



PRIME MINISTER

INDUSTRIAL ACTION BY TEACHERS - PRIVILEGE

1. Arising from the further discussion in Cabinet on 7 March of the industrial action being taken by Scottish teachers in Ministers' constituencies (CC(85)8th Conclusions, Item 4), I was invited, in consultation with the Law Officers to prepare a statement of the case for a complaint of privilege. This would serve to bring the issue before the wider public, and enable the consideration of what steps would be open to the Government in the light of the Speaker's possible response to such a complaint. A draft statement is appended accordingly. (Annex A).

2. The Speaker may very well advise against a reference of the issue to the Committee of Privileges. It would however still be open to the Government to table a Motion proposing such a reference. Such a course would be contentious, and, if a reference were made in these circumstances, the Committee would be likely to split on party lines.

3. Even if the Speaker did refer the matter to the Committee of Privileges and the Committee concluded that the Union's action constituted a breach of privilege, the powers of the House to punish the offender are limited. Apart from committal the only sanction is reprimand or admonition, neither of which would appear to be sufficient to deter the Union from continuing its action.

4. The Secretary of State for Employment, in consultation with the Law Officers, has been invited to review the scope for effective action to counter selective strikes and to consider the possible need for changes in trade union law.

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5. It is also for consideration whether other legal remedies, other than Parliamentary privilege, could be pursued against the EIS. The Law Officers' Department is preparing a separate memorandum on this.
6. You may like to discuss the above at the meeting you are holding on Tuesday, 2 April, to discuss teachers' pay generally.
7. I am copying this minute to Cabinet colleagues, the Attorney General, the Chief Whip and to Sir Robert Armstrong.

W. J. B.

W J B

29 March 1985

STATEMENT OF CASE FOR A COMPLAINT OF PRIVILEGE

1. The Educational Institute of Scotland (EIS), the largest teachers' union in Scotland, is pursuing a policy, in furtherance of its request for an independent pay review, of targetting strikes by its members on schools within the constituencies of Government Ministers. These schools are suffering strike action on up to three days each week, and the education of children in these Parliamentary constituencies is being considerably disrupted.

2. It has been acknowledged in reports made by the Select Committee on Privilege (eg the complaint of Mr Campbell Savours against the British Steel Corporation (1981) HC 214) that a serious breach of Parliamentary privilege could arise not only if a Member of Parliament was himself threatened in an attempt to influence his conduct in the course of his Parliamentary duties, but also that such threats may be improperly directed against a Member's constituents as well as against the Member himself.

3. In the view of Ministers the continuance of the industrial action being taken by the EIS constitutes a threat against particular Members of Parliament, insofar as discriminatory, and seriously prejudicial, industrial action is being taken against their constituents, who have been singled out solely because they are that Member's constituents. A Member does not cease to be entitled to protection from action which is aimed at him in his capacity as a Member merely because he is also a Minister. That

the action in this case is indeed aimed at certain Members in their capacity as such is clear from the fact that it is defined, by those who are taking it, by reference to its impact on their constituents and their constituencies. It is as Members of the House that they have constituencies through which they can be subjected to pressure or "punished": not as Ministers.

4. References to the Committee of Privileges of alleged threats to Members of Parliament are normally related to specific items of Parliamentary business eg where such a threat is designed to influence the way in which a Member votes on a forthcoming Bill or Order. In this connection it is understood that at an earlier stage of this industrial dispute the General Secretary of the EIS stated, in advance of a debate in the House of Commons, that any Scottish Member of Parliament who voted against the setting up of an independent review of teachers' pay would find industrial action being intensified in his constituency, and that he later withdrew this remark on being advised that it could be construed as a breach of Parliamentary privilege.

5. It is suggested, however, that this need not in principle be regarded as an absolute rule, and that it would produce undesirable and anomalous results if it were so regarded.

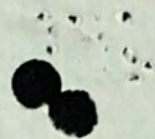
6. For example, it could happen at any time that the industrial action now being taken by the EIS would become directly relevant to some item of forthcoming Parliamentary business, or a Member might contrive such an occasion.

7. Were such an occasion to arise, however fortuitously, it would appear that the continuance of the present action by the EIS would certainly be considered to constitute a *prima facie* breach of Parliamentary privilege. Bearing in mind the nature and importance of the threat posed, it is suggested that it is most unsatisfactory that action aimed at Members should change from legitimate to illegitimate merely because an occasion has arisen, perhaps fortuitously, for the topic to which it relates to be considered by the House. The gravamen of the offence, if there is an offence, would seem to lie in the fact that the action in question is intended to affect, and does affect, Members in their capacity as such, and not that it is intended to affect particular proceedings in a particular way.

8. Furthermore, whilst the present discriminatory action is already having serious effects on the constituencies affected, the policy being followed by the EIS is clearly capable of extension to other essential services. Or similar discriminatory action could be extended more widely; for example, to the constituencies of all Members of Parliament of a particular party.

9. In the view of Ministers the issues at stake in this matter are accordingly of considerable importance in safeguarding Members of Parliament from the development of further improper pressures of this kind. I should accordingly be grateful if you would consider the action being taken by the EIS against Members' constituents, and let me know whether you agree that its discriminatory character raises issues that might appropriately be referred to the Committee of Privileges for their consideration.

Educ. Teachers Pay: Pt 4.



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HOUSE OF LORDS,
SW1A 0PW

29 March 1985

My dear John:

INDUSTRIAL ACTION BY TEACHERS - PRIVILEGE

attached

I have read your minute of today to the Prime Minister and the draft statement appended to it.

My own view, for what it is worth, is that this is a serious contempt of the House, but that the Speaker would be bound to rule that it would be too late to give it priority over other business. It would therefore fall to be debated in Government time, and would almost certainly be voted on in the Committee of Privileges (if referred) almost entirely on Party lines.

Whether the exercise is politically worthwhile is primarily a matter for the judgment of Commons' colleagues.

I am copying this letter to the Prime Minister, Cabinet colleagues, the Attorney General, the Chief Whip and to Sir Robert Armstrong.

Yrs:

The Right Honourable
John Biffen, M.P.,
Lord Privy Seal.

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