CONFIDENTIAL

Prime Minister

We are to discuss at E tomorrow David Howell's paper (E(82)2) on the implications of the House of Lords judgement in the GLC/ Bromley case.

There are three points about the block grant implications of the Lords decision and the GLC reaction to it which I should draw to colleagues' attention. In addition, I am reporting on the current position with regard to possible refunds to ratepayers who have paid the supplementary rate.

First, the effect of the decision which the GLC have taken yesterday to reduce their subsidy to London Transport in the current financial year (1981-82) to the Cutler level will be to recover for them the block grant (about £60m plus about £30m of prospective grant holdback) which they would have lost under the Livingstone cheap fares budget. This restoration of grant is an automatic consequence of the rate support grant legislation, and does not require any action or decision by the Government.

My only discretion in the matter is about the timing of the restoration of the grant. We should bear in mind in this context that the GLC's grant for 1981-82 is paid not to them but to the London Boroughs, who have therefore borne the grant consequences of the GLC's cheap fares policy, although they had no means of influencing it. I therefore propose to restore the grant as soon as possible. There is fortunately just time to make the necessary adjustments in the Supplementary RSG Report for 1981-82 at proof stage before it is published in the week beginning January 25. This will ensure that the grant gets back to the London Boroughs in their grant payments in February and March, and will enable them to refund that part of their supplementary rate attributable to grant loss as well as that part due to the direct cost of the GLC cheap fares policy.

Secondly, the block grant position in 1982-83. As David Howell has pointed out in his paper the TSG settlement for 1982-83 assumes that the GLC could and should continue to give revenue support to London Transport at about the same real level as planned in the Cutler budget for 1981-82. The RSG settlement implicitly makes a similar assumption in the GREs and targets for the GLC in 1982-83. If colleagues agreed that this is still an appropriate level of support for the GLC to give to London Transport in 1982-83 there will be no need to reopen that part of the RSG settlement.

London Transport's 1981-82 deficit of £120-125m will however be more of a problem. Since the GLC have now decided that they cannot themselves meet this deficit in 1981-82 I understand that London Transport will cover their immediate position by temporary borrowing, but that this will have to be repaid in 1982-83. The cost will therefore have to be recovered in that year either by further borrowing (requiring further legislation), or by further fares increases and/or service cuts, or from the GLC, ie from London ratepayers.

The last of these options would have grant consequences. If the GLC resolved to pay off some or all of the 1981-82 deficit as part of their 1982-83 budget (and everyone agreed that it was legal for them to do so), they would inevitably find themselves overspending the targets which I have issued for 1982-83, and hence would incur grant penalties in that year which would add to the ratepayers burdens. If the Government had openly, or even tacitly, accepted that the GLC should meet this cost in 1982-83, we might then come under strong pressure to abate the grant penalties in respect of this expenditure, eg by increasing their target for 1982-83 by the amount of this expenditure.

This could be difficult to handle. I think we should be very reluctant to consider any concession since the GLC set out on the cheap fares policy in 1981-82 in full knowledge of the grant consequences and ought to suffer the penalties accordingly. Moreover any concessions would have to be paid for either by extra Exchequer grant or by taking grant from other authorities. Neither would be attractive. Nevertheless I can foresee that this may be a hard line to hold, particularly in the current year when we shall want to keep London rates down as far as possible. For my part I would therefore incline more towards one of the options that would leave London Transport to make up the lost £120-125m from the farepayer, perhaps with the option of legislation to enable them to spread the necessary increases over five years with temporary borrowing meanwhile if the single year increases would otherwise be too large.

The third grant issue concerns the concessionary fares for old-age pensioners etc discussed at paragraphs 5 and 6 of David Howell's paper. As he points out there could be considerable difficulties on the grant front in trying to transfer this responsibility from the GLC to the London Boroughs in 1982-83. The GLC's GRE for this purpose is about £30m in 1982-83, whereas it is estimated that their prospective expenditure on the present scheme (after the forthcoming 100% fares increase) could be about £60m. If we were to invite the boroughs to resume responsibility for the scheme but only gave them £30m of GRE they would immediately be faced with the unenviable choice between halving the benefits of the scheme or becoming overspenders overnight in this respect. It would not be right to try to overcome this problem by increasing the total of block grant for 1982-83 or taking grant fron non-London authorities. So if the LBA made this a sticking point I would myself reluctantly conclude that we should after all have to give the GLC the powers to carry on this function.

