

cc of

PRIME MINISTER

MIDDAY SUPERVISION

(Poss meeting
Fri 25 or Mon 28)Await
OK comments
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I announced in Blackpool that the Government would be ready to make available additional resources (within the £1250 million envelope) for midday supervision of schools on condition that the money would in all circumstances be used for and achieve its intended purpose. That purpose is to deprive the unions of this cost-free disruptive weapon which bears directly on parents and to put the LEAs in a position to secure adequate supervision during future pay campaigns. Since then, I have been exploring urgently how this might be done including, at your request, investigation of the possibility of a short Bill to give powers to make a specific grant.

2. The attached note has been prepared by my officials in consultation with the Treasury and the DOE. From this work and initial discussions which I have held with the local authority associations I draw the following conclusions:

- (i) A guarantee that new money would be used for our purposes could not be given if the resources were channelled through the normal block grant mechanism. That guarantee could only be achieved through specific grant.
- (ii) The local authority associations would be ready to play their part. They told me that the need to

make new arrangements to remove this weapon of disruption from the hands of the teacher unions was urgent.

Moreover, provided that they could be assured that the offer of new money was secure for 1986-87 many individual authorities would be likely to take steps to change the present arrangements before the start of the new financial year using their own resources. But they could not act without the certainty of new money.

- (iii) As my colleagues know, I have no specific grant powers directly to hand. Although Education Support Grant (ESG) is in principle available, we have already announced and invited bids from local authorities on a programme of activities involving new and committed expenditure in 1986-87 upto £40m within a maximum ceiling of £50m available under present legislation. We could not now undo that programme without severe political embarrassment and even then because more than £20m is committed expenditure from projects that have started this year, there would be insufficient headroom available. To secure the necessary headroom within ESG, a very short Bill would be needed to amend the 1984 Act by increasing the statutory ceiling to 1% of planned current expenditure on education (about £100m).

- (iv) To ensure that local authorities introduced new midday supervision arrangements from the start of

the new financial year (summer term 1986) this short Bill will have to be an addition to our existing programme. To incorporate the amendment into the already planned Education Bill would delay the process until the September term.

3. I see no insuperable difficulties about devising a robust specific grant which would ensure that additional money would only be paid out to those local authorities that developed effective arrangements in line with our objectives and only so long as those arrangements remained effective. In other words, no effective arrangements; no grant. It will be necessary to work out the detailed arrangements of such a scheme in consultation with the local authority associations, who have agreed to urgent discussions to that end. In order to make progress within the required timetable, I would welcome the agreement of colleagues in principle to the immediate introduction of a very short Bill to enable me to proceed by way of specific grant.

4. I am sending a copy of this minute to the Members of E(PSP), the Secretaries of State for Scotland, Wales and Northern Ireland and, in view of the implications for the legislative programme to the Lord President, the Leader of the House and the Chief Whip and to Sir Robert Armstrong.

KJ.

KJ

21 October 1985

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POSSIBLE SPECIFIC GRANT POWER FOR MIDDAY SUPERVISION OF SCHOOLS

INTRODUCTION

1 The Prime Minister has asked (Mr Norgrove's letter of 4 October) that urgent consideration be given to ways and means of resolving the issue of supervising school pupils at midday. The Prime Minister is particularly concerned that any payments made for midday supervision taken out of the £1,250 million envelope should be made in such a way that they would only be used for this purpose and asks that consideration be given to the possibility of a short Bill to give powers to make a specific grant, or alternative means if this option does not seem desirable or feasible.

BACKGROUND

2 This year, as last, the teachers' unions are pursuing their pay claim through a mixture of selective short-term strikes and a comprehensive and continuing refusal to undertake certain duties, which they deem 'voluntary' and hence susceptible to a 'withdrawal of goodwill'. The duty which causes most trouble is midday supervision. Nine out of ten teachers are now refusing to supervise and very few schools are unaffected by the consequent disruption. This is one of the unions' most disruptive and effective weapons which bears directly on parents and heads and through them on MPs and the Government. It is a weapon which is virtually cost free to teachers.

3 Very few of the teachers' duties are expressly stated in contractual terms or are covered by national agreements. There is a 1968 national agreement on the school meals service which concedes that activities which take place between the schools' morning and afternoon sessions are voluntary. Legal advice to the local authorities is that this concession (coupled with the way in which custom and practice have developed) make it unlikely that they would succeed in any test case to establish that supervising pupils at midday is an implied term of their teachers' contracts of employment. It was in acknowledgement of this that the Secretary of State accepted in May this year that midday supervision should be excluded from the range of teachers' duties. In recent years teacher supervision levels have fallen, with more and more authorities looking to separately employed supervisory assistants. Last year there were some 90,000 assistants with an aggregate wage bill of about £60 million. The Associations circularised employers in August about separate contracts for teachers and others undertaking midday supervision: the response was generally welcoming. The chance of a return to previous levels of teacher supervision after this year's disruption seem slight. One way or another, authorities are probably going to have to pay for more supervision than previously.

