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Foreign and Commonwealth Office

London SW1A 2AH

24 January 1985

*MS*

1) ~~FEED~~  
2) Prime Minister  
CDP  
25/1

Dear Charles,

Sequestrators' Action

Henry Steel wrote on 23 January about developments concerning the receivership and sequestration of the NUM's funds, and in particular proceedings in Luxembourg.

We instructed our Embassy in Luxembourg this morning to make urgent representations to the Luxembourg Government against their interference and to press in the strongest terms for it to be withdrawn, so that the arrangement freely negotiated between the Receiver and Novis could go ahead unimpeded (FCO telegram No 4 to Luxembourg). In reply to these representations, the Secretary-General of the Luxembourg Foreign Minister said that he knew nothing about any such Luxembourg action, which he found puzzling, but could say categorically that it was technically impossible to withdraw Novis's banking licence, as we had suggested had been threatened by the Luxembourg Foreign Ministry. The Secretary-General said he would take urgent action with his Foreign Minister when he returned later in the day, and would let us know the true state of affairs as soon as possible.

The Head of our Western European Department reinforced our points with the Luxembourg Ambassador today, stressing the political significance of the matter for the UK. M. Hastert subsequently telephoned to say in strict confidence that he had conveyed our concerns to his Prime Minister, M. Santer, by telephone.

I will write again when we have a considered reaction from the Luxembourg Government. We will keep up the pressure.

I am copying this to Henry Steel in the Law Officers Department.

*Yours ever,*

*Len Appleyard*

( L V Appleyard )  
Private Secretary

C D Powell Esq  
10 Downing Street

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10 DOWNING STREET

*From the Private Secretary*

23 January 1985

NUM: SEQUESTRATORS' ACTIONS

The Prime Minister has seen Henry Steel's letter to you of 23 January. She agrees strongly that our Ambassador in Luxembourg should make strenuous representations to the appropriate part of the Luxembourg Government.

I am copying this letter to Henry Steel (Law Officers Department) and Michael Reidy (Department of Energy).

ANDREW TURNBULL

L.V. Appleyard, Esq.,  
Foreign and Commonwealth Office.

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*PERB*



H. STEEL, CMG OBE  
LEGAL SECRETARY

Prime Minister  
The FCO will  
proceed as at X /, provided  
that you are content.

LAW OFFICERS' DEPARTMENT  
ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

23 January 1985

Agree?

*PERB*

*Yes*

L. V. Appleyard, Esq.,  
Private Secretary to the Secretary  
of State for Foreign and Commonwealth Affairs,  
Foreign and Commonwealth Office,  
Downing Street,  
LONDON, SW1.

*Dear Gen,*

NUM: SEQUESTRATORS' ACTIONS

/ I enclose a copy of a note prepared by Gerald Hosker, the Deputy Treasury Solicitor, on developments concerning the receivership and sequestration of the NUM's funds. What I say below will explain why I am copying it to you. If there is anything in it on which you need explanation, please let me know.

You will see what the note says about the proceedings in Luxembourg. The Attorney General would be grateful if urgent consideration were given to instructing our Ambassador there to make strenuous representations to the appropriate Ministry that the Luxembourg Government should countermand their interference in this matter and that the transfer to the receiver of the NUM funds held by Novis Finance should be allowed to proceed unhindered.

So far as the proceedings in Ireland are concerned, the Attorney General thinks that it would be unwise of him to interfere with the sequestrators' judgment, based on the

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H. STEEL, CMG OBE  
LEGAL SECRETARY

LAW OFFICERS' DEPARTMENT  
ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

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advice of their own legal advisers, as to whether to  
discontinue. The matter will therefore presumably take  
the course described in the note.

I am copying this letter to Robin Butler at Number 10.

*Yours ever,  
H. Steel*

H. STEEL

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84/289/Pt XII/GAH

NUM: SEQUESTRATORS' ACTIONS

I received a telephone call from George Staple of Messrs Clifford-Turner who said that there had been developments of a sensitive nature of which I would, no doubt, wish to be aware. I accordingly called upon him at his office this morning and he outlined what had happened.

2. The situation is as follows:-

(1) Luxembourg

(a) The receiver of the NUM had arranged for the transfer to him of the NUM funds held by Novis Finance in Luxembourg. The deal would have been completed in Brussels with the money in fact remaining in Luxembourg to support an indemnity given by the receiver to Novis in respect of any claims against or proceedings which might be brought as a result of Novis agreeing to the transfer.

(b) The Ministry of Foreign Affairs in Luxemburg heard about the proposed deal with the receiver and notified Novis that it could not countenance any transfer of funds in Luxemburg for the benefit of the Receiver. If Novis proceeded regardless of the Ministry's views, its banking licence would be withdrawn.

