

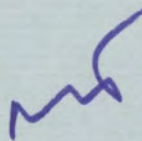
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AD

Prime Minister

PRIME MINISTER

Yes 

Agree with the approach
at X and Y?

MCS 10/2

GLC AND LONDON TRANSPORT : EMERGENCY POWERS

At our meeting on 3 February I was asked to develop proposals for legislation which would require the GLC to approve London Transport's budget and to pay subsidy to LT against the possibility that the GLC might not approve LT's budget or otherwise failed to act in a reasonable manner.

I understand that the Labour group have now agreed on the budget to be proposed at the Council's meeting on 16 February. They propose:

- (a) to implement LT's revised budget without any further fares increase in 1982 beyond the 100% next month;
- (b) the continuation of their full concessionary travel scheme; and
- (c) to pay off LT's deficit next year without taking advantage of our offer to allow LT to borrow to cover it.

They have taken the view, however, that the Lords judgement would require further fare increases in LT's budget for 1983. They have therefore assumed that an extra £25m would be raised from increased fares in the first quarter of 1983 unless the law is amended. This could mean an increase of 50% or more on top of the increased March 1982 level.

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x / If the GLC adopt a budget on these lines, I would not see any need to intervene further. It therefore looks as though the legislation I am bringing forward may need to deal only with travel concessions. Nevertheless I think it necessary to draft emergency powers just in case. I am enclosing a paper on the powers that would be needed. The Secretary of State for the Environment has seen it and is content. In practice it would be difficult to force the GLC to take actions which they had been unwilling to vote for. If the need should arise therefore the only practical way of dealing with the situation would be for me to assume their powers for a short period.

y / I shall in any event need to publish a Bill as soon as we know the outcome of the Council's meeting on 16 February. If they should fail to settle a sensible budget we shall need an urgent meeting of E Committee to decide whether to take the emergency powers described in the paper. Otherwise I shall clear the provisions about concessionary fares in the normal way.

Copies of this minute go to members of E Committee, the Lord President, Sir Robert Armstrong and First Parliamentary Counsel.

DA
7

DAVID HOWELL

10 February, 1980

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GLC AND LONDON TRANSPORT : EMERGENCY POWERS

1. If the GLC fail to approve London Transport's (LT) budget on 16 February or otherwise fail to act in a reasonable manner, emergency powers might be needed. These would secure approval of LT's budget and payment of subsidy to LT.

Coverage

2. It is important to avoid any risk of hybridity. We therefore consider that the powers should apply not only to LT but to the Passenger Transport Executives (PTEs) in the major conurbations. In any event once the powers are available it may be difficult to avoid intervening elsewhere e.g. in South Yorkshire if they do not now change their low fares policy in the light of the House of Lords' judgement.

The Trigger

3. The legislation would need to provide a mechanism for triggering the use of the powers. It is difficult to define in advance the various possible situations that might give rise to the need to use these powers. The legislation would need to provide that the Secretary of State may make an order if it appears necessary for him to do so. A power drafted in such general terms may be open to criticism. It would help to meet this if there were Parliamentary sanction for the Order, particularly if it were subject to affirmative resolution. This would also help to reduce the risk of legal challenge on the ground that the Secretary of State had acted unreasonably, as might well be alleged where the reason for taking control was that GLC were not paying sufficient grant and insisting on higher fare increases.

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Form of the Powers

4. So far as LT is concerned, the first essential is to ensure that the GLC budget is approved so they can implement their 100% fare increase. To achieve this the Bill would need to include provision that where an order has been made the Secretary of State may take over the powers of the GLC in relation to LT and exercise them himself.

Finance

5. If powers are to be used to settle LT's budget, it is quite possible that the GLC will refuse to continue financial support for LT. The Government will then need to ensure that LT receives the finance needed to keep it going. The most obvious course would be to deal with the situation as if the Secretary of State were acting in the place of the GLC. He would therefore pay LT any necessary subsidy himself as if on behalf of the GLC and treat it as a debt due to him from the GLC, which could be offset against any payments of Government grant to them. The amount of revenue support involved, assuming that LT borrow to cover their outstanding deficit, would be around £160m. If the GLC refused to support LT's capital expenditure, however, he could authorise LT to borrow for it - including the depreciation element - rather than follow the GLC's practice of making a capital grant.