4 The objective therefore is to deprive the unions of this cost-free disruptive weapon and to place employers in a position to sustain supervision during future pay campaigns by the unions. It is proposed to do this by:

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- i having employers explicitly exclude the midday supervision of pupils from the contracts of employment of all their teachers other than heads and deputies: this exclusion would not apply to the normal dismissal of classes after the morning session, assembly for the afternoon session or to the supervision of clubs, societies, games, orchestra etc if those are arranged during the midday break.
- ii providing local authorities with additional resources to allow them to enter into separate contracts with volunteers - be they teachers or others - to supervise pupils during midday.
- iii ensuring that those resources will be used as payment for such contracts.
- iv ensuring that those contracts are in such a form that refusal to supervise will amount to a clear breach of contract such that the employee will not be paid;
- v arranging for employers to employ whomsoever they wish as midday supervisors so that they have the opportunity to recruit others in the event of serving supervisors deciding to withdraw their services.

free 5 There is no way of producing a cast-iron guarantee of disruption-~~free~~ midday supervision. There have already been reports, subsequently contradicted, that the NUT would be supported by public sector manual unions, such as NUPE, in their efforts to thwart new midday arrangements. This seems improbable as such action would run directly counter to their own members' interests. In any event, the proposals in this paper would mean that a refusal to supervise would result in immediate financial penalty for the employee concerned and local authorities would be given a new capability to keep schools supervised in the event of disputes with their teachers.

NUT
unknown

POSSIBLE MECHANISMS

6 The Secretary of State has indicated the Government's willingness to provide extra money for local education authorities to enable them to introduce new arrangements for midday supervision on condition that the money would in all circumstances be used for and achieve the intended purposes. There are in principle two ways in which money might be channelled to LEAs:

- a through the block grant element of RSG; or
- b as suggested by the Prime Minister, through a specific grant - this could be done either through a wholly new grant, or through amendment to the Secretary of State's existing powers under the Education (Grants and Awards) Act 1984.

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7 Payment through the block grant is technically possible as early as 1985-86, as well as 1986-87. However for 1985-86 it would require a supplementary RSG Report, and while the issue of the basis of expenditure guidance and abatement is before the House of Lords there remain doubts as to when such a Report could be made. For 1986-87 it would be possible to include additional provision in the RSG Settlement due to be announced in December, although this would require a firm decision by the end of October. The mechanism would be an increase in the total of relevant expenditure, in education GREs, and in Aggregate Exchequer Grant; this would produce an increase in block grant for education authorities (except for those out of grant). But this route does not provide the means of making the payment of extra grant conditional on LEAs introducing new arrangements which would meet the objectives described in paragraph 4. The Department could issue a Circular inviting authorities to draw up suitable schemes but would have no sanctions to apply if they failed to respond. The Government could therefore not be confident that the extra block grant would produce the desired result rapidly, if at all. Moreover the extra expenditure could leak away into higher teachers pay, without any change in existing arrangements for midday supervision.

8 Payment through a new specific grant would allow money to be made available conditionally. A wholly new specific grant could be introduced, but this appears unnecessary since the Secretary of State already has power, under the Education (Grants and Awards) Act 1984, to pay Education Support Grants (ESGs) to all local education authorities in respect of approved expenditure "for or in connection with educational purposes where it appears to him that those authorities should be encouraged to incur such expenditure in the interests of Education in England and Wales". We are satisfied that this power could be used to pay grants for midday supervision. Although this raises no new principle amending legislation would be required since the 1984 Act specifies a ceiling on the amount of expenditure which may be supported in any financial year and there is insufficient headroom for next year. The sum which has been publicly quoted as available, within the total package of £1.25 billion offered by the Secretary of State, for the cost of bringing new supervision arrangements into effect is £40m a year (illustrative figures showing the build up of the £40m are at Annex A). The ESG ceiling is currently 0.5% of total planned local authority current expenditure on education, giving maximum expenditure which may be supported through ESGs of about £50m a year. From this we are already committed to supporting expenditure of £19m for the second year of projects approved in 1985-86; and the Secretary of State has announced that a further £21m worth of expenditure will be supported in 1986-87 in a number of priority areas, including the teaching of science and technology, meeting the needs of ethnic minorities, updating courses to meet the needs of industry, development of information technology, and action to combat the misuse of drugs. A new ESG for midday supervision could be accommodated within the existing ceiling only if the offer of support for all these activities with withdrawn and we would also need to look for reductions in committed expenditure.

