

Subject a matter

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10 DOWNING STREET

From the Private Secretary

26 March 1984

Dear John,

LIVERPOOL

The Prime Minister held a meeting today to discuss developments in Liverpool. Present were the Home Secretary, Lord Privy Seal, the Secretaries of State for Education, Environment, Scotland, Trade and Industry, and Social Services, the Chief Secretary and the Attorney General. Also present were Sir Robert Armstrong and Mr. Buckley.

Your Secretary of State said that the Labour rebels now wanted, not just to prevent an improper rate, but to secure a legal rate before the election on 3 May which was likely to result in an increased Labour majority. He had also spoken to members of the Conservative group on the Liverpool City Council. It was clear that the latter had not appreciated that there was a prospect of combining with the Labour rebels to produce a legal rate. They would now be considering how this could be achieved. The Conservative Councillors had, however, been hampered by the fact that they had not been given adequate information on the Council's financial position.

Your Secretary of State said he was coming under pressure from the media who wanted to know what contribution the Government would make to a solution of Liverpool's problems. He and his Department had refused to be drawn in public on this. In practice, the scope was very limited. One possibility was to allow a disregard for urban programme expenditure. But this could not be confined to Liverpool and in any case could not operate in the coming year.

Your Secretary of State then raised the question of intimidation of the rebel Councillors. It was noted that if they were to be expected to carry out their obligations (and absence from the vote would still leave them liable) they were entitled to protection at home and in getting to and from the meeting. It was noted that the march would culminate in a demonstration outside the City Hall which would make it difficult for Councillors to get into the meeting. There was also the problem of order inside the meeting. It was not clear to what extent the Police were able to intervene in a public meeting to maintain order or to what extent they were bound by the wishes of the chairman. Summing up this part of the discussion, the Prime Minister said the rebel Councillors were entitled to public protection. She asked the Home Secretary to consider what needed to be done to protect their homes and to ensure access to the meeting would be maintained despite the

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demonstration outside. He should also consider what was the position of the Police in maintaining order in the Hall.

The meeting then considered the draft statement prepared by the Attorney General on the duties of Councillors and the sanctions for not fulfilling them. This was attached to Mr. Sarjeant's letter to me of 23 March. Since the draft had been prepared, the Liverpool Council Councillors had received very full advice from the Chief Executive, City Solicitor and City Treasurer, and a report from the District Auditor. It was doubtful whether a further statement by the Attorney General would currently add very much. The Attorney General said that he had sought to amend the earlier draft to cover the case where there was no rate at all but had found it difficult to provide a clear-cut statement. It was agreed that there was no advantage in publishing before the Council meeting on 29 March. The Attorney General would look again at the text when the precise situation to be covered would be clearer.

I am copying this letter to Janet Lewis-Jones (Lord President's Office), Hugh Taylor (Home Office), David Heyhoe (Lord Privy Seal's Office), Elizabeth Hodgkinson (Department of Education and Science), John Graham (Scottish Office), Callum McCarthy (Department of Trade and Industry), Steve Godber (DHSS), John Gieve (Chief Secretary's Office, HM Treasury), Henry Steel (Attorney General's Office), Richard Mottram (Ministry of Defence), Richard Hatfield (Cabinet Office) and to Michael Buckley.

Yours sincerely

Andrew Turnbull

ANDREW TURNBULL

John Ballard, Esq.,
Department of the Environment.



Private Secretary to Secretary of State
for the Environment

Hugh Taylor.

My Secretary of State
received this letter this
morning and may refer
to it at this afternoon
meeting with the P.M.

The matters raised are
mainly for the Home Office.

A copy of this letter note
has gone to Andrew Turnbull
(No 10)

John Bellamy

The Right Hon
Patrick Jenkin, M.P.

Read via Lib of Commons
26/3/84

FOR

362, Princess St

Liverpool 14
8XQ

My Dear Sir,

As one of the Six would be Rebels may I seek your kind advice with reference to next Thursday Budget meeting. In view of the threats that have been made of violence inside or outside of the Town Hall & those calls to my home, my wife is a physical wreck, which are similar to my colleagues, we would not wish to meet any such behaviour because of our disbelief of Marxist forces, will not work & my democratic belief of local government.

Can I ask if it is possible that some form of Exemption of attendance will be available to thwart any hysteria & violence on that day.

I am convinced that another 10 persons are sitting on our backs assailing our downfall to avoid them being surcharged & the budget falling on the vote of 43.

