary the terms of employment in a way adverse to the employee (such as by introducing a term

permitting what is now suggested) we think that express notice should be given to each employee of the intention of the Crown to exercise the right to vary the conditions of service by the introduction of the new term at a specified future date, so that those unwilling to serve on that term could leave the service. We fear that any such action would not be acceptable to employees but any who in fact continue in service might be taken to have assented to the variation. However we must warn that quite apart from the obvious administrative difficulties in seeking to introduce what may well be thought a controversial term capable of working great hardship, the prospects of the Crown being successful in litigation are poor should the validity of the claimed right to vary the conditions of service in this way, without dismissal, be challenged. Nevertheless should the Crown wish to proceed on these lines in spite of these difficulties, what we have suggested would at least put the Crown in as favourable a posture for resisting a challenge as is possible in the circumstances.

16. In this Opinion we have assumed against the Crown that the relationship between the Crown and its employees is basically contractual such that a claim in contract by the employee cannot be defeated in limine. In the light particularly of Kodeeswaran v A.G. of Ceylon 1970 A.C. 1111, we believe that assumption to be correct though the contrary is

certainly arguable. It will be for consideration in any given case whether the Crown should as a matter of policy take the point, unattractive though it is to modern eyes.

17. This Opinion relates only to the law of England. We understand that the Lord Advocate will be advising separately on the law of Scotland in this area.

M.H.

J.P.

T. Bingham

Simon Brown.

Anthony Grabiner.

-1 OCT 1979

1 October 1979

THE STATUS OF CIVIL SERVANTS

JOINT OPINION

Attorney General

Solicitor General

Peter Gibson

Simon Brown

Anthony Grabiner

Treasury Solicitor

LIMITED CIRCULATION ANNEXES

~~Mr. Whitmore~~

Mr. ~~Cartledge~~ Alexander

Mr. Lankester

~~Mr. Sanders~~

Mr. Pattison

~~Miss Stephens~~

Only copy - please file & destroy. done

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COPY NO 1

NOTE

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COPY NO 1

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

LIMITED CIRCULATION ANNEX
E(79) 8th MEETING, MINUTE 3
THURSDAY 20 SEPTEMBER 1979 AT 10.30 am

CONFIDENTIAL

3. CURRENT INDUSTRIAL DISPUTES

THE PRIME MINISTER said that recent developments in Civil Service pay negotiations had revealed a weakness in managerial response to selective industrial action. Under the law as it now stood, it appeared impossible for Departments to lay-off non-industrial staff who were unable to work as a result of selective action undertaken by a small number of key people. This made it impossible to put pressure on unions and strikers through the majority of their members. It seemed probable that, depending on the terms of contracts of employment, there were similar difficulties in many private sector employments. She had already asked for the position as it affected the civil service to be investigated urgently.

THE SECRETARY OF STATE FOR EMPLOYMENT said that the current dispute over the National Engineering Agreement was developing in a very dangerous way and no early solution was in sight. Rolls Royce, with the support of other members of the Engineering Employers Federation, had taken the extreme step of laying off employees involved in the recent two-day a week strikes. There was a chance that other major companies would follow their lead and that, despite a period of disruption, this would prove to be the correct solution in the long run.

In discussion, there was considerable criticism of the reported action of the Department of Health and Social Security, in making special arrangements for the payment of supplementary benefit to the families of the strikers locked-out by Rolls Royce. It was argued strongly that the Department was wrong to anticipate a long strike in this way, or to make special arrangements to help those affected. Against this, it was pointed out that the present law had to be administered fairly, and that the families of strikers were entitled to supplementary benefit once they had exhausted their immediate resources. The object of the special arrangements made was to ensure that strikers and their families did not crowd out other and more deserving cases at local social security offices. It was also suggested that polls had shown that the strike action did not command general support among the workforce, who were being intimidated by the threat of losing union membership. The Government's proposal for dealing with the closed shop would help to solve this problem in the longer term but meanwhile there was a case for challenging the union to say whether they intended to penalise any members who refused to take part in strike action.

THE PRIME MINISTER, summing up a brief discussion, said that the Committee invited the Secretary of State for Social Services to review the special arrangements being made for the families of strikers at Rolls Royce and in other locations. The Secretary of State for Employment should consider, in consultation with the Attorney General, what might be said publicly to reassure those members of the workforce at Rolls Royce who wished to continue working without the risk of losing their union membership. The Committee noted that a new Ministerial Sub-Committee had been established to consider the threat of industrial action in the civil service, including the state of physical preparedness in Departments. The Secretary of State for Employment, in consultation with the Secretary of State for Social Services, should bring forward urgently his paper on Supplementary Benefits for Strikers.

