



Charity
Commissioners

for England and Wales

Report of the
Charity Commissioners
for England and Wales
for the year 1991



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Presented pursuant to the Charities Act 1960, s. 1(5)

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REPORT OF THE CHARITY COMMISSIONERS FOR
ENGLAND AND WALES FOR THE YEAR 1991

Presented pursuant to the Charities Act 1960, s 1(5).

Charity Commission,
St Alban's House,
57-60 Haymarket,
London SW1Y 4QX
31 March 1992

TO THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Sir,

We, the Charity Commissioners for England and Wales, have the honour to make our report for the year 1991 in pursuance of section 1(5) of the Charities Act 1960.

We have the honour to be,

Sir,

Your obedient servants,

R I L GUTHRIE

R M C VENABLES

J FARQUHARSON

D H YEO

M WEBBER

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Introduction

1. 1991 marked the 30th Anniversary of the coming into force of the Charities Act 1960 which has regulated charities for a generation. During that time the nature and size of charity in this country has evolved and grown to a remarkable degree and the perception of the charitable sector within our Society has undergone a major transformation. These developments have not only shaped our own approach to the exercise of our functions under the Act, but led the Government to introduce a Charities Bill in 1991 to strengthen our powers to investigate abuse and to protect and recover charitable property, as well as to raise standards of accountability for charity trustees. We are delighted that the Bill received the Royal Assent on 16 March 1992. These measures are designed to ensure a healthy and vigorous charitable sector for our own and future generations in which the public and Government alike may have confidence.

2. As a major part of the voluntary sector, charities are now recognised as essential contributors to the well-being of our Society, meeting needs which neither the State nor the commercial sector can fully address. Independent of the State and not dependent on profit motive, charities have a greater capacity for flexibility, imagination, innovation and compassion. Although never equal to that of the Government, charitable provision is now immense. There are more than 165,000 registered charities on our Database, approximately 4,000 continue to be registered each year; money flowing through charities is estimated as representing more than 4% of GDP; more than 25% of adults regularly assist charities on a voluntary basis; and Government has increasingly looked to charitable organisations as their agents for social service provision.

3. Charities contribute and impart quality to every part of our Society whether it be in education, religion, social service provision, health care, or recreation; whether to improve the environment, or to enrich the cultural and social life of the whole community. Moreover, charities in this country increasingly benefit communities throughout the world in meeting deprivation, assisting in redevelopment, or meeting environmental and conservation needs. Charities continue to develop, adjust and respond to changing social circumstances.

4. The effectiveness of charity trustees and their probity is therefore ever more crucial if charities are to continue to contribute to the health of our Society and if they are to continue to enjoy the trust and support of both public and Government. This makes it essential for us to:

- secure (so far as is possible within our powers) the open and public accountability of trustees;
- give trustees advice, guidance and legal authority to perform their duties as efficiently and effectively as possible;
- supervise charities in a way that ensures that abuse is detected and corrected.

5. We also consider that we have a responsibility to represent, protect and promote the interests of charity within the context of developments in the European Community and we report on this more fully in paragraphs 17 to 26.

6. Notwithstanding these developments, and the sharper powers envisaged for us under the Charities Bill, our overall function specified in the Charities Act 1960 is as relevant today as it was 30 years ago. Under the Act we are charged with the promotion of the effective use of charitable resources and their protection. Our powers are designed to encourage the development of better methods of charity administration, to give charity trustees information or advice on any matter affecting their charity and to investigate and check abuse. In respect of our own organisation, our task was to transform the Commission into a body fully equipped to supervise and support registered charities effectively. To that end we have regrouped our functions under two principal heads, each underpinned by information technology and specialist staff in law and accountancy. These are **CHARITY SUPPORT** and **CHARITY SUPERVISION**.

7. **Charity Support** provides charities with the legal framework, authority and advice to secure their effective administration.

8. We have powers to promote the effectiveness with which trustees use their resources by giving advice and information about the law, about sound administrative practice generally and on matters relating to individual charities. We have power to make Schemes and Orders to modernise the purposes of a charity and provide it with a sound administrative framework and to authorise actions otherwise not open to trustees. We report more fully on a wide range of these matters in paragraphs 27 to 50. Moreover, the Official Custodian for Charities provides a custodial service for the land and investments of charities and we report on her activities at paragraphs 51 to 59.

9. The promotion of good practice and the regeneration of resources of charities can also be achieved through local reviews, which we plan to develop over the next few years, and by contributing to trustee training initiatives and the promotion of "self regulation". We have joined with the National Council of Voluntary Organisations in setting up a working party to identify the ways in which the training needs of trustees can be met and with the Joseph Rowntree Memorial Trust we have commissioned research to identify the ways in which standards in the administration of charities can be raised through systems of self support.

10. **Charity Supervision** ensures the accountability of trustees and the protection of charitable property.

11. Trust in charities is dependent not only upon their effective administration, but also upon the full accountability of charity trustees and their effective supervision. We have a duty to maintain a public up-to-date Register of charities, to monitor charities, to investigate any abuse in their administration and to protect their property. We were pleased that the Committee of Public Accounts in its Seventh Report to Parliament of 4 March 1991 welcomed our positive response to their earlier reports calling for prompt and vigorous action to improve supervision of charities. Fundamental to the fulfilment of this is the development of a computerised charity Database to enable us to compile and maintain a detailed and up-to-date source of information about registered charities. We report at paragraphs 60 to 68 on our progress on this project and in paragraphs 69 to 78 we give a brief account of our work in considering applications for registration. It is also fundamental that we introduce an effective monitoring system to identify abuse and develop further our investigative skills. We report on this work fully in paragraphs 79 to 130 below.

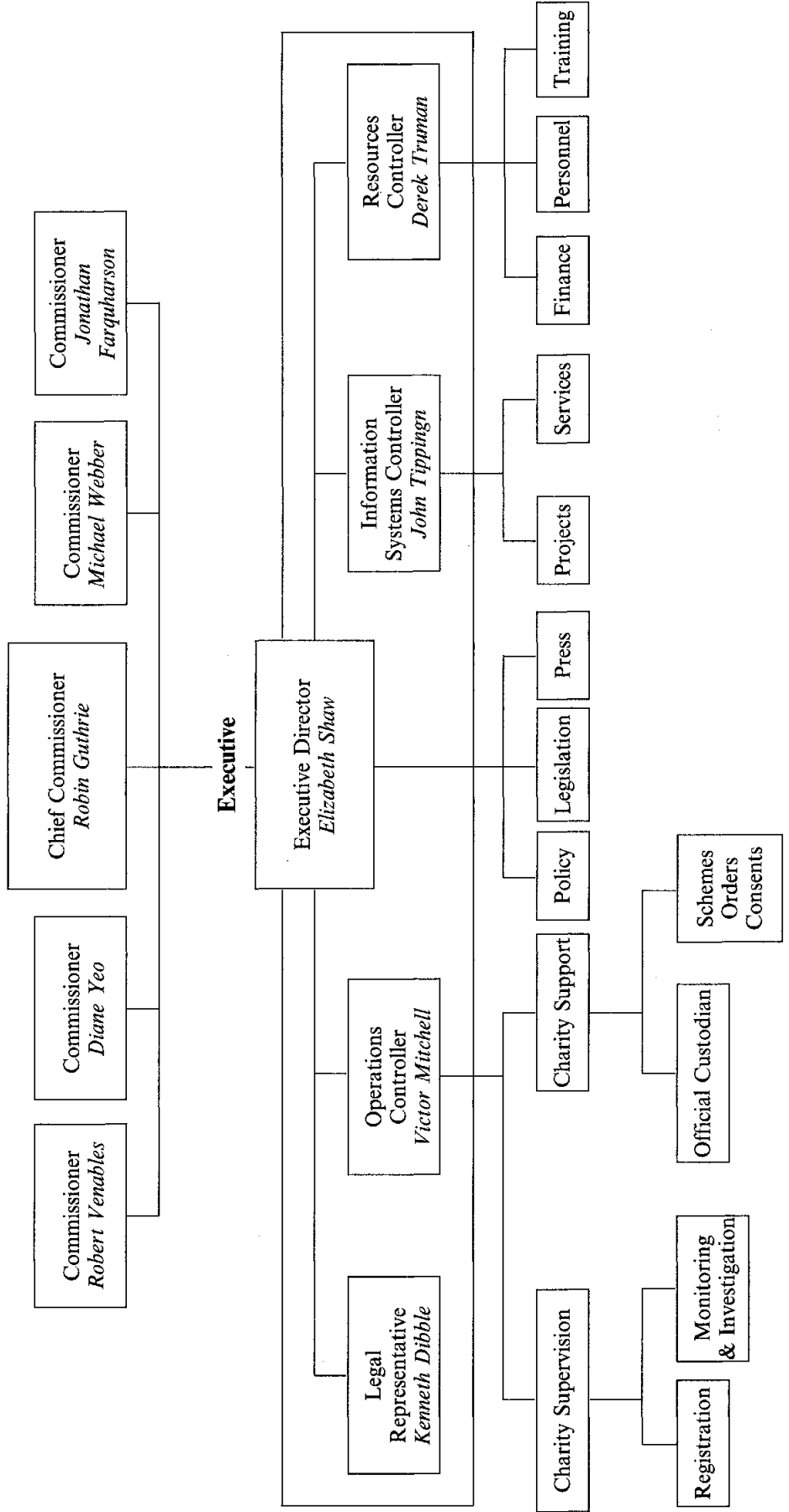
12. During the year we considered the reports of two major inquiries which we had instituted under Section 6 of the Charities Act 1960, namely those into OXFAM and War on Want. We believed that the issues raised in each case were of such importance to charities generally and to the two charities in particular that we published both reports and our responses to them (HMSO). In paragraphs 111 to 118 and paragraphs 119 to 127 we report on the response of the respective trustees since publication.

Organisation and Management

13. During the year we reorganised the management structure of the Department so that in determining and implementing our business strategy, we are now supported by an Executive whose members are responsible to us for the efficient, effective and economical discharge of the Department's functions. The Executive now consists of the Controller of Operations, Mr Victor Mitchell, the Resources Controller, Mr Derek Truman, the Legal Division Representative, Mr Kenneth Dibble and the Information Systems Controller, Mr John Tipping. The Executive was chaired in 1991 by Mr David Forrest as Executive Director and Secretary of the Commission. The structure of the Executive is set out in the organisational chart on page 3.

Organisation Chart

Board of Commissioners



Woodfield House, Taunton

14. In October our new south-western regional office building at Taunton, Somerset, was formally opened by Sir Philip Woodfield, KCB CBE. The opening of this purpose-built office for the Commission marks the completion of one of our major programmes of change which, due to the commitment of staff concerned, was successfully achieved on time and within budget. The new office will provide a more convenient point of contact between the Commission and charities in southern and south-west England. The office will provide the same range of services to charities as the Commission's offices in London and Liverpool. The Taunton office will also house the centre of information technology (systems and support) for the Commission. The information technology team in Taunton will be principally responsible for developing new technology systems to improve the Commission's ability to monitor charities more effectively and reduce the instances of abuse.

Changes in Senior Appointments

15. Mr David Forrest retired from the Commission on 31 January 1992 having been Secretary of the Commission since 1983. He was succeeded by Mrs Elizabeth Shaw as Executive Director and Secretary.

16. We wish to pay tribute to Mr Forrest's outstanding contribution to the work of the Commission over 33 years. In particular, his exceptional combination of experience, adaptability, wisdom and imagination has contributed greatly to the progress made by the Commission in recent years. We were delighted that Her Majesty was pleased to appoint Mr Forrest to be Commander of the Order of the British Empire in recognition of his work.

Developments in Europe

Generally

17. As we have noted in our recent reports, the developments within the European Community will increasingly influence the structure and activities of charities in this country. Our Consultant in these matters, Mr Harry Kidd, has accordingly continued to represent our interests and to report regularly to us, particularly in relation to the provisions of Article 58 of the Treaty of Rome which we discussed in detail in paragraph 17 of our Report for 1990.

18. It appeared increasingly likely that the Commission of the European Communities would publish an interpretation of the Article that would, among other things, have the effect of bringing many voluntary organisations within the scope of future company law directives, which might be at variance with the regulatory provisions of our charity law. Following discussions it became clear that the European Commission might well be able to achieve its purpose more effectively by an alternative route, the creation of a new type of legal vehicle—the European Association. An Association would be an incorporated body established under Community legislation, which would ensure equal recognition for Associations in all Member States and allow them to operate freely throughout the European Community. If this were successfully achieved, it would not be necessary to promulgate, at least for the time being, the disputed interpretation of the Treaty. In this way the difficulty that it gave the United Kingdom would be avoided.

19. The development by the European Commission of these proposals was, therefore, the second matter that engaged our increasingly close attention. An instrument has now been prepared for voluntary associations. The draft instrument, along with those for co-operative societies and mutual financial organisations, was approved by the European Commission at the very end of the year for submission to the Economic and Social Committee, the Parliament and the

Council of Ministers. The draft relating to voluntary organisations will require detailed scrutiny during 1992.

20. The draft envisages that a European Association can be established by two or more voluntary organisations established in two or more Member States of the Community. The constitution of an Association will follow the pattern laid down in the draft instrument, and will enable the organisation to pursue its objects throughout the whole Community. The institution thus created by Community law will be a novel one for English law and its assimilation into our law will create for the United Kingdom problems that are not shared by the majority of Member States. We are confident, however, that with the goodwill of the European institutions and our fellow Member States those problems will be resolved. Existing voluntary organisations which currently operate throughout the EC, and find no obstacles to their ability to do so, will be free to continue in their present form.

21. We remain heartened by the continuing enthusiasm with which charities have developed collaboration with similar bodies in other Member States. One of the most significant developments has been the creation of networks throughout Europe of voluntary organisations with shared interests or specialisms. Of wider significance, however, has been the collaborative effort, in which British charities have played a major role, devoted to providing advice and assistance to emerging charities in Central Europe. We have also been pleased to learn of the interest shown by Central European charities and governments in our regulatory arrangements and in several cases we have given practical advice about them.

22. Contacts between British charities and officials of the Commission in Brussels have constantly grown closer, and we attached particular value to a visit paid to us by Herr von Möltke, Director General of DG XXIII in October and to us and a number of leading charities by Mr Paul Ramadier of that Directorate in May.

**The Bible College of Wales:
La Maison De L'Évangile**

23. This case illustrates both the similarity between our own charities and certain charitable institutions operating within the European Community and the difficulties of reconciling our common law system based on charitable trusts with a civil code system which does not utilise such a concept.

24. The objects of the Bible College of Wales, settled by scheme of Mr Justice Roxburgh in 1955, include the maintenance of an Evangelical Centre in Paris and the promotion of Christian religious work among the French. The property known as La Maison De L'Évangile at No 1 Rue Georges Soral, Boulogne-sur-Seine was held by two trustees on behalf of the charity. Both trustees were elderly. They had been advised that because French law did not recognise the charitable trust on which the property was held and therefore provided no relief from French succession duty, the property would on their death have to be sold and a greater part of the proceeds of the sale applied in payment of that duty.

25. The Trustees of the College sought our advice. Fortunately, a French religious association, "L'Alliance des Églises Chrésiennes Missionnaires de France", had offered to accept the property and use it for its purposes. The French association was established with similar purposes under the French laws of 1 July 1901 and 9 December 1905 and had been awarded recognition as an association "Reconnu d'utilité publique" which enabled it to acquire property and accept donations.

26. The scheme governing the Bible College of Wales contains an express provision confirming that the property does not constitute permanent endowment. If the property had constituted permanent endowment we doubt whether a transfer would have been possible under current English law. As it was, however, we were able to confirm that the proposed transfer was appropriate and that the trustees were empowered by the scheme to complete it without our further authority.