In conclusion may I ask what protection is there & why should this march go on, or why it should not be ^A routed away from the Town Hall if violence is expected & threatened, as you will

I be aware of the tension our families
 are suffering, I would appreciate your
 fullest confidence that I have written to
 you after 31 years on the Liverpool City
 Council this is the first time I have
 ever written to a Minister of State for
 guidance.

I am yours

Sincerely
 Willard Johnson

P.S. Is it possible
 for an early reply
 before next Thursday

26 MAR 1984



CS/87/84

CITY OF LIVERPOOL

GENERAL RATE 1984/85

Joint Report of the Chief Executive,
City Solicitor and City Treasurer

City Solicitor's Office
MARCH 1984

Joint Report of the Chief Executive,
City Solicitor and the City Treasurer

1. INTRODUCTION

The Council resolved, on the 9th November 1983, "that printed budgets for 1984/85 be prepared on the basis of current budgeted standards of service, together with known inescapable new commitments and a continuing Housing Investment Programme, all based on November 1983 prices, and that they be submitted for consideration in the first phase, to Policy Groups 1 and 2."

The Council further resolved, on the 7th March 1984,

- (a) that notwithstanding the powers and duties of the Policy and Finance Committee, as approved by the Council on the 17th May 1983, the Performance Review and Financial Control Sub-Committee be empowered to make recommendations directly to the Council as to the making of a rate for the financial year 1984/85; and
- (b) that a special meeting of the Sub-Committee be held on Monday the 26th March 1984 and a Special Council Meeting be held on the 29th March 1984.

For the assistance of Members the following paragraphs set out the financial situation regarding the Council's allocation of Rate Support Grant and grant penalties and the legal requirements regarding making a rate, together with a review of the statutory and common law provisions relating to the level of the rate, to failure to make a proper rate, and the practical consequences thereof.

2. RATE SUPPORT GRANT

A graph prepared by the City Treasurer, showing the Rate Support Grant entitlement at various levels of net expenditure, grant penalties and the resultant rate poundage, appears as an Appendix to the City Treasurer's report on the 1984/85 Budget.

3. STATUTORY PROVISIONS

- (a) The General Rate Act 1967, as amended by the Local Government (Finance) Act 1982 -

(i) Every Rating Authority must make such a rate as will be sufficient to provide for such part of the total estimated expenditure to be incurred by the Authority as is not met by other means (e.g. Government grants), and including sums payable under a County Council Precept.

(ii) The Rate must be made in respect of a period beginning immediately after the expiration of the last preceding rate period, i.e. 1st April. There must be no interval between the expiry of the period of the last rate and the commencement of the next rate period.

(iii) the Rate is deemed to be made on the date on which it is approved by the Authority.

(b) Local Government Finance Act 1982

(i) A Rating Authority has no power to issue a Supplementary Rate or a rate for any period other than the financial year.

(ii) A Rating Authority may make a rate in substitution for a rate previously made by it for that year, but not exceeding the estimated product of the rate for which it is substituted and whether or not the original rate was validly made.

(iii) Any question of the validity of a rate must be by application for judicial review and if the Court decides to grant relief it shall quash the rate whether the ground of invalidity relates to the whole or any part of it.

4. COMMON LAW

A. THE LEVEL OF THE RATE

Fiduciary Duty to Ratepayers

The latest case relating to a Council's fiduciary duty to its ratepayers and its duty to act reasonably is R -v- Greenwich London Borough Council ex parte Cedar Transport Group Limited 1983.

The Local Authority made a rate based on estimated expenditure which exceeded the Government target by £10m and resulted in loss of Government grant. In particular the Authority decided not to increase Council house rents and to spend £4m (not £8m as was first suggested) on various new projects and services. A commercial ratepayer challenged, by way of judicial review, the rate on the ground that the Council's decision was so unreasonable that the court should draw the inference that reports and advice placed before the Authority had either been ignored or misunderstood.

The court dismissed the application because it did not consider the conclusion to be so unreasonable as to justify drawing the inference that advice had been ignored; the Council had considered the arguments for and against increasing Council house rents and had been reminded of its fiduciary duty to ratepayers. It had taken this duty into account in rejecting the original expenditure of £8m on new projects.

Further the Council had considered its level of expenditure at many levels; there was no suggestion that the additional spending would not confer a benefit on some section of the community and whether it was right to call on the ratepayers to meet this expense was primarily a matter of political judgment. Also, the court could find no material that would justify accepting the argument that a total overspending of £10m in excess of the Government's target was so large that it must be wholly unreasonable.