The Committee -

Took note, with approval, of the Prime Minister's summing up of their discussion and invited the Ministers concerned to proceed accordingly.

Cabinet Office

21 September 1979

CONFIDENTIAL

file KB

10 DOWNING STREET

From the Private Secretary

SIR JOHN HUNT

INDUSTRIAL RELATIONS IN THE CIVIL SERVICE

The Prime Minister has considered your minute of 17 September, and has agreed your proposals on the setting up of a Ministerial Committee "to consider industrial relations questions in the Civil Service", supported by a group of officials.

I understand that it is your intention that the Committee should consider the question of laying off non-industrial Civil Service staff without pay. The Prime Minister is quite content with this, even though the membership of the Committee will be slightly different from the group which she suggested should look at this question at the small meeting of Ministers last Wednesday.

The Prime Minister has also asked that the new Committee should consider the Government's overall strategy in relation to Civil Service disputes, as recommended by the Secretary of State for Social Services in his minute of 12 September. In addition, she would like the Committee to consider the specific dispute at the Child Benefit Centre in Newcastle.

T. P. LANKESTER

18 September 1979

CONFIDENTIAL

CONFIDENTIAL

Prime Minister
Agree John Hunt's proposals? (The new Committee, chaired by Lord Soames, will have virtually the same membership as the old Nor group which you asked to look at Lay-offs in the civil service. The Committee should therefore look at this issue).

Ref. A0242

MR. LANKESTER

Agreed AJ.

Industrial Relations in the Civil Service

Flag A

In your minute of 13th September you asked for my advice on the Lord President's proposal that consideration be given to the setting up of a Ministerial Committee, supported by an Official Committee, which would consider how the Government should respond in individual cases to Civil Service disruption.

2. I am clear that recent events (notably the DHSS and Newcastle Child Benefit centre case) have shown that there is a gap in our collective arrangements in this field.

3. At present:

(i) Such pay questions, whether in the public or in the private sector, as require collective consideration come to the Sub-Committee on Economic Affairs (E(EA)) under Sir Keith Joseph's chairmanship.

(ii) Where an industrial relations situation, again whether in the public or in the private sector, threatens, or seems likely to threaten, "the supplies and services essential to the life of the community", the Civil Contingencies Unit (CCU) is responsible for preparing, considering and supervising contingency plans to meet the emergency. CCU is chaired by the Home Secretary, although it also meets at official level under its Deputy Chairman, Mr. Wade-Gery.

(iii) The Civil Service Department has an overall responsibility for management within the Civil Service, and gives general guidance to Departments on how to deal with particular situations.

4. As the Lord President said at the Prime Minister's meeting on Wednesday it is virtually certain that there will be extensive industrial action taken by the Civil Service unions this winter, over cuts as well as pay matters. The unions are nationally organised and will pick their targets carefully to achieve maximum disruption with minimum inconvenience to themselves. The

extent to which we are dependent on e.g. computers makes this all too easy. The Civil Service is not managed centrally - each Department is responsible for its own staff and different Ministers will be in the lead on different occasions. It is essential that the management response should be consistent. There are also general questions which apply across the board e.g. the point about the legal position with regard to the laying-off of non-industrial staff which the Prime Minister has already asked Lord Soames and a few senior colleagues to consider.

5. CCU, which, as stated above, is primarily concerned with the preparation and carrying into effect of action to preserve supplies and services essential to the life of the community at large including the use of the Armed Services, is not the right body to take on this role. Nor is E(EA) which deals with pay matters. The problems we now face are those of the management of the Government's own employees and of the action which Civil Service management can take to protect its interests. This is, oddly, a relatively new field for Government and what I think we need are arrangements:-

(i) To enable the tactical handling of individual disputes to be considered collectively by Ministers both to ensure consistency and that each Minister knows that he is operating in a particular situation with the full backing of his colleagues.

(ii) To ensure that Ministers know in advance which are the likely trouble-spots within the Civil Service.

(iii) To ensure that the contingency planning that can be done in these areas to keep disruption to a minimum is in hand.