6. It would be made clear to the GLC that it was for them to decide whether to go on providing the present travel concessions for the elderly and disabled and that the Government would not intervene if they reduced or abolished them.

7. Treating any subsidy paid to LT as paid on behalf of the GLC means that it would count as the GLC's own expenditure for grant purposes. Because of its high rateable resources the

GLC has a "negative marginal rate" of grant. This means that any extra expenditure which they incur as a result of the Secretary of State acting in their place would therefore lead to a reduction in their grant. [REDACTED]

[REDACTED] This would no doubt be represented by them as a penalty which we were imposing on London ratepayers.

8. This would not be too difficult to defend in a situation where the GLC had failed to approve any budget for LT: the outcome would be the same as if they had acted responsibly themselves. But these powers might have to be used in a situation where the GLC had decided to go for bigger fare increases because of the burden which supporting LT's budget would place on ratepayers, taking account of the grant loss. We have discussed with DOE whether there are defensible options which could ensure that the loss of grant is avoided. We have concluded that there are not.

Duration

9. The powers could clearly be only an interim measure. If they were invoked the Government would need to introduce further legislation next Session to deal with the substantive issues. Even so, permanent new arrangements could probably not be introduced before 1984 and could take longer if any reorganisation was involved. The Bill therefore might provide for the emergency powers to expire after three years.

Summary

10. The proposals would be:

- (a) the powers should cover London and the PTEs;
- (b) they should provide that the Secretary of State may make an order subject to affirmative resolution applying them to the GLC or any metropolitan county;

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- (c) they should provide that a Council to which they apply should not use its powers in relation to its executive without the Secretary of State's consent and that the Secretary of State may exercise those powers himself;
- (d) the Secretary of State should have power to pay subsidies direct to an executive and treat them as a debt owed to him by the Council, which he may recover by setting it off against payments of grant to the Council; and
- (e) the powers should expire after three years.
- (f) we should leave it to the GLC to decide whether to continue the existing travel concessions for the elderly and disabled.

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bcc: Mr. Duguid

10 DOWNING STREET

From the Private Secretary

11 February 1982

Dear Anthony,

GLC AND LONDON TRANSPORT: EMERGENCY POWERS

The Prime Minister read with interest your Secretary of State's minute of 10 February, together with the enclosed paper on the emergency powers which may be needed if events so turn out in relation to the GLC's budget.

The Prime Minister is generally content with the Secretary of State's approach. She agrees that an urgent meeting of E Committee will be needed as soon as possible after 16 February if the GLC's meeting on that day fails to settle the budget issue in a reasonable way.

I am sending copies of this letter to the Private Secretaries to Members of E Committee, the Lord President, Sir Robert Armstrong and First Parliamentary Counsel.

Yours sincerely,

Michael Scholar
←

Anthony Mayer, Esq.,
Department of Transport.

SW

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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

9 February 1982
Local Gov

Dear David,

attached

Thank you for your letter of 5 February with which you circulated to me and our other Cabinet colleagues factual material to help counter the GLC low fares publicity campaign.

I think the material is very useful indeed and I hope that all our colleagues will make the maximum use of it. I particularly endorse your view of the importance of taking up this subject on a wide front as we agreed in discussions. The theme of low cost public transport is intrinsically very attractive and it is vital for us to make people address their minds to the larger questions of the costs and how they should be shared.

