



P.0641

PRIME MINISTER

Greater London Council (GLC)  
and London Transport (LT)

## BACKGROUND

In January the GLC agreed that London Transport's fares should increase by 100 per cent on 21 March. On advice from the Attorney General, E Committee decided on 14 January that the Secretary of State for Transport should inform Mr Livingstone that in the Government's view there was no legal requirement for yet further fare increases during the year. The Committee also decided:

- i. that there should be an urgent bill to enable the GLC to subsidise concessionary fares and to permit LT to borrow for five years to cover its accumulated deficit: the bill has been drafted but not introduced;
- ii. that officials should examine the options for longer term arrangements for public transport in London and for the Passenger Transport Executives.

2. The Secretary of State for Transport's minute of 29 January reports that the GLC now take the view that the 21 March fares increase is not enough to comply with the Law Lords' interpretation of the Transport (London) Act 1969. Their legal advice appears to be that since the GLC would lose grant if they met LT's revenue deficit of £109 million, they would be in breach of their fiduciary duty to ratepayers; and that to minimise LT's deficit fares must be increased soon by a further 50 per cent above the 21 March level, ie three times what they are at present; services cut and concessionary fares cut back.

3. Mr Howell suggests that it may therefore be necessary for the Government to amend the Transport (London) Act to make clear that the GLC can pay a limited amount of subsidy to LT; or to remove control of LT from the GLC altogether.



4. The Secretary of State for the Environment's letter of 2 February to the Attorney General sets out the legal background more fully.

#### MAIN ISSUES

5. There are a number of points which ought to be clarified before the meeting considers the choices open to the Government.

#### The GLC

6. The Secretary of State for Transport may be able to give further details of GLC's intentions and of their timetable for decisions. In particular:

- i. do the GLC accept that LT will borrow to meet their accumulated deficit up to 21 March, as the Government intends?
- ii. By when must the GLC and LT reach agreement about fare increases or service cuts beyond those which come into effect on 21 March?  
(Probably 16 February, when the GLC need to approve their budget so as to fix their rate precept).

#### Rate Support Grant

7. The position is complicated. The 21 March fare increases should leave LT with a deficit of £109 million in 1982-83, which is of the same order of magnitude as the £89 million deficit which the Government has assumed in fixing the GLC's 1982-83 share of Transport Supplementary Grant (TSG). The workings of the block grant system mean however that any subsidy payment at all reduces GLC's receipts of RSG. In order to equalise the rate poundage cost among authorities of providing a comparable level of services, authorities with high rateable values, such as the GLC, lose grant as their expenditure increases even at "reasonable" levels of expenditure at or below grant related expenditure assessments (GREAs), ie they face "negative marginal rates of grant".

8. It appears that the GLC interpret the operation of this mechanism as equivalent to the imposition of block grant penalties. It can be argued that negative marginal grant rates for the GLC are an essential part of the block grant system and should not be confused with grant penalties proper; the Secretary of



State for the Environment appears to endorse this view in his letter of 2 February.

Legal position

9. If it is agreed that the point at issue is the GLC's view that their fiduciary duty requires them to maximise RSG and minimise rate precepts (whether loss of grant occurs through penalties or the basic machinery of block grant), we then need the Attorney General's advice on the reasonableness of this view.

10. If he advises that the GLC's view is, as the Secretary of State for the Environment would argue, "totally unwarranted", there may be some prospect of persuading the GLC that the increases planned for 21 March are sufficient to comply with the Lords' decision, although there is no reason why the GLC should be particularly disposed to follow the Government's advice. Failing that, it would at any rate be easier to make it clear publicly that the blame for the extra fair increases and other adverse consequences rested with the GLC, although the public debate will be complex and the Government's points may not be easy to put across.

11. If however the Attorney General cannot advise that the GLC's view is "totally unwarranted", there would seem to be little or no prospect that the Government could persuade the GLC to discard the legal advice it has received. The meeting would then need to discuss whether there is any way in which the block grant system could be changed to avoid loss of grant by the GLC. The Secretary of State for the Environment is likely to argue that the system cannot be changed in this way.

12. In those circumstances the Government would be faced with the choices outlined by the Secretary of State for Transport, ie

- a. to legislate quickly to make clear that the GLC can subsidise LT;
- b. to take effective control of LT away from the GLC.

13. Neither of these courses is attractive, and it will be important to establish what either would involve in practice. In either case there would have to be urgent and contentious legislation. (b) looks less attractive than (a): it would lay on the Government all the responsibility for unpopular future decisions about LT and would seem to involve more complex legislation than (a).



