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CONFIDENTIAL

PRIME MINISTER

SCHOOL TEACHERS

1. We agreed on 2 April that I should prepare a note exploring the scope for defining in regulations, with which LEAs would be obliged to comply, (i) procedures for assessing teacher performance and (ii) a model contract clarifying the extent of teachers' duties. I have prepared the attached note. Because of its length I offer here a summary of the conclusions which I draw.

2. We should continue to look beyond the present year's disruption to steps we might take to minimise the risk of further disruption over the next two or three years and to maximise progress with our educational objectives for the schools. We should continue to resist making any extra resources available for teachers' pay this year.

3. It would be possible for me to impose a system for the regular appraisal of school teachers in England by 1987-88 following our proposed enabling legislation in 1985-86. Such a system, imposed or negotiated, would not in itself do anything to prevent disruption of education in future pay disputes. I cannot, however, impose a link between appraisal and pay, because pay has to be negotiated in Burnham. It may prove necessary for me to impose appraisal in connection with in-service training and promotion arrangements. But the effectiveness of an appraisal system will depend substantially on the acceptability of the arrangements to both teachers and employers: it is highly desirable that we should achieve an agreed system.

4. There is no accepted full definition of teachers' duties. But this is not the real problem in relation to teachers' contracts. LEAs are unwilling to act sufficiently firmly against disruptive teachers on the basis of the implied terms of their contracts, and there is no reason to believe that they would act any more firmly even if contracts were based on a full definition of the teachers' duties.

5. We should deceive ourselves if we thought that by imposing appraisal and improved contracts through legislation we would prevent future disruption at little or no cost to the teachers. That would continue to depend largely, as now, on the attitudes of employers. Moreover the aspects of teachers' duties most easily covered by contracts would be aspects such as mid-day supervision and cover for absent colleagues rather than the curriculum and examination changes which are central to our educational policies.

6. I believe therefore we have to continue to bring pressure on employers and teachers, partly by winning public opinion to our side, to accept their proper respective responsibilities. A few test cases to clarify implied terms of contracts could be helpful.

7. We should also weigh the advantages of seeking to use some additional money (I have suggested £250 million over three years) to win improved management of teachers and better-used pay differentials, and to reduce the risk of disruption over at least the next two or three years.

8. We should recognise there can be no certainty about the outcome of this course of action. Success requires Burnham to agree the principles of the scheme set out in the appendix to the minute we discussed on 2 April by October. But, given that, the LEAs could not then avoid discriminating among their teachers for pay purposes, and the risk of further disruption for two or three years would be significantly reduced.

Attended
— it hardly sets out clearly what "this course" is!

9. If we favour this course - and I do - we must decide soon how to proceed if we are to have any chance of exploiting what will at best be a short period (July to October?) of opportunity between the conclusion of the current pay negotiations and industrial disruption and the time by which we must take final decisions about the rate support grant settlement for 1986-87.

10. If we decide against this course, we must accept the risk of further and possibly more severe disruption over those years and great damage to our education policy together with pay comparability considerations leading employers or arbitrators to give pay rises at high cost yet delivering nothing in terms of improved performance.

11. Copies of this minute and its attachment go to the Secretaries of State for Scotland, Wales and Northern Ireland; the Chancellor of the Exchequer; the Secretaries of State for Employment and for the Environment; and to Sir Robert Armstrong.

Elizabeth Hodgkinson

Approved by the
Secretary of State and
signed in his absence

SIR KEITH JOSEPH
Department of Education and Science
26 April 1985

Copy also to the Attorney General.

CONFIDENTIAL

SCHOOL TEACHERS

Introduction

1. We agreed on 2 April that our line for 1985 must be to stand firm in the face of the teachers' campaign of disruption to extract more pay with no appraisal or contractual strings attached. Although there are no prospects of an early end to the present disruption, and it may become more severe, I believe we must continue to stand firm. Only if teachers see that their present campaign extracts not a penny more from the Exchequer will there be any prospect of them negotiating any changes in conditions of service or links between pay and performance of the kind we wish to see on the basis of the sort of sums we might be willing to add to local authority expenditure.

