

CONFIDENTIAL

CCBL



QUEEN ANNE'S GATE LONDON SW1H 9AT

2 October 1986

Dear Willie,

NBP?

E(LF): COMMUNITY CHARGE: FRAMEWORK OF DUTIES AND OFFENCES

Malcolm Rifkind copied to me his letter to you of 10 September in which he gave details of the proposed civil penalty system which will reinforce community charges.

Looking at the proposals as a blueprint for legislation south of the border, I have reservations about the proposal to levy an enhanced penalty of £400 for a second or later failure to respond to a canvass or to give false or incomplete information in response to a canvass. Enhanced penalties in the criminal law were largely abolished by the Criminal Justice Act 1982. They penalise the repetition of the offence rather than its intrinsic gravity. This is contrary to good sentencing practice, which (under a system of maximum penalties) requires the sentencer to mitigate the penalty for the first offence but not to enhance it for a second or later one. In the case of a fixed penalty such as this one, there is no possibility of mitigation for a first offence, but that does not, in my view, alter the principle that a second offence should be penalised according to its gravity and not just because it is a second offence.

I am also of the view that £400 is too high a penalty for non-registration or failure to register fully, particularly as the responsible person is automatically liable to pay the penalty each time he fails, without reasonable excuse, to respond to a canvass - and there is nothing to stop him being canvassed several times a year. I accept Malcolm Rifkind's argument that a responsible person might choose to pay a £50 penalty but continue to refuse to provide information, but he is still liable to pay his own community charge (at an enhanced rate after three months) and, ultimately, so are any other individuals in his household who should be on the register. I find it hard to believe that local authorities will find themselves completely impotent in the face of people who do not register. I should therefore prefer to have a simple £50 penalty, applicable each time the responsible person refuses to respond to a canvass; but I would not object to a higher penalty of £100 if a stronger deterrent is really thought necessary.

I am copying this letter to the recipients of yours, together with the Attorney General in view of his overall legal interest.

Lower.
Doy 12.

The Rt Hon The Viscount Whitelaw, CH., MC.

CONFIDENTIAL

Local Govt
Rates
P 75