(c) No legal proceedings have been brought by the receiver in Luxemburg: he thought he had achieved his objective by means of the commercial deal which he had negotiated with Novis. The deal had been approved by Mr. Justice Mervyn Davies and Mr. Justice Nicholls.

(d) The NUM are free to withdraw their funds from Novis. However, the sequestrators have taken proceedings in Luxemburg to sequester the NUM funds but these proceedings have been in abeyance while the receiver discussed the terms of the transfer of the assets to him by Novis. The sequestrators' proceedings would have been discontinued if the receiver had been successful in obtaining the money.



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2.

(e) Other relevant points:

(i) A partner in Arthur Young & Co is the Receiver. Another partner in the same firm, but in the Luxemburg office, is influential in the legislature there but it is not known whether he is talking to the Ministry of Foreign Affairs about <sup>their</sup> intervention.

(ii) Messrs Lovell White & King are the solicitors who act for the Receiver.

(2) Ireland

(a) The trial of the action in Dublin has been fixed for the 31st January and 1st February next.

(b) The action was started by the sequestrators but the Receiver applied successfully to be joined as a party in November. There are now five plaintiffs, namely the four sequestrators and the Receiver. The defendants are the National Union of Mineworkers and the Bank of Ireland (Finance) Limited.

(c) The defence alleges that the sequestration order is penal and therefore ought not to be enforced by the Irish courts. It is also alleged that the Receiver's claim should also be rejected as he is an emanation of the sequestrators.

(d) Messrs Clifford-Turner believe that the sequestrators' claim will fail but the Receiver's claim should not because he was appointed in separate proceedings in the United Kingdom. He is independent of the sequestrators and is manifestly not seeking to enforce a penal order.

(e) Recently the NUM sought to obtain the release of money from the Bank of Ireland (Finance) Limited in order to pay for the defence of the proceedings. They furnished an affidavit in support of their application and this indicates part of the basis of their defence, namely:

(i) The Attorney-General said in the House of Commons that the sequestration order was a penal order and

(ii) The involvement of the United Kingdom Government in the process

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of the court is evidenced by the indemnity given to the sequestrators.

(f) In the proceedings, the contacts between the sequestrators, the Attorney General and officials of HMG are very likely to be probed in cross-examination. Messrs Clifford-Turner think that it would be wise to avoid evidence being given on the subject, particularly as they have advised that the sequestrators will lose their claim any way.

(g) Messrs Clifford-Turner suggest that a tactical withdrawal should be made. If an application is made to the Irish Judge it will be for leave to discontinue. It would probably be granted on terms that:

(i) The sequestrators pay the costs of the NUM in the proceedings up to the discontinuance.

(ii) There should be an assessment of damages.

(h) The Receiver should win in respect of his action, according to Messrs Clifford-Turner. In the meanwhile however the interlocutory relief in favour of the sequestrators would fall if they withdraw. Therefore, there is no legal restriction on the Bank of Ireland (Finance) <sup>acting on</sup> ~~instructions~~ <sup>interests</sup> from the NUM in respect of the funds in the hands of B of I (F).

(i) Although in respect of the claim for damages, the NUM will probably allege that they could have invested the money in a particular way and were thus deprived of a considerable benefit, the sequestrators can show that they offered in writing to co-operate with the NUM in their investment of the funds while the interim order (as interlocutory relief) was in force.

(j) The Receiver's claim does not seek the same interlocutory relief but he might ask B of I (F) to undertake not to transfer the funds pending the hearing of the court action. The Receiver is entitled to do this as he has been appointed by the High Court in London to act for the NUM and therefore he, under English law, is the owner of the funds which are at present in Dublin.

(k) If the Bank were to pay out to the NUM on the instructions of the Union's officials, the Bank would face the prospect of an action for damages

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in England. The Receiver could ~~order~~<sup>sue</sup> them here as they have an address for service in the UK.

(3) George Staple of Clifford-Turner is seeing Mr Justice Nicholls this afternoon and he may agree that a tactical withdrawal from the Dublin proceedings is appropriate. If the consequence is an order for damages against the sequestrators, the Judge may grant an indemnity out of sequestered funds. At the moment, the sequestrators have no spare money.

(4) (a) George Staple is to discuss with the Irish solicitors acting for the sequestrators what are the appropriate tactics to adopt in the proceedings. A meeting had been scheduled in Dublin tomorrow.

(b) If there is to be a withdrawal from the proceedings, two days prior notice has to be given. In order for there to be two free days before the trial starts next week, the notice would have to be served on the NUM lawyers on Wednesday afternoon or Thursday morning at the latest.

(c) The application for withdrawal would be heard in open court on Monday or Tuesday of next week.

(d) Mr Staple will be at the offices of Messrs McCann Fitzgerald Sutton & Dudley in Dublin on Wednesday morning. The partner there dealing with the matter is Mr David Clarke (0001765881).

G.A.H.

G A Hosker

22.1.1985

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