

HAMMERSMITH & FULHAM: HOUSE OF LORDS CASE

It has just been announced that the Lords have reached the provisional view that the banks have no case and that all local authority swap deals are ultra vires.

The Clerk to the Judicial Committee informed the parties of this last night, privately but in writing. The Lords would approach the other items on the case on that basis, in particular whether in the case of London authorities, individuals can be pursued for the debts of the authority.

This was made public after consultation between the Bank of England and the Audit Commission today. I understand the former was particularly concerned about insider trading if it was kept secret.

There is no knowledge of when the Lords will confirm their view in a judgement. But they are sitting on the case next week and will surely be under immense pressure to confirm the position quickly, presumably with the detailed reasoning to follow later.

That what has been announced is only a provisional view (and not a judgement) constrains what the Government can or should say. I understand that DoE, because of this, intend to respond to inquiries simply by saying that there can be no substantive comment ahead of a judgement. But they will emphasise that this does not affect the powers of local authorities to borrow; these exist clearly under statute.

The immediate implications are that:

- the residents of Hammersmith are let off the hook as regards the huge debts built up by the authority;
- the banks will press the Government hard for retrospective legislation to enable them to recover their losses, and this will have to be strongly resisted;

- we believe that the risks have been quite widely spread among banks, and that the Bank of England is fairly confident that this will not seriously affect any UK bank's balance sheet. But several foreign banks are involved, and these will argue strenuously that they dealt with local government in good faith, as if it was an arm of central Government;

- as a result, shaken confidence in the way in which London markets work. The pressure for a much more legalistic approach to business doing will grow.

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