

PRIME MINISTER

The attached letter from Mr. Heseltine to the Chancellor argues that the Comptroller and Auditor General is exceeding his functions. Mr. Heseltine records the intention of E and AD to submit to PAC a paper on the future financial implications of policy decisions now being considered in the Department.

We shall shortly be receiving a note about the functions of E and AD following your comments to Sir Derek Rayner. The questions now raised by Mr. Heseltine can also be looked at in that context. His letter raises an important issue of principle: the particular case which has brought it up is no longer urgent, as the PAC Chairman has now decided to approach housing issues in a different way, with the result that Sir Douglas Henley's draft memorandum will not be issued.

You should, however, be aware of the point now in case Mr. Heseltine mentions it to you in the margins of Cabinet.

24 October 1979



2 MARSHAM STREET
LONDON SW1P 3EB

My ref:

Your ref:

22 October 1977

Jan Cullin

Am

I think I should alert you, and our colleagues, to my concern at what appears to be an attempt by the Comptroller and Auditor General, Sir Douglas Henley, to extend his role into commenting on financial aspects of forthcoming legislation, and using his access to our files for audit purposes to reveal in advance of our defending our legislative proposals in Parliament the advice we have received from officials on those proposals. This precedent if established clearly has the most far-reaching implications for all Government Departments.

The issue is that of the sale of council houses, which is of course a main element in the programme on which we were elected and is highly contentious politically - and especially the terms of sale, notably the discounts. When we came into office we made our improved discount arrangements available for existing voluntary sales in advance of the legislation we are introducing this session. My officials called my attention with supporting figures to the possibility of criticism that, on certain assumptions, while there was bound to be a short term gain to the public purse, there could be a loss in the long term; but all depended on the assumptions, which were bound to be speculative eg about future rates of inflation. On this basis we concluded we could reject any such criticism either at that time or when the issue would no doubt be debated on our forthcoming legislation.

The Comptroller and Auditor General, through Exchequer and Audit Department, has access to departmental files for purposes of audit. My officials knew that some interest had been shown by Exchequer and Audit Department in the arrangements for the sale of council houses, and that Sir Douglas Henley had mooted the possibility of putting forward a Memorandum to the Public Accounts Committee in the light of this. But when they expressed doubts about this novel proposal, which seemed rather far away from Comptroller and Auditor General's normal role of an apolitical auditor of the regularity, propriety, and value for money of transactions under existing legislation, and venturing into a field which was to be the subject of forthcoming and no doubt politically contentious legislation, they had received reassurances.

My Accounting Officer was, therefore, greatly surprised to receive, towards the end of last month, a draft Memorandum which Sir Douglas Henley had in mind to submit to the Public Accounts Committee, which, using the information on our files, set out in summary form the calculations my officials had put before me, and repeated their advice to me about the possibilities of longer term loss wider certain assumptions - assumptions I should stress that are not accepted by Ministers in the Department as being the most probable.

Your officials and mine have talked to Sir Douglas Henley to represent the concern of Accounting Officers generally that material obtained through Comptroller and Auditor General's right of access for audit purposes should be used in this way; that there were great dangers in the Comptroller and Auditor General setting himself up to give a financial view on forthcoming legislation and particularly in drawing on departmental papers for this purpose - papers that are not endorsed by Ministers and to which he had access for quite different purposes: that although Accounting Officers have a peculiar responsibility to Parliament through the Public Accounts Committee for their financial management of Departments, it is Ministers, not Accounting Officers, who have to defend proposals in legislation with financial implications, and Accounting Officers are only responsible for carrying out what Parliament has enacted. Even though, as in this case, they would expect to advise Ministers of the financial implications and possible criticisms of legislative proposals, they would not expect to be questioned by the PAC in advance of the legislation being discussed in Parliament on the tenor of their advice: nor would they expect Ministers to be confronted, during the passage of the legislation, with the advice they had received from officials, obtained as it was through access directed primarily at audit.

My Accounting Officer made it clear that if current material was used in this way, he might have to consider withdrawing access by Exchequer and Audit Department to current papers without his own prior approval; though he would do this with the greatest reluctance, because it would upset the effective understandings which has long prevailed between the PAC, Comptroller and Auditor General, and Accounting Officers. But in any event the issue of the proposed Memorandum, on so politically contentious an issue, would doubtless upset the bi-partisan nature of the PAC to the detriment of those understandings.

Our officials believe that Sir Douglas Henley was impressed by these arguments. He still thinks that Parliament ought to have before it information on the financial implications of Government proposals, but has taken note of the argument that he, with his particular responsibilities and powers, and the PAC, to which Accounting Officers are directly answerable, may not be the most appropriate channel. However, he said he needed to consult Joel Barnett, as Chairman of the PAC, before deciding whether to go ahead with his Memorandum. And this is understandable because Jack Straw MP has written to Joel Barnett as Chairman of the PAC on this issue, which the Opposition know to be a contentious one.

