



CEBG

Prime Minister

OVERSEERS

Earlier this year MISC 109 considered my proposals for the appointment of "overseers", as a means of preventing the breakdown of a local authority in financial difficulties, and avoiding the need to appoint Commissioners to take over the duties and responsibilities of elected councillors. I was invited by the group to work these proposals up further, in conjunction with other Ministers, and details of the scheme have since been considered by officials on the interdepartmental Working Group on Local Authority Financial Prudence.

The attached paper sets out the key elements of a scheme which I would commend to colleagues. Whilst no authority at present appears in danger of imminent default we can not rule out the possibility. The overseer scheme would enable us to deal with an authority which was prepared to take the action necessary to restore its financial standing, and help to ensure a longer-term improvement in the authority's management of its affairs. The scheme is one which requires the co-operation of the council concerned and which would be used in much the same circumstances as Commissioners where such co-operation exists, as an alternative to the appointment of Commissioners.

Colleagues will wish to note my view that Ministers should not be responsible for approving an authority's recovery plan (paragraph 10 of the paper). I believe it would be a grave error for the Government to become involved in the operational decisions facing an authority at such a time and that therefore responsibility should rest with the overseer alone.

Paragraph 17 suggests that the scheme might be established either on a non-statutory basis; by agreement between the Government and a co-operating authority, with minimum legislative cover to allow the Secretary of State to make loans to local government; or else be set out fully in legislation. The first option would create



difficulties in the use of the Appropriation Act. The third would result in a more tightly drawn scheme, would lay specific statutory duties on both myself and on the authority. It would however, require us to decide whether to provide legislation in advance of a crisis with the unhelpful debates that would involve, and to find a suitable legislative vehicle. My preference would therefore be to develop the minimum legislation option and be prepared to introduce the limited necessary legislation if and when the need arose.

I therefore invite colleagues to agree

- i. that officials should be instructed to complete preparation of a minimum legislation overseers scheme, along the lines set out in the paper, as soon as possible;
- ii. that the scheme should not provide for the detailed approval of recovery plans by Ministers.

I hope that it may prove possible to settle this in correspondence without the need for a meeting. I am copying this minute to members of MISC 109 and Sir Robert Armstrong.

R. J. N. R.

PP N R

23 December 1987

(Approved in draft by the Secretary of State and signed in his absence.)

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OVERSEERS

INTRODUCTION

1. This paper

- briefly rehearses the purpose and context of overseers;
- describes the main elements of an overseers scheme; and
- considers whether legislation is necessary to implement the scheme.

PURPOSE AND CONTEXT OF OVERSEERS

2. The purpose of the overseers scheme is to provide the means for a local authority on the brink of financial collapse to restore its financial standing. The overseer would supervise an authority's return to financial normality without the removal of the councillors from power and so avoid the need for the Government to appoint Commissioners. The scheme would balance certain financial assistance for the council, including emergency funding if necessary, against the need to keep to a retrenchment plan. It can only work with the cooperation of the council concerned.

3. The scheme would normally be a response to an authority seeking assistance with its financial difficulties. Exceptionally the Government might itself wish to approach an authority if it felt that urgent action was needed to avoid financial collapse and the authority appeared not to be taking the necessary steps. The Government would need to screen very carefully any authorities seeking participation in the scheme. It would wish to be clear that the scheme did not simply provide an easy way out for an authority that was able to take the necessary steps on its own, nor that it was a last minute attempt by a council to embroil Central government in the blame for an inevitable collapse.

COMPONENTS OF AN OVERSEERS SCHEME

4. There are four essential components of the overseers scheme: the appointment of independent overseers to advise on and monitor adherence to a recovery plan; the recovery plan; the provision of financial assistance to the authority; and means of ensuring compliance with the recovery plan. These are discussed below.

(I) Appointment of Overseers

5. The function of the overseer would be to approve the authority's recovery plan, and thereafter (as an independent "umpire") to monitor and periodically certify compliance with it. It is on this approval and on the assurance of continuing compliance that the other benefits of the scheme, outlined below, depend. The overseer's costs would be funded by the authority itself. He would need to have appropriate professional qualifications - almost certainly an accountant or management accountant - and preferably have prior experience of financial management in local government.

6. It would be for the Secretary of State to decide when the full overseer scheme was to be activated. The appointment of the overseer itself could, however, rest with either the Secretary of State or the council itself. In the latter case the authority would normally approach Government about suitable candidates from which to choose; they might alternatively leave it to Government to make the appointment. To this end it would be necessary for Government to keep a list of acceptable individuals, though it would be impractical to publish such a list. None of this would rule out an authority proposing its own candidate, and seeking the Government's approval. Once the appointment had been made the council would have to approach the Government to persuade it to provide the financial assistance (described in paragraphs 11-15 below) dependent on the existence of an overseer and the preparation of an acceptable recovery plan.

7. The Audit Commission might be asked to advise Government on whether the appointment of an overseer, or activation of the full overseer scheme, was appropriate. The Commission could not itself play the role of overseer nor advise the Secretary of State on the acceptability of measures proposed by the authority to restore its financial position since this could conflict with the auditor's normal duties in relation to accounts and financial management.

