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ROYAL COURTS OF JUSTICE
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The Rt.Hon. Sir Keith Joseph Bt.MP.,
The Secretary of State for Education and Science
Department of Education and Science
Elizabeth House
York Road
London SE1 7PH

21 May 1984

Dear Keith.

At our meeting on 17 May I was invited to advise you urgently upon the extent of your powers to modify Liverpool Education Authority's proposals under Section 12 of the Education Act 1980.

You have been advised, to my mind correctly, that you could properly modify Liverpool's proposals under Section 12(6) of the Act to secure the retention of two single-sex schools. The question now raised is whether you could impose a decision to retain four single-sex schools by way of "modification".

The only jurisprudence on the point is Megarry J's decision in LEGG. He draws a distinction between on the one hand changing a still recognisable original proposal and on the other hand in effect rejecting that proposal and replacing it with a different one. He expressly recognises that "to some extent the matter must be one of impression"; plainly, in determining upon which side of the somewhat indistinct boundary proposed "modifications" would fall regard must be had (as it was in Legg's case itself) not only to the ostensible change but also the impact which in practice the alteration would have on the actual workings of the originally proposed scheme.

I take the view that to require the retention of all four schools would be at the very margin of permissible modification if not indeed beyond it. Certainly you would be vulnerable to successful legal challenge.

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- page two -

Such alteration would, I am instructed, affect 20% of pupils subject to the overall scheme of reorganisation and would threaten its intended implementation in a number of important respects, most particularly in regard to admission arrangements and to the creation of a viable 6th form in certain schools.

In a sentence there would be a real risk of the required change being characterised by the courts as creating an essentially different scheme rather than a modification to the original one.

I am copying this letter to The Prime Minister and colleagues who attended the meeting on 17 May.

Yours Eva

Michael.

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Dms
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Prime Minister 2

The Education Secretary is consulting the Law Officers, and will report to your meeting next Tuesday.

PRIME MINISTER

Dms
18/5

SECONDARY EDUCATION IN LIVERPOOL

1. I did not speak in the discussion today on Keith Joseph's paper. I had intended to make a contribution after those with Departmental responsibilities had spoken but we then ran out of time. I would, however, like to put on record my view that:-

i) The best course would be to examine the legal position to see if the Secretary of State has the authority to secure tangible changes to proposals submitted by the local education authority.

ii) If such authority does not exist, I feel that on balance the proposed action of the Secretary of State should be confirmed.

iii) I make this conclusion believing that the present educational arrangements are also unsatisfactory; that there is no prospect of early political change in Liverpool leading to better proposals; and that Commissioners are not really suited for the task of refashioning education in the City.

2. I am copying this minute to those present at the meeting.

W.J.B.

J.B.
17.5.84

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P12

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