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On timing I agree with David Howell that we should not rush into legislation on the longer term issues. But both the GLC and the Government will need early resolution of the issues concerning the GLC's expenditure, rates, and grant entitlement in 1981-82 and 1982-83.

Repayment of Rates

As I indicated in my letter of 7 January to the Attorney General (copied to members of E) I have taken the advice of Counsel on the question of refunding ratepayers who have paid supplementary rates issued in consequence of the now unlawful GLC supplementary precept for the purpose of subsidising fares. As you know, the law is not clear on this issue. In particular, although ratepayers who have not paid have been told by Lord Denning that they need not do so, there is doubt whether the boroughs have the power to refund the money to those who have paid.

Counsel has advised, however, that despite the uncertainties surrounding the legal position the boroughs have power to make voluntary repayments to the ratepayers who have already paid; this action being in accordance with their fiduciary duties to all ratepayers, namely to secure as far as possible parity of treatment for those who have paid and those who have not paid.

With this advice in mind we have now been able to look more closely at the scheme devised by the London Boroughs Association (to which I referred in my earlier letter) which is intended to provide a solution to the various problems. An outline of the proposed LBA scheme, which assumes that the GLC grant penalties will be restored in full, provides that:

i. boroughs should rescind in their entirety any supplementary rates which were made (whether in whole or in part) in pursuance of the GLC's supplementary rate for London Transport purposes; and if necessary make fresh supplementary rates where revenue is still required for lawful purposes (eg the ILEA precept);

ii. where ratepayers have already paid the supplementary rate they should be credited with the appropriate amount for next year's rate, except that -

iii. ratepayers who ask for a refund should have them;

iv. no interest shall be payable on refunds.

Subject to colleagues' views I am prepared, on the basis of Counsel's advice, to support in principle the LBA's scheme. Given that we are approaching the end of the financial year it appears to strike the right balance between equity for ratepayers and practical common sense in terms of the administrative burden placed on the boroughs.

It remains to be seen, however, whether individual boroughs are satisfied - given the uncertainty of the law - that they have the vires to comply with the LBA scheme (they could face surcharge if not) or indeed whether they are willing to comply on political grounds. Further, many aggrieved ratepayers have appealed under S7 of the General Rate Act 1967 against the supplementary rate. When these cases are heard (which is expected to be at the end of this month) there will be various options open to the Crown Court, some of which might conflict with the LBA scheme.

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I am, as you know, very concerned to ensure as far as possible uniformity of treatment to all London ratepayers; this could be frustrated if individual boroughs, for whatever reason, are not prepared to play ball. I do not wish, however, to rush into legislation to resolve the situation unless it is absolutely necessary to do so. I therefore propose to give as fair a wind as possible to the LBA scheme by saying that on legal advice I think that the better view is that the boroughs have the power to comply with the LBA scheme, but that, as the legal position is not entirely clear, in order to protect them from the possibility of surcharge I will be prepared to grant a special sanction to individual boroughs under S161 of the Local Government Act 1972. In addition I would say that I want to see uniformity of treatment for London ratepayers and that I therefore hope all boroughs will comply with the LBA scheme; but that if they do not I shall have to consider legislation. (I ought to point out to colleagues that such legislation would have to be of an emergency nature and could in the time available be devised only to deal with the particular position of the GLC in 1981/82).

I am copying this to other members of E Committee, the Lord President to the Attorney General, the Chief Whip, and to Sir Robert Armstrong.

M H

13 January 1982

6F

P.0628

PRIME MINISTER

Transport Subsidies and Related Issues
(E(82)1 and 2)

BACKGROUND

The Secretary of State for Transport's proposals for dealing with the transport questions arising out of the House of Lords' judgement on the Greater London Council's (GLC) cheap fares policy for London Transport (LT) are set out in E(82)2; the issues are examined in more detail in the paper by officials attached to E(82)1 which can be regarded as a background paper. The Secretary of State for the Environment's minute discusses the repayment of the supplementary rate and the implications for the London boroughs' block grants; the Attorney General's minute dated 12 January gives his advice on the various legal points arising.