Apart from the actual decision, the court made two particularly relevant statements in the course of its judgment.

First, all Members of the Authority had had the advantage of receiving papers from both the Borough Treasurer and the Borough Solicitor which set out all the relevant considerations they should have in mind when deciding on the 1983/84 level of expenditure. The Borough Solicitor's advice was drafted by a distinguished Queen's Counsel and included the following :-

"In summary, in settling budgets and determining the rate levy for 1983/84 members must have regard to: (a) the rating authority's statutory and other legal duties and powers including prospective duties and powers; (b) relevant factual information ensuring that such information is before members when a decision is reached; (c) all relevant factors and leaving out of account all irrelevant factors. Members must not come to a decision which no reasonable authority could reach; (d) the needs of the community as perceived by the members; (e) the rating authority's fiduciary duty to its ratepayers, including: (i) awareness of the financial consequence of any proposal for ratepayers, domestic and commercial; (ii) financial prudence; (iii) striking a fair balance between the interests of ratepayers on the one hand, and the community's interest in adequate and efficient services on the other hand; (iv) giving consideration to any loss of grant arising from the adoption of any course of action; (v) acting in good faith with a view to complying with statutory duties and exercising its statutory powers for the benefit of the community; (f) general economic circumstances including Government policy and guidance.

Members must not fetter their discretion by treating as decisive a proposal or proposals in an election manifesto. Members must reach a decision anew in the light of known factors, but they are entitled to take into account their election manifesto when deciding between lawful options.

It is considered that provided members act in accordance with the above principles, it is for them to decide an appropriate level of expenditure and that the rating authority will not act unreasonably (within (c) above) merely because it resolves on a level of expenditure with which others strongly disagree. It is considered that it is not for the courts to substitute one judgment of what is reasonable for that of the rating authority to whom the discretion has been given by Parliament.

Members should not be afraid to vote for a budget where expenditure exceeds target or the GREA if they are sure that such expenditure is needed, but they should not do so merely because they regard the constituent elements as desirable. Once penalty levels are reached financial prudence and providence dictate a more thrifty approach."

The fact that this advice was submitted and considered was an important factor in the court's decision.

Secondly, dealing with the level of expenditure the court said "there is room for a wide divergence of honest opinion upon the burden of taxation. A Labour Council might perhaps be likely to favour a higher level of taxation to provide for public services than a Conservative Council, or a Conservative

Government. There is no suggestion that the additional plans would not confer a benefit on some section of the community and whether it is right to call on the ratepayers to meet this expense is primarily a matter of political judgment. It is clear from the massive documentation that this question was considered in the Council at many levels before the final decision was taken."

The conclusions to be drawn from the above case are -

1. An Authority is more likely to succeed in defending a challenge regarding the reasonableness of its rate decision if
 - (a) it receives and considers legal advice on the extent of its fiduciary duty; and
 - (b) provided it has given this consideration, the fact that the budget exceeds Government targets and incurs penalties does not per se make the decision unreasonable.
2. The court will be most reluctant to substitute its own view of the way in which the Authority should have exercised its discretion for that of the Authority. Only in a case in which the decision of the Council is so outrageous that no right thinking person could support it would the court interfere with the Council's decision making process.
3. The facts of political control and policies are recognised.

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B. FAILURE TO MAKE AN ADEQUATE RATE

The previous paragraphs relate to the Authority's position regarding the level of its rate. The legal position if it fails to make any or makes an inadequate rate is different. As stated in paragraph 1. (a) the General Rate Act 1967 makes it compulsory for a Council to make an adequate rate and certain consequences flow from breach of that duty, both for the Council as a whole and for individual Members.

(a) Powers of the Court

Since there is a statutory obligation upon the City Council to make a rate sufficient to meet its requirements, a rate resolution which did not achieve this result would be contrary to law and accordingly open to review by the High Court. If a challenge proved to be successful the costs of it would fall to be met by the Council.

In the event of a successful challenge the consequences of failure to comply with the ensuing Court Order are as follows :-

- (i) it is a Civil Contempt of Court to refuse or neglect to do an act required by a Judgment or Order of the Court within the time specified in the Judgment or Order;
- (ii) Civil Contempt of Court is punishable by way of committal to prison for a fixed term not exceeding two years or, as an alternative, by way of unlimited fine, recoverable in the same manner as a Judgment debt;
- (iii) the persons who govern an Authority are responsible for its acts and are liable to be committed for disobedience R -v- Poplar Borough Council ex parte London County Council 1922.

