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ATTORNEY GENERAL'S CHAMBERS

Communications on this subject should  
be addressed to

The Legal Secretary  
Attorney General's Chambers

LAW OFFICERS' DEPARTMENT

ROYAL COURTS OF JUSTICE

LONDON, W.C.2

10 December 1984

Dear Andrew,

INDEMNITY TO SEQUESTRATORS.

I enclose briefing on this matter. In the time available it has not been possible to clear it with Energy and the Treasury.

A copy has been sent to the Private Secretaries to all members of Cabinet, ~~and~~ to the Private Secretary to the Chief Secretary (Treasury) and to Gerald Hosker (Deputy Treasury Solicitor).

Yours sincerely,  
Stephen Hyett.

Andrew Turnbull Esq.  
# Prime Minister's Office  
10 Downing Street  
London SW1.

THE INDEMNITY BY THE ATTORNEY GENERAL TO THE  
SEQUESTRATORS OF THE NUM'S ASSETS

Possible Questions

1. What are the legal proceedings to which the indemnity relates?

They are proceedings to enable the assets of the NUM to be brought under the control of the sequestrators who were appointed by the High Court (Nicholls J.) on 26 October 1984 in the case of Taylor and Foulstone v. National Union of Mineworkers (Yorkshire Area) and the National Union of Mineworkers, following the non-payment of a fine imposed on the NUM for contempt of court. Messrs. Taylor and Foulstone are two working miners.

2. What does the indemnity cover?

The costs and expenses reasonably and properly incurred by the sequestrators as officers of the court in carrying out their duties to the court.

3. Why was the indemnity given?

In order that the sequestrators as officers of the court should not be prevented by lack of resources from carrying out the order of the court.

4. Why was the indemnity given by the Attorney General?

It is the proper concern of the Attorney General, as guardian of the public interest, that the law should be upheld and the orders of the court should not be successfully defied.

5. Why has the Government given an indemnity in this particular case, to which it is not a party, and not in others?

The sequestration was not ordered to enforce a judgment in favour of one of the parties to the action. It was ordered following the non-payment of a fine imposed for deliberate contempt of court by the NUM. The NUM not only

made it clear that it would not obey the order of the court, but it tried to defeat the court's order by transferring its assets abroad and keeping them abroad. It thereby increased the difficulty and cost of the sequestrators of fulfilling their obligation to the court. It is not in the public interest that the order of the court should be frustrated through lack of funds.

6. Has the Government paid out any money under the indemnity?

No.

7. Is not the effect of the sequestration to punish the members of the NUM, not its officials?

We are concerned only with the indemnity, not with the order appointing the sequestrators or with the fine imposed on the NUM for contempt of court. In any case, it is not for us to comment on an order of the court.

8. Under what legal power was it given?

Under the common law powers of the Crown. The Crown has the same freedom as any other individual to give an indemnity unless precluded by statute. Since the Crown is dependent upon Parliament to vote the necessary funds, it has been agreed between the Committee of Public Accounts and the Treasury that where a need to incur contingent commitments arises from a continuing policy requirement power should be conferred by statute. However, where the giving of an indemnity is a one-off exercise, as here, it is proper to rely on the Appropriation Act to provide the funds.

9. Why was the House only informed by means of a Supplementary Estimate?

There was adequate information supplied with the estimate.

10. Why was a minute about the continued liability not laid before the House?

The information supplied with the Supplementary Estimate provided all the relevant details.

11. Is the liability under the indemnity unlimited?

Yes. If the sequestrators are successful in taking early control of a significant amount of NUM funds, it is unlikely that the Crown will have to make any payments under the indemnity. If there is a delay before the sequestrators are successful, any payments by the Crown under the indemnity will be repayable by the sequestrators out of NUM funds subsequently recovered by them. //

12. How many firms of <sup>w</sup>layers are involved on behalf of the sequestrators?

Five. Apart from the sequestrators' London solicitors, firms are currently instructed by them in the Republic of Ireland, Luxembourg and Switzerland. There were also proceedings in the Isle of Man but these have recently been discontinued.

