In re T (A Minor)

House of Lords
Lord Browne-Wilkinson, Lord Slynn of Hadley, Lord Nolan, Lord Steyn and Lord Hutton
20 May 1998

Resource considerations are not relevant to the question of what is 'suitable education' for the purposes of Education Act 1993 s298 (now Education Act 1996 s19).

Facts

The applicant was born on 8 February 1982. She suffered from myalgic encephalomyelitis (ME) from 1989 which made school attendance difficult and at times impossible. From May 1992 the respondent local education authority provided the applicant with five hours of home tuition per week. The applicant was unable to attend school on more than a handful of occasions so her prime source of education was her home tuition. In September 1996 the respondent education authority decided to reduce the applicant's home tuition from five hours to three hours per week. In making that decision, the respondent education authority took into account the fact that in February 1996 it had decided to cut expenditure on home tuition from £100,000 to £25,000 per annum. That decision had been made because projected education expenditure for 1996/97 exceeded projected income by £3.085 million and the respondent education authority did not have the power to increase its income, eg, by way of local taxation. The respondent education authority was, accordingly, forced to find ways of reducing its projected expenditure. It continued, however, to owe the applicant a duty under Education Act 1993 s298 (now Education Act 1996 s19):

> *(1) Each local education authority shall make arrangements for the provision of suitable full-time or part-time education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.*
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> . . .
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> *(7) In this section 'suitable education', in relation to the child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.*

Held:

1 There is nothing in the Education Act 1993 to suggest that resource considerations are relevant to the question of what is 'suitable education' for the purposes of s298. On their face, those words connote a standard to be determined purely by educational considerations. This view is much strengthened by the definition of 'suitable education' in s298(7) which spells out expressly the factors relevant to the determination of suitability, namely, the education must be 'efficient' and 'suitable to [the pupil's] age, ability, and aptitude' and also suitable 'to any special educational needs [the pupil] may have'. All these express factors relate to educational considerations and nothing else. There is nothing to indicate that the resources available are relevant. Moreover, there are other provisions in the Act which do refer expressly to the efficient use of resources: see Education Act 1993 ss160 and 161(4) and Sch 10 para 3. Whoever drafted the Act was alive to the issue of available resources; if

such resources were meant to be relevant in the consideration of what constitutes 'suitable education' the Act would surely have said so. The same expression ('. . . efficient . . . education suitable to his age . . .') is used in Education Act 1944 s37 (now Education Act 1996 s7) in relation to the duty of parents to provide education for their children. The extent of the parental duty to educate cannot vary according to the resources of the parent. The respondent education authority's decision to reduce the applicant's hours of home tuition took into account an irrelevant circumstance, namely its own shortage of resources, and therefore was unlawful: *R v Gloucestershire CC and Secretary of State for Health ex p Barry* (1997) 1 CCLR 40, HL, distinguished.

2 It was rightly conceded that the respondent education authority owed an individual duty to each child in its area who answered the description in Education Act 1993 s298(1) to provide education which was suitable to that individual child: see s298(7). The decision as to what constitutes 'suitable' or 'efficient' education for the purposes of s298 is committed by Parliament to the local education authority and is one of fact and degree. The local education authority is entitled to adopt a policy by reference to which it carries out its duties under s298. If there were more than one way of providing 'suitable education' the local education authority would be entitled to have regard to its resources in choosing between different ways of providing education.

3 The courts should resist adopting an approach to statutory duties which permits a lack of resources to preclude a statutory duty arising, or to afford a defence to a failure to perform a statutory duty which has arisen. As a matter of strict legality the respondent had the resources necessary to perform its statutory duty under Education Act 1993 s298 by diverting money from its discretionary functions. To permit a local authority to avoid performing a statutory duty on the ground that it prefers to use its resources in other ways is to downgrade a statutory duty to a discretionary power. Once the reasonableness of the actions of a local authority depends upon its decision how to apply scarce financial resources, the local authority's decision becomes extremely difficult to review. The courts cannot second guess the local authority in the way in which it spends its limited resources: see also *R v Cambridge District Health Authority ex p B* [1995] 1 WLR 898, CA, especially at p906D-F. A person could try to control the failure of a local authority to carry out its statutory duty by showing that it was acting in a way which was *Wednesbury* unreasonable in failing to allocate the necessary resources. However, this is a very doubtful form of protection. The courts should be very slow to downgrade statutory duties into what are, in effect, mere discretions over which the court would have very little control: dicta of Lord Nicholls of Birkenhead in *R v Gloucestershire CC and Secretary of State for Health ex p Barry* [1997] AC 584 at p470F-G doubted.