(II) Recovery Plan

8. The authority would need to formulate, and be obliged to implement if it was to receive the financial assistance described in paragraphs 11-15 below, a recovery plan to restore its financial standing. This plan would be a detailed budget for the first year, and an outline of the strategy to be followed over the next 2 or 3 years; the plan could be rolled forward annually. In order to be acceptable the recovery plan would have to demonstrate realistic proposals for arriving at a balanced budget in each year of the plan, without recourse to new creative accounting or creative financing measures. It would cover revenue and capital, and the management of the authority's debt.

9. The authority might ask its overseer to assist with preparation of the recovery plan, but this would not be essential. The authority's own officials or private consultants could equally well do the work.

10. It is for consideration whether the Government should be involved in the detailed approval of a recovery plan, in particular as it affects individual service provision. Such involvement would allow Ministers to ensure both that desirable levels of service were maintained despite the need for retrenchment and that favoured policies on, for instance, contracting out, rents, fees and charges, and sale of housing and land were adopted. On the other hand, such involvement would be quite against the policy of recent years which has made clear that day to day running of authorities is a matter for councillors not Ministers. It would also limit the

attractiveness of the overseer policy to councillors. The main selling point is that they, the councillors, remain in charge subject to the overseer's role in financial management. It would therefore seem more appropriate for Ministers to remain at arm's-length from the recovery plan, and not be committed to its details.

(III) Financial Assistance

11. The response to a request for special financial assistance by an authority might take two forms - action on rates or rate limits, and special borrowing arrangements. Additional grant-aid would be neither desirable nor appropriate, shifting as it would the costs of putting right an individual authority's mismanagement to the national tax-payer.

12. Rates The adoption of a recovery plan may require steep rate increases. These may arise because the authority is no longer able to use creative accounting or creative financing devices, or as a direct short-term consequence of the measures included in a recovery plan. Large redundancy payments may for example arise from decisions to reduce manpower and contract-out services, although special consent may be given for these costs to be met from capital receipts if these are available.

13. When the need for such rate increases becomes obvious shortly before the start of a new financial year or, in relation to a rate limited authority during the process of considering rate limits, no special measures are required. The authority can either make the necessary rate itself or the Government can allow for the costs in the authority's Expenditure Level (attaching conditions to any increase as appropriate) or rate limit. Once a rate has been set, however, there is no power to fix a higher substitute rate (unless the original rate is quashed on grounds of invalidity.) Similar considerations will apply under the community charge regime. If it was essential for an authority to have additional revenue income for its recovery plan at such a time, the Secretary of State would either

- (a) require a new power to allow an authority to levy a higher substitute rate, including the disapplication of any rate limit; or
- (b) be prepared to give special consent, under existing powers, to the authority borrowing for revenue purposes against the following year's rate income, to tide it over.

14. Special borrowing arrangements The overseers scheme would need to ensure that an authority did not collapse because it could not borrow. Financial institutions are becoming increasingly alert to possible problems of creditworthiness amongst local authorities, and may be reluctant to lend to an authority in sufficient difficulties to have sought the appointment of an overseer - though such a move might in itself be a point of reassurance. Whilst the PWLB would continue to lend if it was persuaded that an authority was acting legally and was secure, it could not lend if it was not so persuaded. This may, but would not necessarily, be the case in the period where a recovery plan is in preparation.

15. If an authority cannot borrow it will almost certainly collapse. The overseer's scheme will therefore need to provide a borrowing facility - for both revenue (cash flow) and repaying debt - to keep an authority afloat where the PWLB/market will not lend, and until its creditworthiness is re-established once a recovery plan is in place. Such a facility would be quite outside the normal remit of the PWLB. It is therefore proposed that the Secretary of State should be the channel for the necessary loans once an overseer is appointed and for purposes certified and approved by the overseer. In doing so the Secretary of State may need to give special consent for the authority to borrow. Such arrangements would be of an emergency and temporary nature, repayable or to be refinanced within one year, and on non-subsidised terms. The assumption would be that the PWLB, and the market, would restart lending when a recovery plan was in place.

(IV) Ensuring Compliance

16. The Government will wish to be as sure as it can that an authority which receives financial assistance, whether on rating or borrowing, sticks to its recovery plan. Initially, the pressure to do so will come from the need for the overseers approval to further borrowing: the authority must be left in no doubt about this condition. If the authority manages to achieve financial equilibrium by means of the special arrangements but fails to carry through its recovery plan, then there is little that the Government can, or would want, to do. Moves to bring the authority back to its plan could upset the financial equilibrium and precipitate a collapse for which the Government would be blamed. An authority may take the benefits of the overseer scheme, set aside its recovery plan but fail to achieve financial equilibrium. The Government will wish to make clear that it would not be prepared to bail out the Councillors in such circumstances and the threat of Commissioners remains.

IS LEGISLATION REQUIRED FOR THE OVERSEER SCHEME?

17. It is possible to have an overseers scheme with or without legislation, with a minimum of legislation or with full legislative backing.

