

**CONFIDENTIAL**

THIS DOCUMENT IS THE PROPERTY OF HER BRITANNIC MAJESTY'S GOVERNMENT

E(82) 1

COPY NO

66

8 January 1982

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

TRANSPORT SUBSIDIES AND RELATED ISSUES

Note by the Secretaries

1. The attached report, by the officials of the Departments directly concerned, sets out the facts and issues arising from the House of Lords' judgement in December 1981 on the Greater London Council's (GLC) fares policy for London Transport (LT). It is covered by a summary which identifies the main immediate questions on the basis of the information so far available. The position could change in the light of decisions taken by the GLC at their meeting on Tuesday 12 January to consider the revised budget for 1982 which LT have submitted for their approval.
2. The Secretaries of State for Transport and for the Environment will make their recommendations in separate memoranda to be discussed, with this report, at the Committee's meeting at 11.00 am on Thursday 14 January.

Signed ROBERT ARMSTRONG  
P L GREGSON  
D J L MOORE

Cabinet Office  
8 January 1982

**CONFIDENTIAL**

# CONFIDENTIAL

## TRANSPORT SUBSIDIES AND RELATED ISSUES

Note by Officials

### SUMMARY AND ISSUES FOR DECISION

1. The following paper by officials sets out the background to the problems which have recently arisen over the subsidies provided by the Greater London Council (GLC) and the metropolitan counties to public transport, and seeks to identify the issues for immediate decision by Ministers.
2. The House of Lords judgement last December relating to London Transport (LT) has created considerable uncertainty about the basis on which, and the extent to which, the GLC and the metropolitan counties can subsidise public transport. In particular there is uncertainty about the implications of the conclusion that LT are under a duty to do their best to break even "so far as is practicable". (Section 2 of the main report).
3. Issues arise for immediate decision in three areas -
  - a. LT's 1982 budget
    - in particular the treatment of the accumulated deficit and the continuation of concessionary fares.
  - b. The implications of the judgement for the support to be given by the metropolitan counties to passenger transport executives (PTEs) in 1982-83
    - in particular the precepts which have to be made by 10 March.
  - c. The extent to which the supplementary rates raised in Greater London in 1981-82 are to be repaid.
4. In addition it will be necessary to consider for the future whether, following the House of Lords judgement, the existing law provides a satisfactory continuing basis for subsidies for public transport both in London and in the metropolitan counties. There are also some more general questions about the

arrangements for public transport in London which are under consideration by the Select Committee on Transport. These wider questions raise some very difficult issues of policy, and any legislation to deal with them would require careful consideration. Ministers may therefore prefer to deal with these matters over a longer timescale provided that the more immediate issues listed in paragraph 3 above can be dealt with satisfactorily on an interim basis.

London Transport's 1982 Budget (Section 3)

5. The 1982 budget is a matter for London Transport and the GLC: the Government's responsibility is to make clear, as it has already done, what amount of revenue support it is prepared to accept for the purpose of the Transport Supplementary Grant (TSG). LTE have now submitted a revised budget to the GLC which assumes that a 100 per cent increase in fares on 21 March is the most that would be practicable. GLC officers are likely to advise the Council that it is essential to accept the 100 per cent fare increase and to accept the budget subject to the points, summarised in paragraph 3.5 of the main report, on the financing of the accumulated deficit, the granting of power to resume concessionary fares, on capital cuts and productivity improvements, and to a report within one month by LT on further substantial fare increases, possibly in June, to minimise the deficit.

6. If the GLC endorse the proposals now envisaged, Ministers need to consider the following -

a. The GLC's legal advice is that they must consider how far it is possible to meet the deficit from a further fare increase this year and they are likely to press the Government for its view on whether the law requires them to consider this purely on commercial grounds or whether they may take account of the effect on transport services. This will be considered further by the Secretary of State for Transport and the Law Officers. If it was concluded that the law did require further substantial fare increases in the summer the choice would be between letting these increases go ahead and introducing urgent legislation to allow for reasonable subsidies.

**CONFIDENTIAL**

b. The accumulated deficit of £125 million.

- It is expected that GLC will reject LT's proposal for meeting it by borrowing over 5 years. If instead they decide - as they can - to fund the accumulated deficit from a rate increase in 1982-83, and if Ministers acquiesce in this, should the Government agree to waive the grant penalties in that year which will otherwise arise from the Council's increased expenditure? (See paragraphs 3.7 to 3.13, and in particular 3.12 which argues against waiver).

- It should be noted that, unless the deficit were financed by the taxpayer or by the fare payer, London ratepayers would still have to meet the cost of GLC's fares policy. The cost will, however, be substantially less than if the policy had continued (paragraphs 3.9 and 3.10).

c. Is the Government prepared to legislate to permit the GLC to continue to pay for concessionary fares? Other local authorities including the London boroughs, have powers to do so. But there has been criticism of the generosity of the concessions which GLC have made hitherto. The timing of any legislation would depend in part on the attitude taken by the London boroughs to the GLC's suggestion that they should temporarily pay for concessionary fares until new legislation is in force (see paragraphs 3.14 to 3.18).

