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## DEPARTMENT OF EDUCATION AND SCIENCE

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FROM THE SECRETARY OF STATE

The Rt Hon Patrick Jenkin MP  
 Secretary of State for the Environment  
 2 Marsham Street  
 LONDON SW1 3EB

9 November 1984

*Mr Patrick,*

I have been considering the handling of the transfer of staff between the existing and the new ILEA. I recognise that there are powerful arguments in favour of block transfer. One of these was referred to in Ken Baker's paper on redundancy compensation for re-employed staff (MISC 95(84)(16) which we discussed in MISC 95 last week, namely the difficulty of otherwise avoiding having to make severance payments to all staff whose contracts were terminated on abolition. Moreover the Yellow Book committed the Government to using block transfer for "clearly identifiable groups of staff" and in your speech of 20 September to the AMA I note that you specified operational staff of the new joint authorities, including the new ILEA.

Nonetheless, it will not be obvious to all our supporters why the Government should lay an Order obliging the new ILEA to take the operational staff in service with the old ILEA on 1 April 1986 and I suspect that we may come under pressure to explain and reconsider the proposal. Most of the pressure will no doubt come from those who are concerned about the manpower levels in ILEA; on that score we have a good answer in rate-capping and the reserve manpower controls. But another concern, which I share, relates to the quality of the teachers in London: it is arguable that we should not be denying the new ILEA the opportunity to weed out poor performers on the staff of the existing ILEA. This argument has led me to pursue the analysis further; and while I have, with some reluctance, come to the conclusion that block transfer is still the right course, I think the point is important enough for me to share the decision, and the basis for it (set out in the attached note), with you and colleagues.

I am therefore copying this letter and note to the Prime Minister, other members of MISC 95 and Sir R Armstrong.

*Ken  
 Ken.*

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## BLOCK TRANSFER OF ILEA STAFF

1. There are two quite separate arguments that may be put against a block transfer, depending on what would be intended to happen in its absence:

(a) a block transfer Order would obviously be incompatible with a policy of requiring the new ILEA to start life with substantially fewer staff than the existing body;

(b) such an Order is also inconsistent with a policy of leaving the new ILEA with the onus of deciding for itself how many of the staff of the existing ILEA to recruit.

2. As to the first argument, MISC 95 have agreed that manpower control should be kept in reserve in the case of ILEA and that rate-capping should be sufficient to achieve an orderly and progressive reduction in manpower levels. It would be difficult to frame or enforce a legal provision which required an LEA to make a given substantial cut in manpower at a single point in time. Furthermore, such a cut, imposed two thirds of the way through an academic year, could be very damaging to the education provided to pupils and students.

3. The second argument is partly presentational. To impose a block transfer could be taken as some kind of approval by the Secretary of State of the manpower total with which the new ILEA would start. The answer to this is that rate-capping manifestly shows the Government's determination to reduce ILEA manpower.

4. However there is a more subtle point to be considered in relation to the quality of ILEA staff, particularly its teaching force. The new ILEA would be deprived under a block transfer of the opportunity of being free to reject those staff whom it did not wish to re-employ. We know that it has a surplus of teachers above even its own very generous "authorised" school staffing levels and that the package of voluntary severance, redeployment and retaining measures which it has introduced, while taken up by some hundreds of staff, has not disposed of the problem. By not imposing a block transfer, the Government would be allowing the new ILEA a special opportunity to deal with this.

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5. There could scarcely be an objection on administrative or educational grounds. The staff in question are by definition superfluous, identified and relatively few in number. There would however be objections from the staff concerned and their unions, and the new Authority might well not wish to use the opportunity it was being offered. It could not be compelled to do so.

6. There is a further weighty objection, in that it would not be sufficient merely to abstain from having a block transfer Order. It would be necessary to make special provision as regards employees' legal rights. MISC 95(84)16, the Minister for Local Government's paper on the re-employment of staff who have obtained redundancy compensation, explains that abolition will operate to terminate the contracts of all staff of abolition authorities and so entitle them to a range of severance payments, unless they accept voluntary transfer or are transferred en bloc or accept a job offer with a successor (or other) authority, within 28 days and that this represents a loophole which staff could exploit by deferring acceptance of a job offer for 28 days. While the vast majority of staff would probably not wish to take the risk of not getting another job the only way of blocking the loophole other than by block transfer is by setting aside employees' statutory and contractual rights under employment protection legislation. This would be draconian; and possibly open to challenge before the European Commission of Human Rights and in relation to the EEC Acquired Rights Directive.

