



10 DOWNING STREET

The Rt Hon Sir Geoffrey Howe QC MP
 Chancellor of the Exchequer
 HM Treasury
 Parliament Street
 LONDON SW1

Dear Geoffrey,

This note summarises the discussion last night with Keith Joseph, Leon Brittan and David Wolfson, and suggests our first thoughts on how to proceed.

1. SUMMARY OF THE DISCUSSION

The conclusions we reached can be summarised as follows:

- (i) The unions are, in the end, more concerned about their funds than about anything else. A bankrupt union would have few friends or members.
- (ii) If their funds are not at risk, no action by them is voluntarily forgone, if it can be seen to achieve a benefit for their members. Even moderate leaders dare not discipline militants without a practical reason (ie I am doing this to protect the union).
- (iii) If union funds are at risk, the big unions would have to behave responsibly. Nothing else (including the threat of imprisonment) will do.
- (iv) All primary action should be protected. All strike action against the employer should be protected. These are basic rights which should be affirmed. But the employer should similarly be free to dismiss the striker.
- (v) All other secondary action should no longer be immune. Those suffering damages should be able to take action against the union, not against individuals.
- (vi) There will inevitably be some uproar (we call it "Havoc '80), but the choice is between having uproar in instalments, timed to ensure that Labour wins in 1984, and getting it over now with solutions which are built to last. The proposal to make unions liable for damages caused by secondary action is simple to communicate and to understand, in terms of natural justice, and is widely popular.

I attach a list of all the points that came up in the discussion as background, but they are not essential reading. I also attach

Peter Martin 2
 he can. A course held
 up by Price's consultation
 document to allow
 time for renewed consideration
 of this issue.
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a copy of the Policy Unit's minute to the Prime Minister before the recent E Meeting which only narrowly and reluctantly concluded that it was not possible to introduce further amendments at this stage.

The conclusion of ^{last night's} the meeting was that this was probably the best opportunity we would get to make this change and the sooner it was made the better. We understand that a leader of one of the big unions has, in private, conceded that if the Tories had the nerve to take action of this kind, they would in the end win. The trade unions would be unable to prevail, because the more trouble they caused, the stronger would be the public feeling against them, especially if it happens so soon after the lessons of last winter.

2. IMMEDIATE QUESTIONS

The immediate questions are on the legal side, on which we are not competent. What is the minimal change in the law that would bring about this state of affairs? Is it possible for those affected by secondary action to get at the union funds in practice? How would it work on the ground? Most important of all, perhaps, how would these proposals differ from 1971? This last question is relevant for two reasons: first, from the point of view of lessons learnt from past efforts; and, second, because this is the main objection from gun-shy colleagues who may have an alarming feeling of *deja vu*. This is where the carefully built up mythology that the 1971 legislation (which so nearly worked and would have done if there hadn't been the February 1974 election) was a disaster from start to finish, is

3. HOW DO WE MAKE THE CHANGE?

This is no more than a check list at this stage, but we need to do work as soon as possible, in the following areas, in parallel with the work being done to answer the questions in section 2 above:

- so realising in its effect.*
- (i) Get a realistic assessment of "Havoc '80", recognising that it is bound to happen anyway and we might as well get it over early, but that (and this should not be underestimated) the proposed changes may themselves effectively flank the predictable union response.
 - (ii) We need to anticipate the nature of the union propaganda war during the period of consultation.
 - (iii) Should we consult in the normal way on the amendments? Or should we be considering a completely new Bill, which would cause further delay, but is worthwhile if the solution is really built to last as a major stepping stone? Alternatively, we should perhaps not dismiss too readily the idea of introducing the change as a fait accompli and consulting afterwards. This would depend on our assessment of union-orchestrated resistance (3(ii) above). On the face of it, it looks unattractive - the Opposition would withdraw co-operation, would hint to the unions that, in view of our method of introduction, any action was morally justifiable etc.

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At the same time, it would possibly outflank the unions more immediately, heighten the sense of emergency, show firm Government in a chaotic situation with an urgent need for quick clarification of the law - particularly in this case where all opinion research shows great distaste for all forms of secondary action and concern about union power.

