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From the Private Secretary

15 May 1986

bc: Prof. Griffiths

SCHOOL TEACHERS' PAY NEGOTIATIONS IN ENGLAND AND WALES

The Prime Minister was grateful for your Secretary of State's minute of 13 May about school teachers' pay negotiations in England and Wales, and has asked that it be discussed in a meeting of MISC 122. A meeting will be arranged (though it may not be possible to fit it in until after the Whitsun Recess).

The Prime Minister would be content if in the meanwhile the Department wished to continue drafting a consultation paper, though she has not herself reached a conclusion on whether its publication would be desirable, and she has serious doubts about the idea of a statutory review body. She has noted that MISC 122 saw major difficulties about the idea of a statutory review body when this was discussed earlier.

I am copying this letter to the Private Secretaries to members of MISC 122 and to Michael Stark (Cabinet Office).

David Norgrove

Rob Smith, Esq.,  
 Department of Education and Science.

CSG

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PRIME MINISTER

SCHOOL TEACHERS' PAY NEGOTIATIONS IN ENGLAND AND WALES

1. We agreed in MISC122 on 4 March that it was unlikely that the ACAS process would achieve a great deal in securing the improvements to the education service which the Government wished to see. We decided not to seek to terminate the process at that stage: such action would risk considerable criticism from employers, unions and parents. We recognised, however, that a further Government initiative might be necessary at some stage. This minute reviews progress to date with the ACAS-led negotiations; considers possible future developments; and considers the options open to the Government.
  
2. On 9 May the Burnham Primary and Secondary Committee agreed an across the board pay rise of 5 1/2% or £520, whichever is the greater for an individual teacher, from 1 April 1986. This is "without prejudice" to the eventual outcome of the ACAS-led negotiations, which may in due course result in a further increase for 1986-87. Related to this settlement is an agreement that the NUT will now join in the ACAS negotiations, and that the NUT will end its disruption of the schools. While the relative peace this is likely to bring in the schools is welcome, the settlement achieves nothing towards our pay structure and conditions of service objectives.
  
3. The negotiations under the ACAS-appointed independent panel have already been in progress, without the NUT (although the NUT did submit a position paper) for just over 2 months. ACAS chose well for their purpose. Sir John Wood and his 2 colleagues are proving very adept in promoting discussion of the main issues. Small working parties have been set up to look at 4 broad areas: pay structure and levels, appraisal and training, duties and conditions, and negotiating machinery. These are scheduled to report in mid-June and already points of agreement are being registered on a range of issues while

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points of difference and questions of greatest difficulty - not least pay levels and finance - are deferred for later consideration. All parties (including my representatives) are being given a fair hearing and ample opportunity to develop the positions set out in their initial written submissions. So far Sir John Wood and his colleagues have helpfully pressed the other parties to acknowledge the validity of some key government positions, for example the need for a pay structure which would give management sufficient scope to reward effective teachers, to recognise responsibility and leadership, to attract and retain teachers in shortage subjects, and to fill difficult posts. None of this fits easily with the employers' preference, shared by most of the unions, for a structure based on a single main grade, with a relatively modest structure of higher paid posts. But should the ACAS panel succeed in edging the consensus the Government's way on structure, we can fairly safely assume that it will have a big price tag on it. Perhaps it is too early to be divining Sir John's strategy but there are some signs of him seeking to extract Government finance by delivering a pay structure whose attractions we would be hard put to deny having advocated them ourselves so publicly.

4. Up to now Sir John and his panel (all of whom wanted to admit the NUT to the talks with no conditions attached) have been helped by the NUT's exclusion. The momentum achieved so far would have been impossible had the NUT been participating (and refusing to take pay and conditions together or to allow any "worsening" of conditions). The other 5 unions have been showing a more constructive attitude, and all have encouraged a return to more normal working. However, some unofficial working to rule (especially among NAS/UWT members) has persisted and the NUT have been continuing disruptive action short of striking. We can now reasonably expect an end to disruption to last through the summer, but it may be in the nature of a truce rather than fully restored harmony and commitment.