[Isle of Man]

The action has now been abandoned.

Estimate of the legal charges incurred - £3,000.

Republic of Ireland

Estimate of the costs so far £25,000.

Luxembourg

Estimate of the costs so far - £5,000.

Switzerland

Estimate of costs so far - £5,000

London

Clifford-Turner [costs so far estimated at £20,000]

13. What is the estimated amount of the sequestrators' costs to date which are covered by the indemnity?

About £30,000.

14. Can the sequestrators start new proceedings and be covered by the indemnity?

Only if they consult the Attorney General and he agrees that the indemnity will apply to the new proceedings.

15. What expenditure other than the sequestrators' costs and expenses are covered by the indemnity?

Any payment which may be due under a cross-undertaking as to damages which may have to be given in the Dublin proceedings.

16. Has the Government given indemnities to sequestrators before?

We know of no other case where either the Attorney General or the Lord Chancellor has given an indemnity, or any other Minister.

17. Does the indemnity cover the costs and expenses incurred by the receiver?

No.

#### The receiver

The receiver was appointed in a separate action, Clarke and others v Heathfield and others. In that action sixteen working miners sought the removal of the three existing trustees, Mr. Scargill, Mr. Mchahey and Mr. Heathfield, on the ground that they were not fit and proper persons to control the funds. Originally, Mervyn Davies J. appointed a Derbyshire solicitor, Mr. Brewer, as provisional receiver for one week, but on Friday December 7 he appointed Mr. Michael Arnold, the senior insolvency partner with the accountants Messrs. Arthur Yound McClelland Moores. The indemnity does not extend to the receiver.

#### Difference between receiver and sequestrators

The receiver has been appointed to take control of the union's funds in order to protect them from, for example, being depleted by further fines or being used for unlawful purposes since the strike was not called in accordance with the union's rules, expenditure on the strike may be expenditure for an unlawful purpose.

The sequestrators were appointed following the failure of the NUM to pay the fine imposed for contempt of court. Whereas the purpose of the appointment of a receiver is to protect the union's funds, the purpose of sequestration is to force the NUM to purge its contempt.

## INDEMNITY TO THE SEQUESTRATORS OF THE NUM'S ASSETS

On the 13th November the Attorney General, on behalf of HMG, orally gave the sequestrators of the NUM's assets an indemnity to cover the costs and expenses reasonably and properly incurred by them in carrying out their duties in pursuance of their appointment by the Court.

### Appointment of sequestrators

2. The sequestrators were appointed by Nicholls J. on the 26th October 1984 in the case of Taylor and Foulstone v. National Union of Mineworkers (Yorkshire Area) and the National Union of Mineworkers following the non-payment of a fine imposed on the union for contempt of court. The action had been brought by two working miners in the Yorkshire Area and Nicholls J. had, on 28th September, made an order restraining the NUM from, among other matters, urging members to strike by describing the strike as official. Knowing of the order the National Executive Committee of the NUM issued a statement on 1st October reaffirming that the strike was official.

3. On 10th October Nicholls J. fined the NUM £200,000 for contempt of court and ordered that if the fine was not paid within 14 days he would consider ordering the sequestration of the NUM's assets. In fining the NUM Nicholls J. took into account six factors -

(1) the claim in the action was founded on the NUM's own rules and constitution. The relevant principles of law were the ordinary, well-established principles of the law of contract:

(2) the acts comprising the contempt were also breaches of orders made by three other judges from 25th May onwards, relating to the Nottinghamshire, North Wales, North Western and Midlands Areas:

(3) if the NUM considered that any of the orders had been wrongly made it had the right of appeal to the Court of Appeal:

(4) the NUM had in July 1984 knowingly breached an order by Vice-Chancellor Megarry regarding a resolution introducing a new disciplinary rule:

(5) there was deliberate refusal to comply with the express terms of an order:

(6) the wilful disobedience had been committed with maximum publicity by a large and powerful body, bent on showing that it was untouchable.