Cases referred to in judgment:

Associated Provincial Picture Houses v Wednesbury Corp [1948] 1 KB 223; [1947] 2 All ER 680; 45 LGR 635, CA.

R v Cambridge District Health Authority ex p B [1995] 1 WLR 898; [1995] 2 All ER 129; [1995] 1 FLR 1056; [1995] 2 FCR 485; [1995] 6 Med LR 250; [1995] Fam Law 480; (1995) 145 NLJ Reps 415; (1995) *Times*, 15 March; *Independent*, 14 March, CA.

R v Gloucestershire CC and Secretary of State for Health ex p Barry (1997) 1 CCLR 40; [1997] AC 584; [1997] 2 All ER 1; [1997] 2 WLR 459, HL.

Legislation/guidance referred to in judgment:
Chronically Sick and Disabled Persons Act 1970 s2 — Education Act 1944 s37 — Education Act 1993 ss160, 161 and 298 and Sch 10 — Education Act 1996 ss7 and 19

This case also reported at:
(1998) *Times*, 21 May.

Representation
Michael Beloff QC, Tim Kerr and Andrew Sharland (instructed by Bates, Wells & Braithwaite) appeared on behalf of the applicant.
Nigel Pleming QC and Rabinder Singh (instructed by Sharpe Pritchard) appeared on behalf of the respondent.

Judgment

LORD BROWNE-WILKINSON:

My Lords,

At all material times the East Sussex County Council, as the local education authority ('LEA'), was subject to a statutory duty under section 298 of the Education Act 1993 (now re-enacted in section 19 of the Education Act 1996) to provide education for those children in its area who by reason of illness would not otherwise have received it. So far as relevant, section 298 provided as follows:

> *(1) Each local education authority shall make arrangements for the provision of suitable full-time or part-time education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or otherwise, may not for any period receive suitable education unless such arrangements are made for them.*
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> . . .
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> *(7) In this section 'suitable education', in relation to the child or young person, means efficient education suitable to his age, ability and aptitude and to any special educational needs he may have.*

The appellant, Beth Tandy, was born on 8 February 1982 and was a child of compulsory school age until 8 February 1998. She has suffered from myalgic encephalomyelitis ('ME') since she was seven in consequence of which she has found it very difficult and at times impossible to attend school. From May 1992 onwards, the LEA provided five hours per week home tuition for her. Originally this home tuition was provided pursuant to a statement of special needs: Beth was mildly dyslexic. However that statement of special needs was withdrawn in July 1995 and from then onwards home tuition has been continued under section 298. Beth's progress has been kept under constant review and every effort made to reintegrate her into her school environment. But her medical condition meant that she only attended school on a handful of occasions. Her prime source of education was home tuition.

In July 1996 Dr Bacon, the manager of pupil services for the LEA wrote to Beth's parents telling them of a general review of the LEA's home tuition services and warning them that 'the level of tuition may reduce from the previous standard of five hours per week as part of a package of measures which aims to facilitate a pupil's early return to full-time education.' There was a report in the press that the LEA's home tuition budget had been cut from £100,000 a year to £25,000 a year but in July 1996 Beth's parents were told — as will appear rather surprisingly — that the LEA had not yet concluded its policy on home tuition. At that time

Beth's ability to attend school had not improved. At a meeting held on 10 September 1996 the LEA's case work officer told Beth's parents that the maximum number of hours of home tuition would be cut from five hours per week to three hours per week, a decision which, the case worker said, was dictated purely by financial considerations and not by Beth's illness or educational needs.

