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PS/ Secretary of State for Industry

in the Director

20 November 1979

M Hall Esq
 Private Secretary to the
 Chancellor of the Exchequer
 HM Treasury
 London SW1

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Dear Martin

STRIKERS AND SUPPLEMENTARY BENEFIT

Following the Prime Minister's request that this subject should be considered further before a decision is taken on whether it should be put to the Cabinet, my Secretary of State has put together a further paper with the help of the E(EA) Secretariat. He thinks that the best way forward would be for there to be an informal discussion of the issues with the Chancellor, the Employment Secretary and the Social Services Secretary. I understand that the Cabinet Office are making the arrangements for the meeting.

I am copying this letter and its enclosure to the Private Secretaries to the Employment Secretary and the Social Services Secretary and, for information only, to the Private Secretaries to the Prime Minister, Lord Cockfield and Sir Robert Armstrong.

Yours sincerely

Ian Ellison

I K C ELLISON
 Private Secretary

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STRIKERS AND SUPPLEMENTARY BENEFIT

Note by the Secretary of State for Industry

1 I have been giving thought to where we now stand as a result of discussions in E(EA), and in correspondence, over the issue of strikers and supplementary benefit.

... 2 The attached note summarises the various arguments. Our supporters expect us to take some action here. The direct consequences may be small, and even if our changes are effective, those who seek to use industrial muscle will probably vary their tactics. Nevertheless we made a commitment.

3 The unions will fight the public relations battle hard - and will use the weapon of alleged hardship to do it. My own view is that we should face that, and fight it by making it clear in advance that any such hardship is entirely the fault of the unions in paying inadequate strike funds. I would not therefore favour weakening our stance by admitting the possibility of hardship payments if the going gets too rough. There are larger issues behind the small change we propose. If we do succeed in encouraging unions to build up substantial strike funds and to pay benefit we may find that we have increased union strength. This may seem desirable insofar as unions are enabled to keep the bargain they make, but it may prove harmful if they remain luddite.

4 Subject to this and any other larger issue, I suggest to colleagues that we should consider the policy summarised in Para 23 of the paper.

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20 November 1979

STRIKERS AND SUPPLEMENTARY BENEFIT

Note by the Secretary of State for Industry

1 There have been three discussions in E(EA) on the subject of Strikers and Supplementary Benefits. This note pulls together the conclusions so far reached, and summarises the arguments on points which remain in doubt.

The Purpose of Legislation

2 The Manifesto said:

"Strikes are too often a weapon of first rather than last resort. One cause is the financial treatment of strikers and their families. In reviewing the position, therefore, we shall ensure that unions bear their fair share of the cost of supporting those of their members who are on strike."

3 Thus the aim is to apply financial pressure on unions to discourage strikes, particularly those strikes where action is taken without exhausting other possible avenues first. We also hope to do something to redress the balance between strikers and employers which is at present heavily tilted in favour of strikers.

The Size of the Problem

4 The duration of strikes in 1976 and 1977 is summarised in Table 1 in the Annex. Two thirds of strikes lasted less than a week, and 83% less than 2 weeks.

Possible Levers for Government Action

5 It seems generally agreed that the Government could not legislate to require unions to pay strikers, bearing in mind the difficulty of enforcement. So the pressure has to be indirect. The first avenue is publicity; the Government could say that, for their part, they will assume that unions pay at least £x p.w. in strike pay, as many do now. The second avenue is to act on supplementary benefits; the Government could take steps to ensure that strikers' families did not receive the full amount of supplementary benefit thus putting pressure on the trades unions to give strike pay. In adopting these courses of action we would in fact leave it open to the unions to decide whether they would give strike pay to all their members on strike or only to those who might have the supplementary benefits payable to their families reduced. If they chose to give strike pay to all their striking members, the cost would be heavy; if they chose to limit strike pay to those who might otherwise have received supplementary benefit the cost would be small. A possible third avenue, action on PAYE rebates as described in Annex D, is not open to us.