7. Whatever the GLC decide about LT's 1982 budget there will be pressure for early legislation to deal with specific difficulties such as concessionary fares (paragraphs 4.2 to 4.4). It will also be necessary to consider in the next few months whether more general legislation is needed to enable continuing transport subsidies in London and elsewhere. The main options are summarised in paragraphs 4.5 to 4.10; they raise complex and difficult issues and it would clearly be better to defer legislating for any such changes until there has been good time to consider them. For the moment, however, it is not clear how quickly such legislation will be needed.

8. So far as is practicable, further major changes in the legislation relating to subsidies should be considered alongside the possibilities for more radical changes in the arrangements for planning and managing public transport in London and the surrounding regions. Account should be taken of the proposals which the

Select Committee on Transport will make on these matters later this year (paragraph 3.25). Ministers may wish to consider what preparatory work by officials should be started now on these longer term issues.

Metropolitan Counties and Passenger Transport Executives (Section 5)

9. As a result of the Lords' judgement on the GLC and LT, some of the PTEs and their metropolitan counties, together with the rating authorities in their area, are also in jeopardy from legal challenge.

10. The metropolitan counties will need to decide at latest by 10 March what precepts they may make for public transport purposes. They are likely to press for a firm statement of the Government's view of their position. In particular they may ask whether the levels of revenue support accepted in the TSG settlement are consistent with the law.

Repayment of Supplementary Rates (Section 6)

11. Subject to confirmation by elected members the Treasurers of the London boroughs have recommended that those ratepayers who apply for repayment of the supplementary rate, raised by the boroughs following the GLC's supplementary precept, should receive a refund and those who do not apply should receive a credit against next year's rate. They have, however, recommended that because it would cost too much no interest should be paid. The amount of the refund will depend on how much grant is held back from the GLC in 1981-82. These proposals may be the best practical solution to the problem. If, however, they run into legal objections it will be for urgent consideration whether the

Government should legislate quickly to enable the boroughs to repay all or part of the supplementary rates collected or to compel them to repay.

12. As noted in paragraph 6b. above, even though the 1981 supplementary precept has been quashed, ratepayers will not entirely escape the cost to date of GLC's fares policy.

# CONFIDENTIAL

## TRANSPORT SUBSIDIES AND RELATED ISSUES

### Main Report

#### 1. BACKGROUND

1.1. The relationship between the GLC and the London Transport Executive is set out in the Transport (London) Act 1969. S.1 of the Act gives the GLC the duty:

"to develop policies and to encourage ..... measures which will promote the provision of integrated, efficient and economic transport facilities and services for Greater London."

S.3 enables the Council to make grants to the Executive "for any purpose". S.5 provides that, subject to the financial duty imposed on the Executive under S.7, it is to be the general duty of the Executive to exercise and perform their functions in accordance with the principles laid down by the GLC. S.7 contains the requirement that LT must "so far as is practicable" break even financially taking one accounting period with another; Subsection (6) requires the Council, in performing their functions, to have regard to the Executive's financial duty. Section 11 provides that the Executive must submit to the Council and obtain the Council's approval of estimates of income and expenditure and the general level and structure of fares to be charged.

1.2. When the Bill was introduced, Ministers of the day clearly envisaged that the main financial responsibility would be with the GLC. Referring specifically to Clause 5, Mr Richard Marsh said (17 December 1968):

"subject always to the financial duty, there will be a duty on the London Transport Executive under Clause 5 to provide such services as best meet the needs of Greater London again defined in accordance with principles laid down by the Council. These duties are completely interlocking. What they mean in practical terms is that the Council will be able to decide on the broad standards of service to be provided and will have, in return, the responsibility of insuring, in one way or another, that the London Transport undertaking remains viable."

## CONFIDENTIAL

And speaking to Clause 3 at Committee stage, Mr Marsh said that:

"we have here a duly elected body which is held responsible for determining how it spends its funds". It has no obligations to spend those funds in any particular way but should certainly have the opportunity to say:

"we will use our rates in this particular direction not as a social service but because the economic cost to us in London would be much higher if we did not use our funds in that way." That is what this clause is all about.

1.3. Although for the first three years of London Transport's existence, it made a slight profit, from 1973 onwards there has been a deficit which has been partly financed by revenue support paid by the GLC. In addition the GLC have concessionary fare payments and paid depreciation and renewal grant. The Department has accepted bids from the GLC for the payment of revenue support in the Transport Supplementary Grant settlement (made under S.6 of the Local Government Act 1974). The amounts accepted (at survey prices) for 1979/80, 1980/81 and 1981/82 were respectively £44m, £48m and £65m.

### The Cutler Budget

1.4. London Transport operates on a calendar year basis. The Conservative controlled GLC agreed to pay grant of £160 million in 1981 to cover London Transport's forecast revenue deficit (£82 million revenue subsidy and £78 million depreciation and renewal grant).