Charity Support

Schemes 27. It is an important and continuing part of our work to assist charities by modernising those of their purposes which have become outdated or restricted and by providing them with a more suitable administrative framework in which to operate. During the year we made 748 Schemes in response to approaches made to us by trustees for such assistance. Changes in the organisation and structure of public institutions introduced by the Government of the day can affect the trusteeship and purposes of charities involved in the work of those institutions and can thus place sudden demands on us to authorise changes in trusteeship or purposes of those charities. Two such events have occurred—the Government's review of the Armed Forces and the forthcoming abolition of the London Residuary Body.

28. During the year the Government announced its proposals following the White Paper "Options for Change" for the review of the Armed Forces in response to the political developments in Eastern Europe. The various amalgamations, mergers and disbandments of units of the Armed Forces which have subsequently been announced will dictate a reorganisation of the charitable funds associated with those units. We have established a direct line of communication with the Ministry of Defence so that the charitable funds can be reorganised in an orderly fashion in line with the time-table for change laid down by the Government. Work has already begun on the process of modernisation of the trusts in question, but a large number of Schemes will need to be established over the years envisaged for implementation of the review.

29. The powers exercised by the former Inner London Education Authority in relation to charities which operate in two or more London Boroughs passed to the London Residuary Body on 1 April 1990. As a consequence the Residuary Body became the sole trustee of many of these charities in succession to the Authority. The dissolution of the Residuary Body during 1992 has led to the need to find trustees to take its place. So far trustees have been appointed for 31 charities. A further 26 charities are to be merged with Sir John Cass's Foundation, an educational charity active in Greater London, and a Scheme to bring this into effect is currently being established. Action will also be needed on our part to modernise the objects of several of the charities affected by the abolition of the Residuary Body, which were set up when the system of education and the opportunities it afforded were different from those which exist today.

The Charities Act 1985 30. During the year we received 268 resolutions under the Charities Act 1985 of which 47 were made under Section 2 for the amendment of objects and 185 under Section 3 for the transfer of property to another charity. Following action by trustees under Section 4 of the Act to spend capital as income, we removed 36 charities from the register as having ceased to exist. The Charities Act 1992 simplifies and extends the provisions of the Act. We believe it will release resources of smaller charities for purposes more appropriate to modern day circumstances and thus make a major contribution to the regeneration of local charities.

Giving advice 31. It is fundamental to the achievement of our objectives that we should provide trustees with authoritative and objective advice on matters relating to the performance of their responsibilities. While trustees should look to their own professional advisers for advice on many aspects of the administration of their trusts, we are able both to advise on highly technical matters and to give guidance on good practice from our knowledge of the operation of charities generally. In this latter respect we have continued our programme of reviewing and extending our range of leaflets and we believe it to be an indication of our success in meeting the needs of charities that the number of leaflets distributed annually has trebled over the last 4 years and now exceeds 130,000. Our current range of leaflets is listed in **Appendix A(c)**.

32. Following the collapse of the Bank of Credit and Commerce International and the resulting loss to many charities of monies deposited with it, we published guidance to trustees on the steps they should take when investing charity money. This guidance was agreed with the Bank of England and the Building Societies Commission. We have also revised our leaflet "Charities for the Relief of the Poor", in particular to clarify the extent to which trustees may assist people who receive state benefits and the extent to which trustees may meet need not otherwise met from the Social Fund. Both these leaflets are reproduced in **Appendix A(a) and (b)**.

33. We report on legislation and legal decisions made during the year affecting charities in **Appendices B and C**. The decision of the court in *Marley and Others v Mutual Security Merchant Bank & Trust Co Ltd*, which we report in **Appendix C(d)**, is of importance in relation to our powers to authorise transactions under section 23 of the Charities Act 1960, to give advice to charity trustees on matters affecting the performance of their duties under section 24 and to consent to the disposition of land under section 29. Before sanctioning a course of action under section 23 we need to be satisfied that the action proposed is expedient in the interests of the charity. Under section 24 and section 29 we must satisfy ourselves that the proposed action is within the powers of the trustees. In exercising these powers we will have regard to the general principles set out in this case and will expect trustees to submit evidence in line with the minimum requirements set out in the judgment.

Trustees' Indemnity Insurance

34. In paragraph 11 of our Report for 1990 we noted that there was growing public concern about the extent to which trustees could be held personally liable for the financial consequences of their actions, and whether they could properly insure themselves at the charity's expense against such liability. We recognise the strength of the argument that people may be deterred from trusteeship by the fear that, through misjudgment rather than malicious intent, their personal assets might be at risk. We completed our detailed policy review on this subject in 1991.

35. Insurance is a contract of indemnity: if there is no loss, there is no payment and rights arise between the parties to the contract. There are two parties who might need to be indemnified—the charity and the trustees.

36. We agree that there is no objection in principle to a charity insuring against loss to its funds resulting from the acts and defaults of the trustees.

37. As regards the provision of insurance for trustees to indemnify them for any liability for their acts and defaults, there are two broad categories of action by trustees which could give rise to liability: those which the trustee knew to be wrong, whether criminal or not; and those which the trustee did not know to be wrong. Trustees cannot obtain cover to protect against their own criminal acts as that would be contrary to public policy. Moreover, since insurance is a contract of the utmost good faith, it seems to us highly probable that the same would be true for actions which the trustee knew to be wrong, though not criminal. However, we would not object if, in appropriate cases, a charity paid for insurance, either directly or by reimbursing the trustee for the premiums, for a policy to cover a trustee from personal liability for acts either properly undertaken in the administration of a charity or undertaken in breach of trust but under an honest mistake. Trustees would need to satisfy themselves that the degree of exposure to liability, and the cost of effecting insurance, justified the expenditure.

38. By virtue of section 310(3)(a) of the Companies Act 1985 as inserted by Section 137(1) of the Companies Act 1989, companies are no longer statutorily precluded from purchasing and maintaining insurance for any officer of the company or any person (whether an officer or not) employed by the company as auditor, against any liability in respect of any negligence, default, breach of trust or breach of duty of which they may be guilty in relation to the company. In our view the withdrawal of this statutory restriction does not of itself authorise

a charitable company to provide indemnity insurance for the directors of the company. Provision and maintenance of indemnity insurance for charity trustees confers a personal benefit on them and the directors of a charitable company would usually be precluded from personal benefit by the company's Memorandum of Association. An amendment would, therefore, normally be required to the Memorandum of Association of a charitable company to enable it to take full advantage of section 310(3)(a) of the Companies Act 1985. We would raise no objection to such an amendment, provided that the insurance was limited to that described in paragraph 37 above.

39. The ability of unincorporated charities to provide indemnity insurance for their trustees depends upon whether there is express power to provide such insurance in the governing instrument. Where no such express power exists the necessary power will need to be conferred and trustees will need to show clearly that such insurance is expedient in the interests of the charity when seeking such a power. If the activities of the charity were so simple and uncomplicated that the possibility of loss either by deliberate wrong doing or by negligence could be dealt with by proper administrative controls the necessary power would not generally be given. The trustees would need to demonstrate that there were special circumstances to justify the provision of such insurance. These could include the nature of the charity's activities, the degree of risk of personal liability to which its trustees were exposed, the number of trustees, the amount of indemnity required, and the cost to the charity of effecting liability insurance for them all.

40. If the promoters of a new charity seek to include express provision in its governing instrument permitting it to provide indemnity insurance for its trustees, we would raise no objection, provided that the insurance was limited to that described in paragraph 37 above.

**Trusteeship: Representative
or Nominative Trustees**

41. The governing instruments of charities often include a clause providing for "Representative" or "Nominative" trustees. This confers on a particular body or organisation a right to appoint trustees. The purpose of such rights of nomination is first to provide that a suitable appointing body is in place to ensure that vacancies in the trusteeship can be readily filled and secondly to ensure that the trustee body is well equipped to carry out the trusts of the charity by introducing a responsible and balanced cross-section either of the community or of the users of the facilities which are to be provided. A number of cases arose during the year which suggest there may be confusion in the minds of certain Representative or Nominative trustees as to their role and function.

42. Such trustees must act independently of the nominating body and act only in the best interests of the charity. They are not appointed to represent or pursue a sectional or special interest in the role or activities of the charity. Indeed, there may well be occasions in the administration of the charity where such trustees may have to act in the proper discharge of their trusteeship in a way which is in conflict with the interests of the bodies nominating them. In such circumstances the best interests of the charity must come first: this duty overrides all other considerations.

43. Where there is an irreconcilable conflict of interest, for example in relation to a property transaction, the trustee should be excluded from the particular trustee meeting or meetings while the matter in question is considered. In such circumstances the remainder of the trustee body, including other representative trustees, must also act exclusively in the interests of the charity. Where trustees feel in doubt or in difficulty about the discharge of their trusteeship we would be pleased to provide advice and guidance.

**Trusteeship: Local
Authorities**

44. A similar conflict of interest can also develop where the trusteeship of the charity rests with the Local Authority. In a time of increasing demand on Local Authority finances and resources there is pressure for such authorities to exploit the value of assets in their charge. It is vital, however, that Local Authorities

recognise the clear distinction between the corporate property of the Authority and that which is subject to charitable trusts. In the case of charitable property the Authority's duty, as with any trustee, is solely to discharge the trust in accordance with the terms and conditions laid down in the governing instrument. In particular, it is not within the discretion of the Local Authority as the trustee to apply the charitable assets outside the scope of the trust even though as a local authority it might wish to put the property to a different use. Such a course of action would clearly constitute a breach of trust. Similarly, the Authority should not confuse its objectives as a statutory body with the role of trustee of the charity. Where a conflict of interest does arise in relation to charitable assets, the Authority's first responsibility as trustee is to the charity.

45. A Local Authority which believes that the charitable trusts have failed and a more appropriate purpose should be substituted should not hesitate to put the facts before us so that we can consider whether to make a Scheme to effect a modernisation of the trusts. Indeed, it has a statutory duty to do so under section 13(5) of the Charities Act 1960.

Dealings in land

46. We continued to make wider use of the power conferred on us by Section 29(4) of the Charities Act 1960 to except charities from the requirement imposed by that section to seek our consent to sell land. In 1991 we made a further 10 General Excepting Orders. We have also continued the use of Excepting Orders in those individual transactions where it is certified by or on behalf of the trustees that certain conditions are met. A further 866 Orders were made on this basis. Although the wide use of Excepting Orders for individual charities or individual transactions has enabled some staff to be redeployed, there remains a considerable number of cases which cannot be carried through without our specific authority. We made a further 1,452 Orders during the year relating to all types of land transactions. Of these, 339 authorised the sale of land; 579 authorised purchases, leases or easements; 294 authorised borrowing on security of charity property; and 54 authorised the release of rentcharges. The remaining Orders authorised such matters as conditional agreements for sale, exchanges, and expenditure of permanent endowment and arrangements for its recoupment.

47. We have continued our policy of asking for a second opinion from the District Valuer where the market has not been fully tested and we think that the true value is in doubt. There were 259 such cases.

Charitable bequests: wills

48. During the year we had an enquiry from the Law Society (the body responsible for the professional conduct of solicitors) about the propriety of a charity which employed a solicitor requiring the solicitor to draft wills for prospective benefactors of the charity. We discussed the point with officials of the Law Society. We advised them that not only was will drafting unlikely to be a proper activity for a charity but also that in our view any will drafted in such circumstances would be at grave risk of challenge on the grounds of undue influence following the decision in *Wintle v Nye* [1959] 1 WLR 284.

49. We also take the view that the practice is likely to bring charity generally into disrepute. The Law Society told us in addition that it is their provisional view that it would be unprofessional conduct for a solicitor to draft such a will knowing at the time of drafting that the will could be so challenged. The solicitor could be considered not to have acted in the best interests of the testator if he complied, let alone encouraged, the benefactor to make a will knowing that the will was likely to be subject to a successful challenge in the courts. We consider that the same principles apply equally to non-legally qualified employees of charities and strongly deprecate the practice.

50. We have seen a number of cases where applications have been made for *ex gratia* payments by charities in circumstances where there has been a gift of a specific property to a beneficiary and the balance to charity. In a number of such

cases the specific property has been sold before the testator died. A common example is the gift of a house later sold after the owner went into hospital or nursing home but before the owner died. We were then approached to allow a payment to meet the moral claim of the person thus deprived of the property. We draw attention to the point in the hope that those who advise people making such gifts will also advise them to make appropriate amendments to their wills when the property to be given is disposed of during the testator's lifetime.

The Official Custodian for Charities

51. The Financial Report of the Official Custodian for Charities for the year is set out in **Appendix E**.

52. Work has continued throughout the year to ensure the accuracy of recorded information about the charities for which the Official Custodian provides an investment service. We approached 7,524 charities for confirmation of correspondent details. At the end of the year there were only 246 (3%) such charities for which we have no up to date correspondent details. Trustees of a further 2,200 charities were asked to confirm the investment agent acting for them and 1,700 (77%) had responded at the year end. Collection of this information will enable us to inform trustees of the arrangements for the reduction of the Official Custodian's service following enactment of the proposals for divestment.

53. Considerable interest in the proposals for divestment was expressed to us during the year and we produced a new booklet to explain its major consequences. Although the planned timetable may be subject to some flexibility it is not expected that the basic strategy will change. A full range of publicity and guidance notes is planned for 1992.

54. Many trustees have requested a transfer of their investments out of the name of the Official Custodian in advance of divestment. We decided in 1989 that, unless there were exceptional circumstances, new requests could not be met for want of resources and because of the need to give priority to completing the necessary work involved before the start of divestment.

55. The review of accumulating accounts mentioned in paragraph 95 of our Report for 1990 has continued with the aim of encouraging trustees to switch from gilt-edged securities into accumulation shares in common investment funds. Administration of accounts is simplified by investment in such funds. Because shares can be held in the name of the charity, no action by the trustees is required to secure reinvestment of interest, and as no individual brokerage costs are incurred, the maximum value of annual instalments is obtained. Of 250 accumulating accounts being maintained for extraordinary repair funds which were examined 110 have reinvested in common investment funds.

56. We have also started to review recoupment accounts set up under our Orders to replace capital expended from permanent endowment. By applying the pound-for-pound basis described in paragraph 114 of our Report for 1989 we have been able to close 78 of the 276 accounts examined. This has released income to the trustees for expenditure for the purposes of the charity. A further 44 recoupment accounts have been reinvested in common investment funds as a result of this review.

57. Many charities are too small to obtain a professional service from a stockbroker or investment agent. Our continuing concern is to help them prepare for the return of their investments and give guidance in administering them. We recommend the use of common investment funds. These funds provide charities with the opportunity to secure a proper balance between capital growth and income. The investment process is simple, the cost of investment is low, holdings are held in the name of the charity thus avoiding the need to re-register on changes of trusteeship, and interest is remitted in full without the need to reclaim tax relief. The relative services and performances of these funds must, however, be assessed by trustees in the context of the investment and income needs of their

charities. We shall be providing trustees with a list of funds currently available during our publicity campaign in 1992.

58. The project to replace the Official Custodian's current computer system was not completed in time for planned live running in December 1991 as described in paragraph 96 of our Report for 1990, and this has now been set for the Spring of 1992.

59. During the year the Official Custodian remitted a total of £98m by way of dividends and interest to charities, an increase of £4.1m over the previous year. We have been able to increase the speed of remitting dividends gross overall. The sum undistributed at the year end was £1.8m, approximately 1.8% of total receipts during the year.

