

TPM

Prime Minister

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A useful note. The Solicitor-
General's concerned appreciation
will be important.

PRIME MINISTER

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BHP
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CHARGECAPPING CASE

I sat in this morning on Lord Justice Leggatt's judgement. It came over as a resounding victory for the Government, whose stance on every count was endorsed.

The local authorities have until noon on Monday to decide whether to appeal. If they do, the Appeal Court will sit on Tuesday morning in view of the urgency.

The importance of the judgement, as I see it, is that it has confirmed the efficacy of the capping powers in the 1988 Act. I imagine you will be presented with this argument strongly next week.

There is no doubt that the judgment, if it stands, strengthens the case for sticking with existing capping powers:

- 'excessive' spending was held to be whatever the Secretary of State thinks it is, provided he acts responsibly and in accordance with stated principles.
- capping principles were entirely up to the Secretary of State. There was nothing wrong with basing them on SSAs. It was the principles themselves which were the basis of the Secretary of State's power and he was, so Leggatt appeared to say, effectively unfettered as to what went into them. He struck down all kinds of eloquent arguments to the contrary put forward by counsel for the local authorities.

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The upshot is that there is little doubt, with hindsight, that the Solicitor-General's advice on SSA + 12½% was much too rigid, and I imagine that he will be prepared to modify that advice in the light of what Leggatt has said if the Appeal Court doesn't create new difficulties.

But the difficulty will remain, if the capping powers are left unchanged, of justifying next year a more rigid test of 'excessive' than this year. That would surely be fertile ground for further argument, and is a good reason, unless the lawyers can argue very convincingly otherwise, for new powers which drop the 'excessive' test altogether, whatever the final outcome of the present case.

EDUCATION BUDGETS

The NUT was given leave to bring a related action which argued that, under the Education Reform Act 1988, local authorities, even if capped, had no powers to reduce school budgets in-year, once LMS was established.

Leggatt did not accept this, but I imagine that what he said will not be the last word. The 1988 Act is clearly open to interpretation on the question. This is a very crucial issue as far as the impact of capping is concerned because if the courts were to hold that the NUT was right, it would force cuts to take place in the town hall bureaucracy rather than in schools themselves.

It may be worth considering whether, in any new legislation, this should be clarified in order to ensure that any cuts do indeed fall on LEAs rather than schools. That might help concentrate local authorities' minds for next year.

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