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PRIME MINISTER

FINANCIAL DELEGATION TO SCHOOLS

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At E(EP) on ~~26~~ October I undertook to report on my further consideration of the points we discussed. These conclusions are incorporated in the Bill being circulated to Legislation Committee.

2. First, we decided that the governing body should be required to consider, rather than take account of, advice from the Chief Education Officer on appointments. I have incorporated this change into the Bill.

3. Second, I was asked to reconsider the proposition that it should be open to an LEA to appeal to the Secretary of State if a governing body persistently made inappropriate appointments. I should explain that I am not intending to introduce a specific power of appeal. Financial delegation will be part of the Education Acts and will therefore inevitably be subject to Sections 68 and 99 of the 1944 Act, which give me powers of intervention where a governing body acts unreasonably or is in breach of its statutory duty. Any interested party, including an LEA, can complain to me that a governing body has so acted. It is possible that an LEA might make such a complaint in preference to withdrawing financial delegation. But since there will be no specific power of appeal I would not expect this to happen often.

4. Third I was asked to consider, in consultation with the Chief Secretary, the arrangements for determining how the costs of dismissals were to be met. John Major and I have agreed in a discussion today that the Bill should continue to contain the presumption that the costs of dismissals would be met by the LEA from outside the school's delegated budget unless the LEA has good reason to deduct them from the delegated budget. I understand John's concern that an LEA might

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err on the side of saying that a dismissal would be likely to be judged unfair in order to discourage governors from seeking to dismiss staff. But in my view this danger is less than the danger that governors will just not pursue dismissal cases at all if the decision about how the costs are borne is dependent on the outcome of an industrial tribunal. The unpredictability of industrial tribunal rulings will be a strong deterrent against removing incompetent and redundant staff unless the governors can come to an agreement with the LEA about how the costs will be met prior to a dismissal notice being given. We agreed not to put any reference in the Bill to the outcome of an industrial tribunal on the basis that an amendment could be considered at Committee Stage if, in the light of responses to the Bill, that proves appropriate.

5. Fourth, I was asked to consider whether provisions prohibiting compulsory redundancy or promising compensation in excess of the statutory level should be made non-enforceable in individual agreements as well as collective agreements. I accept this point; it will be covered in the Bill.

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

K.B.

K B

Department of Education and Science

12 November 1987

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DAS



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bc BG

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

16 November 1987

Dear Tom,

FINANCIAL DELEGATION TO SCHOOLS

The Prime Minister has seen your Secretary of State's minute of 12 November about particular points of financial delegation to schools. She read this without comment.

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

Yours,
David.

D R NORGROVE

Tom Jeffery, Esq.
Department of Education and Science

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Mr Norgrove

cc BG

(pa)

Reference No E 0442

MR WILSON



I agree with both points on the substance. I doubt however whether you will wish to write, at any rate on the point about dismissals given that Mr Baker has agreed with the Chief Secretary to consider it at Committee stage.

Financial Delegation to schools

16/11

Mr Baker's minute dated yesterday gives his views about the points which E(EP) asked him to reconsider on 26 October.

2. On his first and fourth points, he has accepted the E(EP) view. No further question arises.

3. On his second point, I think that Mr Baker has adequately explained what he meant by his earlier reference to a right of appeal, which we can now see was not well drafted. I doubt whether that particular point needs to be pursued. But the exchange has thrown up another more general point. Mr Baker's paper says that the LEA will be able in the limit to withdraw financial delegation. His minute of yesterday does not affect that. An LEA right to withdraw financial delegation is potentially very far-reaching. At the extreme it would allow LEAs to frustrate the Government's intentions. Presumably the circumstances in which delegation can be withdrawn will be carefully defined by the Secretary of State's statutory guidance to LEAs. But the consultative document on the subject does not say that, and I suggest that Mr Norgrove could fairly write back to ask for some reassurance on the point. Presumably the Bill would not be affected.

4. I am puzzled at the line Mr Baker wants to take on the third point. It is common ground that LEAs should meet the cost of dismissals outside the school's delegated budget unless they have good reason to refuse to do so. Mr Baker's paper said that they could have such a reason if they considered that an industrial tribunal would be likely to find the dismissal to be unfair. The

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Chief Secretary, and indeed E(EP) generally, thought that the LEA would have good reason only where the tribunal actually found the dismissal to be unfair. The reason is obvious. An LEA anxious to prevent dismissals could simply say that in its view an industrial tribunal would rule them to be unfair. Mr Baker does not meet this point at all. He simply says that if dismissals depended on tribunals' decisions their unpredictability would be a strong deterrent. But of course the argument is that there would be a much stronger deterrent under his approach, which would in most cases give the decision not to the tribunals but to politically motivated LEAs. It is unfortunate that the Chief Secretary now broadly agrees with Mr Baker, but in my view the Prime Minister should maintain her opposition to his proposal.

5. I attach a possible draft reply for Mr Norgrove to send.

G W MONGER

Economic Secretariat

13 November 1987

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Draft letter for Mr Norgrove to send to
DES Private Office

Financial Delegation to Schools

The Prime Minister was grateful for your Secretary of State's minute of 12 November. She is glad that changes have been made in the Bill to meet the first and fourth points described in the minute.

On the second point, she is content with the position on appeals to the Secretary of State as now set out by Mr Baker. She is however concerned to see that the LEA will have the right to withdraw financial delegation from schools. ^{She would be grateful to know} ~~can~~ ^{can} this be exercised? ^{in what circumstances} [Presumably they will be carefully defined in the guidelines on financial delegation to be issued by the Secretary of State?

On the third point, the Prime Minister is still not convinced that the proposal now in the Bill is right. If Schools have to bear the cost of dismissals only when a tribunal actually finds them to be unfair, the decision will depend on the tribunal, which should at least take a neutral view. If they have to bear this cost when the LEA thinks the tribunal will find them to be unfair, the decision will in most cases depend on an LEA which might be politically motivated and concerned to prevent the dismissal of incompetent staff. The Prime Minister would therefore prefer the Bill to be amended on this point now.]

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Education: Policy PT16.



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