6. This could best be done by a small Ministerial team, drawn primarily from the major Departmental employers, backed up by a group of officials. The Ministerial team might comprise:

Lord President

Secretary of State for Defence

Secretary of State for Employment

Secretary of State for Scotland

Secretary of State for Social Services

Financial Secretary, Treasury (both the Chancellor and the Chief Secretary will be heavily engaged on other matters e.g. public expenditure)

I think it is important to keep the core of this team small but other Ministers (e.g. the Attorney General and Ministers whose Departments are involved in particular cases) would be brought in as appropriate. It is, I think, right that the group should be chaired by the Lord President given the CSD's general management responsibilities. It could be a Sub-Committee of your Economic Strategy Committee, to whom major issues could be brought, and would be serviced by the Cabinet Office. Its terms of reference might be "To consider industrial relations questions in the Civil Service". The official group would need to be larger and be drawn from the Departments mainly concerned so that it could undertake the initial work under paragraph 5(ii) and (iii) above. Normally it should meet under the chairmanship of a CSD Deputy Secretary, but the individual concerned will be in hospital for the next few weeks and the CSD have asked if the Cabinet Office would provide a Chairman (Mr. Le Cheminant) for the time being. This official group would have a joint Cabinet Office/CSD Secretaryship. The fact that both Ministerial and official groups would have a Cabinet Office Secretary should enable us to ensure that there was no wire-crossing between the new groups and E(EA) which would still consider specific pay questions or with CCU which might need to be involved if e.g. troops had to be brought in to maintain essential services to the public.

7. I have discussed these proposals with Sir Ian Bancroft, who agrees with them and is satisfied that they would meet the Lord President's wishes. If the Prime Minister agrees, we will set up these Committees straightaway.

JOHN HUNT

17th September, 1979

2

Civil Service Department
Whitehall London SW1A 2AZ
01-273 4400

14 September 1979

Prime Minister
To note Lord Soames' view at X.
TL 17/9

The Rt Hon Patrick Jenkin, MP
Secretary of State for Social Services
Alexander Fleming House
Elephant and Castle
LONDON SE1 6BY

Dear Patrick,

INDUSTRIAL ACTION IN DHSS: MANAGEMENT RESPONSE

Thank you for copying to me your minute of 12 September to the Prime Minister about the management response to industrial action by the staff of your department.

We now have to deal with the situation at Newcastle as it is. The order on overtime was rescinded and it would not be very clever management to go back on it. You seem to have the stark alternatives of a retreat or a confrontation which would leave 1000 staff idle but still on full pay. I fancy that this is not the only battle we shall have to fight in the coming months and, given what has passed, I think that you would be better to keep your head down for the moment.

In the meantime, we are, as you know, looking at the legal position of laying-off non-industrial civil servants without pay where a handful of strikers put large numbers out of work.

I am sending copies of this letter to the Prime Minister, Cabinet colleagues including the Minister of Transport and Sir John Hunt.

Yours ever
Christopher

SOAMES

19 SEP 1979

SECRET

FILE

6/F 20.9.79

A

VLG

1

cc CSD.

10 DOWNING STREET

From the Private Secretary

SIR JOHN HUNT

This is further to my letter of 12 September to Ian Fair recording the discussion about industrial relations at last night's meeting.

At the end of the meeting, Lord Soames suggested that consideration be given to the setting-up of a Ministerial Committee, supported by an Official Committee, which would consider how the Government should respond in individual cases to Civil Service disruption.

I should be grateful for your advice on this proposal.

I am sending a copy of this minute to Jim Buckley (C.S.D.), who will no doubt ensure that it is circulated on a strictly "need to know" basis.

T. P. LANKESTER

13 September 1979

SECRET

GB

CABINET OFFICE
E 059
12 SEP 1979
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Personal.
M. Lankester.
You may like to see in view of our conversation this morning: but we need to provide the Prime Minister for the time being.
Tony 14/9

SIR JOHN HUNT

cc Mr Le Cheminant
Mr Miles.

INDUSTRIAL ACTION IN THE CIVIL SERVICE

This note follows your discussion at the Permanent Secretaries meeting this morning. We have since established that Mr Prior does not intend to raise these matters with the Prime Minister this evening, but that he is likely to minute his colleagues about them shortly. I have now discussed with Mr Duke (CSD). The position seems to be as follows.