Charity Supervision

Registration of Charities

Generally 60. For the third consecutive year we have added over 4,000 charities to the register (4,042 charities in 1991 compared with 4,013 in 1990). Largely because of our success in identifying inactive charities, mainly because they have ceased to operate or been wound up, the number removed was high for the second year running (1168 in 1991 compared with 749 in the previous year). With the benefit of a computerised register, we are for the first time able to provide accurate figures of the total number of registered charities. At the end of 1991 there were 166,503 registered charities on the computerised Register, broken down as follows:

Main Charities	134,623
Charities administered in connection with main charities	17,507
Charities grouped under a common name (2,394 groups)	14,373
	<hr/>
	166,503

61. In addition, there are approximately 9,000 registered charities administered in connection with health authorities. These have not yet been entered onto our computerised system as considerable work is required to update our records, and to obtain information about the large number of other charities in this category which need to be registered. It is planned, therefore, to exempt the trustees of these charities from the duty to register for a period of 3 years to enable us to undertake this work.

62. In our report for 1990 we referred to the launch of the largest census of charities ever undertaken and our plans to write to registered charities seeking confirmation of their correspondent and banking details, annual income and copies of their latest accounts. The census commenced in October 1990 and this first stage in our annual mailing of charities was completed in Autumn 1991. We wrote to 130,881 main charities and by the end of 1991 we had received 78,987 (60.3%) positive replies. We received a total of 61,306 sets of accounts compared with 13,743 in 1990: 40,123 sets of accounts were returned to us with the mailing forms and 21,183 were sent to us separately.

63. The total number of accounts submitted to us in 1991 represents 77% of those charities with whom we have made contact in the first year of mailing and some 46% of the total number of main charities on the Register. This contrasts with a return rate of 11% in 1989. We believe that this is a satisfactory result at this stage and it supports the view we expressed to Parliament that even in the absence of the effective sanctions envisaged in the Charities Bill, our target of obtaining 80–90% of the accounts of active registered charities is achievable by 1994 (Treasury minute of May 1991 Cm 1542).

64. The Database now clearly identifies all registered charities which have provided the updated information and accounts which we have required from trustees. It also identifies those which have not. The second year's mailing, which commenced in March 1992, is aimed at all main charities which responded to our first request for information, subsidiaries of main charities, charities which operate as groups and charities registered since the Register was computerised. The trustees of these charities will be asked to confirm a wider range of their registered details, including details of their objects, area of benefit and governing document. We propose to start making specific default markings when this exercise is complete since, at that stage, we expect to be in contact with the vast majority of active charities.

65. In our Report for 1990 we referred to our intention to test the effectiveness of different methods of tracing those charities which did not respond to our mailing. A proportion of such charities, largely in the Midlands and the North West of England, were referred to local agents operating under the auspices of co-ordinating organisations such as Rural Community Councils and Councils of Voluntary Service. They were successful in contacting 5,777 charities. We have, however, compared the cost of this exercise with the cost and effectiveness of using our own staff and internal records. The result of this comparison led us to decide to undertake this task ourselves. We are establishing sections in each of our three offices in April 1992 which will be responsible for tracking down those charities which have not responded to our mailings and we aim to complete this task by November 1993.

66. Of those charities which did respond to the mailing, several thousand have either notified us of changes to their registered details, or have advised us that they have ceased to operate. In many instances, the information which has been provided has led us to believe that the charity may be experiencing operational difficulties, or that its trusts may need updating. In these cases we have made further enquiries of the trustees with a view to establishing whether there is indeed cause for concern and to see whether we can help.

67. In many cases, the trustees who have responded to the mailing took the opportunity to seek our advice about problems which they were encountering, or to seek information on more general issues affecting the charitable sector. The mailing has undoubtedly prompted many enquiries from charities which might not otherwise have been brought to our attention. In this respect the exercise has proved successful not only in meeting its original objective of establishing contact with the very many charities with which we had lost touch, but also bringing to light issues where we can help trustees by providing them with advice and information to improve the effectiveness of their charities.

Opening of the Public Register

68. The computerised Register was officially opened to the public by the Home Secretary, The Rt. Hon. Kenneth Baker MP, on 20 May 1991. The Home Secretary welcomed the introduction of the computerised Register and the benefits it would bring to us and to our customers. The Register can now be consulted at each of our offices in London, Liverpool and Taunton.

Cases of interest

69. In our Report for 1990, we referred to two cases which arose out of the armed conflict in the Gulf, namely **The Gulf Trust** established to relieve members of the armed forces who suffered during the conflict and **The Kuwaiti Support Fund** established to support those citizens of Kuwait who are in need as a result of the conflict. The continuing plight of the Kurdish people has given rise to the creation of two charitable trusts. **The Kurdish Charitable Trust** is established to relieve the sickness, hunger, homelessness and distress of Kurdish people and to rehabilitate such people in the United Kingdom, Austria, Belgium, Germany and Sweden. **The Kurdish Life Aid Trust** is established to relieve poverty by the provision of essential food, clothing, medicine and shelter for Kurdish refugees in the United Kingdom and elsewhere out of Kurdistan. We also registered **The Amar Trust**. While the charity is established for the relief of poverty, distress or

suffering by appropriate charitable (whether medical, rehabilitative, financial or other) assistance in any part of the world, it intends to concentrate initially on the Shias caught up in the continuing atrocities in the south of Iraq.

70. **The Independent Iran Fund** is established for the relief of sickness and poverty respectively amongst those injured and bereaved in the earthquakes which occurred in Iran in June 1990.

71. Relatives of victims of the Lockerbie disaster and survivors of the Marchioness river boat disaster have, with others, established a charity called **Disaster Action** whose purposes are to promote the safety of the public against disasters involving multiple deaths or injury whether on land, or water or in the air. The charity is particularly concerned to research and advance principles and methods for furthering the prevention of and protection against accidents of all kinds likely to give rise to such disasters. The charity is also established to provide support and succour to those who may have been or may be affected by such disasters.

72. The flow of charities to promote the relief of poverty, sickness and distress and for the advancement of education (both academic and vocational) in individual Republics being the territories of the former Union of Soviet Socialist Republics was sustained. We have recently agreed to register **The BEARR Trust** which is intended to pursue such purposes throughout these territories.

73. During the year, there has been a noticeable increase in the number of applications for registration of charities for the advancement of public education in the protection and improvement of the natural environment and for the promotion of research in this field. It is not always easy to draw up satisfactory objects for some of these charities, since fashionable terms, such as "green", "sustainable development", "ecologically friendly" and "ecological principles", are too vague and imprecise to describe charitable objects. An interesting case which illustrates the difficulty and how it may be overcome is **The Wilderness Trust**. This charity was established to advance the education of the public by increasing knowledge and understanding of wilderness and its conservation and the interrelationship between wilderness and the environment generally by the provision of instruction and of opportunities for direct experience of wilderness. The term 'wilderness' is defined in the charity's governing instrument as meaning "those areas of land or sea of scientific interest the primeval state of which has not been discernibly affected by the social or economic activities of man".

74. Following the decision of the House of Lords in the case of **Inland Revenue Commissioners v McMullen and Others** ([1981] AC 1), to which we referred in our Report for 1980, the organisation or provision of facilities which will enable pupils of schools and universities to play sports is a valid charitable purpose because it ensures their physical development and education as well as the development of their minds. There has been a noticeable increase during the year in the number of applications for registration of such charities. Of particular interest is **The Cliff Richard Tennis Development Trust** established to promote and facilitate the playing of tennis amongst schoolchildren who would not otherwise have the opportunity to do so.

The Commissioners' decisions on charitable status

75. We were asked to consider whether an institution to be known as the **Margaret Thatcher Foundation (Appendix D(a))** would be eligible for registration as a charity if it were to be established on the terms as drafted. We took into account the proposed activities of the Foundation and we advised the promoters that a substantial part of those activities was not educational in the charitable sense but was concerned with arguing and advancing a particular political viewpoint. No application for registration has been received.

76. The promotion of the arts has long been accepted as a charitable purpose on the ground that it advances public education. We were asked to consider whether the promotion of the arts without any reference to the advancement of

education was charitable under the fourth head of charity, namely purposes beneficial to the community in a way which the courts have held to be charitable. We had no difficulty in agreeing that it was (**Promotion of the Arts, Appendix D (b)**).

77. In another case we reviewed the position of an institution which had been registered in 1989. Doubts had arisen about whether its trading activities, carried out through the medium of a shop, were compatible with charitable status. We decided to advise the trustees to restructure the charity so as to overcome the potential difficulty (**Community Shop, Leeds, Appendix D(c)**).

78. **The Albert Kennedy Trust (Appendix D(d))** recruited and trained older homosexual men and lesbian women to act as role models and to provide stable and supportive homes for young homosexuals and lesbians in need of care and counselling. Although we were able to agree that the objects of the Trust were exclusively charitable, we sought advice from the Official Solicitor as to whether he was satisfied that the activities and procedures of the Trust met the requirements of other areas of the law, particularly in relation to the care of young people under 16 years of age. The advice received from him and others enabled us to accept the Trust for registration.

Investigation of Abuse and Protection of Charitable Property

Generally 79. We have continued to expand our capacity to supervise charities effectively. During the year we increased the resources applied to this important part of our work which is at the heart of maintaining public confidence in the charitable sector. Application of those resources to the most important cases has resulted in improved performance in protecting charity property.

80. During the year the number of staff engaged in monitoring and investigating charities increased from 44 to 50. On an experimental basis we set up in our London office a team to specialise in fundraising abuses. The results will be evaluated during 1992. In September we set up an investigation team in our Taunton Office. This is due to be strengthened in 1992 with the addition of further staff including a professionally qualified and experienced accountant. The team will deal with inquiries into charities based in the South and South West of England and South Wales.

81. Our training programme, supported by our professionally qualified staff, continued to focus, in particular, on legal and accounts training for new staff. We are developing a computer-based programme for accounts training. An analysis of the need for accounting skills throughout the Department was carried out to enable us to ensure that both the training of our own staff and our requirements for professional skills were met. Towards the end of the year we initiated a recruitment drive to fill three accountancy posts in the Commission.

82. The Investigation Division Management Information System is now well established, but we continued to refine it throughout the year in order to improve the quality and accuracy of the information which it provides and to ensure that the system is as simple and robust as possible. The introduction of the system has enabled us to identify and concentrate on the most serious cases. At our invitation the National Audit Office examined the methods by which we calculate the value of charity property protected by our work. We are pleased to report that they confirmed that the requirements for audit and validity of calculation were met.

Investigation 83. The simplification of the Management Information System has led us to record inquiries by "cases under investigation" rather than "causes for concern" or "complaints" as recorded in the past. Cases are categorised and accorded priority. One of the most important criteria used in determining the priority is the amount of charity property at risk or protected. This criterion is intended to provide an

indication of the value of the investigation and is not necessarily a reflection of the honesty and integrity of the trustees concerned. It includes property at risk due to inadequate financial and management controls (maladministration) as well as property misapplied, for example for non-charitable purposes (malpractice). During the year we opened 556 inquiries emanating from the following sources:

INTERNAL:	
Internal monitoring	42%
our other operations	4%
EXTERNAL:	
Public and media	35%
Inland Revenue	10%
Police	4%
Others	5%

84. We concluded 397 inquiries during the year. In 129 (32%) irregularities were found. At the year end 648 cases were under inquiry. These investigations fall into the following categories:

Maladministration	40%
Malpractice	26%
Constitutional irregularities	21%
Fundraising abuse	10%
Political activities	3%

85. The approximate value of property which we protected during the year was £16.8m and the value of property which we recovered during the year was £0.8m. We made 34 orders freezing bank accounts containing a total sum of £0.2m. We removed 12 trustees, appointed 16 trustees, and referred 70 cases to the police. We prohibited further fundraising in 25 cases.

Monitoring

86. We have continued to develop a system to monitor situations where failure and abuse are most likely to be found. As we reported last year we commissioned a study to explore how selective monitoring of charities could be achieved by means of a computer system based on an annual return of information from all charities. We completed the first stage of the study which was based on a questionnaire sent to a random sample of 1,200 registered charities. We also took the views of representatives of the voluntary sector. The purpose of this stage was to ascertain whether a questionnaire would identify areas of concern, to test the effectiveness of the questions themselves, and to establish whether questionnaires should be tailored to particular types or sizes of charities.

87. This trial stage took considerably longer than expected mainly because of the time some charities took to respond and of inaccuracies in the Charity Database at the time the questionnaires were first sent out. Considerable effort was spent in tracing charity correspondents. In the event, 712 of the 1,200 questionnaires issued were completed and returned, representing 68% of active charities sampled. The trial confirmed the effectiveness of monitoring charities by means of a questionnaire and identified a number of key areas of charity operations which should be monitored. The results also suggest that monitoring would be more effective if it were targeted on the basis of certain criteria. We will test this assumption in the second stage planned for 1992.

88. In addition to the study, work continued on the examination of accounts. During the year we examined the accounts of almost 8,000 charities of which 220 were referred for further investigation. Concluded cases identified from the examination of charity accounts generally and the monitoring study account for £1.5m of the property protected.

Case of Interest

89. As noted above the majority of our cases concerned maladministration (40%), many of which stem from trustees not exercising sufficient managerial

and financial control over their charities. The exercise of our responsibilities in such cases may well extend beyond ensuring the remedy of deficiencies in the administration of the charity. A new body may need to be appointed, a better legal framework established and more relevant purposes identified. Each of these can generally be done effectively only by means of a scheme made by us.

90. One such case concerned a project for sick children suffering from a particular illness which had attracted adverse press comment and was the subject of local suspicion that the charity was not being properly managed. Although a large property had been purchased for conversion into a children's home and various dates of opening had been announced, little progress had been made on the necessary work. Four key staff resigned following disagreement with the charity's appeals organiser and local people involved in fundraising refused to hand over funds until their concerns had been allayed. Our investigation revealed that the charity was at a standstill, internal controls were weak and the trustees were exercising insufficient control over the appeals organiser. The trustees were based at a considerable distance from the project which added to these difficulties.

91. Following the publicity we gave to the matter three local trustees were appointed to take control of the administration of the charity and regain local confidence. They succeeded. The home opened in September 1991 and the moneys held by local fundraisers were released. We are now involved in widening the objects of the charity to include all seriously sick children in order to ensure the future viability of the charity.

Associated organisations

92. During the year we protected £0.5m of charity funds which were at risk through lack of proper controls to distinguish between the assets and finances of charities and their associated organisations.

93. Charities must have dedicated accounting and reporting systems which ensure that the property of the charity and its financial transactions are properly identified and accounted for. This is particularly the case when the charity works closely with an associated non-charitable company. Any expenses incurred jointly with the associated organisation, for example accommodation and administration costs, should be apportioned clearly and fairly to ensure that the charity is not subsidising the activities of the non-charitable organisation. Trustees are under a duty to ensure that funds belonging to a charity are expended solely on the charity's objects and not for the benefit of any associated non-charitable organisation.

94. In the case of two inquiries, we found that charity funds had been intermingled with those of an associated non-charitable organisation because the accounting systems had not sufficiently differentiated between the two organisations. As a result charity funds were misapplied to non-charitable purposes. Following our inquiries matters were put right. Charity property which had been misapplied was restored, appropriate accounting systems were put in place and claims improperly made on the charity's funds were withdrawn.

95. Where there is good reason for charities to work in close association with linked non-charitable organisations it is vital in our view that, in addition to proper organisational and accounting procedures being in place, the names of the charity and its non-charitable associated organisations are sufficiently distinct to prevent confusion either as to the activities of the separate bodies or the identity of the body being supported.

Fundraising

96. In our Report for 1990 we expressed our concern that cynical abuse of the good name of charity by unscrupulous fundraisers can have an adverse effect on charities far beyond the actual damage caused by their activities. During the year we have made considerable efforts to warn charities and the public alike to be on their guard against the activities of such people. We have, for instance, mounted a publicity campaign through the press and through radio and television

appearances advising the public to be on their guard and if in doubt to ask basic questions to ascertain the *bona fides* of those collecting in the name of charity. We have also set up a pilot telephone "hotline" as an experiment in the North West of England to help the public report any suspicion they may have about charities or fundraising.

