

BF 5/6

CONFIDENTIAL

~~RE 26/5~~  
PMP

FROM: A J C EDWARDS (LG)  
DATE: 24 MAY 1989  
EXT: 4480

CHIEF SECRETARY

cc **Chancellor**  
Sir P Middleton  
Mr Anson  
Mr Monck  
Mr Phillips  
Mrs Lomax  
Miss Peirson  
Mr MacAuslan  
Mr Potter  
Mr A M White  
Mr Hudson  
Mr G C White  
Mrs Chaplin  
Mr Call  
Miss Wheldon TSol  
Mrs Dayer TSol

Ch/CST is being advised to forewarn PM at your meeting tomorrow that an early meeting with Mr Rifkind should be called on this subject.

✓

DIS

COMMUNITY CHARGE CAPPING IN SCOTLAND

Mr Rifkind's letter of 18 May rejects the suggestion that any Scottish local authorities should be charge-capped this year. He offers instead (not very seductively) to make clear publicly that this should not be taken as a precedent. Mr Ridley's somewhat indecisive letter of 16 May, clearly influenced by the thought that he may be having a similar argument with you in a year's time, says that, although inaction in Scotland "would not, I believe, undermine our position to any great extent", he believes "the case for capping is strong". His subsequent letter of 23 May argues strongly against an announcement suggesting that capping would be inappropriate in the first year of the new system.

you have not read this yet.

Suggested way ahead

2. We do not think it would be right to let Mr Rifkind get away with no capping. The issue has strategic importance for the Community Charge policy. Although the basic assumption of the policy has always been that accountability should restrain expenditure at local level, accountability can hardly be expected to work properly in the early years and will indeed tend to work perversely, with many authorities blaming on the Community Charge

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policy high community charges resulting from high levels of expenditure.

3. There are two particular reasons why we think it important that there should be charge capping in Scotland this year.

4. First, as Mr Rifkind himself significantly admits, inaction this year will make it more difficult from a legal point of view to act in Scotland in later years. If the Government turns a blind eye this year to local authorities which overspend needs by over 40 per cent in some cases, it will be difficult in future years to defend on legal grounds capping any authority which overspends up to such levels. Consistency is critical, not least in the context of judicial review cases.

5. Second, the political signal from a decision to cap Scottish authorities this year would be extremely valuable; the signal from failure to cap, correspondingly damaging. Mr Rifkind is highly sensitive to arguments that English and Welsh repercussions should affect Scottish policies. This is, however, an immensely important consideration. If the Government turns a blind eye in Scotland this year, local authorities in England will be encouraged to call the Government's bluff next year. Of course there are differences of system and law between Scotland and England. It is, however, the same Government.

6. In the light of the above, we think that you should press hard for charge-capping in Scotland this year. Mr Rifkind will not concede the point in response to a further letter from you. The only way to resolve the matter, as we see it, will be to bring in the Prime Minister. We understand that No.10 are not proposing to intervene until requested to do so. We suggest accordingly that you should reply to Mr Rifkind, with a copy to the Prime Minister, suggesting that the Prime Minister should call an early meeting. You will wish to copy your letter to Mr Ridley and presumably Mr Parkinson as well. You may wish to consider whether it should be copied to Mr Walker. A draft letter is attached.

7. An alternative possibility would be to suggest an early meeting of E(LF). But E(LF) contains several Ministers who are not closely concerned. Moreover, time is running out: nearly two months of the financial year have passed already. For both reasons, a smaller informal meeting, called by the Prime Minister as soon as possible, would seem preferable.

8. If you agree, you may also like to foreshadow this important issue at your meeting with the Prime Minister tomorrow. In agreeing with Mr Ridley's point that the Government will need to be ready to charge cap next year, you could usefully make passing reference to the importance of preparing the way by capping certain authorities in Scotland this year.

