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LONDON SW1A 2AA

From the Private Secretary

27 June 1990

SUBJECT cc MASTER

Dear Philip,

THE COMMUNITY CHARGE

The Prime Minister held a meeting at 5.45 p.m. on Tuesday 26 June 1990 to discuss the community charge. Those present were the Lord President of the Council, the Chancellor of the Exchequer, your Secretary of State, the Chief Secretary, Treasury, the Solicitor General, the Chief Whip and the Minister for Local Government, Richard Wilson, Peter Owen and Andrew Wells (Cabinet Office), and John Mills (Policy Unit).

I should be grateful if you would ensure that this letter is not copied without your authority, and that it is seen only by those with a strict need to know.

The group considered the Solicitor General's minute to the Prime Minister of 19 June and your letter to me of 25 June.

The Solicitor General said that his minute set out his advice both on the use of the existing capping powers in the Local Government Finance Act 1988 and on possible legislation for enhanced capping powers coupled with referendums. In 1990-91 the Government had effectively been constrained to use only one limb of the existing powers, allowing capping where the absolute level of an authority's expenditure was excessive. He had been obliged to give cautious advice about the use of this limb because of the uncertainties inherent in the calculation of standard spending assessment (SSAs), which precluded capping at anything less than 12.5% above SSAs. But for 1991-92 it would be open to the Secretary of State to use the second limb of the powers, to cap authorities which made excessive increases in their expenditure. The base for comparison would be the budgets set by the authorities themselves in 1990-91, rather than the SSAs. It would therefore be open to the Secretary of State to take a more robust approach. He could for instance have a policy for what would be an excessive increase for different categories of authority. For example, those spending below their SSAs in 1990-91 might be permitted to set their own budgets for the following year without intervention; those spending between SSA and SSA plus 5% might be allowed a standstill in real terms before the capping powers were invoked; and those spending more than SSA plus 5% might be expected to reduce their expenditure in real terms by, say, 2%. Such a general policy could be announced in advance; and the Secretary of State could make it clear that if

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his policy were ignored he would not hesitate to use his powers under section 100(1)(b) to enforce it. His advice was based on careful consideration of the law, in consultation with Treasury Counsel, and he was convinced that the powers were reasonably robust. The risk of successful judicial review could not be discounted entirely, but it would be hard for a local authority to argue that a budget which it had itself set was so inadequate as to be an unacceptable base for capping. It seemed unlikely that Government would gain any greater certainty through new legislation of the sort which the group had discussed at previous meetings.

Your Secretary of State said that the Solicitor General's advice was encouraging. It suggested that the Government could proceed under existing powers rather than seeking new legislation with all the disadvantages in political and Parliamentary terms which that would entail. The table which he had had circulated illustrated one possible version of the scheme set out by the Solicitor General, and showed that it could in principle achieve greater savings than enhanced legislation of the sort which the group had discussed in the past. But he did not want to mislead colleagues. In practice he was doubtful whether the Government would wish to proceed with a scheme as tough as the one which had been exemplified, which might involve capping every local authority with a budget above the statutory minimum of £15 million. Whatever scheme was adopted, it would be important to achieve the greatest possible deterrent effect by announcing what use he was minded to make of the capping powers in advance. Such a statement could be made either in July, or in November when the detailed settlement decisions were announced. As far as the details of the scheme were concerned, it would probably be better to base the selection of authorities and the decision about what constituted an excessive increase in each case on their 1991-92 SSAs, rather than the unrealistically low figures set for 1990-91.

Ministers also needed to take decisions about the level of Aggregate External Finance (AEF) and Total Standard Spending (TSS) for 1991-92. The paper which had been circulated set out the background, his views and those of the Chief Secretary. Annex B to the paper set out his proposals for a package of measures to help individuals. He sought colleagues' endorsement of his proposals.

In discussion the following main points were made -

a. The difference between the use of the second limb of the existing powers in the way proposed and legislation to take enhanced powers coupled with referendums were not as great as was implied by the figures which had been circulated. Under either scheme the savings secured would depend on how the powers were used in practice, and it was not realistic to suggest that the Secretary of State would cap as many as 149 local authorities. If the existing powers were used as proposed the scheme would still to some extent be based on SSAs, since spending in relation to SSA would be the test which determined what constituted an excessive increase for

different categories of authority. This might invite a challenge, based on alleged deficiencies in SSAs, in much the same way as under the first limb of the powers. The advantage of legislation was that it would be possible to enact new provisions to reduce the chance of a successful legal challenge to SSAs and their use in relation to capping. It might therefore still be preferable to legislate, notwithstanding the Solicitor General's advice.