- (A) No legislation, the scheme would depend entirely on agreement with the authority concerned - about who was the overseer, the authority's relationship with him and the preparation of a recovery plan (in any event overseers require the authority's co-operation.) The scheme once prepared could be activated at any time. Ministers would need to decide whether to announce its availability in advance of trouble arising. The Secretary of State would have no power to vary rates or raise rate limits once made (not essential) but could

provide special borrowing consent under existing powers. The difficulty arises here because the Secretary of State has no specific powers to make loans to local government. Treasury advice is that whilst the Appropriation Act might be relied on in an emergency, P.A.C. are likely to consider it improper for a scheme, such as overseers, to be drawn up in advance which depended on using the Act. They also point to practical difficulties in relying on the Act, in particular where there is no statutory cover for the policy concerned in existence or in prospect. The Government would almost certainly be forced to legislate to get the necessary cover retrospectively, in particular if there was any suggestion that the same issue would arise again.

- (B) A minimum legislation option would have all the features of A except that a short Bill (or clauses for an existing Bill) would need to be prepared to give the Secretary of State statutory cover to make loans to local government. This might be legislated in advance or held back until an emergency.

- (C) With full legislation a tighter scheme could be imposed with specific powers and duties for the various parties. For instance, the authority could be required to give an overseer full access to its books. The Secretary of State could take powers to vary rates/rate limits. The ability to make loans in these specific circumstances could be placed on a statutory footing. The scheme could not be activated until the legislation was enacted, and Ministers would need to decide whether to promote the legislation in advance of trouble arising or once it had arisen with inevitable delay in getting the scheme activated.

In either case the pressures on the authority to comply would be the same - the threat that special borrowing arrangements would be withdrawn and that, ultimately, Commissioners could be appointed if the scheme failed.

SUMMARY

18. The overseers scheme could be the means of assisting a local authority to avoid financial collapse, if it were willing to co-operate in the necessary measures to restore its financial standing. The scheme would have four essential components:

- the appointment of independent overseers to advise on and monitor adherence to the plan;
- an approved recovery plan;
- provision of financial assistance
- means of ensuring compliance with the recovery plan.

Ministers are asked to consider -

- Whether the scheme outlined above is on the right lines; if so
- whether the Government should be involved in the detailed approval of a recovery plan;
- whether the scheme should operate without legislation, with minimum cover for the Secretary of State to make loans to local government, or with full legislative backing.

LC Relations

X

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PRIME MINISTER

5 January 1988

OVERSEERS

*Local Gov't. relations
File with PC
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attached

Some time ago MISC 109 asked Nicholas Ridley to work up an 'IMF' type option for local authorities in financial crisis as an alternative to the Government putting in Commissioners. He has now done this in his note on 'overseers'.

The Proposal

The DoE say that Mr Ridley's overseers scheme would operate as follows:

- A local authority would face a cash crisis, probably some time in the second half of the financial year, because it was unable to secure an expected creative accounting deal or expected expenditure savings and private investors and the PWLB were unwilling to continue to lend to it.
- It would approach the Government for help. The Government would agree to lend money to the local authority for up to a year, or, if the time of year was right set a higher rate limit, provided the local authority agreed to draw up a 'recovery plan' and to appoint an 'overseer'.
- New legislation would be required to enable the Secretary of State to lend in these circumstances. It would only be brought forward if a crisis arose.
- The main requirement of the recovery plan would be that it enabled the local authority to balance its books year by year. The Government would not require the plan to achieve any particular level of expenditure or Rate and would not approve the plan.

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- The role of the overseer would be to certify that the plan drawn up did indeed enable the local authority to balance its books and to monitor implementation of the plan. He would not necessarily play any part in drawing up the plan.

- Because the local authority would require cash immediately, but preparation of a recovery plan takes time, giving assistance to a local authority in these circumstances would be something of an act of faith. There would be no guarantee that the plan produced would be acceptable to the Government. Indeed, the plan might involve an unacceptably high level of Rates in an authority that could reduce expenditure by cutting unnecessary expenditure and improving efficiency.

- If the local authority was to be rate-capped the following year the Government would be able to decide, as part of the annual rate-capping discussions, whether the level of Rates proposed in the plan was excessive given the level of expenditure. If a lower rate limit was set than the local authority had assumed in its recovery plan the authority would either have to reduce its expenditure to live within the limit or would be unable to set a legal rate. In the latter case the Government would have to appoint Commissioners. The local authority might try to seek further help from the Government but there could be no question of giving it in such circumstances.

- If the local authority was not rate-capped (for example Brent at present) there would be nothing the Government could do about a recovery plan involving an excessive level of Rates and expenditure until the following year when such an authority would presumably come within the rate cap net. The authority might be able to use this

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year of grace to build up balances and so meet its desired level of expenditure at the rate limit set by the Government. If not it would either be forced to reduce expenditure or be unable to set a legal budget.

Comment

The main advantage of this approach is that it distances the Government as far as possible from the affairs of local authorities getting into difficulties. Where an authority in crisis genuinely wishes to put its house in order by cutting expenditure to a level that can be sustained by a reasonable level of rates this mechanism will provide the breathing space needed to draw up a recovery plan and start to implement it.

Where an authority in crisis is rate-capped the overseer proposal would enable the rate-capping procedure to put pressure on the local authority finally to cut expenditure when previously it had been able to escape the full consequences of rate-capping through creative accounting.

But it would otherwise simply buy time for local authorities who had no intention of mending their ways without putting any pressure on them to cut expenditure.

