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PRIME MINISTER

GLC PROPAGANDA ON RATECAPPING

We are to discuss with colleagues after Cabinet tomorrow the renewed concern expressed to you by Keith Joseph about what he calls the "black propaganda" on ratecapping issued by the GLC. It may be useful, therefore, if I set out the present position.

For some time now Ministers have found themselves in a dilemma about how to counter the increasingly unscrupulous propaganda campaigns which have been mounted by the GLC, ILEA, the Metropolitan County Councils and the Association of London Authorities against the Government's local government policies. We have been much criticised by our backbenchers and by our supporters in local government for our failure, as they see it, either to produce an adequate Government response to these campaigns or to stop them.

We face two problems. First, the conventions under which successive Governments have operated have prevented us from spending taxpayers' money on advertising other than on factual information about legislation already on the statute book. Backbenchers and others, of course, have difficulty in understanding or accepting these conventions and tend to see us as losing the propaganda battle by default. (Although we feared that we might be straining against those conventions, we successfully mounted our "Protecting the Ratepayer" campaign in October. This involved the delivery of a booklet to every household in the areas affected by ratecapping, as well as national and local press advertising. This material was however strictly factual, and has been criticised as being too low key and no answer to the authorities' emotive propaganda.)

The second difficulty has been the apparently unfettered, and until recently unchallenged, freedom of local authorities to use their powers under Sections 137 and 142 of the Local Government Act 1972 to finance these campaigns. It was our concern about such abuses of the spirit of the existing law that led us to decide to set up the forthcoming inquiry which I announced at the Party Conference in October.

since then, as you will know, Westminster City Council have achieved some success in the Courts and have obtained injunctions against the GLC and ILEA. We are also aware that Councils have been taking Counsel's advice on the use of Sections 137 and 142 for their campaigns on abolition and ratecapping. I have written to the Attorney-General about this and have invited him to consider whether he would be prepared to bring legal proceedings against authorities. A copy of my letter is attached to this minute. FLAG A.

In my view, we are precluded in the short term from the most desirable course of action which would be to legislate to stop such advertising. However, the uncertainty about the eventual outcome of the court cases, the fact that we are just about to announce the details of the inquiry into abuses and the lack of legislative time seem to rule out that possibility. In any event, even if other considerations were to allow it, I believe that we would be heavily criticised if we were to attempt to curb such activities on the grounds that we would be accused of silencing our critics - a further charge of 'dictatorship'. Partly for this reason and partly because of the additional problem of definition of political propaganda, I have it in mind to ask the abuses inquiry to look at this whole issue as a matter or urgency and to make an interim report.

One check on the ability of the GLC and the Metropolitan County Councils to engage in fresh campaigns may of course

become available to us on 1 April 1985. The District Auditor for the GLC has given an opinion that Section 142 (which allows for the provision of information) is inappropriate to their present campaigns and has suggested that if they wish to continue, the Council should consider the use of Section 137. The powers which we took under the paving Act will render unlawful any expenditure incurred under Section 137 without my consent, thereby making the councillors liable to surcharge and disqualification.

Since these arguments have so far ruled out early legislation to curb the activities of local authorities, we need to decide whether or not to continue to abide by the conventions which constrain Central Government. Each time we have discussed this question collectively, we have concluded that we must. Unless we change that view, therefore, we must look to other means of countering the campaigns against ratecapping and abolition.

Two options are open to us. First, under the existing conventions, we have the right to carry out further paid publicity to provide purely factual information to the public about the provisions of the Rates Act. It has to be said that such a campaign would only go part of the way towards countering the emotive and highly coloured propaganda of the rate capped authorities. Because such advertising has, of necessity, to be flat and unemotional, it appears pallid by comparison and leaves us open to criticism from some of our own supporters. (Any comparison of the attached anti-ratecapping advertisement with our own advertisement makes the point very clearly).

AGB

It is worth adding that last summer when we considered whether to retaliate in kind, I sought professional advice from outside Government. The nub of that advice was that if the Government were to retaliate in kind, it would provoke still further campaigning by local government and would lay us open to the accusation that the Government was spending taxpayers' money on party political propaganda.

Despite these factors, I intend to move to the next phase of the 'Protecting the Ratepayer' campaign in late March/early April to do what we can to counter the increasingly hysterical claims that we shall face from many of the ratecapped authorities. We are entitled to and will take steps to inform the public about the purpose of the Rates Act and their rights under it.

