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Dear John.

CODES OF PRACTICE ON PICKETING AND THE CLOSED SHOP

The Secretary of State was grateful to the Chancellor of the Exchequer for his helpful comments on the two draft codes and their covering papers. These and comments from other colleagues have enabled him to make a number of improvements to the drafts. This letter answers some of the other questions that the Chancellor raised.

It is not possible in these codes, any more than in earlier industrial relations codes, to draw a hard and fast line between passages which describe what needs to be done to comply with the law and passages which constitute good practice. What we have done in each case is to describe in layman's language the legal requirements under headings which make this clear ("Legal Rights of Individuals" in the case of the code on the closed shop and "Picketing and the Civil Law" and "Picketing and the Criminal Law" in the case of the code on picketing). The following sections of each code provide practical guidance as required by the statute. Though none of this is directly enforceable, any of it may be a "relevant provision to be taken into account in proceedings before any court or industrial tribunal or the Central Arbitration Committee", although the likelihood of this will vary between one provision and another. No hard and sharp division between them can be made.

Turning now to the Chancellor's particular questions and comments

i) Para 12

This of course is a statement of the law and cannot in itself go beyond what is stated in Clause 4. However, Section D of the Code, Union Treatment of Members and Applicants, covers circumstances in which exclusion or expulsion from a trade union might be found to be "unreasonable".



ii) Para 16

This paragraph and paragraph 15 have been amended to make clear that readmission by a union, consequential upon a tribunal declaring that an individual has been unreasonably excluded or expelled, will trigger different procedures and levels of compensation. Under the Act neither the tribunal nor the EAT can order a union to re-admit but, by analogy with unfair dismissal provisions, a union which fails to take someone back when the tribunal has found the exclusion to be unreasonable, may have to pay an extra sum by way of compensation.

iii) Para 29(d)

The inconsistency between this and para 53 is more apparent than real. One deals with advice to employers, the other to unions. Both passages envisage that there are circumstances in which a trade union member may be expelled from his union for refusing to take part in industrial action. Para 23 (d) makes the additional point that it is good practice for employers to secure, as well, agreement that any such person should not be dismissed from employment.

v) Para 33 (e) and (f)

The phrase quoted is drawn from the statute itself and the code could not impose a more restrictive condition. We believe that what the code says is a sufficient nudge in the direction of employing an independent body, particularly since what is involved here is a ballot arranged jointly by management and unions, not by a union alone.

vi) Para 42

The Secretary of State wishes to await the views of industry before deciding whether or not to have a maximum interval between ballots. The views so far received from industrialists are divided on the question of reviews generally. The reviews are likely to be initiated by employers and this paragraph indicates the circumstances in which such reviews should be carried out.

viii) Para 52(b)

This paragraph is not about the formation of new closed shops but is drafted in recognition of existing traditional arrangements like those in the acting profession, which were of course recognised in the Industrial Relations Act 1971.

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ix) Para 59

The Secretary of State considers that a provision on access to the Press is essential. It featured prominently in the Press Charter discussions under Lord Pearce and agreement was almost reached on it. The present text was supported by the majority of those taking part in the discussion. Its absence would be adversely criticised.

I am copying this letter to the recipients of the Chancellor's.

Jo- m-
Richard Dykes

RICHARD DYKES
Private Secretary

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