Civil Servants have no individual contracts of employment. Strictly, they are employed 'at pleasure'. But, for the purposes of the Employment Protection Act, the collective agreements with the trade unions concerned are deemed to amount to contracts of employment.

In the case of the industrial civil service, there is an explicit provision in the agreements which permits the employer to send home men who are prepared to work normally, but for whom there is no work as a result of industrial action undertaken by others. This is the case referred to in para 5 of Lord Soames letter of 7 September to the Defence Secretary. The whole of this paragraph (apart from the first sentence) refers explicitly to the industrial civil service.

In the case of non-industrials, there is no such explicit provision. It follows (so CSD have been advised by their lawyers, and by the Attorney General of the last Administration) that there is no power to send home non-industrials in this situation.

The matter has not yet been put to the test. If it were, the CSD believe that the unions would arrange for a test case, in which one

of the staff sent home would sue for his wages. They are advised that the Courts would find in his favour.

The views of the present Law Officers have not been obtained so far. But this, and a number of related matters, have been put to the Treasury Counsel for his advice, and the Law Officers will no doubt be considering that advice shortly.

CSD believes that there are only two ways of dealing with this situation, as it affects the non-industrial civil service. The first is to alter the agreements with the unions. They believe this will have to be done by agreement, because the courts would strike down any unilateral change in the conditions of service. The second option is to legislate. CSD do not believe that it is worth risking court action by laying men off and waiting to see what happens. They are sure they would lose, in circumstances of maximum embarrassment for the Government.

Mr Duke said that there had been considerable discussion among Departments about all this. He was surprised that Sir Frank Cooper and others did not know the present position.

I said that there was considerable Ministerial interest in all this. It seemed likely that we would be asked to arrange for all this to be properly considered and put to Ministers. In that case, there seemed to me to be no appropriate Ministerial Committee. I said that in my view we would need a small group for the purposes. The minimum composition seems to be the Lord President, the Secretary of State for Employment, the Attorney General, possibly the Lord Advocate, and two or three of the biggest employing Ministers: Defence, DHSS, and Treasury/Revenue.

If you agree, you might like to advise the Prime Minister along these lines when the expected minute from Mr Prior arrives.

PM

P MOUNTFIELD

12 September 1979

Subject

CONFIDENTIAL

CC HMT
LPO
DOI
DOT
DHSS
MOD
AGO
CO

JFH
Mr Wolfson
Mr Hoskyns
Mr James

cc Ind Pol - Relations legislation - May 79

10 DOWNING STREET

From the Private Secretary

12 September 1979

Dear Ian,

The Prime Minister held a meeting this evening to discuss the industrial relations situation. In addition to your Secretary of State, the Chancellor of the Exchequer, the Lord President and the Secretaries of State for Industry and Trade were present. The following are the main points which came up in discussion.

Ministerial Statements

The Prime Minister said she wanted to be sure that Ministers were adopting the right posture in relation to the current rash of industrial disputes. A balance had to be struck. On the one hand, Ministers needed to avoid getting involved in disputes by making unnecessary or inflamatory statements. On the other hand, it was important to bring home to the public and to those who were striking the effects of strike action. Ministers needed to drive home the basic message that strikes and excessive pay settlements cause unemployment. The more specific examples that could be produced the better. It was all the more essential to spell out this message since it seemed likely that the trade unions would be mounting an increasing attack on the Government on the unemployment issue.

In discussion, it was pointed out that the TUC Conference had produced hardly anything positive; but there was still a real risk that the trade unions would unite against the Government. The Government's aim should be to keep them disunited, and this meant that Ministers needed to take care with their language. Moreover, it would be a mistake to give the trade unions a pretext for breaking off their contacts with the Government - since these on the whole were beneficial. The best publicity was criticism by trade unionists themselves, but unfortunately there were few trade union leaders who were sympathetic to the Government's line. On the other hand, Ministers needed to press home the basic economic argument, and while avoiding provocation, language had to be used which would catch the public's imagination.

It was agreed that the approach outlined by the Prime Minister was the right one, and that Ministers were at present striking about the right balance in commenting on the various disputes (or as in some cases, such as British Leyland, avoiding comment).

/Media Coverage

CONFIDENTIAL

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Media Coverage

In further discussion, it was argued that TV coverage of the current disputes was very inadequate. This was largely because the commentators and interviewers failed to ask the right questions and to point up the economic issues properly. It would be worth studying the performance of industrial correspondents over a short period, and then expose their inadequacies. It was also argued that Information Departments were not doing enough to educate and influence correspondents so as to ensure that they did ask the right questions.

