



Prime Minister

The Chancellor

*suggests discussion at
Cabinet on Thursday*

Treasury Chambers, Parliament Street, SW1P 3AG
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*of these proposals for
disciplining civil servants*

PRIME MINISTER

*Agree?
MCS 6/7
Yes - but not if it means
a total disruption
of services
new to be
delegated*

NHS DISPUTE: SYMPATHETIC INDUSTRIAL ACTION BY CIVIL SERVANTS

On the occasion of the one-day strike in the National Health Service on 23 June some 550 staff, from the Departments of Employment and Health and Social Security, absented themselves to take industrial action in support of the health service unions. Further industrial action is planned in the NHS for the three days 19-21 July. We have been considering in the Ministerial Group on Current Industrial Disputes (MISC 80) how best to discourage civil servants from taking further sympathetic industrial action in the period 19-21 July and, more generally, how to prevent the practice spreading in the Civil Service of taking industrial action in support of disputes outside the Civil Service.

2. We are agreed that the right strategy is for the Government to take and be seen to take firm and resolute action but not to over-react in a way which would play into the hands of the unions. We therefore considered how existing Civil Service disciplinary procedures could be brought to bear most effectively on the situation. The staff who took part in the action on 23 June have already had a deduction of pay for the period of absence. This follows automatically and does not require the use of disciplinary procedures. The question for consideration is

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how far disciplinary action, which might begin with a written warning and then range from formal reprimand to loss of increments, suspension with pay and downgrading to dismissal, might be imposed and, if so, what steps would be necessary to bring this about.

3. We distinguished between the following two categories of offence:

- a. cases involving misconduct of an overtly political or abusive nature;
- b. cases involving only unauthorised absence or failing to work as directed.

4. In cases of misconduct disciplinary charges can be brought without warning and the full range of disciplinary penalties, as appropriate, is available. We are agreed however that action should be concentrated against blatant cases where the activity and evidence is such that a charge is likely to stick. Each case will need to be looked at carefully both to make sure the Government's case is legally sound and to assess the political aspects. Certain cases relating to 23 June are already under urgent consideration and the Secretaries of State for Social Services and Employment will be reporting their conclusions orally to the Cabinet on Thursday.

5. With a few exceptions however, the offences fall into category b. above, i.e. unauthorised absence or failing to work as directed. Where such action is taken in pursuance of an industrial dispute within the Civil Service, it has been accepted that disciplinary procedures would not be appropriate. Where unauthorised absence occurs for some other reason the disciplinary action in relation to an isolated

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offence is usually not more than a written warning. Where an offence is repeated more serious penalties might be applied. We considered whether unauthorised absence for the purpose of sympathetic industrial action should be treated differently from unauthorised absence for some other purpose. There are bound to be real practical difficulties in pursuing this course. Some staff might claim that their absence was for some recreational purpose. It would also be possible for the unions to arrange industrial action in the Civil Service during the period 19-21 July which was primarily linked to Civil Service issues and was only secondarily in support of the NHS dispute. But we did not feel that these difficulties could stand in the way of all action.

6. We therefore agreed that the right approach in the cases of unauthorised absence was as follows:

i. the staff who were absent on 23 June should now receive a written warning; any of these staff who were absent again during the period 19-21 July or on some other future occasion would then be liable to disciplinary action involving penalties ranging up to dismissal in the most serious cases, if circumstances were thought to justify this;

ii. although there would be no general announcement, the issue of such written warnings would be likely to become widely known;

iii. all Civil Service managers would receive instructions drawing their attention to the fact that absences in pursuit of sympathetic industrial action

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and breaches of conduct were liable to be dealt with under disciplinary procedures and requiring them to record and report to their Principal Establishment Officers the names of staff concerned.

7. We also considered whether it would be desirable to go further and issue individual notices to staff who did not take action on 23 June, either to all staff in the two Departments affected, or to all Civil Servants, making it clear that sympathetic action taking the form of unauthorised absence or refusing to comply with a legitimate instruction would be an offence, liable to be dealt with under the disciplinary procedures. The case for such a notice was argued on two grounds. First it was suggested that such individual notices were necessary to ensure that future first offenders, as well as those who took action on 23 June, were eligible for the full range of disciplinary penalties, including those for which a prior warning should be given so as to avoid any appeal to an Industrial Tribunal, i.e. dismissal and any penalties which might be regarded as constructive dismissal. This might be necessary to discourage the unions from deliberately using the tactic that further industrial action on 19-21 July would be taken by different staff from those involved on 23 June. Secondly, a notice to all staff might strengthen the perception of the Government's resolve in countering sympathetic industrial action by its own employees.

8. Against this it was argued that sympathetic action had been confined so far to a small percentage of staff in two Departments. Sending notices to several hundred thousand Civil Servants in all Departments might actually stimulate

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sympathetic action where none would otherwise have occurred. The restriction of the range of penalties available for first offenders was not thought to be a serious constraint. It seemed likely that a written warning, formal reprimand or some other penalty short of constructive dismissal would in any case be the appropriate response for such cases. It was also at least arguable (although the point should be further considered) that the issue of written warnings to staff who took action on 23 June might be held to constitute some kind of indirect warning to those contemplating similar offences in the future. The deterrent effect, and the demonstration of the Government's firmness of purpose, should be adequately achieved when the written warnings to the staff who took action on 23 June became widely known.

8. We therefore concluded on balance that the right course was not to issue a general warning notice to all staff but to rely on the steps set out in paragraph 6i-iii above. The position would need to be reviewed again in the light of experience over the period 19-21 July. We are also agreed that, quite apart from the problem of sympathetic industrial action, Civil Service rules of conduct including political activity should in due course be reviewed in the light of present day circumstances.

10. If colleagues agree with these proposals - and I suggest that we consider them in Cabinet on Thursday - we should proceed at the end of this week with the issue of written warnings to the staff who took action on 23 June, and instructions to managers, so that the position is clear in good time before the NHS action on 19-21 July.

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11. I am sending copies of this minute to all members of the Cabinet, to the Attorney General, the Lord Advocate, the Minister of State, Treasury (Mr Hayhoe), Mr Sparrow and Sir Robert Armstrong.

(G.H.)
July 1982