CONFIDENTIAL 27 February 1980

MR HOSKYNS

cc Mr Wolfson
Mr Lankester

TRADE UNION IMMUNITIES

I mentioned that there seems to be an important loophole in the proposals contained in Mr Prior's working paper on secondary industrial action. While it is possible that some bodies will respond to the working paper by pointing this out, I do not think we should rely entirely on this. I attach a draft letter which one of the members of E Committee could send to Mr Prior to expose the point. If it is not exposed now, it seems likely that there will be inadequate time at the end of the consultative period in which to put this right.

I hope the draft letter is self-explanatory. If not, it will have to be improved.

If the draft is clear, I suggest we ask whether the Chancellor, Sir Keith Joseph or John Nott would be willing to send it. Obviously the approach would need to be very discreet.

ANDREW DUGUID

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DRAFT LETTER FOR A MINISTER TO SEND TO MR PRIOR

Working Paper on Secondary Industrial Action

1. There is one point in the working paper proposals that is troubling me and which does not accord with my understanding of the decision we reached at E Committee on 13 February.

2. Although several of us would have liked to restrict immunities still further, we accepted your view that the line should be drawn broadly at the level of the first suppliers and customers to the party in dispute - although you explained that immunity would not automatically extend to all first suppliers and customers. I think we all recognised that this was less than a complete fulfilment of the Manifesto commitment to ensure that the protection of the law was available to those not concerned in the dispute, but we felt that this line was defensible - at least as a first step. In describing option 3, the official paper, E(80)10, explained that in the current steel dispute, immunity would run for secondary action against those independent steel manufacturers who were in substantial commercial relationship with BSC, but not the rest.

3. The draft of the working paper that you circulated on 14 February [on which I commented] contained - at para. 16 - the reassuring sentence:

> "Those customers and suppliers falling outside this definition would be free to exercise their normal rights under the law in the case of interference with their commercial contracts."

I thought - and I'am sure that some of our colleagues did - that we had at least extended the protection of the law to customers and suppliers - and competitors - who were not in substantial and regular contractual relationship with the employer in dispute.

5. My concern is this. The final version of the working paper seems to suggest that employees of first customers and suppliers to the employer in dispute will enjoy immunity for <u>any action</u> directed at <u>any victim</u>, no matter how remote, so long as the tests of capability and motive are met. This leads me to fear that we are not proposing to extend the protection of the law even to those who are more remote than first customers or suppliers. For example, despite the assurance contained in E(80)10 that independent steel producers without substantial commercial relationships with BSC would be protected, they could be the targets of selective blacking action by the employees of any first supplier to BSC. Thus, if British Rail have a substantial commercial relationship with BSC, it would be open to the NUR to black the supply of coking coal and other raw materials to independent steel producers. Similarly, the movement of private sector steel or even imported steel could be blacked in order to prevent supply to steel users whether they were substantial first customers of BSC or not.

6. More generally, in any dispute a trade union only needs to identify the first supplier or customer whose employees have the most wide-ranging muscle and ask them for support. I would accept that we have agreed on continuing immunity for the employees of first customers and suppliers to take sympathetic

strike action. But I am sure it was not the intention of the Committee to confer immunity on these employees for selective blacking action directed against any target they may choose.

7. I hope very much that it will be possible to plug this loop-hole. It has been suggested to me that it may be possible to do this by a close definition of the tests of capability and motive, but I am sceptical about this. Surely it would be much clearer to specify in the new clause that immunity will not extend to selective secondary action directed against suppliers or customers who do not have substantial contracts with the employer in dispute? If for any reason this seems impossible, an alternative route might be to introduce a third test of remoteness.