97. We suggest that when, for example, donations are sought by telephone, members of the public ask:

- "is the organisation a registered charity?"
- "what percentage of the donation will be spent on the objects of the charity?" and
- "if payment is to be made by cheque, is the cheque to be made payable to the charity?"

98. In the case of street collectors, members of the public should check that the collection box is sealed and the name of the charity is prominently printed on it. If in doubt, they should not hesitate to ask to see the Certificate of Authority which should be signed by the promoter.

99. It is the responsibility of trustees to ensure so far as possible that fundraising carried out in the name of their charity is controlled. In 19 inquiries we found that the proportion of funds collected which were handed over to the charities concerned was less than 10%. We have acted in these cases to prevent further fundraising and protect the assets of these charities by freezing bank accounts containing the funds collected, as we suspected that moneys raised were being misapplied by the fundraisers to non-charitable purposes.

100. In our Report for 1990 we also expressed our concern that some hospital authorities were not exercising sufficient control and vigilance over fundraising carried out on their behalf. We wrote to 1,008 authorities drawing these matters to their attention and recommending procedures which they should adopt when dealing with fundraising. As a result of our letter, we have received 22 enquiries asking for further information and advice and four reports giving information about dubious fundraisers which are currently being examined.

101. Charities involved with hospitals are particularly vulnerable to unscrupulous fund-raisers because of the public's natural enthusiasm and generosity in supporting local medical care. One case demonstrates this all too clearly.

102. Our investigations into the **Hospital Aid Society** and its associated lottery company, led us to refer the matter to the police. On 31 January 1992 the promoter and his associate were convicted at Liverpool Crown Court on offences including deception, false accounting, supplying false information and of illegally applying lottery proceeds raised between October 1984 and September 1986. They were jailed. It was estimated by the police that over a period of two years income from the lotteries would have exceeded £2m, but, although some payments were made to hospital charities, over 40% of the money raised was diverted to the personal benefit of the promoter and his associate. We have made an Order protecting the moneys remaining in the charity.

103. The success of this scheme over some years undoubtedly owed much to the cause for which the lotteries were run and in this connection it is worth quoting Judge Richard Hamilton when passing sentence:

"The people of Merseyside are not always rich. They are always very generous. They are generous to sport, hospitals and handicapped children and it is from these sources that each of you to different degrees are shown to have profited".

Chain letters 104. During the year we considered the use of chain letters for charity fundraising. A charity had issued a chain letter to companies for the stated purpose of raising

£200,000 within a week. Each recipient was asked to forward a cheque for £20 to the charity and to retype the letter forwarding it to 10 companies which they thought would be willing to help. The letters generated a large number of enquiries seeking our views on the matter.

105. In our view, chain letters can cause particular problems for charities. They can be difficult to control and, as they progress, the link between donors and the charity itself is weakened. As a fundraising method, they are not universally acceptable and can attract adverse comment. If charity trustees consider that they must use this method to raise funds, in our view they must ensure that:

- the charity is clearly identified and its registered number entered on all letters;
- the purpose for which funds are sought is clearly stated, so that the public know precisely for what they are contributing and are not misled into thinking that they are giving to specific projects when the money will in fact go into the general funds of the charity;
- all contributions are made directly to the charity and are paid into a bank account under the control of the trustees;
- such contributions are separately accounted for;
- a date on which the appeal will finish is included in the letter;
- if the appeal is for a specific project, then an explanation of how any surplus funds will be used should be included in the letter.

Commercial use of charity names

106. We also had occasion to consider the use of charity names by commercial concerns. In our view, charity trustees should be wary of entering into arrangements whereby the charity's name is to be used by a commercial company in return for money. This might involve the endorsement of a commercial product by a charity or the use of the charity's name in relation to a commercial product. There are cases when a charity can properly associate with a commercial organisation to their mutual benefit but care must be taken to protect the interests of the charity and to ensure that the relationship is, and remains, appropriate.

107. The charity's name is a valuable asset. It is the means by which it is identified in the Central Register of Charities and to the public. Before allowing the use of a charity name on a commercial basis, charity trustees must first consider the needs of the charity and whether funds could be raised by other methods. The name of a charity must not be exploited for non-charitable purposes. If a charity's name is used commercially it must be shown that the arrangement is expedient, in the interests of the charity and on terms which are advantageous to the charity. Any such arrangement must be precisely defined by the charity trustees in every detail and kept under review. They must ensure that there is no misuse of the charity name nor any improper exploitation of its association with a commercial organisation and that the arrangements made allow them to prevent any such misuse.

108. Payments to charities for promoting commercial products are usually taxable. Tax can only be avoided if the relationship between the charity and the commercial product is a purely passive one, such as direct payment for the use of a logo. Charity trustees should ask the Inland Revenue for advice before entering into an arrangement.

Investigations & the media

109. In our Report for 1990 we highlighted the positive role of the media in detecting and publicising cases of fundraising abuse. In particular, we described how the press coverage of the fundraising activities of the Association for the Disadvantaged had enabled us to act swiftly to freeze the Association's bank accounts and protect the funds which had been raised for the charity. An order for the removal of the trustees and the appointment of new trustees was subsequently made. We are pleased to report that the funds have now been applied to the purposes for which they were raised from the public.

110. We remain concerned, however, about the damage to charities which may arise from inaccurate reporting. It was, for example, reported that The Simple Truth Appeal for the Kurds had raised £57m which had been passed to the British Red Cross Society but that only a small amount had reached the beneficiaries. We investigated the matter and found that the amount raised throughout the world was £57m of which £13.8m was under the control of the British Red Cross Society. Of this money, a balance of only £396,000 had not been distributed and this was being held to provide necessary relief during the winter months. We hope that any damage to the charity arising from this unfortunate incident has been overcome.

Formal inquiries
(a) OXFAM

111. In May 1991 we published the report of the inquiry and our conclusions into whether, in advocating and campaigning for political change, in this country or abroad, the trustees of OXFAM were acting in accordance with their trusts and the restrictions of charity law in England and Wales (HMSO reference ISBN 011.701.621). Although we recognised the value and importance of the work of the charity and the experience and commitment of the trustees, we nevertheless concluded that in recent years the trustees had on occasion exceeded the charity's objects and the law which restricts charities from undertaking political activities. We therefore required the trustees to accept that some of their current campaigning work was political and not charitable. We informed the trustees that the unacceptable political activities of the charity must stop.

112. Following discussion with OXFAM about certain aspects of the Inquirer's report and our conclusions, we received the trustees' formal response to our findings in November 1991 and we replied the following month. We welcomed the remedial action taken by the trustees in the light of our criticisms of some of their campaigning activities. We noted that the mock referendum which was held in relation to Cambodia would not be repeated; that the booklet **FREE FRONTLINE AFRICA** containing recommendations on sanctions policy against South Africa, was no longer distributed and had been withdrawn from OXFAM's shops; that if further editions of the book **FRONTLINE AFRICA: THE RIGHT TO A FUTURE** were printed, amendments would be made to take our findings into account; and that the book **PUNISHING THE POOR: THE INTERNATIONAL ISOLATION OF KAMPUCHEA** would not be reprinted or further distributed by OXFAM.

113. We considered, however, that in the context of the issues raised in the report of the inquiry and our findings, the trustees' response on the subject of the charity's future campaigning activities was ambiguous and, if taken at its face value, could be construed as endorsing the type of campaigning which was criticised in the report and by us. In further discussion with the trustees we have, therefore, restated the position on campaigning.

114. To be a charity an organisation must be established for the public benefit. The courts have decided that a political object cannot be charitable because it cannot be proved that the achievement of the object would be for the public benefit. It follows that charity trustees who wish to take a course of action which could be seen as political must take particular care. Any action taken must be in accordance with the charity's purposes and within the powers given by the document controlling the charity (which vary greatly from one charity to another). It must be taken exclusively on behalf of the beneficiaries, in pursuit of the charitable objects and in a manner appropriate to a non-political body. It must not be of a general campaigning nature, but particular to the concerns of the charity and to its beneficiaries.

115. The educational purposes of a charity may include a power to inform the public about its work and circumstances which affect the trustees' ability to carry it out. In doing so, the trustees can seek to inform the public of the range of options and possibilities so that they can draw their own conclusions, but should not set out to persuade them of a chosen point of view: their educational work should be neither political nor partisan.

116. It is clear that no organisation whose objects include a political purpose can be accorded charitable status. If in pursuing charitable objects trustees find themselves involved in public discussion and in serving governments with information and recommendations, that activity must demonstrably lead to the direct benefit of people for whose benefit the charity is established. It must not predominate over the primary charitable activity in such a way as to imply that their purposes have in effect become political.

117. The trustees of OXFAM have assured us that it was never their intention to justify their campaigning work on the grounds of relatively low proportion of expenditure or of the need to adopt a political stance. The trustees recognise the limitations imposed by trust law on the extent to which they may campaign in the interests of their beneficiaries. They have assured us that their concern has been, and is, to work for the benefit of those in need by raising public consciousness about the circumstances which affect the poor, contribute to their plight or hinder the charity's work.

118. We shall continue to monitor closely the activities of OXFAM and other campaigning charities to ensure that their campaigns are within their powers and the limitations imposed by charity law.

(b) War on Want

119. The terms of reference of this inquiry were to ascertain the circumstances which had led to the potential insolvency of War on Want and the extent to which members or past members of the Council of Management, employees or past employees and the charity's professional advisers had contributed to the state of affairs with particular reference to the treatment of special funds and special project funds in the hands of the charity.

120. The inquiry was probably the most complex ever conducted on our behalf, involving the inquirers in the detailed examination of accounts and accounting records with one of the United Kingdom's major charities, and in taking evidence from a considerable number of people who had been connected with the charity in a formal capacity during the relevant period.

121. The Inquirers' report and our response to it were published on 26 March 1991 (HMSO ISBN 0.11.701612.8). We wrote to War on Want on that date pointing out that the report identified many grave deficiencies in the administration of the charity, including:

- the production of misleading accounts for five successive years (1985–89);
- failure to account separately for funds from different sources for given purposes resulting in their wrongful application (albeit for charitable purposes);
- failure to recover £36,745.98 owed to the charity by WOW Campaigns Limited;
- failure to recover £66,385 owed to the charity by War on Want Trading Limited;
- failure to control the charity's programme of work in accordance with the resources available;
- failure to define the relationship between the charity and the consortia of charities to which it belonged;
- the absence of proper membership records;
- unresolved internal disputes;
- other serious failings of management and financial control.

122. We considered that the responsibility for these failures lay with the members of the Council of Management in office at the relevant times. Further failures on the part of the charity's former auditors were identified.

123. We concluded that all those assets which had been misapplied must be restored to the charity in the shortest possible time and acceptable standards of accountability must be established immediately. In particular we said that the Council must:

- within one month of receipt of our letter inform us how they proposed to identify all the funds received from any source after 1 April 1985 to that date on trust for special purposes which had not been spent on the purpose for which they were given;
- within two months thereafter furnish for our consideration a plan acceptable to the charity's auditors and bankers for the early restitution of all such monies to the special funds;
- subsequently at three monthly intervals furnish us with a report by the charity's auditors and solicitors confirming the progress being made on the fulfilment of the plan;
- take steps forthwith for the immediate recovery of all moneys owed to the charity by WOW Campaigns Limited and War on Want Trading Limited, and inform us within one month of the receipt of our letter how and by when those moneys would be recovered;
- furnish us within one month of the receipt of our letter with a statement of all the amounts in respect of which the European Community had not yet received a full report or had not discharged the charity from all its obligations;
- within one month of the receipt of our letter obtain a report from the charity's auditors detailing how the accounting and budgeting systems and records of the charity could be improved to correct the weaknesses identified in the inquirers' report; and obtain further reports six months after the date of that report on the extent to which all the recommended changes had been implemented, and make those reports available to us;
- ensure that moneys, other than general funds, which were received and held by the charity on a trustee or other fiduciary basis were identified and held in specific separate trust bank accounts and that all the accounts were always held in credit;
- direct the Company Secretary to prepare a statement on the state and accuracy of the charity's statutory books and how they were to be maintained in the future and to present the statement to us within two months of the receipt of our letter;
- produce a detailed business plan within one month of the receipt of our letter showing how the solvency of the charity might be restored and maintained.

124. In their general response War on Want explained that a new Council of Management had been elected on 24 November 1990 and now consisted of 12 people with no previous involvement in the management of the charity.

125. In April 1991 the charity's new accountants produced a report with proposals for tracing special trust funds which had not been spent on purposes for which they had been given. By October the tracing exercise had been completed and the accountants reported that on 21 October 1991 the liability for unspent special trust funds stood at £166,777. In the same month the accountants completed a critical review of the solvency of the charity. They concluded that at 31 October 1991 the position showed an improvement in the position from that on 31 May. We have kept the Attorney General fully informed about this and other relevant matters.

126. Towards the end of the year the accountants reported that in the main their recommendations on financial and management systems and control had been implemented properly. We made known our concern about those recommendations which had not been implemented and we are pressing the

matter. By the end of the year plans for repaying to War on Want the moneys owed to it by the two related non-charitable companies had not been completed.

127. The new Council of Management have made progress towards correcting the mistakes of its predecessors but much remains to be completed before the rehabilitation of War on Want can be said to have been successfully achieved.

Two further cases of interest

128. Failure to keep proper books of account and manage the bank accounts properly are illustrated in two further inquiries completed this year.

(c) *The Animal Defence Trust*

129. This charity rescues and cares for injured and stray animals. We had received complaints about the Trust and had had grave difficulty in obtaining accounts from the trustees and in securing satisfactory answers to the queries we had raised on them. The report disclosed that the trustees had not maintained any cash books or other ledgers recording income and expenditure. Such accounting records as there were comprised bank statements, cheque stubs, invoices and handwritten statements giving the breakdown of one trustee's personal expenditure on foodstuffs and vet's bills for the animals in the Trust's care. There were no proper accounting systems in existence. For these and other reasons we concluded that the charity had been mismanaged and that the property of the Trust was at risk while the present trustees remained in office. Consequently we made an order under section 20(1) of the Charities Act 1960 removing the present trustees and appointing four new trustees in their place.