2. This paper does not therefore propose any new line of action in relation to the immediate problem of the 1985 pay dispute. It is about possible initiatives for 1986 or later. Our options are bounded by these two possibilities:

A: Make no change to the tight approach we have adopted since 1979 for pay increases for teachers, seeking at the same time both to reduce the extent to which teachers can engage in disruption at little or no financial cost to themselves and also to improve standards by imposing statutory requirements as respects contractual responsibilities and performance appraisal (as a means of improving the management of the teacher force);

B: Seek to buy the desired educational, appraisal and contractual improvements we are looking for through negotiations with the teachers (the approach adopted in the Burnham "structure" working party of 1984, which the teachers walked out of last November).

Between these extremes lies the sort of option described in

Mr Kings paper is relevant here but not optimistic on possibilities.

See Keltt rejects both A & B and sets out his proposals in parallel 200. You can skip the - paras in between.

general terms in the appendix to the paper discussed on 2 April. If we are to take an initiative in this middle ground for 1986 we must decide soon what proposal we are willing to make. This is because there will at best be a short period of opportunity if any such proposal is to be introduced in April 1986. But before returning to this intermediate strategy, and as agreed on 2 April, I explore the scope for defining in regulations with which LEAs would be obliged to comply (i) procedures for assessing teacher performance and (ii) a model contract clarifying the extent of teachers' duties.

3. This note relates to England and Wales. It has been prepared in the light of consultation with SED, WOED, DENI, Treasury, DOE and DE officials. The Secretary of State for Scotland is submitting a supplementary parallel note.

Teacher assessment

4. The assessment (or appraisal) of teachers which I am seeking to promote would have a variety of purposes. In the main these would be concerned with the more effective management of the teacher force - the better selection and matching of teachers for in-service training, improved promotion decisions, improved match between teachers' qualifications and experience and their deployment, etc, as explained in chapter 6 of the March 1985 White Paper, "Better Schools". I regard the establishment of a clear link between teacher appraisal and the administration of in-service teacher training under our proposed specific grant as very important. In cases where evidence emerges that teachers are under-performing - and if reasonable attempts to improve performance by further training, counselling, re-posting etc should fail - then the teachers concerned should not be retained in service. The appropriate solution in particular cases would depend on age, health and experience - possibly early retirement on efficiency grounds, possibly retirement on health grounds, but, if necessary, straight dismissal.

5. I also want to promote a closer relationship between performance and pay bearing upon the main body of teachers and not just the exceptionally good and the exceptionally weak. This was

one of the original attractions to me of the work on salary structure reform begun in 1981. I was disappointed therefore when the employers' package of proposals published late last year postulated merely the withholding of increments for under-performance and the conferring of high-status fellowships on outstanding teachers. For their part, the teachers found even this degree of discrimination too much and although I think quality of performance should be one of the factors built into the pay system, I would not wish to lose any opportunity of introducing the systematic appraisal of performance on this account because appraisal must serve the other vital purposes mentioned above. Its early introduction should be our objective. The extension of its use to pay may have to be pursued progressively thereafter.

6. "Better Schools" proposed an extension of my existing powers for regulating the employment of teachers so as to allow a requirement to be placed on LEAs regularly to appraise the performance of their teachers. An appropriate clause will be included in the Bill agreed for introduction early next session. That might receive Royal Assent by summer 1986, allowing the introduction of an appraisal requirement from 1987 (at the earliest). It does not follow of course that this power to require appraisal need be exercised immediately - or even at all. It is possible that a satisfactory appraisal system can be introduced on an agreed voluntary basis, although the prospects for this are uncertain at this stage. Whether or not the power to regulate is used, the success of the system will inevitably depend to a large extent on the willing co-operation of both the employers and the teachers. The existence of the power will of course affect attitudes, as has the proposal to legislate; and it could well also serve to set agreed arrangements firmly in place. In recent discussions with my officials, the teacher unions have made clear that they will not co-operate with a directly pay-related appraisal system, and that they will not join in pilot work to develop the sort of procedures and mechanisms which will be necessary to operate appraisal for the wider purposes described in paragraph 4 above if we insist it is also intended directly to affect pay. They recognise, however, that any systematic appraisal system would influence promotion, and that higher pay goes with promotion.

7. Nevertheless, if negotiations to establish an appraisal system fail it could be imposed, in the sense that a legal obligation to appraise teachers regularly could be put on LEAs. In the long run such an obligation might be exercised beneficially. In the short run the present attitudes of the parties seem likely to prevent the satisfactory operation of an imposed system. Moreover it would not be realistic to suppose that the Department could police the system. Appraisal for 400,000 teachers must be largely self-administered within the schools and even an LEA committed to appraisal would be in difficulty if its teachers were to refuse to co-operate. Moreover, if LEAs were to decide to undertake an imposed system in non-rigorous fashion, there would be little that Central Government could do directly to sharpen up the system.

