



Report of the Charity Commissioners for England and Wales for the year 1990

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

Ordered by The House of Commons to be printed 15 May 1991

LONDON: HMSO

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Charity Commission
St Alban's House,
57-60 Haymarket,
London SW1Y 4QX
12 April 1991

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 1990 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. A fully effective system of supervision of charities in England and Wales depends upon carrying forward a series of critical measures, some requiring legislation, each of which is an integral part of a co-ordinated programme. Associated with these developments, and of particular interest to us in dealing with cross-border cases of charity abuse, is the introduction, for the first time, of a system of accountability and regulation of charities in Scotland. We report on this more fully in paragraph 14 and **Appendix B**. Preparation of a Charities Bill to enhance our own powers in relation to charities in England and Wales is in hand and the possibility of legislation within the next Parliamentary year determines much of our planning.

2. Meantime, we have continued to make significant progress to become a more effective supervisory body. (In paragraphs 45 to 78 we report on our work in monitoring charities, investigating abuse and protecting charitable property). In this respect we were encouraged by the findings of the National Audit Office (NAO) following an examination made during the year of the progress which we have made towards implementing recommendations from the Committee of Public Accounts in February 1988. In a Report of 12 November 1990 presented to Parliament by the Comptroller and Auditor General the NAO found that we had responded positively to all the conclusions of the Committee. They concluded that, if successful and supported by necessary legislation, our strategy for structural and management reform should put our operations on a more efficient and more effective basis by 1993-94 when the full monitoring system is expected to be in place. The NAO also found that the proposed changes and developments presented a severe management challenge. We recognise this and are determined to meet that challenge.

3. Fundamental to the achievement of our objectives 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 charities and to institute a system for their effective supervision. The creation of the Charity Database took a significant step forward in October 1990 when we were able to launch the largest census of charities ever undertaken. Over the coming year we will be contacting registered charities in England and Wales and asking them to update the information held on the Central Register of Charities. This is a massive undertaking which will be of considerable significance to the whole charity world. When the Register has been effectively reconstructed we and the public will, for the first time, have an accurate record of all registered charities. Through an Annual Return which registered charities will be required to complete we plan to update the record annually. This will put us in touch with the trustees of charities on a regular basis. We report more fully on this development in paragraphs 25 to 28 below.

4. The confidence of the public and Government in charities is dependent not only upon the open accountability of trustees and our own capacity to identify and root out abuse, but also upon the effectiveness with which trustees themselves use their resources to fulfil the purposes of their charities. We very much welcome the growing recognition within the charitable sector of the need to promote and enhance efficiency and effectiveness in the administration of charities, and we have been pleased to be associated with several initiatives in the voluntary sector to promote that practice. The Report of a Working Party established by the National Council for Voluntary Organisations under the chairmanship of Lord Nathan, published in April 1990, is a significant contribution and major stimulus to these developments. We greatly welcome this significant contribution to the active discussion on efficiency and effectiveness in the voluntary sector.

Sound Administrative Practice

5. Our own concern about the need for sound administrative practice was reflected in the seminar which we held in April 1990 to address current concerns about effective administration of charities. The seminar coincided with the publication of the Nathan Report, and the contributions of those who attended

echoed many of its recommendations, in particular, those dealing with the role and effectiveness of trustees. These recommendations are contained in chapter 8 of that Report, and we believe it worthwhile to discuss them below in some detail.

6. We agree with the contention of the Working Party that many trustees are not fully aware of the responsibilities and of the burdens of trusteeship when they assume office. The Report recommends that there should be a chairperson of trustees, who should be expected to see that trustees are aware of the full range of their responsibilities; that new trustees receive our leaflet (CC3) on their legal responsibilities; and that new trustees be given some formal introduction to the organisation they are joining. We endorse these recommendations, and we also agree that individual trustees should be selected so as to provide, between them, a variety of skills and abilities to enable the charity to perform effectively across the whole range of its activities (including internal administration and management). We should like to see the notion dispelled that charity trusteeship is in any way a sinecure or a form of patronage: no-one should believe that a willingness to dedicate personal resources of time and energy to the office of trustee, unrewarded, is an acceptable excuse for a lack of professionalism. Trustees must become fully involved in the control and management of their charity from the start and be clearly aware of their responsibilities in this regard.