## HANDLING

14. It will be for the Secretary of State for Transport to take the lead in discussion. The Secretary of State for the Environment will wish to comment on the RSG implications of the GLC's decisions; the Attorney General may wish to add to his previous legal advice; the Lord President will be able to advise on the prospects of getting through Parliament legislation on the lines Mr Howell suggests may be necessary; and the Chief Secretary will want to comment generally.

## CONCLUSIONS

15. You will want to record the meeting's conclusions on how the Government should respond to the GLC's apparent intention to insist on further fare increases from LT.

16. If the conclusion is that the Government should not take action beyond that on which E agreed on 14 January, it will be for the Secretary of State for Transport to attempt to persuade the GLC to change their minds; and, if they will not, to be prepared to put forward as strong a public case as possible that it is the GLC which should be blamed for a second fare increase. He will need to agree the line which the Government should take with the Secretary of State for the Environment, the Attorney General and other colleagues as necessary.

17. Cabinet or E Committee would need to endorse a decision to introduce legislation going beyond E's decision of 14 January. On present plans E will not meet until 9 February, and it may be necessary to say something to the Cabinet on 4 February.

PLG

P L GREGSON

2 February 1982

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DEPARTMENT OF TRANSPORT  
2 MARSHAM STREET LONDON SW1P 3EB

Nick Huxtable Esq  
Private Secretary to  
the Lord President of the Council  
Privy Council Office  
LONDON  
SW1

2 February 1982

Dear Nick

GLC AND LONDON TRANSPORT

Thank you for your letter of 27 January.

You will have seen from my Secretary of State's minute of 29 January to the Prime Minister that the legislation to deal with the situation following the House of Lords judgement in the Bromley case may need to go further than Ministers have so far agreed. My Secretary of State would not wish to put to L Committee and introduce a Bill which may subsequently need substantial amendment or which may need to be withdrawn and replaced by a new one. I am afraid this means that we shall not be able to keep to the timetable we had envisaged.

We are working up possible additional measures on a contingency basis. If the GLC fail to provide a sensible basis on which London Transport can continue to operate we may need to step in quickly. But we may not be certain what is needed until the GLC have met on 16 February to decide their budget. We do, of course, appreciate the difficulties this may create for the Parliamentary timetable, but we are facing a highly volatile situation.

I am copying this to Mike Pattison, Murdo Maclean, Michael Pownall, David Edmonds, David Wright and to the Private Secretary to the First Parliamentary Counsel.

*Yours sincerely*  
*C R Edwards*

C R EDWARDS  
Private Secretary

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cc AD



2 MARSHAM STREET  
LONDON SW1P 3EB

My ref:

Your ref:

2 February 1982

*J. L. L.*

## GLC AND LONDON TRANSPORT

You are aware that the GLC are still in disarray over the financial problems of London Transport and have not yet approved the fare increase proposed in LT's budget. This has created an uncertain situation which may need to be resolved by litigation between LT and GLC. David Howell may need to consult you further on this in the light of developments.

Meanwhile there are a number of other issues arising from the House of Lords judgement both in relation to the interpretation of the Transport (London) Act 1969 and because of its implications for the block grant system. These affect both our Departments and I am therefore writing with the agreement of David Howell to seek your advice on them together.

*will regard it as agreed*

As you know, following your advice, David Howell wrote to Mr Livingstone on 14 January to say that in the Government's view London Transport's budget for 1982 - which involved fare increases of 100% next March - was a legitimate one and could stand without further fare increases. The object of the exercise was to make it absolutely clear that the GLC can now get LT back onto an even footing and that if they do otherwise it will be their choice and not the requirement of the law. So far we have succeeded in keeping the initiative. But the GLC are likely to argue that the solution we have suggested is not workable. They have had advice from leading Counsel which conflicts with the advice LT have had. Counsel have now reviewed the position together and produced a joint opinion covering their still conflicting advice. Copies of these opinions are attached. As you will see the advice to the GLC appears to conclude that the budget submitted by LT is not consistent with the terms of the Lords' judgement. However, the view David Howell has taken is that it is for LT to satisfy themselves that they have met the requirements of Section 7(3) of the 1969 Act. But, having received an Opinion from leading Counsel that a proper construction of the 1969 Act is that London Transport should consider a further increase in fares, the GLC in pursuance of their fiduciary duty to their ratepayers, may well feel obliged to go back to London Transport on this basis.