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9 Legislation would therefore be required increasing the limit in section 2(1) of the 1984 Act to one per cent of total local authority expenditure on education. For reasons of timing this might best be done through the immediate introduction of a very short Bill, rather than as part of the Education Bill planned for next session (and not expected to receive the Royal Assent before July). It will be necessary to secure as much agreement as possible with the local authority Associations to the Government's objectives and to the basis for new arrangements. In the past, they have opposed new specific grants on principle but there is some evidence that they would be more ready to acquiesce in this proposal given the availability of new money.

10 It is for consideration whether this enabling legislation should be complemented by placing local education authorities under a new statutory duty to provide reasonable midday supervision of pupils between school sessions. It might be that such a duty would push local authorities into a more robust delivery of the service and a firmer enforcement of supervision contracts. But in the current dispute authorities have not succeeded in insisting upon the satisfactory performance of the express and implied terms of teachers' contracts of employment by reference to their fundamental statutory duty to provide sufficient and efficient education. It seems unlikely that they would be any more successful in respect of a less central duty. The prospect of advantage seems too remote to consider complicating the simple legislation proposed.

11 Once the principles of new arrangements are established we envisage that expenditure on midday supervision would be reabsorbed into block grant. Support through specific grant might be necessary for up to 5 years but could be reviewed earlier.

MANPOWER IMPLICATIONS

12 The annex attached provides an indication of the number of supervisors likely to be receiving payments. These supervisors would be in substitution for the teachers who have in previous years carried out these duties voluntarily in return for a free school meal. They would be additional to the supervisory assistants already employed to assist teachers in supervising school meals. (There might be some scope for reductions in the need for these assistants but events this year have shown that there is limited scope for substitution between assistants and supervisors wielding authority at least equal to that of a teacher). There will therefore be some manpower implications for local government. In some cases the additional "posts" would be filled by teachers already employed in the school; in others new part-time staff may be recruited. The full-time equivalent might be of the order of 4 to 5,000 nationally. Central Government manpower will not be affected.

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DETAILED ARRANGEMENTS

13 Detailed arrangements remain to be worked out and must to some extent depend on consultation with the local authorities. The steps which might be required to introduce a specific grant to support new arrangements of the kind set out in paragraph 4 are as follows:

- (a) legislation to amend the 1984 Act;
- (b) new Regulations (subject to Affirmative Resolution) to extend the scope of ESGs to midday supervision and to specify the rate of grant. We propose that this should be 70%, the rate applicable to other ESG activities;
- (c) an RSG Supplementary Report to increase relevant expenditure, AEG, and the total of specific grants. An early announcement would allow LEAs to budget for their share of the cost in 1986-87. Precept and rate limits for rate-capped authorities which are LEAs should also if possible take account of the extra commitment, which would require decisions on LEA allocations by the beginning of January 1986;
- (d) The national total of expenditure to be supported through specific grant would be apportioned between LEAs according to their school and pupil numbers. Each LEA would be given a maximum allocation of expenditure and invited to apply for grant on expenditure up to that maximum. To qualify for support LEAs would be required to state that the resources would be used for separate contracts as described in paragraph 4 which would ensure that there are arrangements for adequate supervision in all foreseeable circumstances;
- (e) LEAs which satisfied this condition would be given approval to incur expenditure, and to claim grant at the prescribed rate, up to the approved level. Virtually all this expenditure would be additional since few authorities have arrangements of this kind in place now and none are able to conform to the strict objectives which will be a condition of grant.

14 Some of these steps could run concurrently but, taking into account the need to devise robust arrangements which satisfy the Government's overall objectives, we see no prospect of introducing new arrangements in the 1985-86 financial year. In order to achieve a start at the beginning of the summer term 1986 the proposed legislation would need to have been given Royal Assent by early next year. That would not be possible if it were introduced as part of the Education Bill currently planned for next session.

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ANNEX A

ILLUSTRATIVE COSTING OF NEW SUPERVISION ARRANGEMENTS

It is assumed that:

- i head teachers and deputy head teachers would continue to have overall supervisory responsibility;
- ii the minimum additional staff necessary to implement the new arrangements would vary from one for small schools (including most primary schools) to 5 or more for the largest secondary schools;
- iii the cost to employers per supervisor per day would average £5 for 190 school days a year (although it is not envisaged that there would be national rates).

The approximate full year cost would be:

	£m
Small schools - average one additional supervisor per school 20,000 x 1 x 190 days x £5	19.0
Medium size schools - average 3 supervisors per school 4,000 x 3 x 190 x £5	11.4
Large schools - average 5 per school 2,500 x 5 x 190 x £5	<u>11.9</u>
TOTAL COST	42.3

Total additional supervisors (per day) 44,500

