



CONFIDENTIAL 16

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Note

The letter only would
be circulated: not
the opinion.
7/15/85

cc: Mr Baker
PS: Mr Waldegrave
Mr Heise
Mr Pickers.

My ref:
Your ref:

(without press cutting)

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 Mr 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 because 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

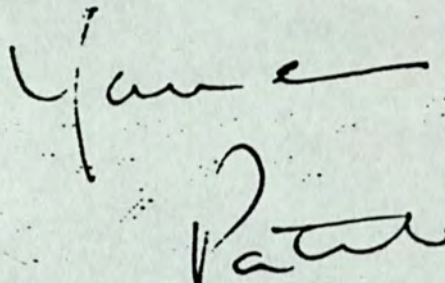
(b) whether the powers referred to in this page are adequate to justify the making of contributions by the GLC and member London borough councils to the ALA to enable it to publish advertisements

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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 constituent borough council, or the GLC, restraining them from incurring such expenditure.

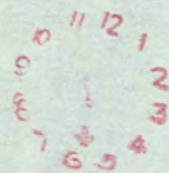
For completeness I should explain that the whole issue of persuasive advertising by local authorities will be one of the important problems to be addressed by the Inquiry into Local Government Practices and Procedures which I hope to set up very shortly. It may be that, as a result of that Inquiry's 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 permissible under present statute.

A handwritten signature in cursive script, appearing to read 'Patrick Jenkin', is written over the typed name.

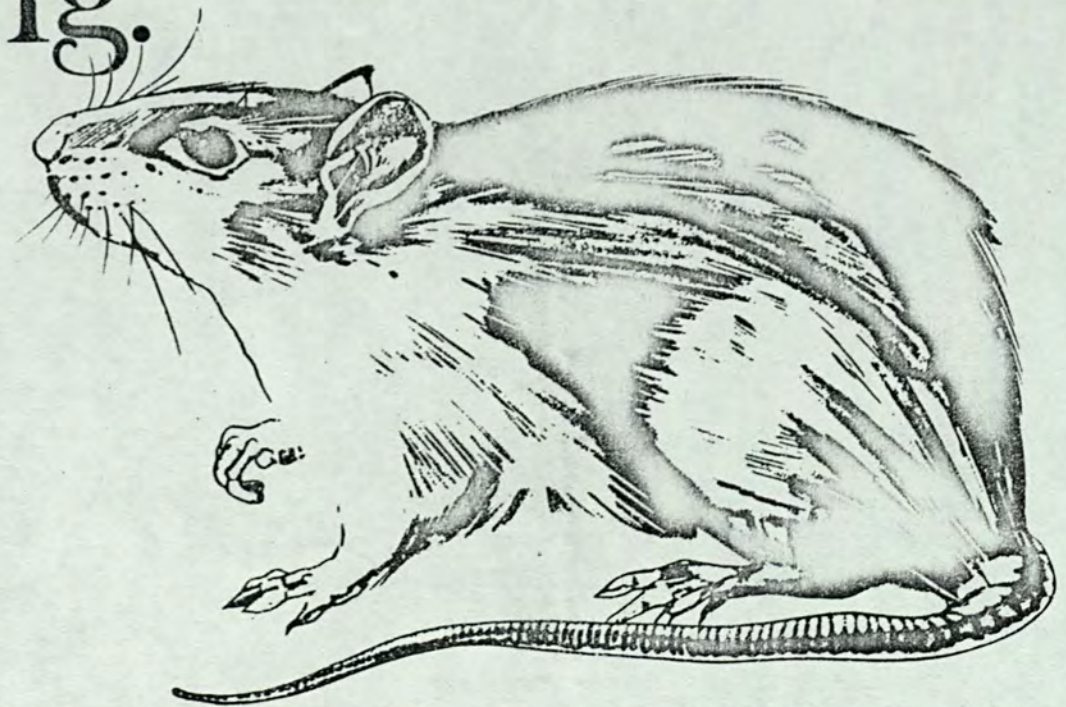
PATRICK JENKIN

The Rt Hon Sir Michael Havers QC

16 JAN 1985



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,

* They are all planning to spend this year at least 4% more than the target set for them by the Government. They are also planning to spend at least 20% more than the Government has calculated should be necessary to provide a standard level of services.

LOCAL GOVERNMENT: COUNTERING THE FAR LEFT

THE PROBLEM

Local authorities spend some £30 billion annually. As part of its efforts to control this vast bill, the Government has 'rate-capped' the eighteen highest-spenders. These authorities are now legally bound to set rates below the limit prescribed by Patrick Jenkin, and to budget accordingly. Two of them are Conservative-controlled and will obey the law; several more will probably come to heel between now and April (when the rates are set). But there is a severe risk that half a dozen will refuse to comply, and they are likely to be joined by Liverpool which (though not rate-capped) has a history of financial irresponsibility.

