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RBS 186/4

- cc. PS/Ministers (B&L)
- PS/PUS (B&L)
- PS/Mr Bloomfield
- Mr Brennan
- Mr Stephens
- Mr Chesterton
- Mr Spence
- Mr M Elliott
- Miss Elliott
- Mr McConnell
- Mr Reid

PSE86/173

Mr Needham has seen and is correct. E Gunning 29/4/86

1. PS/Mr Needham (B&L)
2. PS/Secretary of State (B&L)

BELFAST CITY COUNCIL

1. The Secretary of State has asked for an urgent note on the application by Mr David Cook and Mr Tom Campbell of the Alliance Party to the High Court for a fine to be imposed on Belfast City Council because of its defiance of earlier rulings of the High Court.

2. Background

The High Court, subsequently upheld also by the Court of Appeal, ruled that Belfast City Council should meet by 15 February to strike a District Rate, should hold such meetings of the Council and its Committees as are necessary for the transaction of normal business and ruled that the delegation of functions to the Town Clerk during the adjournment policy was ultra vires.

3. Court Hearing

The further application was heard by Mr Justice Hutton on 25 April 1986. No decision was given by the Court and Justice Hutton reserved judgement until this week. During the hearing, Counsel for the City Council advised the Court that a special meeting of the Council had been called for 30 April to consider the boycott policy. It is unlikely that Justice Hutton would have given his decision on 25 April in any event since it is normal practice in such cases to reserve judgement. There is as yet no indication whether judgement will be reserved until after the meeting on 30 April but, we are advised by the Town Solicitor that given the terms of the motion to be debated by the City Council, it may be reasonable to assume that Mr Hutton will take cognisance of any decisions taken by the Council on 30 April before giving his judgement.

The application was brought against the City Council as a corporate body and not, as might have been expected, against individual Unionist Councillors who, notwithstanding the earlier Court judgements decided not to meet to fix a rate and also decided to continue their policy of adjournments. It is interesting to note that during the recent Hearing, Justice Hutton spent some time questioning whether a more appropriate course would not have been to move against individual Councillors responsible for defying the Court, clearly implying that the City Council had refused to obey the Court because of the actions of those Councillors since the consequence could be that the applicants

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would be placing a further unfair burden upon the ratepayers if a fine was granted. Senior Counsel appearing for the applicants said that it was the intention that innocent Councillors and ratepayers should not be penalised since it was hoped that the Local Government Auditor would impose a surcharge on the responsible Councillors if the High Court imposed a fine on the Council.

4. Possible Court Decisions

Since the application to the Court is in respect of contempt by the Council, the decision is entirely for the discretion of the Court itself. It is difficult to speculate at this stage on the precise outcome but we are advised that the 2 most likely options would be either for a fine on the Council as a corporate body or, alternatively no order of fine to be made. If a fine is imposed, then it would be most likely that it would be against the Council itself since all previous Orders of the Court have been against the Council. The level of any such fine is difficult to guess, with the range being possibly from £2,000 to £50,000 depending on Mr Justice Hutton's perception of the laws on surcharge (which have a threshold of £2,000). It is also possible that a fine could be imposed with a continuing penalty in circumstances where the original Court Order continued to be defied. If a fine is not paid, then it would probably be handled through the normal process of the Enforcement of Judgements Office as a debt on the Council. We are further advised that the contempt of Court would still have to be purged in these circumstances. How this is to be achieved is again open to speculation but one possible method could be sequestration of Council assets if the contempt is seen as that of the Council and not individual Councillors.

5. In light of Mr Justice Hutton's remarks during the Hearing, there is a possibility that he may, in his judgement, venture an opinion that the applicants should consider directing their application in another way. This would have the effect of leading - but not directing - them to name individual Councillors. That would be the extent of his action however should he decide on that particular course.

6. Local Government Position

If a fine is imposed on the Council then 2 specific problems could arise. The first concerns the ability of the Town Clerk to pay a fine since, as a result of earlier judgements, he does not have the authority to take such decisions and may well require the specific authority of the Council to pay such a fine. This point will be the subject of further legal consideration.

If a fine is paid by the Council then the question of possible surcharge arises. In the normal course of events, the audit of Belfast City Council accounts for the year 1986/87 would not commence until after 31 March 1987, following the end of the financial year. There is also specific provision within Local Government legislation for the holding of an Extraordinary Audit. Such an audit could only be

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on foot of a Direction from the Department to the Local Government Auditor and the Extraordinary Audit would be held after giving three days' notice in writing to the Council. It would be for Government therefore to decide whether to direct the Auditor in such circumstances to hold such an Extraordinary Audit, or to leave the matter in the hands of the Auditor to be considered during the normal course of his Audit in mid/late 1987. In either situation, it would be for the Auditor himself to decide whether any loss was attributable to the wilful misconduct of any person. It would be for the Auditor to apply to the High Court in respect of such a surcharge and, if the surcharge exceeds £2,000 and is upheld, the person involved will be disqualified from being elected or being a member of a Council for 5 years.

7. The Secretary of State will see from this information above that a number of possibilities exist in relation to possible High Court action this week and, depending on the decisions taken, there would be a number of legal steps required before Government had to take decisions about an Extraordinary Audit. Further advice will be given when the judgement has been delivered and the implications of that judgement considered. The judgement itself is unlikely to have any effect on the continued delivery of services, in respect of which action was taken very recently but the functions of Belfast Council and of all other Councils involved in the present adjournment policy are being examined and will be the subject of a further detailed report to Secretary of State within the next week.

D Barry

D BARRY
29 April 1986

Ps. We have been advised late this afternoon that a decision will be given by Mr Justice Hutton at 10.30 AM on Wednesday 30th April, presumably because either he is not prepared to await the outcome of the Council meeting, or is proposing to seek the means of dealing with individual Councils.

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