7. The Report quite rightly concludes that present arrangements for the guidance and training of trustees are inadequate. Many trustees have not considered that trusteeship was an office for which training could (or need) be given in any formal sense. Now that new training initiatives are beginning to become available, many trustees need to understand that it is their responsibility to take advantage of the opportunities which these initiatives provide. If, as the Report suggests, grant-makers get into the habit of checking the availability to trustees of appropriate training before making a grant to a particular charity, some trustees may find that their charity's income will suffer directly as a result of their reluctance to undergo the training which would enable them to make the most effective use of the grant money, especially where this is for the general running costs of the charity.

8. We have taken an active interest in various trustee training initiatives which have begun in recent months, although we are not at present seeking to accredit training courses which we deem to be suitable. We were pleased to be able to contribute to two pilot seminars organised by the Directory of Social Change for the trustees of newly-registered charities. We will support the further series of six meetings planned for 1991. Mrs Diane Yeo will act as Deputy Chairman of a Working Party set up in December 1990 in conjunction with the NCVO to identify what elements should be contained in a training and support package for trustees and for management committees of voluntary organisations. It is particularly important, in our view, that any initiatives promoted for training charity trustees should specifically reflect the values and characteristics of voluntary sector organisations.

9. We welcome, as did the Nathan Report, the establishment of a register giving the names of persons willing to act as charity trustees and listing the particular skills that they could bring to that office. We would also urge those in business to consider whether allowing suitably qualified members of their staff to become charity trustees, and making their time available for that purpose, may be an appropriate way of "giving" whether in addition to, or in substitution for, making grants of funds.

10. The Nathan Report also concluded that trustees should remain unpaid; this is in line with our own views, which were set out in paragraphs 87 to 95 of our Report for 1989. Whilst we have always believed that there are powerful reasons to maintain the voluntary nature of trusteeship, we have been further encouraged in recent months by the interest in our country's system of disinterested management that has been shown by the voluntary sector in many European countries and

in particular by the Commission of the European Community. We report more fully on developments in Europe in paragraphs 15 to 23.

11. Another subject of concern raised at our April seminar was the extent to which trustees can be held personally liable for the financial consequences of their actions, and whether they can 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 may be at risk. We hope to produce the results of our detailed policy review on this topic during 1991.

12. We also propose to produce a checklist for charity trustees on "good practice" to prompt trustees to evaluate their own performance in several key areas (including their own training).

13. In the body of this Report we also give brief accounts of other work done during the year, in particular in considering applications for registration of new charities which reflect evolving social needs, and in making schemes and orders for the better regulation of charities. In **Appendix A** we detail six cases where, as a Board we formally considered their charitable status, and in **Appendices C and D** we mention recent legislation affecting charities and certain decisions of the courts.

Supervision of Charities in Scotland

14. In paragraphs 134 to 144 of his Report (HMSO, 1987) Sir Philip Woodfield commented on the absence of effective supervision of charities in Scotland and recommended that the Scottish Office Home and Health Department should advise the Secretary of State on which provisions applying now or in the future in England and Wales should be extended to Scotland. He noted that no official body existed in Scotland to exercise the functions vested in the Charity Commissioners in England and Wales, and that because there was no Central Register of the estimated 17,000 Scottish charities little information was available publicly about their activities. In the absence of a registering authority, charitable status was effectively determined by the Inland Revenue, for the purposes of deciding whether to grant tax-relief. The Inland Revenue had no powers to deal with non-tax abuse of charitable funds, and indeed no power to pass information about abuses to an investigating authority. Following full consultation by the Secretary of State, Part I of The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) which received the Royal Assent on 1 November 1990 but which has not yet been brought into force, introduces new provisions for the regulation of charities and their accountability in Scotland. The regulatory system reflects in part existing English law and proposals derived from the proposed legislation in England and Wales (White Paper, **CHARITIES: A FRAMEWORK FOR THE FUTURE** (HMSO, 1989)). Some provisions are however unique to Scotland. We discuss the principal provisions of Part I of the Act in **Appendix B** and point to those measures which are of particular interest to the proposals for legislative reform in England and Wales.

