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A:\ECONOMIC\BRIGHT (MRM)

SUBJECT cc MASTER

(not copied to Employment)

10 DOWNING STREET

LONDON SW1A 2AA

From the Private Secretary

28 March 1990

Dear Roger,

COMMUNITY CHARGE CAPPING 1990-91

The Prime Minister held a meeting on Tuesday 27 March at 4.30pm to discuss community charge capping for 1990-91. Those present were your Secretary of State, the Home Secretary, the Chancellor of the Duchy of Lancaster, the Secretaries of State for Health, Education and Science and Social Security, the Chief Secretary, Treasury, the Solicitor General, the Parliamentary Secretary, Treasury, the Minister for Local Government, the Ministers of State, Department of Education and Science and Department of Employment, Sir Robin Butler, Richard Wilson and Andrew Wells (Cabinet Office) and John Mills (Policy Unit).

I should be grateful if you and copy recipients would ensure this letter is not copied and is seen by only named individuals.

The meeting had before them your Secretary of State's minute to the Prime Minister dated 26 March, attached to which was a draft E(LG) paper, and Tim Sutton's letter to me dated 27 March.

Your Secretary of State said that the draft E(LG) paper concentrated on the three questions which he faced over capping for 1990-91: whether to use the powers at all; if so, what criteria to use to select authorities for capping; and the level of caps to be imposed on those authorities. The first question was not straightforward, and there were differing views among the Government's supporters. Some MPs vigorously opposed capping, on the ground that the accountability inherent in the community charge should be allowed to work. Others strongly favoured the use of capping, arguing that the Government had a responsibility to chargepayers facing excessive bills. At local authority level, many Conservative counsellors also opposed capping, on the ground that voters would draw conclusions from the difference in community charge levels between Conservative and Labour councils. A further factor against capping was the inevitable anomalies which would arise, which were spelt out in detail in the paper. Nevertheless, the Government had made it clear that they would not hesitate to cap local authorities if they set excessive budgets. The Government could not ignore the plight of chargepayers who were facing unreasonable bills. Furthermore, if the capping powers were not used in 1990-91 it was difficult to

see how they could be used in subsequent years. For all these reasons he had concluded that he should use the powers to cap authorities for the forthcoming year.

The next decision was the criteria to be used to select the authorities which were to be capped. The paper illustrated two options. The first would select authorities whose expenditure was excessive on the basis that they were budgeting to exceed their standard spending assessments (SSAs) by more than 12.5 per cent and by more than £100 per adult, and in addition were exceeding these criteria by at least £26 per adult. The purpose of this final "de minimis" criterion was to ensure that no authorities were selected unless they could be required to cut their expenditure, and hence their community charge, by at least £26 per adult, or 50p per week. These criteria would select 19 local authorities. The second option illustrated in the paper would cap authorities which set budgets which exceeded their SSAs by more than 12.5 per cent and by more than £75 per adult, again with a £26 de minimis margin. These criteria would select 21 local authorities, and this was the option which he favoured.

The third decision was the caps to be set for each of the selected authorities. These needed to reflect their individual circumstances. The proposals in the paper would require the maximum possible cuts in most cases. But in a few cases his judgement was that such cuts would not be achievable, and he had proposed less severe reductions. The overall effect of his proposals would be to reduce local authority spending by £250 million.

It was essential that his capping decisions should stand up to legal challenge. Court cases were almost inevitable, and a defeat could have serious implications for the whole local government finance system. His proposals had been designed with great care to minimise the risk of successful legal challenge, in consultation with the Solicitor General.

The Solicitor General said that he had considered the proposals carefully with the Secretary of State and his advisers. The Secretary of State had a clear power to cap local authorities if their expenditure was excessive. But his use of this power was likely to be challenged in the courts. They would apply the normal Judicial Review principles. The proposed selection criteria measured excessiveness in relation to an authority's SSA. But the SSA, like the grant-related expenditure (GRE) which had preceded it, was not a precise measure of a reasonable spending level. The Department of the Environment considered that it was only accurate to within about 10 per cent, and this view was known from affidavits submitted in previous court cases. For this reason a margin of 12.5 per cent above GRE was the lowest which had been used to select authorities under rate capping. If the Secretary of State now chose a lower criteria for community charge capping he would need to be able to argue that SSAs were more accurate than GREs. It was doubtful whether this argument could be sustained. There was therefore a real risk that a court might find against the Secretary of State, either on the ground that he did not have all the facts and that

his calculations incorporated no margin of error to allow for this, or on the ground that the decision was one which no reasonable Secretary of State could have made. So, while he believed that there was a good chance of winning any court case against the proposals in the Secretary of State's paper, he could not advise that it would be safe to adopt significantly more stringent criteria.

