

Prime Minister

COLLIERY CLOSURES: INDEPENDENT REVIEW BODY

1 You will be aware from our earlier discussions that the management of British Coal see serious difficulty in dealing with the next round of capacity-related colliery closures through the existing consultative procedures culminating in the Independent Review Body (IRB). However, following extensive discussion with Sir Robert Haslam, I believe we can see a way forward, at least in the first instance. But, given the genesis of the IRB, we would both find it helpful to take your mind on the matter. I set out below the main considerations.

2 British Coal and the mining unions operate a long established Colliery Review Procedure which enables the progress of individual collieries to be reviewed by the local management and unions with the object of improving performance and allows candidates for closure to be jointly considered. Following the 1984-85 strike, an additional element was introduced - the Independent Review Body. The IRB consists in practice of a single QC, drawn from a present panel of three, who hears the arguments put forward by the parties, focusing on the performance of the colliery in question, and reports his view. In reaching a final decision the Corporation gives full weight to, but is not bound by, the views expressed by the IRB.

3 As set out in more detail later, the Colliery Review Procedure, including the IRB element, has been developed to deal with the issues associated with individual collieries. Collieries in difficulties are identified by local management and discussed with the unions at specially convened meetings. In the event that improvements in performance sufficient to satisfy operational objectives cannot be made, the local management may propose closure. Only then, if this proposal is not accepted by the unions, will the matter be put to the Corporation for review in the light of representations from both the unions and the local management ie the process reflects essentially a "bottom-up" approach.



4 However, the recent agreements between British Coal and the electricity generators stipulate a reduction in tonnage over the next three years, from sales of some 72.5mt to the CEGB this year to 65mt to the successor companies in 1992-93. This, together with planned productivity improvements, implies taking out some 10mt of capacity over the next year or so. British Coal's view is that this reduction in capacity (amounting to some 8-10 pits, including no more than 1 UDM pit), taken together with the specific requirements of the generators as regards supply patterns and coal quality, will mean that the next round of pit closures can only meaningfully be identified at the Corporation level and will be market-driven to an extent not experienced before. The Corporation point out that the Colliery Review Procedure was never intended, and is therefore likely to prove unworkable, for pit closure proposals prompted by such "top-down" considerations.

5 We need therefore to consider the arguments for and against three possible ways of proceeding:

- (a) attempting to put collieries selected for closure individually into the Colliery Review Procedure at local level and (if closures are not agreed by the men and the unions) taking them through all stages of the procedure, including the IRB hearings. This would seek to maintain the appearance of previous practice as far as possible;
- (b) dealing with the selected collieries outside the Colliery Review Procedure and avoiding the IRB altogether. A new consultative procedure would be needed for this purpose;
- (c) attempting to deal with the whole tranche of collieries selected for closure (8-10) en bloc, moving straight to a single IRB hearing which would focus on industry-wide questions of capacity and supply.



In cases (b) and (c), only those collieries required to close under the next round for capacity reasons would be treated in this way. The existing procedures (including possible reference to the IRB) would remain for pits with individual difficulties and especially for those whose reserves were exhausting. British Coal believe that most subsequent closures, after the present round, that will be required to continue to adjust capacity over time to the generator's requirements could be achieved through the normal locally initiated Colliery Review Procedure eg on grounds of exhaustion.

6 British Coal's views are annexed. For the reasons stated there at length, and summarised below, the Corporation does not see maintaining the Colliery Review Procedure for this next capacity related closure round as a practical proposition.

First Option: Adapting Existing Procedure

7 British Coal's position is that the Colliery Review Procedure, including the IRB element, was intended to deal only with colliery-specific issues such as geology, reserves, the practicalities of mining in particular locations and the cost of production against likely proceeds. British Coal's concern is that the Colliery Review Procedure was never intended to deal with industry-wide questions of capacity and supply, nor customer-related factors such as the location of base-load generating stations, the resulting coal flows and transport costs, the generators' transmission costs, coal quality and environmental costs. It follows that the tranche of closures now needed will be determined to a large extent by factors quite outside the narrow unit cost arguments with which the Colliery Review Procedure was designed to cope. Some collieries with relatively low costs may have to close, for example because of generators' high transport costs. The factors leading to this outcome could not, in British Coal's view, sensibly be dealt with by a series of unconnected local consultations within the Colliery Review Procedure leading to IRB hearings. To attempt to operate the procedures in this way would discredit local



management and would be seen by the unions and the men as a charade.