4. Mr. Scargill was also fined £1,000 for contempt of court, but his fine was paid. The union did not pay its fine and on 26th October Nicholls J. ordered the appointment of four sequestrators, Brian Larkins, Peter Padmore, Peter Barrows and Edward Holtall, Partners in Price, Waterhouse.

#### CIRCUMSTANCES LEADING TO THE GIVING OF THE INDEMNITY

5. By 12 November only about £8,500 of the NUM's assets had been seized by the sequestrators. The sequestrators had, however, discovered that the vast majority of the NUM's funds had been transferred to the Isle of Man and from there to Luxembourg and Switzerland (via the United States) and to the Republic of Ireland. The funds coming to the NUM and liable to seizure in the UK amounted only to a trickle. The costs that had been incurred already and which would be incurred in obtaining the assets in the Republic of Ireland, Luxembourg and Switzerland would be well in excess of the assets likely to be seized in the U.K. If they <sup>we</sup> are not given an indemnity against those costs the sequestrators were thought to be unlikely to persist with the proceedings and, if they did not do so, <sup>the</sup> ~~a~~ sequestration would be frustrated.

6. In addition, the High Court in Dublin had granted a temporary injunction until the main action between the sequestrators and the NUM was heard. The Dublin High Court had required the sequestrators to give a bond to cover any damages that might be awarded should judgement be given against the sequestrators at the hearing. In the absence of an acceptable bond, the sequestrators would have had to give an undertaking to pay the damages themselves. A bond was in fact obtained but not until after the Attorney General had given the indemnity.

7. In these circumstances the Attorney General was authorised to give the indemnity.

#### WHAT HAPPENS GENERALLY IN SEQUESTRATIONS

8. The usual arrangements for the payment of sequestrators is that they are paid out of the assets seized. Thus, before



sequestrators are appointed the court needs to be satisfied that the person or body whose assets are being sequestrated is solvent. If it transpires that the assets are likely to be less than the costs of the sequestration, the sequestrators ask to be discharged by the court.

9. The Government has not given an indemnity to sequestrators before. So far as we have been able to discover, the Government has never received a request for one. It seems that such a planned strategy to transfer assets out of the reach of the court is rare.

10. Sequestration is a method of enforcing judgements or orders of the court by proceeding against the property of a person in contempt of court. It can be issued by the court only where the person against whom it is issued is in contempt by disobedience to an order of the court.

11. In this case the writ of sequestration was in the usual form and ordered the sequestrators to take possession of all the assets of the NUM and to keep the same until the NUM paid the fine of £200,000 and cleared its contempt.

12. Sequestrators are required to take possession of the assets and to hold them until the contempt is cleared. They must apply to the court for any orders necessary to complete their seizure of the property and for orders of management. They have no power to sell the property seized without an order of the court.

#### THE RECEIVER

13. The receiver was appointed in a separate action, Clarke and Others v. Heathfield and Others. In that action sixteen working miners sought the removal of the three existing trustees, Mr. Scargill, Mr. McGahey and

Mr. Heathfield, on the ground that they were not fit and proper persons to control the funds. Originally, Mervyn Davies J. appointed a Derbyshire solicitor, Mr. Brewer, as provisional receiver for one week but on Friday December 7th he appointed Mr. Michael Arnold, the senior insolvency partner with the accountants, Messrs. Arthur Young McClelland Moores. The indemnity does not extend to the receiver.

#### DIFFERENCE BETWEEN RECEIVER AND SEQUESTRATORS

14. The receiver has been appointed to take control of the various funds in order to protect them from, for example, being depleted by further fines or being used for unlawful purposes. Since the strike was not called in accordance with the union's rules, expenditure on the strike may be expenditure for an unlawful purpose.

15. The sequestrators were appointed following the failure of the NUM to pay the fine imposed for contempt of court. Whereas the purpose of the appointment of a receiver is to protect the union's funds the purpose of sequestration is to force the NUM to purge its contempt.