2. The Secretary of State for Transport's general approach is that it should be left to the GLC to sort out the immediate financial problems which arise in 1982 and that the Government should intervene to legislate only in so far as this is absolutely necessary to ensure a sensible policy for transport in London. With the likely exception of concessionary fares, it now seems probable that immediate legislation will not be necessary. This has considerable advantages: as the Secretary of State for Transport points out, it avoids the Government's appearing to take responsibility for the big fare increases in 1982; perhaps more important, it gives time for careful consideration of the complex questions which arise on the legislation which may well be necessary to deal with transport policy in London and elsewhere after 1982.

MAIN ISSUES

3. The main issues for discussion fall under the following headings:

a. London Transport in 1982;
b. Concessionary fares;
c. London Transport after 1982;
d. The Passenger Transport Executives;
e. Supplementary rates;
f. Block grants.

London Transport in 1982

4. The GLC decided last night that LT fares will be doubled on 21 March and that savings will be found from cuts in services and in capital expenditure. This is their decision and, as it seems a necessary and reasonable first step in dealing with the problem, there should be no need for the Government to intervene to persuade the GLC to act otherwise.

5. This action will, however, still leave LT with a substantial deficit. Of this, £125 million is the accumulated deficit resulting from the fares cut and the extra costs incurred in 1981 as a result of GLC's policies. GLC are expected to reject LT's proposal for dealing with this deficit by borrowing over 5 years, which would require legislation. Instead they are likely to fund it by temporary borrowing for the moment and then, in financial year 1982-83, by either further fare increases or by a grant to LT, which would probably mean higher rates than otherwise for the London ratepayers, or by some combination of the two. In addition, there is a current deficit which will require revenue support which is in line with what the Secretary of State for Transport accepted for the purpose of Transport Supplementary Grant. The GLC's legal advisers consider that revenue support of this order in 1982 is consistent with the Lord's judgement.

6. Although you will wish the Attorney General to confirm his views at the meeting, paragraphs 3.1 to 3.3 of his minute seem to make clear that he accepts that the GLC's proposed approach, both to the current and the accumulated deficits, is consistent with the Lords' judgement. This is an important point because it means that it will not be necessary to decide between accepting yet further large fare increases in 1982 and rushing through difficult and contentious legislation to enable reasonable susbsidies to be paid in the year. Apart from concessionary fares, any further legislation can be deferred to the 1982-83 session.

7. The next step for 1982 will be for the GLC to decide definitely on how they want to deal with the accumulated deficit. If they do decide to fund it by a grant, and thus fix their precept higher than it otherwise would have been, they will be spending more in 1982/83 than assumed in the Rate Support Grant settlement and they will be liable to grant penalties. The Department of the Environment do not wish these penalties to be waived: to do so would mean revising the RSG settlement, or its distribution, which has just been agreed with great difficulty; it can be argued that since GLC will not now suffer grant penalty in 1981-82 that

is a sufficient concession to them. These points are discussed in paragraphs 1 to 10 of the Secretary of State for the Environment's minute. He warns that if, for good reasons, grant waiver is refused, the Government will be blamed for bringing about higher rate increases than otherwise and this could affect the Conservative Party's prospects in the May London borough elections. This may lead to consideration of one of the alternative courses - putting the burden on the farepayer or early legislation to permit borrowing (this could be in the same Bill as powers on concessionary fares). You will wish to give at least provisional guidance on this to the Secretaries of State for Transport and for the Environment for any further discussions and negotiations they may be having with the GLC and the London boroughs.

Concessionary Fares

8. Unlike the London boroughs and the Metropolitan counties, the GLC do not have specific powers to finance concessionary fares. The Lords have ruled that their general grant powers are not appropriate for the subsidies now being given. With your agreement, the Secretary of State for Transport has already said publicly that the Government believes that London's Old Age Pensioners should continue to enjoy concessionary fares and that, if insoluble problems were encountered, he would certainly consider sympathetically what changes were needed to solve them.

