

CENO.



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Prime Minister 2  
To be aware.

My ref:

Your ref:

8 October 1985

DLW  
14/10

not

Sam Willie

APPEAL COURT JUDGEMENT: 1985/6 TARGETS

Colleagues will have seen press reports of a judgement in the Court of Appeal last week upholding a challenge brought by Nottinghamshire and Bradford against their expenditure targets for 1985/6. I am writing to report on its implications.

The court held that 1985/6 targets were not framed by reference to principles applicable to all local authorities, as the law requires. Strictly, therefore, all authorities' 1985/6 targets have been found unlawful, and grant cannot lawfully be held-back from authorities overspending target. Equally importantly, since the general applicability rule is central to the law on GREs, grant distribution and rate limitation, the judgement casts doubt on the use of our powers across the whole local government finance field. It therefore puts at risk the RSG Supplementary Report for 1985/6 planned for later this month, and the timetable for the RSG settlement and rate limitation for 1986/7.

I have immediately sought leave to appeal to the Lords and I have asked for the case to be dealt with very urgently. I am advised that we have a fair chance of winning, but we must obviously consider what to do if we lose.

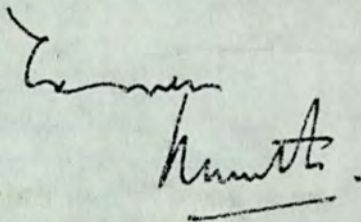
Much will depend on the terms of an adverse judgement. In putting our case in the Lords, we will need to make very clear the importance of the general applicability rule for the operation of all our local government finance policies, and seek thereby to limit the damage of a successful challenge to the 1985/6 target methodology. If the 1985/6 targets are judged unlawful, and if we take no corrective action, we would have to surrender the £550m of grant held-back from overspenders, and we would lose one of our two main deterrents to excessive spending this year. I should therefore propose to frame new targets in the light of the judgement and issue them in a new Supplementary Report. I could not give any authority a lower target, and the new methodology would undoubtedly result in higher targets for some authorities; but I hope we could devise a methodology which did not seriously weaken the pressures for restraint.

If, however, the judgement went wider than targets and jeopardised our interpretation of the general applicability rule for RSG and rate limitation generally, we should have to contemplate primary legislation, possibly with retrospective effect. But I see that as a last resort. For the time being, at any rate,

we can only say that I have sought leave to appeal to the Lords and the matter is still sub judice.

At the risk of tedious repetition, I do want to remind colleagues that this is the sort of risk that we run when we try to administer from Whitehall tight detailed control over local authority spending. We must recognise that a system of administrative law is being invented by the courts. The abandonment of targets and penalties for 1986/7 will relieve some of the pressure, but we must expect more skilful legal challenges in the 1986/7 RSG and rate-capping round. In the context of my longer-term studies on local government finance, this case is further evidence of the dangers of a top-down system of tight Whitehall control.

I am copying this letter to the Prime Minister, to members of E(LA) and QL, and to Sir Robert Armstrong.



KENNETH BAKER