Teachers' Contracts and Conditions of Service

8. There is no single comprehensive national statement of the duties and responsibilities of the individual teacher which is carried through into contracts of employment. This does not mean that teachers do not have contractual obligations, merely that those obligations are not codified and agreed in ways which establish their scope beyond argument. The extent of teachers' obligations derives from their written contracts of employment and secondary material such as articles of government, the so-called "Burgundy Book" ("Conditions of service for School Teachers in England and Wales", prepared by the LEAs and the teacher unions), and from "custom and practice". Written contracts of employment themselves vary widely by employer and with the date of their adoption. In earlier times this absence of contractual codification was no problem as there was general consensus on what was expected of teachers as members of the teaching profession. But times have changed and it is now established practice during times of dispute for many teachers to claim that certain important duties customarily undertaken are voluntary. At such times they "withdraw goodwill" and cease to discharge the full range of their responsibilities. Traditionally the common points of attack are midday supervision and cover for absent colleagues. This year they have also refused to take part in staff meetings and meetings with parents out of school hours and threaten non-cooperation in development work towards new examinations and curricula.

9. This year, too, a considerable number of LEAs have shown more resolution than previously in pressing teachers to work normally. More than 60 have warned their teachers that their actions may be in breach of contract and of those 22 are now deducting damages for certain specific breaches. (Leading Counsel have advised employers to proceed by way of deductions for damages rather than by withholding pay.) The NUT have made a public fuss about this and on 18 April issued writs against Doncaster and Rotherham LEAs seeking a declaration that the deductions are unlawful. While this action might result in a court ruling on teachers' contractual obligations, it is unlikely that these cases will be heard in time to influence the current dispute. It would of course be possible for the local authority employers to act more vigorously. For example, they could dismiss teachers who refuse to carry out normal work for breach of contract, on the basis that work normally undertaken as a matter of course is within the implied terms of their contracts. Equally, if teachers refuse to negotiate new forms of contract desired by the employers the employers could offer all new appointments (including promotions) only on the basis of new forms of contract. There is, however, no sign that any authority is willing to act in this way, even to bring matters to a head in the present dispute by dismissing one or two teachers for breach of contract. ACC/AMA divisions on the handling of the dispute and the impending County Council elections may be relevant.

10. From all this it appears that the real problems do not lie in the form of existing contracts. The employers have sought and received Counsel's opinion that all the duties deemed by the teachers to be voluntary (except midday supervision where the employers' case is thought to be very weak) would be found by the Courts to be contractual. The problems lie in the employers' ability and willingness to hold their employees to all the terms of either existing or future contracts of employment. While in principle it would be possible to devise much more precise and detailed contracts for teachers (although it would be very difficult to achieve the necessary precision and comprehensiveness to cover all the work required of a profession), and if this were done with the assent or co-operation of the teachers it could be very valuable, employers who do not insist upon the

fulfilment of existing contracts will not be transformed by the development of a new ideal contract. This approach does not therefore seem to offer a sure road to preventing disruption without financial penalties to the teachers concerned. This would seem to be so even if we were to impose new forms of contract for teachers by primary legislation - either for all teachers or new appointments - which would make it unlawful for teachers in LEA and voluntary schools to be employed other than in accordance with a contract set out in regulations made from time to time (probably after consultation with employers and unions). This course of action would moreover be without precedent. I see no prospect of legislation forcing the employers against their will to act more rigorously and with greater determination.

Possibilities Reviewed

11. I think we should rule out statutory imposition as a practical means of denying teachers the industrial weapons now available to them or of forcing authorities to manage more effectively. If we go back to the possibilities in paragraph 2, A now becomes pay restraint pure and simple. I see an increasing risk that if we adopt this line then within the next year or so teachers could secure (perhaps through arbitration or end-loading in a particular financial year) a damagingly large pay increase without our gaining any return in terms of appraisal or contracts. I said as much on 2 April, and I remain of that view.