Supplementary Benefit Payments

6 These have been the main focus of our consideration. But we should recognise they apply only to a very small proportion of

/strikers and ...

strikers and people. Benefits are not normally paid until the strike is in its third week, so that on the 1976-77 experience only 17% of strikes are relevant. And the great majority of strikers are ineligible and a proportion of those eligible to claim do not do so. Table 2 in the Annex shows figures of between 13% and 25% for the take-up between 1960 and 1977. The proportion of all strikers who could in principle have taken up supplementary benefits varied between 1% and 8%.

Suggested Courses for Action

7 It is clear therefore that any action we take will have very little direct effect on the majority of strikes or the majority of strikers. We must judge measures also in the light of their potential indirect effects through changed attitudes as a result of the publicity the legislation would attract.

8 The discussions in E(EA) have led to the conclusion that we should "deem", for settling the level of Supplementary Benefit to a striker's family, that he receives £10 pw strike pay from his union. At the same time we would alter the rule about "disregarded" income to say that the full amount of deemed strike pay would be taken into account in settling supplementary benefit. In the earlier E(EA) discussions we have not given close attention to what income should be disregarded. In the first discussion (E(EA)(79)25) it was suggested that the present "disregard" which applies to strikers' income (notably strike pay and tax refunds) should be abolished. This paper did not, however, consider the "disregard" in favour of £4 pw of wife's earnings, if any, and £2 pw of strikers' earnings from a second job. Moreover, later papers from DHSS, and the examples of family income given in them, which we considered, were based on the altered assumption that £4/ of income tax refund would continue to be disregarded. We could of course go either way either by taking more of the disregarded items into full account or, alternatively, by abolishing only the disregard on strike pay. If we take the former course, it would put the striker in a different situation from other supplementary benefit recipients and it might be represented that the Government wished to penalise strikers per se. On the other hand, strikers place themselves in a different position to other recipients of supplementary benefit and we could justifiably point out that the Government was taking firm action to avoid using taxpayers' money to subsidise strikes. (Moreover, Annex C shows that there is already discrimination against strikers per se; non-strikers have their income tax rebate disregarded in full). There are therefore presentational arguments for abolishing the "disregards" on both strike pay and income tax rebates (and indeed in respect of all sources of strikers income except wife's earnings if any) or for retaining the disregard on income tax rebates. But, if we wish our changes to be effective on motivation before and during a dispute, then we should abolish both "disregards". (The question of whether the disregard on income tax refunds should be abolished for all benefit recipients is a wider issue requiring separate consideration).

Who are the Strikers?

9 It is very difficult to be sure in an industrial dispute who is willing to work, and who is prevented from doing so by the action of the employer (a lock-out) or that of other employees. So it is long-

established - by legislation going back more than 60 years - that all those who stand to benefit from an industrial dispute are not eligible for unemployment benefit or supplementary benefit while the dispute lasts. (Their families are eligible for Supplementary Benefit once normal pay is assumed to have run out - usually the third week of the strike.) Thus we see no way of distinguishing the "militant" striker from the man who would prefer to return to work. But by not distinguishing, and so penalising some individuals, it will intensify the pressure from the men onto the union or strike leaders to achieve a settlement.

Unofficial/Official Strikes?

10 Most unofficial strikes are likely to last less than 2 weeks so that entitlement to benefit does not arise. But by saying that the Government intends to treat unofficial and official strikes similarly, it would encourage pressure to have strikes declared official (so as to achieve entitlement to strike pay). This could be two-edged. It might increase the power of militants within the union. But however one views that argument, the key point is that the other course would create converse pressure for unions to make strikes "unofficial" so as to avoid the need to pay out strike pay.

Union Members Only?

11 Only union members can actually receive strike pay from a union. So to deem that others do so would penalise them for not being a union member. If they are also opposed to the strike, and yet have been denied benefit under para 9 above, the further penalty would seem doubly harsh.