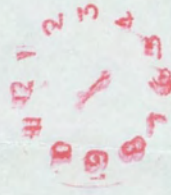
Yours

Francis

FRANCIS PYM

The Rt Hon David Howell MP
Secretary of State for Transport
2 Marsham Street
London SW1P 3EB

1110 FEB 1982



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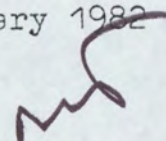


Prime Minister (2)
rus 11/2
2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

February 1982



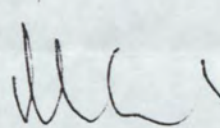
In brief

David Howell sent me a copy of his letter to you of 5 February about the GLC fares issue.

I agree with David that we need to take this subject on a wide front if we are to get our message across. In particular, I see no great advantage in getting drawn into the intricacies of the block grant argument. Although our position on this is logically impregnable - in the sense that the GLC's loss of grant for high spending is no different in kind from that of many other authorities with high resources - the argument is too technical to make a wide political impact.

/ I would therefore propose to base my public comments on the enclosed note, which concentrates on the simple political points.

I am sending copies of this letter and enclosure to the Prime Minister, other members of the Cabinet, and Sir Robert Armstrong.

Yours ever


MICHAEL HESELTINE

Rt Hon Francis Pym MP



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

The Rt Hon Francis Pym MC MP
Lord President of the Council and
Leader of the House of Commons
Privy Council Office
Whitehall
LONDON
SW1

Prime Minister

Has seen

MP 7/2

*na
MP 10/2*

5 February 1982

Dear Brian

I now enclose the factual note we have prepared setting out points that can be used to help counter the arguments being advanced in connection with the GLC low fares publicity campaign.

I myself will be answering some written PQs this week in order to tackle particular points - I enclose a copy of the sort of thing I envisage. I shall in any event be answering First Order Questions on Wednesday when no doubt some of these matters will be aired. Thereafter I propose to provide a newspaper article setting out our theme - i.e. who is to pay for low fares and to follow that up with a major speech, probably at the Dinner of the Confederation of Passenger Transport Operators I am attending on 18 February, two days after the GLC budget day.

I hope this will begin to get the record straight on transport aspects. I think it would be very helpful if those concerned with the wider budget of the GLC and the block grant implications could simultaneously build up their programme of

clarification, since, as we all agreed, in our discussion yesterday, we must take this subject on a wide front if we are to get our message across.

I am sending copies of this letter and the notes to the Prime Minister, other members of the Cabinet and to Sir Robert Armstrong.

Yours

David

DAVID HOWELL

LOW FARES AND SUBSIDY

PQs

MONDAY 8 FEBRUARY

1. To ask the Secretary of State what is his policy on subsidy for urban transport undertakings.

Suggested Answer

The Government shares the view of its predecessors that public transport needs a reasonable level of support to keep essential services going. This is reflected in the public expenditure provision - £1.2 billion was spent last year to support public transport. London Transport, for example, received some £250m subsidy. But there is a question of balance and value for money. Indiscriminate subsidies are not an effective way of meeting environmental and social objectives. The problem we have seen in acute form over the last year is where local authorities have embarked on low fare/high cost policies without regard to their relevance to travel needs or to their duty to maintain a fair balance between travellers and ratepayers.

TUESDAY 9 FEBRUARY

2. To ask the Secretary of State how much ratepayers' money will be saved if the Government, in response to the Livingstone publicity campaign, enables the GLC to lower fares.

Suggested Answer

I note the Leader of the GLC is now talking of pushing up their precept on London Boroughs to over 40p in the £1 - an increase of

129% over 1981/82. Were they now also to be enabled to revert to their low fare high cost policies of last year, they would impose at least a further £200m levy on ratepayers. So the aim of the campaign for which ratepayers' money is now being used would, if achieved, push rates up even higher. It would mean a further increase of nearly 60% taking the GLC precept to nearly treble the level when they took office less than a year ago.

WEDNESDAY 10 FEBRUARY

3. To ask the Secretary of State whether the Government's policies will now prevent London's old age pensioners from getting free travel.