8 British Coal has also identified the following further difficulties with existing procedures:

- local management would inevitably come under pressure to compare the performance of one colliery with another, both within and outside their areas, to justify their view that the selected collieries should close. It would quickly emerge that colliery performance was only a marginal issue. There would be arguments going beyond the scope of local consultation, including, for instance, the politics of closing an NUM-majority pit versus a UDM pit;
- performance at a colliery selected for closure might improve while local consultation was under way - a normal objective of the review exercise. It would not, however, be possible for that to affect a decision based on market factors;
- a response to arguments about market-driven capacity reduction in the context of local consultations could be to generate local resistance to improved working practices aimed at increasing productivity and output (eg cutting coal at week-ends, ad hoc contracts). There would also be pressure to reduce opencast output which could hinder British Coal's negotiations with mineral planning authorities; and likewise pressure to restrict licensed mine output to the detriment of the small private sector;
- there could be as many as eight to ten separate IRB hearings over a period of perhaps nine months or a year, with the NUM taking the lead for the unions and local authorities and Opposition politicians lending support. British Coal's decision in each case would be determined by the overall capacity requirement and any



IRB recommendations against particular closures could not be accepted. Turning down up to ten consecutive recommendations could lead to accusations that the consultative process was no more than a farce, giving the NUM ammunition for a sustained campaign.

9 British Coal acknowledges that since the last IRB hearing in 1986, over 40 collieries have been successfully closed, involving over 40,000 job losses, on the basis of voluntary redundancy (or transfer to other pits), attractive redundancy terms, together with increasingly effective efforts to re-settle leavers into jobs outside the coal industry. The Corporation stresses, however, that this success has been achieved despite the Colliery Review Procedure and has been reinforced by the use of deadlines on redundancy payments such that men have had to choose between taking redundancy lump sums by a specified date or (through their unions) appealing to the IRB. The IRB has recently indicated its strong view that it is improper to force men to choose between such redundancy terms and an IRB hearing. It has said that whatever terms are available should remain on offer until the outcome of the hearing is known. Although British Coal does not accept this view, the IRB's stance represents a further constraint on their freedom of action.

10 I recognise the force of British Coal's arguments about the difficulty of operating the Colliery Review Procedure in circumstances for which it was not intended. While I had originally hoped that it would be possible to proceed in this way, I am, reluctantly, prepared to accept the Corporation's view that this is not a viable course of action in the circumstances. Unfortunately, one inevitable consequence of not being able to identify collieries for closure on an ad hoc basis at local level is the preparation, by the Corporation, of a list of collieries to be closed. There will be no alternative but to make that list eventually available to the unions and no doubt Arthur Scargill will present this as a vindication of his claims over the years that such a "hit list" existed. While such an argument can be refuted, given the need to adapt capacity to the contracts agreed



with the generators, this will nevertheless be unhelpful.
However, I can see no alternative to proceeding on this basis.

Second Option: Replace the Colliery Review Procedure

11 British Coal's strong preference and firm recommendation is to argue that the operation of the Colliery Review Procedure including the IRB stage is not appropriate for the forthcoming round of closures attributed to loss of sales to the generators - although the Corporation would continue to utilise the Colliery Review Procedure for closures arising from operational difficulties or exhaustion. The reasons for this stance are those set out in paragraphs 7 and 8 describing the difficulties associated with using the Colliery Review Procedure for centrally determined closures. The Corporation would instead seek to agree with the unions a new procedure for consultation at national level on the capacity issue and at local level on the handling of the designated closures.