(d) *South Tyneside Disablement Advice Service*

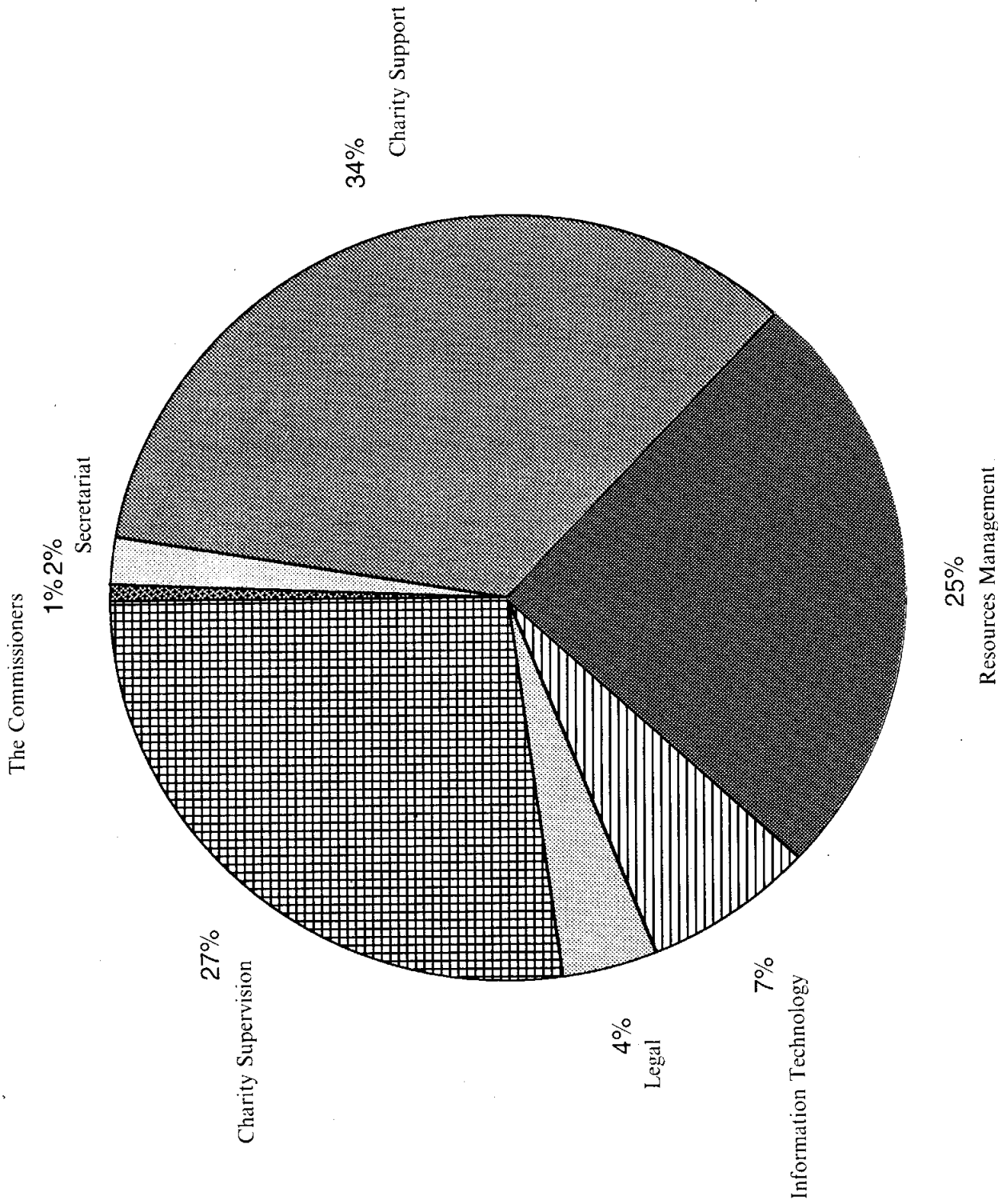
130. We instituted an inquiry into the affairs of this organisation following the receipt of numerous complaints, the chief one of which was that there had been a lack of financial control by the Management Committee generally and by its Treasurer in particular. We found, among other things, that in 1989 an employee of the Service had been appointed to look after its day-to-day finances, including petty cash, and to provide periodic financial reports to the Committee. That employee was also one of the three signatories to the charity's current bank account, the others being the Treasurer and the then Secretary, both of whom were members of the Committee. The bank had a mandate to honour the signatures of any two of them. In order to reduce the number of journeys he was having to make to the Charity's office to sign cheques, the then Secretary acceded to the request of the employee and signed about six blank cheques. It was later revealed that one of those cheques had been fraudulently cashed. In February 1991, the employee pleaded guilty at Newcastle Upon Tyne Crown Court to a single specimen charge for a theft of £700. Although the Committee took steps to tighten up the procedures for operating the bank account once the fraud had been uncovered, we advised the Committee of our concern about what had transpired and warned that we would monitor closely the charity's future performance.

Cost and Manpower of the Commission

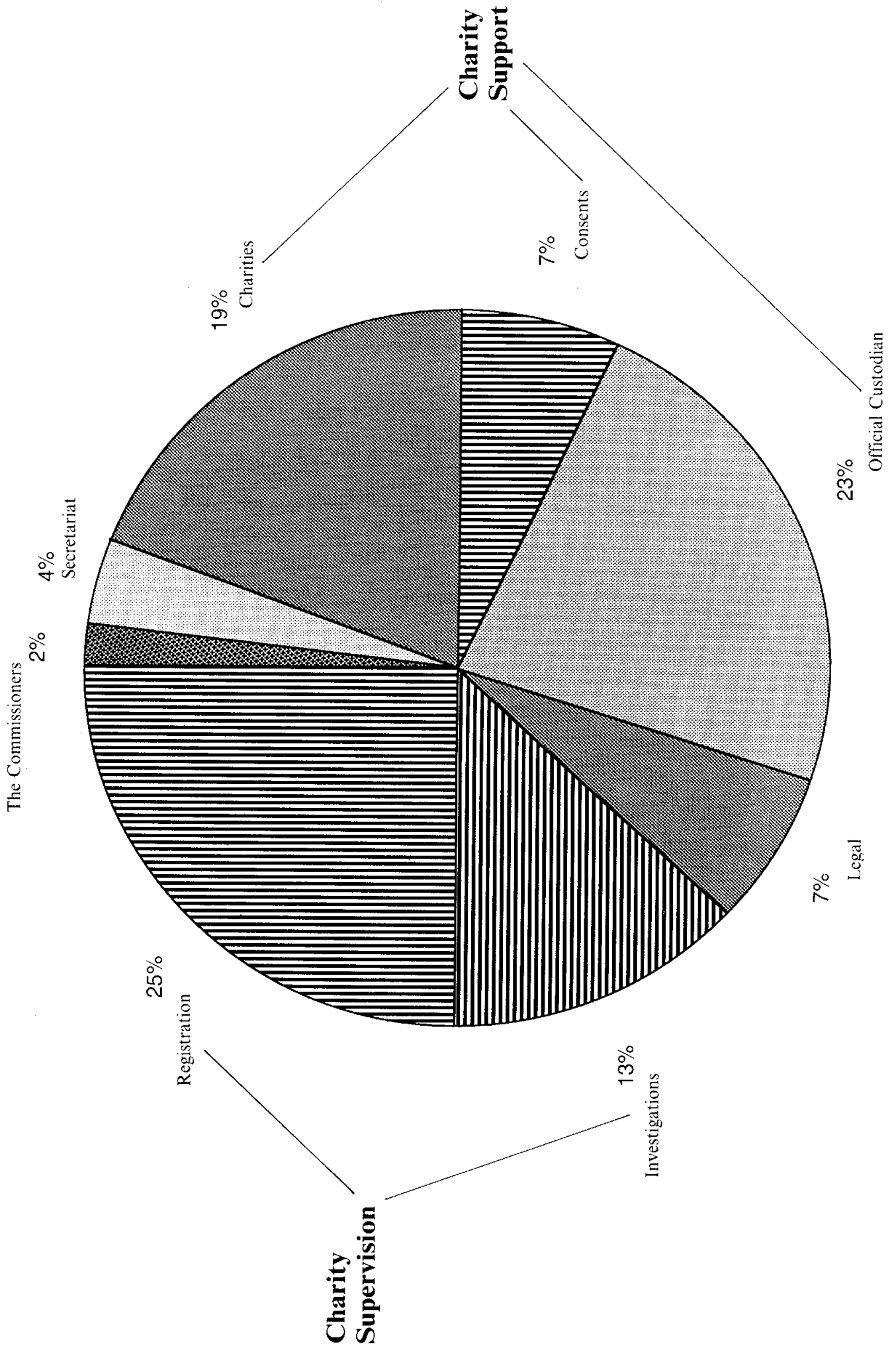
131. The planned expenditure of the Commission for the financial year 1991-92 was £19.642m of which £8.865m was for salary related costs including £1.429m for information technology staff. Other expenditure was expected to be £3.833m for information technology, capital and running costs; £2.45m for accommodation costs and £4.489m for other costs. The following charts show the allocation of resources and of staff to the main divisions of the Department.

132. The resources devoted to the Commission more than trebled and the number of staff has doubled over the last five financial years, enabling us to implement the recommendations of the Woodfield Report. In particular we have been able to introduce major new computer systems, information technology generally, and establish administrative systems to provide the essential under-pinning for the work of the operational divisions in supporting and supervising charities. The work arising from maintaining annual contact with the trustees of registered charities, obtaining their accounts and the further enhancement of our investigative and monitoring capacity will demand a further increase in resources during the next financial year.

Distribution of Staff by Function



Breakdown of Total Costs between Operational Divisions



The Charities Official Investment Fund

133. In their 1991 Report, the trustees of the Charities Official Investment Fund observe that in a year of international upheaval and a worldwide slowing of economic growth, the United Kingdom economy remained depressed, although further reduction in inflation and interest rates was achieved. The year proved to be a difficult one for income funds such as COIF Income Share Portfolio since many higher yielding companies suffering from the recession did not fully participate in the equity market recovery. Nevertheless, against this background, the Income Share value of the Fund rose in 1991 by 11.1% to 501.17p. The dividend was increased by 4.2% to 29.60p per share, giving a yield of 6.6% at the year end. Over the last ten years the COIF Income Share value has risen by 12% p.a. and the dividend by 7.7% p.a., compared with a Retail Price Index rise of 5.7% p.a.

134. The Accumulation Shares rose in value by 17.6% to 1,851.41p over the year. Over the last ten years, as a result of both income accumulation and capital appreciation, the COIF Accumulation Share value has risen by 16.6% p.a. compared to a rise of 5.7% p.a. in the Retail Price Index.

The COIF Charities Fixed Interest and Deposit Fund

135. The new Fund, which was formed on 1 April 1990 following the termination of the Charities Deposit Fund, is made up of both fixed interest shares and deposit accounts. The shares provide an investment in a portfolio of fixed interest stocks, principally UK Government stocks. The Deposit Account is designed for a charity's cash balances and enables a charity to obtain the higher rates of interest usually available only on large sums in the London money market.

136. In their 1991 Report, the trustees record a growing interest by charities in the Fixed Interest Income Shares. At the year end the portfolio amounted to £7.7m compared with £5m at 31 December 1990. The share value rose from 105.85 at 31 December 1990 to 113.90 at 31 December 1991. Accumulation shares, with income reinvested, rose by 19.1% to 133.20 from 111.85 at 31 December 1990. The dividend paid for the period was 11.6p per Income Share to give a yield at 31 December 1991 at 10.2%.

137. Over the year, deposits increased by a further £33m to £238m at 31 December 1991. During the period an average rate of interest of 11.63% was paid, an equivalent or slightly better rate than that paid by comparable funds.

Appendix A(a)

CC14(a)

INVESTING CHARITY CASH

- | | |
|---|---|
| Identify which institution(s) to invest with | <p>1. Draw up a list of recognised financial institutions which have a first class reputation and are authorised and supervised by the Bank of England or the Building Societies Commission.</p> <p>* Guidance on credit ratings can be found from the international credit rating agencies such as Moodys, Standard & Poor's Corporation and IBCA.
Only institutions with the highest short-term ratings should be considered.</p> <p>This list should be reviewed quarterly.</p> |
| Limiting the amount invested | <p>2. Establish a maximum amount to be placed with any one particular institution.</p> |
| Short, medium and long term investment | <p>3. Prior to investing their cash trustees should consider on which dates they need funds to be available so as to properly allocate the monies into short, medium or long term investments.</p> |
| High interest paying institutions | <p>4. It should be noted that those institutions consistently offering higher than the market interest rate may in some cases have a more urgent need of funds than the major financial institutions. They may have, therefore, greater difficulty in attracting funds to them because of their higher credit risk.</p> |
| Authorisation of investments | <p>5. Ensure that all funds which are placed with a financial institution are duly authorised by two trustees or members of the charity's Executive Committee. The co-signatory will also have the responsibility for checking and ensuring that proper and appropriate due diligence procedures are in place for investment of the charity's liquid funds.</p> |
| Insurance and compensation | <p>6. At the present time there are insurance schemes in existence which may provide partial compensation following default by a bank or building society. Protection is limited to £20,000 of sterling funds per organisation with the maximum compensation payable of £15,000 in the case of banks and £18,000 in the case of building societies.</p> <p>All investments of cash in excess of £20,000 need, therefore, to be most carefully considered.</p> <p>The guiding principles should be prudence and caution, bearing in mind that charity funds are of a long term structural nature.</p> |
| Responsibility for investments | <p>7. For substantial cash resources, utilisation of professional money managers may be appropriate. However, even if professional managers are appointed, it is the trustees who will bear the responsibility for decision making and they should therefore, at all times, carefully and objectively assess the advice they are being given.</p> |
| Policy for investments | <p>8. Draw up a written policy statement for the charity in respect of placing monies on deposit and ensure this document is circulated to all relevant staff.</p> |
| Professional advice | <p>9. The general advice given above is intended to be helpful to trustees but if they are in any doubt they should seek professional advice.</p> <p><i>NB—Attention is drawn to the existence of charitable common investment funds where they include deposit funds that enable charities to invest their cash resources as a possible alternative to banks and buildings societies.</i></p> |

* **Standard & Poor's Corporation** **Moodys Investment Services Ltd**
18 Finsbury Circus, London EC2M 7BP 51 Eastcheap, London EC3

IBCA Ltd
Eldon House, 2 Eldon Street,
London EC2M 7LS

January 1992 v2

Appendix A(b)

CC4

CHARITIES FOR THE RELIEF OF THE POOR

Introduction This leaflet gives guidance to trustees of charities whose objects include the relief of the poor. In particular the leaflet gives advice on:

Trustees' duties generally

What "poor" means nowadays

Assisting people who receive State benefits

The Social Fund and how it affects trustees

What trustees should do if they find it difficult to spend all the charity's income

The different ways trustees can help the poor

When trustees cannot help

General advice on trustees' duties The trustees of all charities should regularly review their use of the charity's funds, so as to ensure that the money is spent most effectively in carrying out the purposes of the charity. This review is particularly important for trustees of charities for the relief of the poor, because of continuing social and economic change and the especial vulnerability of the poor at such times. Trustees should ask themselves whether they are in fact relieving poverty, and whether they are spending the charity's funds in the way most helpful to the charity's beneficiaries.

Trustees must always bear in mind that they can spend the charity's funds only in accordance with the objects as set out in the charity's governing instrument (ie the trust deed, constitution, scheme or other document describing the charity's purposes). Some governing instruments may still lay down the precise means by which the beneficiaries' poverty can be relieved. However, there are many more ways nowadays than there used to be in which charity trustees can help relieve poverty but if trustees consider that the means laid down in the governing instrument are unduly restrictive they should advise the Commission's staff. This leaflet lists some of the ways that trustees can use the charity's money to assist those in need, and some of the ways that they cannot.

Some trustees by tradition give a small amount of help (whether in cash or in kind) to a large number of needy people. Trustees should ask themselves whether it might not be more effective to target their funds so as to give larger benefits to a smaller number of carefully selected people. This might also be more in accordance with the intentions of the charity's founder.

At the same time trustees must remember to limit the benefits given to an individual to what is actually required to relieve his need. It is an improper use of charity funds to give more assistance to a person than would simply relieve his need.

What 'poor' means nowadays A person does not necessarily have to be destitute to qualify as "poor". Anyone who is in a condition of need, hardship or distress might be eligible for help, and it is up to trustees to make their own judgment as to whether a particular person qualifies for assistance. Generally speaking, anyone who cannot afford the normal things in life which most people take for granted would probably qualify for help.

A person who normally has an acceptable standard of living, but who is suffering temporary hardship perhaps because of an accident, a death in the family, or

other setback, could also qualify for help. The condition of need, hardship or distress does not have to be a long-term condition to qualify for help from a charity's funds.

Whether a person qualifies for assistance from the charity, is not dependent upon whether or not the person is eligible for State benefits. Each person's actual needs and financial circumstances must be assessed individually, and some people who already receive their full entitlement of State benefits may need help on top of this.