#### Legal and technical points

9. The draft letter will, I trust, be self-explanatory. There are, however, two glosses which should be added.

10. First, the options. We have investigated Mr Rifkind's point about Glasgow's "European City of Culture" expenditure. The Scottish Office say that this expenditure amounts to £15 million this year. There is no needs assessment for such expenditure. Hence removing this from the calculation would (they say) reduce Glasgow's overspend above needs from 45% to about 30%, less than Clydebank and Stirling and on a par with Clydesdale. The accompanying table shows the figures.

11. It is for consideration whether expenditure on the "European City of Culture" should be differently treated from expenditure on other worthy causes. The fact is that Glasgow's Community Charge payers are being asked to pay a charge based on planned expenditure 45% above assessed needs. As can be seen from the accompanying table, the neatest solution would be to dodge this problem by capping either the six authorities whose planned expenditure exceeds assessed needs by 25% or more or the four authorities whose planned expenditure exceeds assessed needs by 30% or more. Glasgow would be included on either approach. Mr Rifkind will clearly argue strongly, however, for limiting any

Scottish local authorities with expenditure  
more than 25% above needs in 1989-90

	<u>Expenditure above needs</u>	<u>Year on year increase in expenditure</u>	<u>Expenditure per head</u> (£)	<u>Community charge</u> (£)
Glasgow	45%	35%	243	306
Clydebank	42%	20%	167	297
Stirling	35%	18%	164	310
Clydesdale	30%	24%	149	301
Glasgow, adjusted for culture	[30%]	[21%]	[217]	[280]
East Kilbride	27%	20%	141	318
Clackmannan	27%	32%	170	300

capping to Clydebank and Stirling. Meanwhile, it would seem legitimate to raise the question whether he would really be justified in exempting Glasgow, with a 45% total excess of spending over need, and whether such an exemption would make it more difficult to defend charge-capping Clydebank and Stirling, from both a political and a legal point of view.

12. Second, the legal position. We are much concerned about the interpretation which Mr Rifkind seeks to put on the charge capping criterion in the legislation, that a local authority's planned expenditure must be "excessive and unreasonable": the English counterpart legislation drops the words "and unreasonable". If an "unreasonable" level of expenditure really has to be construed in the extreme sense of "so unreasonable that no reasonable person would plan such expenditure", as suggested in the middle of page 2 of his letter, Community Charge capping in Scotland could be virtually a non-starter, and Mr Rifkind ought never to have retained this phrase in his legislation in the first place.

13. Past experience suggests that Scottish lawyers will be very difficult to shift on such a point. However, the Government has successfully rate-capped Scottish local authorities in times past, as well as using the threat of rate-capping to persuade authorities to negotiate a settlement. Having consulted informally with our own legal advisers, moreover, we think that a less extreme interpretation of the word "unreasonable" may be possible given the list of criteria which the legislation requires the Secretary of State to take into account.

not a lot of comfort

14. Certainly it would seem quite wrong to be deterred by fears of possible judicial review proceedings from applying the charge capping policy in the way intended. There is no point, as Bismarck put it, in committing suicide for fear of death.

AJCE

A J C EDWARDS

CONFIDENTIALDRAFT LETTER FROM CHIEF SECRETARY TO:

Rt Hon Malcolm Rifkind  
Secretary of State for Scotland

Community Charge Capping in Scotland

I am grateful for your letter of 18 May and Nick Ridley's letters of 16 and 23 May.

2. Although I well understand your preference for avoiding charge-capping, I see this as a key strategic issue in relation to the Community Charge policy as a whole.

3. The fact is that three Scottish local authorities have budgeted to spend between 35 percent and 45 percent above assessed needs and three more at between 27 percent and 30 percent above assessed needs. As you yourself imply, some Scottish authorities have clearly seen introduction of the new system of local government finance as providing an opportunity to step up their spending while blaming the Government.

4. From a legal point of view, you have confirmed that inaction this year could prejudice action in future years. I see this as a major concern. With respect, I do not think that an announcement that inaction should not be taken as a precedent would solve the problem; and Nicholas Ridley has pointed out the particular disadvantage in making any announcement which could be taken to imply that capping would be inappropriate in the first year of the new system.

