

Prime Minister (2)

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2 MARSHAM STREET  
LONDON SW1P 3EB

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My ref:

Your ref:

2 February 1982

R v. SECRETARY OF STATE FOR THE ENVIRONMENT EX PARTE  
LONDON BOROUGH OF BRENT AND OTHERS

You will remember that last October the Divisional Court quashed my earlier decision under sections 48 to 50 of the Local Government, Planning and Land Act 1980 to abate the Rate Support Grant entitlements for 1980-81 in respect of six London authorities; it follows from the grounds of the decision that similar decisions in respect of two other authorities that were not parties to the action were also unlawful.

The Court said that it was open to me to reconsider the matter, and after considering representations to reach any decision that I considered right that was within the terms of the Act and the Rate Support Grant (Principles for Multiplier) Order 1980. I have accordingly invited further representations, and I enclose a copy of a submission prepared by my officials that summarises and comments upon the main points that have been made.

I am now in a position to retake my decision. None of the new representations that I have received convinces me that the policy which underlay my original decision was wrong, and in general my inclination is to reaffirm it. I nevertheless think that I should accept two of the points that have been made, for they would have the effect of bringing my proposals for 1980-81 into line with those I subsequently announced for 1981-82. They would mean allowing urban programme expenditure to be excluded in determining whether an authority achieved a waiver, and basing the whole of the waiver calculation on outturn instead of budget expenditure. This second point, in particular, I think it would be difficult not to concede. Both points are discussed in more detail at 111a on page 9 and 111f on page 10 of the enclosed submission.



I cannot judge the effect of these changes with any certainty, but all they could possibly do is increase the chance of an authority gaining exemption from abatement; they would not affect the size of the abatement faced by authorities that did not achieve a waiver. It is therefore possible that they would have no practical effect.

We now face further litigation, for Hackney and Camden have applied for leave to apply for judicial review of my decision not to pay them increased rate support grant for 1980-81 and not to pay them interest. I enclose a copy of their application. It is against this background that I should welcome your advice on a point of particular difficulty which is dealt with in paragraphs 9 to 16 of the submission.

I have been advised that it follows from the Court's judgement that monies due to the authorities since last January have been unlawfully withheld between the dates on which they should have been paid and the date on which I make a valid decision; on the other hand, it appears that the authorities do not have any right in law to interest. In the circumstances, Mr Robert Alexander, QC has advised in conference that I should carefully consider offering ex gratia payments in lieu of interest. His reasons were first that this might dissuade the authorities from challenging my new decision, and secondly it would put me in a more favourable position if there were a challenge. It would nevertheless be a substantial concession which might be thought to create an undesirable precedent. If it were decided to make such a payment, the appropriate amount could be in the range of £1m to £2m; on balance I am inclined not to offer ex gratia payments, and I have asked my officials to draft decision letters on that basis. I would propose to show you these letters in draft, once they have been considered by Counsel.

In view of the likelihood of further litigation I should be glad to know that you are broadly content with the line I intend to take.

I hope to be ready to announce my decision by the time of the debate on the RSG Order on 16 February.

I am copying this letter, without the enclosure, to the Prime Minister and the Chief Secretary, and the Leader of the House.

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MICHAEL HESELTINE

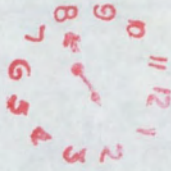
Rt Hon Sir Michael Havers QC MP

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01-405 7641 Extn 3201

Prime Minister

Ms 15/2  
ROYAL COURTS OF JUSTICE

LONDON, WC2A 2LL

12 February 1982

Rt Hon Michael Heseltine MP  
Secretary of State for the Environment  
2 Marsham Street  
SW1

Dear Michael.

Thank you for your letter of 8 February about the case brought against you by some of the London Boroughs in which your decision to abate rate support grant for 1980-81 was quashed by the Divisional Court.

As you say, the terms of the Court's judgments left it open to you after considering representations to reach a fresh decision within the terms of the Act and the 1980 Multiplier Order. The effect of that decision could be to abate rate support grant due so that no further money is now payable to the Councils in respect of that financial year.

I understand that Robert Alexander's advice that you should consider offering ex gratia payments in lieu of interest was based in part upon the consideration that it might prevent further troublesome litigation being commenced. However, this objective can no longer be achieved.

Accordingly, I am content that you should not offer to pay any interest or equivalent sum at this stage. I do not think it would be advisable to make any such concession in the context of the further litigation which has begun. Assuming your decision has the effect you think possible, to make a payment would be inconsistent with the contention that that decision was validly made. The important point is that you should

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ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

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announce your decision as soon as possible.

I understand that your decision letters are being considered in draft by Counsel and they will be discussed in conference with Robert Alexander on Tuesday morning.

I am copying this letter to the recipients of yours (the Prime Minister, the Chief Secretary and to the Leader of the House).

*Yours are - Michael.*

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15 FEB 1982

