



cc/ga
Prime Minister
Content, subject
to colleagues?

CONFIDENTIAL

DW
Yes not

PRIME MINISTER

THE ORGANISATION OF EDUCATION IN INNER LONDON

1. Our consultation paper on opting out of ILEA has produced a large response but, almost without exception, those commenting express complete opposition to our proposals. Paradoxically, there appears to be a greater readiness now than for many years to accept the once for all abolition of ILEA. It is not surprising that ILEA has again orchestrated a campaign in its own defence, although it is disappointing that the prospective opting out boroughs have done little to persuade their residents to write in support.

2. We must stand by our Manifesto commitment to allow opting out rather than to compel the break-up of the Authority. We could not now legislate for the abolition of the ILEA by 1990. In any case, it would be difficult to do so without carrying out a review of the Authority's performance under Section 22 of the Local Government Act 1985 - which we intend to repeal. ILEA have themselves requested that I carry out such a review; I have refused.

CHANGES AS A RESULT OF CONSULTATION

3. I therefore propose that we should make no modification to the main lines of our policy, including the broad arrangements for staff transfer, property transfer and finance. There are however some changes or additions which increase the likelihood that those boroughs wishing to opt out will be able to do so successfully to the tight timetable implied by the target date of April 1990. The main ones are discussed below; some smaller issues are collected in the Annex.

Timing

4. We are perhaps most vulnerable on amendments designed to slow down the timetable so that it becomes virtually impossible for boroughs to opt out by our target date of April 1990. We shall come under pressure to concede -

- (i) a requirement for some form of consultation with local people, and particularly parents, before a borough applies to opt out;
- (ii) more than the one month we have proposed for statutory objections to an application;

CONFIDENTIAL

- (iii) more than the three months we have envisaged for the accelerated hybridity procedure for the transfer Orders in the House of Lords.

If combined amendments along these lines were carried in the Lords it would be unlikely that the Orders would be approved until late autumn 1989, leaving at most five months before the transfer of education responsibilities. We simply could not guarantee in those circumstances that there would be an orderly transfer to the new LEAs.

5. I am very concerned about these potential timing difficulties. We need to take preventative action now and I have therefore concluded that -

- (i) we should advance the final date for applications from 28 February 1989 to 31 December 1988;
- (ii) we should be prepared to concede, during the passage of the Bill, an extension to two months of the period for statutory objections;
- (iii) we should introduce the Bill with provision for a two month accelerated hybridity procedure in the Lords, leaving room to concede later three months if necessary.

OTHER ITEMS

Role of the Education Assets Board

6. Following comments by the Chief Secretary, E(EP) asked me to consider the role of the EAB in the opting out process. I now propose the following arrangements in order to minimise the demands falling on the EAB - to the extent that there will be no need to increase my PES bid on this account- while providing access during the difficult period of transition to the advice of a body which we are specifically setting up to deal with similar matters arising from other aspects of our legislation.

7. The functions I have identified are -

- (i) a reserve role in ensuring that each transfer to a borough is effective from the transfer date. The opting out borough and ILEA would be required to appoint an arbitrator in cases of dispute, eg over user rights. If they could not reach agreement on a suitable person, the EAB would be empowered to appoint one, with costs to be met by the two parties. The Conservative boroughs have specifically requested some such provision for arbitration;
- (ii) a counter-obstruction role in relation to moveable assets. E(EP) asked me to consider measures in this area, and I have concluded that the following procedure, based on that adopted at the time of the abolition of the GLC, would be appropriate. The Department would invite the Audit Commission to impress on District Auditors the need for opting out boroughs to establish, well in advance of transfer date, inventories of

CONFIDENTIAL

the moveable property they would inherit. The EAB would have the power to arbitrate on whether there was good cause for any discrepancy between the inventory and the property actually inherited, and to advise me on whether to direct ILEA either to hand over specific items of property or to pay compensation to the borough;

- (iii) a requirement that the EAB should provide such advice as I may request. We cannot be sure of foreseeing all the complexities that may arise, and deliberately to cut ourselves off from this source of expert advice would be perverse.

Capital Receipts

8. E(EP) asked me to consider what might be done to minimise the risk that ILEA might, through improper disposal of property, acquire capital receipts which would score against its capital allocation. This point is fairly simply met by a provision, both in relation to ILEA and the PCFC sector, ensuring that such receipts would not count in this way.

Counter-Obstruction - Staff Transfer

9. E(EP) asked me to consider measures against possible obstruction by ILEA in relation to staff transfer. The only practicable measure we have identified is that designed to prevent "no-compulsory redundancy" agreements being entered into from the date of introduction of the Bill. This has now been agreed by E(EP).