5. I agree of course that we must be alive to the risks of judicial review. We should not, however, in my view, allow that to deter us from acting as the situation demands. Our aim this year (as in previous years) should rather be to minimise the risks by consistency of action, both as between one year and another and as between individual authorities, and by punctilious observance of procedures. I note what you say about interpretation of the

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"excessive and unreasonable" levels of planned expenditure mentioned in the legislation. However, we have successfully rate-capped Scottish authorities in times past or brought them to the negotiating table. I believe we ought also to consider further whether the test of what is an "unreasonable" level of expenditure would have to be as exacting as that mentioned on page 2 of your letter, bearing in mind the criteria which you are required to take into account in reaching your capping decision.

6. At a political level, we should not in my view allow our bluff to be called by authorities who decide to spend up and blame the resulting burdens on introduction of the Community Charge. As implied in Nick Ridley's earlier letter, that would transmit a most unfortunate signal to local authorities throughout Britain.

7. As noted in my earlier letter, you are better placed than I to identify the options. Apart from your preferred option of no capping, however, I suspect that the main options may be to cap authorities exceeding their assessed need to spend by (a) 35% or more, (b) 30% or more, or (c) 25% or more. Also for consideration is whether you would really be justified in discounting Glasgow's European "City of Culture" expenditure and whether such treatment would make it difficult, from a political and legal point of view, to defend charge-capping other authorities. Depending on how that issue is resolved, options (a), (b) and (c) would I believe imply capping 2 or 3, 4 or 6 authorities, respectively.

8. We need in my view to weigh these matters carefully with the colleagues most closely concerned. I hope that, given the importance and urgency of the subject, the Prime Minister might find it possible to call an early discussion.

9. I am copying this letter to the Prime Minister, Nicholas Ridley, Cecil Parkinson, [Peter Walker], and Sir Robin Butler.

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FROM: MISS C EVANS  
DATE: 26 May 1989

MR EDWARDS

cc: Chancellor  
Sir Peter Middleton  
Mr Anson  
Mr Monck  
Mr Phillips  
Mrs Lomax  
Miss Peirson  
Mr MacAuslan  
Mr Potter  
Mr A M White  
Mr Hudson  
Mr G C White  
Mrs Chaplin  
Mr Call

Miss Wheldon T Sols  
Mrs Dayer T Sols

**COMMUNITY CHARGE CAPPING IN SCOTLAND**

The Chief Secretary was grateful for your submission of 24 May. I understand from Paul Gray that the Prime Minister is reluctant to intervene on this, and if required to do so, seems unlikely to support us. In the light of this, the Chief Secretary sees two options:

- (a) to write anyway on the point of principle, and be overruled, possibly in unhelpful terms.
- (b) agree at official level gruesome warnings that Mr Rifkind could issue (and has promised to, on future policy).

2 The Chief Secretary would be grateful for advice on which course to take. He is mildly inclined to (b) but prepared to be persuaded otherwise. He is also concerned that we are fighting a number of battles at the moment and need to choose carefully which ones we refer to the Prime Minister.

MISS C EVANS  
Private Secretary



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FROM: A J C EDWARDS (LG)  
 DATE: 26 MAY 1989  
 EXT: 4480

CHIEF SECRETARY

cc **Chancellor**  
 Sir P Middleton  
 Mr Anson  
 Mr Monck  
 Mr Phillips  
 Mrs Lomax  
 Miss Peirson  
 Mr MacAuslan  
 Mr Potter (o/r)  
 Mr A M White  
 Mr Hudson  
 Mr G C White  
 Mrs Chaplin  
 Mr Call

Miss Wheldon TSol  
 Mrs Dayer TSol

*please obtain  
 X for me and  
 then BF 5/6  
 when I return.*

COMMUNITY CHARGE CAPPING IN SCOTLAND

X Miss Evans' minute of today records your request for further advice on this difficult matter.