### Revision of budget by present GLC

1.5. In October 1981, in implementation of the present GLC's manifesto commitment, London Transport reduced its fares by 32 per cent overall (including the effect of zoning). LT and the GLC estimated that the reduced fares, together with a deficit inherited from the Cutler administration and improved concessions for Age Pensioners on the Underground would cost £17 million extra up to the end of March 1982 (the end of the GLC's financial year); some £67 million of this would be incurred in 1981. LT's deficit at the end of March is now expected to be £125 million.

**CONFIDENTIAL**

The October precept

1.6. Of the GLC's precept of 11.9p in the pound, levied on 1 October 1981, 6.1p was intended to cover the estimated cost of the GLC's transport package in 1981-82 (£117 million) and 5.8p the cost to ratepayers of the GLC's consequent loss of block grant (£96 million).

2. THE JUDGEMENT

2.1. The case before the House of Lords was an application by Bromley LBC to quash the supplementary precept raised by GLC. It involved their Lordships in a close consideration of the London (Transport) Act 1969. The judgement produced two main conclusions which may be summarised as:-

(a) that LTE are under a duty to do their best to break even so far as is practicable and that the GLC power to pay grant for any purpose must be construed as enabling them to give revenue support only to the extent that it is not practicable for LTE to avoid a deficit and

(b) that in considering the use of their grant-making power, GLC must have regard to their fiduciary duty to hold a fair balance between ratepayers and transport users.

2.2. In the case under consideration where there had been an unnecessary reduction in fares it was not difficult for their Lordships to conclude that LTE and GLC had failed in their respective duties. What is rather less clear is how far LTE must go in increasing fares notwithstanding reduction in passengers and in reducing or eliminating services which do not pay their way. This depends on the meaning of the words "so far as is practicable"; what is practicable may well be a matter on which opinions may vary widely.

2.3. The fiduciary duty owed to ratepayers is a general duty and the judgement may have implications for other areas of local government. Three of the Law Lords suggested that one reason why the GLC were in breach of their fiduciary duty was that their higher expenditure on transport would lead to loss of block grant to the GLC with consequent detriment to the ratepayers. If this approach were developed by the courts on similar lines in other cases it could mean that any local

CONFIDENTIAL

authority overspending the general expenditure targets issued by the Government, and thereby incurring grant reductions, might be held to be in breach of its fiduciary duty. If this view prevailed in the courts, it could provide a powerful means of reinforcing the Government's public expenditure plans. By the same token it would, however, imply a severe diminution in local authority freedom.

CONFIDENTIAL

3.

3.1.

it to  
plan t

3.2.

fares  
requir  
accept  
the fo

3.3.

15% in  
manner  
already  
may tak

### 3. IMPLICATIONS FOR LT's 1982 BUDGET

3.1. London Transport have prepared a revised budget for 1982 and have submitted it to the GLC for approval. The GLC are due to consider it on 12 January. They plan to settle their rate precept on 16 February.

3.2. The budget submitted by LT is based on their view that 100% increase in fares in March is the most that would be practicable. On this basis they would require revenue support of £109m. (The TSG settlement announced on 21 December accepts revenue support of £89m for grant purposes.) LT's budget is based on the following assumptions:

(a) LT continue to receive grants to cover the cost of travel concessions for the elderly - currently £3m a year, but increasing proportionately with fare increases.

(b) The deficit of £125m incurred up to the time fares can be increased should be met by borrowing to be repaid by LT over 5 years. The annual cost would be £36m.

(c) The provision for depreciation and renewal (D and R) which as in LT are required to make in their accounts - £89m - is covered/previous by grant from the GLC. This grant is used to finance capital years, expenditure.

(d) LT propose total capital expenditure of £166m, of which £138m is to be financed by GLC grants. This would involve a capital grant of £49m in addition to the grant for the D and R provision.

3.3. This budget would involve cutting costs by £40m, including a reduction of 15% in scheduled bus services, the most that LT consider can be achieved in an orderly manner next year. There would be some risk of industrial action. There have already been press reports that the unions concerned - particularly the TGWU - may take industrial action in support of legislation to reverse the Lords judgement.

3.4. The GLC's advisers initially took a much more restrictive view of what is practicable, ie that LT cannot budget for operating losses, that there can be no D and R grant and that the inherited deficit must be covered from revenue next year. This would involve much bigger fare increases - over 250%. They have also advised that the GLC has no powers under the 1969 Act to pay for the cost of travel concessions for the elderly.