Developments in Europe

15. We noted in paragraph 17 of our Report for 1989 that the concept of charity in England and Wales was markedly different from that in almost all other Member States. Because our system of charity law is almost unique in the Community, we felt it to be at particular risk of damage by European legislation drafted in ignorance of it. We endeavoured during 1990 to commend the virtues of the English charitable system to the EC Commission, and to emphasise the importance of charity in the values and daily life of our nation. Our apprehensions have diminished during the year as the EC Commission has shown a growing

interest in English charity law and practice, and an appreciation of their special features. In October we were pleased to meet M. Paul Ramadier, who has special responsibility within Directorate General XXIII of the EC Commission for the *économie sociale*, which includes the voluntary sector and charities. M. Ramadier has also had discussions with our Consultant, Mr Harry Kidd, in Rome and in Brussels on several occasions.

16. On 7 November we held a seminar on the subject of developments in Europe, which was attended by representatives of a wide range of institutions concerned with the effects of European legislation upon the charitable sector in the UK. Discussions at the seminar testified to the desire of the UK charitable sector to promote co-operation with similar organisations throughout Europe, including non-EC States. We are also pleased to report that, towards the end of 1990, we received from Brussels a proposal that an official with knowledge of the UK voluntary sector and especially of charities should be seconded to Directorate General XXIII of the EC Commission as a national expert. Such an appointment is to be made in 1991.

17. Throughout the year Article 58 of the Treaty of Rome has continued to engage our close attention. The primary purpose of the Article is to assure to "companies or firms" the right to pursue their activities throughout the Community. The definition in Article 58 of "companies or firms" is couched in broad terms, but it specifically excludes those which "are non-profit-making" ("*sans but lucratif*"). The EC Commission has been inclined to the view that "non-profit-making" companies or firms should be interpreted as comprising all those that are not engaged in economic activity. The practical effect of such an interpretation, if it prevails, would be to extend the application of Article 58 to many voluntary organisations (including many charities) that would otherwise be outside its scope. This would be welcome to a number of such organisations but the Commission's interpretation also has the effect of bringing these voluntary organisations within the ambit of future company law directives, which might be at variance with the regulatory provisions of our own charity law. It may also have implications for grant making by Government. We therefore maintained our resistance to the proposed interpretation, confident that other means could be found of assuring to voluntary organisations the freedoms that they seek. There is the possibility that the European Court may hold the EC Commission's interpretation to be correct, for European canons of interpretation are markedly different from our own, especially in allowing other factors, such as the Court's view of the purpose, intent or spirit of the Treaty, to take precedence over the literal meaning of the words to be interpreted.

18. As we said in our Report for 1989, the European institutions regard many charities and voluntary organisations as falling within the category of "associations", which in turn are treated as belonging, along with co-operatives, mutual credit and mutual insurance organisations, and the like, to what is sometimes called the "*économie sociale*". Mr Kidd has on our behalf, attended general conferences on the *économie sociale* held in Paris in 1989 and in Rome in 1990. From his observations, and from a paper published in the latter part of 1990 by the Economic and Social Committee of the European Communities (CES 1046/90 jc), we have come to the belief that the UK charitable sector does not lie comfortably alongside the other organisations mentioned above as making up the *économie sociale* which appears to be dominated by powerful organisations whose primary purposes, while not leading to a direct distribution of profit, are nonetheless overwhelmingly commercial. These organisations operate in the interests of their members, so that the altruism and disinterested management that are essential characteristics of charities under English law are absent.