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Future expectations for the ACAS exercise

5. The probability must be that the negotiations will continue through the summer, without breakdown, despite the addition of the NUT. ACAS and Sir John Wood's panel will work hard to ensure this. But the Labour employers (most of whom will be newcomers after the 8 May elections) may be easily led by their new leader, in conjunction with the national Labour leadership, to favour positions acceptable to the politicized NUT, and incompatible with our objectives. Substantive recommendations from Sir John are not likely before September or the Scottish inquiry report, whichever comes later.

6. Sir John Wood has indicated privately that he thinks much of what the Government is seeking is sensible - and this view is beginning to show. Our existing policies for improving standards in school education, and any further options we may select, demand a better managed and more professional teacher force. Teachers' duties must be more clearly defined, so that we do not again experience the disruption of schools by teachers at no financial cost to themselves. (Even if imminent judgements on four current cases about cover for absent colleagues are favourable, we cannot assume that this will make the employers more resolute on this and other matters of contract.) We need a pay structure and pay levels which will offer attractive career prospects to effective teachers, and enable employers to recruit and retain teachers in shortage subjects and in certain areas of the country where authorities are experiencing difficulties. But there is no prospect of a set of recommendations in September which meets our requirements as a whole, including affordability. The most likely outcome is a set of recommendations priced at a level higher than the Government thinks reasonable, even if it offers reasonable progress in terms of structure and duties. We can then expect the local authorities and the teacher unions jointly to demand Government financing for what they will describe as an eminently fair and reasonable outcome.

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What happens if we allow the ACAS exercise to take its course?

7. We must now expect the ACAS exercise to come to a conclusion - or to break down - around September. Sir John Wood's remit is important. By September his panel (to quote from the January 1986 ACAS agreement):

"Shall review its work with a view to concluding whether it can continue to contribute usefully to a solution of the profession's problems. The panel shall eventually make a final report to both sides and to ACAS on any key issues that have not been resolved. It shall at the same time formally recommend how in its view the problems should be resolved."

So the outcome need not be a complete agreed package of recommendations. The eventual "Wood report" might well include the panel's independent assessment of the way ahead on a range of outstanding issues.

8. But whether it is an agreed package or a set of independent recommendations which emerges, the conclusions would still have to be converted into settlements. We shall ourselves have to consider the outcome (and the outcome of the Main inquiry in Scotland), and decide whether to make additional resources available to the LEAs and, if so, on what terms and in what years. But unless and until we change the law school teachers' pay has to be settled in the Burnham P and S Committee and their other conditions of service in non-statutory negotiations between the LEAs and the teacher unions (at present these negotiations are conducted in a committee known as CLEA/ST). Whereas an agreed package might be negotiated into place (even this is problematical both on resources grounds and because the NUT are in a minority on the teachers' side of Burnham but have a majority on the teachers' side of CLEA/ST which means we could end up with a statutorily enforceable pay deal and a bungled deal on duties and conditions), the current negotiating machinery offers no ready prospect of implementing disputed recommendations. We will not be in a position either

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to stop the pay element of an agreed package (2 votes out of 27 on the management side of Burnham) or to impose any Wood recommendations on other conditions of service (even if we wanted to), although we could refuse to make any additional resources available.

9. The options likely to be available to us in September/October are not appealing:

(i) We receive the Wood outcome and consider the extent to which it accords with the Government's objectives and agree to release commensurate additional resources.

In practice this would mean deciding how much we are prepared to add to the RSG settlement for 1986-87, and how much we are prepared to include within the forthcoming RSG settlement for 1987-88, to pay for the Wood recommendations - or those of them the employers and teachers are willing to negotiate into place. It will then be for the employers and the teachers to try to reach settlements in Burnham and CLEA/ST within the financial resources available to the local authorities and compatible with the Wood recommendations. We cannot force an agreement. If we do not make what is perceived as being a fair contribution to the cost we must expect that there will not be a settlement and there will be disruption.

(ii) If we object to the Wood outcome, we could explain why and withhold any financial support for its implementation. The two sides would simply be left to negotiate as best they could within planned expenditure figures, plus any extra we might offer on stated conditions. Again, industrial action would be a certainty. It would be far too late at this stage to avoid intense disruption in the schools from autumn 1986 by extending the Main inquiry to England and Wales.