Suggested Answer

That is a complete myth. I have already made clear that the GLC is to have powers like those of every other authority to continue to run their own concessionary fares scheme. The cost, again as in every other local authority, will form part of their total budget and they will have to decide their priorities within that. If they choose to use their resources for other policies they regard as having higher priority than financing old people's concessions that will be their decision and not in any way a consequence of the state of the law. It will be the GLC's choice as to whether they prefer providing indiscriminate low fares for rich and poor alike, or whether they make more resources available to use selectively in order to help travellers such as the old and disabled for whom public transport is especially important.

BRIEFING NOTES

LOW FARES AND SUBSIDIES

A. LINE TO TAKE

1. The Government accepts that public transport needs a reasonable level of support to keep essential services going. This is allowed for in public expenditure - £1.2 billion this year going in support of public transport - and in the Transport Supplementary Grant settlement for local authorities.
2. So Government accept need. What we are opposed to is indiscriminate, wasteful and unbalanced subsidies. We will not subsidise inefficiency. A fair balance must be struck. The GLC's low fares policy increased costs and put far too much of the burden on London's ratepayers.
3. The Government is not opposed to low fares. We would all like to see a cheap efficient public transport system in London - and elsewhere. But who is to pay? Is the burden on the national taxpayer to be increased? or is it to be shouldered by the ratepayer? Costs to ratepayers of continuing low fares policy likely to have been over £200m in 1982-83 without taking any account of loss of grant.
4. Low costs and matching services to real demand are the key to low fares. London Transport has a history of high costs eg the costs of vehicle mile run and per passenger journey on LT buses are considerably higher than in the PTEs. All this needs to be tackled and LT management would like to do so but the present GLC have increased costs by eg requiring extra bus miles to be run.
5. It is the direct consequence of these GLC policies that fares now have to rise more than they would otherwise have had to do, to unprecedented levels, to cover the costs.
6. And ratepayers this year will also have to make a special contribution towards the cost of the debt the GLC piled up during the past few months by their high cost low charge policies.

B. WHAT THE GOVERNMENT HAS DONE

1. Before the Livingstone policies, London Transport was already getting some £250m subsidy annually. A further £150m goes to BR's L & SE services through the PSO. This is not an unreasonable share of the national resources available to assist public transport in this country.
2. London is getting more than 40% of the transport supplementary grant being paid out in England. This recognises its special transport problems and its position as a capital city.
3. The Government acted swiftly and sympathetically to the GLC request for clarification of their powers to continue their concessionary fare scheme for the old and disabled. Like other

authorities, the GLC will have a clear power to continue to provide for these to the extent they think appropriate within the total resources available.

4. The Government have clarified that Councillors in London will not be breaking the law in approving a budget on the lines LT have submitted and that the fact that some share of the cost of clearing up the mess will fall on ratepayers as well as travellers is not a breach of their fiduciary duty. In the Opinion of the Attorney General.

"The fiduciary duty requires that the authority must do its best to reduce the burden falling upon the ratepayers. It does not require the authority to relieve the ratepayer from all of the burden. A fair balance must be struck. To quote Lord Scarman, "loss may have to be accepted as a necessity, but may not be sought as an object of policy."

C. FURTHER BACKGROUND MATERIAL

Background notes are attached on:

- 1 costs and efficiency in LT
- 2 History of GLC subsidy to LT
- 3 What the Government has done

COSTS AND EFFICIENCY IN LT

(a) Losses on LT before and since GLC changes

1. At the end of 1980 LT's bus services were operating at a cost of around £2 a bus mile and a deficit of 80p a bus mile. London's buses ran short of covering their costs by 5p a passenger mile (Underground 0.5p a passenger mile). The total loss on bus services was £133m - Underground £13m.
2. In mid-1981 the Council policies added about £115m to the revenue support required for 1981-82. Part of this was to pay for the low fares, part for the uncorrected deficit (£25m mid-1981) and part to cover increased services, pay settlements etc.
3. By the end of 1981, when the low fares policy had been running for only 3 months, the shortfall per bus passenger mile had become 6.3p (Underground 1.9p). The forecast deficit per bus mile had risen to 97p.
4. The 1981 original budget (agreed by Cutler) included a deficit of £142m on the bus services and £11m on the Underground - total £153m. The 1982 base budget (prepared for the low fares policy) envisaged a deficit of £423m. This is not broken down between bus and underground but clearly the bus service would have received the lion's share. With a deficit of 2½ times larger the loss per bus passenger mile could easily be in the range 12p-14p - deficit per bus mile would have been around £1.35.

