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CITY HALL
BELFAST
BT1 5GS

30th April, 1986

Dear Alderman/Councillor,

I enclose for your information summary of the Judgment given by Mr. Justice Hutton this morning regarding the Council's failure to hold meetings of the Council and its Committees in accordance with the Order of Mandamus issued in the Court of Appeal on 14th February, 1986.

I also enclose notes by the Council's Senior Counsel, Mr. David Hunter on the effect and consequences of the judgment of Mr. Justice Hutton.

Yours faithfully,

A large, stylized handwritten signature in cursive script, likely belonging to the Town Clerk.

Town Clerk

To: The Rt. Hon. the Lord Mayor and
Members of the Belfast City
Council

Since December 1985 Belfast City Council has not been holding meetings of the Council, and Committees of the Council have not been meeting, as a protest against the Anglo-Irish Agreement. The resolutions of the Council that meetings should not be held have been passed by the Unionist Councillors who form the majority on the Council, and a minority of the Councillors have voted against the resolutions On 7th February 1986 the High Court, on the application of the present applicants, ordered that Belfast City Council should:

- "1. hold such meetings of the Council as be necessary for the transaction of its general business;
2. hold such committee meetings of the Council as be necessary for the exercise of such functions of the Council as have been lawfully and properly delegated to any committee of the Council;
3. hold a meeting of the Council before 15th February 1986 to fix for the next following financial year the amount estimated to be required to be raised by means of a rate made by the Council."

On 14th February 1986 the Court of Appeal ordered Belfast City Council by way of mandamus:

- "1. to hold such meetings of the Council as are necessary for the transaction of its general business;
2. to hold or cause to be held such Committee meetings of the Council as are necessary for the exercise of such functions of the Council as have been or may be properly delegated to any Committee of the Council;
3. on or before 26th February 1986 at a duly convened meeting of the Council to fix for the next following financial year the amount estimated to be required to be raised by a rate made by the Council."

In the present application the applicants seek an Order that:

"The Belfast City Council be fined for having neglected or refused to obey the Order of Her Majesty's Court of Appeal in Northern Ireland dated 14th February 1986 requiring the Belfast City Council by way of an Order of Mandamus:-

- (a) To hold such meetings of the Council as are necessary for the transaction of its general business;
- (b) to hold or cause to be held such Committee Meetings of the Council as are necessary for the exercise of such functions of the Council as have been or may be properly delegated to any Committee of the Council;
- (c) on or before 26th February 1986 at a duly convened meeting of the Council to fix for the next following financial year the amount estimated to be required to be raised by a rate made by the Council."

..... the Order of the Court of Appeal was duly served on Belfast City Council, with full knowledge of that Order the Council at a meeting held on 26th February 1986 resolved by twenty seven votes to twenty one votes not to hold any meetings of its Committees during the month of March or the monthly meeting of the Council of 2nd April, the Council has deliberately disobeyed the Order of the Court of Appeal and is in contempt of court a rate was fixed on or about 18th March 1986 by the Department of the Environment so therefore I do not propose to consider whether this Court should take any action against Belfast City Council in relation to its failure to obey paragraph (3) of the Court of Appeal's Order

Where there is a breach of an order of the Court in a civil matter (as is this case) the contempt is civil contempt and not criminal contempt and the Court itself does not initiate proceedings against the person or persons in contempt but the application against the person or persons in contempt is brought by the party or parties in whose favour the order was made.....

The law is clear that in a case of this nature, provided that the necessary procedural requirements are observed, proceedings for contempt can be brought against the individual Councillors..... In this case the applicants have decided to proceed, as they are entitled to do, against Belfast City Council itself and not against the individual Councillors who have voted for the resolution which has caused the Council to be in breach of the Order of the Court of Appeal. It is clear law that a corporation or a limited liability company or a trade union can be fined for contempt, as opposed to the persons, such as councillors or directors or members of the executive committee, who actually make the decisions which give rise to the contempt. In this case this means that any fine imposed by the Court will have to be paid by Belfast City Council out of its general funds and the financial burden will therefore fall on the general body of the ratepayers of the City of Belfast and not on the individual Councillors who have decided that the Council should not obey the Order of the Court of Appeal.....

Section 82(1) of the Local Government Act (Northern Ireland) 1972 (as amended) provides:

"Where it appears to a local government auditor at any audit held by him -
that a loss has been incurred or deficiency caused by the wilful misconduct of any persons, he shall certify that the sum or, as the case may be, the amount of the loss or the deficiency is due from that person and, subject to subsections (3) and (5), both he and the council concerned may recover that sum or amount for the benefit of that council; and if the auditor certifies under this section that any sum or amount is due from two or more persons, they shall be jointly and severally liable for that sum or amount."
.....

