

E(81)67

15 June 1981

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

 NON-INDUSTRIAL CIVIL SERVICE:
 7% PAY INCREASE

 Memorandum by the Lord President of the
 Council

Introduction

1. Officials, including those in the legal Departments, have re-examined the pay scheme, described in E(81)62, in the light of E discussion on 9 June.
2. Annex A - a draft staff notice - is the scheme modified to take account of legal and operational problems.

Operational Difficulties

3. The scheme would be far from easy to implement and operate. The Civil Service pay system is computer-based and departures from the normal pattern cause problems. For a pay settlement of the traditional kind, instructions to alter pay rates given at the start of a month would generally ensure payment of the new rates (including back pay) at the end of that month. But some Departments already have a backlog of computer work, so that payment of a normal increase within that time-scale is already impracticable. It would certainly not be possible to make payments within that time-scale if the system also had to exclude those civil servants who had either rejected the offer or (more likely and more important) had taken industrial action. Probable non-cooperation by computer programmers would lead to further delays.
4. For the Departments with the backlogs, the end of August rather than the end of July would probably in any event be the earliest date for paying the increase (including the retrospection). By then, if the scheme had been implemented, it would be possible to make adjustments for some members of staff who had become ineligible because of industrial action during the initial June-July period of reckoning. There would, however, also be overpayments. It takes time for notifications to work through the administrative system. A stoppage of pay because of industrial action which took place in the last days of July would, in normal circumstances, not be made until the September salary payment.
5. In practice, paying out followed by recovery at a subsequent date is quite common. There are a variety of other types of stoppage which have to be made retrospectively, in the ordinary course of events. If the scheme is to be implemented, Departments would much prefer to increase all salaries by 7% and to make any necessary adjustments in subsequent months. This would be

administratively easier, more efficient, and would minimise the increased operating costs. It would mean that, where there were no major backlog problems the civil servants - including many who have been working hard and conscientiously - could receive payment, including retrospective, at the end of July. But it would also mean that, if there were significant industrial action in July, there would have to be a considerable number of overpayments.

Legal Difficulties

6. During the E discussion on 9 June, it was suggested that it might not be acceptable to pay all civil servants the full increase in July and then to attempt to claw back the increase from those who had been taking industrial action during the period of reckoning. A significant clawback, it was thought, might be construed by the courts as indicating a scheme involving penalties, allowing successful actions for unfair dismissal.

7. The Law Officers have been asked whether it is essential to withhold additional payments from everyone until it is possible to instruct the computer not to pay those who are not entitled to any increase. Their view is that while a clawback arrangement would not, as matter of law, invalidate the scheme, it would increase the risk of a court's holding that the scheme was, in essence, an attempt to penalise strikers. Nevertheless, in view of the considerable practical difficulties in operating the scheme in any other way, they consider that it could still be argued that the true legal position was that the clawback procedure was merely the recovery of an overpayment made in error.

8. The Law Officers emphasised the need to make the position absolutely clear in the offer. Paragraph 8 of the notice at Annex A deals with this.

Paying the back pay in monthly instalments

9. At E Committee on 9 June we discussed a refinement of the scheme - namely paying the back pay in instalments from July to September, with payment depending on the civil servants concerned continuing to refrain from taking industrial action. On consideration I come down against this. To withhold the full arrears for so long would be unfair to the majority of civil servants who have been working conscientiously. We must do all we can to keep their support. And, secondly, the scheme would be even more difficult to implement, particularly if we want to keep clawback to a minimum. Moreover, it is precisely in the early weeks that the financial disincentive to take industrial action would be most valuable.

Non-cooperation by union members

10. As I pointed out in Annex A to E(81)62, the unions would try to thwart the implementation of the scheme. This could be answered with the firm use of TRO and, if appropriate, disciplinary procedures. Nevertheless, we have to accept that non-cooperation and blacking by computer programmers would probably delay implementation of the scheme; the announcement of it would, however, in itself influence behaviour.

