



Ponie Minister

Agree, subject to
the views of colleagues?

I hope we get
the decision
right.

Jim Walker

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

7 April 1986

RATE SUPPORT GRANT 1986/7: LEGAL CHALLENGE BY BIRMINGHAM CITY COUNCIL

You may have seen from press reports that Birmingham City Council have got leave to challenge the Rate Support Grant Settlement 1986/7 in the High Court. The case is due to start on Monday 14 April.

Up to now I have proceeded on the assumption that I would defend the case. However, I have just received uncompromising advice from Robert Alexander QC, who has led for us in some crucial cases, that we have no prospect of success. He believes we would be well advised not to attempt to fight the case.

In the Autumn we agreed an RSG settlement which allowed us to abolish the expenditure targets and grant holdback which have been so unpopular with our supporters in local government. Instead we substantially strengthened the pressures against increased expenditure through the normal mechanisms of the block grant system. But to avoid excessive gains and losses for individual authorities arising from this change, and from the effects of abolishing the GLC and the metropolitan county councils, we applied block grant multipliers to give effect to "safety nets" and "caps" on grant changes, on essentially the same basis as my predecessors have done each year since 1981.

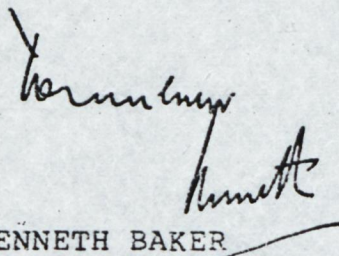
Birmingham have challenged this aspect of the RSG Settlement, and particularly the cap applied to their gains from the abolition of targets and from the abolition of the West Midlands County Council. Their main contention is that S.59(6)(a) of the Local Government Planning and Land Act 1980 provides only a power to limit the overall change in an authority's grant in one year compared to a previous year and not a power to limit the grant consequences on individual factors such as the removal of targets or the abolition of the metropolitan county councils. Robert Alexander's advice is that they have correctly identified substantial shortcomings in the existing legislation. He believes that the courts will have no option but to strike down the interpretation of my powers to use multipliers to provide safety nets and caps which my predecessors and I have relied upon since the block grant system was introduced in 1981/2 and which have been accepted by the local authority associations. He is also concerned, given his view of the law, that our Counsel have no prospect of mounting a realistic defence of the case.

This advice puts in question the block grant arrangements not just for this year but for the last five years - as we are still making Supplementary Reports for previous years. If we have to rework all Settlements since 1981, then unless we were prepared to inject additional block grant into the system, a very large number of authorities would suffer totally unexpected losses of grant for previous years. Even if the implications were restricted to 1986/7, I do not believe that we could replicate the Settlement within Counsel's interpretation of the law. Preliminary attempts to do so demonstrate that this would either involve unmanageable losses of grant for many authorities, or be prohibitively expensive for the Exchequer. We cannot simply correct the situation for Birmingham as we are already aware of potential legal challenges from other authorities in a similar position.

I am therefore driven reluctantly to the conclusion that it is essential to introduce a short piece of legislation during this session of Parliament to clarify the powers on which the Department has relied since 1981 without previous challenge, and with the broad support of the local authority associations. Subject to Parliamentary Counsel's view, I would hope that this need not amount to more than a few clauses. The main provision would simply be an explicit power to set multipliers to limit the effects of individual factors affecting an authority's block grant entitlement. This is a highly technical matter but it has unacceptable implications either for local authorities or for the Exchequer if we do not take action. I propose therefore that the Minister for Local Government should make a short statement on Monday 14 April and we shall seek to postpone the Birmingham court case, explaining the background and setting out our intention to introduce very early legislation.

I would be grateful for your agreement and that of other colleagues to this course of action. I would also be grateful for the Lord Privy Seal's authority for my officials to instruct Parliamentary Counsel.

I am sending copies of this letter to the Prime Minister, members of E(LA), to the Lord Privy Seal and members of L Committee, to Sir Robert Armstrong and Sir George Engle.