9. As he explains in paragraphs 4-6 of E(82)2, he hopes that the London boroughs might take over the concessionary scheme from the GLC. It is, however, unlikely that they will be willing to do so. There is no provision in the Rate Support Grant settlement for them to incur additional expenditure in 1982-83 on this count and, if they were to do so, they would either incur grant penalties or the RSG settlement would have to be redrawn to prevent this. They could also be worried about the cost of concessionary fares at a time when fares will be rising sharply. The GLC could take on responsibility under their present powers, to make grants from the product of a 2p rate, only if they were to reduce substantially the value of the concessions and to withdraw some of the job creation schemes they have in mind. The outcome may well be, therefore, a demand for a short Bill to give the GLC the same powers to subsidise concessionary fares which are available to other councils. The Department of Transport are not yet clear on the timing of this but the likelihood is that it would need Royal Assent this summer.

10. The Committee will wish to take a provisional view on whether they agree that such a Bill should be introduced if necessary. While it may well turn out to be

unavoidable it is likely that, though short, it would give rise to contentious debate particularly on the amount of subsidy which GLC might give under the enabling powers.

London Transport after 1982

11. Even if it is accepted that the immediate problems of 1982 can be dealt with broadly as discussed above there remain important questions on the arrangements for later years. While some substantial degree of revenue subsidy may be reasonable for the transitional year of 1982, it still has to be decided whether legislation is necessary to enable continuing "reasonable" subsidies in later years. The broad options for any such legislation are discussed in paragraphs 4.5 to 4.10 of the report by officials attached to E(82)1. They raise difficult questions about the balance to be struck between central and local control and decision making and they will need to be considered carefully.

12. This further work on the case for continuing subsidies, and the legislative options for enabling such subsidies to be provided, needs to be considered alongside the possibilities for radical changes in the arrangements for planning and managing public transport in London and the surrounding regions - this leads in to questions about the role of the GLC, the co-ordination of decisions on all forms of transport in the Metropolitan area and the possible role of the private sector (see paragraph 4 of E(82)2).

13. I suggest that you ask the Secretary of State for Transport to arrange for officials of his Department, of the Department of the Environment and of the Treasury and the CPRS to consider these questions in detail over the next few months and to prepare a report for consideration by Ministers before the Summer Recess. This report could take account of the recommendations which the Select Committee on Transport are due to make in the spring following their examination of transport arrangements in London. It could also cover, as necessary, the need for legislation and different arrangements for the Passenger Transport Executives (PTEs).

Passenger Transport Executives

14. Some of the Metropolitan counties are now facing legal action, similar to that taken against the GLC, for their cheap fare policies for the PTEs. The Secretary of State for Transport proposes (paragraph 7 of E(82)2) that he should

now make clear to the Association of Metropolitan Authorities that the Government's legal advice is that they are required to reduce their subsidies on the principles applicable to the GLC and LT. On this basis no legislation should be necessary in 1982, although it is for further consideration whether anything is necessary for the longer term. The Committee will wish to note, and perhaps to discuss, the likely fare increases which will result in the PTEs - see Annex B at the end of the report by officials, E(82)1.

Supplementary Rates (see paragraphs 11-17 of the Secretary of State for the Environment's minute of today)

15. The Treasurers of the London boroughs have recommended to their elected members that those ratepayers who apply for repayment of the supplementary rate, raised following the GLC's precept in 1981, should receive a refund and that those who do not apply should receive a credit against next year's rate. The Secretary of State for the Environment advises that Counsel has confirmed that these proposals are acceptable in law. The Attorney General will wish to say whether he agrees. This is satisfactory in so far as it appears that there is not need for the Government to intervene or to introduce legislation to deal with this problem. The Secretary of State wishes to make an early announcement of the Government's views on this point and to indicate that the London boroughs should act uniformly.

16. The Committee should, however, be aware that the result of all these proposals will not be an unqualified victory for the London ratepayers. They will get something back but the probability is that they will have to pay higher rates than otherwise in 1982-83 because of the accumulated deficit which has arisen as a result of the GLC's cheap fares policy. In addition, services will be cut and farepayers will be paying more. This is, however, largely unavoidable and the important positive point to register is that, if it had not been for the Lords' judgement, ratepayers would have had to finance the GLC's policy on a continuing basis.

Block grants (see paragraphs 1 to 10 of the Secretary of State for the Environment's minute of today)

17. The GLC's decision to revert to the Conservative administration's budget for LT means that £60 million of grants which had been withdrawn from the London boroughs will now be repaid to them and that £30 million grant which would have

been withheld from the GLC will now be paid. This follows automatically under the present RSG arrangements and it does not call for any decisions by the Committee. The Secretary of State for the Environment wishes to make an early announcement on this point.