3.5. GLC officers have, however, now prepared a report which considerably narrows the differences of view between LT and themselves. They are likely to advise the Council to accept the LT budget, and in particular the proposed increase of 100% in fares next March, subject to the following points:

- (a) They have reservations about LT's powers to finance the accumulated deficit by borrowing repayable over a period of 5 years. They consider that it is in any case financially unsound to borrow to pay off a current deficit. They are therefore likely to advise that the GLC should meet the deficit. This would mean raising it from ratepayers. The GLC are likely to ask the Government not to impose any grant penalties if their expenditure is increased by dealing with the deficit in this way.
- (b) The GLC are able to continue to meet the cost of travel concessions for the elderly up to the end of March. Officers consider that the London Boroughs would then probably be prepared to take over the financing of the concessionary fares for a time if the Government were able to assure them that early legislation would be introduced to give the GLC powers to resume responsibility.
- (c) The GLC should press LT to cut its capital budget as much as possible. The scope for cuts this year is limited because so much of the expenditure is already committed. But substantial cuts should be possible in later years, particularly in view of the planned service cuts. GLC also hope that LT will be able to make more effective progress with productivity, eg single manning of trains. Increased productivity may however

require some additional investment eg for automatic fare collection.

If LT are relieved of the cost of financing the accumulated deficit, the amount of normal revenue support which the GLC consider to be required by their budget is £84m. Officers of the GLC recommend that they should ask LT to report within one month on further fare increases designed to minimise the deficit.

3.6. Increasing fares by 100% in cash terms will raise them about 25% above the level they were at last May in real terms. Average bus fares would be raised to 40p - 60p. These would be somewhat higher than comparable fares of 33p to 47p which would be required in PTE areas if their subsidies were reduced in line with the TSC settlement. The amount of travel would be reduced by about 25%. The proportion of costs met from fares would be increased to about 78%. This is somewhat higher than the figure for BR's London and suburban services (66% to 73% - precise comparisons are difficult because of differences in the definition of costs). LT tube fares are currently lower than comparable BR fares, eg about 40p for a 5 mile journey on LT compared with 60p to 70p on BR. Doubling LT fares would therefore increase them above BR's. This is partly because a bigger share of LT's subsidy goes to buses.

#### The Accumulated Deficit

3.7. Dealing with the accumulated deficit resulting from the fares cut and extra costs incurred in 1981 presents a particularly difficult problem in constructing LT's budget for 1982. At the end of 1981 this amounted to some £63m. Under the 1969 Act any deficit must be carried forward and covered by revenue in the following year. In the first quarter of 1982 an additional deficit of £62m will have been incurred by the time fares can be increased.

3.8. Assuming that Ministers would not wish to come to the rescue by funding the deficit at the <sup>tax</sup> payer's expense, and that the GLC will not cut its other expenditure by the necessary amount the only possible sources for meeting the

deficit are fares and rates. To meet the whole of the deficit from increased fares in 1982 would mean an additional increase of around 75% in March. LT's proposal would in effect mean funding the deficit from a combination of higher fares and increased rates over 5 years. Given the GLC's reservations about LT's borrowing powers, which are shared by the Department of Transport, legislation would probably be needed. Similar arrangements might have to be made for the 1983. The Department also share the reservations of GLC officials about the financial soundness of medium-term borrowing to cover a current deficit, although this form of financing could probably be limited to the present exceptional circumstances.

3.9. There are also difficulties about the proposal of GLC officials to meet the deficit by an additional precept. The effect would be that despite the 1981 supplementary precept being quashed, ratepayers would still have to meet the cost of the GLC's cheap fares policy. If arrangements are made to repay the 1981 precept or have it credited in next year's rate demand, it would appear to be immediately taken away again.

3.10. It is arguable that the outcome would nevertheless be a reasonable one for ratepayers. The costs of the GLC's policies to date have been incurred and have to be paid for by somebody. They are substantially less than the cost of continuing with those policies. If it had not been for the Bromley action, ratepayers would had to meet at least a continuation of the additional 11.9p precept in 1982/83. Meeting the cost of the £125m deficit would involve a precept of 6.5p. These figures leave the grant consequences out of account. On their original policies, the GLC would have forfeited virtually all grant for next year. As a result of the new proposals total spending on support for LT (including the £125m) will be around £100m lower. Depending on how big the rest of their budget is, the GLC may be eligible for at least some grant next year. The effect of the grant would therefore be to mitigate the burden on ratepayers, at least to some extent, even if Ministers do not agree to waive grant penalties.

3.11. The GLC do not require any Government sanction to fund the accumulated deficit from the rates. It is entirely a matter for them to decide. It is possible that the precept would be challenged in the Courts, but this is a matter on which they will presumably have taken legal advice. If the GLC decide to adopt this course, the main issue for the Government is likely to be whether to waive any grant penalties.

3.12. It would be difficult for Ministers to agree to this since it would involve either increasing the total amount of rate support grant, which has just been decided, or altering its distribution, which would affect all other authorities. If the 1981 supplementary precept is repaid, this will have the effect of reducing the GLC's expenditure in 1981/82 and the grant for this year would be re-adjusted to restore some of the grant which was withheld because of the GLC's overspending. To agree to waive any grant penalty involved in funding the LT deficit in 1982/83 would therefore mean relieving the GLC of grant penalties twice over.

3.13. The options described for dealing with the revenue deficit for 1982-83 and the accumulated deficit are combined in Annex A, which shows the effects for ratepayers and farepayers.

