

contingency
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01-405 7641 Extn

THE PRIME MINISTER
CIVIL SERVICE PAY

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

Ann-Thomas
The Cabinet conclusions may have been too concise. The Chancellor (Flag A) is well aware of the need for legislation if TRD is to be extended.

MW

12.17/3

I have just seen the conclusions of the Cabinet meeting on 12 March and refer to the last paragraph (item 4 on Civil Service pay).

2. I am troubled by the statement, in connection with withdrawal of data processors from work in the VAT computer at Southend, that those not now on strike will "have to be sent home without pay" when they reach the stage of having no useful work to do as a result of industrial action by others.

3. Such a step would be an extension of the procedure known as "TRD" (temporary relief from duty) which is discussed in the legal Opinion of the Law Officers and Treasury Counsel (sent to colleagues on 1 October 1979). The broad conclusion then reached was that TRD would not stand up in the courts unless the staff to whom it was applied were in breach of contract by reason of failing to perform their normal duties. This advice has, I believe, been consistently followed to date and I have no reason to modify it.

4. I do not have the precise details of what has been happening at Southend, but I understand that the non-striking staff, to whom the Chancellor suggests that this procedure might be applied, are not in breach of contract. Sending them home without pay would probably be held by the courts to be unlawful and I advise most strongly against it.

5. The only safe way of achieving lay-off without pay in circumstances like these would be to take and exercise the powers which are found in the draft contingency legislation recently prepared on the instructions of E(CS).

6. I am copying this to all members of Cabinet, Michael Jopling, the Lord Advocate and Sir Robert Armstrong.

MH

16 March 1981