X It was agreed that further consideration should be given to how Information Departments could do more to help in this area. The Chancellor of the Exchequer and the Secretary of State for Industry should consult with the No. 10 Press Secretary and report back to the Prime Minister.

Civil Service Disputes

Lord Soames said that the Civil Service unions were becoming increasingly ready to strike, and there was little doubt that further trouble could be expected over the proposed Civil Service cuts. They were using all the techniques at their disposal - and, in particular, they were taking out on strike small numbers of key people so as to bring major services to a halt. The latest example was the dispute at the Child Benefit Centre in Newcastle.

Lord Soames went on to say that a major difficulty for Civil Service managers was that they could not lay off non-industrial civil servants without pay, and therefore it was much more difficult than in the private sector (or indeed in respect of industrial civil servants) to bring pressure on a few strikers to return to work.

In a short discussion, it was questioned whether the law really did prevent non-industrial civil servants from being laid off without pay. If that were the legal position, then consideration had to be given to changing the law; alternatively, the conditions of service of civil servants might have to be changed to allow lay off without pay.

It was agreed that these questions should be considered further by a group consisting of the Lord President (in the Chair), the Attorney-General, the Secretaries of State for Employment, Social Services and Defence and the Chancellor of the Exchequer. The group should report back to the Prime Minister as soon as possible.

I am sending copies of this to Tony Battishill (HM Treasury), Jim Buckley (Lord President's Office), Andrew Duguid (Department of Industry), Tom Harris (Department of Trade), Don Brereton (DHSS), Roger Facer (Ministry of Defence), Bill Beckett (Attorney-General's Office) and Martin Vile (Cabinet Office).

Yours ever,

Tim Lankester

Ian Fair, Esq.,
Department of Employment

CONFIDENTIAL

BF

Prime Minister

John Hunt will advise on Monday on the setting up of an E sub-committee to consider civil service strike issues. The specific Newcastle problem and the general issues at x and y should be considered by this new sub-committee.

Agree?

In our small reformed committee last week we agreed that the Lord President would follow this up.

PRIME MINISTER

I have seen your Private Secretary's letter of 10 September conveying your view that we should have refused to withdraw overtime at the Child Benefit Centre at Newcastle, and, by implication, that we should have faced the consequences. You should know that Reg Prentice - who was not here at the time - shares that view! (And I have just seen Geoffrey Howe's letter of 12 September to the same effect.)

Flag A

Lynda Chalker's letter of 5 September set out all the facts and the reasons why, with great reluctance, I decided to withdraw overtime in order to keep the main operation of the Child Benefit Centre running. It became clear from Lynda's meeting with Staff Side representatives that the threat to bring the Centre to a halt by withdrawing a handful of key computer staff was a real one - it had happened earlier this year in the pay dispute and we still have not recovered from the interruption of service; this caused hardship to a good many families and a great and continuous volume of complaint. It was not easy to see how the dispute would develop, and the disruption could have been prolonged. I judged that we cannot risk a really massive interruption of indefinite length unless we are on very firm ground indeed.

Overtime, which is only worked voluntarily, is not as good a ground on which to make such a stand as, say, refusal to accept management orders. There is little doubt, the way things are going, that before much longer I shall have clear ground on which to take action against staff who disrupt our work. The consequence of suspending staff will certainly be a widespread disruption of our service to the public, and probably a strengthening of staff support for their unions' campaign, which is at present lukewarm. We shall have to pick our ground carefully; the damage that this action will do to many members of the public should not be underestimated, and we must be sure we can win the ensuing public relations battle.

The right weapon to deploy to counter the Unions' threat would have been ourselves to threaten to escalate the dispute by making it clear that staff made idle by the computer shut-down would be sent home without pay. But I understand that legally we have no right to do this to non-industrial staff, and could be sued successfully for breach of contract. True, we could have taken the risk - rejected the Unions' demand to withdraw overtime and then, when the computers stopped, sent up to 1,000 people home without pay. But if, say, an interim injunction against the Department had ordered us to take them back, we would have looked very foolish indeed. Against that possibility, I judged that the balance lay on the side of caution.