19. While we understand why the EC Commission may wish to combine a miscellany of different organisations under the heading of the *économie sociale* it is difficult to accept that a common philosophy is shared by its constituent organisations. It may well therefore be dangerously misleading to treat UK

charities as of like character to the other constituents of the *économie sociale*. We shall continue to use all opportunities in our future discussions with the Commission to explore other possible means of achieving the Community's purposes in ways which allow this distinction to be maintained.

20. Mr Kidd welcomes the increased emphasis that has been placed, in recent discussions of European politics, on the principle of subsidiarity. This principle calls for legislative responsibility to be left to the Member States except where there is a clear necessity for it to rest with the European legislative institutions. The high value placed upon the voluntary sector, and especially upon charity, and the considerable differences both in the legal structures of the individual organisations concerned and in the legal frameworks within which they operate throughout the Community, seem to him to lead inevitably to the conclusion that this is manifestly an area in which the principle of subsidiarity should prevail.

21. We are pleased to see the active part which UK charities are taking at the present time in the work of such bodies as the European Foundation Centre and CEDAG (*comité européen des associations d'intérêt général*). Both the National Council for Voluntary Organisations and Charities Aid Foundation as well as many leading charities are forging valuable links with similar special bodies in other Member States. Some charities are also now actively assisting the emergent charities of Eastern Europe.

22. Mr Kidd attended as an observer, on our behalf, a meeting of the International Committee on Fundraising Organisations. This body is composed of representatives of non-governmental organisations all of which are concerned with monitoring the standards of conduct of charitable and other philanthropic bodies. An increasing number of these non-governmental organisations award a mark of approval to bodies that meet their standards. The Committee is particularly concerned that bodies which raise funds in one country, administer them in or from another, and perhaps spend them in yet another, may escape adequate scrutiny in all of them, simply because their activities are spread through several jurisdictions. This is a problem to which we shall continue to give attention.

23. We were also represented at a meeting held in Paris under the auspices of the *Fondation de France* who are actively examining the organisation of associations and similar voluntary bodies in other States.

Registration of Charities

24. We registered 4013 charities during 1990. 749 charities were removed from the Register, usually because they have been wound up or ceased to operate. The estimated total number of registered charities at the end of the year was 171,434. The number of charities removed is much higher than in previous years and we expect that it will increase further as our work in identifying active registered charities continues.

Computerisation

25. The introduction of a reliable and up-to-date National Charity Database took a significant step forward in October 1990 when we were able for the first time to launch the most comprehensive census of charities ever undertaken to which we have referred in paragraph 3 above. Our object is to establish contact with those charities with whom we have lost touch, to validate and add to the information about them, to obtain up-to-date accounts and finally to remove from the Register those charities which no longer operate or have ceased to exist. Over the 12 months to September 1991 we shall write to the charities on our Register asking them to update key items of information. We began in October 1990 by writing to some 23,000 charities asking them to confirm the name of the current correspondent and provide details of their bank account, annual income and copies of their latest accounts. At the end of the year the response rate was 65% of those mailed. The lessons learned from the first tranche of the

mailing will be applied as we write to the remaining charities on the Register between April and September 1991. The task of tracing those charities which do not respond to our mailing is not an easy one. We have, in the first part of this exercise, sought to use the services of voluntary co-ordinating organisations (rural community councils, councils of voluntary service and the like) who will provide a useful local contact. We shall assess the costs and benefits of continuing in this way and explore additional means of tracking down those charities which do not respond.

26. Computer technology is being successfully used to capture new registration details and amendments to the Register. The work of transferring information from the paper-based index to the computer system has enabled us to rectify many inaccuracies and duplications which had grown up during the years not least in the different systems adopted by the Commission and the Department of Education and Science before the initial transfer of responsibility for the maintenance of the Register to the Commission in October 1972. The information about registered charities now held on computer will be available to the public in April 1991.

