

muford 7/10

PRIME MINISTER

EDUCATION DEFAULT IN LIVERPOOL

1. The holder of my office has a power (not a duty) to direct a local education authority to take steps to remedy a default (Section 99 of the 1944 Education Act) or not to proceed with a proposal to default (Section 68); the power is ultimately enforceable by mandamus. I am being asked to use the section 68 power following the issue by the Liverpool Council of notices to all staff at the schools and colleges it maintains, making them "redundant" on 31 December but offering to reinstate them not later than 1 April 1986, on the grounds that the Council cannot afford to pay them for the remainder of the financial year. Prima facie the Council are proposing to default, as respects the spring term 1986, on their duty to secure the provision of schools and colleges.

2. Although I have been asked by a number of teacher unions to intervene, I do not propose to use the section 68 power, or to act as if I might, at least until the outcome of the judicial review, likely to take place soon after 13 October, of the legality of the notices, which the National Union of Teachers (NUT) has secured. But in order to ensure that I cannot be faulted in the exercise of my legal responsibilities, I propose to write to the Council* to ask whether they intend to fulfil their duties under the Education Acts. This standard procedure does not imply default action on my part, and in nearly all cases does not lead to such action. I propose to justify my position on the grounds that I have by law to satisfy myself that the Council really mean to default on their statutory duties, and that in any case the proposed closure of schools and colleges is not imminent, and there will soon be an authoritative court ruling on its legality. I will be criticised for not discharging my moral duty to the children and students in question. But a direction may be hard to enforce, and its outcome is sufficiently uncertain to make it wise not to give it until the advantages outweigh the disadvantages.

*A copy of the draft letter is attached

3. I also propose to refuse the request I have received from the NUT, and from the Professional Association of Teachers (PAT) who also intend to obtain a judicial review, to join in the review proceedings, on the grounds that the Court is well able without my help to decide the question at issue viz whether the notices are illegal and invalid in education law.

4. After the judicial review, it is possible that circumstances will arise which may make it difficult to refuse to use my default powers, or indeed advantageous to use them. I might wish to propose to my colleagues that, with the help of the Court, I should seek to oblige the Council to take those necessary financial measures which we have all along said they should take in order to discharge their education duties, and be seen to do so. My only power to act is through the default procedure - and if necessary through application to the courts for enforcement. I have no power to take over the education service in Liverpool, or to channel extra money to it.

5. But for the present I seek my colleagues' agreement to the minimalist stance set out in paragraphs 2 and 3 above.

6. I am sending copies of this minute to the other members of MISC 109 and to Sir Robert Armstrong. My letter to the Council ought if at all possible to issue on 8 October because of the impending judicial review. If you or colleagues have comments, therefore, I need to receive them by midday tomorrow.

KJ

KJ

7 October 1985