KENNETH BAKER

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PRIME MINISTER

RATE SUPPORT GRANT 1986/87
LEGAL CHALLENGE BY BIRMINGHAM CITY COUNCIL

I thought I had better let you know, before Cabinet tomorrow, what action has been taken on Kenneth Baker's letter to me of 7 April.

2. Your Private Secretary's letter of 8 April and John MacGregor's letter of the same date record your views that legislation to clarify the powers for setting multipliers is now unavoidable. E(LA) members agree with that view, which was endorsed by Michael Havers and Quintin Hailsham at a meeting I held this morning with them, Kenneth Baker and the business managers. Michael was clear that the legislation would need to have retrospective effect as proposed, and he stressed that the presentation of this difficult feature should emphasise that what we were doing was to confirm the understanding of the law shared by central Government and local authorities for the last five years, until the present case.

3. All colleagues agree that we should endeavour to avoid the case going as far as a judgement being handed down against us; and that that means making a statement this week of our intention to legislate in the present Session. The business managers all agree that the statement should be made tomorrow (Thursday 10 April); it will doubtless need to be repeated in the House of Lords.

4. We will not know how much room for manoeuvre we have on the timing of legislation until the court hearing on Monday. Counsel representing the Government will naturally try to avoid making any commitments going beyond the promise of legislation this Session contained in tomorrow's statement itself. It may be, however, that in order to preclude the hearing proceeding to judgement, Counsel will have to undertake that legislation will go ahead as quickly as possible.



5. Until the timing and other aspects of the Bill are clearer, I do not think I should speculate on the possible consequences of all this for the rest of the present Session's programme. But they might be considerable.

6. I am sending a copy of this minute to the members of E(LA) and L Committees, to First Parliamentary Counsel and to Sir Robert Armstrong.

hwl

Privy Council Office
9 April 1986

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cc PH
BG
TF
BJP

Minister of State for the Environment,
Countryside and Local Government



Department of the Environment
2 Marsham Street London SW1P 3EB
Telephone 01-212 3434

9 April 1986

Dear David,

RATE SUPPORT GRANT 1986/87 : LEGAL CHALLENGE BY BIRMINGHAM CITY COUNCIL

The Lord President's minute of today to the Prime Minister reported the need for a statement to be made in both Houses tomorrow on this issue.

I attach a draft of the statement which Mr Waldegrave proposes to make tomorrow in the Commons. I should be grateful for your comments and those of copy recipients by noon tomorrow.

I am sending copies of this letter to the Private Secretaries to the Lord President and the members of E(LA), to the Chief Whips in both Houses, to the Attorney General, to Sir Robert Armstrong and Sir George Engle.

Yours sincerely,

A G DOWNEY
Private Secretary

Prime Minister

It looks OK to me.

JEW
9/4.

David Norgrove Esq

LOCAL GOVERNMENT FINANCE : BLOCK GRANT MULTIPLIERS

WITH PERMISSION MR SPEAKER, I SHALL MAKE A STATEMENT ABOUT A COMPLEX TECHNICAL MATTER TO DO WITH THE OPERATION OF THE BLOCK GRANT SYSTEM ESTABLISHED BY THE LOCAL GOVERNMENT PLANNING AND LAND ACT 1980. I HOPE THE HOUSE WILL BEAR WITH ME.

GENERALLY BLOCK GRANT IS PAID TO COMPENSATE AUTHORITIES FOR DIFFERENCES IN THEIR EXPENDITURE NEEDS AND IN THEIR RATEABLE RESOURCES. THE HOUSE WILL KNOW THAT THE SECRETARY OF STATE DETERMINES A NEEDS ASSESSMENT FOR EACH AUTHORITY, CALLED THE GRANT RELATED EXPENDITURE ASSESSMENT AND BLOCK GRANT IS PAID TO ENSURE THAT THEY CAN FINANCE ANY GIVEN LEVEL OF EXPENDITURE IN RELATION TO GREA BY LEVYING AN APPROPRIATE RATE. BUT IN ADDITION SUBSECTION (6)(A) OF SECTION 59 OF THE 1980 ACT GIVES THE SECRETARY OF STATE A POWER TO DETERMINE BLOCK GRANT "MULTIPLIERS" TO LIMIT CHANGES IN THE GRANT ENTITLEMENTS OF INDIVIDUAL AUTHORITIES FROM YEAR TO YEAR. SUCCESSIVE SECRETARIES OF STATE SINCE 1981 HAVE USED THIS POWER TO SET SAFETY NETS TO PROTECT LOCAL AUTHORITIES AGAINST UNDESIRABLE LOSSES IN ANY ONE SETTLEMENT. IN TWO YEARS IT HAS ALSO BEEN USED TO SET CAPS ON INCREASES, TO PREVENT UNREASONABLE GAINS BY SOME AUTHORITIES AT THE EXPENSE OF ALL OTHER AUTHORITIES.