(b) Comparison of LT with other operators

5. The normal performance indicators show LT buses doing less well than the PTEs and the NBC:-

		1980	
	LT	PTEs	NBC
Cost per vehicle mile	£2	£1.42	£0.90
Fares/operating expenditure ratio	.52	.63	.86
Subsidy per passenger journey	12p	8p	4p
Vehicle mile per staff employed (000)	5.08	7.08	11.19
Labour costs % of total costs	73	N/A	67

REVENUE SUPPORT FOR LONDON TRANSPORT

1. The London Transport Executive was established by the Transport (London) Act 1969 and replaced the former London Passenger Transport Board. £270m in debts of the former London Board were written off to allow LT to start with a clean slate and for the first few years it paid its way but in 1973 it incurred an operating deficit of £10.1m and from 1974 onwards deficits increased substantially.
2. Initially these deficits arose because LT was prevented by the prices and incomes legislation from making required fare increases. The difficulties were compounded by a steady reduction in use of LT services and a consequential increase in unit costs.
3. LT has received the following in revenue support and depreciation and renewal grant (which also meets the "gap" between revenue and operating costs) since 1973 (nothing in 1970-72):-

	£m cash prices								
	1973	1974	1975	1976	1977	1978	1979	1980	1981
Revenue Support		23.6	93.3	86.9	62.7	50.6	50.8	80.0	82.0
Depreciation and Renewal Grant	18.1	19.3	23.1	26.9	33.8	43.6	59.9	70.1	78.3

WHAT THE GOVERNMENT HAS DONE

1. Over the last few years London has had the lion's share of resources for transport. In the 1982-83 Transport Supplementary Grant settlement, its % share was as follows:-

	London	Metropolitan Counties (6)	Shire Counties (39)
% of resources available nationally for transport supplementary grant for	%	%	%
Revenue support	28	48	24
Capital	38	15	47
(Highway maintenance etc)	15	23	63
Total expenditure accepted for grant aid	25	25	50
* % Grant paid	40	26	34

* The amount of Transport Supplementary Grant paid increases with the size of the programme.

2. In 1980 London Transport received some £250m in various grants (a large element of which came from central taxpayers) which meant that for every £ earned through fares LT received over 50p in grants.
3. In addition BR estimate that their London and South East services account for about 25% of the total grant paid by Government to the railways to meet their public service obligation - which would mean about £180m out of last year's grant of £755m.
4. In total public transport serving London is receiving some £400m in grants.

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10 DOWNING STREET

From the Private Secretary

4 February 1982

This is just to record our conversation this morning about the Attorney General's Opinion on the London Transport subsidy issue.

The matter was raised in Cabinet this morning, and the Prime Minister asked that the Attorney's Opinion should now be made available to all her Cabinet colleagues. You undertook to arrange this. I told you that there may also be a request for further material for wider circulation, under the auspices of the Paymaster General.

I am sending copies of this letter to Keith Long (Paymaster General's office) and David Wright (Cabinet Office).

M. A. PATTISON

(see that Transport have now circulated it)

Jim Nursaw Esq
Law Officers' Department.



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3BB

MCS to see

MA 4/2

Mike Pattison Esq
Private Secretary to
the Prime Minister
10 Downing Street
LONDON
SW1

4 February 1982

Dear Mike,

GLC AND LONDON TRANSPORT

I sent you, David Edmonds, John Kerr, Nick Huxtable and Jim Nursaw copies of the Attorney-General's advice earlier this morning.

I understand that the Prime Minister would like all members of the Cabinet to have a copy. I attach this, together with a copy of my Secretary of State's letter to Mr Livingstone.