18. There will, however, be grant penalties on the boroughs if there is a revenue grant to LT in 1982-83 to pay off the accumulated deficit and/or the boroughs have to pay more in 1982-83 as a result of taking over from GLC responsibility for subsidising concessionary fares. The issues here are discussed in paragraphs 7 and 9 above.

HANDLING

19. You might first ask the Secretary of State for Transport to make a brief general introduction and also give the Secretary of State for the Environment, the Attorney General and the Chief Secretary, Treasury the opportunity to make any general points they wish to register before turning to the specific issues ie:

- the short term issues concerning London Transport (the 1982 Budget and concessionary fares)
- the longer term issues affecting London Transport
- the analogous short-term and longer term issues affecting the PTEs
- the rates issues (repayment, extra rates in 1982-83, and grant penalties).

20. You might then ask the Secretary of State for Transport to take the Committee through the specific issues arising on the transport front and, following that, the Secretary of State for the Environment to do likewise for his responsibilities; the Attorney General can come in on particular points as necessary.

21. The Lord President of the Council and the Chancellor of the Duchy of Lancaster will want to comment on any proposals for urgent legislation to deal with concessionary fares and any other technical questions arising. The Secretaries of State for Scotland and for Wales have a general interest in the impoications of these proposals for relations with local authorities; the decisions could well influence what happens in Scotland although they do not bite directly on them.

CONCLUSIONS

22. You will wish to record conclusions on the following:

i. confirming that GLC should go ahead broadly as proposed in 1982, with early legislation avoided so far as possible;

ii. whether there are any objections to GLC financing the accumulated deficit by grant in 1982-83, if they so wish; whether any request for waiver of grant penalty should be refused; and whether it would be better to legislate to enable LT to fund the deficit by borrowing over a period (paragraph 7 above);

iii. whether, and if so over what timescale, there might be early legislation to give GLC powers to subsidise concessionary fares, should this prove necessary following the proposed discussions between the GLC and the London boroughs (paragraph 10);

iv. inviting the Secretary of State for Transport to arrange for officials, under his Department and including representatives of the Department of the Environment, the Treasury and the CPRS, to report by the Summer Recess on the longer term options for legislation and possible new arrangements for transport in London and the PTEs on the lines indicated in paragraph 13 above;

v. agreeing that the Secretary of State for Transport should make clear to the Association of Metropolitan Authorities and the PTEs that they are required to reduce their subsidies on the same principle as those applied to the GLC and LT (paragraph 14);

vi. noting the position on repayment of supplementary rates (paragraphs 15 and 16) and of block grant in 1981-82 (paragraph 17).

23. It may well be that, following further discussions with the GLC and the AMA, the Secretary of State for Transport, and possibly the Secretary of State for the Environment too, will wish to come back to the Committee at the end of the month or in early February for approval of some of the details.

PLG

P L GREGSON

13 January 1982

For B Folder

CONFIDENTIAL

Qa 05772 12 January 1982

To: MR SCHOLAR

From: J R IBBS

London Transport

1. The papers by officials and those by the Secretaries of State for Transport and the Environment focus attention on the key issues requiring decisions now. On these points the CPRS have nothing to add. There is general agreement that there is no immediate need for legislation in advance of the March fare increase.

2. But the Law Lords' judgement has left a state of uncertainty about whether the GLC can legally continue to pay any subsidy in the longer term since it would presumably be "practicable" to eliminate the subsidy over time by some combination of higher fares, greater efficiency and reduced services. There is thus no satisfactory basis on which to plan and operate public transport in London. Also there are the questions of the accumulated deficit and concessionary fares. To resolve these uncertainties legislation will almost certainly be required before long, no matter what short-term decisions the GLC and London Transport take.

3. Before legislation can be devised, on the level of subsidy for public transport in London, three policy issues need to be addressed:

(i) the extent to which Ministers wish to seek control over public expenditure on this service which has until now been provided locally in most areas (PTEs);

(ii) the balance between different forms of public and private transport; any approach other than that of local discretion (within the grant system) would require Ministers to have a policy about the shape and size, and monopoly role,

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of the public transport system in London; the tighter the degree of control, the more specific the policy would need to be;

(iii) the arrangements for planning and managing public transport within the limits set by any Government policy.