The need to mount a campaign to tell the public what the unions are doing is clear. I had authorised a firm statement over the Newcastle affair, but the episode has passed so far without attracting public comment and the statement was not in the event used. We are considering how and when to deploy our case.

All of this reinforces my view, as set out in Lynda Chalker's letter to Christopher Soames, that it is urgent for us to consider collectively our overall strategy in these matters - including what we should do to counter the "selective strike" which relies on the withdrawal of a handful of staff. As I hope that letter made clear, we do not shrink from firm action here - and I am quite ready to accept that the social security system may well be in the forefront of civil service disruption.

I am copying this to members of the Cabinet, and to Sir John Hunt.

12 September 1979 P J

12 SEP 1979

Treasury Chambers, Parliament Street, SW1P 3AG
01-233 3000

NBPM

12 September 1979

PL
12/9

Dear Christopher

INDUSTRIAL ACTION DHSS : MANAGEMENT RESPONSE

I have seen a copy of the letter on this subject which Lynda Chalker sent to you on 5th September in Patrick Jenkin's absence.

We must not undervalue the importance of management judgments on the spot about the degrees of disruption of important work likely to flow from different responses to union threats. But I am worried by wider implications of what is proposed.

The behaviour and attitude of the unions in this case - and I refer particularly to the Child Benefit Centre in Newcastle - is disgraceful. It disregards the expressed wishes of a majority of the members affected and would, I am sure, be roundly condemned by a great majority of public opinion. Union tactics of this kind are becoming increasingly common, however, precisely because they are thought likely to be effective.

I am sure we would all agree that we cannot go on being held to ransom in this way, but I am also persuaded that we shall not halt the process by general speeches and exhortations alone: we shall have to take the risks in fighting individual cases on the ground. The risks include the effects of disruption of work, and we must face the fact that public opinion, however strong in support of our attitude in general, may in individual cases spread its criticism over management and government, as well as unions.

This may mean that we have to be selective. But even on that basis, my reaction to Lynda's account of the position at the Child Benefit Centre was that this would make a very good subject for full exposure to the public,

/that it

The Rt. Hon. The Lord Soames, GCMG, GCVO, CBE

that it would illustrate the general messages we are trying to get across about the unrealism and irresponsibility of much union behaviour, and indeed that if we are not prepared to fight on this kind of ground, it is difficult to see where we shall be able to fight.

I am copying this to other Members of Cabinet and to Lynda Chalker.

(GEOFFREY HOWE)

CONFIDENTIAL

MFS.

10 DOWNING STREET

From the Private Secretary

10 September 1979

Dear Robbie.

Industrial Action DHSS (Management Response)

The Prime Minister has read your Minister's letter of 5 September about the current industrial action at the Child Benefit Centre at Newcastle.

The Prime Minister has asked me to say that she is very unhappy about the decision, which I understand has now been implemented, to rescind the order on overtime. She also takes the view that the Government should expose those concerned in this dispute to a massive campaign of public criticism.

I am sending a copy of this letter to Private Secretaries to members of the Cabinet and to Martin Vile (Cabinet Office).

Yours ever.

Tim Lankester.

Mrs. Roberta Paley
Department of Health and Social Security.

CONFIDENTIAL

TMP/HS.

Prime Minister

To glance: disgraceful example of union black-mail.

2

DEPARTMENT OF HEALTH & SOCIAL SECURITY
Alexander Fleming House, Elephant & Castle, London SE1 6BY
Telephone 01-407 5522
From the Joint Parliamentary Under Secretary of State

The Lord President

I am very unhappy about this decision. It seems to me that we should expose this — now — as a massive campaign against civil servants. MT.

5 September 1979

Dear Christopher,

INDUSTRIAL ACTION DHSS: MANAGEMENT RESPONSE

1. Patrick is out of London at present, but before he left he agreed that I should write on his behalf, in advance of the Cabinet meeting on 13 September, to let you and our Cabinet colleagues know about the Unions' campaign in DHSS against cuts in public expenditure and in particular the difficulties that have now arisen at the Child Benefit Centre at Newcastle.