#### Concessionary Fares

3.14. London Transport offer generous travel concessions to the elderly and disabled - free travel off-peak, which has recently been extended to the evening peak period on the Underground.

3.15. The Law Officers agree with the GLC's view that they have no specific powers to pay grants for these travel concessions. For the time being the GLC are continuing to cover the cost by using their powers under S.137 of the Local Government Act 1972 to apply the product of a 2p rate for general purposes. A 2p rate produces about £40m. The current cost of these concessions is £31m, which will rise proportionately with fare increases. GLC officers suggest that the Council would not be willing to use the whole of a 2p rate product for this purpose because they wish to use their S.137 powers to finance job creation schemes.

3.16. LT could not justify these travel concessions on commercial grounds and unless means can be found to finance them, they would have to be withdrawn. The London boroughs have powers to pay grants for this purpose and travel concessions were financed by them until 1973. It may be that they would agree to do so again on an interim basis rather than see the concessions withdrawn. It would be too late to adjust their GREAS for next year to take account of such additional expenditure but DOE could undertake to adjust them when making a supplementary order. But the cost of these concessions will rise sharply with fare increases and it may be that the boroughs would refuse to take on this commitment on a longer-term basis, even with a grant adjustment.

3.17. The proposal that the Government should legislate to enable the GLC to continue to pay for travel concessions raises difficult issues. The London concessions are much more generous than those in many other parts of the country, including neighbouring counties. The extent of concessions is a matter of local discretion. But variations between areas cause a good deal of resentment. Legislation to enable the GLC to continue its scheme may therefore attract criticism from those who think it over-generous and revive pressures for legislation for a national minimum level of concessions.

3.18. Against this, the GLC is the only local authority which does not have powers to pay for travel concessions. Although these powers were given only to the Boroughs in London because travel concessions were regarded as a matter of social rather than transport policy, it has proved sensible in practice to have a London-wide scheme. Withdrawal of the concessions or different arrangements in different boroughs would be highly unpopular.

#### Capital Expenditure

3.19. LT's budget for 1982 proposes capital expenditure of £166m, of which £138m would need to be covered by GLC grants. The GLC have general powers to make grants to transport operators for capital expenditure outside the framework of the 1969 Act, which could be used for this purpose. However £89m of this would be funded via the D and R provision. The GLC have effectively treated their grant for this purpose as a capital grant - and it is treated as such for public expenditure purposes also - but the D and R provision is properly part of the revenue account which should be financed from current income.

3.20. Given the requirement to break even as soon as possible and the likely contraction of services, the advice of GLC officers would lead to reducing capital expenditure to the minimum. The scale of cuts possible for 1982 is very limited because of the scale of existing commitments, amounting to some £120m to £130m. Severe cuts would be possible thereafter.

3.21. It would be difficult to relieve LT of the obligation to cover D and R from current revenue, since it is properly chargeable to the revenue account. All the PTEs allow for depreciation in their revenue accounts in calculating the deficit

which needs to be covered by revenue support grants. The financing of the capital programme does not therefore raise any issues for Ministers. But it should be noted that cuts in investment will create difficulties for BL and Metro-Cammell which are heavily dependent on LT and the PTEs for sales of buses and railway rolling stock.

Need for Legislation

3.22. If the GLC accept the proposals being put forward by their officers, there would not appear to be any need for emergency legislation<sup>requiring Assent by the end of the financial year</sup> to deal with the GLC's general powers to pay subsidies to LT (as distinct from legislation to deal with specific difficulties such as concessionary fares). The budget would appear to be consistent with the interpretation of the law put forward by the Solicitor General in the emergency debate on 22 December. It will, however, be necessary to consider in the next <sup>few months</sup> / whether the existing law would allow a continuation of subsidies at the level which has been paid in recent years and which is now being proposed by GLC officers or whether it would require progressive steps to be taken to achieve a break-even position. It is generally accepted that London's needs cannot be met without some degree of subsidy for public transport and if the law did not allow it legislation would be needed to permit limited fare subsidies. Legislation might also be needed sooner if the GLC took a more rigid stance than is now being recommended by their officers.

3.23. Early legislation would have the advantage of achieving some certainty in the face of differences in interpretation of the Lords judgement. It would, however, face Ministers with a difficult choice:

- (a) if the effect is to sanction subsidies in line with existing Government policy, ie in line with the TSG settlement, it will still involve big fare increases. These will then be seen as the responsibility of the Government rather than the local authorities which created the situation.
- (b) If on the other hand the legislation allows for bigger subsidies to mitigate the size of fare increases the Government will be seen as having given in to pressure from the GLC. Bigger subsidies would also be inconsistent with the grant settlement and the extra cost to ratepayers would be increased by grant penalties unless GREAs were adjusted.

3.24. Any legislation that could be introduced in time to affect LT's budget in the current year could only be interim in nature. The options are discussed

below. But in debate on any legislation now Members would raise longer term issues which the Government would not be able to deal with satisfactorily at this stage.