7. There is a further special problem in relation to ILEA. Although abolition of the GLC will operate to terminate the contracts of employment of all ILEA employees, the situation of all the teaching and non-teaching staff of schools and colleges is also covered by the Articles of Government of their institutions; and I am advised that under the terms of these Articles posts at schools and colleges in ILEA will not become automatically vacant on abolition. In order to protect the new Authority from legal action aimed at requiring staff to be appointed to the Authority's service it would be necessary for the Bill to secure that the posts were, notwithstanding the relevant Articles of Government, to be treated as vacant. This would not be sufficient, however, since the Articles also then provide that on the occurrence of a vacancy a complicated selection procedure ensues, involving advertising the post, short listing candidates, interviews by Governors and elected Members, and appeals at each stage. The Bill would need to set this procedure aside and empower the Authority to re-appoint all those it did not wish to dismiss, by a streamlined special procedure.

8. In the case of voluntary aided bodies the employer is not the ILEA but the Governing Body itself, which would not lapse on abolition. Contracts of employment of staff of voluntary aided schools and colleges will not therefore be terminated by abolition

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and if parallel action were to be taken for these bodies the Bill would need to provide that these contracts were to be deemed to be terminated.

9. Thus it would be necessary to devise an anti-loophole measure; a measure to set aside relevant Articles of Government and substitute a streamlined re-appointment procedure; and, if the option was to apply to the voluntary aided sector, an additional measure deeming the contracts of employment to be terminated. In return for this the new ILEA would have been presented with an option which it might or might not decide to exercise. If it did exercise it, it would probably wish to do so only in respect of a hundred or so teachers out of 30,000 FTEs. Despite the logical attraction of this idea therefore, the potential gain is not judged commensurate with the practical difficulties entailed in pursuing it.



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2 MARSHAM STREET  
LONDON SW1P 3EB

01-212 3434

My ref:

Your ref:

21 November 1984

Dear Keith,

Thank you for your letter of 9 November outlining the conclusions you have reached about the arrangements for transfer of staff to the new ILEA on abolition.

I entirely share your view of the difficulties and complications which would arise if the operational staff of ILEA were not transferred by a block transfer order. These seem to me to rule out alternative approaches, designed to give the new ILEA an opportunity to weed out a relatively small number of staff - however desirable that objective may be.

Practical obstacles apart, however, I would ask colleagues to recognise that the decision we took on timing of elections to the new ILEA means that the authority will be under exactly the same control as now on 1 April. Is it realistic to expect that they will take decisions to weed out staff which they are not prepared to take now?

I hope nonetheless that in applying block transfer to operational staff you will leave open the possibility of making some reductions in the present County Hall bureaucracy. Recruitment rather than transfer for some of these staff does not appear to present the same difficulties - provided, of course, that ILEA can be made to pursue a policy of economy and efficiency in their management.

As you know, we are shortly going to issue a paper setting out our staffing proposals. My officials are consulting yours and those of other interested departments on the text. It will be necessary to record your decision on ILEA in the paper.

I am copying this letter, as you did yours, to the Prime Minister, MISC 95 members, and to Sir Robert Armstrong.

*Patrick Jenkin*

PATRICK JENKIN

The Rt Hon Sir Keith Joseph Bt MP

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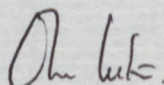
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In principle, the Government should be seeking reductions in all forms of ILEA staff. But there now seems little prospect of achieving such reductions in the case of teachers and other operational staff. It is therefore essential, as Patrick Jenkin says, to leave open the possibility of making cuts in the present County Hall bureaucracy.

If rate-capping works, there will be considerable pressure on ILEA to find savings; and the obvious place for these savings to arise is in the bureaucracy. The sensible course is, therefore, to ensure that the ILEA has to recruit its bureaucrats afresh.

We suggest that the Prime Minister should write to Patrick Jenkin or Keith Joseph:

1. accepting block transfer of operational staff;  
and
2. supporting the proposal that the ILEA should be given the opportunity to reduce costs by cutting its bureaucracy.



OLIVER LETWIN