In my opinion this is a case in which the legal concept that a city council is separate and distinct from its councillors creates a situation of some artificiality, but nevertheless the legal principle is clear that a corporation is a legal person separate and distinct from its members..... the Courts have fined or issued writs of sequestration against local government councils and trade unions for

contempt of court, notwithstanding that the decision to disobey the orders of the Courts were taken by individual members of those bodies and that some members were opposed to such disobedience I consider that the applicants are entitled to claim that Belfast City Council, as opposed to the individual Councillors who passed the resolution, is in contempt of court and should be fined for that contempt. And as the City Council is in contempt of court I consider that the Court should impose a fine on the Council for that contempt..... in the present case, although the fine must be substantial I do not consider it appropriate to impose a very heavy financial burden on the general body of the ratepayers of the City of Belfast and, in addition, although the applicants through their counsel have to some extent disclaimed that this was their purpose, I consider that the Court should not close its eyes to the possibility to which Mr. Cook has referred in his affidavit that ultimately, through the action of the local government auditor, the fine imposed together with legal costs may have to be borne by individual Councillors. Therefore I consider that the appropriate fine to impose is £25,000 the Court orders Belfast City Council to pay a fine of £25,000 for contempt of court, but the Court further directs that the execution of this Order shall be suspended for seven days, and the Court further directs that if within the said period of seven days Belfast City Council resolves to hold its meetings and meetings of its committees as ordered by the Court of Appeal, this Order for the payment of the fine of £25,000 will be discharged and cease to have effect.

BELFAST CITY COUNCIL

The Effect and Consequences of the Judgment
of Mr Justice Hutton of 30th April 1986.

Belfast City Council (the Council) is in contempt of court, in that it has:

- (a) failed to hold such meetings of the Council as are necessary for the transaction of its general business.
- (b) failed to hold or cause to be held such Committee meetings of the Council as are necessary for the exercise of such functions of the Council as have been or may be properly delegated to any Committee of the Council.

The Council, in its capacity as a corporate body, has been fined £25,000.

This fine falls to be paid out of the general funds of the Council. The financial burden of the payment of the fine will therefore, at least initially, fall on the general body of the ratepayers of Belfast.

In due course, acting under Section 82 of the Local Government Act (Northern Ireland) 1982 (as amended), the Local Government Auditor may seek to recover the amount of the fine, as a loss sustained by, or a deficiency caused to, the Council by wilful misconduct in consciously and deliberately coming into contempt of court, as a surcharge from those individual councillors whose consistent voting at the material meetings of the Council has ensured that it has continued to fail to transact its business. In the event of the appropriate action by the Local Government Auditor, those councillors would be liable, jointly and severally, to pay to the Council the amount of the fine, and also ^{to} suspension for five years from holding office as councillors (cf the recent confirmation by the Court of Appeal in England of orders for substantial payments by councillors in Lambeth and Liverpool).

The execution of the court order imposing the fine is suspended for seven days. If within the period of seven days the Council resolves to hold its meetings and meetings of its committees as ordered by the Court of Appeal on 14th February 1986, the said order for the payment of the fine will be discharged and cease to have effect.

Should the Council fail to purge its contempt by resolving within seven days to meet, and fail also to pay the fine, this would be a further contempt of court. The most probable consequence of such failure by the Council would be the sequestration by the court of the property and assets of the Council. The effect of sequestration would be that the entirety of the property, funds and other assets of the Council would be seized and held on behalf of the court until the Council's contempt had been purged

(in this case by an undertaking to pay the fine), and the said property, funds and assets would pass completely out of the control and management of the Council and its officers. All business, powers and actions of the Council would thus effectively be frozen.

Should such sequestration occasion a loss or deficiency to the Council - and inevitably a very substantial loss would occur by way of legal and administrative costs of the sequestration, of loss of income and revenue to the Council, and of liabilities incurred by the Council by reason of inability to act, again such loss would initially fall on the general body of the ratepayers, but would in due course fall to be considered by the Local Government Auditor, who could, as in the case of the amount of the fine, proceed to recover by way of surcharge the amount of the loss from individual councillors found to be responsible therefor.

The fine of £25,000 has been imposed in respect of the contempt of the Council to date. Even though the fine were to be paid, a continuation of the policy of the Council of failing to transact its business would be a further and fresh contempt of court, and would be subject to further penalty by way, in all probability, of a greatly increased fine.

An appeal from the judgment of Mr Justice Hutton would be utterly futile in terms of its prospects of success, and could be of no conceivable practical or tactical advantage to the Council.