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The Rt Hon Norman Fowler MP  
 Secretary of State for  
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One Minute<sup>-2</sup>

to note

NW

23.5. 23 May 1986

Dr. A.,

David Young has asked me to reply to your letter of 18 May in which you sought agreement to the action you propose to take over picketing at Huyton local office (LO).

Your letter describes a series of actions following upon the transfer of the cleaning contract which are unlawful in a number of respects. There is clearly a problem of public order and criminal offences have almost certainly been committed, but I am not primarily concerned with this aspect. I have addressed myself to two questions: on what legal grounds might you proceed against those involved in the action? on wider political grounds, should the Government become involved in legal action on this matter?

The circumstances are unusual: the action is aimed at the cleaning contract between the LO and the new contractor; those involved are employees (or ex-employees) of neither party; it is not clear that either the cleaning contract or any employment contracts are being breached or interfered with. So far as the LO is concerned, therefore, the main problem is the pressure on its staff and some disruption of its services. The activities of the pickets appear to amount to a nuisance which the courts would restrain on the basis that it fell outside the protection afforded by s.15 of the Trade Union and Labour Relations Act 1974 (as amended by s.16(i) of the Employment Act 1980); an injunction, however, would not necessarily prohibit all picketing but would probably only restrain mass or intimidatory picketing. In addition, if LO staff do not come into work because of the pickets' actions - or if there is a real risk that this may happen - the pickets would have no immunity against an action for inducing breaches of contract. Finally, there might be a further cause of

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action - for which there would be no immunity - if the picketing interfered with the performance of the cleaning contract. It is open to doubt, however, whether a court would consider that interference with a cleaning contract was sufficiently serious to warrant the granting of an interlocutory injunction at the request of the DHSS.

If you intend to proceed primarily on the ground of nuisance evidence will be required as to the behaviour of the pickets and the effects of their behaviour on staff and others coming to the LO. It would strengthen the case, also, if you could show that the dismissed cleaners had formerly worked for part of their working hours elsewhere than at the LO, since they could not then be considered to be picketing "their place of work". Finally, you would wish, I imagine, to proceed against the TGWU rather than against individuals, and in that case it would be necessary to obtain as much information as possible about the union's role in the organisation of the picketing.

I turn now to the wider considerations. Other parties to this dispute have a more direct interest and might have more secure grounds of action. As a Government we have made it a policy not to intervene in others' disputes but to leave them to judge when and to what extent they wished to avail themselves of the protections enacted in our legislation. However this case is rather different. A Government office is affected, and the public will consider that we are involved. In consequence the public may judge our legislation, and our attitude to it, by the extent to which we are prepared to invoke its provisions. Moreover, if Donway really does risk destruction because it cannot afford to seek the law's protection it would be difficult to justify any refusal to play our part in restraining the union's campaign.

For these reasons I do not in principle oppose the approach which you have outlined. Before embarking on the road to legal action, however, I would urge that we examine carefully the further choices with which it may present us. In particular, we need to accept that it may be necessary to pursue contempt proceedings against the TGWU. We should also consider the messy situation which might arise if the TGWU obeyed an injunction to call off the action but local militants sought to keep it going. It would be possible in those circumstances to initiate fresh proceedings against individuals, but there can be no certainty that they would be effective.



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Since receiving your letter I have been informed that Donway has approached ACAS, and that the possibility of a negotiated settlement is being explored. If this could be achieved without sacrificing essential principles it would be clearly preferable to action through the courts, and I would strongly urge that we make no legal move while any talks with ACAS are in progress. I see no objection, however, to preparing to make a swift application to the courts if the talks should fail.

In the light of this morning's discussion at Cabinet I am copying this letter to the Prime Minister and to Patrick Mayhew.

KENNETH CLARKE

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