Alternatives

Mr Ridley's proposal appears to be the mildest of a range of possible options which stop short of sending in Commissioners. One alternative would be for the Government to be more specific about the content of the recovery plan. It could, for example, require the plan to:

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- bring expenditure within, say, 12½% of GRE (the level used to determine rate-capping);

or

- balance the books with no real increase in the level of rates.

The Government need not scrutinise such a plan itself and could not withhold funds pending the production of such a plan, since the authority would then collapse, but it could require the local authority to agree to produce such a plan and to accept the overseers' judgement as to whether the plan met these criteria. This would not guarantee compliance but it would put added pressure on the local authority.

Conclusion

Nicholas Ridley asks for agreement in correspondence to his plan. But the way the plan would work in practice and alternatives options that stop short of Commissioners need to be considered. The option proposed puts little immediate pressure on the local authority. We need to consider whether there are alternatives that would place more pressure on local authorities in crisis whilst enabling the Government to distance itself from the detail of the authorities' recovery proposals.

Peter Stredder.

PETER STREDDER

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CPG
3 PPS

Treasury Chambers, Parliament Street, SW1P 3AG

The Rt Hon Nicholas Ridley AMICE MP
Secretary of State for the Environment
Department of the Environment
2 Marsham Street
London
SW1P 3EB

18th March 1988

Dear Secretary of State,

OVERSEER SCHEME

My Private Secretary's letter of 18th January to the Prime Minister's Private Secretary recorded my concerns about the risk of local councils abusing an overseer scheme; the lack of tight conditionality on the proposed emergency loans to local authorities; and the need to establish an appropriate legal and financial basis for the loans. On this last aspect, we need to be clear about how far you would have legal powers to make loans without prior amending legislation; I believe it would be helpful if that point could be clarified with the advice of the Law Officers before E(LF) discuss your paper.

On the substance of the overseer proposal, I continue to have reservations about how far it is likely to be useful in practice. If we are ever faced with the imminent financial collapse of a local authority, it will most likely be the result of the council deliberately seeking political confrontation: and in that situation an overseer is unlikely to be able to play a useful role. Only in a very narrow range of circumstances - where a council which is attempting to run its affairs properly had come to the brink of collapse, perhaps because it had not had time to reverse the imprudent policies and redress the managerial incompetence of its predecessors - could an overseer expect to get the co-operation which would be essential to his mission. And that may well prove a rare situation in practice.

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If we are to reduce the political dangers of abuse and risks to the Exchequer, the mechanics of any scheme must also be considerably tightened. In particular we need full collective discretion in each case over whether or not to appoint and support an overseer. To exercise that discretion, we need time to establish the circumstances and judge the intentions of the local council; yet the imminence of collapse will require a quick decision.

I therefore wonder whether the best course might be to make overseer appointments provisional in the first instance, for a specific and limited time. That would provide an initial breathing-space during which the overseer could provide us with the information necessary to exercise a sound judgement. We need his independent advice on the scale of the council's problems; on the strength of the political will within the council to achieve recovery; on the degree of political stability in the ruling group; and on the competence of the council and senior officials to deliver the plan. Such information and advice would be in much greater depth than that available from our regular monitoring exercises.

During this provisional and limited period, the overseer would be aiming to draw up a recovery plan and to judge the ability and resolve of an authority to deliver that plan. If he concluded that the authority's ability or resolve was likely to be inadequate, he would so advise and if we accepted that advice the overseer appointment would be terminated, and we would have to consider sending in Commissioners.

I see this as an essential safeguard to minimise the risks of the Government appointing an overseer who is then used by the council to postpone, not avoid, collapse. We must protect local charge payers from an unscrupulous council which might seek to use the overseer and the higher Community Charge limits allowed in order to continue with imprudent policies. The termination of a provisional overseer appointment need not be politically damaging if we could demonstrate that by giving an authority a last-chance opportunity to agree a recovery plan, we had worked hard to avoid more drastic action.

A provisional overseer appointment in the first instance would also have the advantage that the overseer would have time not only to establish the political and practical realism of the proposals but also their financial credibility with lenders. The overseer would need to be satisfied that the financial support for the authority would be forthcoming; and, as a matter of prudence, he would no doubt want to ascertain whether the PWLB (as the principal lender to local authorities) would be prepared to lend on the basis of the recovery plan, assuming it was approved by the Secretary of State. Without that financial support, there could of course be no recovery plan.

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This would avoid any fundamental change in the present role of the PWLB. The Board would not have a leading part in determining the acceptability of the recovery plan as a whole - a role which it is not equipped to perform. But it would retain its formal discretion over whether to lend to the council, assessing the recovery plan in terms of its usual tests.

I remain concerned about the proposed emergency loans from DOE votes to a local authority. I appreciate that we might have to give emergency support in order to avoid financial collapse. But I see a considerable danger of authorities seeking to prolong use of the loan facility and procrastinate over the recovery plan, thus avoiding collapse and drawing the Government - as provider of funds - closer into the crisis.