The facts in this case were that the Local Authority refused to include in its rate provision for payment of the County Council Rate Precept. The Council considered that Poplar was a poor Borough, its account was already overdrawn, its rating was extremely high and would be abnormally and extraordinarily high if the rate was levied to pay the Precept.

The Court rejected appeals against committal for neglect to comply with Orders of Mandamus directing the Councillors to levy rates to meet the County Council Precept and in so doing the Judges said that the question whether the appellants had acted conscientiously or not had nothing to do with the matter

(b) Receivership

If the Rating Authority fails to make a rate to raise the amount of the County Council Precept, the County Council can apply to the Secretary of State for the appointment of a Receiver to recover the amount due, and interest (General Rate Act 1967).

By the Local Authority (Stocks and Bonds) Regulations 1974 and 1983, if any money due in respect of any stock or bonds issued by a Local Authority amounting to £500 or more remains unpaid for two months the person entitled thereto may apply to the High Court for the appointment of a Receiver and the Court may confer upon the Receiver any such powers of collecting, receiving and recovering the revenues of the Local Authority, and of making, collecting and recovering rates, and of issuing and enforcing Precepts, as are possessed by the Local Authority or their officers.

Therefore the County Council or a stockholder could apply for the appointment of a Receiver.

(c) Secretaries of State

Despite research of current legislation the City Solicitor cannot find a general power enabling the Secretary of State for the Environment to assume the functions of the Local Authority.

Various statutes empower the relevant Secretaries of State, in certain cases, if a Local Authority fails to carry out its statutory functions, to exercise default powers. For example a failure to provide an adequate education service may lead to the exercise of default powers under the Education Act 1944 by the Secretary of State for Education and Science. Similar powers exist in relation to Social Services and Environmental Health functions and certain Housing functions. The costs involved in the assumption of such functions would ultimately be recharged to the ratepayers.

For example the Housing Finance Act 1972 empowered the Secretary of State for the Environment, by order, to appoint a person - a "Housing Commissioner" to discharge in the name of the Authority and at their expense the functions of the local authority relating to rents under that Act and to direct that the Authority should not during the term of the Commissioner's appointment perform those functions. The power was invoked in the Clay Cross case.

(d) Wilful Misconduct

Failure to make a rate to cover estimated expenditure would probably amount to wilful misconduct under the Local Government Finance Act 1982, "wilful misconduct" being legally described as a person concerned appreciating that he is acting wrongfully, or is wrongfully omitting to act, and yet persists in so acting or omitting to act regardless of the consequences, or acts or omits to act with reckless indifference as to what the results may be.

The District Auditor has power to certify that the loss or deficiency arising from wilful misconduct of any person is due from that person or persons (jointly and severally) and may take steps to recover that loss or deficiency. If the loss exceeded £2,000 the Councillors responsible would be liable for disqualification for a period of five years. Recovery of the "surcharge" could be by way of proceedings as in the case of a civil debt and, if the debt is not paid, there could follow bankruptcy proceedings and attachment of earnings. In any bankruptcy proceedings the property of the bankrupt vests in the trustee in bankruptcy without any conveyance or assignment and he can set aside any conveyance or transfer of property by the bankrupt to his wife or children within two years before the bankruptcy, or within 10 years in certain circumstances. Further if the Councillor's house is in the joint names of himself and his wife the trustee can apply to the Court for an order for sale.

It may well be decided by the District Auditor that the amount of loss is the difference between the rate income actually levied and the rate income which should have been levied if a lawful rate had been made and that the loss commenced to arise very quickly after the 1st April.

(e) Extra-ordinary Audit

Section 22 Local Government Finance Act 1972, empowers -

- (a) the Audit Commission to direct the holding of an extra-ordinary audit by the District Auditor on the application of a local government elector or if it so decides after receiving an auditor's report, or for any other reason which appears proper to it;
- (b) the Secretary of State, if he considers it desirable in the public interest to require the Commission to direct the District Auditor to hold such an audit.

The previous provisions relating to wilful misconduct referred to earlier are applicable to an extra-ordinary audit.