4. These three issues are closely linked; they embrace such questions as:

- how should the balance of traffic between public and private transport be determined?

- how much is private (car) traffic likely to increase when public transport fares are increased?

- what are the implications of this increase for road construction and/or traffic restriction policies (including the parking regime and their enforcement)?

- should the policies of British Rail's commuter system, the Underground and the buses be better co-ordinated, and by what means?

- whether the London Transport Executive is the best arrangement for carrying out the policies for the Underground and bus services;

- whether the GLC is the right body to have local policy control over London Transport's functions, and, depending on the degree of government control, whether there needs to be local authority control at all.

5. These questions are not simple. But the CPRS believes that Ministers should have answers to them, and to the issues (paragraph 3) which underlie them, before they decide the forms of general legislation on subsidies. Although the work of the Select Committee on Transport will help, the CPRS think there is a strong case for Ministers to ask officials to examine these longer-term issues (as suggested in paragraph 8 of the summary of the paper by officials) and report back before the summer recess. The Secretary of State for Transport's paper recognises

the importance of these issues, but it does not seem to us enough to conclude that Ministers should simply "keep their minds open" about them. The work we suggest might be done in a group led by the Department of Transport, but including the Department of the Environment, Treasury and the CPRS.

6. I am sending a copy of this minute to Sir Robert Armstrong.

JR

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

PRIME MINISTER

LONDON TRANSPORT
MEMORANDUM OF THE LAW OFFICERS

This memorandum considers the following issues:-

1. The House of Lords Judgment.
2. The Implications for LTE and GLC.
3. The 1982 LT Budget.
4. Concessionary Fares.
5. Rates.
6. Metropolitan counties and PTEs.
7. Legislation.

1. The House of Lords Judgment

1.1. The case concerned the validity of a supplementary precept issued by the GLC to the London Borough of Bromley to enable the GLC to finance by grant to the LTE the cost of reducing fares overall by 25% and of introducing a simplified zone system.

1.2. The House of Lords decided that LTE's new fares structure was ultra vires the Transport (London) Act 1969, that the GLC had no power to pay grant under section 3 of the 1969 Act to finance the reduction and that the supplementary precept requiring the London Boroughs to levy a rate of 6.1 p in the pound to finance the unlawful grant was itself ultra vires and void.

/1.3

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01-405 7641 Extn

1.3 The five judgments can be reduced to the following two propositions:-

(a) LTE are under a duty to do their best to break even so far as is practicable and that the GLC power to pay grant for any purpose must be construed as enabling them to give revenue support only to the extent that it is not practicable for LTE to avoid a deficit, and

(b) that in considering the use of their grant-making power GLC must have regard to their fiduciary duty to hold a fair balance between ratepayer and transport user.

2. The Implications for LTE and the GLC

2.1. What must the LTE do to comply with the law? It must conduct its operations so as, so far as is practicable, to avoid a deficit taking one accounting period with another. We take the view that as far as expenditure is concerned, this gives the LTE the necessary tolerance to deal with matters which are not foreseeable such as stoppages due to strikes, accidents and emergencies. It also enables the LTE to provide essential transport services which cannot be run on a "break even" basis. Income must be raised principally from fares. This does not mean in our opinion that fares must be set at such a figure that a deficit will be avoided despite a significant fall in passenger services. Here again there is some room for manoevre. If in the result there is an unavoidable deficit then the loss may be made good by grant. If an unavoidable deficit is foreseeable a grant may be budgeted for.

/2.2.

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LONDON, WC2A 2LL

01-405 7641 Extn

2.2. What must the GLC do? The GLC has a statutory responsibility for formulating public transport policy for Greater London (section 1 1969 Act). It must ensure that it and the LTE comply with the law. When it uses its grant making power under section 3 it must hold a fair balance between ratepayer and farepayer.

3. The LT 1982 Budget

3.1. The House of Lords did not directly consider the deficit which would arise following their ruling. However they did consider the general treatment of deficit. Lord Scarman said, "If the Executive fails to make good in the following year the deficit that has arisen in the previous year, the GLC shall take action to enable the Executive to overcome the deficit. In other words, deficit is unacceptable: and the GLC may take action to get rid of it either by grant or by requiring an increase in the level of fares, (or by other steps)."