A provisional overseer appointment would also be helpful in this respect. The period of the provisional appointment might provide the natural break point for the availability of such loans so that the facility was clearly for emergency finance only. It would be used only to meet any shortfall in resources necessary to sustain normal local services. Further loans would not be made once an agreed recovery plan was in place, financial creditworthiness re-established and normal sources of finance available. We should therefore place a time limit of a very few weeks on the provisional overseer appointment and hence the availability of loans from the emergency facility. As I have already mentioned, we also need to clarify the legal basis on which any such loans would be made.

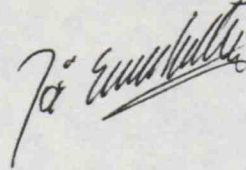
Finally, we have already agreed there should be performance targets for the recovery plan: we need to consider how to cope with authorities which failed to meet the targets. On the one hand, a willing authority that met the performance criteria might achieve financial stability and be released from the scheme relatively soon, say after one year. On the other hand, if an authority were to face difficulties because of unforeseen changes in circumstances, we may need to be prepared to give the overseer some leeway to redefine the next year's targets. But if the overseer were to conclude that a particular council had missed performance benchmarks and appeared no longer committed to the recovery plan, we must be ready to terminate the overseer regime in such a case. There can be no question of simply providing a second tranche of "emergency" finance if the authority had failed to use the breathing space provided by the first.

The suggestions above are designed to minimise both the political dangers and the risks to the Exchequer of an overseer scheme and I hope you will feel able to incorporate them in the scheme if the overseer proposal commands the support of colleagues in principle at E(LF).

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I am copying this letter to the other members of E(LF),
to Patrick Mayhew and to Sir Robin Butler.

Yours sincerely,

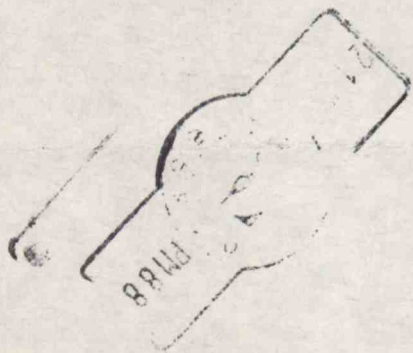


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JOHN MAJOR

(Approved by the Chief Secretary
and signed in his absence)

LOCAL GOVT : Relations PT34.



file to
721. Mr. Gray *WLB
nr*2. File

c Langdon, Co

10 DOWNING STREET

LONDON SW1A 2AA

*From the Principal Private Secretary*MR. WILSON**OVERSEERS**

Thank you for your minute of 10 February about the follow up to Mr. Ridley's paper of 23 December on Overseers. I agree with your analysis. I believe that it would look strange for the Cabinet Office to circulate a memorandum on the lines of the one attached to your minute. I suggest that instead, Mr. Ridley's paper should be tabled for a suitable meeting of E(LF) and that you should use your helpful memorandum as the basis of the brief for the Prime Minister. If the Treasury have further thoughts about Mr. Ridley's proposals, they can presumably make them at the E(LF) meeting.

NLW

12 February, 1988.

nr



cc BG ✓

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From: R T J Wilson
10 February 1988

P 03015

MR WICKS ✓

cc Mr Langdon

OVERSEERS

1. Your minute of 24 December to Mr Woolley asked for a co-ordinated brief for the Prime Minister covering Mr Ridley's paper of 23 December and Ministers' comments on that paper when they had been received. I understand that this has since been changed into a request for a memorandum by the Cabinet Office which could be circulated as a basis for discussion in E(LF).

2. I attach a draft of such a paper and would be grateful if you would confirm that it is what you had in mind. We ought to show it quickly to the Department of the Environment and the Treasury before sending it out and will do so if you give the go ahead.

3. I should perhaps say that on reflection I have slight misgivings about sending out this paper, for two reasons. First, it is an unusual procedure for the Cabinet Office to send out its own paper when the responsible Secretary of State has already circulated a paper which is an adequate basis for discussion. It might be interpreted as a reflection on his proposals and attract comment. Second, and perhaps more important, we understand informally that the Treasury are having further thoughts about Mr Ridley's proposals and there is a possibility that they may suggest to the Chief Secretary that he should send round another letter. We are not clear what lies behind this but it suggests that if we do send out this paper it may be overtaken by further correspondence.

4. The alternative would be simply to add this as an item to the agenda for the next meeting of E(LF) and use the attached as a basis for briefing the Prime Minister as you originally proposed. I would be inclined to favour this approach but perhaps we could have a word.

RTJ

R T J WILSON

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DRAFT

CABINET

MINISTERIAL COMMITTEE ON ECONOMIC STRATEGY

SUB-COMMITTEE ON LOCAL GOVERNMENT FINANCE

OVERSEERS

Memorandum by the Cabinet Office

The Secretary of State for the Environment minuted the Prime Minister on 23 December, seeking agreement to a scheme for the appointment of "overseers" as a possible means of preventing the breakdown of local authorities in financial difficulties. This fulfilled a remit from MISC 109 (MISC 109(87)2nd Meeting, Conclusion 2). Subsequent comments from other Ministers were contained in letters from the private secretaries to the Home Secretary, the Social Services Secretary and the Chief Secretary, Treasury (all of 18 January), and from the private secretary to the Lord President of the Council (of 21 January).

2. The Cabinet Office has been asked to produce this Memorandum summarising the proposed scheme and the resulting comments.