- (iv) We have to prepare (on the lines of our preparations for the steel propaganda battle) to dominate the debate during both consultation and the remainder of "Havoc '80".

I am sending copies of this letter (but without the attachments) to the Prime Minister, and with the attachments to Keith Joseph.

It is worth reminding ourselves, perhaps, that neither the discussion nor this note proposes drastic changes. We are simply suggesting the areas in which calm and careful thought is necessary before we can decide whether or not the present situation offers an opportunity - or even perhaps a bigger potential penalty than appears at first sight - if we do not grasp it.



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(Note of a conversation with Sir Keith Joseph, David Wolfson, Leon Brittan, Monday, 28 January 1980)

1. Whatever action we take, must be done in such a way as not to sacrifice goodwill. But we're not talking about goodwill from moderate leaders, we're talking about goodwill from rank and file.
2. The union leaders will laugh about the inadequacy of our proposed legislation, in private, but they will protest in public. Our proposals on the closed shop are regarded as a joke. They won't be effective, but they will be bitterly opposed as if they were.
3. *(this can't be right)*
94% of unofficial strikes are made official. A familiar Tory objection to more radical changes is "it's very hard on the T&G if we take action against them when the action they have taken is unofficial". But the correct response to that is "good, it will make them act". They will quickly decide that this sort of thing can't go on if it hurts union funds. The unions own their members, because they can expel them on the instant. The only way in which unions can discipline militants, in order to avoid facing the legal consequences of action taken by their members acting against their union's instructions, is for them to dismiss the striking member and not to readmit him. (This echoes Andrew Sykes' comments, that unions are prepared to discipline people who won't strike when ordered to do so, but are never prepared to discipline those who strike against their union's orders, nor will the unions let the management do that either.)
4. The only way to penalise unions is to attack their funds. Never go after the individual, he has neither funds to pay damages, nor should he be offered martyrdom - which many of them would like. The only thing the union leaders really care about is their funds. (This echoes the Christopher Storey thesis - that unions are really simply financial enterprises which operate on a no-risk basis, with large funds which are really used simply to sustain the enterprise, produce benefits and so on for its officials, but not to support strikes etc.) Our position is that unions are free to be as militant as they like, but it will cost them money. And in the end that will mean higher dues from their members. Use market forces, make people pay for the actions they take.
5. This Government will fail if the law on immunities is not changed. This is not a matter of intellectual or legal tidiness, but of power. If we don't do it now, we'll be taken to pieces in 1983 in time to lose the next election. "How dare the unions wreck us, Labour, and then refuse to do the same to the Tories, their political enemies?"
6. The right to withdraw labour is absolutely fundamental and would be preserved. Similarly, the employer should be free to dismiss someone who does so. The individual must decide whether he is prepared to take that risk in withdrawing labour. There should be no other immunities except these immunities for primary action.

7. Never for one moment assume that the union leaders speak for their members on these issues. There should be no immunities for secondary action of any kind. A civil action should always lie against unions who take secondary action. Secondary blacking is simply immoral. Unions would therefore have to strike, so that their members lost pay.
8. The employee today fears his union more than he fears the employer. This change would reduce his fear of the union, would reduce the power of the shop steward over him. That would be welcome. Very popular. In dozens of appeal cases to get a man's card returned to him, it has turned out that the shop steward in almost every case simply didn't like the individual concerned and therefore victimised him.
9. Going back to the pre-1974 situation, in which immunities only apply to breaches of contracts of employment, rather than breaches of contract of any kind, only goes part of the way. It isn't enough.
10. Don't kid ourselves that the employers are going to do the work for us. They can only do that as the whole climate of opinion changes. We didn't discuss what that really meant in practice, or how reluctant employers would be to take civil action.
11. It is quite unrealistic to think that people would be persuaded to black leg. In the real world, that is seen as morally indefensible for union members. (This arose from a point raised by Leon Brittan, but I missed that point - this was the rejoinder to it.)
12. Police are useless on the picket line. They will deal with gross breaches of order, but it is quite unrealistic to expect them to spot who is threatening whom and take names.
13. Gravediggers etc, workers in essential industries - no fundamental objection to having a "no-strike" law, but the comparability alternative is unattractive.
14. If we don't act, Frank Chapple will in due course be replaced by militants, and then the switches could be turned off. Similarly, Scargill will eventually succeed Gormley.
15. Everything in the end depends on communications and explanation. Will people obey the law, or disregard it in a way which makes a mess of their own lives (no water in their own houses etc).
16. The water workers' strike is seen as breakable, because it is not skilled work, troops could do it (but what about knowing your way around a very old sewerage system?) Would people tolerate bringing in experts from overseas to run power stations?
17. Once the framework of law is changed, we have more chance of progress with the TUC which does contain some responsible men (even if they