2. I do of course understand your concern not to take too many battles to the Prime Minister. Paul Gray's advice to Miss Evans must add to this concern. I do not think, however, that it would be right to be overly influenced by this. Paul Gray is presumably judging what the Prime Minister's reaction might be in the light of the skilfully drafted minute from Mr Rifkind and other views at No.10. I understand that the political advisers there believe that the Community Charge has bedded down quite well in Scotland and are anxious not to risk upsetting things there.

3. I also take your point that, if there were an option to protect the flank effectively by having Mr Rifkind issue gruesome warnings, that would have some attractions. Sadly, however, our view is that gruesome warnings would do very little good and would probably indeed be harmful. As Mr Ridley's second minute argued, such warnings could be counterproductive. The only plausible excuse one can offer for not capping authorities who are spending more than 40 percent in excess of assessed needs is that this is

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the first year of a new system. That, however, would send an appalling signal about the Government's posture and firmness of purpose. The hard fact is, I fear, that the Government does set a precedent by what it does in Scotland this year. It is both a legal precedent (in Scotland) and a political precedent (throughout the country). There is no way of undoing the precedent by saying it is not a precedent.

4. It was against this background that my earlier submission suggested that you needed to refer the matter to the Prime Minister and to write back to Mr Rifkind accordingly. We still think it would be wrong to give in to Mr Rifkind on such a strategic issue and in relation to such a strategic policy without bringing in the Prime Minister.

5. The chances of success may be no more than about 50/50. But we do have Mr Ridley more or less on side. I would also guess (no more) that Mr Rifkind and his officials will be pleasantly surprised if they get away with no capping. The Scottish local authorities concerned have raised their expenditure by amounts varying between 20 percent and 35 percent compared with last year to levels between 27 percent and 45 percent above their assessed needs.

6. As I mentioned to Miss Evans, time is now of the essence. Nearly two months of the *financial* year have passed, and Mr Rifkind will soon be able to argue that it is anyway too late for action. If therefore you do decide to write in the sense suggested, the sooner your letter can issue, the better.

7. I hope these further reflections will be of some help.

AJCE

A J C EDWARDS

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The Rt Hon John Major MP  
 Chief Secretary  
 HM Treasury  
 Treasury Chambers  
 Parliament Street  
 LONDON  
 SW1P 3AG

CH/EXCHEQUER <sup>18/5</sup>  
 18 MAY 1989  
 SCOTTISH OFFICE  
 WHITEHALL LONDON SW1A 2AU  
 C51

✓  
 Ch/ To note Mr Rifkind is 18 May 1989

resisting CC capping largely on grounds it would make little difference to the total overspend in Scotland - very dubious logic. Mr Ridley's letter (behind) is also unhelpful: he denies a lead-across between Scotland & England.

**COMMUNITY CHARGE CAPPING IN SCOTLAND**

Thank you for your letter of 3 May.

As you surmise, I have been giving a good deal of thought to Scottish local authorities' budgeted overspending this year and whether it would be appropriate to respond by using my community charge capping powers. As you would expect, there are some very conflicting considerations.

The overall picture is of budgeted expenditure 11.4% higher than budgets for 1988-89. This clearly involves a real terms increase - though, bearing in mind new burdens imposed since last year (including in particular school boards and community charge collection) and also that actual rates of inflation experienced by local authorities will have been higher than GDP or RPI figures, the volume increase will not be so high as 6% - perhaps 3.5% to 4%. In accordance with experience in past years, I would expect actual expenditure by the end of the year to be somewhat lower than this.

I was interested in your speculations as to the reasons for this. My own view, based on post-mortem discussions which my officials have had with senior local authority staff and on a meeting that Ian Lang and I had with the Convention of Scottish Local Authorities 2 weeks ago, is that several factors were involved. In the first place, the ending of grant penalties must have had some impact. Second, the change in grant arrangements will have been seen by some authorities as providing an opportunity to increase their spending while obfuscating the reasons for the increase. Third, I think that many local councils have seen all too clearly the pressure that community charge arrangements will quickly bring to bear on their spending arrangements, and will have decided on a last burst for growth while they felt that the going was still good. There is certainly evidence that the 2 traditionally high spending authorities - Lothian and Strathclyde Regions - went to enormous efforts (albeit starting far too late in the last financial year) to tailor their budgets to what they regarded as acceptable community charge levels.