Beth's parents protested vigorously to the LEA against this cut in the hours of home tuition. On 25 October 1996 the chairman of the education committee, wrote to them as follows:

> *I understand your concern that your daughter Beth should receive sufficient education to meet her needs. The county council had to make some very difficult decisions last March regarding the level of budget for education and I regret that it was considered necessary to reduce expenditure on home tuition. It is not considered that the county council is failing in its statutory duty to provide education other than at school for pupils such as Beth. It is important that all pupils who require this service do receive some tuition and the reduction from five to three hours per week has been necessary to ensure equal access to this provision for those pupils who need it.*

It was in those circumstances that these proceedings for judicial review were launched on 30 November 1996 attacking the LEA's decision to reduce the number of hours of home tuition provided for Beth from five to three hours per week. The decision has been attacked on three separate grounds:

(1) that the local authority in reaching its decision to cut the number of hours took into account an irrelevant consideration, namely, its financial resources;
(2) that the decision was reached in pursuance of an improper purpose, viz, to save money;
(3) that the decision was irrational.

For reasons which will appear, it is only necessary for me to consider the first of those grounds. But for that purpose it is necessary to consider the reasons for the decision of the LEA to reduce the number of hours of home tuition provided for Beth.

Like all other local authorities, the respondent county council is in an unenviable position. It is now prevented from obtaining either from central government or from local taxation the financial resources necessary to discharge its functions as it would like to do. In a period when the aim of central government, of whatever political colour, has been to achieve a reduction in public spending, local authorities have not been relieved of statutory duties imposed upon them by Parliament in times past when different attitudes prevailed. Thus, in preparing its budget the respondent county council had to find ways of saving expenditure.

The evidence discloses how such considerations bore on the decision challenged in the present case. The respondent council was to set its budget for the year 1996/97 at its meeting on 20 February 1996. One of the major items in that budget was the requirement of the education committee which committee fixed its budget on 5 January 1996. The education committee faced a requirement for an additional expenditure of £8.499 million on account of pay and price increases and other commitments. Under the system whereby central government seeks to control local authority expenditure, central government's calculation of the allowable expenditure on education ('the SSA') provided for an increase of only £7.264 million. On the assumption that the whole of this SSA increase of £7.264 was allotted to the education committee by the council, the education committee still had to

find savings of £1.235 million (i.e. £8.499 million less £7.264 million). Further there had been an overspend of £1.85 million in the year 1995/96 which the education committee had to seek to recoup. Therefore in fixing its budget, the education committee was faced with the task of making savings of £3.085 million by reducing expenditure. Amongst other economies, they resolved to cut the expenditure on home tuition from £100,000 to £25,000 per annum. This decision was based on a recommendation by a strategic forum set up by the education committee to consider and assess all areas of its services for possible budget reductions.

This 75 per cent cut in provision for home tuition then had to be translated into practical decisions for individual children. This was achieved by adopting a policy which is described in a letter dated 25 October 1996 from the county education officer as follows:

> *Subject to a full revision of the home tuition policy, it was agreed that the existing criteria for the provision of home tuition would remain in place. However, in order to meet existing commitments it was determined that provision for existing students would be decreased from five to three hours per week, and that an allocation of two hours per week would be made in cases agreed from the spring term 1996. Existing commitments on this reduced basis will lead to a significant overspend against the allocated budget for the current financial year, and contingency moneys have been identified to enable commitments to be met.*

That change of policy was known to and understood by the chairman of the education committee who, in her affidavit, described it as follows:

> *I knew that, as one of the means of achieving the savings of £130,000 I have referred to, the county education officer had decided to alter one of the criteria related to the provision of home tuition. The previous policy or practice on the provision of home tuition was normally to limit it to five hours per week in term time; that normal allocation was now to be reduced to three hours per week for existing cases and two hours for new cases.*

In these circumstances it is not surprising that the agreed statement of facts placed before your Lordships included the following paragraph:

> *In September 1996 the LEA decided to reduce Beth's home tuition from five hours per week to three hours per week. The LEA applied a policy that the normal number of hours of home tuition for children would be three hours per week. In formulating that policy and applying it to Beth's case, the LEA had regard to financial considerations. Its decision in relation to Beth was made in the context of a previous decision, on the ground of financial stringency, to reduce the overall annual home tuition budget for the year 1996/97 from £100,000 per annum to £25,000 per annum.*

There is therefore no doubt that in deciding what constituted suitable education for Beth the LEA did take into account the financial resources available to it. The question is whether that was lawful.