I am copying this to the Private Secretaries of the remaining members of Cabinet and to David Wright.

Yours Sincerely,
Anthony Mayer

R A J MAYER
Private Secretary



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

David Edmonds Esq
Private Secretary to
the Secretary of State
for the Environment
Department of the Environment
2 Marsham Street
LONDON
SW1

4 February 1982

Dear David,

LONDON TRANSPORT

In the light of yesterday's discussion with the Prime Minister I attach a copy of the letter my Secretary of State has just sent to Mr Ken Livingstone.

I am copying this letter to Mike Pattison, John Kerr, Nick Huxtable, Jim Nursaw and David Wright.

Yours Sincerely,

Anthony Mayer

R A J MAYER
Private Secretary



DEPARTMENT OF TRANSPORT
2 MARSHAM STREET LONDON SW1P 3EB

Councillor Ken Livingstone
Leader
Greater London Council
County Hall
LONDON
SE1

4 February 1982

Ken Livingstone

LONDON TRANSPORT

Thank you for your letter of yesterday's date asking for a most immediate answer.

You say that merely to bring in legislation empowering the GLC to subsidise old people's transport and to permit special borrowing would leave Members and officers in an intolerable position and liable to challenge. I know that this has been a matter of some concern to you and I had therefore sought advice from the Attorney General. I am enclosing a copy of his Opinion which he has agreed may be made available to the Council. As you will see, he concludes that London Transport's revised 1982 budget complies with the House of Lords' judgement and that your Council would not be in breach of their fiduciary duty to the ratepayers if they approved it. I should be grateful if you would bring this Opinion to the attention of all members of your council's Finance Committee which I understand is to meet today.

The rest of your letter appears to be concerned with the financial problems the GLC face and for which you would like extra resources not available to other local authorities (and which can only be provided at their expense).

First you stress the disagreeable financial consequences of borrowing to spread the cost of clearing the debts created over the past year. I fully recognise these. It will be for you to weigh them against the advantage of using such a power to provide the Council with a breathing space to turn round its policies in a manageable way.

Second, you do not mention the main dilemma of your Council - the need to review the total cost of all the policies being pursued of which transport is only one element, in order to settle your budget and a rate precept that reasonably reflect the resources available.

This dilemma would have been much more acute had you continued to pursue the policies of last year.

The effects of the block grant system to which you refer are not a new situation created by the Lords' judgement, but largely the consequence of the standard financial arrangements to equalise the resources of rich and poor authorities. I note you have written separately to the Secretary of State for the Environment raising some points on this. So far as TSG is concerned, your Council already receives over 40% of the grant I pay and I could not agree that they should receive a still larger share at the expense of other authorities.

In view of the urgency, and to ensure that the Opinion of the Attorney General is available at the earliest possible moment to all the Members of Offices of the Council, I am sending copies of this letter simultaneously to Sir Horace Cutler and to Sir James Swaffield.

Yours sincerely
David Howell

DAVID HOWELL

Secretary of State - to see

From: Ken Livingstone

Member of the Greater London Council
for Paddington
Leader of the Council

Mrs Bridgeman
urg adv pl
for Mr Howell

MEMBERS' LOBBY
THE COUNTY HALL
LONDON SE1 7PB

PS/Mr Clarke

PS/Sir Peter Baldwin

3 February 1982

Mr Lazarus

Mr Hannigan

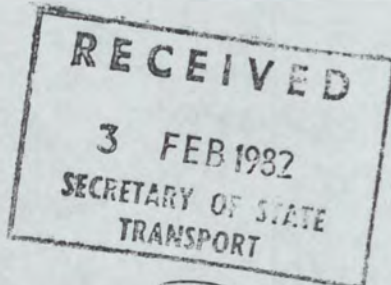
Mr Holmes

Mr Yan

Mr Smethurst

Mr Marchmont

Mr Goodfellow



Dear Secretary of State,

I am sending a copy of this letter to the Secretary of State for the Environment for reasons which will become readily apparent and as a matter of courtesy I enclose ~~not enclose~~ a copy of my letter to him.