16. The receiver is under a duty to obtain possession of the assets of the NUM. He will be subject to the order of sequestration and, unless otherwise ordered by the court, obliged to transfer the assets that come into his possession to the sequestrators.

#### LINE TO TAKE

The indemnity was given to the sequestrators because there was a real risk that the sequestration would be frustrated through lack of funds. It was ordered following the non-payment of a fine imposed for deliberate contempt of court

by the NUM. The NUM not only made it clear that it would not obey the order of the court, but it tried to defeat the court's order by transferring its assets abroad and keeping them abroad. It thereby increased the difficulty and cost to the sequestrators of fulfilling their obligation to the court. It is not in the public interest that the order of the court should be frustrated through lack of funds.

INDEMNITY GIVEN TO SEQUESTRATORS OF NUM FUNDS

STATEMENT BY THE ATTORNEY-GENERAL

With the leave of the House, I wish to make a statement concerning the indemnity which I gave, on behalf of the Government, to the sequestrators of the assets of the National Union of Mineworkers.

As the House will know, on 28 September of this year, Mr. Justice Nicholls gave judgment on an application which had been made ~~by the plaintiffs~~ in an action brought by two working miners, Mr. Taylor and Mr. Foulstone, against the National Union of Mineworkers. In his judgment, Mr. Justice Nicholls restrained the NUM from, among other things, describing the strike in the Yorkshire area as official since it had not been called in accordance with the rules of the union. Despite that order, and in full knowledge of it, the National Executive Committee of the NUM and its senior officials made statements which affirmed the strike as official. This was a deliberate contempt of court by the union and on 10 October Mr. Justice Nicholls fined the union £200,000 and ordered the fine to be paid within 14 days. He made it clear, that, if it were not paid, the union risked having its assets sequestrated. In imposing the fine, the Judge said (and I quote):

"A great and powerful trade union, with a large membership affected by the court orders in question, has decided to regard itself as above the law, and to make this plain repeatedly, emphatically and publicly on a nationwide basis."

The fine was not paid within the 14 days and Mr. Justice Nicholls therefore appointed sequestrators, as he had warned the union to expect, on 26 October.

The sequestrators accordingly set about taking possession of the assets of the union. However, by about 11 November, they had been able to seize assets only to the value of some £8,500. The vast majority of the remaining assets of the union - amounting to many millions of pounds - had apparently been transferred by the union to banks in various countries abroad in a deliberate attempt to put them out of the reach of the court. The sequestrators, as was their duty, took steps <sup>in</sup> the countries in question to obtain possession of the funds which had thus been spirited away and in particular instituted proceedings in the High Court in Dublin where they had traced a substantial deposit of the funds. For the purposes of these proceedings it seemed likely that the sequestrators might be required to incur considerable financial liability themselves, including having to give a financial undertaking to the court. In those circumstances, I understand that they enquired from the High Court in this country whether this potential liability could be covered by funds at the disposal of the court and were told that there were no funds available to the court for that purpose. There was no communication at any time between Mr. Justice Nicholls and my Department.

When I learned of this situation, it seemed to me to be quite contrary to the public interest to allow the risk of the sequestration being frustrated in this way to continue. On the one hand, it was not right to expect the sequestrators to incur this increasing substantial financial liability themselves even if, at the end of the day, they could look to reimbursement out of the union's funds. On the other hand, it was totally unacceptable that the order of the court, made following the

non-payment of a fine imposed for deliberate contempt of court, should be defeated by the union's tactics of transferring its assets abroad and keeping them abroad. I therefore sought and obtained authority to give the sequestrators on behalf of the Government, an undertaking to indemnify them against the costs and expenses which were reasonably and properly incurred by them in carrying out their duties in pursuance of their appointment by the court. In the knowledge that that undertaking is available, they are now pursuing actions in various jurisdictions abroad to recover the assets which were surreptitiously removed from this country. The contempt of court committed by the NUM will therefore be punished and the law will be properly upheld.