P.01481 CONFIDENTIAL

PRIME MINISTER

London Regional Transport:
Greater London Council (GLC) Challenge
(E(A)(85)4) FLAG A.

BACKGROUND

The High Court have quashed a direction by the Secretary of State for Transport under Section 49 of the London Regional Transport (LRT) Act requiring the Greater London Council (GLC) to pay grants of £281 million to LRT up to the end of 1984-85. The GLC have agreed to leave the money already paid (about £177 million) with LRT for the present, but will not make further payments. LRT will encounter cash flow problems in about six weeks if no action is taken. Mr Ridley originally intended to appeal against the judgement, but the Law Officers have advised that such an appeal would probably fail. Interested Ministers have been considering whether to negotiate with the GLC or to legislate to effect the required cash transfer from the GLC to LRT. This has leaked to the press, and Mr Ridley is anxious to make an early statement of the Government's intentions to Parliament.

MAIN ISSUES

2. The main issues are:

i. how to secure LRT's finances;

ii. if it is decided to do so by introducing legislation, what the content of that legislation should be;

iii. if by negotiation, how to fund any shortfall in LRT finances;

iv. the implications for Government policies in other areas;

v. whether to make an interim direction to secure the payments already made by the GLC.

The options

3. Mr Ridley identifies three main options:

a. appeal against the High Court judgement;

b. negotiate with the GLC on a new S.49 direction;

c. legislation.

The Law Officers have advised against appealing.

4. The choice between the other two options is a very difficult one. Both have substantial disadvantages, as follows.

Disadvantages of negotiation

- the best deal we are likely to get is a payment of £205 million by the GLC, giving them a £60 million windfall in 1984-85 and leaving LRT £35 million short in 1985-86

- this makes a nonsense of the provisional rate limit imposed on the GLC which cannot now be tightened

- the LRT's shortfall can be made up only by financial help from the Government or large fare increases (14 per cent in June on top of 9 per cent this January) or cuts in investment (very difficult since it is mainly for cost reduction)

- there must be a serious danger that the GLC will exploit its strong negotiating position and secure a deal under which their windfall and the LRT's shortfall are even larger.

Disadvantages of legislation

- having been found by the courts to have tried to make the GLC pay too much, the Government will appear to be trying to reverse this decision

- it is very difficult (as the Annex to E(A)(85)4 shows) to establish a clear, intelligible and defensible figure which the GLC should pay

- it will be seen as another anti-local government and especially anti-GLC measure, and may place a further strain on back-bench support

- it will interfere with the legislative programme

  (The Lord Privy Seal has conceded that legislative time could be found but has warned that the Bill will be very controversial; Mr Ridley wants it to be introduced very quickly and to be drafted as a Money Bill to avoid delay in the Lords).

5. If the Sub-Committee concludes that the legislative option is the lesser of the two evils, urgent thought will need to be given to the presentation of the Government's case. The emphasis will have to be on a few simple points, eg that the GLC already has this money which was raised and set aside for LRT and that the legislation is necessary to avoid a totally unjustified fares increase.

Scope for legislation

6. If Ministers favour legislation naming a specific figure to be paid by the GLC, it will be important to be able to justify the figure. Mr Ridley argues that the guiding principle should be to relate the figure to the provision the GLC made in drawing up their revenue and capital budgets for London Transport (LT) for 1984-85. This would enable the Government to counter allegations of retrospection, arbitrariness and unfairness.

7. The detailed argumentation supporting Mr Ridley's view that a figure of £258.2 million emerges from following this principle is set out in the annex to his paper. The Chief Secretary, while unlikely to disagree with the principle, may well question some of the figures. (For example, the need to concede the £10.2 million which the GLC have, purely as a device, labelled as relating to 1984-85 rather than 1983-84). But it seems clear that such a principle would produce a figure of the general order of £250-60 million. On this basis, the Sub-Committee may be content to leave it to those Ministers most concerned - the Chief Secretary, Mr Ridley, Mr Biffen and Mr Jenkin - to agree the precise figure, so long as this can be done quickly.

8. £258.2 million would be enough to cover LRT's cash need for 1984-85 and enable them to live within their External Financing Limit (EFL) and grant for 1985-86. The Chief Secretary is likely to put in a reservation on the question of Exchequer funding for any knock-on effects in 1986-87 (which are not quantified in Mr Ridley's paper).

Interim direction (prior to legislation

9. Mr Ridley's arguments (paragraphs 8-9) against making an interim direction are based on Counsel's opinion that the GLC would have a good chance of mounting a successful challenge to such a direction, and the judgement that the GLC would prefer to be seen acting reasonably in the run-up to abolition, and would not therefore wish to throw LRT into chaos by reclaiming the money already paid. This may be over-optimistic. However, it does seem likely that, once legislation had been introduced, any attempt by the GLC to recover the £177 million already paid over could be stalled.

HANDLING

10. You will wish to ask the Secretary of State for Transport to introduce his paper. The Chief Secretary, Treasury will wish to comment on the public expenditure aspects and the Secretary of State for the Environment on the implications for local government policies more

generally. The Lord Privy Seal and the Deputy Chief Whip will advise on the business implications and the Solicitor General on the legal aspects.

CONCLUSIONS

11. You will wish to reach conclusions on the following issues:

i. whether the LRT's finances should be dealt with by negotiating a new direction with the GLC or by legislation;

ii. if the negotiation route is to be followed, how the shortfall in LRT's finances is to be dealt with;

iii. if there is to be legislation:

a. what its content should be;

b. when it should be introduced, and the Government's intentions made known;

iv. whether there should be an interim direction.

PLG

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25 January 1985