

SECRET

[passed to PS/CST]

pyg

CHIEF SECRETARY

FROM: B H POTTER

Date: 16 November 1988

Ch  
Leave to CST, but seems to be a matter for DOE & their lawyers to sort out, rather than for CST to minute PM.

cc: Chancellor  
Sir P Middleton  
Mr Anson  
Mr Phillips  
Mr Edwards  
Mr Turnbull

I agree. However, the ~~idea~~ of no matter is in the two options - without them is a nonsense.

SIMPLIFIED NEEDS ASSESSMENTS

The Environment Secretary has written to the Prime Minister seeking permission to circulate a note to the local authority associations (LAAs) which describes and exemplifies the impact of new approaches to assessing local authorities' relative needs (ie the determination of GREs) on Community Charges.

2. This has important and complex implications not discussed in the minute. Circulation of such a note could lead to a claim on the Reserve in 1989-90. At worst, it could expose the Government's rate-capping proposals and possibly the RSG settlement for 1989-90 to legal challenge. I recommend that you write to the Prime Minister urging that no such note should be circulated to the LAAs at this stage.

Background

3. You may recall that E(LF) commissioned work on a new needs assessment in July 1987. Officials were asked to produce a simpler, more understandable, more stable and no less fair system for assessing the relative needs of local authorities.

4. Treasury officials have participated in the various groups which considered needs assessments for the different services eg education, fire service etc. The work has been dominated by DOE officials and those of the Departments concerned eg DES and Home Office.

The CST write to Mr Risky, Le SW, copy to PM, write to Mr Risky, copy to PM, and have lawyers question before that is a note, since it is

Mr Chancellor's difficulties.

5. The exercise has been successful in meeting some of the criteria set by Ministers. It will be simpler and should be more understandable. The number of 'services' assessed separately has been reduced from 65 to 12. One general method has been adopted for assessing needs, broadly identifying the client group for whom the service is needed and the unit costs of provision. And the number of factors taken into account in assessing the characteristics of the client group and the influences on unit costs has been substantially cut. Whether the system will prove more stable has yet to be tested: that is essentially an empirical issue. Whether it is no less fair ie defensible is also still to be considered.

6. However there is no single "right" answer in the sense of one correct needs assessment formula for each service. As the draft paper shows (for example in paragraphs 6-8), several options on each of the main service assessments are still under consideration within central government. The proposals have not yet been (but will need to be) considered formally by Ministers. e.spe

#### The problem

7. The difficulty arises when various options on individual services are put together to form the packages (1-3) discussed in Mr Ridley's minute and exemplified in terms of Community Charges for the current year. There are important timing considerations about when this material is circulated to the LAAs. Whether described as illustrative or not, the table might imply Government consideration of new GREs (which has not taken place at Ministerial level): and any such new GREs threaten to undermine the status of the present GREs. The Government needs to be careful not to question the validity of the present GREs, until they no longer serve any operational purpose within the present local government finance system.

8. Mr Ridley's minute is rather confused on this. The penultimate paragraph indicates that when material is made available to the LAAs "... there will be no reference to an overall package nor to the implications for Community Charges." But the packages in the note which he proposed to circulate do refer to Community Charge figures, based on new GREs. It is true that LAs would have to adjust the figures on the basis of assumptions, in order to work out, albeit broadly, their new individual GREs. (The will.) But the critical point is that circulation of any exemplifications of CCs based on illustrative new GREs will indicate that the Secretary of State for the Environment (and by extension the Government) is aware now of revised possible GREs for individual authorities.

#### Rate-capping

9. The most immediate danger lies with rate-capping. Between now and next March, final decisions need to be taken on the expenditure limit (the Expenditure Level (ELs)) and rate limit for the seven all-purpose authorities being capped next year. Other DOE officials (not those who drafted Mr Ridley's minute) have already spotted the implications for setting ELs.

10. The Government announced provisional ELs last July. Five of the seven authorities have now applied to have their ELs redetermined at a higher level. Under the 1985 Rates Act, the Government must take into account the authority's written application for such a redetermination and "other relevant information" in considering whether to raise the EL.

11. DOE lawyers take the view that knowledge of even illustrative packages based on new GREs constitutes "other relevant information". Moreover two of the option packages in the note indicate that for two rate-capped authorities (Southwark and Hackney) the new GRE would be higher than the provisional EL put forward in July. In the lawyers view, the minimum redetermination would be to move the EL up to the highest GRE exemplified for the two authorities. DOE officials are inclined to recommend such a redetermination; the higher EL would, however, be announced without specifying the new GRE as being the reason for the revision. We could not be sure, however, that the genesis of the change would remain confidential.