### The Need for New Arrangements

3.25. The present crisis for LT has highlighted the unsatisfactory arrangements for the planning and management of public transport in London and its surrounding region. But there are other matters which need attention. These include:

- (a) the failure of the GLC to plan and execute any worthwhile programme of road improvements, mainly because the cycle of political change has been shorter than the time needed for roads to be planned and built; and
- (b) the lack of co-ordination between LT and BR's commuter system on matters such as fares and the rationalisation of services.

A more rational pattern is for the medium term rather than for immediate action. The Select Committee on Transport is considering these matters and may have useful proposals to make.

### LEGISLATIVE OPTIONS

4.1. There are a number of options for legislation. If the Government chose not to legislate on the generality of transport subsidies it might still wish to ((a) legislate on some of the peripheral consequences of the judgement for London./below) And there are a number of ways of legislating on the general issue of subsidies, of which four main options are set out in sections (b) to (e) below.

- (a) Concessionary fares, accumulated deficit, indemnities

4.2. Legislation could give to the GLC the power to pay for concessionary fares for the elderly and disabled. This would place the GLC in the same position as counties and districts outside London, and would enable it to continue its free travel scheme for the elderly.

4.3. If it were decided that London Transport's accumulated deficit at the end of this financial year should, exceptionally, be amortised over a period of up to 5 years, legislation might be necessary to give LT the necessary borrowing powers. LT's legal advice is that its existing powers are adequate for this purpose. GLC have some reservations. A provision to place the legality beyond doubt might be part of a package of measures to secure an acceptable budget for LT. Similar arrangements may be needed to cover PTR deficits if supplementary precepts are successfully challenged.

4.4. The GLC may ask for legislation to indemnify members and officers against surcharge and disqualification. It is considered unlikely that individuals would be liable to surcharge or penalties as a result of the actions they took in connection with the fare cutting policy. It is also thought that existing powers to exempt items of expenditure from audit could be used to ensure immunity if necessary. These powers are untested, however, and there would be some argument, at least as part of a package of measures, in favour of legislating to indemnify individuals in this specific case.

(b) Allow subsidies subject to external finance limits

4.5. Legislation could restore clearly GLC and the metropolitan counties' powers to pay subsidies to LT and PTRs, and the executive's powers to budget for a deficit. Control over the size of the subsidies could then be exercised by imposing EFLs under powers similar to those already circulated in E(81)130. This scheme has the advantage that a considerable amount of progress has already been made in developing it and legislation could, if necessary, be introduced quickly. It could form the basis of a long term regime for the transport executives, providing an effective control over their expenditure and giving them certainty about what was permitted. On the other hand it was conceived as a way of putting a control on expenditure which was getting out of hand, and it would be less appropriate in the changed circumstances after the Bromley judgement. It would also leave only limited scope for local discretion and would be criticised as an attack on local authority powers.

(c) Allow subsidies subject to the Secretary of State's consent

4.6. The legislation would not make any general modification to the existing law as interpreted in the Bromley judgement: but it would add a provision that local

authorities could pay additional subsidies to transport executives with the Secretary of State's consent. This approach might appear more consistent with the position in the aftermath of the Bromley judgement: it would keep the constraints imposed by the judgement - that transport executives should be operated in a businesslike way. The legislative provision would be simple. However, there would still be some doubt over what level of subsidy was permitted without the Secretary of State's consent. Although legislation on these lines could allow some scope for local policy formulation by allowing bids, it would be seen as a further intervention by the Government in local affairs.

(d) Limit subsidies to a fixed proportion of costs

4.7. Legislation would allow LT to budget for a deficit and GLC to subsidise it up to a limit which would be included in the Bill. It would embody a positive Government policy on the appropriate level of subsidy, eg to provide that the proportion of costs covered from revenue from fares on LT services is similar to that on BR London and suburban services. There would need to be order-making powers to vary the limit in the light of changed circumstances.

4.8. This approach would answer the demand for guidance on what was permitted and provide an effective check on the amount of subsidy. It would show a positive response to the problems created by the judgement. But it would be difficult to draft quickly, and there could be difficulties in achieving a satisfactory definition of costs as a basis for calculating the limit. It would leave little or no room for local policy formulation.

(e) Allow subsidies subject to clearer financial duties and possibly guidelines

4.9. The legislation would redefine the financial duties of LT and the GLC, allowing LT to budget for a deficit. It would spell out the accounting arrangements to be adopted and require budgets to be set in the context of a medium term plan for the future of the business which would make it difficult to introduce policies which would lead to an escalating burden on local rates.

4.10. It would improve financial discipline while giving a wide measure of local discretion without direct central Government controls. The other side of the

coin is that it gives less certainty about what is permissible and runs the risk of generating another round of litigation. Legislation on these lines would take some time to draft and would therefore not be appropriate if it were needed to deal with the problem for the next financial year.

5.

5.1.