12 There would, however, be real difficulties associated with introducing a new procedure, even temporarily, for such a group of closures:-

- the unions and the Opposition would attack British Coal for not using a time-honoured procedure and for removing the opportunity for independent review. No doubt the Unions would attempt to lay responsibility at the Government's door. Conceivably, the QCs comprising the IRB might resign in protest, which would be embarrassing;
- the "new" procedure for consultation is likely to be dismissed by the unions as a meaningless charade since the closure decisions would not be capable of variation;
- announcing the tranche of closures outwith the IRB procedure would provide Arthur Scargill further cause



for complaint to add to the provision of an official "hit list";

- relations with the other unions, which have been relatively quiescent recently, are likely to be exacerbated - although the UDM are not party to the IRB procedure and might not be too perturbed by its not being used. NACODS, who were instrumental in establishing the IRB, would be particularly unhappy. Until the Health and Safety Commission have completed their consideration of proposed new mining safety regulations, action by the pit deputies could still shut down the industry.

Third Option: A Single IRB Hearing

13 Despite the Corporation's clear preference for introducing a new procedure, British Coal could nevertheless accept the fall back position that, for the next round of colliery closures driven by market contraction, the whole tranche might be taken to the IRB for consideration en bloc, focussing on the industry-wide issue of capacity reduction and avoiding detailed discussion of individual pits. The terms of reference of the IRB would need to be changed for this purpose.

14 This third option would enable market considerations to be given full weight and might avoid some of the difficulties identified in connection with the first option. It would also ensure that no more than a single IRB hearing took place, and might be attractive to the unions since it would guarantee them at least one such hearing. Nevertheless, there would still be difficulties involved:

- British Coal witnesses would be under pressure to provide evidence on the comparative performance of pits, including UDM versus NUM pits;



- the question of the Government's policy towards the industry would be raised, including its size and future prospects, the implications of electricity privatisation, policy on coal imports, as well as the scale of assistance to coal mining areas;
- the hearing would provide a national platform for the NUM leadership without first testing whether agreement could be reached on individual closures at local level. They could seek to insist on a detailed scrutiny of the prospects for each of the pits put up for closure - in effect ten hearings and reports in one;
- the unions may not accept a single hearing and may seek to insist on the use, in each case, of all the stages of the Colliery Review Procedure, including IRB hearings. British Coal could not agree to this;
- the IRB could produce an unhelpful report, which would be used as a focus for opposition to Government and Corporation strategy.

However, this third option has the merit of retaining the IRB as part of the consultative machinery and seems to me to offer the least disadvantages of the courses of action open to us.

Enhanced Redundancy Terms

15 To achieve the necessary closures and job losses in the forthcoming round on the basis of voluntary redundancy, British Coal argues that it will be essential to pay supplementary lump sums of up to 10,000 on top of the basic redundancy scheme in current operation. I concur in this judgement and with the Chief Secretary's agreement I have endorsed the Corporation's proposal. The reduction in capacity must be accompanied by an appropriate manpower reduction and such enhanced payments will encourage the men to vote with their feet. To avoid the problem arising from the IRB's concern about deadlines for such payments (see



paragraph 9) British Coal have announced that the supplements "will be made available for the time being" and aim to give the impression that this will be less than a year and will depend on the rate of uptake of the redundancy money made available; the timing of the later announcement that payment of the supplement was to be terminated will require careful judgement. I accept that this may not set aside the IRB's concerns completely, but it will be more than a gesture in the right direction.

The way forward

16 In reality, the two options proposed by British Coal are not mutually exclusive and can rather be seen as alternative responses to differing reactions by the unions. Sir Robert believes that the next step must now be for the Corporation to broach with the IRB and the unions the situation in which it finds itself, now that the detailed terms of the contracts with the generators have been settled. This meeting would explain why the existing machinery was not appropriate as a means of consultation and seek the unions', and the QCs', views as to how best to proceed. The intention would be to indicate the scale of the problem but not, at that stage, to detail the pits that are due to close. Once there was agreement on the mechanics, then the list would be provided. Depending on the strength of the reaction the Corporation would seek to agree either option 2 or option 3 as the way forward. In British Coal's view, the scale of the closures proposed will be seen by the unions as being less than most in the industry have been expecting. They therefore believe that there is a chance, albeit a fairly slim one, that option 2 might prevail and the Corporation would see this as the most favourable outcome.