Equally, some people who are not entitled to receive any State Benefits may sometimes need help, because of their particular circumstances.

Assisting people who receive State benefits

When trustees of a charity for the relief of the poor are thinking about assisting a person who is already receiving State benefits, they should take care not to use the charity's funds simply to replace the State assistance received by the person.

The charity's funds must be applied so as actually to reduce a person's need, hardship or distress. Charity funds should not be applied in a way which would replace assistance a person is already getting from the State with the same amount of assistance from the charity.

To use the charity's funds in this way would not make the person any better off: it would simply mean that he was getting from a charity what he had previously been receiving from the State. In effect the charity would be relieving the State, not the beneficiary.

When assessing a person's income and financial circumstances, trustees should count as part of his income any State benefits they know that person is **entitled** to receive as of right. If the person has not actually been claiming or receiving a benefit to which he has a right, trustees should encourage him to do so. They should not use charity funds to make payments to a person where he is entitled by law to receive the money from the State under the system of statutory benefits.

Trustees may, however, use charity funds to relieve temporary need where there is a delay in receiving statutory benefits.

If a person is still in need even after receiving all State benefits to which he is entitled by law, then charitable funds may be used to relieve this continuing need.

In order to make the most effective use of their charity's funds, trustees should take the trouble to learn about:

- the system of State benefits;
- how a person's State benefits can be affected by receiving a grant from a charity;
- the gaps in the State benefit system which can be filled by payments from charities.

Local offices of the Department of Social Security (formerly the DHSS) keep leaflets about the State benefits available to the elderly, disabled, sick, unemployed, those on low incomes, and single-parent families.

Trustees should keep in regular contact with the local Social Security offices and with the Social Services Department of their local authority. In this way trustees can learn about the help available to poor people from public funds. By consulting about specific cases trustees can find out how any help they give a person from charity funds will affect any State benefits which the person may be receiving.

The Social Fund

The Department of Social Security also administers the Social Fund which is intended to help people meet exceptional expenses from their regular income.

Many of these payments are made in the form of interest-free loans instead of grants. Nobody has a right in law to a loan or grant from the Social Fund. It is up to the Social Fund officers to decide whether an applicant's circumstances are such that a loan or grant can be paid to him.

It is a cardinal principle of charity law that charitable funds should not be used in place of benefits to which an individual has a statutory right. Nevertheless, in determining whether a loan or a grant can be made from the Social Fund, officials are in some circumstances also obliged by law to consider whether an applicant could be helped from another source, such as a charity.

The risk that applicants might be shunted from social security office to charity and vice versa must at all costs be avoided.

When an applicant has been referred by a social security official to a charity, trustees must assume that the Social Fund cannot help in that particular case, and that the official was acting in the knowledge of the help the charity was likely to give and not on the basis of mere speculation, on the off-chance that help might be available from an external source. Should trustees feel that a particular office or a particular official is using the availability of charitable funds to avoid Social Fund expenditure, their concern should be raised with the official concerned and subsequently if necessary at a higher level. The office should be informed clearly of what the charity's policy is.

Should individuals still be referred to a charity contrary to agreed policy the trustees may wish to consider joining with the individual concerned to secure whatever help he or she may be entitled to.

There are circumstances where trustees can make payments to a person even if that person has been promised a Social Fund loan.

These are:

- where the person's **need is urgent** and cannot wait for the Social Fund money to be made available (although crisis loans are normally paid on the day of claim);
- where they believe that a Social Fund loan will not succeed in helping to relieve the person's need, because he cannot afford to pay back the loan in the time required. In this case the trustees could give the person a grant instead of a loan or they could give him a loan on more favourable terms than the Social Fund loan—this is an exception to the general rule stated above that charitable funds should not replace State funds;
- where the Social Fund loan he is getting will be too little to relieve his need, and the trustees are in a position fully to relieve that person's need.

What trustees can do if they find it difficult to spend all their charity's income

Trustees of some charities for the relief of the poor may find it difficult to spend all the charity's income in the way the trusts demand. This may be because the level of poverty in the charity's area of benefit has significantly decreased in recent times, and there are few needy people. In these circumstances, trustees should take positive steps to search for potential beneficiaries, for example by:

- asking the local Social Security and Social Service Departments to let them know of any people living within the charity's area of benefit whose needs cannot fully be met by State payments;
- advertising in the local newspapers;
- contacting trustees of other charities and voluntary organisations, particularly those involved in welfare.

Trustees who continue to have difficulty in finding beneficiaries after having taken these steps should contact the Commission's staff for further advice.

Ways in which trustees can help poor people

Examples of ways in which trustees may be able to give assistance of real value to people in need are listed below. Other ways will no doubt occur to trustees.

Grants of money in the form of:

- weekly allowances for a limited period to meet a particular need;
- special payments to relieve sudden distress;
- payment of travelling expenses for visiting people in hospitals, convalescent homes or similar institutions, or in children's homes, or in prison or other correctional establishments, particularly where more frequent visits are desirable than payments from public funds will allow; and payments to meet consequential expenses of accommodation, refreshments, child-minding, etc;
- payments to other charities accommodating those in need in the area of the charity such as almshouses, or homes or hostels for the residence or care of old, infirm or homeless people;
- payments to assist in meeting electricity, gas and water bills;
- payment of television licence fees.

The provision of items (either outright or, if expensive and appropriate, on loan) such as:

- furniture, bedding, clothing, food, fuel, heating appliances;
- washing machines for widows with large families or radio or television sets for the lonely, bedridden or housebound.

Payment for services such as house decorating, insulation and repairs, laundering, meals on wheels, outings and entertainments, child-minding.

The provision of facilities such as:

- the supply of tools or books or payment of fees for instruction or examinations or of travelling expenses so as to help the recipients to earn their living; or
- provision of equipment and funds for recreational pursuits or training intended to bring the quality of life of the beneficiaries to a reasonable standard.

Further examples follow of the sort of additional help that can be given **when those in need are also sick, convalescent, disabled, handicapped or infirm**, whether mentally or physically:

Grants of money in the form of:

- special payments to relieve sickness or infirmity;
- payment of travelling expenses on entering or leaving hospitals, convalescent homes or similar institutions, or for out-patient consultations;
- payment towards the cost of adaptations to the homes of the disabled;
- payment of telephone installation charges and rentals.

The provision of items (either outright or, if expensive and appropriate, on loan) such as:

- food for special diets, medical or other aids, nursing requisites or comforts;
- invalid chairs for the disabled, handicapped or infirm.

The provision of services such as bathing, exchange of library books, foot care, gardening, hair washing, shaving, help in the home, nursing aid, physiotherapy in the home, reading, shopping, sitting-in, tape-recording for the housebound, travelling companions.

The provision of facilities such as arrangements for a period of rest or change of air or to secure the benefits of any convalescent home or other institution or organisation or to provide temporary relief for those having the care of the sick or handicapped person: help for relatives and friends to visit or care for patients: transport.

As well as giving grants to individual people in need, or to organisations on behalf of those individual people, trustees can also make grants to other charities and organisations which offer help to the poor. Before giving a grant to another such body, trustees must make sure that the money they give will be passed on (in cash or in kind) to a person or persons who is a proper recipient of it within the donor charity's trusts.

On this basis, grants to almshouse charities, and other charities which cater exclusively for the poor, are permissible provided that the receiving charities operate in the same area of benefit as the donor charity.

When trustees cannot give help

Grants cannot be made by a charity for the relief of the poor to another charity if the objects and activities of that charity are wider than the relief of poverty, because the grant could be used to benefit people who are not poor.

Local charities which could not for this reason be supported by a charity for the relief of the poor include village halls, hospitals, recreation grounds and church restoration funds. Grants to charities like these would be likely to provide as much benefit for people who were not poor as they provide for poor people.

Some local charities may, however, cater only or mainly for poor people even though their trusts may not be strictly confined to such a class. For example, most people attending a youth club or an old age pensioners club in a particularly deprived area may be poor even though membership of the club is not limited to the poor.

If the trustees wish to give a general grant to another charity in such circumstances, they should find out whether in practice the charity's beneficiaries are poor persons and the grant will benefit them. The fact that a few people who are not poor might also benefit from such a grant, will not prevent a grant provided that their benefit is merely incidental and cannot be avoided and the bulk of the benefit is given to poor people.

The Commission's staff will be pleased to advise trustees if they are in any doubt.

June 1991 v1

Appendix A(c)

CC37

COMMISSIONERS' EXPLANATORY LEAFLETS

- CC1* The Charity Commission: Origin and Functions
 - CC2* The Charity Commissioners: How they can help charity trustees
 - CC3* Responsibilities of Charity Trustees
 - CC4* Charities for the Relief of the Poor
 - CC6* Charities for the Relief of Sickness
 - CC7* Ex Gratia Payments by Charities
 - CC8* Registration of Charities for Disabled Persons
 - CC9* Political Activities by Charities
 - CC10* Redemption of Rentcharges
 - CC12* Official Custodian for Charities Charity Funds
 - CC13* Official Custodian for Charities Charity Land
 - CC14* Official Custodian for Charities
 - Investment Management by Charity Trustees
 - CC14(a)* Investing Charity Cash
 - CC15* Official Custodian for Charities Common Investment Funds
 - CC16* The Relief of the Unemployed
 - CC17* The Promotion of Racial Harmony
 - CC18* Use of Church Halls for Other Charitable Purposes
 - CC20* Fundraising and Charities
 - CC21* Starting a Charity
 - CC23* Charities Act 1985
 - Alterations of objects of local charities for the Poor
 - CC24* Charities Act 1985
 - Transfer of property, and winding up of very small charities
 - CC25* Charities Acts 1960 and 1985 Charity Accounts
 - CC26* Charities Act 1985
 - CC27* Provision of Alcohol on Charity Premises
 - CC28* Selling Charity Land
 - CC29* Charities and Local Authorities
 - CC31* Educational Charities
 - CC33* Acquiring Land
 - CC34* Official Custodian for Charities Sales and Purchases
 - CC36* Making a Scheme
 - CC38* Capital Expenditure by Charity Trustees
 - CC39* Extraordinary Repair Funds
 - CC40* Disaster Appeals—Attorney General's Guidelines
 - CC41* Payment of Charity Trustees
-
- AC7* Charity Accounts: Notes for Charity Trustees
 - 073* Investment Principles
 - RE4(R)* Registration of Religious Charities
 - TP1* Trustee Investments Act 1961
 - 1039* Availability of Central Register Files (London)

Appendix B

(Paragraph 33)

LEGISLATION AFFECTING CHARITIES

- (a) The Value Added Tax (Charities) Order 1991 (SI 1991/737)** The Value Added Tax (Charities) Order 1991, which came into force on 1 April 1991, has the effect of extending the zero rate of Value Added Tax for—
- (a) the sale of donated goods to all charities, not just those established primarily for the relief of distress or for the protection or benefit of animals;
 - (b) printed media advertising supplied to charities for raising money for their work or for making known their aims and objectives, to the broadcasting of such advertisements on television and radio and the screening of such advertisements in cinemas;
 - (c) medical and scientific equipment, donated to an eligible body and purchased by funds provided by a charity or from voluntary contributions, to be used in veterinary research, diagnosis or treatment, and for substances directly used in veterinary research.

The Order also has the effect of exempting from Value Added Tax one-off fundraising events organised by a trading company which is wholly owned by, and covenants its profits to, a charity.

- (b) Finance Act 1991** Section 68 of the Finance Act 1991 amends section 84 of the Income and Corporation Taxes Act 1988 by introducing new tax reliefs for companies or unincorporated businesses making gifts of items of equipment either manufactured, sold or used in the course of their trade to educational establishments designated by the Secretaries of State for Education and Science and for Wales. Establishments so designated include universities, schools and institutions of further and higher education. The new reliefs apply to gifts made on or after 19 March 1991.

Section 70 of the Finance Act has the effect of abolishing the maximum limits on charitable gifts qualifying for tax relief under the Gift Aid scheme with effect from 19 March 1991.

- (c) Diocesan Boards of Education Measure 1991** The Diocesan Boards of Education Measure 1991 came into force on 1 August 1991. The measure repeals the Diocesan Committees of Education Measure 1955, provides for the constitution of Diocesan Boards of Education (which replace Diocesan Committees of Education) and sets out the functions of Boards. The Measure requires the governing body of any church school and the trustees of any church educational endowment held wholly or partly in connection with a church school to obtain the advice or consent of the Diocesan Board of Education in relation to certain transactions. These provisions include—

- (a) where the governing body of any church school and the trustees of any church educational endowment held wholly or partly for or in connection with any church school, propose to apply, agree or arrange for the discontinuance of the school, any change in its status, size or character, significant enlargement of its premises, any sale or other disposal of the premises (or part), or any amalgamation of the school with another school, they must first obtain the advice of the Board and have regard to that advice (**section 3(1)**);
- (b) where the governing body of any church school which is an aided or special agreement school proposes to enter into arrangements for the alteration or repair of the premises in respect of which alteration or repair grant may be paid by the Secretary of State they must obtain the prior consent of the Board (**section 3(2)**);
- (c) where the trustees of any church educational endowment held as (a) above propose to make or to agree to any alteration in the purposes for

which the endowment may be applied, they must first obtain the advice of the Board and have regard to that advice (**section 4**);

- (d) where the governing body of any Church of England voluntary school proposes to acquire grant-maintained status, they must seek, consider and publish advice given by the Board (**sections 3(4) and 5**);
- (e) where the Board is satisfied that the trustees of any church educational endowment held wholly for a church school are not applying the endowment in the best interests of the school or have failed to discharge their function in relation to that endowment, the Board is empowered to give directions to the trustees as to the exercise of their functions: the trustees must comply with those directions within six months (**section 8(1)**).

For the purposes of the Measure (**section 10(1)**)—

“church educational endowment” means “an educational endowment which includes among the purposes for which it may be applied religious education according to the faith and practice of the Church of England”; and

“church school” means “a Church of England voluntary school or a grant-maintained school which was such a voluntary school immediately before it became a grant-maintained school”.

Appendix C

(Paragraph 33)

(a) **Harries (Bishop of Oxford) v Church Commissioners, The Times, October 30, 1991**

LEGAL DECISIONS AFFECTING CHARITIES

During the course of the year the Bishop of Oxford, together with others associated with the Christian Ethical Investment Group, sought declarations from the Court in relation to the investment policy of the Church Commissioners. Their concern was that, in making investment decisions, the Commissioners were guided too rigorously by purely financial considerations. The case offers guidance on the question of the pursuit of an ethical investment policy by charity trustees, and confirms the views we expressed on this point in paragraphs 41 to 45 of our 1987 annual report. The key criteria are:

- (a) any decision by charity trustees to exclude from consideration a particular range of investments must be centred on the beneficiaries of the charity rather than on the trustees. The trustees should not use powers of investment for the purpose of giving expression to their own views on moral or political questions. If trustees decide to exclude a particular range of investments from their consideration they should do so only on the basis of a consideration of the interests of the charity's beneficiaries;
- (b) generally, the purposes of a charity are best served by the trustees seeking to obtain the best economic return (consistent with commercial prudence) from the exercise of investment powers: this objective is not, usually, consistent with the exclusion from consideration of investments which would be within the powers of the trustees to select;
- (c) if trustees are satisfied that a particular range of investments would *directly* impede the effective furtherance of the objects of the charity, then they can properly exclude that range of investments from consideration. Such action was justified even if it involved, in terms only of investment, a financial risk. The impediment might take the form of a loss of financial support from subscribers, or of an adverse reaction from beneficiaries to an operation which was financed in a manner considered to involve a denial of the charity's objects. The judge gave some illustrations and these were essentially the same as those given by us in our 1987 report;
- (d) the greater the risk of financial detriment, the clearer the evidence that is required of the impediment to the furtherance of the charity's objects. The judge expressed the view that for charity trustees to adopt an investment policy which involved a significant risk of financial detriment would be rarely justified in practice;
- (e) greater difficulty arose where trustees were pressed to exclude a range of investments to meet the views of those who considered that particular forms of investment should be avoided for ethical reasons. Such a decision is one for the trustees and could not be delegated to members or subscribers to the charity. The judge pointed out that such perceptions were likely to be matters of controversy and indicated that trustees may approach the matter of investment in this way only if they, the trustees, were satisfied on the basis of reasonable evidence that such a course could not involve a risk of significant financial detriment to the charity;
- (f) the judge reaffirmed that trustees may exclude certain types of investments if there remained open to them "an adequate width of investment".