Your letters of 14 and 23 January continue to give rise to great concern on the part of the Members and the officers of the GLC for the following reasons:-

1. If the proposed legislation enacts, without more, that LTE may borrow £125m over five years, the cost of such borrowing will itself have to be funded out of increases in fares and reductions in services above and beyond those which are scheduled to be implemented in and after March 1982, rather than by additional revenue support from the Council to LTE. We have been advised that this is the effect of the House of Lords decision.
2. Upon the assumption that the funding of the loan is to be provided not by increases in fares and transport savings (which assumption has been rejected as unlawful by our Leading Counsel but appears to be acceptable to your legal advisers) the money will have to be provided by the Council. It is implicit in your letters that this is what you envisage, because you assert that there is no need for further fare increases. ?
3. The cost of the loan which would fall upon the Council would not be the pure cost of capital and interest repayments, but would be increased both by block grant penalties on the repayments and by block grant penalties on interest costs. Taking into account the interest costs currently being incurred, the cost of borrowing in 1982-3 would be £80m, unless the Secretary of State for the Environment, in accordance with principles applicable to relevant local authorities, directed that such expenditure was not to be included in the Council's total expenditure for block grant purposes. The rate of interest on the loan would rise from just under 17% to just under 27% per annum - a price of borrowing that speaks for itself.

4. In round terms, the penalty for borrowing £125m over five years, if not financed by increased fares and reduced services, would cause a loss of block grant to GLC ratepayers on present known facts of at least £100m. and would cost a total of at least £298m overall.
5. In business terms, the alternatives of financing the £125m deficit on the one hand out of special borrowing or on the other hand from transport economies and fare increases are not alternatives at all because the latter are practicable, although wholly undesirable and, in our view, intolerable, whereas the former cannot be justified in law. How, in the light of the speeches in the House of Lords, is the Council to justify interest costs and in addition block grant losses of over £100m when aggrieved ratepayers or their representatives complain that travellers' interests are being preferred without good reasons to those of the ratepayers?
6. In fact, upon the advice that the Council has hitherto received from Counsel, it would not be lawful for the Council to finance the costs of such a loan. Therefore, although the further increase in fares and reduction in services are the last things which we would want to adopt, your suggested legal remedy would drive us to do this and prevent us from taking any other course.
7. I turn now to what you call 'the tangle over old people's concessionary travel' and fear that once again the block grant implications of your proposed legislation are such that, while it might appear to permit the Council to subsidise such travel, the automatic consequential loss of block grant would render the power illusory. Not only that, the higher the fares, the greater the value of the subsidy and the greater the block grant penalty.
8. In attempting to highlight the problems associated with the proposals described in your letters, I have necessarily ignored an even greater problem with which your letters do not deal, namely, the full scale of the operational subsidy needed to attempt to maintain London Transport in 1982-3. If there are no further increases in fares in 1982-3 after 21 March, if reductions in staff are confined to natural wastage, the budget of which you have expressed approval would, if lawful, require revenue support for LTE rising from £84m already approved to £236m in 1982-3. This takes no account of the financial consequences of old people's travel concessions or of block grant penalties. These figures were accepted by your officers a few days ago.

Correct
but £236m over
includes paying off
the £125m deficit
in one year.

The answer to these problems must surely lie in the reasonable operation of the transport supplementary grant and the block grant systems and the amendment of the Transport (London) Act 1969. It is also abundantly plain that the differences of legal opinion must be resolved by the legislation.

If neither the financing of the deficit, nor the borrowing of £125m, nor the subsidy of old people's travel resulted in the loss of block grant and if the needs of travellers were given their proper weight in the transport supplementary grant and in legislation, this could and would 'ensure that the public transport that best meets the needs of London can continue to be provided' - your own concluding words. If the operation of the transport supplementary grant and block grant systems unreasonably fails to take account of the matters I have mentioned and if new legislation is as limited as your letters appear to envisage, this will ensure that public transport will fail dismally to meet the needs.