My Accounting Officer is proposing to write to Sir Douglas Henley saying that the Memorandum is unacceptable in principle as something prepared by C & AG on the basis of access to files for a different purpose; to re-iterate the arguments already put orally to Sir Douglas Henley; and to ask him not to proceed with it.

I am sure we should do everything we can to prevent this Memorandum going forward. Quite apart from the massive extension of the role of the C and AG that it would represent, it raises the most serious implications for relations between Ministers and officials in their own Departments. If this precedent is created it will mean that financial advice given to Ministers, whether they agree with it or not, is potentially immediately available to the PAC from the C and AG and is therefore accessible to the Opposition at the very time that Ministers are proceeding with Bills relating to that advice in the House. If Joel Barnett and Sir Douglas Henley decide themselves not to proceed, so well and good, though the prospect of further initiatives of this kind, perhaps more insinuatingly in a less politically contentious field, would still remain, and we should still be at risk because of the access to our files that this involves. But if there are signs that Joel Barnett does not reject the idea, perhaps one of us should have a talk with him? The role of the C & AG is of course under review at present and Joel Barnett will know that a Green Paper is in prospect. (Of course Sir Douglas Henley is very exercised about his own appearance of independence, as he has been under criticism for lacking it: and too overt an intervention by Ministers might have the opposite effect to what we wish).

I am sending copies of this to our Cabinet colleagues, including the Minister of Transport, and to Sir Robert Armstrong and Sir Ian Bancroft.

Yours ever
MHE

MICHAEL HESELTINE

The Rt Hon Sir Geoffrey Howe MP



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HOUSE OF LORDS,
SW1A 0PW

26th October 1979
x 27

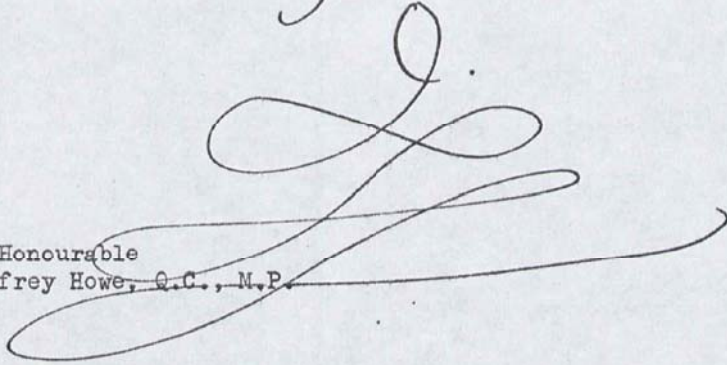
My dear Geoffrey..

Michael Heseltine sent me a copy of his letter to you of 22nd October about the suggestion that the Comptroller and Auditor General had made that he might submit to the Public Accounts Committee a memorandum based on departmental files and dealing with officials' calculations relevant to the policy of selling Council Houses.

I share Michael Heseltine's misgivings about this development. I think, as he does, that it could form an unfortunate precedent for financial advice relevant to policy currently being formulated being made available to the Public Accounts Committee. I do, therefore, agree that it would be wise to take such steps as can be taken to stop this development.

I am sending copies of this letter to Michael Heseltine and to those to whom he sent copies of his letter to you.

Yrs :



The Right Honourable
Sir Geoffrey Howe, G.C., M.P.

BF 9/11/79
MMP

Chancellor of the Duchy of Lancaster

PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

2 November 1979

COMPTROLLER AND AUDITOR GENERAL

The Secretary of State for the Environment has sent me a copy of his letter to you of 22 October about the Comptroller and Auditor General's proposed memorandum for the Public Accounts Committee on the sale of council houses.

I share Michael Heseltine's concern about Sir Douglas Henley's intervention and the exposure of advice to Ministers which could result from it. I am also concerned about the role of the PAC in this matter. I can well see that Jack Staw may have aroused their interest but it would seem to me most unfortunate if the PAC were to see it as their business to question the financial assumptions behind legislation which has not yet been introduced or which is still before the House. This would complicate and delay the preparation and passage of bills with potentially serious implications for our legislative programme; and it would confuse the functions of the PAC, of the Standing Committee on the Bill, and possibly of the new Select Committee on the department concerned. We have not yet formulated a Government view on how far it would be appropriate for the new Select Committees to interest themselves in proposals for future legislation, and at this stage I think it would be best to deal with such interest as it arises in individual committees, with guidance from the departmental Minister concerned. My own view - which I indicated briefly in the debate on 25 June (Col. 217) - is that we should not prevent them from asking about the shape of coming legislation as their dialogue with the department goes on - but their interest would be broader and the context and scope of such questioning would be different from what would be involved in an enquiry by the PAC. A third consideration is that Ministers and officials could hardly be very forthcoming in such a discussion with the PAC, and that could lead to criticism and ill-feeling that could affect relations with Select Committees generally.