It was on this basis that the judge endorsed an ethical investment policy which had in fact been adopted by the Church Commissioners and which is consistent with our own advice.

**(b) Canada Trust Company
v Ontario Human Rights
Commission; Royal Ontario
Museum et al, Intervenors
[1990] 69 DLR (4th) 321**

This decision of the Ontario Court of Appeal is of interest because it shows a modern approach to the *cy pres* application of charitable funds in changed circumstances. By a trust deed of 1923 Rueben Wells Leonard (the Settlor) established a trust for the purpose of providing educational scholarships tenable at certain eligible institutions in Canada and Great Britain. The beliefs of the Settlor were expressed in four recitals to the trust deed relating to the race, religion, citizenship, ancestry, ethnic origin and colour of the class of person eligible to receive scholarships. The fourth recital gave these beliefs as the Settlor's reason for excluding from the management of, or benefits in, the Foundation "all who are not Christians of the White Race, all who are not of British Nationality or of British Parentage, and all who owe allegiance to any Foreign Government, Prince, Pope or Potentate, who recognise any such authority, temporal or spiritual". The operative part of the trust deed provides that a student or pupil to be eligible for a scholarship should be "a British subject of the White Race and of the Christian religion in its Protestant form, as hereinbefore in recital more particularly defined, who, without financial assistance, will be unable to pursue a course of study in any of the Schools, Colleges, or Universities hereinbefore mentioned". The trusts also limited to one quarter the amount of income to be expended on providing scholarships for female students or pupils in any year.

Since 1971 there had been complaints to the Trustee of the Foundation about the conditions of eligibility. In 1986 the Ontario Human Rights Commission filed a formal complaint against the Foundation alleging that the trust contravened the Human Rights Code 1981. The Trustee sought the advice and directions of the Court. The trial judge, on considering only part of the deed, held that the provisions of the trust did not violate either the Human Rights Code 1981 or public policy. The Ontario Court of Appeal held that while the operative provisions of a trust instrument would ordinarily prevail over its recitals, where the recitals are not clearly separable from the rest of the instrument and themselves contain operative words or words intended to give meaning and definition to the operative part, the instrument must be viewed as a whole. On that basis, the provisions were so at odds with today's social values as to make its continued operation in its present form inimical to the public interest. The Court recognised that the freedom of an owner of property to dispose of his or her property as he or she chose was an important social interest that was firmly rooted in society and the law, but was not absolute. It was limited by public policy considerations, and a trust which was based on notions of racism and religious superiority contravened contemporary public policy. The Court found that although the trust established by the trust deed was a charitable trust which, when established in 1923, would have been held to be valid and not contrary to public policy, changing times had rendered the ideas promoted by the trust contrary to public policy and hence the trust had become impracticable to carry out in the manner directed by the Settlor. In the circumstances, the trust should not fail. Rather, the Court should invoke the *cy pres* doctrine and establish a scheme to bring the trust into accord with public policy and permit the general charitable intention to advance education and leadership through education to be implemented by the Trustee of the Foundation. The Court directed that effect be given to its judgment by striking out the recitals to the trust deed and removing all restrictions in the trust deed with regard to race, colour, creed or religion, ethnic origin and sex.

**(c) Webb v Webb [1992]
1 All ER 17**

This was a case where a father had paid the price for a flat in France acquired in his son's name. The father had furnished and maintained the flat and used it as a holiday home. When the son refused to transfer the flat to him the father started proceedings in England for a declaration that the son held the flat and its contents on trust for him. The son argued that the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1968 (which has the force of law in the UK, by virtue of section 2(1) of the Civil Jurisdiction and Judgments Act 1982) required that the case could be heard only in France because it concerned rights in land in that country. The Court held that what was claimed was a declaration that the son was a trustee and therefore accountable to his father which was not a claim to the property itself. As the claim concerned

the fiduciary duties of a person within its jurisdiction, the court could make an order directing that person to comply with its obligations. This principle would appear to apply to property held on charitable trusts:

(d) Marley and Others v Mutual Security Merchant Bank and Trust Co Limited (Privy Council) [1991] 3 All ER 198

This case concerned the duty imposed on a trustee when making an application to the Court for directions or approval of a particular course of action, to ensure that sufficient evidence is placed before the Court to enable the Court to make an informed decision.

The Privy Council took the opportunity to restate two general propositions:

- (1) that where a trustee seeks the guidance of the Court as to the propriety of any contemplated course of action he thereby surrenders his discretion to the Court. The Trustees should always bear in mind that the Court should be put into possession of all the material necessary to enable that discretion to be exercised. A duty is imposed on the trustee to obtain appropriate expert advice and, where necessary, a valuation of any property. The Court ought not to be asked to act upon incomplete information;
- (2) that in exercising its jurisdiction to give directions on a trustee's application the Court is engaged solely in determining what ought to be done in the best interests of the Trust Estate and not in determining the rights of adversarial parties. The principles are not the same as those where the conduct of the trustee is impeached by the beneficiaries. The question is not whether the trustee has exercised due diligence but whether there is sufficient evidence before the Court to enable it to make an informed decision. In this case it was necessary for the Respondent in the action to satisfy the Court that it had taken all the necessary steps to obtain the best price that would be taken by a reasonably diligent professional trustee. On the facts the Court was not satisfied that this had been done.

Lord Oliver of Aylmerton said that any Court which is called upon to consider whether a bargain which has been negotiated is the best reasonably obtainable in the interests of the beneficiaries would normally require, as a minimum, evidence of the accuracy of the accounts upon which any valuation is based, an informed professional assessment of whether any proposed sale has been effected under the most favourable conditions and, where appropriate, evidence of what efforts have been made to explore the market and what advice has been received with regard to the marketing of the property to the maximum advantage.

Appendix D

(Paragraphs 75–78)

DECISIONS ON CHARITABLE STATUS

(a) **The Margaret Thatcher Foundation**

We were asked to consider whether we would register as a charity a proposed institution, to be called the Margaret Thatcher Foundation, if a deed were to be executed in the form of the draft submitted by the promoters. The objectives of the proposed institution as set out in clause 2 of the draft deed were—

“ . . . the education of the general public and in particular, without prejudice to the generality of the foregoing, the increase of knowledge, understanding and appreciation of the principles of freedom under a rule of law, of democracy and of responsibility towards both the ethical and physical environment”.

“Education” for the purposes of the law of charity bears the same meaning as that current in present-day educated English speech (see **Inland Revenue Commissioners v McMullen [1981] AC 1**). It is a process to equip the persons being educated, through subjects of educational merit, to “choose for themselves, starting with neutral information, to support or oppose” any given position (**Re Bushnell deceased Lloyds Bank v Murray [1975] 1 All ER 721**). The courts have occasionally been called upon to determine whether an ostensibly educational trust was so bound up with the promotion of a political object that the general or main purpose of the trust could only be regarded as political. **Re Bushnell deceased** itself is an example of that and other examples are **Bonar Law Memorial Trust v Commissioners of Inland Revenue (1933) 17 TC 508**, **Re Hopkinson deceased Lloyds Bank v Baker [1949] 1 All ER 346** and **Re Buxton’s Trusts Buxton v Public Trustee (1962) 41 TC 235**.

The objects declared in the draft deed indicated that the education was to be focused upon certain areas, that is, “the principles of freedom under a rule of law, of democracy and of responsibility towards both the ethical and the physical environment”. The activities which the proposed institution intended to undertake, revealed in a statement provided by the promoters, were particularly relevant in determining whether the education which the proposed institution intended to advance was educational in the legally charitable sense. The activities were also relevant in construing the wording of the draft deed where that was imprecise. That was the case in respect of the words “responsibility towards both the ethical and the physical environment”.

Taking into account all the information which had been provided to us, we considered that a substantial part of the proposed activities was not educational in the charitable sense but was concerned with arguing and advancing a particular political viewpoint. In our view problem areas referred to in the statement were not so much defined for the purpose of objective analysis as identified for the purpose of developing a political agenda for dealing with them. That particular stance was present in many of the themes identified in the statement, in particular in the areas of foreign affairs and Europe. In one part of the statement the political element was even more apparent. It was stated that “The Foundation will take a close interest in the progress made towards freedom, democracy and prosperity in Eastern Europe, the Soviet Union and South Africa. The Foundation plans to provide for the acquisition of the practical expertise required to transform the institutions and economies of these countries . . . This aim will be achieved by . . . making grants to set up or sustain foreign journalists; sponsoring missions by Western businessmen and technical advisers . . .”. We found it difficult to see what was educational in a neutral sense about providing for the acquisition of practical expertise required to transform the institutions and economies of the various countries, making grants to set up or sustain foreign journalists or sponsoring missions by western businessmen and technical advisers.

The proposed institution differed therefore from the Wilton Park Project considered in **Re Koeppler's Barclays Bank Trust Co. v Slack Will Trusts [1985] 3 WLR 765**. In that case conferences were to be held to examine a wide variety of topics through discussion amongst people with differing views. Particular care was taken "to avoid inculcating any particular viewpoint". In the present case it appeared, however, that achievement of the proposed institution's purposes would be driven by a particular political perspective and that the proposed institution would not so much analyse and examine critically the principles behind that perspective as seek ways in which those principles could best be carried forward and "appreciated" (clause 2 of the draft deed).

For these reasons we decided that if a deed were to be executed in the form of the draft submitted, the institution so created would not be eligible for registration as a charity under section 4 of the Charities Act 1960.

(b) Promotion of the Arts

The Arts Council was in the process of reorganising the Regional Arts Associations which were to be reconstituted as Regional Arts Boards to be incorporated as charitable companies limited by guarantee. A model draft memorandum and articles of association had been approved by our staff and by the Inland Revenue for registration purposes. Clause 3(A) of the draft memorandum of association set out the objects in the following terms:

"The objects of the Company shall be to promote the arts in society for the benefit of the inhabitants of [] . . . and elsewhere by developing public appreciation of the arts and by improving public access to and the quality of the arts . . .".

According to legal authorities, the promotion of the arts is charitable as being for the advancement of public education. During the course of the discussions leading to approval of the model draft, however, representatives of the Arts Council had voiced a strong preference for objects expressed in the above terms, that is, omitting the usual specific reference to the advancement of education. We had been asked to determine whether the model draft objects were exclusively charitable in law, whether the promotion of the arts for the public benefit was a charitable purpose under the fourth head of Lord Macnaghten's classification in **Commissioners for Special Purposes of Income Tax v Pemsel [1891] AC 531**, and whether the test of public benefit was the same under the fourth head as under the second head.

We agreed that the promotion of the arts is charitable in and of itself (see **Royal Choral Society v Commissioners of Inland Revenue [1943] 2 All ER 101**; **Re Town and Country Planning Act 1947, Crystal Palace Trustees v Minister of Town and Country Planning [1951] Ch 132**, and **British Museum Trustees v White [1862] 2 Simon's & Stuart's 594**). The objects of an institution for the promotion of the arts does not have to refer to education and therefore we agreed that the objects adopted in the model trusts for the Regional Arts Boards were charitable.

With the exception of some charities for the benefit of poor persons, all institutions must be for the public benefit if they are to be charitable. In **National Anti-Vivisection Society v Inland Revenue Commissioners [1948] AC 31** Lord Wright observed—

"Save in the case of gifts to classes of poor persons, a trust must always be shown to promote a public benefit of a nature recognised by the courts as being such if it is to qualify as being charitable. The question whether a purpose will or may operate for the public benefit is to be answered by the court forming an opinion on the evidence before it".

In some cases the Courts will regard the element of public benefit as self-evident. As Slade J in **McGovern and Others v Attorney General [1982] Ch 321** observed—

"No doubt in some cases a purpose may be so manifestly beneficial to the public that it would be absurd to call evidence on this point. In many other instances, however, the element of public benefit will be much more debatable.

Indeed, in some cases the courts will regard this element of being incapable of proof one way or the other and thus will inevitably decline to recognise the trust as being of a charitable nature”.

The Courts regard the public benefit element as self-evident in relation to charities for the promotion of education and we considered that the same view would prevail in relation to charities for the promotion of the arts generally. There is no substantive difference between the second and fourth heads of charity in relation to the requirements of public benefit.

Evidence of public benefit would be necessary where an educational charity or a charity for the promotion of the arts framed its purposes so that the education provided, or the arts promoted, were of a particular nature or type. In some cases the Court, and therefore we, must call for evidence of the nature of the public benefit to be derived from the particular activities stipulated by the trusts and if they or we are not satisfied of this public benefit the trusts must be rejected as not being charitable (see *In Re Pinion deceased Westminster Bank Ltd v Pinion* [1965] Ch 85 and *In Re Hummeltenberg Beatty v London Spiritualistic Alliance Ltd* [1923] 1 Ch 237). Where a charity has general objects such as the promotion of the arts without specifying the particular way in which those objects are to be achieved, and subsequently supports activities to a substantial degree which do not satisfy the requirement of public benefit as defined by the Courts, then the trustees will be committing a breach of trust and can be restrained by us in the usual way.

**(c) The Community Shop,
Leeds**

The Community Shop, Leeds was registered as a charity in 1989. The charity is governed by a Declaration of Trust dated 17 February 1989 clause 4 of which reads as follows—

“The Trust is established for the relief of poverty by the provision of clothing and other goods at low cost to people in need and (as an equal principal object) the promotion of any general charitable purposes in the City of Leeds and its neighbourhood and, in particular by means of the realisation for cash of donations in kind made to the Trust, and the application thereof for charitable purposes”.

The Shop has always operated by receiving or collecting donated goods from individuals and organisations and selling them either at low prices or at full price to produce income. The Shop generates substantial surpluses which are paid over to local charities. Initially the Inland Revenue had objected to the registration of the Community Shop arguing that whilst its first object was a charitable purpose as stated, it could not be charitable in practice because of the risk that those not in need might also benefit from the sales made in the Shop. They also argued that the second object of the charity was not a charitable purpose in itself but merely amounted to fundraising. Those arguments were not accepted by our staff and eventually, on the basis that the decision was not to be taken as a precedent, the Inland Revenue had dropped their objections to registration. It then appeared that other organisations were seeking to use the case as a precedent for setting up similar charities and the case was brought before us for formal consideration.

Whilst it is undoubtedly charitable to relieve poverty by the *donation* of goods to poor people, the legal situation is more complex when a charity *sells* goods to poor people as part of its objects. In this particular case, three areas of concern arose:

- (1) although the charity was selling only donated goods, there was nothing in its trust deed which prohibited it from purchasing and then selling goods (in such case it would be similar to a community shop—a concept which we had already decided was not charitable);
- (2) although one object of the charity was to provide goods at low cost to poor people and the Shop was located in a “poor” area of Leeds, the charity had no control over who bought goods in the Shop;

- (3) furthermore the charity admitted that it sold goods at their true value in the Shop “in the hope of attracting the not so needy” and with a view to generating income for the charity rather than benefiting the poor.