12. The alternative possibility, B, would be to bring in new contracts (incorporating systematic appraisal) through collective bargaining. The employers' recent attempt to do this failed to appeal to any of the teacher unions, even at a long-term cost of 15% on the pay bill. The largest union remains resolutely opposed in principle to trading conditions of service against pay, fearing that the pay gain would be eroded over time to their permanent disadvantage. The other unions appear not to have difficulties of principle (save over midday supervision in the case of the second largest union) but their prices for agreement are unaffordably high. I continue to believe that we cannot hope to buy new and agreed contracts at an acceptable price and at an early date through collective bargaining.

13. I do not favour either of these strategies. My preferred intermediate approach has three components.

Contracts: I think we must load as much pressure as we can on LEAs to act resolutely as employers. We should publicise what the Government believes to constitute the teacher's job and effectively challenge the unions to deny it and the employers to enforce it. At the very least we would be likely to win over many parents to the reasonableness of what we expect of teachers. Beyond this we should encourage some test cases, if willing employers can be found, and encourage individual authorities to make all new appointments and promotions on new tighter contracts. But the key requirement is the need for a more determined and forceful approach from the employers. Present prospects are not very encouraging, and we cannot rely on this alone.

Appraisal: We have the initiative and must keep it. The teachers are on the defensive here, in that they are seen as opposing a desirable development. I also continue to believe that we should continue to seek the closer linking of individuals' pay to their performance. Such a link would facilitate the differential distribution of resources available for teachers' pay. The employers backed away from that goal as their package developed. We should not back away, although we should avoid referring to our preference as "merit pay" and we must privately accept that in the short term an overtly performance-related pay system based upon systematic appraisal is non-negotiable.

Pay and Performance: An adjusted pay system which explicitly allowed employers to promote teachers to higher scales for a variety of reasons - additional responsibilities, shortages of graduates in particular disciplines, high quality performance - and which deliberately increased the total number of promotion opportunities could be very valuable. It would be less easy for the unions to oppose, it would force the employers to

discriminate among teachers (and therefore to appraise them by some means), and it would add to managerial flexibility. Such a system was outlined in the appendix to the paper considered on 2 April. As there indicated, quite a lot might be achieved for an extra 5 or 6% on the pay bill, spread over three years (about £100 million in year one, rising to about £250 million in year three). Alternatively, we might seek a more radical change, adopting in addition some of the features of the employers' package. Thus, a new entry grade might be introduced, with a test of career suitability after three years, and only those who pass at that stage keeping their jobs. Those would then proceed to a scale comparable with the present scale 2. Beyond that scales 3, 4 and 5 would be retained as promotion levels. One might contemplate adding one or two more scales, available to small minorities and commanding substantial salaries. (The direct cost of such lowly populated scales would be low, but there would be implications for the salaries of heads and deputies, unless the availability of the highest scale posts were restricted in the smallest schools.)

Window of Opportunity

14. An adjusted pay system on one or other of the two bases just described would have to be negotiated in Burnham, or conceivably brought in through arbitration. But the Government could promote it by offering to provide the additional resources and block grant if, and only if, Burnham were explicitly to agree the necessary structural changes in advance of final determination of the relevant Rate Support Grant settlement. Negotiations to agree a percentage uplift to the scales would follow the RSG settlement as usual. I think that negotiations towards the introduction of such an arrangement would be very difficult but not hopeless, even in the aftermath of this year's pay dispute.

15. My own judgment is that the scheme in the 2 April appendix is close to the best mix of what might be desirable and achievable. But no scheme of this kind could be canvassed now. We must first

have a settlement to this year's claim. As soon as that is achieved, we shall need to make our offer to provide as much time as possible for us to secure the necessary agreements with employers and unions in Burnham well before the end of October in order to ensure that the expenditure consequences can be taken into account in the RSG settlement for implementation in 1986-87. Even if this year's teachers' pay negotiations are settled by July when the provisional RSG announcement is made there will be little time; and I recognise that leaving the decision open until October will add to the complexity of DOE's work on the final RSG settlement. If a settlement to this year's claim is not forthcoming in July, we run into serious time problems. If we decide to keep targets in 1986-87, there would be the problem of directing the extra resources to LEAs as distinct from other authorities. An adjustment to targets on this account would be unprecedented and could have unwelcome repercussions. Some of these matters lie outside our control but policy agreement now would allow officials to get on with the necessary preparatory work on a contingency basis.

Edwin.
Covers Pay

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