Staff Commission

10. Most respondents express lukewarm acceptance of the possibility, floated in the consultation paper, of establishing a Staff Commission to assist over opting out. None however suggest areas in which it would perform tasks which could not equally well be performed - at some staff cost - by my Department. The case for a Staff Commission therefore rests on the reassurance it provides to ILEA staff that their interests will be impartially considered. Against that, there is a risk that a Commission could try to use its independence publicly to criticise the opting out policy and its implementation. Since we are not proposing a compulsory ring fence arrangement, a Commission would need no powers of direction, and could be criticised as toothless. It would furthermore linger on in existence for as long as the opting out process lasted. I therefore propose that we should make no provision in the Bill for the establishment of a Staff Commission. If in the event it became apparent that some form of advice would be helpful, I could consider setting up non-statutory arrangements.

Trigger Mechanism for Dissolution of the Rump ILEA

11. E(EP) in September endorsed my general proposals for reserve powers to break up the rump ILEA and establish a residuary body. The only matter which remained unresolved was the question of how to describe the point at which the reserve powers would become available. I had proposed that this should be when there were five boroughs or less left in ILEA; against this, it was argued that

CONFIDENTIAL

if a given number of boroughs were defined as the point below which the power became available, there would be great pressure on boroughs not to trigger the possible use of the power by opting out. I was therefore requested to attempt to find an alternative, purely verbal and general formulation.

12. The strongest formulation we have been able to come up with is that the legislation should provide a power for the Secretary of State to require inner London boroughs to submit applications for assuming LEA responsibilities where

Either the geographical or other circumstances of the boroughs remaining in ILEA, or which would remain in ILEA following the opting out of other boroughs, were such that the maintenance of an effective education service would no longer be possible, or possible only at disproportionate cost;

Or there would, without a major restructuring of the electoral arrangements for ILEA, be too few elected members for the effective discharge of their responsibilities.

13. Parliamentary Counsel advise that any general formulation of this sort is vulnerable to judicial review. In their view, such a provision would be difficult to use, and perhaps impossible in certain circumstances. I therefore believe that, despite the problems associated with it, the "five boroughs" option is more likely to lead to the outcome we want.

CONCLUSION

22. We need to proceed very swiftly indeed if provisions covering the points discussed in this minute are to be included in the Bill as introduced. I should therefore be grateful for colleagues' confirmation - by the evening of Wednesday 4 November if at all possible - that they are content with what I propose.

23. I am copying this minute to other members of E(EP) and E(LF), the Attorney General and to Sir Robert Armstrong.

KB.

KB
Department of Education and Science

NOVEMBER
3 OCTOBER 1987

ANNEX

THE ORGANISATION OF EDUCATION IN INNER LONDON: MINOR CHANGES TO EXISTING PROPOSALS

Cooperation Between ILEA and Opting Out Boroughs

1. No transfer of responsibility between local authorities has ever taken place on such a short time scale as the one proposed for opting out. Everything would have to be in place by 1 April 1990, only weeks before examinations were due to begin and while secondary transfer choices and admissions to colleges and awards to students would, in the normal course of things, still be being determined. These are all areas where potentially serious problems could occur. ILEA have - helpfully - suggested that it will be necessary for an opting borough and the Authority to work closely together in run-up period to transfer. Such cooperation is likely to assist the process of smooth transition, and there may be advantage in building on ILEA's statement and writing into the legislation a requirement that ILEA and the opting out borough should cooperate during the period between approval of a transfer order and transfer itself. The moral effect at least of such provision might be useful.

Governing Bodies

2. The Conservative boroughs have requested that, in addition to the ILEA nominees who will be automatically replaced on governing bodies by nominees from the boroughs from the date of transfer, coopted members on governing bodies - who will have been chosen by the ILEA dominated governing bodies - should also be removed from office at the same date. I believe that we should agree to this request, and make provision in the Bill accordingly, so far as schools are concerned. Co-optees on FE college governing bodies will be covered by Bill's provisions on college governing bodies generally, and no special provision is needed to secure the boroughs' objective in this case.

Information-Gathering Power

3. The consultation paper proposed that ILEA should be required to make available any necessary information to an opting out borough. This proposal has now been refined as follows -

- ILEA and its officers should be under duty to provide information
- within a period of sixty days
- upon request by a borough considering opting out, one whose proposal to opt out has been approved, or by the Secretary of State
- this requirement to commence with Royal Assent and to terminate in respect of individual boroughs twelve months after the date of transfer.