Although trading can be permitted in direct furtherance of a charity’s objects (for instance, charities for the disabled selling goods made by their beneficiaries) or if ancillary and incidental to a main charitable purpose (for instance, theatres providing refreshments at performances and selling their own publications), a charity cannot properly undertake unrestricted trading activity to raise funds. We considered that the charity was structured in a way that overstepped the line between a charitable and non-charitable trading activity. We decided, therefore, that the trustees should be invited to consider restructuring the charity by establishing a subsidiary non-charitable trading company to operate the Shop, and to covenant its profits to the charity. The company could continue to sell goods to those in need but would be free to sell goods to anyone. The charity, receiving the covenanted profits from the non-charitable company, could apply those funds in furtherance of the second object of the charity.

(d) The Albert Kennedy Trust

The Albert Kennedy Trust was established by a trust deed dated 22 August 1990 and its objects as set out in clause 4 of the deed are as follows:

- “(i) to relieve lesbian and gay young persons in conditions of need, hardship or distress by the provision of temporary homes for such young persons who have need thereof and by the provision of counselling and other forms of assistance for such young persons;
- (ii) to relieve lesbian and gay parents in conditions of need, hardship or distress by the provision of respite care for the children of such parents who have need thereof.”

The trustees had applied to register the Trust as a charity. The manner in which the Trust intended to carry out its objects was, however, novel and controversial. The Trust was to recruit and train older gay men and lesbian women to act as role models and to provide stable and supportive homes for young gays and lesbians in need of care and counselling. Young people to be assisted by the Trust would usually be between 16 and 19 years of age and would be referred by Social Services, gay and lesbian organisations, child care agencies and the police. Some young people would approach the Trust directly. The Trust anticipated that there would be some referrals of young people under 16 by Social Services who would see the Trust as a means of carrying out their duty towards the young people in question and ensure that the proper channels would be gone through. Any direct approach from a child under 16 would be reported to Social Services. The carers would be recruited and approved by the trustees and a potential carer would be required to sign a form authorising the Trust to submit his or her name and address to the police so that criminal records could be checked.

When a young person had been placed with a carer the placement would be carefully monitored by the trustees. If an improper relationship developed between a carer and their charge, the trustees would terminate the placement and if the parties refused to stop living together, they would sever contact with that carer. The Trust also said that the local authority would normally place children who are under 16 and therefore they would carry out their own checks to ascertain whether the carer was suitable.

Although we agreed that the objects of the Trust were charitable and we accepted that it was not established in order to promote homosexual and lesbian relationships, there were a number of legal and other issues on which we wished to be satisfied before we accepted the Trust for registration as a charity.

Our concerns were:

- (a) that the Trust’s activities and procedures should meet the requirements of the law, other than charity law, particularly in relation to the care of young people under the age of 16;

- (b) whether we could insist that all carers taken on by the Trust should be approved by the Social Services Departments of local authorities;
- (c) that the trustee body of the Trust should include a number of heterosexuals who were concerned with the care of children generally; and
- (d) that the trustees were receiving and would continue to receive legal advice on all aspects of the Trust's activities.

The Official Solicitor confirmed that in his view there was nothing in the Trusts's reported procedures which ran contrary to the law relating to children as set out in the Children Act 1989 and the regulations, then in draft form, that were to be made under the Act. The Act, which was subsequently brought into force in October 1991, is of general application and applies to all persons under 18 years of age. The Official Solicitor considered, however, that the trustees would be wise to be aware of the statutory background against which the Trust would be operating. In particular, as a "voluntary organisation" within the meaning of the 1989 Act, the Trust would be subject to the duties imposed by section 61 of that Act. Before making any decision with respect to a child, the Trust would be required, so far as was reasonably practicable, to ascertain the wishes and feelings of the child, his parents, any person who was not a parent of his but who had parental responsibility for him and any other person whose wishes and feelings the Trust considered to be relevant. The Official Solicitor thought it was possible that the trustees might find some difficulty in discharging that particular statutory duty.

The Social Services Inspectorate confirmed that it was not possible to insist that all carers taken on by the Trust should be approved by Social Services Departments of local authorities. Where, however, the local authority was intending to place a child under 16 years of age with the Trust or any other voluntary organisation, we could be assured that a police check would be made for the previous convictions of the prospective carer.

The Department of Health informed us that it was already a requirement that voluntary organisations should obtain information of previous convictions of volunteers in a "foster-care" situation. When the checks related to people who were employees of the organisation they could, if they were members, use the National Council for Voluntary Organisations' Consultancy Service which would enable them to gain access to police computers. Otherwise, local voluntary organisations could use local authorities to make the checks.

The trustees responded to our concerns by explaining that at no time since the formation of the Trust had the trustee body been composed solely of lesbian women or gay men. The composition represented a mix of gender, age, sexuality, experience and skill. Approximately one-third of the current body of trustees was heterosexual. The trustees had a wide range of experience in dealing with young people and, following the registration of the Trust as a charity, would be supplemented by a full-time social worker with Social Services experience. The trustees also confirmed that they were fully aware of the duties imposed upon them by the Children Act 1989 and the Regulations made under it and that they were continually revising their procedures and would carry out further revisions in the light of the new legislation. Finally, the trustees had confirmed that they would continue to obtain expert legal advice on all aspects of the Trusts's activities.

Having considered all the advice which we had received, we agreed that the Trust should be registered. We advised the trustees, however, to draw up a more clearly defined complaints procedure, a copy of which should be handed to every young person taken into care of the Trust, to provide an avenue for them to complain about their conditions and treatment.

Appendix E

(Paragraph 51)

OFFICIAL CUSTODIAN FOR CHARITIES

- Foreword**
1. The Official Custodian for Charities is a corporation sole created by section 3 of the Charities Act 1960 to act as a trustee for charities in respect of:
 - (i) any charity land or other property vested in the Official Custodian by an Order of the Court or of the Charity Commissioners;
 - (ii) any charity funds, including investments and mortgages, which the Official Custodian agrees may be transferred.

The Charity Commissioners designate one of their officers to be the Official Custodian and he or she performs the duties in accordance with the directions of the Commissioners.

2. Section 3(6) of the Charities Act 1960 provides that the Official Custodian shall keep such books of account and shall prepare such accounts as the Treasury may direct.

3. The Official Custodian has the same powers, duties and liabilities as a custodian trustee appointed under section 4 of the Public Trustee Act 1906, except that she has no power to charge fees for her statutory services. She is expressly precluded from taking any part in the administration of any charity (section 17(1) of the Charities Act 1960). The responsibility for managing charity property held in the name of the Official Custodian remains wholly with the managing trustees.

4. The primary aim of the Official Custodian, in respect of charity funds entrusted to her, is to safeguard those funds. She also provides a number of services to charity trustees whose funds she holds.

5. The Official Custodian buys and sells investments in her name for charities on the instructions of the trustees. Where necessary she uses stockbrokers for this purpose. If trustees wish to use their own investment agents she will allow transactions to be carried out by the agents in her name. In this case, settlement is undertaken between the trustees and their agents and no money passes through the Official Custodian's books. The Official Custodian informs charity trustees whenever an investment held on their behalf becomes due for redemption or eligible for conversion or carries rights which call for a decision; and she acts in accordance with their instructions. The Official Custodian reclaims from the Inland Revenue (in advance) or overseas tax authority all recoverable tax on dividends and interest on investments held by her and remits the gross amounts to charity trustees on or as soon as possible after the due payment dates.

6. The Official Custodian acts as registrar for the Charities Official Investment Fund.

7. The Official Custodian's Receipts and Payments Account shows receipts and payments of dividends and interest and of cash involved in, or arising from, investment transactions. The major part of the Official Custodian's work in connection with the acquisition, disposal or conversion of investments does not, however, involve the receipt by her or payment to her of cash (Note 4a to the Account). The schedule of acquisitions and disposals of securities (Note 4d to the Account) provides a clearer representation of the investment work carried out by the Official Custodian's office.

Mrs S. E. Gillingham, Official Custodian for Charities
27 March 1992

OFFICIAL CUSTODIAN FOR CHARITIES

Receipts and Payments Account for the year ended 31 December 1991

	Notes	£,000	£,000	Previous Year £,000
CAPITAL				
Receipts:				
From trustees for investment (including dividends and interest retained)	2a, c	37,474		28,308
From disposal of investments	2a	45,081		43,323
			82,555	71,631
Deduct payments:				
Purchase of investments	2a	49,539		41,506
Amounts remitted to trustees	2a	32,807		30,558
			82,346	72,064
	2d		209	(433)
DIVIDENDS AND INTEREST:				
From investments held	2b	99,311		93,673
Deduct amounts remitted to trustees (including amounts retained for investment)	2b, c	98,399		95,418
	2e		912	(1,745)
			1,121	(2,178)
OTHER: receipts (payments) net	3		28	7
EXCESS: of receipts over payments (payments over receipts)			1,149	(2,171)
Statement of balances as at 31 December 1991				
Balance at 1 January 1991			3,095	5,266
Add (deduct) excess of receipts (payments)			1,149	(2,171)
Balance at 31 December 1991			4,244	3,095

The Notes numbered 1 to 4 form part of these Accounts.

Notes to the Account

Note 1

In accordance with s.3(6) of the Charities Act, 1960, the Account is drawn up in the form directed by the Treasury.

Note 2—Accounting policies

- (a) The Official Custodian has no funds of her own and no power to make investment decisions on behalf of charity trustees. In the investment or disinvestment of charity funds, she may act only on, and in accordance with, instructions from the trustees. The proceeds of investment disposals may be reinvested or remitted to the charity trustees. Where capital funds are involved, the Official Custodian will not normally release the funds without taking steps to ensure that the capital is reinvested in her name. Funds expendable for the purposes of the charity may normally be withdrawn at the trustees' discretion.
- (b) Investments held by the Official Custodian for more than one charity are registered in aggregated holdings in her name. Where an aggregated investment holding is held, the Official Custodian apportions dividends or interest payments received (with the benefit of all recoverable tax) between the charities concerned. Dividend and interest amounts in the Account include recoverable tax.
- (c) The Official Custodian either remits dividends and interest payments to the charities' bank accounts or retains them for investment in accordance with standing instructions from the trustees. The amount retained for investment in 1991 was £991,684.26.
- (d) Investment transactions are carried out promptly by the Official Custodian. Unavoidable delays in settlement of investment transactions result in relatively small differences between total receipts and payments over the year.
- (e) Dividends and interest due to trustees include amounts held while investment holdings are reconciled with registrars' books and advances of tax from the Inland Revenue.

Note 3—OTHER: Receipts (payments) net

These comprise miscellaneous receipts and payments by way of fractional residues of cash entitlements arising on aggregated holdings and not applicable to individual charities; cash arising from, or paid out of the Departmental Vote as compensation for, errors in cash or investment dealings; miscellaneous commission received not applicable to individual charities, etc.

Note 4—Securities

- (a) The schedule at 4(d) reflects—
 - (i) acquisitions and disposals of investments by the Official Custodian acting on the instructions of charity trustees:
 - (ii) purchases and sales carried out in the Official Custodian's name by investment agents acting directly for trustees: and
 - (iii) Other transfers of investments to and from the Official Custodian.In the case of (ii) and (iii) above, no cash passes through the books of the Official Custodian and the transfers are not reflected in her Receipts and Payments Account.
- (b) Share and unit holdings, whether with or without a par value, are shown as numbers of shares or units. Holdings of UK stock and foreign debentures are shown as nominal amounts in the relevant currency.
- (c) Transactions in investments are recorded on the basis of contractual entitlement. Transactions carried out by the Official Custodian are recorded without delay. Where the transaction has been carried out by the trustees' own investment agents, however, there can be a delay before the Official Custodian is notified of the transaction. Transactions occurring in the current year, but notified to the Official Custodian after 31 December, are included in the following year's Account.
- (d) Total amounts of securities placed to the account of the Official Custodian and transferred therefrom in the year ended 31 December 1991 and the balances standing to the account of the Official Custodian at that date are as follows:

	Balance on 1 January 1991		Transferred to Official Custodian		Transferred from Official Custodian		Balance as at 31 December 1991
British Investments:							
Issued or guaranteed by the Government-							
Dated Stocks	£355,782,894		£97,463,978		£84,051,994		£369,194,878
Undated Stock	£20,064,038		£216,925		£775,905		£19,505,058
Issued by Local Authorities-							
Dated Stocks	£1,966,060		£38,487		£175,819		£1,828,728
Undated Stocks	£751,416		Nil		£19,688		£731,728
Mortgages & Bonds	£1,083,471		Nil		£445,899		£637,572
Temporary Loans	£209,848		Nil		£75,139		£134,709
Issued by other statutory authorities-	£2,520,876		£6,000		£327,692		£2,199,184
Issued by Companies-							
Loan Capital	£54,337,484		£19,672,221		£15,527,634		£58,482,071
Preference Capital	27,722,304	Shares	15,692,334	Shares	10,541,217	Shares	32,873,421
Ordinary Capital	261,335,893	Shares	103,333,065	Shares	96,753,026	Shares	267,915,932
Interest-bearing Deposits	£34,582,534		£11,346,855		£14,015,510		£31,913,879
Real Securities	£20,500		£3,000		£4,000		£19,500
Miscellaneous Shares	80,969	Shares	520,566	Shares	579,456	Shares	22,079
Currency	£164,854		Nil		£1,400		£163,454
Annuities	£63		Nil		Nil		£63
Commonwealth Investments:							
Government, Provincial and other Securities	£1,524,406		£95,000		£570,468		£1,048,938
Foreign Government, Municipal and other Securities	£62,908		Nil		Nil		£62,908
Investments expressed in other currencies:							
Shares of Commonwealth and foreign undertakings	1,069,001	Shares	266,781	Shares	888,900	Shares	446,882
Debentures							
Roubles (Imperial)	93,750	Roubles	Nil		Nil		93,750
Irish Punts	78,157	Punts	15,632	Punts	Nil		93,789
US Dollars	3,000	Dollars	Nil		Nil		3,000
Investments not expressed in currency:							
National Savings Certificates	640	Units	Nil		150	Units	490
Charitable Investment Funds-							
Charities Official Investment Fund	60,374,553	Income Shares	2,464,359	Income Shares	1,075,553	Income Shares	61,763,359
	2,720,971	Accumulation Shares	371,657	Accumulation Shares	169,494	Accumulation Shares	2,923,134
Other Funds							
	96,808,084	Income Shares	9,923,205	Income Shares	2,682,852	Income Shares	104,048,437
	4,174,440	Accumulation Shares	690,678	Accumulation Shares	321,790	Accumulation Shares	4,543,328
Unit Trusts	131,389,429	Units	27,988,891	Units	22,256,689	Units	137,121,631
Shares of No Par Value	203,502	Shares	7,618	Shares	57,212	Shares	153,908
Subscription Warrants	1,474,844	Warrants	484,984	Warrants	557,402	Warrants	1,402,426
Participation Units	452	Units	Nil		Nil		452

The Seal of the Official Custodian for Charities was affixed hereto in the presence of:

Mrs S. E. Gillingham
Official Custodian for Charities

27th March 1992

M. J. Fry

Authorised under section 3(4) of the Charities Act 1960. Charity Commission, St Alban's House, 57/60 Haymarket, London SW1Y 4QX

Certificate and Report of the Comptroller and Auditor General

I certify that I have examined the financial statements on pages 45 to 47 in accordance with s.3(7) of the Charities Act 1960 and the National Audit Office auditing standards.

In my opinion the financial statements properly present the receipts and payments of the Official Custodian for Charities for the year ended 31 December 1991 and the balances held at that date and have been properly prepared in accordance with s.3(6) of the Charities Act 1960.

I have no observations to make on these financial statements.

NATIONAL AUDIT OFFICE
7 April 1992

JOHN BOURN
Comptroller and Auditor General

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