Coverage of the scheme

11. The recent negotiations do not, of course, cover all civil servants. The industrialists have a separate regime. The Open Structure increase has already been promulgated. And I think that grades with single outside analogues (whose pay was not covered by the negotiations with the CCSU) and the staff of fringe bodies (where central Government does not have the same powers of direction on the method, as opposed to the rates, of payment) should also be excluded. If we go ahead, we cannot however ignore industrial action by any members of the Open Structure and I suggest that, if the need arises, it should be dealt with, after due warning, by disciplinary action. I am advised that it would be legally defensible to proceed separately in this way against such very senior staff.

Conclusions

12. We want the industrial action brought to a speedy end - preferably without penalising loyal civil servants or further prejudicing the prospects of recovery. The present scheme has serious operational and presentational disadvantages, would affect the climate of recovery, and is not free from legal risks. But the alternatives are not without difficulty either. To do nothing could be misunderstood. Ultimately it might be necessary to impose a settlement but not before we can be quite sure that industrial action is petering out (since we would then have few cards left to play). Withholding payment and the (implied or explicit) threat of possible loss of retrospective action may be our most powerful sanctions for the present. The proposed scheme is a useful addition to our armoury but is generally felt by management to be best kept in reserve for the time being. If that is accepted, we have to recognise that we are in effect ruling out the possibility of the scheme's being in operation in time for a strike beginning on 29 June: we would need to allow an interval of some 10 days between a decision to go ahead and the operative date.

13. We shall not know until after 18 June whether the CCSU will now opt for an all-out strike, for increased selective action, or for acceptance of the existing offer. There are strong signs, however, that the action is crumbling; that the union strike funds are running out; and that many favour a return to work. Officials generally believe that even if an all-out strike is called the response will be far from total initially, and will quickly dwindle, which could in turn lead to industrial action burning itself out.

14. Colleagues may feel, therefore, that the best course at present is to wait and see how the next stage of industrial action develops. If so, I ask my colleagues to agree that I should announce the setting up of the enquiry (with terms of reference and Chairman) in the course of next week: this could help to influence staff attitudes. I should also like to have authority to indicate (if this seems desirable at the time) in general and guarded terms that if the action continues the operative date for the settlement cannot be held indefinitely at 1 April: this would not commit us to any particular method of imposing or withholding the 7% increase.

DRAFT

Introduction

1. This note is being issued to staff in all departments, following the recent negotiations between the Government and the CCSU on non-industrial Civil Service pay. The Government has decided to offer each non-industrial civil servant in grades whose pay was covered by those negotiations a payment equivalent to an increase of 7% in salary subject to the conditions described below. If you do not wish to accept the offer in this notice, it is open to you to notify your Establishment Division that you do not accept it. Non-acceptance will mean that you will not be entitled to this additional payment during this financial year.
2. A separate notice will be issued about the position of Open Structure staff.

Details and conditions of the offer

3. You will be eligible for an additional payment of 7% of your existing pay for each pay period falling between 1 July 1981 and 31 March 1982 in which you do not engage in industrial action.
4. You will also be eligible for the same additional payment in respect of April, May and June of this year provided you do not take industrial action between [Monday 29 June] and Friday 31 July, both dates inclusive. If you take industrial action at any time between [29 June] and 31 July you will not be entitled to this sum.
5. In any pay period, stoppage or stoppages of pay arising from industrial action will determine whether or not you are eligible for an additional payment for that pay period. Each pay period will be treated separately.
6. In the case of monthly-paid staff, "pay period" will be regarded as a calendar month.
7. In the case of weekly-paid staff, "pay period" will be regarded as a period of one week. The conditions of the offer in paragraph 4 above relate to both monthly and weekly paid staff.

8. For operational reasons, payments actually received may not correspond to your real entitlement. Any payments to which you prove not to be entitled, by reason of not having satisfied the conditions, will be recovered as overpayments by deduction from your subsequent pay.