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Prime Minister

With the agreement of the Law Officers I have decided not to appeal against the High Court ruling on the direction appointing the Commissioners for the Lambeth, Southwark and Lewisham Health Authority.

The Judge (though with the likelihood of an appeal in mind) expressed views which indicated his support "in the public interest" for keeping the Commissioners in office until the end of March. But his views do not have the force of law; they do not in themselves validate the decisions of the Commissioners in the six months since they were appointed; nor do they give the Commissioners the power to act until the end of March. Solicitors for the three London Borough Councils which challenged my direction have moreover indicated that, despite the views of the Judge, they intend action which would result in an immediate and disruptive removal of the Commissioners.

I must now seek:

- a. to ensure an orderly transfer of power from the Commissioners;
- b. to make it clear that the Authority must act responsibly within its cash limits.

These two aims are difficult but perhaps not impossible to reconcile.

The ideal would be for me to make a direction giving power to the Commissioners to wind up their affairs in an orderly way, and to hand over to the Authority on April 1st. The Law Officers have however advised that if this were to be challenged we could not be sure of success. I cannot risk failure.

The alternatives are therefore:

- a. to seek to reach agreement with the Authority that, to ensure an orderly handover, they would themselves accept (and would seek to persuade the three Councils to accept) a new direction giving the Commissioners power to act to the end of March. The Law Officers advise that provided the text of the direction were negotiated to the satisfaction of the Authorities there could then be no one who could successfully object to it. There is an outside chance that it would be accepted. But I am clear that I could not persuade them to accept it if I were proposing at the same time to direct the Authority to act responsibly.
- b. to accept the Authority back into office, eg. from next Monday, but with a very firm direction to live within cash limits and not without approval to re-instate any services discontinued by the Commissioners.

I believe the second alternative to be the better both politically and in relation to the rest of the NHS which will be watching carefully what I do. I believe that most responsible people whether in the NHS or among the public though regretting that I have come to grief on a matter of law, have all along supported the Government's firm handling of the rebellion.

I have also consulted the Law Officers on the matter of validating all the varied actions of the Commissioners which they have taken in good faith. We will need to look at the range of such actions, but my own view is that this position cannot be left unresolved, and on their advice I now seek agreement of colleagues to a Bill validating the past actions of the

the Commissioners. These cover inevitably so wide a range of activities that it seems to me to be essential, to avoid serious confusion, that such a Bill be enacted quickly. I am advised that it would probably not extend to more than two clauses, of which one would be formal.

Subject to the views of colleagues on the options I have outlined it would seem appropriate that I should announce my intentions in a further statement to the House tomorrow (Thursday). Such a statement would seem to be essential before Business Questions tomorrow if the Attorney General advises the introduction of the Bill next week.

I am copying this minute to members of the Cabinet, to the Attorney General and to Sir Robert Armstrong.

PJ

27 February 1980

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