CONFIDENTIAL

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

The Rt Hon John Major MP
Chief Secretary
HM Treasury
Parliament Street
LONDON
SW1

22 September 1987

Dear John

ROLE OF THE TREASURER

Thank you for your letter of 14 August.

You drew attention to the need to ensure that the proposed duties of the Chief Finance Officer are still fulfilled if some local authorities are slow to fill vacancies when they arise in future. This is an eventuality that we have been concerned about. Legal advice, however, is that it is covered by the basic requirement in Section 151 of the Local Government Act 1972 and Section 73 of the 1985 Act, as extended by clauses 49 and 50 of this Bill, whereby every local authority is under a duty to secure that one of their officers has responsibility for the proper administration of their financial affairs. It is immaterial whether that person is the person permanently appointed or whether or not he is called the Chief Finance Officer. It is the officer charged with this responsibility who is to be placed under the duties outlined in my minute of 5 August. If the post of Chief Finance Officer was to remain vacant, whether deliberately or otherwise, the person nominated under section 151 or section 73 would still be required to fulfill these duties.

I believe therefore that no other provision is necessary and that the arrangements proposed will ensure that the duties are carried out in the circumstances you foresee.

I am copying this letter to the recipients of yours.

Yours

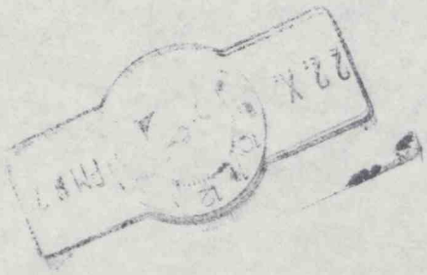
Nicholas

NICHOLAS RIDLEY

LOCAL GOVT

RATES

OCT 4



CONFIDENTIAL

CCBG

2 MARSHAM STREET
LONDON SW1P 3EB
01-212 3434

My ref:

Your ref:

Mark Addison Esq
Private Secretary to
The Prime Minister
10 Downing Street
LONDON
SW1A 2AA

21 September 1987

Prime Minister!
Content? Yes mt
22/9.

Dear Mark,

ROLE OF THE TREASURER

I sent you on 13 August an interim reply to your letter of 10 August, about our proposals to strengthen the position of the local authority Treasurer in dealing with potential illegality and impropriety by his council. Before agreeing to the inclusion of these proposals in the Bill the Prime Minister has asked whether the Treasurer would be qualified to judge whether a proposed payment would be contrary to law, and I indicated that we would be writing to the Law Officers as you have suggested. On further reflection however we wonder whether it is in fact necessary to trouble the Law Officers with this matter.

The "recognised professional qualification" which we propose that the Treasurer (or Chief Finance Officer, as he will be called in the Bill) should be required to hold is an accountancy one. Subject to a special dispensation for existing Treasurers, about 95% of whom are already suitably qualified, he must be a member of an accountancy body to be specified in the Bill or subsequently approved by the Secretary of State. These will be the same bodies from which, under the Local Government Finance Act 1982, the Audit Commission is required to appoint local authority auditors. It is an historic part of an auditor's duties to take a view on whether items of account are contrary to law, and under S.19(1) of the 1982 Act an auditor is empowered to apply to the courts for a declaration to that effect; the court may then proceed to order surcharge and disqualification.

In requiring a person holding one of these qualifications to exercise a judgement as to whether proposed expenditure by the authority is unlawful, we would not therefore be breaking new ground. Until the reorganisation of Local Government in 1974 the Treasurer was in fact under such a duty. Even today one would expect him to make such judgements: the proposed new statutory duty would simply formalise the position once again.

There are two further points on the operation of the duty which I should also underline. First, the Chief Finance Officer's judgement as to what is lawful would not be final. Once he has reported to his authority that in his opinion a proposed payment would be ultra vires the authority is under a duty to consider the report; it is not prohibited from then proceeding with its proposed actions, although if it does the Chief Finance Officer's report is likely to provide a firm basis for subsequent action by the authority's auditor. Secondly, it will be open to the Chief Finance Officer to take legal advice if he believes this is necessary to assist him in discharging the proposed new duty. We are proposing, as a counter-obstruction measure, that the authority should be under a duty to provide the Chief Finance Officer with whatever resources (which would include access to legal advice) he needs to carry out this duty.

I would be grateful to know, in the light of this more detailed explanation, whether the Prime Minister is content for us to proceed with the proposals in my Secretary of State's minute of 5 August and to the inclusion of appropriate clauses in the Rates Reform Bill.

I am copying this to private secretaries to members of E(LF) and to Trevor Woolley in Sir Robert Armstrong's Office.

Yours,

Robin.

R U YOUNG
Private Secretary

LOCAL GOVT

RATES

CTV