17 For my part, I believe that the chances of the unions accepting no independent review of the Corporation's closure proposals are vanishingly small. If the unions are clearly unwilling to proceed with consultations without the possibility of independent review, I accept that British Coal should offer



the prospect of one IRB hearing. The optimum solution would be to reach agreement with the unions that the reasons for the proposed closures should be explained in detail to the men concerned at local level and that they should then be allowed to vote on whether or not they are prepared to accept closure and either accept the redundancy terms on offer or seek a transfer to another pit. Only those pits where the men opposed closure would be taken together, en bloc, to the IRB for one hearing.

18 While it is, of course, difficult to prejudge the outcome of the necessary negotiations it seems to me that such a course would be a reasonable, and be seen to be a reasonable, compromise in the circumstances. Both the Corporation and I agree that to go any further, eg to allow up to 10 IRB hearings, would be potentially very damaging and should be avoided. The Corporation do not believe that we would be running any significant risk of major industrial action, although there may well be sporadic action in NUM strongholds eg in Yorkshire. However, this should be containable.

19 I am copying this minute to John Major, Michael Howard and Sir Robert Haslam.

Secretary of State for Energy

26 March 1990

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BRITISH COAL CORPORATIONCONSULTATION WITH THE UNIONS- THE CAPACITY/SUPPLY ISSUEIntroduction

1. Following negotiations with National Power and Power Gen, British Coal must now achieve and sustain profitability against a requirement to cut prices in real terms by up to 5% p.a. during the contract period. This will require improvements in productivity year on year in excess of 10%. British Coal must also bring capacity into line with the market: this means reducing volume by some 10 million tonnes.
2. Volume reduction with higher productivity means fewer collieries. The implications of this have been discussed with Ministers: in particular, the handling of consultations with the unions so as to minimise the industrial and political risks of colliery closures. This will be achieved only if consultations deal squarely with the real issues.

Consultation - The Issues

3. The selection of closures to bring capacity into line with the market must take full account of:-
 - the location of base load generating stations;
 - generators' transport costs;
 - grid transmission costs;
 - flows of imported coal;
 - coal qualities, and related environmental costs;
 - reserves and long term prospects.

4. It follows that the shape of the closure programme will be influenced only marginally by the potential at individual units for short run improvements in productivity. Consultative arrangements must reflect this: it would be quite wrong to use a procedure designed to cope only with individual colliery results. British Coal have accordingly indicated to Ministers that the capacity/supply issue cannot be tackled through the Colliery Review Procedure.

The Colliery Review Procedure

5. The Colliery Review Procedure was introduced in 1972 to:-
 - provide, jointly with the unions, for the regular review of performance at each individual colliery; and
 - identify collieries with particular problems and to resolve those in the most effective manner.
6. The procedure applies to all collieries. Each colliery is reviewed at local level on a quarterly basis. Where particular problems are identified, further meetings are held to find ways to improve results.
7. A proposal to close a colliery is only made if and when proposals for improvements have failed. The unions can, after local consultations have been exhausted, appeal against closure to the Corporation.
8. In 1985 the procedure was modified to provide a further appeal to an Independent Review Body, comprising a panel of senior lawyers agreed by British Coal and the unions. References are heard by members of the panel, sitting alone, in rotation. The UDM are not a party to this modified procedure.
9. The whole emphasis of the Colliery Review Procedure is on individual colliery performance. It was never intended to deal with industry-wide issues of capacity and supply. As noted, these cannot sensibly be handled through a series of unconnected consultations at local level, each focusing on operational issues specific to a particular colliery. Moreover, to use the procedure as a way of closing collieries rendered uneconomic by factors unconnected with their own performance would conflict with the purposes for which the procedure was set up, and would be likely to undermine its usefulness.

10. There would be other difficulties if British Coal attempted to use the Colliery Review Procedure in these circumstances:-

- local management would come under pressure to compare the performance of one colliery with another, to justify closure decisions. It would emerge very quickly that individual colliery performance was only a marginal issue;
- political issues (UDM/NUM) would be emphasised by the NUM;
- once the capacity issue was in the open, there would be pressure from men and unions to cut back opencast output - British Coal's position at Public Inquiries and in negotiations with Mineral Planning Authorities could be prejudiced;
- there would be pressure to restrict licensed output - attention would focus on the licensing provisions of the Coal Industry Bill;
- there would be resistance from men and unions to closing some collieries and simultaneously introducing more intensive working practices at others. Co-operation on e.g. weekend coaling could be restricted.