3.2. The LT revised Budget for 1982 anticipates a fares increase of 100%, a borrowing of £125m over 5 years and a GLC revenue grant of £109m. The zonal structure would be retained. There would be cost savings in all areas, rapid reduction in scheduled and manned bus mileage, a smaller reduction in train mileage and some closures and a controlled reduction of employment in London Transport. On this basis the revenue account would break even year by year. Subject to one reservation (this concerns the power of the LTE to borrow under section 8 of 1969 Act over 5 years. The GLC legal advice which is accepted by the Department of Transport is that "temporary borrowing" is restricted to borrowing over 12 months.), we do not consider that the courts would upset

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this budget on either of the grounds set out in paragraph 1.3 above. It follows therefore that the GLC approval of the revised Budget need not in our opinion be conditional on any further increase in fares during the year.

3.3. This proposal means that the GLC will issue a precept to finance the revenue grant to the LTE. Whilst this would appear to deprive Bromley of some of the fruits of their success we advise that it would not be unlawful on the part of the GLC, provided of course, they have had regard to their fiduciary duty to hold a fair balance between rate-payer and transport user and have considered the RSG consequences.

4. Concessionary Fares

4.1. London Transport offer free off-peak travel to the elderly and disabled. The GLC finance these concessions by grants to LTE under section 3 of the 1969 Act. Whilst the House of Lords judgment did not deal specifically with this question there is no doubt that on their interpretation of this section they can no longer continue to provide this subsidy in this way. Furthermore unlike other PTEs they have no specific statutory powers to enable them to provide concessionary fares.

They would nevertheless continue to provide them under general statutory powers by using section 137 of the Local Government Act 1972 (limited to the product of a 2 p rate) or rely on the London Borough's powers to pay grants.

/5. Rates

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LONDON, WC2A 2LL

01-405 7641 Extn

5. Rates

5.1. It is clear from the judgment that a precept issued to meet unlawful expenditure is ultra vires and void. It should follow that a rate made to meet such a precept is likewise ultra vires and void and that ratepayers who have already paid the unlawful part of the supplementary rate can recover the amount overpaid. Put another way ratepayers should be treated in a similar manner by all the boroughs affected and ratepayers who have already paid their supplementary rates should not end up worse off than those who have not yet done so.

5.2. It is clear that the GLC is not entitled to recover from the London boroughs any part of the supplementary precept which has been held to be ultra vires. The position of the individual ratepayer is fraught with a number of legal problems involving the General Rate Act 1967 and the legal precedents concerning money paid under a mistake of law. We will have to advise on this question at a later date after detailed consideration with Counsel. The most we can say at present is that it is arguable that the amount overpaid by the ratepayer is recoverable from the rating authority where the rate is ultra vires.

6. Metropolitan ~~Contracts~~ Counties and PTEs

6.1. These bodies are also subject to the duties referred to in paragraph 1.3 above above. The important difference being that they have specific statutory powers to enable them to provide concessionary fares.

/7. Legislation

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7. Legislation

Colleagues will be considering as a question of policy the need for legislation to deal with inter alia subsidies, concessionary fares and invalid precepts. However it is clearly desirable that the problems arising in all these areas should be considered in some detail and over a longer period than has been available to prepare this memorandum.

I have sent a copy of this memorandum to the Lord President, the Secretary of State for Scotland, the Secretary of State for Wales, the Secretary of State for Social Services, the Chief Whip, Sir Robert Armstrong and all members of 'E' Committee.

M.H.

12 January 1982

CONFIDENTIAL

ds

be Duguid

10 DOWNING STREET

From the Private Secretary

11 January 1982

London Transport and the GLC

The Prime Minister was grateful for your Secretary of State's minute of 8 January about his meeting with Mr. Livingstone on Friday morning.

I am sending copies of this letter to John Kerr (HM Treasury), David Heyhoe (Lord President's Office), Jim Nursaw (Attorney General's Office), David Edmonds (Environment) and David Wright (Cabinet Office).

M. C. SCHOLAR

Anthony Mayer, Esq.,
Department of Transport.

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