(f) Responsibility

On making his declaration of acceptance of office of Councillor each Member of a local authority declares that he will duly and faithfully fulfil the duties of his office and it has been said by the Court that those duties require a Member to carry out the provisions of any Acts of Parliament which applied. It is the duty of an individual Councillor to ensure the Council's compliance with the law and therefore to oppose any resolution which does not comply with the law.

The various precedents of cases involving ultra vires acts by a local authority provide the following guide lines -

- (i) there can be no doubt that persons who -
 - (a) vote for a resolution share responsibility for it,
 - (b) vote against it are exempt;
- (ii) where no formal vote is taken those present are presumed, in the absence of evidence to the contrary, to have assented;
- (iii) abstention from voting may amount to acquiescence;
- (iv) even absence from a meeting may not protect a Member. Staying away without good reason may be equivalent to abstention.

(g) Practical Consequences

Quite apart from the legal duty as to the making of a rate set out in paragraph 3(a), there would be severe effects upon the practical operation of the City Council's services if the City Council either made a substantially insufficient rate or failed to make a rate.

In either event there would come a point where, unless the Secretary of State was willing to authorise borrowing to meet a shortfall of revenue income, it would not be possible to make payments due. This would cover all payments, be they to employees for salaries and wages, to suppliers for goods and services received, to the County Council in respect of its precept, to voluntary organisations and to other local authorities in respect of services provided by them and to lenders for interest on debt outstanding.

It is safe to assume, however, that even before this point actually arose those who might be adversely affected would take steps to minimise the risk to themselves. Suppliers would be reluctant to deal with the authority and investors and financial institutions to lend to the authority. Those who have already made loans might be expected to seek repayment at the earliest possible time.

Quite what the effect would be it is impossible to say. There could be a gradual and protracted deterioration in services, or a sudden and dramatic one, and there might be differences depending upon whether an insufficient rate was made or no rate at all.

In the former case it seems clear that, in the light of the provisions of the 1982 Act on substituted rates, prompt action would need to be taken to reduce expenditure to that level which could be financed by the proceeds of the rate. What such action would need to be, and how practicable its implementation, would depend on the size of the shortfall. Failing such action a cessation of payment would, in the absence of the Secretary of State's borrowing consent, appear to be inevitable; the only question would be - When? If a cessation of payment becomes inevitable, there would doubtless be a quick reaction from suppliers and lenders. This reaction would certainly be accelerated if, as a consequence of the decision to make an insufficient rate, payments of rate support grant were withheld. The effect would be more quickly felt upon those services where continuity of supplies is essential, but all services would be affected - even to the point of cessation - if the loss of confidence extended as far as the providers of statutory services.

In the case of a failure to make a rate at the meeting of the City Council on the 29th March, it is possible that the external reaction would not immediately be so severe since there would still remain the possibility of a rate being made which was sufficient to meet budgeted expenditure, and in the meantime it is probable that payments of rate support grant would continue on a provisional basis.

The immediate effect of such a failure would be on the ability of departments to incur expenditure since the budget resolution provides not only for the rate to be levied but authorises expenditure, and without this Chief Officers would have no authority to incur expenditure by placing orders for the supply of goods and services or for

any other form of expenditure which requires their specific authority.

Beyond this, a delay of more than a few days in making a rate would lead to an increase in interest charges paid for borrowing to meet expenditure pending the making and collection of the rate. The bulk of rate income is received by way of payments in July and November, in response to recovery action taken subsequently, or by on-account payments such as those for Crown property and Housing Committee property. It is not anticipated that a short delay in the issue of rate bills would affect such payments.

Of the rate debit some $2\frac{1}{2}\%$ is paid as the bills are received and 20% is paid by instalments which commence after a statutory period of notice and monthly thereafter. These payments would be the first to be affected by any delay in fixing a rate. When this happened the estimated cost to the authority would be some £80,000 for each week of delay initially, but if the delay was protracted and more substantial payments were affected the cost could rise to £150,000 for each week of delay. This expenditure would also incur R.S.G. penalties which more than trebles the cost.

Clearly, a continuing failure to make a rate would ultimately bring about a loss of confidence, with the concomitant effects previously described, but it is difficult to predict exactly when this would happen. It would depend upon when the situation was seen to be not one merely of delay in the due process but as a complete failure.

There is one factor which would outweigh all others in its impact in the event of a loss of confidence - and that is the capital debt outstanding. A considerable proportion of the total debt outstanding (now amounting to £680 millions) matures each year and is replaced by further borrowing. Such borrowing, together with that to cover new capital spending, is estimated at £250 millions in 1984/85.