12 The unions will argue that, by assuming that all their members receive strike pay, we will be encouraging people to leave the unions and this claim would have some substance for any impoverished unions. But bearing in mind our overall aim of "making unions pay a fair share" we should be able to face that argument squarely. The remedy of the impoverished union is in their own hands/is to raise subscriptions.

and

13 We have also been concerned that it would be administratively difficult to decide who is or is not a union member at the point of paying out benefit. Annex B gives proposals on how this might be done. Provided we asked simple questions of fact within the knowledge of the individual striker, eg:

- a) Are you a union member?
- b) If so which union?
- c) If in doubt - "Have you paid a union subscription at any time in the last 3 months?"

then it would be a criminal offence for him to take money by making a fraudulent declaration. We could make it a condition of payment that the benefit officer was satisfied that the man was not a union-member. Thus the onus of proof could lie on the striker, and would

/leave the scope ...

leave the scope for the DHSS to initiate inquiries to his employer etc if there was prima facie indication of fraud. The level of abuse would probably be tolerable if the declaration is made sufficiently clear cut. There is the option of going further and taking a power to demand access to union membership lists. But it carries the risk that, if the union refused to obey, there would be no effective sanction, and it could intensify union opposition to the whole scheme.

Hardship Provisions.

/or 14 We have examined proposals for making hardship payments (possibly recoverable when work recommences) to strikers for whom the loss of the whole/part of the deemed amount would take the family income below the "Requirements Level" used in setting Supplementary Benefits. This level relates to the needs of dependants only and therefore the family is already some £15 below their normal entitlement. But apart from administrative complexity, hardship payments have the serious disadvantage that they cut at the roots of the proposal. We are in any case only operating on that minority of strikers who claim Supplementary Benefits. My preference therefore would be to say that there will be no hardship provision in respect of the deeming, and that it is the responsibility of the unions not Government to make sure that the risk of hardship does not arise.

15 The great majority of strikers manage their finances without calling on benefit at all. The standing expenses of the family - rent, rates, water, electricity, gas, telephone, HP, clothes - can all be deferred. Travelling costs are reduced. But I recognise that, particularly in a long strike, the absence of a hardship provision will intensify political pressure. But if the measure is to achieve anything we must be prepared to face pressure, and repeatedly to place the onus on the unions. And I am sure there will always be "hard cases" in the media, as there have been in past strikes under existing rules, whether or not we adopt these proposals.

16 In E(EA) we have considered a time-limited hardship provision (eg no hardship till the 5th week of the strike). But that would not prevent political pressure in earlier weeks, and it would remove the incentive for the unions to act themselves and might indeed encourage them to pay more in earlier weeks and withdraw their payments once the hardship provision is available. If we went this way at all, a longer time limit might be preferable.

17 If we make a hardship payment at all, there seems no great objection to making it recoverable, since for many supplementary benefit recipients such arrangements have already to be made to recover the whole of the benefit which they receive during their first two weeks back at work, before normal pay is resumed. And these are likely to include any people who have no other resources and have claimed hardship. But we should keep in mind that an increasing debt of this kind may lead to pressure for a compensating lump sum settlement from the employer to bring about the end of the strike. And there is the point that any repayment scheme also adds some work for DHSS staff and employers. This would be the greater if the union encouraged its members to make hardship claims.

18 I recognise that, without a simple rule for determining hardship payments, we could not retain a discretion to deal with hard cases connected with the circumstances of the strike. Once there was acknowledged discretion the unions would swamp the DHSS with claims, and this would give the worst of all worlds presentationally, with the Government admitting hardship but taking a long time to make payments.

19 There would remain the catch-all discretion for extraordinary circumstances (eg fire or flood) unrelated to the strike. But any hardship provision more than this destroys the whole basis of what we are seeking to achieve and would be exploited.

Summary

20 In summary therefore I consider that the following scheme might be adopted in fulfilment of our Manifesto commitment:

- i The Government should state that as a matter of good practice unions should pay at least £10 pw to members who are called out on strike.
- ii For its part the Government will assume - from a commencing date in 1980 - that all union members with an interest in the outcome of a dispute are receiving at least £10 pw from their union.
- iii This sum will thereafter be increased annually in proportion to the increase in Supplementary Benefit.
- iv Where the benefit officer is satisfied that the striker is not a union member, the deemed amount would not be deducted. "Membership" of a union would be defined (in Regulations) as "having paid a subscription to a union at any time in the last 3 months".
- v The Government should make it clear that a failure for income to reach the Supplementary Benefit Requirements levels because unions fail to pay strike pay will not be reckoned to constitute hardship.
- vi The Government will retain a residual discretion to pay benefit only in cases of extreme hardship caused by extraordinary circumstances unrelated to the strike.
- vii The "disregards" on strikers' income from income tax rebates and strike pay should be abolished, together with the "disregard" in respect of a strikers second job.
- viii We should draw to employers (and especially small employers) attention the scope that they have under existing legislation to refuse to pay PAYE rebates.