You will gather from this that, while Scottish authorities' budgeting for this year is very disappointing, I do not think we need be unduly

depressed about it. It is against that background that I have been considering use of the charge capping powers.

You will be familiar, from our exchanges in previous years, with the legislative background and constraints. The statutory test for using the charge capping power is whether an authority's planned expenditure is "excessive and unreasonable". In reaching a view on this I must have regard to the financial and other relevant circumstances of the area of the authority; and in addition I may have regard to other considerations including the expenditure or planned expenditure of other comparable authorities in the year concerned or in any preceding year, general economic conditions, and "such other financial, economic, demographic, geographical and other criteria" as I consider appropriate.

In practice, in the absence now of expenditure guidelines, I have to have regard to "the financial and other relevant circumstances of the area" by reference to assessed needs; and the other factors are taken into account by comparing each authority which may be a candidate for capping with comparable authorities in respect of its increase in expenditure over the previous year, its increase in expenditure volume over the previous year and over a longer period, and its expenditure per head on the same basis. The comparator authorities for Regions are (because of their small total numbers) all other Regions with the same range of functions, but for District Councils the establishment of comparator authorities is itself a fairly complex statistical exercise.

These procedures have been refined over the years, and have been the subject from time to time of detailed consultation with the Scottish Law Officers. In particular, in the Scottish legislation the test of "unreasonableness" is in addition to the test of being "excessive". We take the view that "unreasonable" is to be construed in the Wednesbury sense as meaning so unreasonable that no reasonable person would plan such expenditure. This has generally been regarded as a very strict test.

All this will be familiar to you - and certainly to your officials - but I have thought it worth setting out in some detail for a very good reason. The care with which I and George Younger before me have exercised these powers has meant that we have never yet been challenged in the Courts. I would be particularly reluctant to cut any corners in the procedure this year when authorities may be more than usually liable to challenge me, and when any adverse court decision would be particularly damaging for future use of the powers.

On that basis, I am quite clear that I could not take action against any of the Regional Councils. Their average budget to budget increase is 10.5%, against which the highest increase is Highland's at 13.5% but they are only 3.6% over their assessed need which is well below the Regional average. In the case of Lothian their increase is 11%. But their volume increase is the lowest of all Regional authorities, both over a one and a 5 year period, and their expenditure per head is below the regional average.

The District Council position is different and, as your officials will have advised you, there are certainly several District Councils reporting substantial budget to budget increases. Your officials have a detailed working paper which identifies 3 District Councils as candidates for capping. You ask if I could adjust the criteria in order to throw up around 6 candidates. Quite apart from the legal impropriety of

exercising a discretionary power in that way I could only do so if I was to set aside part of my well established and defensible scrutiny tests. To do so would in my judgement only increase the risk of challenge. But even as regards the 3 identified by the scrutiny, the issues are not entirely straightforward. In particular, Glasgow's budget includes provision for substantial expenditure on a one-off basis, related to the City's designation next year as European "City of Culture". There would be very obvious difficulties in taking action against Glasgow in these circumstances. That leaves me with Clydebank and Stirling District Councils, against whom clear cases for action could certainly be sustained.

Obviously, I have thought carefully about proceeding with these 2 authorities. But I am far from clear as to the advantages of doing so, and I see considerable disadvantages. The main practical point is that capping these 2 authorities would make very little difference to the total budgeted overspend by Scottish authorities - about £3.5 million, out of total budgeted expenditure of £4126 million. It is hard to believe that this would have any desirable demonstration effect on other authorities. It may, indeed, simply point up the limitations on the practical application of these powers. As you say the fundamental objective is to establish better accountability. We should give accountability a chance to work. Obviously, as you recognise, any community charge capping will be controversial. It would also undoubtedly generate a good deal of criticism, which is likely to focus on our abandonment of local accountability. The practical question is whether it is worth stirring controversy for such little return. My own feeling is that, unless we can use the capping powers to make a substantial difference to spending levels or to make some very clear political point, it is not worth doing and we simply risk bringing the underlying philosophy of the new system into disrepute.