If it proved impossible to borrow to replace loans maturing, then these repayments would have to be met from existing cash resources, and this would significantly shorten the time before they were exhausted.

Although the Public Works Loans Board act as a lender of last resort to local authorities, it has a statutory duty to have regard to the security offered when making loans and its willingness to lend cannot be taken for granted.

A loss of confidence in the financial management of the City Council could cause long term damage to its creditworthiness. If this happened it could be expected that the City Council would have to pay higher rates of interest on its borrowing for many years to come.

5. CONCLUSION

This report has been submitted to Counsel for approval. Counsel concurs in the views expressed herein and is of the opinion that it correctly states the law.

CITY OF LIVERPOOL

REPORT OF THE DISTRICT AUDITOR

TO THE CITY COUNCIL

MARCH 1984

City Solicitor's Office
MARCH 1984

The District Audit Service

NORROY HOUSE, WATERGATE STREET, CHESTER CH1 2NB
TELEPHONE: 0244 315571

FROM THE DISTRICT AUDITOR
NO 5 AUDIT DISTRICT

19 March 1984

DISTRICT AUDITOR'S REPORT TO THE LIVERPOOL CITY COUNCIL

Ladies and Gentlemen

This report is made pursuant to my duty under section 15 of the Local Government Finance Act 1982.

For some months there have been persistent reports in both the local and national press suggesting that the Council will deliberately make a rate for the financial year commencing on 1 April 1984 which will not be sufficient to meet the Council's outgoings for that year.

It is not my normal practice to comment on press reports. However, I consider it my duty to do so on this occasion in the absence of any official reports produced to or by the Council, and in view of the serious consequences which would result from the reported suggestions. In doing so I should dispel any suggestion that I wish to interfere with policy. The Council is elected to carry out its programme and functions within the law. So long as it does so lawfully neither I nor the Courts will question the substance of what it decides; this position has been repeatedly confirmed by the Courts in recent years.

Where, however, it comes to my notice that serious breaches of the law may be contemplated I have a responsibility to report in the public interest. In my opinion the Council would clearly be in breach of its legal duty if, in the event, it failed to make an adequate rate. It is appropriate in this report therefore that I should remind the Council of its duty in this regard and draw attention to the consequences of failing to carry it out.

RATING PROVISIONS

As rating authority the Council is required under section 2, General Rate Act 1967 "to make such rates as will be sufficient to provide for..... total estimated expenditure to be incurred by the authority during the period

in respect of which the rate is made". In the past there were powers to make supplementary rates, but these powers were abolished by the Local Government Finance Act 1982. Although there is power to make a rate in substitution for one made previously the estimated product of the substituted rate cannot be higher than that of the previous rate.

The position under the legislation is thus clear: the Council is required to levy an annual rate sufficient to meet its estimated expenditure and the product of the rate once determined cannot later be exceeded.

FINANCIAL AND OTHER CONSEQUENCES

The making of an inadequate rate would have serious consequences for the Council, for some or all of its individual members and for the recipients of its services and its employees.

The financial effect of levying an inadequate rate would be that money would be short from the outset and would eventually run out. The Council would be unable to make the position good by borrowing. Although paragraph 10(1)(a), Schedule 13, Local Government Act 1972 permits temporary borrowing to meet a temporary shortfall in cash flow, this facility is only available to defray expenses incurred in anticipation of the receipt of revenues which are receivable in respect of the financial year. The provision does not enable borrowing to meet a shortfall in the rate levy.

Where anticipated revenues are insufficient to meet budgeted outgoings therefore, the Council will be without funds to maintain services and to pay its employees once balances and temporary borrowing powers against non-rate revenues have been exhausted. There will in short be a serious breakdown.

DUTY OF THE AUDITOR

The making of an inadequate rate would inevitably result in losses to the Council and it would be my clear and unavoidable duty to consider whether those losses should be recovered. Section 20(1), Local Government Finance Act 1982 provides that where it appears to the auditor that a loss has been incurred or deficiency caused by the wilful misconduct of any

person, the auditor shall certify the amount of the loss as due from the person or persons responsible. In addition to this personal financial liability, if those involved are members and the amount exceeds £2,000, certification would also result in disqualification from office.

The meaning of the term wilful misconduct has been considered by the courts in various cases. In *Horabin v BOAC* (1952) the effect of these cases was summarised as follows: "to be guilty of wilful misconduct the person concerned must appreciate that he is acting wrongfully, or is wrongfully omitting to act and yet persists in so acting or omitting to act regardless of the consequences, or acts or omits to act with reckless indifference as to what the results may be".