27. These steps are the first major achievement in developing the Charity Database which it is planned will by 1995 provide an essential source of information about charities which can be drawn on with confidence by the public, by charities themselves and other voluntary bodies. Not only will the information on the Register then be reliable but it will for the first time be able to provide crucial information about the income of registered charities and its distribution. The Database is also designed to provide the basis for effective supervision of charities. The use of an annual return to update information will enable us also to identify those charities which call for investigation. In paragraph 50 we report on the progress of our study designed to test and explore the potential of selective monitoring.

28. The use of computer technology is crucial to the development of our ability to support and supervise charities. Initially it will enable us to handle essential items of information and will assist the process of charity registration. Our ability to monitor all registered charities effectively depends on the use of this technology to despatch and analyse their annual returns. We plan to develop this further to hold information about each charity, thereby allowing all enquiries and charity requests to be dealt with using up-to-date and detailed information.

Exempt charities

29. Although section 4 of the Charities Act 1960 allows for the registration on a voluntary basis of exempt charities, it has been our policy since 1973 not to do so. We have now reviewed that policy in the context of the development of the Register as the basis for our supervision of charities and their public accountability.

30. The Register of Charities will no longer simply consist of a list of institutions which are charitable. It is intended that particulars entered on the Register, whether in the Database or the manual files, will contain more information than simply recording that the institution is charitable. To that extent the particulars which we will seek from charities under section 4(1) of the Charities Act 1960 will be expanded. We should therefore have to ask any exempt charity which seeks voluntarily to register to submit to the supervisory régime which we will impose in respect of those charities which are required to register. This would include the completion of the questionnaire, the submission of annual accounts, compliance with any audit régime and the completion of annual returns or any other return which we require for registration purposes. In relation to exempt charities, however, we will have no power to enforce such compliance nor would we have power to investigate such a charity on the basis of evidence which it did supply.

31. Since the thrust of the Government's White Paper proposals for the public accountability and the supervision of registered charities could not be applied in relation to a charity exempted from our jurisdiction even when entered on the

Register, we believe that it would not be right to include exempt charities on the Register and we do not therefore propose to change our policy. Moreover, as part of our computerised programme for the Register it would not seem to us right to continue to hold on the Register those exempt charities registered on a voluntary basis before 1973. As part of our programme of reconstruction we shall be removing such charities from the Register after giving them notice of our intention to do so.

Cases of interest

32. The trend continued towards a European and international dimension in the purposes of new charities being set up. The hospice movement, which is becoming well established in this country, is now finding acceptance abroad. We agreed to register **The Gdansk Hospice Fund**, established to provide and maintain a hospice for the care of patients in terminal stages of incurable disease and for the counselling of patients and their families in Gdansk, to be called **The Hospicjum Pallottinum Gdansk**. We also accepted **The Nairobi Hospice Trust** for similar purposes in Nairobi, to be called **The Nairobi Hospice**.

33. The economic restructuring of the Soviet Union and the consequent situation arising amongst its peoples gave rise to the establishment of **The USSR Support Charity**. The charity has objects to relieve poverty, advance education, promote religion and other charitable purposes and in particular to advance education and training in the USSR. We understand that the charity will initially concentrate its efforts on giving charitable relief to some of the estimated 35 million disabled people in that country.

34. Two cases which arose out of the conflict in the Gulf are of interest. **The Kuwaiti Support Fund** has as objects charitable purposes for the benefit of those who were citizens of Kuwait on the 2 August 1990 and their dependants who are in need as a result of armed conflict in the Middle East. **The Gulf Trust** is a charity established by the Secretary of State for Defence with The United Services Trustee as trustee. Its objects are to relieve the financial need, sickness and distress and other physical or mental disability of members of HM Armed Forces arising from military and other operations relating to or in connection with the Gulf conflict. The charity will function by distributing its funds to the King George's Fund for Sailors, the Army Benevolent Fund and the Royal Air Force Benevolent Fund for application amongst the beneficiaries in the respective branches of the Armed Forces. The division of funds will reflect the extent of the need arising among the beneficiaries in the respective forces as a result of the conflict.

35. Two charities of interest for the relief of the disabled have been registered, one on a national and the other an international scale. They are **The British Paralympic Trust** and **The Global Project in support of the United Nations Decade of Disabled Persons**.