THE PROPOSED SCHEME

3. The overseers scheme would provide the means for an authority on the brink of financial collapse to restore its financial standing. It would be an alternative to the appointment of commissioners in these circumstances. Its key feature is that the existing councillors would remain in control of the authority, but

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an overseer would be appointed to supervise the return to financial health. It would therefore be dependent upon the co-operation of the council concerned.

4. There are four main components to the proposed scheme.

i. Appointment of an overseer. The overseer could be appointed either by the Government or by the local authority itself. However the authority would require the Government's agreement before the full overseer scheme - in particular any financial assistance - came into operation.

ii. Preparation of a recovery plan. The authority would formulate a recovery plan, including a detailed budget for the first year and a strategy to be followed over the next 2 or 3 years. The plan would have to provide realistic proposals for a balanced budget in each year, without recourse to creative accounting. It would be subject to approval by the overseer, but not under the Environment Secretary's proposals, by the Government, which would remain at arms' length from managerial decisions of the authority.

iii. Financial assistance. It would not be appropriate to provide additional Exchequer grant to an authority participating in the overseer scheme: that would simply transfer the costs of past mismanagement from rate or community charge payers to national tax payers. But two forms of special assistance might be appropriate:

a. special borrowing arrangements to ensure that the authority did not collapse because it could not borrow from other lenders;

b. permission to levy a higher rate. Before the start of a year, an authority already has full discretion over its rate unless it is rate capped: in that case the Secretary of State could agree under existing powers to

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increase the rate limit as part of a recovery plan. But a new power would be needed to allow an increase in the rate during the course of a year.

The Environment Secretary proposes a new power which would enable him to lend to authorities participating in the overseer scheme, but no new power to allow rate increases in mid-year. Existing powers would allow him to permit use of borrowed funds for revenue purposes if necessary.

iv. Arrangements to ensure compliance. Initially the approval of the overseer would be required as a condition of access to the special borrowing arrangements. The overseer would monitor and certify continuing compliance, and access to those arrangements could be withdrawn if he was not satisfied. But these constraints would not necessarily prevent an authority departing from its recovery plan. The Government would therefore have to make it clear that it would not bail out the authority in these circumstances. Ultimately commissioners might have to be appointed.

Legislative implications

5. Officials have considered what legislation would be necessary to operate the overseers scheme. There are three options.

i. No legislation. The scheme would have to operate solely by agreement with the authority concerned. The main drawback is that there would be no power to provide special borrowing arrangements: the Treasury's advice is that the Appropriation Act could not properly be used for this purpose.

ii. Minimum legislation. The scheme would again be voluntary, but would be backed by a specific power for the Secretary of State to advance loans, subject to conditions.

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iii. Full legislation. This could put the concept of an overseer on a statutory basis, and be used to impose a tighter scheme. For example, the overseer could be given the right of full access to an authority's books.

Under either legislative option, the Government would need to decide whether to legislate in advance of any specific case, or to hold a Bill in readiness to be introduced as an emergency measure.

6. The Environment Secretary recommends minimum legislation, with a Bill to be prepared and held in readiness for introduction when the need arises.

VIEWS OF OTHER MINISTERS

7. The following are the main additional points raised in the correspondence.

i. The overseer scheme has attractions as an alternative to the more drastic alternative of commissioners. But there are also substantial risks. A council might use the scheme simply to postpone collapse, and then seek to embroil the Government and the overseer in responsibility for breakdown. To prevent this, it is essential that the Government retain full discretion over the use of the scheme, and apply it only where there is the necessary political stability and will to return to financial health.

ii. It is accepted that the Government cannot become so involved in the preparation of a recovery plan that it appears to take responsibility for day-to-day management decisions. But there are also dangers in standing too far back. The Government might find itself giving assistance in support of a plan which did not meet its policy objectives, either for local Government spending as a whole or for service delivery. One solution would be to take specific powers to attach conditions about such matters to any special financial

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assistance. Alternatively, if the Government want to be completely at arms' length, the responsibility for approving an overseer might rest with another body, such as the Audit Commission or PWLB.

iii. The minimum legislation option would keep the use of scarce drafting resources to an acceptable level, and the resulting Bill might well be a Money Bill. It would also make it easier to keep the scheme in reserve, so that its existence need not be disclosed in advance.

iv. But there are also counter arguments. The minimum legislation scheme might not give the overseer sufficient powers to fulfil his role. It might, for example, be desirable to grant him a statutory power to see all the local authority's papers. That points to the full legislation option.

v. There might be a case for a more flexible approach, under which all the options would be developed, and the appropriate measures adopted in response to a particular case.

ISSUES FOR DECISION

8. In the light of these comments, the main issues for decision seem to be:

i. in what circumstances the overseer's scheme might be an appropriate response to financial breakdown;

ii. whether to legislate for the overseer's scheme in advance, or to hold this option in reserve for use if the need arises;

iii. whether to adopt the minimum legislation option, providing only a new power to extend loans to local authorities, or to go for full legislation for a statutory overseer's scheme;

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iv. how far the Government should seek to be involved in determining the contents of individual recovery plans, or setting specific conditions on loans extended under the scheme.