It has been suggested that we might look to Central Office or to other sources of private finance to fund, say, a limited publicity drive possibly through the publication of leaflets. However, I know Central Office funds are severely constrained and that approaches to outsiders for finance would not be welcomed by the Party Treasurer. John Gummer will be able to advise us on that aspect.

What we are left with then is an all out effort on the part of Ministers, backbenchers and our supporters in local government to get across the message that ratecapping is for the protection of ratepayers and that the scaremongering tactics of the affected councils have no substance. In this context, I believe that the role of the backbenchers and of the Conservative leadership in the ratecapped Councils is crucial. They know their local press and must be encouraged to use their knowledge of their Council's finances to refute the accusations of our opponents. This is an obvious area for action by the groups of backbenchers which are being organised by the Committee

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under the chairmanship of Willie Whitelaw. Kenneth Baker and I will gladly provide such speaking notes and background information as is required.

A copy of this minute has gone to Willie Whitelaw, Keith Joseph, Michael Havers, Kenneth Baker, John Gummer, Sir Robert Armstrong and Bernard Ingham.

A H Davis
for
P J
16 January 1985

Approved by the SofS
and signed in his absence

SECRETARY OF STATE FOR THE ENVIRONMENT

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cc PS/Mr Baker
PS/Mr Waldegrave
Mr Heiser
Mr McKeep.
Solicitors
(without press cuttings)

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

Note
This letter only would be circulated: not the opinions.
HS 15/1.

11 January 1985

Dear Michael,

I am becoming increasingly concerned about the "Awareness Campaign" currently being undertaken by the GLC against abolition. The GLC has been advised by Lord Gifford QC as to the legality of this campaign and his most recent advice has involved comments on advice given by M Lionel Read QC to the GLC auditor.

Legal advice has also been obtained by the Association of London Authorities (of which the GLC is a member) and by Lambeth Borough Council from Mr Roger Henderson QC and Mr Tabachnik QC in relation to the campaign against rate-capping. The powers used by the authorities concerned are the same.

/ Copies of Lord Gifford's two opinions and extracts from the opinion of Mr Read are enclosed. The principal powers on which the GLC rely for their campaign are contained in sections 142 and possibly 137 and 111 of the Local Government Act 1972.

Section 142 - This section consolidates and extends the powers formerly contained in sections 134 and 135 of the Local Government Act 1948. So far as material subsection (1) provides that a local authority may make, or assist in the making of, arrangements whereby the public may .... obtain .... information concerning the services available within the area of the authority provided either by:-

(a) the authority

(b) other authorities

(c) any government department, or

(d) any charity or voluntary organisation, and other information as to local government matters affecting the area.

Subsection (2)(a) goes on to provide that a local authority may arrange for the publication within their area of information on matters relating to local government.

The Department's View

The department's lawyers take the view that section 142 confers power on the GLC, inter alia, to publish information relating to local government matters affecting their area. The abolition of the GLC is clearly a matter relating to the local government of Greater London. It will only be possible to challenge expenditure on publicity under this section which cannot properly be described as information relating to local government. Expenditure on the publication of material comprising, or consisting principally of, party political propaganda would not be authorised under the section. However the dividing line between information, political propaganda and slogans or advertisements devoid of informative content is a fine one. The publication of information which is persuasive or exhortatory will not by virtue of that fact alone be ultra vires the section.

Departmental views on Council's opinions

(I) It is clear that both Lord Gifford and Mr Read accept the distinction between information and party political propaganda.

(II) Both Counsel appear to have become entangled with the concept of plurality of purposes. This is a legal porcupine. What it amounts to is this.

> If the actor has in truth used his power for the purpose for which it was conferred, it is immaterial that he was thus enabled to achieve a subsidiary object. For example, if the Home Secretary was honestly satisfied that a deportation order is valid it would be immaterial that the practical (and perhaps the desired) effect of the order was to secure the extradition of the alien to another country seeking his rendition for a non-extraditable offence. Section 142 empowers an authority to "arrange for the publication ... of information on matters relating to local government." The question for the court therefore is whether, as a matter of fact, any material published is information on matters relating to local government. If the answer to that question is "yes" then it matters not what the dominant or subordinate purpose was. My lawyers consider that Lionel Read QC reads too much into section 142 and that Lord Gifford is right in saying that if what is published is in fact information, it is authorised.

