



01-405 7641 Extn 3201

Prime Minister

Content, provided that these  
conclusions are married with the  
action the Home Secretary has in  
ROYAL COURTS OF JUSTICE mind?

LONDON, WC2A 2LL

13 January 1982

Yes

[Handwritten signature]

MMP 14/1

The Rt Hon Margaret Thatcher MP  
Prime Minister  
10 Downing Street  
LONDON S W 1

Dear Prime Minister,

PENLEE LIFEBOAT DISASTER FUND

Before the most satisfactory solution to this matter you asked for my Opinion on the state of the law as it affects the disbursement of money from the Penlee Lifeboat Disaster Fund and also whether the present state of the law is satisfactory. The present state of the law can be summarised as follows:-

- (i) Gifts to relieve distress caused by disasters must have a general public benefit to be charitable but trusts for a limited class of dependants of victims of a disaster have traditionally been accepted as charitable because they are recognisable as poverty trusts;
- (ii) this prima facie rule is excluded in the case of the Penlee Lifeboat Disaster Fund by the terms of the Press Notice ("the total fund will be used directly for the benefit of the dependants and that all money received will be distributed directly to families of the lifeboat crew") so the trust is clearly not charitable and is, therefore, a private trust.
- (iii) We have of course resolved the tax problem in this particular case however the general tax position varies according to whether a disaster fund is charitable or not. If charitable a fund will qualify for exemption from income tax

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on the income received by the Trustees, from capital gains tax on gains realised by the Trustees, and from all forms of capital transfer tax while the trust endures. Subject to certain conditions CTT relief will also be available on gifts to the fund. Income received by the beneficiaries of the Fund will be taxable as their income (and as unearned income) in the normal way in exactly the same way as would be the case if capital were transferred to the individuals concerned and produced income in their hands, and CTT will be payable in the normal way on any funds applied by the charity for the benefit of a beneficiary when the interests of that beneficiary comes to an end, whether on death or on an earlier disposal of his interest.

If the trust is not charitable then gifts to the trustees will fall to be counted as transfers of value for the purposes of CTT, liability on the part of the donors, although by far the largest part of the donations will be exempt as being either normal gifts out of income or within the annual exemption for gifts not exceeding £3,000 in the aggregate. No capital gains tax or income tax exemptions will be available to the trustees.

As far as the question of whether the present state of the law is satisfactory is concerned, I do not consider that there should be any immediate reform of charity law. However it is clearly desirable that some guidance be given to people who may set up similar funds in the future. I have in mind two formulae which could be used and which would clearly establish the charitable or non-charitable

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status of the fund. I will instruct my Charity Counsel to draft these with a view, after appropriate consultation, to their publication in the appropriate legal and financial journals and also, as you suggested, ask the Banks to circulate them to their branches.

Yours truly,  
Michael



FILE

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Home Affairs.

10 DOWNING STREET

*From the Private Secretary*

15 January 1982

Penlee Lifeboat Disaster Fund

The Prime Minister was grateful for the Attorney-General's letter of 13 January about the present state of the law relating to such charitable purposes. As the Attorney may know, the Home Secretary has also been considering the need for further guidance on these matters. He already has in preparation arrangements to publicise his conclusions. The Prime Minister would be grateful if the Attorney and the Home Secretary could co-ordinate their operations on this front.

I am sending copies of this letter to John Halliday (Home Office) and David Wright (Cabinet Office).

M. A. PATTISON

Jim Nursaw, Esq.,  
Law Officers' Department.

JG