CABINET OFFICE

11 February 1988

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local Gov: Relations Pr 34



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PRIVY COUNCIL OFFICE
WHITEHALL, LONDON SW1A 2AT

21 January 1988

*Put it she for to the next B(F)
RACC
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Dear Nigel,

OVERSEERS

file with PG

The Lord President has seen the Environment Secretary's minute of 23 December, and has asked me to say that he is bound to have an eye to the use of drafting resources for contingent exercises of this kind. From that point of view, he welcomes the Environment Secretary's conclusion that contingency drafting should be limited to a simple provision to enable loans to be made to local authorities, and he understands that Parliamentary Counsel should be able to see to this without much difficulty. The Lord President also believes that a simple Bill that was limited to that point would stand a good chance of being a Money Bill, and he doubts whether that would be true of a more complicated measure.

I am sending copies of this letter to the Private Secretaries to members of MISC 109, and to Trevor Woolley.

Yours,

Alison

ALISON SMITH
Private Secretary

Nigel Wicks Esq CBE
PPS/Prime Minister
10 Downing Street



DEPARTMENT OF HEALTH AND SOCIAL SECURITY

Richmond House, 79 Whitehall, London SW1A 2NS

Telephone 01-210 3000

From the Secretary of State for Social Services

Nigel Wicks Esq
Private Secretary
10 Downing Street
LONDON
SW1A 2AA

18 January 1988

Dear Nigel

OVERSEERS

file with PG

My Secretary of State is grateful for the opportunity to comment on the proposals circulated with Mr Ridley's minute of 23 December.

In general, he welcomes the development of options for securing the appointment of Overseers to forestall the complete collapse of an authority where the authority is prepared to co-operate and to ease the return to normal democratic processes. He believes it is essential at this stage not to rule out any of the identified options, since it will be important in his judgement to secure a flexible range of responses for dealing with the varied situations which could arise.

We would not therefore wish to rule out the use of the non-legislative option to forestall a collapse in credit worthiness. Nor is he persuaded at this stage that the full legislation option should be ruled out. Indeed it would be helpful if Ministers could be given a clearer view of what would be included in both legislative options so that they can consider both the relative merits of the packages and the likely call on legislative time. It may be preferable for both packages to be worked up to provide a choice as to which is most suited to the specific circumstances that arise.

He would welcome in particular a considered assessment of the circumstances in which such legislation would be introduced. Would this be only when the credit worthiness of an authority had collapsed, or could there be some agreed "trigger" for action before this point? Alternatively the Government might announce its

E.R.

intention to introduce such legislation should the need arise. He appreciated that early introduction could imply undesirably a willingness on the part of the Government to bail out any authority in difficulties, or precipitate a loss of confidence amongst lenders; but he would like to be assured that the scheme could be activated sufficiently quickly to meet its objectives if legislation were delayed until the last possible moment. The handling of a Bill, under either legislative option, would also be easier to consider if both legislative options were pursued further.

Mr Moore agrees that under an Overseers scheme the Government should not get itself into a position where it either had or appeared to have taken over from the local authority responsibility for the precise content of the recovery plan. He accepts that the local authority must be clearly responsible and accountable for the specific decisions taken. He does not believe, however, that the Government could or should entirely detach itself from the recovery plan process. In his view the Government would need to satisfy itself, before agreeing to extra borrowing, new loans, or increased rates, that the stated intentions of the plan were sufficiently in line with Government policies in terms of the delivery of services, and would command sufficient public and Parliamentary confidence, for the Government to be justified in facilitating their implementation. In any event, he believes that the Government would be widely seen to be an active participant in the recovery process. It would therefore be prudent in his view for the Government to exercise a degree of oversight, without taking responsibility for the detailed judgements and proposals involved.

If a more arms length relationship were to be preferred, he would wish to question whether it was appropriate for the Government to be responsible for appointing the Overseers. In those circumstances, there would be a case in his view for considering appointment by a non-Governmental agency such as the Audit Commission or the PWLB.

The Secretary of State would welcome clarification of the precise effects of the proposed Government loans under the new legislation. On present information, he believes it would be unreasonably restrictive to confine the power to make such loans for one year only. He would hope that the power would leave the Government with sufficient flexibility to make arrangements that suited the circumstances of an individual authority including the amount of time it might need to implement a recovery plan without unacceptable consequences for services.

I am copying this letter to the Private Secretaries to the members of MISC 109 and to Sir Robin Butler.

Yours ever,

Rod Clark

ROD CLARK
Private Secretary

LOCAL GOVT - Relative - p 34

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Treasury Chambers, Parliament Street, SW1P 3AG

Nigel Wicks Esq
Principal Private Secretary
10 Downing Street
London
SW1A 2AA

18 January 1988

*Dear Nigel,***OVERSEERS***file with PG*

Your letter of 24 December invited members of MISC 109 to comment on the approach to the overseer scheme suggested by the Secretary of State for the Environment in his minute of 23 December and attached paper.

The Chief Secretary has considered the proposals carefully and agrees that the scheme has now been sufficiently developed for Ministers to take decisions on the principle of the overseer. There are attractions in the concept of such a half-way house scheme that would avoid the need to appoint Commissioners, when an authority was on the brink of financial collapse but willing to take the difficult measures necessary to restore financial stability. But there are also potential political dangers with the scheme: for example a council could use the scheme as a breathing space to raise extra resources from its ratepayers and postpone the financial collapse. It could then seek to embroil the Government in responsibility for its subsequent collapse and for the rate increases while the overseer was in office.

