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The Rt Hon The Viscount Whitelaw CH MC
Lord President of the Council
Privy Council Office
Whitehall
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24 October 1986

Dear White

NBRM.

E(LF): COMMUNITY CHARGE - APPEALS

In the course of discussions in E(LF) we have identified a number of areas where there will need to be provision for appeals against local authority decisions relating to the community charge.

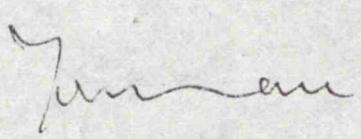
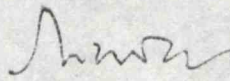
Malcolm Rifkind has already proposed that, in Scotland, these appeals should be to the Sheriff. In my letter to you of 18 September, commenting on his proposals, I said that I would be putting forward my own suggestions for handling appeals in England - and that, because there is no equivalent in England and Wales to the Sheriff, the approach would necessarily be rather different.

I now enclose a paper setting out my proposals. You will see that these involve an extension of the Local Valuation Courts (lay tribunals which at present consider only appeals against rateable values). Enforcement of payment would, however, remain with the magistrates' courts.

The paper sets out a first estimate of possible implications for cost and caseload. If colleagues agree with my proposals, further work will need to be done to refine these, and to consider implications for appointment to the new tribunals, and the number and status of the support staff.

I hope that it will be possible to agree in correspondence these proposals, which have been discussed by officials.

I am copying this letter to members of E(LF), the Lord Chancellor, the Lord Advocate and Sir Robert Armstrong.


NICHOLAS RIDLEY 

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PAYING FOR LOCAL GOVERNMENT - APPEALS

1. The system of local government finance set out in the Green Paper "Paying for Local Government" will require several new rights of appeal for individuals. This note identifies the main appeal provisions and sets out proposed arrangements for hearing appeals in England and Wales.

Appeal provisions

2. There will be four main areas of appeal under the proposed system of local taxation.

(i) Appeals against rateable values. The 1990 non-domestic revaluation will produce a substantial number of appeals. There will also be a decreasing number of appeals against domestic rateable values during the period of transition to the community charge.

(ii) Appeals at the boundary between the domestic and non-domestic sectors. In future, the two will be subject to different forms of taxation. It will be necessary to resolve any disputes as to liability. There will be appeals too about the apportionment of mixed properties between the two sectors.

(iii) Appeals on matters of fact concerning the community charge and the collective charge, including

- appeals by individuals against inclusion on the community charge register for an area, on the ground that there are not solely or mainly resident there; and

- appeals by landlords against their property being made subject to the collective charge.

(iv) Appeals against civil penalties on 'responsible persons' and individuals for failure to register for the community charge.

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Hearing the appeals

3. Appeals on valuation matters are heard by Local Valuation Courts (LVCs). These are lay tribunals, responsibility for which lies with DOE and the Welsh Office. The system is well-established and should be retained if possible.

4. So far as the new rights of appeal are concerned, one possibility would be for appeals to be to magistrates. But there is a good deal to be said for the relative flexibility and informality of a tribunal system. The community charge issues that will arise will be mainly matters of fact, such as the main residence of an individual with two homes. Even appeals against civil penalties will turn on whether the person concerned can show a 'reasonable excuse' for failing to register. This too will be largely a question of fact, such as that the person concerned was away from home in the period after the canvass form arrived.

5. I therefore propose that the remit of LVCs should be expanded to cover all the areas of appeal set out in paragraph 2 above. This will be a different approach from that envisaged in Scotland, where appeals on the community charge will be to the Sheriff. But the quite different legal system north of the Border - there is no equivalent in England and Wales to the Sheriff - justify that.

Enforcement of payment

6. It would be possible to provide that enforcement of payment for rates and the community charge was also the responsibility of the expanded LVCs. However, such responsibilities would seem to be out of keeping with the composition and procedures of the tribunals as we envisage them. I recommend, therefore, that enforcement of payment, including the issuing of distress warrants and attachment of earnings orders, should continue to be a matter for the magistrates' courts.

Further appeals

7. Appeals from LVCs on rateable values are to the Lands Tribunal, which is a specialist valuation body. A handful of the most significant and contentious cases go from the Lands Tribunal direct to the Court of Appeal.

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8. I do not propose to disturb these arrangements so far as appeals against rateable values are concerned. For other appeals, however, I see no need for a automatic right of appeal on matters of fact, and I propose that appeals on points of law should go direct to the High Court under the 'case stated' procedure. The number of cases reaching the High Court would be small, though we could expect a handful of important cases of precedent, to determine case law in the early years of the new system.

Resource implications

9. LVCs have seen a halving of their workload from the peak of 84,000 cases heard in 1977/78 to about 40,000 a year now. Slightly under half the cases being heard concern non-domestic valuations. The number of non-domestic appeals can be expected to increase substantially after the revaluation in 1990. These cases tend to last longer, and so cost more, than appeals on the domestic side.

10. Establishing the tax base - particularly for a personal tax on every adult where the main criterion is place of residence - will always give scope for appeals. Although this must be speculative, I estimate that about 150,000 to 200,000 appeals a year might be heard on matters other than valuation. About three quarters of these might be against the imposition of civil penalties, where our decision to use this approach will increase the number of cases compared with the alternative of criminal proceedings, but should make individual cases easier to deal with. These appeals would begin to reach LVCs in the summer before the first community charge bills went out (ie summer 1989). Appeals against the revaluation would not begin until 1 October 1990.

11. If colleagues agree with my proposals there will need to be further consideration of the cost and staffing implications. LVCs currently cost £2.5m. This figure is artificially low in the absence of a recent revaluation. In my view, the increase in non-domestic appeals after the 1990 revaluation will ensure that there are no savings to be made here from phasing out domestic valuations. In addition there will be costs associated with community charge appeals. On my estimate of the number of appeals these might cost a further £7m a year - giving £9.4m in total.

CONFIDENTIAL

12. Legal Aid would not be available for the proposed tribunals, but there would be the likelihood of some additional expenditure under the 'Green Form' scheme.

13. It is unlikely that the numbers of cases coming before the higher courts will form anything more than a very small fraction of their total workload.

Conclusion

14. I invite colleagues

(a) to agree that appeals on matters concerning the community charge should be to an expanded version of the Local Valuation Courts, which would also continue to deal with appeals against rateable values;

(b) to agree that enforcement of payment should continue to be through the magistrates' courts;

(c) to agree that, so far as the community charge appeals are concerned, there should be no automatic appeal from the LVCs on the matters of fact, and appeals on matters of law should be through the 'case stated' procedure to the High Court;

(d) to note the likely increase in costs that will arise on DOE and Welsh Office Votes.