have lost control of their unions) than with the PLP which is reckless and irresponsible.

18. Crucial to stand firm on British Steel. If we lose on pay, we'll fight all over again on closures, and it will be one battle after another through to 1983.
19. Go-slows and works-to-rule can only be handled by the employers. The employers should be free to dismiss someone who breaks their contract.
20. It was suggested if there was one single action that was essential it was the right to take civil action in cases of secondary blacking. This is more important than picketing. But ideally we should go for secondary action of all kinds.
21. An up-and-coming potential General Secretary of one of the unions has said in confidence that he knows that everything that is going on now is crazy, and commented "it's amazing what they (the Tory Government) let us do".
22. Why should we try to take all this in one step? Why not push through the present Act and then do a one clause Bill later? The answer was that the public would say "why do they have to keep going on at this, do they know what they're doing, why can't they get it right in one"? And we would have lost a year by then anyway. Better for the Prime Minister to say that the situation has changed, things have moved on, and that we have to make another major change in what is otherwise a perfect set of laws. Just this one change and it will meet the requirements. On the face of it this is not quite a coherent answer because the McShane judgment did not affect the question of union funds, making unions liable rather than individuals, but the answer to that is that we simply have to aim off in the light of our experience and what is happening in the steel dispute. The strong view was put forward repeatedly, that we should take the action now, as amendments to the present Bill, that we could not afford to wait and start again later. The opportunity window is open.
23. Workers are not in favour of public spending cuts, even though they may want lower taxes. But they don't like modern trade unionism, they do feel trade unions have too much power. They do think Government should do something about it.
24. The Charing Cross pickets preventing lorries coming in with oxygen or oil etc would mean that the haulier could take action against new NUPE. Okay for the pickets to prevent their own fellow workers coming in, but not to prevent others. That is secondary action.
25. Straw polls showed that if there had been a ballot in the steel dispute, there would have been no strike. The polls showed a clear majority against the strike. This was why the militants would not let Sirs hold a ballot.

26. What was the cause of the drastic shift in union behaviour and attitudes since 1971/4? A combination of two things. First, the loosened legal framework which led inevitably to the exercise of greater power. If the power is there it is used, and if the legal framework is loose enough, a Mafia culture begins to take over. Combined with this is the fashionable tendency towards decentralisation. Unions should be run by very strong, autocratic rulers (Bevin, Deakin etc). It is the only way in which they can function well and not disintegrate into mob rule. That seems to be the lesson of past history. With the present very loose framework in which the militants exploit their power to the full, the moderate leaders aren't be out-done by the militants. If the framework was tightened, the moderate leaders (while they would go through ritual protests etc) would in fact be grateful. For they would then be able to act more moderately while saying to their members and the militants that they now had no choice, because the law did not permit them to do anything else. They aren't strong enough people to set their own rules. It has to be set for them.
27. It was suggested that we should take no action on supplementary benefits for strikers' families. Although in logic and justice there should be no benefits, this is still an emotive issue on which many sensible people, especially in the unions, feel that the present arrangements are "fair". If we decide to go for the really important area of secondary action where the great mass of union members would be with us, why risk losing their goodwill on a much less important issue?



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