The general position

2. The DHSS Section Executive Committees of the SCPS and CPSA issued circulars to their members which not only called for bans on overtime, temporary promotion and substitution, work sharing, and the recruitment of casuals, but also sought to place a severe constraint on Management's ability to manage. Thus:-

> "Managers should be informed that all duties should be assigned by half-an-hour after the start of core time each day. Once assigned CPSA members will continue to do that duty for the rest of the day. The SEC has identified the following key areas:-
>
> Telephonists, Receptionists, Cashiers, Stockholders, Counter Staff
>
> who may, because of exceptional circumstances, have to be replaced during the day. If one of these members goes off sick their replacement should be discussed with CPSA. If key posts have to be filled in this way, Management will have to accept that the work of the person who fills in will be left undone for the rest of the day."

3. This advice is being applied in varying ways by Union representatives in a number of our local offices. The Unions' line is not being universally supported by staff and in those offices where we have real difficulties we have, so far, been able to get the staff to cease unacceptable practices. But we cannot assume we will always be successful; if these actions continue, there is a real possibility that, after proper warning, staff will have to be relieved from duty until they are prepared to work properly.

4. The prospect of confrontation with the Unions and of heightened industrial action in DHSS will be much increased if we take action against members of staff who believe

they are following declared union policy. And the Unions will then feel compelled to react in order to avoid any erosion of support for their campaign. Whether they would initiate further industrial action and what it might involve must be matters for conjecture. It could lead to considerable interference with the provision of benefits: it might conceivably result in industrial action spreading to other Departments.

5. Despite these risks we believe that we should be ready to act firmly. Any decision to relieve from duty will be taken only on the authority of Ministers. We shall proceed carefully and persuasively, but it may be inevitable that we shall have to take firm action in some local situations. If we do have to act, we shall want to ensure that the reasons for doing so are explained forcefully and effectively to the public and the media. I return to this point below.

Child Benefit Centre

6. As a forerunner to those general difficulties we have had to deal with an immediate problem at the Child Benefit Centre in Newcastle which pays child benefits to over 7 million families. Our difficulties at this Centre seem to us to epitomise current union attitudes and tactics.

7. The background, briefly, is that this Centre was badly hit by unofficial strike action during the pay dispute. This caused delays in payments and arrears of work to build up and some public criticism. Normally we would have used overtime to recover the position, especially as some overtime working is normal during the summer months when the work load reaches a peak because of school leavers, and the holiday season for staff is also at its height. However, the Civil Service unions imposed a ban on overtime, and we thought it would be provocative and probably ineffective at that stage to offer overtime, much as we were concerned about the criticisms of poor service.

8. There were growing signs that the staff at the Child Benefit Centre were restive about the overtime ban and a few weeks ago the CPSA branch there voted, against Union advice, by a majority of 3 to 1, to discontinue any form of industrial action, and the Society, covering the whole Newcastle Central Office, voted by only a small majority (418 to 385) to continue action against manpower reductions. In the light of this we made overtime available at the Child Benefit Centre from 27 August. There was a very good response from both CPSA and Society members and we have already made significant inroads into the arrears.

9. Predictably, the Unions have reacted strongly and, with, we understand, the agreement of their National Disputes Committees, they have told our Controller at Newcastle that, unless the order on overtime is rescinded, the Society will call out eight ADP staff handling child benefit work on continuing strike. This would cause the whole child benefit operation to come to a halt and would in time leave over 1,000 staff without work, without our being able to take any effective action against them. The Unions can comfortably finance a strike by such a small group.

10. We regard this as a gross form of industrial blackmail by the two unions, and our instinct was to tell them to go to blazes. But rational analysis points in the direction of rescinding the overtime order because:-

(1) there is no way in which we can take effective action for example by laying off the large numbers of staff who would be made idle without pay.

(I understand that we have sought legal advice on this point. It might be helpful if it could be obtained very soon).

(2) without overtime, the vast majority of the public will still get their money reasonably to time, but if the Centre ceased to operate many hundreds of thousands of families would not receive their benefit, which has become an increasingly important part of family budgets (£4 per week per child)

and,

(3) we think the Unions' threat is a real one and if there were a strike, the only way of bringing it to an end would probably be by agreeing not to make overtime available.