b. On the other hand the risk of legal challenge could not be ruled out even with new legislation. The existing powers had at least been tested in the courts and had so far proved to be robust. Legislation would have substantial disadvantages: it would be lengthy; it would provide a focus for debate on most aspects of the community charge; and it would need to be enacted by February, imposing substantial strains on business management. Even if there were a successful legal challenge to existing powers this could be countered by emergency legislation, possibly without the same timetable constraints. The balance of advantage therefore lay with using the existing powers in the way proposed by the Solicitor General.

c. The danger in basing capping on the year-on-year increase in each local authority's expenditure was that this would validate the budgets of those authorities whose expenditure was excessive in absolute terms. But the scheme proposed by the Solicitor General avoided this problem, because it allowed the Secretary of State to set different increases for different categories of authorities, depending on how high their expenditure was in relation to SSA. In deciding the criteria for selecting authorities, and setting their caps, it would be important to take account not only of the pressure on their budgets from inflation and new burdens, but also the scope for savings from greater efficiency and reductions in excessive staffing levels.

d. It would be important to achieve the greatest possible deterrent effect from the proposed use of the new powers, to encourage local authorities to moderate their spending and reduce the number which had to be capped. The best way to achieve this would be for the Secretary of State to make a clear announcement in July of how he was minded to use the powers. He would be entitled to have different rules for different categories of authorities; and he would need to be prepared to use the powers on the basis set out in July if authorities ignored his warning and again set excessive budgets in 1991-92. Failure to do so would mean that similar warnings given in future years would not be believed.

The Prime Minister, summing up the discussion, said that the group had reached agreement on how to proceed for 1991-92 on the crucial question of measures to restrain local authority expenditure, subject only to an unexpected adverse outcome to the present Appeal Court hearing on capping for 1990-91. They had agreed that it would be best to proceed under the existing

capping legislation, on the broad lines proposed by the Solicitor General. It would be important to achieve the greatest possible deterrent effect, and the Secretary of State for the Environment should include in his July announcement a clear statement of how he was minded to use the powers. An indication of the bands which he was minded to apply, and the increases which he believed to be appropriate for each band, would also need to be given in advance. He had agreed that it would be important to be prepared to cap as many authorities as exceeded the limits which he set if the use of the powers were to retain credibility for future years. Despite the robust legal advice which they had received, the group recognised that this approach might be subject to legal challenge. The group had agreed that it would be necessary to introduce emergency legislation if such a challenge were successful.

The group had also considered the package of measures to help individuals proposed by the Secretary of State for the Environment. The extension of the transitional relief scheme and the freezing of existing entitlements for 1991-92 and 1992-93 had already been agreed in principle. The group had now agreed on the proposals to give additional transitional relief to small composite hereditaments, to close the gap for students between school and university, and to alleviate some of the worst problems caused by the standard community charge. Indeed in the last case there were arguments for going further, and exempting from the standard charge those people, such as vicars and soldiers, who were obliged to live in accommodation provided by their employers. But this could be reconsidered in the light of the outcome of consultation on the proposals put forward by the Secretary of State. The group had expressed doubts about the remaining proposals. It was not clear that there was any case for further concessions to the disabled, or any enhancement of community charge benefits, and the Secretary of State had agreed not to proceed with these proposals. Doubts had also been expressed about the proposals to reduce the threshold for transitional relief from £3 to £2 per week and to change the rate at which the area safety net was withdrawn. These proposals were expensive, costing £220 million and £24 million respectively, and did not appear to offer good value for money. On the other hand, the Secretary of State believed that they would be an effective way of helping some of the people who had been worst affected by the community charge regime. He should reconsider his proposed package in the light of the group's discussion. It had to be borne in mind that funds which were used to help individuals would have to be found within the envelope which could be afforded for this purpose and for AEF: to devote too much to individuals would have adverse implications for community charges and the RPI in 1991-92.

The Secretary of State for the Environment and Treasury Ministers should have further discussions urgently with a view to agreeing a joint package of AEF, TSS and measures to help individuals which they could recommend to colleagues. Their recommendations would need to take account of what could be afforded in the context of the Public Expenditure Survey, but it should be possible for the Government to be more generous than

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they would otherwise have been now that they had identified effective means to constrain local authority expenditure. A meeting of E(LG) should be held the following week to consider the outcome of the further discussions. That meeting would also need to consider whether to defer the implementation of the Government's community care proposals.

I am copying this letter to the private secretaries to the Ministers present, to Sonia Phippard in Sir Robin Butler's Office, and to the officials who attended the meeting.

Yours,

Barry

BARRY H. POTTER

Phillip Ward, Esq.,
Department of the Environment.

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