11. Most importantly, British Coal could face up to ten Independent Review Body hearings, with Scargill taking the lead for the unions. Given the real reasons for the closure programme, the presentation of British Coal's case to a series of separate appeals on non-colliery performance issues would be a matter of the greatest difficulty and would present Scargill with a continuing opportunity for publicity over a lengthy period. There would be a clear prospect of at least some adverse reports from the Independent Review Body, with the subsequent rejection of their views by the Corporation Board thus demonstrating the farce of the misuse of a non-applicable procedure. British Coal do not see the Colliery Review Procedure as a practical proposition in these circumstances.

Consultative Arrangements - The Options

12. British Coal therefore see two options:

- (i) creating a new procedure for consultations with the unions at National level, solely for the purpose of equating the capacity of the industry with overall market reality;
- (ii) dealing with all the selected collieries together and, if the unions so wished, moving straight to a modified final stage of the Colliery Review Procedure - a single hearing by the Independent Review Body which would focus on industry-wide questions of capacity and supply.

The First Option

- 13. The introduction of a new procedure by which British Coal would consult with the unions at national level on the closures needed to bring capacity into line with the market. The factors determining the selection of collieries for closure (listed in paragraph 3, above) would be explained.
- 14. It would be made clear that British Coal would continue to use the Colliery Review Procedure for all cases of the kind for which it was intended - those where colliery performance is the real issue.

The Second Option

- 15. This would be a single hearing with the unions of the whole national capacity/supply issue as it stands in the aftermath of negotiations with National Power and Power Gen. The Independent Review Body, if required by union insistence, would be asked to deal with the whole tranche of closures together.

This avoids some, but not all, of the difficulties of using the Colliery Review Procedure. Other difficulties would remain, but could be more readily handled in the context of a single hearing. Nevertheless, there would be serious risks in the event that an Independent Review Body hearing was demanded:-

- British Coal witnesses would still be under pressure to lead evidence comparing the performance of one colliery with another, with the political overtones (NUM v UDM) mentioned above;
- there would be pressure to cut back opencast and licensed output;
- British Coal witnesses would face questioning on the course and outcome of negotiations with National Power and Power Gen. The attention of the Unions and Independent Review Body members would inevitably focus on Government policy and attitudes towards the industry, its size and future prospects. Coal imports would be a particular issue;
- the hearing would provide a platform for the NUM leadership, but at least for only one occasion for the whole capacity reduction announcement;
- Independent Review Body members could well produce an unhelpful report, which would provide a focus for opposition to Government and British Coal strategy. The Corporation Board in rejecting an unhelpful report could be criticised for taking part in a charade.

Recommendation

16. British Coal strongly recommend the first option - that consultation with the unions on the decisions now needed to bring capacity into line with the market should be through a new procedure at national level. Unless consultation arrangements are seen to be tackling the real issues in this way, there is a clear danger of repeating the mistakes of February 1981. The attempt was made then to finesse capacity related closures through local consultations within the Colliery Review Procedure, and failed disastrously, with the Government having to become involved and to instruct the Board to withdraw the closure proposals.
17. It should be recalled also that British Coal's success in closing collieries over the past four years or so is due not to the availability of the Colliery Review Procedure, but to the policy of voluntary redundancy and the availability of generous redundancy terms. Accordingly, British Coal recommend that a supplement be made available to make the existing terms more attractive before any announcement of any kind is made.

18. If Ministers were to take the view that the involvement of the Independent Review Body was unavoidable, British Coal would attempt to follow the second option - a single Independent Review Body hearing - and face the consequences which that could involve.
19. British Coal recommend in the strongest terms that no attempt should be made to implement the overall capacity decision through a series of individual colliery consultations and hearings through the Colliery Review Procedure. Such a course would be damaging to the reputation and credibility of British Coal management and Government. The whole procedure would be discredited. The political consequences for the Government would be far more damaging than a firm decision now by British Coal dealing with the capacity issue.
20. These recommendations have the full support of all Corporation Members, including all Non-Executive Directors.

BRITISH COAL CORPORATION

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NAT (ND): Coal pt 21

228