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- (iii) A different but no more appealing option opens up in the unlikely event of Sir John Wood and his panel concluding that the gap between the sides is so fundamental that they cannot offer recommendations to bridge it. Recent developments in further education suggest that the employers might then lead the teachers off into private and separate negotiations aimed at preparing a new package for confrontation with the Government. We should not like that package, either. There would again be no way of reaching reasonable peace in the schools without an over-generous settlement and no conditions attached to it that we would regard as essential.

We shall not be able to maintain satisfactory relationships and proper working practices in the schools without a pay settlement which the teachers and the public will perceive as fair. But it will be very bad for the future of school education if there should be a high pay settlement without substantial improvements in the pay structure, better provision for shortage subject teachers, and a clarification of teachers duties and conditions of service which the local authority employers then enforce. Part of the package must bring greater pressure on local authorities, either through tighter statutory duties or by exercising financial pressure through specific grants, or both.

Should we seek to stop the ACAS exercise?

10. The prospect is then that the ACAS exercise will continue, and that the position throughout the summer will probably be relatively peaceful (this may not extend to full cooperation with GCSE). Things are likely to go bad in the autumn. Yet we cannot reasonably seek to stop the ACAS exercise now.

11. We cannot at this stage set up an inquiry covering England and Wales matching the Scottish inquiry. That remains an option if the ACAS talks break down soon, but would otherwise be incompatible with what we have already said about the ACAS

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exercise. If, nevertheless, we were to set up our own inquiry now there is no guarantee that the ACAS exercise would stop, nor would there be much hope of getting Burnham and CLEA/ST to accept and implement the findings of our inquiry. Moreover, if we were to set up an inquiry at this stage we might well immediately provoke industrial action in the schools because the teachers would assume we were determined to prevent a costly settlement. Public opinion would find our action incomprehensible, and would be solidly against us.

12. Could we then provoke a breakdown of ACAS, and then set up an inquiry? We might cause a breakdown in the ACAS-led negotiations if we were to insist that under no circumstances would we make more money available from the taxpayer for teachers' pay than the £1,250 million (less £170 million for midday supervision) already conditionally offered. But that would be incompatible with what we have already said - which is that we will look at the ACAS recommendations in due course. We should certainly provoke immediate industrial action in the schools. Public opinion would again be solidly against us.

Is there any other option?

13. All this does not mean we should simply allow the ACAS exercise to proceed and watch what goes on. We need to prepare the ground for the longer term in a way which could also help us if ACAS reports in September or if ACAS breaks down at that stage.

14. The local authority employers have long been pressing me to repeal or amend the Remuneration of Teachers Act 1965, the legislation under which the Burnham Primary and Secondary and FE Committees work. I have resisted, on the grounds that there is no agreement on what should replace the Act, and that I could only seek Parliamentary time if I were confident of replacing the Act by arrangements that would work more effectively. But the RTA 1965 is now so discredited - the Primary and Secondary Committee has had to seek negotiations



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led by ACAS as an alternative to normal operation within Burnham; and in further education the employers and NATFHE are now doing most of their negotiation in a separate forum and only staging formal meetings of Burnham to formalise what they have agreed elsewhere - that I must make some change. There is also a problem in that we can by no means be certain that the Burnham P & S Committee and CLEA/ST will implement any ACAS recommendations - especially if we do not provide what they will regard as sufficient financial assistance.

15. We should therefore plan to replace Burnham before the election, I believe we may have to do so before an acceptable settlement can be finalised. There are broadly three ways in which we could amend or repeal the RTA 1965, which covers further education teachers as well as school teachers.

- (i) We could repeal the Act. This is what the employers want. The employers and the unions would then be free to make their own negotiating arrangements and to reach their own settlements for pay and conditions of service - nationally or locally. They would be constrained by RSG settlements and any Government regulations about appraisal, midday supervision, or other matters affecting teachers' conditions of service.
- (ii) We could amend the Act to establish reformed statutory negotiating committees. These committees could cover both pay and other conditions of service (as in Scotland), and could give the Government a strengthened position.
- (iii) We could replace the Act by legislation to establish a statutory review body for pay and other conditions of service, including the definition of teachers' duties. This body could cover both school teachers and further education teachers, and would differ from existing review bodies in that ;

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- it would be statutory
- it would consider pay and other conditions of service (including duties).
- it would cover local authority employees.

The Secretary of State might have power to accept the review body's recommendations, or to substitute his own decisions subject to approval by Parliament.