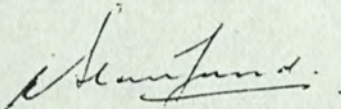
I should not wish of course to prejudge circumstances which have not yet arisen. However, it would be less than helpful if I were to fail to say at this stage that I should find it difficult to see how the deliberate making of an inadequate rate could be anything other than wilful misconduct.

Were the circumstances to arise I should have to consider who, in my view, were the persons responsible. It is relevant in this connection to remind the Council that every individual member has a duty to ensure, so far as it is within the member's power to do so, that the Council complies with the law.

There is no doubt that members voting for a resolution which results in certifiable loss share responsibility for that loss and that members voting against are exempt. Members would in my view also be at risk if a rate was not made because no vote was taken or there was unreasonable delay in making a rate. They would not necessarily absolve themselves from liability by merely abstaining from voting or absenting themselves from meetings.

If the press reports to which I referred earlier are inaccurate or untrue, then clearly this report is irrelevant. If however those press reports do reflect the intention of members, I would urge in the strongest possible terms that the proposed course of action would be a clear breach of duty and would not be in the best interests of the Council and individual members, its employees or the local community.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'L C Stanford', written in dark ink.

L C STANFORD
District Auditor



CONFIDENTIAL

P.01257

PRIME MINISTER

Liverpool

BACKGROUND AND
MAIN ISSUES.

The first part of the informal meeting of Ministers under your chairmanship at 2:30pm on Monday 26 March will discuss Liverpool. (The second part will discuss proposals on the details of possible legislation to impose Commissioners on local authorities in certain circumstances; Sir Robert Armstrong is submitting a separate brief on this).

2. The main purpose of the discussion of Liverpool will be to hear an account from the Secretary of State for the Environment of the current situation. So far as I know, the assessment is, in essentials, much as before: that it is unlikely that the Liverpool City Council will vote on 29 March for an illegal (ie. manifestly inadequate) rate; but that it is quite likely that no majority will be found for any rate. As long as that is the assessment, Ministers will presumably continue to take as their main aim keeping up all possible pressure on the council to strike a legal rate.

3. There are, however, two particular points which may be raised by your colleagues:

(i) contingency planning;

(ii) the role of the Civil Contingencies Unit (CCU).

FLAG B (iii) the Attorney General's revised text on the duties of councillors. - see attached minute

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FLAG A

(iv) Mr Jenkins' response to the 29 March Budget meeting - see his minute of 23/3.



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Contingency Planning

4. Departments responsible for law and order and for the services run by the Liverpool City Council have undertaken contingency planning for a possible breakdown in services. This planning has been carried out in strict secrecy and without consultation of local interests. Some departments wish to be free to widen the consultations.

5. If any of your colleagues should raise the point, the meeting will wish to consider the following.

(a) It must be true, as a general proposition, that wider consultation would produce better contingency plans. But would they be very much better? The circumstances of a breakdown in one or more local services are extremely hard to predict. Contingency plans made now could not be at all detailed or definite.

(b) Short of acts of sabotage by the council itself, a breakdown would be unlikely to happen for quite a long time. The latest financial assessment is that even if Liverpool failed to strike a rate, funds would be available (from rate support grant, council rents and other income, short-term borrowing and the like) for several months. There are at present no signs of doubts in the money markets about Liverpool's credit worthiness.

(c) Consultations with local interests would no doubt be confidential. But they would be virtually certain to leak. The knowledge that central Government was preparing to intervene would encourage irresponsible councillors. At the very least, it seems unwise to undertake local consultations until it becomes clear that there is no prospect at all of a legal rate for 1984-85.



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(d) There may be a case for treating law and order differently from other services. Local services are the responsibility of the local council. But the Government does accept a large part of the responsibility for maintaining law and order. It would not necessarily damage the strategy of maintaining the maximum pressure for a legal rate if it became known that the Government was conferring with the local police about how to counter any civil disturbances in Liverpool.

Role of the CCU

6. Some of your colleagues may ask whether the CCU should be involved in contingency planning. The Home Secretary, as Chairman of the CCU, will be able to deal with the position in detail. But you will wish to make the following points.