There are 2 other aspects to the issue. The first, which you recognise in your letter, is the risk of giving the wrong signals in respect of future years; and there may also be some risk that failure to take action this year could prejudice future action, in a legal sense. But I think that it will be perfectly possible to elaborate counter arguments (if we are ever required to do so) on the basis that the circumstances in this first year of the new arrangements are exceptional; that action - or lack of action - this year is attributable to the changeover and the need to let the new system settle down; and that my decisions this year offer no necessary precedent for future years.

The other question is whether, if I fail to use the powers this year, this will create any awkward precedent for Nicholas Ridley next year. I cannot see that it would. My capping powers are of course unchanged in substance from those that I had under the rating system, and their use has been well established in rate capping over a number of years. Second, as I understand it, Nicholas faces a number of far-left authorities in England who pose problems of quite a different order from those which I face. Third, in determining whether a Scottish authority's expenditure is "excessive and unreasonable", what I undertake is a comparative exercise in which the comparators are other relevant Scottish local authorities with similar assessed needs. I have never compared expenditure of a Scottish with that of an English authority and, of course, there would be no basis for doing so since our needs assessment arrangements are different. All of these points could apply equally in reverse. And finally, the new English capping legislation (benefiting

from our experience) operates by reference only to expenditure being "excessive" - ie the statutory test in England is different. In his letter of 16 May, Nicholas recognises that a read across from the Scottish situation is unlikely.

In the light of all these points I do not propose to undertake any charge capping this year. But one point that does occur to me, on looking at the matter again in the light of your letter, is that I should perhaps take an early opportunity to make clear that this decision should not be taken as a precedent for the future. I will look for an early opportunity to make this point, either in a public speech or in one of my forthcoming meetings with the local authority associations.

I am copying this letter to members of E(LF), to the Lord Advocate, and to Sir Robin Butler.

  
**MALCOLM RIFKIND**



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2 MARSHAM STREET  
LONDON SW1P 3EB  
01-212 3434

The Rt Hon John Major MP  
Chief Secretary  
HM Treasury  
Treasury Chambers  
Parliament Street  
London SW1P 3AG

CHIEF SECRETARY	
REC.	24 MAY 1989
ACTION	Mr B White
COPIES TO	Mr B White, Mr Anson, Mr Mack, Mr Phillips, Mr Edwards, Mr P. Mac, Miss Pearson, Mr Macdonald, Mr Macdonald, Mr Macdonald, Mr Macdonald

My ref:

Your ref:

Dear Chief Secretary, *Mr B White, Mr Anson, Mr Call*

Malcolm Rifkind sent me a copy of his letter of 18 May to you in response to yours of 3 May.

As I said in my letter of 16 May to you the main factor in determining whether or not to cap Scottish authorities this year must be the situation in Scotland itself.

My immediate concern, however, is the suggestion that if it is decided not to cap any authority Malcolm might publicly imply that capping had not been used as it would be inappropriate until the new system had settled down.

As I said previously, I believe there is only limited read across between Scotland and England and I accept Malcolm's argument that decisions about capping Scottish authorities this year will not in themselves create an awkward precedent for decisions about capping in England next year. But any announcement of a decision not to cap in Scotland which implies that capping would be inappropriate in the first year of a new system could create difficulties for me. Such a suggestion could leave us open to the accusation of inconsistency of approach, notwithstanding the different situation in Scotland and England, if it were decided to charge cap in England next year. It could also give rise to a clear expectation that we would not cap in England in 1990/91.

In these circumstances, I would urge Malcolm not to imply any such suggestion in any public justification of a decision not to cap in Scotland this year. Indeed, from my point of view it would be much better not to make any announcement giving reasons for not capping Scottish authorities this year, if that is to be the decision.

I am copying this to members of E(LF), the Lord Advocate and to Sir Robin Butler.