There are many possible variations of detail within each of these three options.

16. I propose to issue a short consultation paper on these three alternatives at about the end of May, giving all concerned two months for comments. Legislation would follow as soon as Parliamentary time could be found. The consultation paper would not rule out any of the three alternatives, but indicate my present preference for alternative (iii).

17. I believe it would be possible for me to issue this consultation paper now, presenting it as part of the necessary preparation for the future, without wrecking the ACAS exercise and without provoking industrial action. I should of course recognise that one part of the ACAS exercise is looking at future negotiating machinery, and would say that I would expect to take that work into account as well as comments on the consultation paper. But wider consultation is essential to cover the further education interest in the Act, and the interests of the voluntary school employers, for example. The consultation process would also provide us with a better foundation for urgent action in the autumn should the ACAS exercise not yield an acceptable outcome.

How would this help achieve our objectives?

18. There is no way of guaranteeing that in future teachers

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will do their work as we think they should, or that the employers will enforce contracts and generally manage their employees as we think they should. The best hope for improvement lies in the sensible clarification of teachers' duties, contracts and conditions of service, so that no-one is in any doubt about what head teachers and local authorities can require them to do (some of this could be in regulations, for example probation, qualifications requirements, appraisal, in-service training); pay levels which are perceived to be fair and a pay structure which takes account of teacher effectiveness, differential responsibilities, shortage subjects, and posts that are difficult to fill; and specific grant arrangements which enable the holder of my office to bring financial pressure to bear on local authorities to enforce teachers' duties and to use the pay structure effectively. I do not myself believe that negotiations between the politically-led and divided local authority associations on the one hand, and the rival teacher unions on the other, can be expected to result in satisfactory arrangements across teachers' pay and conditions of service. That is why I favour the third option. But the local authority associations and the teachers are likely to favour either the first or the second option. The challenge for them in the consultation process is to show that one of these options could deliver the kind of settlements that is needed.

19. This consultation process would prepare us for legislation to introduce more satisfactory negotiating arrangements or a statutory review body to determine teachers' pay and conditions of service in the future. We could then if necessary take the appropriate legislative action before the end of 1986. We may need to do this if the ACAS exercise breaks down in September or if it produces recommendations in September which cannot then be put in place by the existing negotiating machinery - or if we cannot accept the ACAS recommendations. It will be obvious to all that we could and should have foreseen these possibilities, which would inevitably lead to severe industrial action in the schools in the autumn. I attach a chart indicating

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the likely sequence of events. I believe therefore that we must embark upon this consultation exercise now as a necessary preliminary to our dealing with whatever situation arises in the autumn.

20. Work is in hand within the Department on the preparation of the necessary consultation paper, which I shall of course circulate in draft to colleagues in due course. In the meantime I should be grateful to know by the end of this week if you or colleagues have any reservations about this course of action or to receive any comments you may wish to make at this stage.

21. I am sending copies of this minute to members of MISC 122 and Sir Robert Armstrong.

K.J.

Department of Education and Science

13 May 1986

1986	RSG Timetable	Scotland (Main)	England and Wales (ACAS)	About ACAS now?	Prepare for future alongside ACAS
March		"Main" inquiry set up; 1985-86 pay deal plus 5.5% for 1986-87	"Wood" exercise set up		
April			Position papers submitted Working groups set up		
May			↓ <div style="border: 1px solid black; padding: 2px; display: inline-block;">5.5% interim settlement</div>	Government extends Main inquiry to England and Wales?	Government initiates consultation on alternatives to Burnham
June		Evidence to Main	Report to Wood group	Takes over ACAS work and invites further evidence?	Responses received
July	July statement for 1987-88		↓		
August			↓		
September		Main report?	Wood report?	Main report, etc.	Responses considered
October	Finalise 1987-88 calculations	Government response?	Government response?		
November	1987-88 RSG Report	Negotiations in STNC based on Main and Government response leading to	Negotiations in Burnham and CLEA/ST based on Wood and Government response leading to pay deals for 1986-87 and		→ If necessary, Bill introduced;
December 1987		(i) supplementary 1986-87 pay deal and			enacted;
January		(ii) 1987-88 pay deal	1987-88		Review body or other arrangements set up;
February					
March					
April					1987-88 settlement.