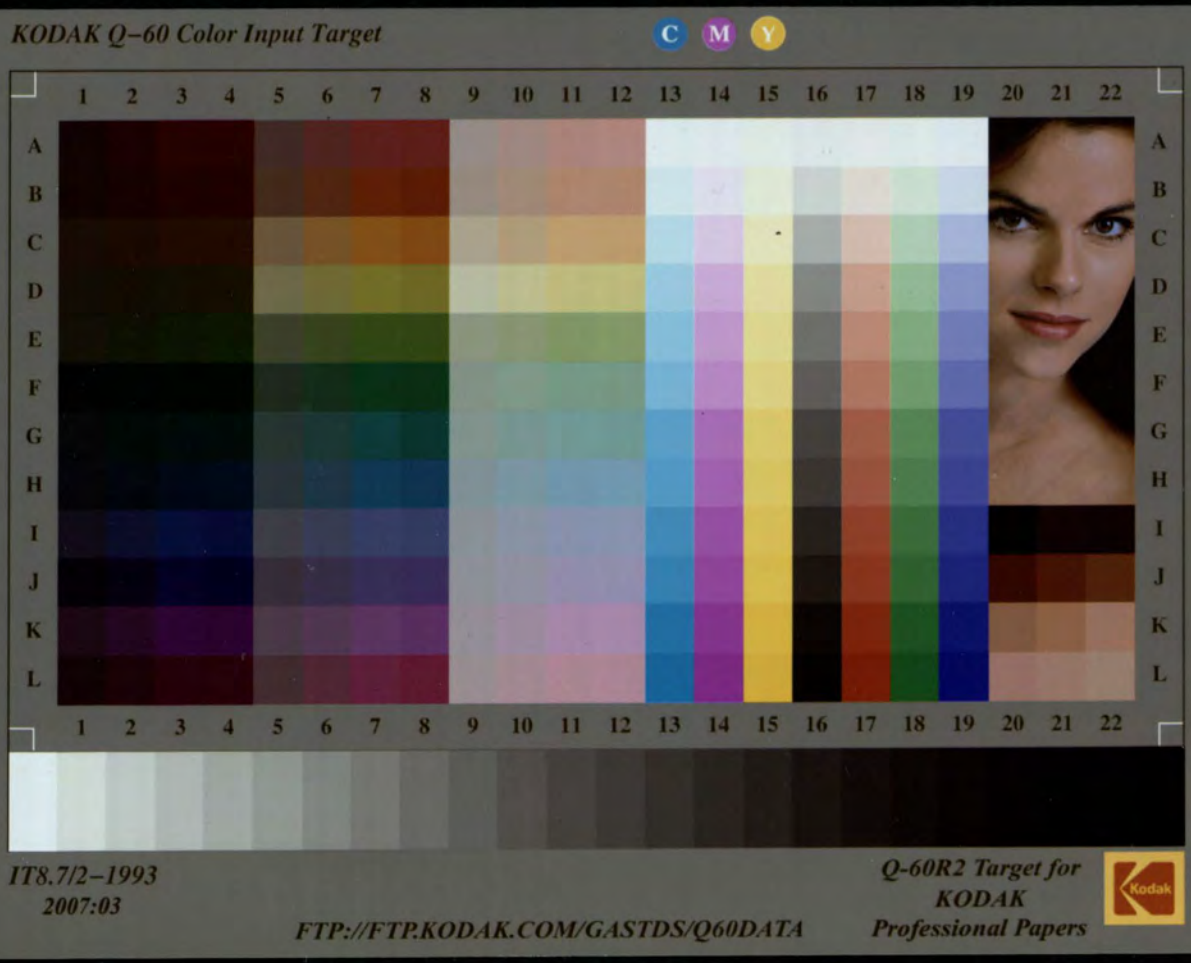
11. I saw the local Staff Side yesterday, and it was made quite clear to me that action would be taken to stop all payment of child benefit unless local management immediately rescinded its offer of overtime. Patrick agreed to this with great reluctance, but we can see no practical alternative. We also considered very carefully how we should react publicly to this threat, in view of the freely expressed wishes of a majority of one of the Union groups concerned to work overtime. There understandably was a case for spelling out publicly the tactics of the Unions and making it clear that we regarded this as an example of industrial blackmail which was politically motivated. However, this would have threatened the considerable progress made with the co-operation of local staff to reduce the arrears of work, despite the obstructive line adopted by the Unions. Moreover, it seemed to us that since the problems I have outlined affect other colleagues we ought to be considering our overall strategy to inform the public of these issues, rather than focussing one at a time on single incidents. You may like to consider this in relation to your forthcoming meeting with the National Staff Side.

12. I am copying this minute to the Prime Minister and members of the Cabinet.

Yours ever
Lynda

MRS. LYNDA CHALKER

- 5 SEP 1979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