The authorities that decide to break the law have three options:

- either they can refuse to set a rate;

- or they can set a rate within the legal limit, but budget to spend more than that rate will raise;

- or they can set an illegally high rate that the Secretary of State is obliged to quash.

Any of these options could lead to the financial collapse of the authority, with the following results:

- i. failure to meet interest charges;

- ii. calling-in of debts by creditors;

- iii. lack of funds to pay for services;

- iv. breakdown of services.

The timing of these stages is uncertain because the councils have many different sources of funds; but there are likely to be financial difficulties by mid-summer, and the first service breakdowns may well occur in early autumn.

The aims of the far-Left councillors who run these authorities are clear, (and in many cases openly announced in the far-Left press). They want:

- to cause disruption in the financial markets;
- to cause dislocation in local services;
- to make the Government appear responsible for such disruption and dislocation.
- to corner the Government, so that it either loses face by repealing the Rates Act, or loses popular support by imposing 'dictatorial' Commissioners.

In pursuit of these aims, the far-Left Councillors have developed a sophisticated system of campaigning. They meet regularly to coordinate their activities, (as we see from the minutes that are occasionally leaked). They fund professional 'Campaign Units' in London and Sheffield, who are paid to foster all forms of opposition to Patrick Jenkin's local Government policies. They spend millions of pounds of public money, (legitimised by various sections of the 1972 Local Government Act), on widespread advertising campaigns. They ensure that all publicity represents them as eminently reasonable, entirely non-revolutionary, fundamentally non-political proponents of 'local democracy': hence, the Campaign Unit is classed as a 'non-political' organisation, and their advertisements remind the public of opposition to rate-capping, not from the Labour Party but from Conservative figures such as Heath and Pym. Above all, they make use of the institutions run by the Council to

carry endless repetitions of their message: town halls, schools, colleges, libraries, public baths etc. are stocked with posters and leaflets; officials are hired on the basis of political affiliation; 'voluntary groups' are given funds to carry on the good work.

The Government has not made any significant response to this campaign. Nor is it in a position to do so. The Department of Environment is prevented by its own probity from spending public funds on anything approaching political propaganda. The Conservative party has insufficient resources. Conservative Opposition Councillors are mainly part-timers (unlike their far-Left counterparts), and do not have access to the money, information, or advice from officials available to councillors from the majority party.

The effects of this one-sided disarmament are predictable: the far-Left will persuade the public that rate-capping is an attack on sensible local democracy; when financial collapse and service breakdown occurs, the public may well conclude that it is the Government's fault; the Government will be forced either to give way or to impose commissioners to run the councils in the face of popular hostility. By themselves, these results will not, of course, generate anything remotely approximating to a revolution. But they will increase the chances both of continued far-Left ascendancy in the Labour Party and of a defeat for the Government at the next election.

THE SOLUTION

The only effective method of countering the far-Left's tactics is to set up a campaign group of our own. This would have to be privately funded, and independent from the Government and the Conservative Party: this alone would give it sufficient freedom and a sufficiently 'non-political' tone. The specifications for such a group might be:

Name: Something memorable and aggressive, but not explicitly Conservative - 'Ratepayers Against Revolution '?

Aim: To reveal the true motives and activities of the far-Left councillors so that the public is prepared for collapse, sees such collapse as the fault of the far-Left, and is ready for the Government to take strong action.

Methods:

- i. Concentrated advertising between February and October, quoting facts and statements from the far-Left, and stressing their revolutionary intentions;
- ii. Opinion-polls, designed both to guide the advertising campaign and to stimulate public awareness - these, like the advertising and the formation of the group itself, should become news items;
- iii. Work with the media to encourage news stories, documentaries etc., revealing the activities of far-Left councillors - this applies to local and national press;
- iv. Coordination with Conservative Councillors in the relevant areas, providing them with effective propaganda, and making use of their expertise and local networks for distributions;
- v. Lobbying of MPs, businessmen etc., to ensure that they are informed about the problem;

- vi. Informal communication with Government and Party, so that propaganda can be coordinated with Party political broadcasts, ministerial speeches, Government actions etc.

Personnel:

A group leader, highly energetic and talented, with political and PR experience, and journalistic contacts - possible names include, B. Anderson, (LWT), M. Dobbs (Saatchi), R. Harris (Leon Brittan's special adviser).

The leader will need three assistants, (one from the media, one from local Government, one with central political expertise), as well as efficient secretarial assistance.

The group will also require a good advertising agency and a good lobbyist; the far-Left have already engaged BMP for advertising and GJW for lobbying (who are the best for these purposes). An effort might be made to outbid their present patrons. Otherwise, Saatchi and Saatchi will probably be the most useful for advertising, and the group will have to search quickly for another lobbyist.

Cost:

It is believed that the rate-capped councils are spending £15 - £30 million (0.5% - 1% of their total budgets) on propaganda either directly or indirectly. Even this may be an under-estimate, given their access to 'free' use of premises etc. An effective counter-attack might, however, be mounted by spending £5 million or less, if the media is skilfully used to provide additional free publicity.