(a) The CCU is a clearing house for information; it can also arrange, in the last resort, for assistance from the Armed Forces. But it has no resources of its own; and it does not relieve departments of their responsibility, within Government, to undertake contingency planning and to deal with any emergencies in the service for which they are responsible.

(b) The CCU would be involved only when the Government was at least contemplating intervention in Liverpool: that stage has not arrived.

(c) Before there was any suggestion of Government intervention, you and your colleagues will obviously need to consider it as a matter of policy. Only if Ministers collectively were satisfied that the Government should intervene would it be right to consider bringing the CCU into play.



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HANDLING

7. You will wish to invite the Secretary of State for the Environment to open the discussion by describing the current situation. The Home Secretary can deal with any points of law and order, and the Chief Secretary, Treasury with any financial questions, including opinion in the money markets. If the points discussed in detail in this brief should be raised, then:

(i) any of those present may wish to speak on contingency planning; you will probably wish, however, to give special consideration to law and order aspects, on which the Home Secretary will be able to advise;

(ii) the Home Secretary can also discuss in detail the role of the Civil Contingencies Unit.

CONCLUSIONS

8. It is not clear that the current situation in Liverpool requires any special action by Ministers now. It may be necessary to do no more than record that the situation should be kept under review and that Ministers should be ready to meet again if events require it. If the points are raised in discussion, you will wish to record conclusions on:

(i) whether departments can consult outside interests, for the purposes of contingency planning, on

(a) law and order;

(b) any other local services;

(ii) the role of the Civil Contingencies Unit.

PLG

P L GREGSON
Cabinet Office.
23 March, 1984



PRIME MINISTER

LIVERPOOL CITY COUNCIL

1. We are due to meet on Monday to consider the latest position in Liverpool. This minute is to bring you and colleagues up to date with developments.

2. Although the national leadership of the Labour Party appears to have failed to dissuade the City Council Labour Group from imposing an inadequate rate on 29th March, there is now no majority on the Council for making such a rate. Seven Labour Councillors have declared their intention not to support the action, one has resigned; and one is debarred from voting after declaring an interest. We do not know whether the Liberals, the Conservatives and the Labour dissidents will be able to agree on an alternative budget and rate which will command majority support. Clearly if no such agreement is reached over the next few days Liverpool will enter the financial year 1984/85 without budget and rating decisions having been made.

3. With the 29th March passed, the next critical date is May 3rd when one third of Councillors must stand for re-election. Barring an electoral upset the signs are that the Labour Party will increase its majority on the Council. It is just possible that they will gain sufficient seats to enable an illegal rate to be passed. With that possibility in mind, it is extremely important that the Conservatives, Liberals and dissident Labour members join together during April to fix a properly balanced budget and rate. I am speaking today to Councillor Hallows to this end.

4. We will inevitably be asked to respond to any action that takes place on Liverpool's budget on 29th March. On the assumption that no rate will be set, I attach the draft of a short statement on which I intend to base any comment (at Annex A).

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5. On creditworthiness, I am informed that the market remains calm. It is an open question as to how the market will react if no valid rate is made on 29th March. It is the view of the Treasury and the Bank of England that it could remain calm in April if the Council do not act illegally. The market will be aware of the pressure brought to bear on the City Council by the national Leadership of the Labour Party and, even if no rate is made on 29th March, may take comfort from the fact that the possibility remains open for a valid one to be made.

6. I understand that the Attorney General is still considering the nature and value of a statement on the duties of local councillors and officers. He may wish to report on this on Monday. (This has now been circulated).

7. I am sending copies of this minute to Michael Heseltine, Keith Joseph, Norman Tebbit, Norman Fowler, Leon Brittan, Peter Rees, Michael Havers, Sir Robert Armstrong and Mr Buckley (Cabinet Office.)

I. G. G. G.
for PJ

23 March 1984

Approved by the Secretary of State and
signed in his absence

NO RATE MADE 29th MARCH
DRAFT STATEMENT BY THE SECRETARY OF STATE

1. I was naturally very concerned to see that the Labour Group on Liverpool City Council carried out its threat to propose an inadequate rate for 1984/85. Responsible members of the Council have united, however, to ensure that the rate was not passed and that the dire financial consequences which would have followed have been avoided. All the people of Liverpool should be grateful to them.

2. The way is now open for Liverpool councillors to come together to produce, as quickly as possible, a properly balanced budget and rate which will command majority support. The sooner the uncertainty is brought to an end and the City is set on a sound footing for next year the better it will be for local residents, business and the employees of the Council.