In discussion the following main points were made -

a. The scope of the proposed capping exercise was very disappointing. The Government had committed themselves to capping authorities where their expenditure was excessive. The plain man's interpretation of this commitment would include substantially more than 21 authorities. Chargepayers in many parts of the country who were facing high community charge bills would not understand why the Government had not been able to take more effective action. Furthermore the proposals would cut local authority spending by only £250 million out of a total overspend of over £3 billion, and would go only a small way to reverse the substantial increase in the RPI resulting from authorities' community charge decisions.

b. There was therefore a strong case for adopting tighter criteria which would select more authorities. Possibilities included reducing the threshold proposed by the Secretary of State to 10 per cent above SSA, introducing a new criterion under which authorities would be selected if they were spending £150 per adult above SSA irrespective of the percentage overspend, and use of a criterion related to the percentage increase in spending between 1989-90 and 1990-91. There might also be a case for reducing the de minimis margin, for example to £15 per adult. Such criteria would select further authorities who had clearly set excessive budgets, and would be popular with chargepayers. These benefits might justify any higher risk of losing a court case.

c. On the other hand, these arguments ignored the limited nature of the existing powers to impose charge capping. A defeat in the courts would be politically embarrassing for the Government. But it could also have disastrous consequences for the new system of local government finance. If, for example, a court found against the new system of SSAs this could invalidate the whole of the new grant system.

d. Whatever decisions were taken on capping, it was important that they should be easy to explain and defend. The anomalies which were bound to arise in the first year, because of the transitional arrangements, would make this difficult. Nevertheless it would be important to be able to rebut any suggestion that the selection criteria had been designed specifically to avoid selecting any Conservative-controlled authorities. Ministers would also need to be sure that the political benefits of capping outweighed the disadvantages.

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e. Authorities selected for capping would claim that it would have unacceptable implications for their services. They were likely to propose cuts in the most public and damaging areas, such as education and the fire service. It was important that Ministers should be in a position to rebut arguments of this sort. Urgent advice was needed on the extent to which they could do this, given any legal constraints which might be imposed by the process of capping and any related legal action by authorities.

f. One of the anomalies highlighted in the paper was the fact that some chargepayers on community charge rebates could be worse off as a result of capping. This arose from the de minimis rule in the benefit regulations which provided that where benefit would be less than 50p per week the entitlement was set to 0. It would be indefensible to apply this rule in the case of capping, and urgent consideration should be given to ways to avoid this, for example through ex-gratia payments to benefit recipients who would otherwise be losers.

The Prime Minister, summing up the discussion, said that the scope of the capping exercise proposed by your Secretary of State was disappointing. Many more authorities than the 21 in his list had clearly set excessive budgets, and chargepayers facing bills which they could not afford would not understand why the Government was unable to take action. The point was reinforced by the fact that the proposals would reduce local authority budgets by only £250 million out of a total of overspend of over £3 billion. Nevertheless, the meeting accepted the strong legal advice which they had received that, given the statutory position, there would be unacceptable risks in setting selection criteria significantly more stringent than those proposed. Their advice to your Secretary of State was therefore that he should proceed with his proposals, subject to a final re-consideration of whether it would be possible to make minor changes to the criteria to extend the scope of the selected authorities.

Further work was need on two points raised in discussion. First, it would be indefensible if the rules for community charge benefits resulted in some chargepayers losing money as a result of capping. The Secretary of State for Social Security, in consultation with colleagues, should consider urgently how this could be avoided, perhaps by disapplying the de minimis rule in this case, or making payments on an ex-gratia basis. It was also important that Ministers should be able to rebut the propaganda which selected authorities could be expected to mount about the effects of capping on services. The Solicitor General should consider this urgently, and advise colleagues about the extent of any constraints on them as a result of the process of capping and any related legal action.

Your Secretary of State should now amend his draft paper in the light of the meeting, and circulate it for a discussion at E(LG) on Thursday morning. The outcome of that discussion should be reported to Cabinet, also on Thursday morning.

I am copying this letter to the Private Secretaries to the Ministers who were present and to the Lord President, and to the others who attended the meeting.

Yours,
Paul

PAUL GRAY

Roger Bright, Esq.,
Department of the Environment

Secret CMO.

Mr Gray 7(a-p) Minutes of a yesterday's capping meeting.

Andrew Wells 28/3

Scanned.

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The meeting had before them your Secretary of State's minute to the Prime Minister dated 26 March, attached to which was a draft E(LG) paper, and Tim Sutton's letter to me dated 27 March.

Your Secretary of State said that the draft E(LG) paper concentrated on the three questions which he faced over capping for 1990/91: whether to use the powers at all; if so, what criteria to use to select authorities for capping; and the level of caps to be imposed on those authorities. The first question was not straightforward, and there were differing views among the Government's supporters. Some MPs vigorously opposed capping, on the ground that the accountability inherent in the community charge should be allowed to work. Others strongly favoured the use of capping,

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The next decision was the criteria to be used to select the authorities which were to be capped. The paper illustrated two options. The first would select authorities whose expenditure was excessive on the basis that they were budgeting to exceed their standard spending assessments (SSAs) by more than 12.5% and by more than £100 per adult, and in addition were exceeding these criteria by at least £26 per adult. The purpose of this final "de minimis" criterion was to ensure that no authorities were selected unless they could be required to cut their expenditure, and hence their community charge, by at least 26 per adult, or 50p per week. These criteria would select 19 local authorities. The second option illustrated in the paper would cap authorities which set

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CONFIDENTIAL

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