The GLC however seem to be reinforcing their Counsel's interpretation of the 1969 Act by an argument related to the calculation of block grant entitlement under the Local Government Planning and Land Act 1980. Although we have no clear statement of their view on this, they appear to argue that having regard to the terms of Lord Diplock's judgement, they would be in breach of their fiduciary duty to their

ratepayers if they allowed expenditure on revenue support from LT to lead to loss of block grant; and that therefore we must either exclude this expenditure from the block grant system or accept that LT should increase its fares beyond the 100% increase proposed for March to a level which maximises potential revenue.

We obviously cannot exclude revenue support for LT from the block grant without taking all revenue support for local transport outside the block grant system, which would undermine the basic principle of an unhypothecated, general grant to all local government services. But in any case, as you will see from the appendix to this letter, I am advised that the GLC may be taking a totally unwarranted and extreme view of their fiduciary relationship if they were seriously to advance the argument set out in the preceding paragraph.

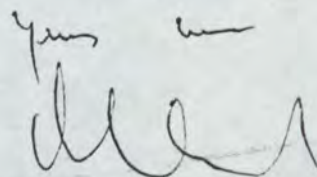
It will obviously create a very difficult situation for us if the GLC were now to ask LT for another big fare increase this year and refused to continue the full travel concessions for the elderly and disabled on the grounds that this was what the law required of them.

If the GLC do take unpopular decisions we shall need to make it clear that it is their responsibility and not due to a legal straitjacket imposed by the 1969 Act or the consequences of the block grant system for their fiduciary duty. To maintain a tenable position we should therefore need to put forward a strong case that they are taking an exaggerated view of the implications of the Lords' judgement and that it is quite unrealistic to suggest that the Courts would necessarily hold that the expenditure required to maintain the status quo after the 100% fare increase was unlawful. In the circumstances David Howell and I would welcome your views both on the implications of the latest conflicting opinions expressed by Counsel for the GLC and LT on the provision of the 1969 Act and on the GLC's interpretation of their fiduciary duty. The Council will be meeting on 16 February to settle their budget and we understand that the Labour group will be meeting to concert their tactics on 8 February. It is therefore essential that we establish a clear line very quickly.

/ Finally, you will see from Annex E that Mr Livingstone has raised certain questions about our powers to carry out our grant 'holdback' schemes in 1981/2 and 1982/3. I propose, subject again to your views, / to reply on the lines of the draft at Annex F. He has also sought an assurance that the holdback scheme for 1982/3 will not be any more severe than that set out in the proposals for the Rate Support Grant Settlement on 21 December. This is the subject of separate correspondence with colleagues.

/ I also enclose (at Annex D) copies of the 2 letters from the GLC's Controller of Finance, and the draft reply we propose to send to him at official level, and would welcome your views on that. We are trying to fix a meeting with you and David Howell later today.

I am copying this letter (but not the extensive enclosures) to the Prime Minister, all Cabinet colleagues, the Chief Whip and Sir Robert Armstrong.



MICHAEL HESELTINE



10 DOWNING STREET

Prime Minister

GLC/LT

No word from the Attorney -

General's office, (in a pair), about

when his advice will be

available.

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Prime Minister

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PRIME MINISTER

GLC AND LONDON TRANSPORT

SECRETARY OF STATE FOR TRANSPORT'S MEMORANDUM OF 29 JANUARY

1. The various events that have taken place over the past few months give us excellent grounds both politically and economically for rapidly increasing the introduction of private sector stage-bus operations in London and the suburbs. The fact that fares are already scheduled to increase by 100%, and are threatened by the GLC to increase by 200%, gives ample scope for profitable competition by private operators. So far private operators have been largely deterred by the very low subsidised fares that have ruled in London Transport. And stage-bus operations are the preserve of LT. But we know that there has been considerable development of private (non-stage) bus commuting in competition with the higher fares on British Rail.
2. There are undoubtedly many problems such as insurance arrangements, public vehicle licences, control (if any) of fares, etc. Many of them are of a bureaucratic nature, however, and can be solved with suitably directed energy.
3. One of the deterrents, however, is political in character. The private operators will want to be assured that, having carved out a successful market, they can continue to compete for it. Only then will they invest the time, effort and resources. This can be achieved by guaranteeing the private operator free access to the market during the life of this Parliament. Any legislation needed to effect such a guarantee may need to be incorporated in the Secretary of State's programme.
4. A further advantage of such an approach would be that it would give a competitive discipline on the behaviour of the GLC and LT. Cheap, frequent, courteous private service will highlight the faults of the slovenly public buses. The threat may also be used to help in our negotiations with them.