EACH YEAR SINCE 1981 MY RT HON FRIEND AND HIS PREDECESSORS HAVE USED THE POWER TO SAFETY NET GRANT LOSSES ARISING FROM PARTICULAR FEATURES OF SUCCESSIVE SETTLEMENTS - FOR EXAMPLE LOSSES ARISING FROM CHANGES IN THE WAY GREs ARE CALCULATED, AND FROM THE REMOVAL OF SAFETY NETS FOR THE PREVIOUS YEAR. IN 1981/82 A CAP WAS ALSO APPLIED TO GRANT GAINS RESULTING FROM THE INTRODUCTION OF THE NEW GRANT SYSTEM.

AS FAR AS 1986/87 IS CONCERNED, MY RT HON FREIND THE THEN SECRETARY OF STATE MADE IT CLEAR IN HIS PROVISIONAL ANNOUNCEMENT TO THE HOUSE IN JULY LAST YEAR THAT HE PROPOSED TO USE THESE POWERS TO RESTRICT WINDFALL GAINS RESULTING FROM THE DECISION TO DISPENSE WITH EXPENDITURE TARGETS. WE ALSO STATED ON MANY OCCASIONS OUR INTENTION THAT THE GRANT EFFECTS OF ABOLISHING THE

GLC AND THE METROPOLITAN COUNTY COUNCILS SHOULD BE NEUTRAL AT RATEPAYER LEVEL. WE GAVE EFFECT TO THIS INTENTION IN THE MULTIPLIERS SET OUT IN THE RSG REPORT WHICH THE HOUSE APPROVED IN JANUARY.

THUS, IN EACH YEAR THE SECRETARY OF STATE INTERPRETED THE POWERS IN SUBSECTION (6)(A) OF SECTION 59 OF THE 1980 ACT IN SUCH A WAY AS TO LIMIT CERTAIN FACTORS AFFECTING GRANT ENTITLEMENTS, RATHER THAN CHANGES IN THE OVERALL GRANT ENTITLEMENT OF AN AUTHORITY. IN EVERY YEAR SINCE 1981 WE HAVE MADE CHANGES TO THE WAY GRES ARE CALCULATED - OFTEN AS A RESULT OF REPRESENTATIONS MADE BY THE LOCAL AUTHORITY ASSOCIATIONS THEMSELVES. IN EVERY YEAR SUCCESSIVE SECRETARIES OF STATE HAVE PROPOSED - AND THE LOCAL AUTHORITY ASSOCIATIONS HAVE ACCEPTED - THAT THE EFFECT OF THESE CHANGES SHOULD BE MITIGATED BY THE SETTING OF SAFETY NETS. WHAT WE HAVE NEVER SOUGHT OR AGREED TO DO IS TO PROTECT AUTHORITIES FROM THE GRANT EFFECTS OF THEIR OWN EXPENDITURE DECISIONS. IT WOULD HAVE RUN COUNTER TO ONE CENTRAL PURPOSE OF GOVERNMENT POLICY IN THIS AREA TO DO SO.

SO - TO SUMMARISE - MULTIPLIERS HAVE BEEN DETERMINED TO LIMIT CERTAIN CHANGES IN GRANT ENTITLEMENTS, BUT NOT OTHERS.

