

CONFIDENTIAL

PRIME MINISTER

LIVERPOOL

Prime Minister

Mr Baker is content with this. Agree that Sir K Joseph may write in the circumstances he describes, but that you would also wish to be consulted on the timing?

Yes no JHS 15/11

1. In my minute of 7 October I warned my colleagues that events in Liverpool might make it inevitable, and possibly advantageous, that I should seek to exercise my default powers in relation to Liverpool's duty to provide education services. Hitherto, at the urging of the Environment Secretary, I have not even asked the Council for an explanation of their actions and intentions in relation to their various alleged failures to discharge their duties under the Education Acts.
2. Although the situation in Liverpool remains fluid, it is now likely that, within a few weeks, a substantial number of Liverpool's schools and colleges may be closed for an indefinite period because for financial reasons the Council are not supplying them with fuel. If that happens, I shall come under great pressure to use my default powers. Given my statutory responsibilities, if I fail to take any action vis-a-vis the Council, a teacher union or others are likely to succeed in forcing me to act via a judicial review.
3. If the occasion arises, I therefore propose, subject to consultation with the Environment Secretary on its timing, to write to the Council (through my Department) on the lines of the attached draft. To issue such a letter would protect my statutory position. It would not oblige me to go to the length of issuing a direction to the Council to remedy default, since even if, in the light of their response, I am satisfied that default is occurring, I am not by law obliged to direct them to remedy the default, if I judge this not to be expedient. I have no intention of issuing a direction in respect of default in keeping schools open for the required 190 days during the 1985 school year, should such a default, if established, not at that stage be open to remedy.

CONFIDENTIAL

CONFIDENTIAL

4. But once I have written as proposed, I shall be obliged also to consider in due course whether to issue a direction in respect of the 1986 school year, and, if it were not complied with to seek to enforce it by mandamus. My decisions would have to be governed by the circumstances as they develop, and their timing would be to some extent within my discretion. If I did, with the agreement of colleagues, come to issue a direction in the New Year, its effect would be to oblige the Council to put its financial house in order to the extent necessary to discharge its duties under the Education Acts.

5. Any action on these lines is likely to relate mainly to schools, since much of Liverpool's further education provision, including the polytechnic, is technically ultra vires.

6. I seek my colleagues agreement to my writing to the Council on the lines of the attached draft, as soon as I judge this necessary to protect my statutory position, but subject to consultation with the Environment Secretary as to the timing of the letter.

and the Prime Minister, I suggest.

7. I am copying this minute to the other members of MISC 109, the Employment Secretary and Sir Robert Armstrong.

KJ

KJ
Department of Education
and Science
6 November 1985

CONFIDENTIAL

C O N F I D E N T I A L

DRAFT LETTER TO THE CHIEF EDUCATION OFFICER, LIVERPOOL CITY COUNCIL

I am directed by the Secretary of State to write to the Authority to express his concern about the curtailment of the education services for which the authority is responsible.

It is the Secretary of State's understanding that a number of educational establishments are closed for want of essential supplies. Having regard to the Authority's duty under Section 8 of the Education Act 1944 to secure provision for full-time education for pupils up to age 19, and the provisions of Sections 12 and 16 of the Education Act 1980, I am to ask the Authority what steps it is taking to comply with these duties.

Having regard to the requirements of Regulation 10 of the Education (Schools and Further Education) Regulations 1981, I am also to ask how the Authority proposes to comply with those Regulations as respects both the year ending 31 December 1985 and the year beginning 1 January 1986.

I am to ask for a substantive response to this letter no later [7 calendar days after the issue of the letter].