2 February 1982

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ALAN WALTERS

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cc. Ingham  
Verker

1 February 1982

GLC AND LONDON TRANSPORT

The Prime Minister was grateful for your Secretary of State's minute of 29 January on developments arising from the House of Lords judgment in the Bromley case.

The Prime Minister feels that the situation, as described in your Secretary of State's minute, is becoming very difficult, and that the Government ought to take a firm hold quickly. She has decided to hold a meeting on Wednesday at which she hopes precise advice will be available from the Attorney General; together with advice from the Secretary of State for the Environment on the specific possibilities as regards the grants concerned. We will be in touch with you later on today about specific arrangements for the meeting.

I am sending copies of this letter to the Private Secretaries to Members of E Committee, the Attorney General and Sir Robert Armstrong.

M. C. SCHOLAR

Anthony Meyer, Esq.,  
Department of Transport.

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I must have a meeting with

(i) private advice for the Ash

PRIME MINISTER

(ii) the public position on grant for SLD Gov.

GLC AND LONDON TRANSPORT

(iii) SLD for Transport.

Prime Minister

(2)

A very unsatisfactory situation. X takes me by surprise.

MCS 29/1

This is getting into a mess and we must take a firm hold quickly

At E Committee on 14 January we decided the immediate action which needed to be taken to deal with the issues arising from the House of Lords' judgement in the Bromley case. This was based first on a firm statement that in the view of the Government's legal advisers there was no requirement for further fare increases in 1982 over and above the 100 per cent proposed by London Transport and secondly our offer to introduce legislation to enable LT to borrow to spread the cost of the accumulated deficit over a number of years and to authorise the GLC to continue travel concessions for the elderly. This enabled me to take the initiative and demonstrate our concern both for the ratepayer and the traveller while leaving responsibility firmly with the GLC. Their own display of incompetence has helped us to maintain a strong public stance.

The position is changing, however. Leading Counsel advising the GLC and LT have tried to resolve their differences. But the GLC's adviser has reinforced his view that the Lords' judgement requires LT's deficit to be minimised regardless of the consequences for travellers. The GLC are also taking another tack. They argue that the expenditure needed to finance LT on the basis of the budget it has submitted will carry with it heavy grant penalties, and that rating for this level of expenditure would put them in breach of their fiduciary duty to their ratepayers. This duty was a factor which weighed heavily on the judgement in the Bromley case. They therefore argue that unless the grant

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penalties are waived they will have to ask LT to increase fares by another 50 per cent, i.e. three times their present level - or even more - to make still greater service cuts, and to cut back on their current concessionary fares scheme. They have launched a massive publicity campaign, costing £200,000 to get their case across.

The Secretary of State for the Environment and I have arranged to consult the Attorney General urgently on these further legal points. In the light of the advice the GLC are being given it may well prove necessary for us to go further than we have so far agreed and amend the Transport (London) Act of 1969 to put the lawfulness of a limited amount of subsidy beyond doubt.

This would not however deal with the block grant aspects, about which I am in touch with the Secretary of State for the Environment. This is a more intractable problem. The Law Lords' view on fiduciary duty is welcome in strengthening the effectiveness of the grant system in restraining local authority expenditure. The GLC will argue, however, that the grant system as it applies to them may make any avoidable expenditure unlawful, and they will undoubtedly do all they can to embarrass us by cutting in those areas where the results will cause the greatest political upset. So far as transport is concerned, we could face a situation in which fares are trebled, concessions for the elderly are slashed, but the rates still go up. This would be damaging to London's economy, would have undesirable social consequences and will make industrial action by the unions even more likely. It will be difficult to ensure that the blame continues to fall on the GLC rather than the Government.

I shall keep in touch with the GLC and see whether there is any scope for meeting their genuine difficulties. But if they show themselves incapable of reaching responsible

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x) decisions we may be forced as an immediate interim measure to step in and take effective control of LT out of their hands. That is a very unwelcome prospect which would raise for us in acute form the problem of whether fares can rise by more than 100% and what rate burdens can be imposed on London. Nevertheless we must now plan for that contingency.

So far the metropolitan counties have been taking a much more moderate view of the implications of the Lords judgement. The AMA are coming to see me on 9 February.

I shall consult colleagues concerned on all the implications of these developments, and of the action I may need to take in respect of transport, but I thought it right in the meantime to let you know that we are likely to be faced with a major campaign in the coming week.

I am copying this to members of E Committee, the Attorney General and Sir Robert Armstrong.

*RAF Mayer*

PP DAVID HOWELL

29 January 1982

*(dictated by the Secretary of State and signed in his absence)*

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27 JAN 1982

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