You will wish to consider the implications of the judgement of Mr Justice Glidewell in R v ILEA ex parte Westminster City Council on 19 December. He made a declaration that the ILEA's resolution on 23 July 1984 authorising expenditure of £650,000 on the employment of professional advertising agents to increase public awareness of the effects of the Rates Act 1984 was invalid on the basis that the ILEA had taken into account irrelevant consideration in that a, if not the, major purpose was to persuade these members of the public who disagreed with ILEA's opposition to the Rates Act to change their minds, rather than simply providing information. He granted leave to appeal. I shall provide you with a transcript as soon as it is available.

Section 137

Subsection (1) of this section provides that a local authority may incur expenditure which:-

(a) they consider to be in the interests of their area or part of it or all or some of the inhabitants of that area, and

(b) is for a purpose for which they are not either unconditionally or subject to any limitation or the satisfaction of any condition, authorised or required to make any payment by or by virtue of any other enactment.

There appears to be general confusion among Counsel over the scope of an authority's power under this section. We take the following view of this power:-

(1) if published material in itself amounts to 'information', then whether or not it relates to local government its publication cannot be authorised under the section beause of the condition in (b) above.

(2) if published material is not in itself information, eg party political propaganda or a slogan devoid of informative content, it would not satisfy the benefit test in (a) above. No reasonable local authority acting in accordance with Wednesbury principles could be of the opinion that such a publication was for the benefit of their area or their inhabitants as inhabitants.

Section 111

Like section 137 this section has been a fruitful source of confusion. The section was intended to be no more than a statutory declaration of the well established common law rule that a corporate body could infer a power to act in a manner which was necessarily incidental to or which was conducive to or which would facilitate the discharge of an express function. The rule was given its most comprehensive expression by Lord Selborne in the case of A-G v Great Eastern Railway Company (1880 5 App. Case 473).

The view of the Department is that expenditure will not be regarded as within the scope of "incidental powers" if it relates to a matter in respect of which express powers are given. Thus Lionel Read is right in saying that "section 111 adds nothing to section 142 in authority of this expenditure, the legality of which as he says turns on the subject matter and the purposes of the material published". He is right in saying that if section 142 authorises the publication of this material, section 111 would authorise activities essentially ancillary to the exercise of such a power. However if published material cannot reasonably be described as 'information' eg a slogan or a pictorial advertisement, it is arguable whether the publication could be justified under the section. The GLC is directly affected by the abolition proposals and it is doubtful whether the publication of a reasonable comment on those proposals would be ultra vires the

council, for example the comment (slogan) 'Say No to No Say' and 'Keep the GLC Working for London'.

The Association of London Authorities

I am also concerned at the publicity campaign being undertaken by the newly established Association of London Authorities ("the ALA") against the government's rate capping proposals. As mentioned above the ALA and Lambeth Borough Council on behalf of the constituent member authorities have been careful to take advice from counsel.

The ALA is an unincorporated association the members of which comprise a number of inner London boroughs under Labour control and the GLC. The association was the subject of legal proceedings in 1984 which established that it was an association to which, because of its revised constitution, members were entitled to pay subscriptions under section 143 of the Local Government Act 1972. Under section 143 of the 1972 Act a local authority may pay subscriptions to an association formed for the purposes of consultation on matters of common interest to the member authorities and for the discussion by them of matters relating to local government. The section does not, prima facie, authorise the payment of subscriptions to an association engaged in any sort of public consultation exercise or publicity campaign. The ALA is not a local authority for the purposes of section 142 of the 1972 Act but the question arises whether member authorities can make contributions under that section to the ALA to enable it to conduct a campaign on their behalf.

Departmental view of the position

An association such as the ALA may have two quite separate and legitimate roles: first to conduct consultation and discussion between member authorities - this role can be funded by subscription under section 143 of the 1982 Act; and second to conduct a publicity campaign against rate capping on behalf of its members with funds contributed by them under section 142 of the Local Government Act 1972. A local authority may also consider it can make contributions under sections 137 and 111 referred to above.

I would be very grateful however for your advice on:

(a) whether the powers referred to in pages 1-3 of this letter are adequate to justify the publication by or on behalf of the GLC of advertisements depicting the Secretary of State (a copy of the most recent is enclosed) and containing misleading information; and

(b) whether the powers referred to in this page are adequate to justify the making of contributions by the GLC and member London borough councils to the ALA to enable it to publish advertisements

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on the government's rate capping proposals (a copy of the most recent of 10 January is enclosed); and

(c) if not whether you would be prepared in either or both cases to bring legal proceedings against a constitutent borough council, or the GLC, restraining them from incurring such expenditure.