THIS APPROACH HAD THE GENERAL SUPPORT OF THE LOCAL AUTHORITY ASSOCIATIONS. IT HAS BEEN EMBODIED IN THE RSG REPORTS FOR EACH OF THE FIVE YEARS 1981/82 TO 1985/86, ALL OF WHICH HAVE BEEN APPROVED BY THIS HOUSE. IT HAS NOT PREVIOUSLY BEEN CHALLENGED.

HOWEVER THIS YEAR FOR THE FIRST TIME A HANDFUL OF AUTHORITIES HAVE QUESTIONED WHETHER SECTION 59(6)(A) CAN BE USED TO ACHIEVE THE OBJECTIVE I HAVE JUST DESCRIBED. THEY MAINTAIN THAT THE SECRETARY OF STATE'S POWER IS RESTRICTED TO LIMITING CHANGES IN THE OVERALL AMOUNT OF GRANT PAYABLE TO AN AUTHORITY FOR ONE YEAR COMPARED TO THE PREVIOUS YEAR. ONE AUTHORITY HAS ALREADY TAKEN COURT ACTION ON THIS, AND I UNDERSTAND THAT A NUMBER OF OTHER AUTHORITIES ARE CONSIDERING SIMILAR ACTION.

I MUST MAKE IT CLEAR THAT I DO NOT BELIEVE THAT THE POWERS COULD BE USED IN ANY SENSIBLE, PRACTICABLE FASHION UNDER THEIR INTERPRETATION. IT WOULD REQUIRE THE SECRETARY OF STATE TO INCLUDE WITHIN ANY SAFETY NET THE EFFECT OF GRANT REDUCTIONS ARISING SOLELY BECAUSE AUTHORITIES' OWN RATEABLE RESOURCES HAD INCREASED. FOR EXAMPLE IT WOULD ALSO REQUIRE THE SECRETARY OF STATE TO TAKE ACCOUNT OF GRANT WHICH AUTHORITIES HAD LOST SOLELY AS A RESULT OF THEIR OWN EXPENDITURE DECISIONS. THAT WOULD BE A NONSENSE. NO REASONABLE AUTHORITY WOULD EXPECT THE SECRETARY OF STATE TO OPERATE THE POWERS IN THIS WAY.

THIS PUTS IN DOUBT THE GRANT ENTITLEMENT FOR EVERY LOCAL AUTHORITY FOR 1986/87 AND FOR EVERY PREVIOUS YEAR BACK TO 1981/82. IT PUTS IN DOUBT THE RSG SETTLEMENTS WHICH PARLIAMENT APPROVED FOR EACH OF THOSE YEARS. IT WOULD OBVIOUSLY BE AN INTOLERABLE SITUATION, BOTH FOR CENTRAL GOVERNMENT AND FOR ALL LOCAL AUTHORITIES, IF AN ACTION BY A SMALL NUMBER OF AUTHORITIES WERE TO SUCCEED IN OVERTURNING A PROCEDURE WHICH HAS BEEN FOLLOWED SINCE 1981/82. THROUGHOUT THIS PERIOD THERE HAS BEEN A BROAD MEASURE OF AGREEMENT BETWEEN THE DEPARTMENT AND THE LOCAL AUTHORITY ASSOCIATIONS, MANY OF WHOSE MEMBERS WOULD FACE WHOLLY UNMANAGEABLE LOSSES OF GRANT IF ANY OTHER INTERPRETATION OF THE 1980 ACT WERE TO BECOME ACCEPTED. THE GOVERNMENT IS NOT PREPARED TO ALLOW THAT TO HAPPEN AND BELIEVES WE MUST TAKE ACTION TO PRESERVE THE STATUS QUO.

OBVIOUSLY THE POSITION MUST BE CLARIFIED. MY RT HON FRIEND AND I WILL THEREFORE BE BRINGING FORWARD A SHORT BILL DURING THIS SESSION OF PARLIAMENT TO REMOVE ANY DOUBTS ABOUT THE INTERPRETATION OF THE SECRETARY OF STATE'S POWERS IN RELATION TO MULTIPLIERS.