In an affidavit, Dr Bacon deposed that, in dealing with Beth's case, she did not simply apply the new policy in reducing the number of hours of home tuition from five to three per week but considered Beth's case individually. She reached the conclusion that three hours home tuition constituted 'a suitable educational arrangement for Beth in terms of section 298'. There are a number of features of Dr Bacon's evidence which are difficult to reconcile with the contemporary documents. However she was not cross-examined nor was her good faith challenged. It must therefore be accepted that Beth's case was considered by her

individually. However there can be no doubt that her conclusion in relation to Beth did take into account the new policy as to the number of hours of home tuition which were normally to be allowed. She said 'therefore, as a general rule, the allocation was reduced from a normal level of five hours per week per case to three hours for existing cases, and two hours for new cases agreed after the start of the financial year, although it was accepted that each case would need individual consideration'.

The application for judicial review came before Keene J who quashed the decision of the LEA on the grounds, first that the council had taken into account an irrelevant factor (ie the shortage of resources) when deciding to reduce the number of hours of home tuition; secondly, on the ground that the decision was made in pursuit of an ulterior purpose, namely, the reduction of expenditure; and, thirdly, on the ground that it was irrational. On appeal, the majority of the Court of Appeal (Ward and Mummery LJJ, Staughton LJ dissenting) reversed the judge's decision. They held that it was legitimate for the council to take into account the shortage of resources and held that the decision was not irrational: [1997] 3 WLR 884. The majority view was largely based on the premise that the duty under section 298 was owed by the LEA, not to each child individually, but to a class of children, viz all children of school age in their area who, for statutory reasons, might not receive suitable education unless arrangements were made for them: see *per* Ward LJ at p898G; Mummery LJ at p904D-905B. On the appeal to your Lordships' House, Mr Pleming QC, for the LEA, did not seek to maintain that view. He accepted, in my view, correctly that the council owed an individual duty to each child in its area who answered the description in section 298(1) to provide education which was suitable to that individual child: see subsection (7).

Although the LEA agreed in [May 1992] to provide Beth with five hours home tuition up to the taking of her GCE exams in June 1995, your Lordships agreed to entertain the appeal: there was at least one other younger child in a similar position to Beth whose case was awaiting the outcome of this appeal.

Before your Lordships, Mr Beloff QC, for Beth, adopted the reasoning of Keene J. The local authority had adopted a policy which required the number of hours of home tuition to be reduced from five to three hours and had applied that policy to Beth. In so doing they had had regard to irrelevant circumstances, namely the shortage of resources available to the LEA. Therefore the decision was unlawful. On the other side, the LEA accepted that there was a statutory duty imposed upon them to provide 'suitable' and 'efficient' education for Beth. But they contended, to my mind rightly, that the decision as to what constitutes 'suitable' or 'efficient' education for the purposes of section 298 is committed by Parliament to the LEA and is one of opinion and degree. The LEA then contended that one of the factors that it could take into account in making that decision was the availability of resources. Thus, it was argued, that in adopting a policy which reduced the normal ration of home tuition from five to three hours per week the fact that such reduction was made with a view to reducing expenditure was not unlawful. The evidence showed that such policy was lawfully applied in that individual attention was given to Beth's case to see if it was appropriate to depart from it.

My Lords, I can accept much of the argument of the LEA In particular, as was much stressed, the LEA was entitled to adopt a policy by reference to which it carried out its duties under section 298. But, like Staughton LJ, I do not understand why it makes any difference whether the LEA decided what was suitable education for each child ad hoc or decided the question in part by reference to a policy which it had adopted. In either case, the question is the same: was it lawful to decide the case or to adopt a policy which took into account the resources

A available to the LEA? Or is the question 'what constitutes suitable education?' to be determined by reference to educational criteria divorced from the resources available to provide such education.