*Yours sincerely*  
*PP* *Nicholas Ridley*

NICHOLAS RIDLEY

(Approved by the Secretary of State and signed in his absence)



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BF 12/6

CC: Chancellor  
Sir P Middleton  
Mr Anson  
Mr Mack  
Mr Phillips  
Mrs Lewis

Treasury Chambers, Parliament Street, SW1P 3AG

Mrs Pearson  
Mr MacNislan  
Mr Porter  
Mr Edwards  
Mr AM White  
Mr Hudson

Rt Hon Malcolm Rifkind QC MP  
Secretary of State for Scotland  
Scottish Office  
Dover House  
Whitehall  
London  
SW1A 2AU

31 May 1989

Mr G White  
Mrs Chaplin  
Mr Call

Miss Wheeler  
Mrs Dejeu (T.S.O.)  
(T.S.O.)

Dear Secretary of State,

Community Charge Capping in Scotland

I am grateful for your letter of 18 May and Nick Ridley's letters of 16 and 23 May.

Although I well understand your preference for avoiding charge-capping, I see this as a key strategic issue in relation to the Community Charge policy as a whole.

The fact is that three Scottish local authorities have budgeted to spend between 35 percent and 45 percent above assessed needs and three more at between 27 percent and 30 percent above assessed needs. As you yourself imply, some Scottish authorities have clearly seen introduction of the new system of local government finance as providing an opportunity to step up their spending while blaming the Government.

From a legal point of view, you have confirmed that inaction this year could prejudice action in future years. I see this as a major concern. With respect, I do not think that an announcement that inaction should not be taken as a precedent would solve the problem; and Nicholas Ridley has pointed out the particular disadvantage in making any announcement which could be taken to imply that capping would be inappropriate in the first year of the new system.

I agree of course that we must be alive to the risks of judicial review. We should not, however, in my view, allow that to deter us from acting as the situation demands. Our aim this year (as in previous years) should rather be to minimise the risks by consistency of action, both as between one year and another and as

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between individual authorities, and by punctilious observance of procedures. I note what you say about interpretation of the "excessive and unreasonable" levels of planned expenditure mentioned in the legislation. However, we have successfully rate-capped Scottish authorities in times past or brought them to the negotiating table. I believe we ought also to consider further whether the test of what is an "unreasonable" level of expenditure would have to be as exacting as that mentioned on page 2 of your letter, bearing in mind the criteria which you are required to take into account in reaching your capping decision.

At a political level, we should not in my view allow our bluff to be called by authorities who decide to spend up and blame the resulting burdens on introduction of the Community Charge. As implied in Nick Ridley's earlier letter, that would transmit a most unfortunate signal to local authorities throughout Britain.

As noted in my earlier letter, you are better placed than I to identify the options. Apart from your preferred option of no capping, however, I suspect that the main options may be to cap authorities exceeding their assessed need to spend by (a) 35% or more, (b) 30% or more, or (c) 25% or more. Also for consideration is whether you would really be justified in discounting Glasgow's European "City of Culture" expenditure and whether such treatment would make it difficult, from a political and legal point of view, to defend charge-capping other authorities. Depending on how that issue is resolved, options (a), (b) and (c) would I believe imply capping 2 or 3, 4 or 6 authorities, respectively.

I understand the sensitivity of this for you. But the reality is clear. If we do not cap severe overspenders we will send an appalling signal about our firmness of purpose on local authority spending. Whether we like it or not, we will set a precedent if we overlook this over expenditure. It will be a legal precedent in Scotland and a political precedent throughout the country. We cannot undo the precedent by saying it is not a precedent.

I continue to believe we should cap the worst overspenders and would be grateful for your further consideration. We must clearly resolve the matter urgently as time is running out.

I am copying this letter to the Prime Minister, Nicholas Ridley, Cecil Parkinson, Peter Walker, and Sir Robin Butler.

*Yours sincerely,  
P. Wauless*

PP JOHN MAJOR  
(Approved by the Chief Secretary  
and signed in his absence)

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