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DEPARTMENT OF EDUCATION AND SCIENCE

ELIZABETH HOUSE YORK ROAD LONDON SE1 7PH

TELEPHONE 01-934 9000

FROM THE SECRETARY OF STATE

The Rt Hon Kenneth Baker MP
Secretary of State for the Environment
2 Marsham Street
London SW1P 3EB

10 April 1986

NBPM.

Dear Ken,

**RATE SUPPORT GRANT SETTLEMENT 1986-87: LEGAL CHALLENGE BY
BIRMINGHAM CITY COUNCIL**

Thank you for sending me a copy of your letter of 7 April to Willie Whitelaw.

WITH DN

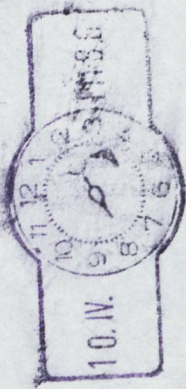
Given Counsel's advice that the present law relating to the setting of block grant multipliers is defective, it is clearly important that we should act quickly to avoid the serious disruption to local authority finances which would otherwise result. I therefore support your proposal for legislation.

It seems likely that there will be other matters which we shall need to look at afresh as a result of this challenge. I understand, for example, that you will not now be able to introduce the supplementary report to implement the grant consequences of my decision to change the AFE pooling formula for 1985-86 as early as we had hoped. My officials will be in touch with yours about matters of this kind.

I am sending copies of this letter to the Prime Minister, and to members of E(LA) and L Committees; also to Sir Robert Armstrong and Sir George Engle.

Kenneth Baker

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CCBG



Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
London
SW1A 2AT

NBN

8 April 1986

Dear Willie,

RSG SETTLEMENT 1986-87: LEGAL CHALLENGE BY BIRMINGHAM CITY COUNCIL

Kenneth Baker sent me a copy of his letter to you of 7 April, proposing new legislation to clarify the powers on setting safety nets and caps to limit local authorities' grant losses or gains.

I recognise all the difficulties, but I do think that Kenneth's proposal has to be strongly supported. The alternative would be to wreck the 1986-87 RSG Settlement, create massive upheaval in local government finance and almost certainly lead to a heavy additional burden on the Exchequer. Many authorities would lose large amounts of grant, including many in London, thus undermining our position on the effect of the abolition of the GLC. Others would receive windfall gains - even though they are already budgetting for large increases in spending and the likelihood here is that this would therefore fuel much further overspending by local authorities. Birmingham itself is planning a 9½ per cent increase over its adjusted 1985-86 budget.

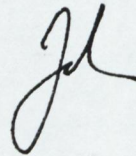
Highly unwelcome though the situation we are now faced with is, I am therefore in agreement with Kenneth's suggested course of action.

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I am copying this letter to the Prime Minister, members of E(LA), to the Lord Privy Seal and members of L Committee, to Sir Robert Armstrong and Sir George Engle.

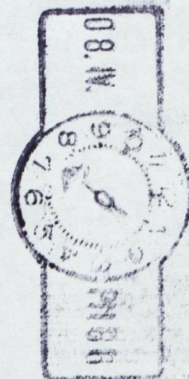
Yours etc,

A handwritten signature in cursive script, appearing to be 'JH' or 'John MacGregor'.

JOHN MacGREGOR

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Local Govt
RELATIONS
PT 29



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JD (47)
bc BG



10 DOWNING STREET

From the Private Secretary

8 April 1986

**RATE SUPPORT GRANT 1986/87:
LEGAL CHALLENGE BY BIRMINGHAM CITY COUNCIL**

The Prime Minister has seen your Secretary of State's letter of 7 April to the Lord President about Birmingham's legal challenge to the Rate Support Grant Settlement 1986/87. The Prime Minister agrees, subject to the views of colleagues, that legislation to clarify the powers in this area seems unavoidable.

I am sending copies of this letter to the Private Secretaries to the members of E(LA), the Lord President, the Lord Privy Seal and members of L Committee, to Sir Robert Armstrong and Sir George Engle.

(DAVID NORGROVE)

Robin Young, Esq.,
Department of the Environment.

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