There is a recent decision of your Lordships which obviously bears on this question: *R v Gloucestershire County Council ex parte Barry* [1997] AC 584; (1997)
B 1 CCLR 40, HL. But I will consider the construction of the Education Act 1993 before considering the impact of that decision. There is nothing in the Act of 1993 to suggest that resource considerations are relevant to the question of what is 'suitable education'. On their face those words connote a standard to be determined purely by educational considerations. This view is much strengthened by
C the definition of 'suitable education' in section 298(7) which spells out expressly the factors which are relevant to the determination of suitability, viz the education must be 'efficient' and 'suitable to his age, ability and aptitude' and also suitable 'to any special educational needs he may have'. All these express factors relate to educational considerations and nothing else. There is nothing to indicate
D that the resources available are relevant. Moreover, there are other provisions in the Act which do refer expressly to the efficient use of resources: see sections 160, 161(4) and Schedule 10 paragraph 3. The draftsman has shown that he was alive to the issue of available resources; if he meant such resources to be relevant for the consideration of what constitutes suitable education he would surely have
E said so. Again, the words in section 298(7) 'efficient . . . education suitable to his age, ability and aptitude and to any special educational needs he may have' echo the words in section 37 of the Education Act 1944 (now section 7 of the Act of 1996) which uses those words to spell out the duty of a parent to provide education for his child. The content of the parental duty to educate cannot vary according
F to the resources of the parent.

It was suggested in argument that it made a difference that the statutory duty was to 'make arrangements for the provision' of suitable education rather than just to provide suitable education. This view commended itself to the majority of the Court of Appeal. But once it is conceded, as it is, that the LEA owes the
G statutory duty to each sick child individually and not to sick children as a class, I can see no force in the argument. The duty is to make arrangements for what constitutes suitable education for each child. That duty will not be fulfilled unless the arrangements do in fact provide suitable education for each child.

For these reasons as a matter of pure construction I can see no reason to treat
H the resources of the LEA as a relevant factor in determining what constitutes 'suitable education'. But I should make it clear, as did Keene J and Staughton LJ in their judgments, that if there is more than one way of providing 'suitable education,' the LEA would be entitled to have regard to its resources in choosing between different ways of providing suitable education.

I Does the decision in *Barry* lead to a different conclusion? That case concerns section 2(1) of the Chronically Sick and Disabled Persons Act 1970 which, so far as relevant, provides as follows:

Provision of welfare services

J *2(1) Where a local authority having functions under section 29 of the National Assistance Act 1948 are satisfied in the case of any person to whom that section applies who is ordinarily resident in their area that it is necessary in order to meet the needs of that person for that authority to make arrangements for all or any of the following matters, namely [(a)-(h)]*

K *then . . . it shall be the duty of that authority to make those arrangements in exercise of their functions under the said section 29.*

The matters referred to in paras (a)-(h) of section 2(1) were as follows:

(a) the provision of practical assistance for that person in his home;
(b) the provision for that person of, or assistance to that person in obtaining, wireless, television, library or similar recreational facilities;
(c) the provision for that person of lectures, games, outings or other recreational facilities . . .
(d) the provision for that person of facilities for, or assistance in, travelling to and from his home for the purpose of . . .
(e) the provision of assistance for that person in arranging for the carrying out of any works of adaptation in his home or the provision of any additional facilities designed to secure his greater safety, comfort or convenience;
(f) facilitating the taking of holidays by that person . . .
(g) the provision of meals for that person whether in his home or elsewhere;
(h) the provision for that person of, or assistance for that person in obtaining, a telephone . . .

The applicant was disabled and had been in receipt under section 2(1) of home care for shopping, pension, laundry, cleaning and meals on wheels. He was then informed that the provision of cleaning and laundry would be withdrawn because the local authority had insufficient resources. It was held by the majority of your Lordships' House, Lord Nicholls of Birkenhead, Lord Hoffmann and Lord Clyde (Lord Lloyd of Berwick and Lord Steyn dissenting) that it was lawful for the local authority in deciding what was necessary to meet the needs of the applicant to take into account the scarcity of the resources available to it.