Transpo

fiducia

Transpo

in deta

financi

seek ne

seem t

busine

metrop

obliga

5.2.

rating

servic

quarte

frozen

precep

precep

5.3.

legal

the se

were

act 1

there

with

elsew

5.4.

the G

reduc

being

suppl

30% a

33p a

5. IMPLICATIONS FOR METROPOLITAN COUNTIES AND PTEs

5.1. The Bromley case was decided on the basis of the financial duty of London Transport set out in the Transport (London) Act 1969, together with the general fiduciary duty owed by GLC to the ratepayers. The financial duty of the Passenger Transport Executives is set out in the Transport Act 1968. Its drafting differs in detail from the corresponding provisions of the London Act. Nevertheless the financial duty is basically similar in requiring the Executive in each case to seek not to make a deficit at the end of each accounting period. The PTEs would seem to have a similar basic statutory duty to conduct their enterprise on businesslike lines as envisaged in the Lords' judgements. Also the PTAs (ie the metropolitan counties), in issuing precepts are under the common fiduciary obligation owed to the ratepayers of their areas.

5.2. This must put some PTEs and their metropolitan counties together with the rating authorities in their area in jeopardy from legal challenges. All PTEs services are subsidised to differing degrees. Between one quarter and three quarters of their costs are met from fares. South Yorkshire's fares have been frozen since 1973. West Midlands and Merseyside, like GLC, issued supplementary precepts during 1981 to pay for fare cuts. West Yorkshire issued a supplementary precept to pay off an accumulated deficit.

5.3. In the West Midlands and Merseyside, district councils are considering legal action to challenge the county precepts. Their PTEs could be faced with the same problems as LT in dealing with their deficits if their supplementary rates were quashed. A number of ratepayers are taking actions under the General Rate Act 1967 to appeal against the legality of the supplementary rates. In London there are already hundreds of such actions pending - they are all to be dealt with at one London court. It will not be possible to ensure that all the actions elsewhere are taken together and there may be inconsistent decisions as a result.

5.4. The metropolitan counties have cause for concern. If they were to accept the Government's view of the meaning of the Bromley judgement they would need to reduce their subsidies to "a reasonable level" which we have interpreted as being in line with the level of revenue support expenditure accepted for transport supplementary grant. This would require fare increases on 1 April of between 30% and 375%. The bus fare for an average 2 to 3 mile trip would then be between 33p and 47p. (See Annex B).

5.5. If the counties took the view that no revenue support was lawful any longer and attempted to break even without revenue support they would require fare increases so large that the effects are more difficult to forecast. South Yorkshire, in particular, but also West Midlands finance a much smaller proportion of their costs from fares than London, even after the fare cut. It would probably be impracticable for them to break even within one year on any interpretation of the law. Reducing revenue support below the level accepted for TSG would probably lead to substantial redundancies, with the likelihood of industrial action. The likely reduction in the demand for new buses would have severe consequences for the manufacturing industry. There would probably be a withdrawal of support for BR and NBC services in the metropolitan counties.

5.6. The metropolitan counties will need to decide at latest by 10 March what precepts they may make for public transport purposes. They are likely to press for a firm statement of the Government's view of their position. In particular they will ask whether the levels of revenue support accepted in the TSG settlement are consistent with the law. The problems which arise in relation to the PTEs are no worse than those for London.

## 6. RATING IMPLICATIONS

6.1. The House of Lords' judgement quashed the element of the GLC supplementary precept which related to transport. It did not affect the element for the ILEA. However, in passing on the precept to ratepayers, individual boroughs have responded in different ways. Because the increased transport subsidy by the GLC brought about loss of block grant for the boroughs, they rated to make good the loss of grant. Of course, Inner London boroughs had also to rate to cover the ILEA precept. In addition, some boroughs took the opportunity to increase the rate for their own purposes, while at least one borough paid some of the precept out of balances, thereby reducing the level of the supplementary rate that would otherwise have been necessary.

6.2. The Secretary of State for the Environment is still considering the rating issues arising from the judgement. The most difficult problems concern the ability of the boroughs to repay rates already paid, the liabilities as between the GLC and rating authorities and the consequences for block grant. Hundreds of appeals against the rates of individual London boroughs are outstanding before the Courts. Selected appeals on a 'test case' basis are due to be heard at Croydon Crown Court at the end of January. The law is obscure and advice is being sought from the Attorney General and from Counsel.

6.3. Individual boroughs may have different approaches to repayment. Some may not wish to repay at all. Others are sufficiently enthusiastic about doing so that they have applied to the Secretary of State for the Environment for a sanction under Section 161 of the Local Government Act 1972 to remove the repayment of rates to the ratepayer from the purview of the District Auditor in order to enable them to work out their own solutions to the repayment problem. This would not, however, lead to uniformity of treatment for ratepayers and would acknowledge the doubts about the legality of repayment.

6.4. Ministers were clearly concerned (E(81)40th Minutes) that those ratepayers who had already paid their rates should not be

worse off than those who had not done so. The issue for decision, if the existing law should prove to be unsatisfactory, will, therefore, be whether or not they will be prepared to legislate quickly to enable the boroughs to repay all or part of the supplementary rates they have collected or to compel them to repay. The latter would be complex because of the need to define precisely what had to be repaid.