Wider implications

12. The sums involved for this revision to the ELs are relatively small though they would represent an unwelcome £7m claim on the 1989-90 Reserve. But there are at least two potentially much wider and much more damaging implications:

- i) circulation to the LAAs of the note attached to Mr Ridley's minute would amount to an admission that the Government now knows its present GREs are no longer the best estimates of needs; it could lead the seven authorities and ILEA (which are rate-capped) to challenge in the courts their present GREs, on which the original selection for rate-capping was based;
- ii) it could also lead to a legal challenge of the 1989-90 RSG settlement as a whole; though the Rate Support Grant Act is now through, the settlement has still to be debated in the House: at the very least, the release and circulation of the GRE packages to the LAAs would no doubt be used in the debate.

Conclusion

13. No operational need for the new GREs within Government will arise till next May/June, when the first exemplifications for E(LA) are prepared. It is, of course, reasonable for the LAAs to receive and have time to comment upon the Government's new GRE proposals. But in our view not even illustrative Community Charges based on new GREs can be offered until they have been considered collectively by Ministers; and they cannot be released safely, till after the rate limits are set and local authorities have set their rates for 1989-90 ie March 1989. If the DOE insist that March through to July 1989 (when the RSG settlement is likely to be announced) is not a long enough consultation period, then we could allow illustrations of one or two individual service needs formula to be released in January. But I suggest that be kept as a fallback option.

14. I attach a draft minute for you to send to the Prime Minister. In view of the sensitivity of this issue, it is copied only to Mr Ridley and Mr Parkinson. I have also put in square brackets two paragraphs which set out the problems in detail. Again given the sensitivity, you may wish to exclude them.

Barry H. Potter

BARRY H POTTER

SECRET

**DRAFT MINUTE TO THE PRIME MINISTER****SIMPLIFIED NEEDS ASSESSMENT**

I have seen a copy of Nick Ridley's minute of 15 November to you on this subject.

I do not wish to comment on the substance of the proposals at this stage. But I am most concerned about the timing of the release of the note to the local authority associations attached to the minute. We need to consider very carefully when it would be right to seek the views of the local authority associations on needs assessment; and in what form we should do so.

Once various options on the twelve separate service needs assessment are linked together to form the packages referred to in the minute and exemplified in the table, it would imply that the Government has knowledge of some, however illustrative, new GRE figures. That is not the case: there has been no collective consideration of the new needs assessments. Any paper which implied the Government had considered new GREs would inevitably cast doubt on the accuracy of the present GREs. Those present GREs are still critical in two respects. First they formed the basis for selection of the seven all-purpose authorities and ILEA for rate capping this year. Second they are the basis for distributing the Rate Support Grant which will be debated in the House next month. Our rate-capping and RSG proposals will not complete their passage through Parliament until March and January 1989 respectively.

[I understand that DOE officials are already concerned that the existence of this material in this form could require an upward revision to the provisional Expenditure Levels of two authorities which have sought redetermination of their ELs - Southwark and Hackney. The implied availability of new GREs would constitute "other relevant information" under the terms of the 1985 Act, which must be taken into account in considering any application for redetermination of ELs. Such revision would on its own lead to a claim on the Reserve of some £7 million in 1989-90.

But I am by no means convinced that the implications would stop there. It seems to me that, once the Government had circulated material which implied doubt about its existing GREs, we could face legal challenge - from all the authorities (including ILEA) that are to be rate capped next year - on the basis that the present GREs were essentially flawed. Also we could expect a difficult debate in the House on the RSG settlement, not least from our own backbenchers concerned about local rate increases. Finally it is by no means inconceivable that a local authority might successfully challenge in law the whole basis of the RSG settlement for 1989-90.]

I believe that we should not circulate this material in this form until after there has been collective consideration of the proposals. In my view, the Government ought not to put forward even illustrative revised GREs until the RSG settlement has passed through the House and until after all the stages of setting the rate limits for the rate capped authorities have been finalised

and authorities have set their rate poundages for 1989-90. That means a delay until next March. I appreciate that would squeeze the time available for the local authority associations to be consulted on the new needs assessment proposals. But we could of course still give them at least four months even starting then.

I therefore urge that the note not be circulated to the local authority associations at this stage. I am copying this minute only to Nick Ridley and Cecil Parkinson.