Contd...



I therefore hope very much that the PAC can be discouraged from this kind of enquiry, and I wonder if you or Nigel Lawson might have a discreet word with Jock Barnett. You will not want to overplay the problem, but I should be glad to join in if you think that would help.

I am sending copies of this letter to Cabinet colleagues and the Minister of Transport, and to Sir Robert Armstrong and Sir Ian Bancroft.

James Callaghan

The Rt Hon Sir Geoffrey Howe, QC, MP
Chancellor of the Exchequer
HM Treasury
SW1



PRIME MINISTER.

A sensible response to the problem about the C & AG's use of his powers, raised in the Heseltine's letter below

Treasury Chambers, Parliament Street, SW1P 3AG

01-233 3000

8 November, 1979

Dear Michael

M.P. 9/11

THE C & AG AND COUNCIL HOUSE SALES

Thank you for your letter of 22nd October about Sir Douglas Henley's recent initiative. I have also seen Quintin Hailsham's and Norman St. John Stevas' letters of 26th October and 2nd November respectively. I share the concern which everyone has expressed.

Some of the urgency has gone out of this matter as a result of a deliberative meeting of the PAC of which my officials have had informal reports from the Clerk and from representatives of the Exchequer & Audit Department. It seems that the Chairman took the initiative to refer briefly, at the end of a long meeting about other matters, to the issue of council house sales. He implied that this was an important issue within the purview of the Committee, and that he hoped the Committee would be able to find room for it in their programme at some future date. There appears to have been no reaction from other members of the Committee. The Clerk has suggested to my officials that the Committee are unlikely to be able to deal with this matter until after January, since they already face a heavy programme.

Although members of the Committee are aware in general terms of the Comptroller and Auditor General's personal interest in this subject, they do not appear to know of the existence of the draft memorandum, and there was no mention of this at last week's meeting. Joel Barnett did however draw their attention to your written Answer in the House on 23rd October in which you promised an appraisal of the financial effects of council house sales in connection with the Bill. Clearly, therefore, the assumption in the minds of the Chairman and the members is that any hearing which they decide to hold on this issue will be based on your financial appraisal.

/In these

The Rt. Hon. Michael Heseltine, M.P.

IN CONFIDENCE



In these circumstances I suggest the right line for your Accounting Officer to take in writing to Sir Douglas Henley might be to decline to offer detailed comments on the draft memorandum on the ground that he understands it has now been overtaken, while making clear that had it been for use as originally intended he would have had difficulty with much of it. I also think it would do no harm if your Accounting Officer's letter were to mention that this use of powers of access to Departmental papers, which were intended for audit purposes, as a source of information about the process of formulating current and future policy raises some awkward questions.

While it is some comfort that the memorandum as drafted seems now unlikely to go forward to the PAC, it is less satisfactory that the Committee may yet decide to involve themselves in the political debate about the forthcoming legislation. As you point out, this kind of development could jeopardise the traditionally bipartisan character of the PAC, and the effective working arrangements which have grown up over the years between Departments and the E & AD. It would also be a departure from the audit-based tradition of the PAC's work, and take them into questions better discussed on the floor of the House, or in the Committee on the relevant legislation, or in the new departmental Committee.

I am doubtful about direct intervention with Joel Barnett at the present stage. It might only stimulate his interest. But we can well keep the idea in mind, and meanwhile seek to influence events in the right direction through the Treasury's continuing informal contacts with the C & AG.

Both because of the possibility that the Committee may go ahead with their enquiry and for other reasons I should be glad to have a sight in due course of your financial appraisal in draft.

I am sending copies of this letter to the recipients of yours.

A handwritten signature in dark ink, appearing to read 'Geoffrey Howe', written in a cursive style.

(GEOFFREY HOWE)

IN CONFIDENCE

IN CONFIDENCE



File Govt Machinery SK

10 DOWNING STREET

From the Private Secretary

12 November 1979

Dear David

The Prime Minister has seen the recent correspondence on the Comptroller and Auditor General's enquiries about the financial implications of policy on council house sales, initiated in your Secretary of State's letter of 22 October. She has also seen the letters from the Lord Chancellor of 26 October, the Chancellor of the Duchy of Lancaster of 7 November and the Chancellor of the Exchequer of 8 November.

The Prime Minister agrees that the developments illustrated by this case seem undesirable. For the present, she is content that matters should be pursued through the Treasury's continuing informal contacts with the Comptroller and Auditor General, as suggested in the Chancellor of the Exchequer's letter of 8 November.

I am sending copies of this letter to the Private Secretaries to the members of the Cabinet, including the Minister of Transport, and to Martin Vile (Cabinet Office) and David Laughrin (Civil Service Department).

*Yours sincerely
Mike Pattison*

David Edmonds, Esq.,
Department of the Environment

IN CONFIDENCE