6.5 The Treasurers of the London Boroughs Association have, on the basis of fresh opinion from Counsel, agreed on a common approach that those who apply for repayment should receive one and that those who do not should receive a credit against next year's rate. However, this recommendation is still subject to confirmation by elected members.

#### GLC FINANCES

6.6 Another question is what might happen if, because of its commitments and inability to collect its precepts, the GLC runs out of money in 1981/82. It cannot now raise a supplementary precept and therefore has no power to borrow for revenue purposes. The only solution would, in fact, be emergency legislation. However we have no indication from the GLC that they are likely to run out of money and this problem seems more theoretical than real.

#### SURCHARGE AND INDEMNITY

6.7 Finally there is the question of surcharge. Although the District Auditor will have to consider the question of illegal expenditure and is likely to decide to bring the issue into the courts, it appears unlikely that the courts would surcharge GLC councillors, as they seem to have acted in the belief that the expenditure was lawful and there does not seem to have been any wilful misconduct. The GLC may ask the Secretary of State for the Environment to remove the expenditure from the purview of the District Auditor under his powers in the Local Government Act. No decision need, however, be taken on this until the request comes.

|                                                                                 | 1981/82               |                                    |                                                            |                                                 | 1982/83               |                                    |                                                            |                                               | Remarks                                                                          |
|---------------------------------------------------------------------------------|-----------------------|------------------------------------|------------------------------------------------------------|-------------------------------------------------|-----------------------|------------------------------------|------------------------------------------------------------|-----------------------------------------------|----------------------------------------------------------------------------------|
|                                                                                 | Revenue Support<br>£m | Block Grant accruing<br>£m         | Cost to rate-payers                                        | % Fare increase over Sept '80                   | Revenue Support<br>£m | Block Grant accruing<br>£m         | Cost to rate-payers                                        | % Fares increase over 1981/82                 |                                                                                  |
| Policies of previous Conservative GLC                                           | 86                    | 134                                | 17p<br>[ £50 ]                                             | + 15                                            | 89                    | 150                                | 17p<br>[ £50 ]                                             | +15                                           |                                                                                  |
| * assuming non-transport expenditure is at 81/82 level repriced by 7½%.         | Revenue Support<br>£m | Resulting Block Grant Change<br>£m | Extra Poundage Cost to ratepayers<br>[£s on av. rate bill] | Percentage Change in Fares (from Sept 80 fares) | Revenue Support<br>£m | Resulting Block Grant Change<br>£m | Extra Poundage Cost to ratepayers<br>[£s on av. rate bill] | Percentage Change in fares (from cheap fares) | Remarks                                                                          |
| Labour GLC Cheap Fares policies                                                 | 205                   | -88                                | 11p<br>[ £30 ]                                             | -32                                             | 309                   | -118                               | 18p<br>[ £50 ]                                             | no change                                     | Illegal as a result of Lords decision                                            |
| Return to original policies with ratepayers paying costs of 1981/82 Cheap Fares | 86                    | 0                                  | 0<br>[ 0 ]                                                 | -32                                             | 209                   | - 56                               | 9p<br>[ £25 ]                                              | +90                                           | High cost to ratepayers unless RSG settlement modified to reduce grant penalties |
| LT to break even in 1982 (including cost of 1981/2 cheap fares)                 | 86                    | 0                                  | 0<br>[ 0 ]                                                 | -32                                             | 0                     | + 53                               | -7p<br>[ - £20 ]                                           | about +300                                    | Very high fare increases involved                                                |
| LT Budget proposals following Lords decision                                    | 86                    | 0                                  | 0<br>[ 0 ]                                                 | -32                                             | 109                   | - 6                                | 1p<br>[ £5 ]                                               | +100                                          | Probably not possible without legislation to allow for borrowing                 |

ANNEX B

FTS: Fare increases required to achieve TSG accepted expenditure levels in one year

|                    | <u>Fare for<br/>2 - 3 mile<br/>journey<br/>Dec 1981</u> | <u>Accepted<br/>Expenditure<br/>1982/83</u> | <u>Fare<br/>increases<br/>required</u> | <u>New Average<br/>Bus Fare</u> |
|--------------------|---------------------------------------------------------|---------------------------------------------|----------------------------------------|---------------------------------|
|                    | p                                                       | £m                                          | %                                      | p                               |
| West Midlands      | 20                                                      | 12.5                                        | 72                                     | 34                              |
| Greater Manchester | 30                                                      | 18.0                                        | 42                                     | 43                              |
| Merseyside         | 26                                                      | 20.3                                        | 45                                     | 38                              |
| Tyne & Wear        | 22                                                      | 13.0                                        | 115 (approx)                           | 47                              |
| S. Yorks           | 8                                                       | 12.5                                        | 375 (approx)                           | 38                              |
| N. Yorks           | 36                                                      | 21.4                                        | 30                                     | 47                              |

Labour costs are assumed to rise 8% in 1982/83  
 Services assumed to be reduced by 5%