The Chief Secretary considers that such an important and potentially controversial scheme merits further discussions with colleagues in MISC 109. He has the following comments on the proposed approach.

First, he would emphasise that for important reasons of propriety the no legislation approach would not be acceptable. He agrees with the Secretary of State's preference for the

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minimum legislation option; and he favours the idea of keeping in reserve the legislation necessary to give the statutory cover to make loans directly to local government and to allow a substitute rate until an emergency arose (so the existence of the scheme would not be publicly disclosed). Moreover, for both an initial and any subsequent appointments, it is essential that Ministers retain collectively full discretion over whether and when to appoint overseers of the political risks are to be minimised. Any applications will need to be considered cautiously. Ministers would have to be satisfied that the only alternative to an overseer was to send in Commissioners and that the council had sufficient political stability, the political will and the managerial competence to deliver the recovery plan.

Second, while he shares the view that the Government should not be involved in the detailed approval of a recovery plan, he believes that, if the Government is to make emergency funds available to the council, the resources should not be given on an unconditional basis. While the initiative in seeking an overseer (and subsequent responsibility for the detailed construction and delivery of the plan) should rest clearly with the local council, the Government can and should set broad policy requirements, such as the need for reductions in overall expenditure, as a condition of access to loans and the overseer facility.

I am copying this letter to the Private Secretaries of the other members of MISC 109 and to Sir Robin Butler.

Yours,

Jill Rutter

JILL RUTTER
Private Secretary

LOCAL GOVT Relations pt 34

cc/1



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HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

18 January 1988

Dear Nigel,

OVERSEERS

FILE WITH 76.

Thank you for your letter of 24 December.

The Home Secretary has read with great interest Mr Ridley's paper on "overseers" and is generally content with what is proposed as a means of avoiding the more drastic step of legislation to appoint Commissioners to deal with authorities who have got themselves into financial difficulties.

However, the Home Secretary wonders whether the Government will in reality be able to stand so far back from a recovery plan and simply delegate acceptance of it to the "overseer", particularly if public order and other service delivery problems were arising.

While recognising the dangers of the Government becoming too closely involved with matters of detail, he sees difficulties in the Government providing help on the basis of only the most generalised recovery plan which might not achieve our service objectives.

The Home Secretary also wonders whether the "overseer" is being given sufficient power to enable him to do the job which we would wish to see him carry out. While the minimum legislation approach has obvious attractions, he thinks that in order to emphasise that the appointment of an "overseer" is different in kind from that of a management consultant there may be a need to strengthen his hand, e.g. by providing a statutory right to see papers, in order that he can effectively monitor compliance with the plan. It would also make it clear to authorities that the Government meant business in wishing to see the plan implemented since it was only on that basis that special financial arrangements were being made.

The Home Secretary suggests that these points might be considered further as the scheme is worked up. At a later stage, particularly if the scheme appears likely to be activated, it might be helpful to have a discussion in MISC 109.

I am copying this letter to the Private Secretaries to members of MISC 109 and to Sir Robin Butler.

Yours ever,
C. Mawer

P.P. P J C MAWER

Nigel Wicks, Esq., CBE.

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N 6 PM

ELIZABETH HOUSE
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CONFIDENTIAL

N L Wicks Esq
Private Secretary
10 Downing Street
London SW1 2AA

12 January 1988

Dear Nigel

OVERSEERS

link with PG

Thank you for your letter of 24 December inviting comments on Mr Ridley's paper on a scheme for "overseers" as a means of assisting local authorities facing financial collapse. My Secretary of State is content with the proposals in the paper and the views expressed in Mr Ridley's minute.

I am copying this letter to the Private Secretaries to the Members of Misc 109 and to Sir Robin Butler.

Yours,

Tom.

T B JEFFERY
Private Secretary

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JD



10 DOWNING STREET
LONDON SW1A 2AA

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From the Principal Private Secretary

24 December, 1987.

Dear Philip,

"OVERSEERS"

Before I submit the Secretary of State for the Environment's minute of 23 December about "Overseers", as a means of preventing the breakdown of a local authority in financial difficulties, I should be grateful to know whether the other members of Misc 109 have any comments on the approach suggested by the Secretary of State in his minute and its attached paper. Please could I have comments, including nil returns, by Monday, 18 January.

I am copying this letter to the Private Secretaries to the members of Misc 109 and to Sir Robert Armstrong.

Nigel Wicks

N.L. Wicks

Philip Mawer, Esq.,
Home Office.

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10 DOWNING STREET

LONDON SW1A 2AA

From the Principal Private Secretary

MR. WOOLLEY

You will see from the letter attached that I have asked that the members of Misc 109 should submit comments on the Secretary of State for the Environment's minute of 23 December on "Overseers" before these papers are submitted to the Prime Minister. Could I ask that the secretariat of Misc 109 should prepare a coordinated brief for the Prime Minister on Mr. Ridley's paper and on Ministers' comments when they have all been received.

NLW

24 December, 1987.

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