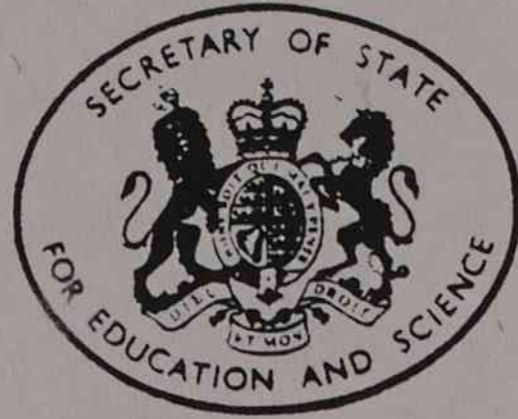
Compulsory Purchase

4. At present there is no sign that ILEA will attempt to circumvent the requirement for consent before disposal of property; we may therefore hope that any provisions for compulsory purchase will be unused. It is nonetheless necessary to provide for this contingency.

5. In the case of institutions entering the PCFC sector, where an LEA has improperly disposed of assets before the transfer takes place, the EAB will have a power of compulsory purchase. It is not necessary to give the EAB such a power in relation to opting out of ILEA - the boroughs have experience of making Compulsory Purchase Orders, and there will be no point in introducing another layer of bureaucracy. It is therefore envisaged that the boroughs should be enabled to make a CPO, and to submit it to the Secretary of State for confirmation - thus enabling him to confirm that the property in question was disposed of without his consent.

6. However the usual CPO procedure under the Acquisition of Land Act 1981 allows for public inquiries and rights of application to the High Court. There must plainly be some provision for the owner of land to state his case against the CPO; and in view of the fact that compensation to the dispossessed owner would have to be paid by ILEA, ILEA also should have the right to make representations to the Secretary of State against confirmation. Under the model of the 1981 Act the dispossessed owner - but not ILEA - will in certain circumstances have the right to insist on a public inquiry. We cannot defensibly remove such a right in the present case.

7. Nor would there be much point in seeking to exclude an appeal to the Court against the Secretary of State's confirmation of such a CPO; the Court would simply allow an application for judicial review. It is therefore proposed to allow a time-limited statutory appeal along the lines of that in the 1981 Act, to ensure that no appeal could be mounted after that time had expired and, in practice, that no application for judicial review can take place later, either.



ELIZABETH HOUSE
YORK ROAD
LONDON SE1 7PH
01-934 9000

cc 86

NRM

CONFIDENTIAL

The Rt Hon Nicholas Ridley MP
Secretary of State for the Environment
2 Marsham Street
LONDON SW1P 3EB

16 November 1987

S. M. H.

INNER LONDON EDUCATION

at 11:45

Thank you for your letter of 5 November, commenting on my minute of 3 November to the Prime Minister.

My reasons for deciding against a statutory Staff Commission were twofold. First, we would be setting up a body of uncertain lifespan, as our provisions enable boroughs to apply to opt out of ILEA at any time in the future, unless the point is reached where it becomes possible and appropriate finally to abolish the Authority. Second, this body would not have the clear and substantial role fulfilled by previous Staff Commissions. The London and Metropolitan Government Staff Commission spent a great deal of its time establishing, monitoring and handling complaints about the ring fence arrangements for GLC and MCC staff. We have agreed in this instance that there should not be a ring fence arrangement, only that ILEA staff should be considered alongside other applicants. The tasks we had considered for an 'ILEA' Staff Commission included the provision of advice on block transfer arrangements, advice to boroughs on the requirement to give fair consideration to ILEA staff and assistance if we reach the point of abolishing ILEA. None of these would provide a full-time task, and none of those commenting on our consultative paper were able to suggest a clear role for a Commission. I am reluctant to establish a statutory 'quango' without a clear remit; particularly when doing so would certainly carry the risk that the Commission itself would indulge in public criticism of the Government's policy of opting out.

I accordingly concluded against a statutory body, although I do not discount what you say about the presentational value of an independent Commission. This is an area where I shall listen to the arguments in the House with close attention.

I have made it clear to the boroughs interested in opting out that we will wish to discuss with them which groups of staff should be block transferred and I will keep you in touch with progress on this front. The extent to which

boroughs can make early savings - thereby reducing their community charge - is also bound up with the question of financial assistance with redundancy costs when boroughs opt out which my officials will be pursuing in consultation with yours in the light of discussion in E(LF)(87) 23rd meeting.

I have looked again at my proposals for a statutory requirement for co-operation between ILEA and an opting out borough in the light of your comments and our own further thoughts. I have concluded that no such requirement should appear on the face of the Bill. I shall, however, seek to encourage ILEA and shadow borough LEAs to work together in the months before opting out. Such co-operation will be to the benefit both of the pupils and students affected by the change, and of the council and its officers which will inherit responsibility for administering education.

I agree that the 60 day requirement attached to the information powers could have proved a hostage to fortune. The Bill will reduce this period to one month.

I am copying this to other members of E(EP) and to Sir Robert Armstrong.