Although both that case and the one now before your Lordships are concerned with the extent to which a local authority can take account of its lack of resources in carrying out a statutory duty, that is the limit of the similarity between the two cases. The question in *Barry* related to the questions what were the 'needs' of the disabled person and whether it was 'necessary in order to meet' those needs to make arrangements for the indicated benefits. It was held by Lord Nicholls that, in assessing the needs of the disabled person, the local authority had to have regard to the cost of what was to be provided and once regard was had to cost they must also have regard to the resources available to meet such cost. Depending on the authority's financial position the authority could be more or less stringent in the criteria it set as constituting need. Lord Clyde adopted a rather different approach. He apparently accepted that the local authority's resources were not relevant to deciding what were the needs of the applicant but held that they were relevant to the decision whether it was 'necessary' to make arrangements to meet those needs: he accepted that there might be in one sense 'unmet needs' if the local authority decided, in the light of its financial circumstances, that there was no necessity to meet those needs: see p475B and H. Whichever approach was adopted, the statutory provision there under consideration was a strange one. The statutory duty was to arrange certain benefits to meet the 'needs' of the disabled persons but the lack of certain of the benefits enumerated in the section could not possibly give rise to 'need' in any stringent sense of the word. Thus it is difficult to talk about the lack of a radio or a holiday or a recreational activity as giving rise to a need: they may be desirable but they are not in any ordinary sense necessities. Yet, according to the section the disabled person's needs were to be capable of being met by the provision of such benefits. The statute provided no guidance as to what were the criteria by which a need of that unusual kind was to be assessed. There was no definition of need beyond the instances of the possible benefits. In those circumstances, it is perhaps not surprising that the majority of

A your Lordships looked for some other more stringent criteria enabling the local authority to determine what was to be treated as a need by reference to the resources available to it.

The position in the present case is quite different. Under section 298 the LEA is not required to make any prior determination of Beth's need for education nor of
B the necessity for making provision for such education. The statute imposes an immediate obligation to make arrangements to provide suitable education. Moreover it then expressly defines what is meant by 'suitable education' by reference to wholly objective educational criteria. For these reasons, in my judgment the *Barry* decision does not affect the present case.

C There remains the suggestion that, given the control which central Government now exercises over local authority spending, the court cannot, or at least should not, require performance of a statutory duty by a local authority which it is unable to afford. In the present case, the LEA does not contend that lack of resources is any defence to a failure to perform the statutory duty if it has arisen. But lack of
D resources is relied upon to preclude any statutory duty arising. My Lords I believe your Lordships should resist this approach to statutory duties.

First, the county council has as a matter of strict legality the resources necessary to perform its statutory duty under section 298. Very understandably it does not wish to bleed its other functions of resources so as to enable it to per-
E form the statutory duty under section 298. But it can, if it wishes, divert money from other educational, or other, applications which are merely discretionary so as to apply such diverted moneys to discharge the statutory duty laid down by section 298. The argument is not one of insufficient resources to discharge the duty but of a preference for using the money for other purposes. To permit a local
F authority to avoid performing a statutory duty on the grounds that it prefers to spend the money in other ways is to downgrade a statutory duty to a discretionary power. A similar argument was put forward in the *Barry* case but dismissed by Lord Nicholls (at p470F-G) apparently on the ground that the complainant could control the failure of a local authority to carry out its statutory duty by
G showing that it was acting in a way which was *Wednesbury* unreasonable in failing to allocate the necessary resources. But with respect this is a very doubtful form of protection. Once the reasonableness of the actions of a local authority depends upon its decision how to apply scarce financial resources, the local authority's decision becomes extremely difficult to review. The court
H cannot second-guess the local authority in the way in which it spends its limited resources: see also *R v Cambridge District Health Authority ex parte B* [1995] 1 WLR 898, especially at p906D-F. Parliament has chosen to impose a statutory duty, as opposed to a power, requiring the local authority to do certain things. In my judgment the courts should be slow to downgrade such duties into what
I are, in effect, mere discretions over which the court would have very little real control. If Parliament wishes to reduce public expenditure on meeting the needs of sick children then it is up to Parliament so to provide. It is not for the courts to adjust the order of priorities as between statutory duties and statutory discretions.

J For these reasons I would allow the appeal and restore the order of Keene J.

LORD SLYNN OF HADLEY:

My Lords,

I have had the advantage of reading in draft the opinion of my noble and learned friend Lord Browne-Wilkinson. For the reasons he gives I too would allow
K the appeal and restore the order of Keene J.

LORD NOLAN: A

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Browne-Wilkinson. For the reasons which he gives I too would allow the appeal and restore the order of Keene J.

B

LORD STEYN:

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Browne-Wilkinson. For the reasons contained in his speech I would also allow the appeal and restore the order of Keene J.

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LORD HUTTON:

My Lords,

I have had the advantage of reading in draft the speech prepared by my noble and learned friend Lord Browne-Wilkinson. For the reasons he gives I would allow this appeal and restore the order of Keene J. D