1. Duration of Strikes - 1976, 1977

<u>Period</u>	<u>Cumulative %</u>
Less than 1 day	18.4
" " 1 week	65.3
" " 2 weeks	83.3
" " 3 weeks	89.8
" " 4 weeks	93.3
" " 6 weeks	96.5
" " 10 weeks	99.0
More than 10 weeks	100.0

2. Supplementary Benefit Claims

	<u>% of all strikers</u>		
	<u>Eligible to Claim Benefit</u>	<u>Received Benefit</u>	<u>% of those eligible who received benefit</u>
1960-70	8.0	1.3	16
1970-74	32.0	8.0	25
1975-77	26.3	3.4	13

Source Management Information Sheet No 58
British Institute of Management Foundation

Definition of a Union-as in existing legislation

Definition of Union Member

(To be laid down in Regulations)

Criteria along the lines of:-

Anyone who has paid a subscription to a union in the last 3 months.

Anyone who has resigned within the last 2 months will still be deemed to be a member.

Qualification for No "Deeming" deduction

The Benefit Officer must be satisfied on the basis of his inquiries - to include a signed declaration by the claimant - that the claimant is not a union member as defined. The claimant should be warned that making a false statement with intent to obtain benefit is a criminal offence.

DISREGARDS ON INCOME FOR SUPPLEMENTARY BENEFIT

The basic disregards for strikers' incomes when their supplementary benefit entitlement is being calculated are:

- a. £4 a week of wife's earnings, plus
- b. £2 a week of the striker's own earnings if he has a separate part-time job while on strike, plus
- c. £4 a week of miscellaneous other income apart from child benefit, family income supplement and the main national insurance pensions and benefits.

This last/^{dis}regard is the one which covers items of income such as strike pay, income tax refund and a war disablement pension. All such items of income are aggregated and a single £4 disregard given. The disregard is not £8 if someone has for example both a tax refund and strike pay.

The difference in treatment for claimants who are not strikers is that income tax refunds are ignored in full. (Such claimants do not, of course, receive strike pay.)

Act references a. Supplementary Benefits Act 1976, Schedule 1, para 22(1)

b. ditto. The disregard is actually set at £4, but under their general discretionary powers the Supplementary Benefits Commission reduce it to £2: the disregard for the unemployed is £2 and it is thought wrong to give a striker more favourable treatment than the unemployed

c. Supplementary Benefits Act 1976, Schedule 1, para 23

PAYE REBATES AND STRIKERS

1. PAYE rebates are one of the major sources of income for strikers and might typically amount to £11 or £12 pw or more for higher paid workers. Rebates arise because workers pay tax weekly (or mothly) on the assumption that their pay will continue at approximately the same rate throughout the year. If a worker's income falls because, for example, he goes on strike, he will find that he has overpaid tax and so becomes entitled to a rebate. This entitlement to rebates applies to all taxpayers, including in particular single men, those without families and those with working wives who do not usually receive supplementary benefit. Rebates are almost always paid by the employer and strikers are allowed to cross picket lines and to go into factories to collect their rebates. Legally, it is open to an employer to refuse to pay refunds. Those who refuse are required to report the facts to the local tax office and, while the tax office is under a duty to pay rebates, there is no requirement to pay them promptly. It is therefore open to us to require employers not to pay tax rebates during strikes and to delay payment by tax offices, but to do this would require legislation.

2. Such a course would deprive strikers of an important source of income and, unlike action on supplementary benefit, would have an impact on single men etc who are not constrained from striking by family obligations. On the other hand, the deferral of tax rebates would lead to more call on supplementary benefits. We are, however, prevented from legislating, even if we wanted to, on rebates by the Prime Minister's categorical statement "I'm not going to pass legislation on tax rebates" ("Weekend World", 7 January 1979). It therefore seems that the only course open to us is to draw attention to employers' freedom to refuse to pay out tax rebates if they so wish.

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