*James
Hirst*

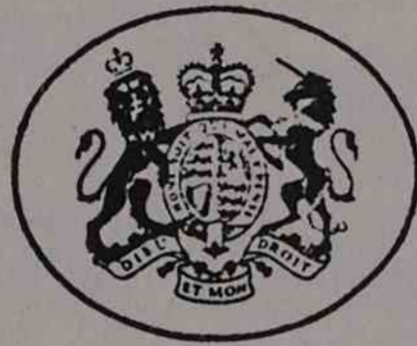
Education: ILEA PTS.



CC BG

From: THE PRIVATE SECRETARY

CONFIDENTIAL



HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

6 November 1987

NBM

Dear Sir,

ORGANISATION OF EDUCATION IN INNER LONDON

I am writing to confirm my telephone call on 4 November conveying the Home Secretary's agreement that Mr Baker should proceed with the proposals for opting out of ILEA on the lines set out in his minute to the Prime Minister circulated on 3 November.

I am copying this letter to the Private Secretaries of the other recipients of Mr Baker's minute.

Yours sincerely,

P J C Mawer

P J C MAWER

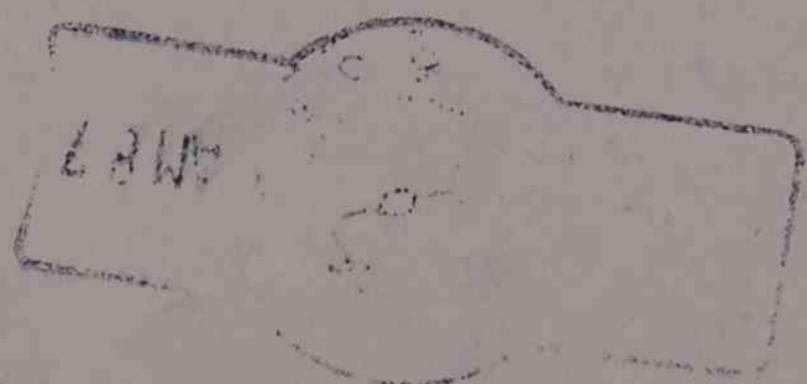
T Jeffrey, Esq.,

CONFIDENTIAL

Education

ILKA

PT 5



CONFIDENTIAL



10 DOWNING STREET
LONDON SW1A 2AA

From the Private Secretary

5 November 1987

Dear Tom,

THE ORGANISATION OF EDUCATION IN INNER LONDON

The Prime Minister has seen your Secretary of State's minute of 3 November which set out his proposals on the ILEA, and is content, subject to the views of colleagues.

I am copying this letter to the Private Secretaries to the members of E(EP) and E(LF), to Michael Saunders (Attorney General's Office) and Trevor Woolley (Cabinet Office).

David

David Norgrove

Tom Jeffery, Esq.,
Department of Education and Science.

CONFIDENTIAL

CONFIDENTIAL

CCB



2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon Kenneth Baker MP
Secretary of State
Department of Education and Science
Elizabeth House
York Road
LONDON
SE1 7PH

N B M

5 November 1987

Dear Secretary of State,

INNER LONDON EDUCATION

will request if required

Thank you for sending me a copy of your minute of 3 November to the Prime Minister.

I am personally content with what you propose, but I am sorry that you have decided against a Staff Commission to deal with staff transfers. Experience here suggests that a Commission can help gain the confidence of staff and allow the trade unions to be more co-operative in sorting out these issues. The informal arrangement you propose may be equally successful but they would have to be seen to be independent.

You do not say what your latest thinking is now on block transfers. This will clearly affect the rate at which opting out boroughs can make savings, in which I have a particular interest because of the effect on community charges. While this does not affect the drafting of the Bill, I would be glad to hear what your latest proposals are.

I am broadly content too with the proposals set out in the Annex to your minute. I have doubts, however, about a statutory requirement to co-operate, particularly in these circumstances. If ILEA is minded to co-operate as their statement suggests, they will anyway. If they are not, it is difficult to see how a statutory requirement will make them do so.

IF ILEA really are prepared to co-operate, I think that the information-seeking powers which allow 60 days for responding to request for information is too long. That is effectively the gap you are now proposing from Royal Assent (on the assumption that the Bill goes to the end of the session) and the last day for applications to opt out.

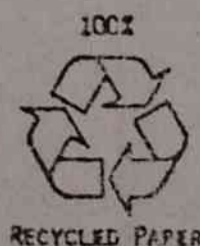
I am copying this to the other members of E(EP) and to Sir Robert Armstrong.

Yours sincerely,

N Ridley

NICHOLAS RIDLEY

PP (Approved in draft by the Secretary of State and signed in his absence)



RECYCLED PAPER