For completeness I should explain that the whole issue of persuasive advertising by local authorities will be one of the important problems to be addressed by the Inquiry into Local Government Practices and Procedures which I hope to set up very shortly. It may be that, as a result of that Inquiry's work, new and tighter legislation in this area will be proposed; but that prospect does not remove the need for us to be as clear as possible about what is permissable under present statute.

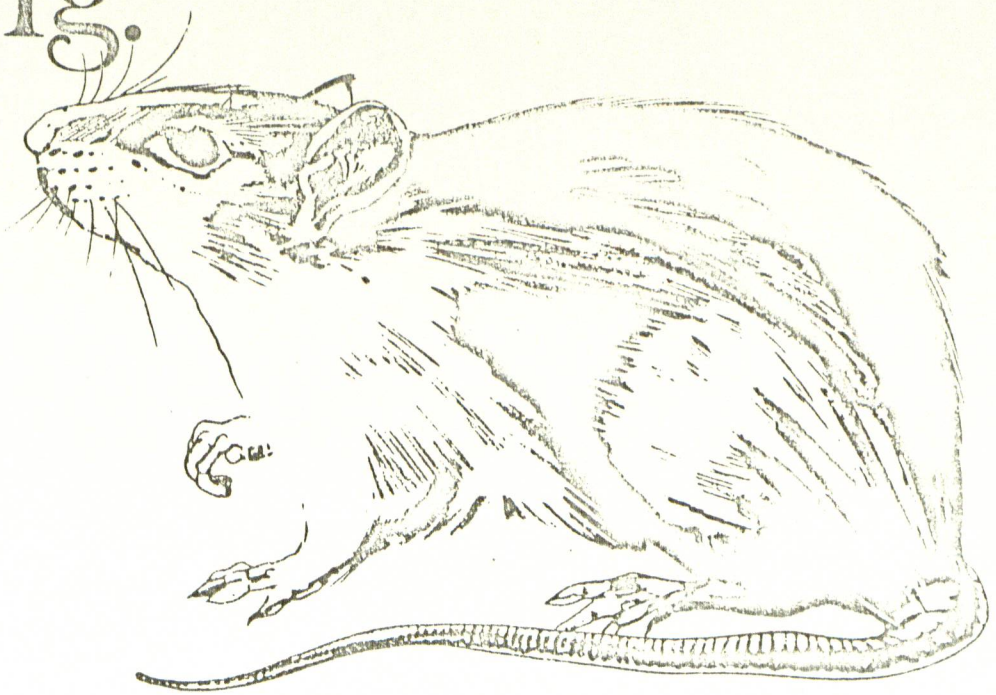
Yours

Patrick

PATRICK JENKIN

The Rt Hon Sir Michael Havers QC

One of the few beneficiaries of ratecapping.



Ratecapping makes no sense.

THE RATES ACT

Protecting the ratepayer

The Rates Act became law in June. Its purpose is to keep rates down.

Eighteen local councils will have their rates limited by law for the year beginning on 1st April 1985. They are: Basildon, Brent, Camden, Greater London Council, Greenwich, Hackney, Haringey, Inner London Education Authority, Islington, Lambeth, Leicester, Lewisham, Merseyside, Portsmouth, Sheffield, Southwark, South Yorkshire and Thamesdown.

These 18 have been chosen on the basis of objective tests which show that, compared with similar councils, they are the highest spenders in the country.*

The Secretary of State for the Environment has told the 18 councils what he expects them to spend next year, and he will back this up by setting an upper limit on the rates they can charge.

It will still be up to local councillors to decide what they want to spend their money on. Limiting rates does not mean that the Secretary of State takes over. And if they feel the limit on their spending is unreasonable the law provides a right of appeal.

Rates next year in the areas affected are sure to be lower than they would have been otherwise – and in some cases there may actually be a cut in rates. All business and domestic ratepayers in these areas will benefit.

If you live in an area that is covered by any of these councils, you will be getting a leaflet explaining the new law in detail: its background, its provisions and the way it will affect your rates. If you live outside these areas you can get a leaflet by writing to: Department of the Environment, PO Box 100,

* are all planning to spend this year at least 4% more than the target for them by the Government. They are also planning to spend at least % more than the Government has calculated should be necessary to ovide a standard