Merely to bring in legislation empowering the GLC to subsidise old people's transport and to permit special borrowing would be a charade. It would leave Members and officers in an intolerable position and liable to challenge while prevented from carrying out the policies necessary to ensure the provision of a public transport system meeting London's needs, unless the transport supplementary and block grant systems are properly applied to permit such action without unwarrantable penalisation of the ratepayers.

In conclusion, I ask you:-

- (1) Have you decided to increase transport supplementary grant in 1982-3 and if you have decided against doing so, why have you so decided?
- (2) Would you inform me when it is the Government's intention to introduce legislation and by what date it is the Government's expectation that such legislation will be enacted?
- (3) To inform me of the details of the proposed legislation.

Since your officers will doubtless have kept you informed of the points raised in this letter and since you will know how important it is that the Members of the Council have answers to the questions and points raised when deciding on the Council Budget on 16 February 1982, I need to request your most immediate answer in order that the Council may perform its proper function.

The Rt. Hon. David Howell, MP.
Secretary of State for Transport
2 Marsham Street
London SW1P 3EB

*Yours sincerely
Herbert*



The Rt.Hon.David Howell, M.P
Secretary of State for Transport
2 Marsham Street
SW1

3 February 1982

G.L.C. and London Transport

I have now read the Opinions of Counsel advising the G.L.C. and London Transport. In view of the suggestion that concillors might be in risk of surcharge if they were to approve the 1982 Budget, I thought it might be helpful if you had my Opinion.

I have no objection to this Opinion being made available. Whilst it is most unusual for Law Officers' Opinions to be disclosed outside Government, I consider that in view of the present difficult circumstances facing London Transport an exception can be made.

I am sending a copy of this letter to the Prime Minister and the Secretary of State for the Environment.

Yours ever.

Michael



O P I N I O N

LONDON TRANSPORT FARES

1. The House of Lords Judgment

1.1. The case concerned the validity of a supplementary precept issued by the G.L.C. to the London Borough of Bromley to enable the G.L.C. to finance by grant to the L.T.E. the cost of reducing fares overall by 25% and of introducing a simplified zone system. Put simply, as an objective of social policy London Transport was being run at a loss to be made good by the ratepayer. The House of Lords decided that:-

- (a) L.T.E. are under a duty to do their best to break even so far as practicable and that the G.L.C. 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 L.T.E. to avoid a deficit, and
- (b) that in considering the use of their grant-making power G.L.C. must have regard to their fiduciary duty to hold a fair balance between ratepayer and user.

2. Implications for L.T.E. and the G.L.C.

2.1. I have had the advantage of reading the Opinion of Counsel for the G.L.C. and the joint Opinion of Counsel for the G.L.C. and L.T.E. In my opinion Counsel for the G.L.C. place an unduly restrictive interpretation on the House of Lords Judgment. I do not consider that any court would upset the L.T.E. 1982 Revised Budget on either of the two grounds referred to in paragraph 1.1. above. I assume here that the Government will legislate to provide for the temporary borrowing requirement and concessionary fares for the elderly.



- 2.2. The G.L.C. approval of the Revised Budget need not be conditional upon any further increase of fares this year. It has been suggested that the G.L.C. would be in breach of their fiduciary duty to their ratepayers if they allowed expenditure on revenue support to L.T.E. to lead to loss of block grant and did not increase fares beyond the 100% increase proposed to a level which maximises revenue. I cannot accept this argument. The fiduciary duty requires that the authority must do its best to reduce the burden falling upon the ratepayers. It does not require the authority to relieve the ratepayer from all of the burden. A fair balance must be struck. To quote Lord Scarman, "loss may have to be accepted as a necessity, but may not be sought as an object of policy."
3. In my opinion the 1982 Revised Budget complies with the House of Lords Judgment and that the G.L.C. would not be in breach of their fiduciary duty to the ratepayers if they approved it.

Mk

3 February 1982

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