36. The former charity has objects which include the provision of facilities for sport and recreation in the British Isles for persons who by reason of physical, mental or sensory impairment have need of such facilities. The Trust was set up to hold and apply a substantial government grant in connection with **The British Paralympic Association**, a charity which has similar objects. The charities aim to apply their funds to assist disabled British athletes with particular emphasis on preparation for, and participation in, the Paralympics, the Olympic Games for the disabled which parallel the ordinary Olympic Games every four years.

37. **The Global Project in support of the United Nations Decade of Disabled Persons** has objects to promote the prevention of disability, and the rehabilitation, integration and full participation of disabled people in society anywhere in the world. This charity will apply its funds in support of the objectives of the United Nations world programme of action arising from the United Nations Decade of Disabled Persons 1983 to 1992.

38. **The Kent Community Housing Trust** illustrates the growing number of charities which now undertake functions relating to the care of the disadvantaged in the

community which in recent history have been carried out by local authorities. This charity is established for the relief of persons resident in Kent who are in necessitous circumstances or suffering or recovering or convalescing from physical or mental illness or disability or of elderly people, by the provision and maintenance of housing accommodation upon terms appropriate to their means. The aim of the Trust is to provide good housing and care options for people with learning difficulties, mental ill health, and for the elderly, based within the community or in a non-institutionalised environment. It will initially acquire and use properties which were formerly held by Kent County Council Social Services Department for community care purposes. Later, it will provide housing facilities for its beneficiaries by arrangement with the Health Authority and other statutory authorities and voluntary agencies.

39. A further case of interest is **The Wessex Foundation** set up to advance education amongst young people by the provision of educational facilities. The Foundation is particularly concerned to provide practical learning and work experience in the context of farm work and craftsmanship in a way which will develop the physical, mental and moral capacities of those who by reason of their social, economic or educational circumstances have need of such facilities to realise their potential as full members of society. The Foundation aims to run an organic farm in Dorset which will give work and practical learning experience to disadvantaged adolescents as well as carrying out research in organic farming. This is similar to educational and work experience projects carried out by a new international association for 'Learning through Productive Action' based in Berlin.

40. Another case is the **Whitehall and Industry Group Trust**. The Trust is established to promote, for the public benefit, an efficient public administration by providing civil servants and others employed in the public sector with programmes of study, research and training about private sector organisations and practice. The Trust is also concerned to promote industry and commerce by improving in private sector companies the understanding of the public sector by means of study, research and training. One aim of the Trust is to provide short term secondments for senior civil servants to the private sector so that the Civil Service may be more responsive to private sector needs and also to promote a greater understanding in industry and commerce of the process of administrative government.

The Commissioners' Decisions on Charitable Status

41. We considered the position of one institution whose charitable status was in doubt and it clarified a decision taken by our predecessors nearly thirty years earlier concerning the jurisdiction of the High Court with respect to a charity founded before the establishment of the Court of Chancery in the fifteenth century (**Bridge House Estates, Appendix A(a)**).

42. In the case of the **Settle and Carlisle Railway Trust (Appendix A(b))** we were asked to consider whether purposes directed to the preservation of buildings of historic and architectural importance were charitable where those buildings belonged to a statutory body and money spent on them could, therefore, be said to be relieving the statutory body of the expense of maintenance. In the circumstances of the case, we decided that they were charitable. In another case, however, we refused to register a trust as a charity where, although the declared purposes were ostensibly charitable, we took the view that the scheme by which those purposes were to be carried out demonstrated that the true purpose was to confer substantial benefit on non-charitable interests (**Chelsea Community Trust, Appendix A(c)**).

43. A dispute between a local authority and the National Playing Fields Association as to whether the local authority had had power to settle land on recreational trusts led us to take the view that, subject to correction by the courts,

valid charitable trusts had been declared and that, notwithstanding the absence of an application from the local authority, we should place the charity on the Central Register (**King George's Field, Canvey Island, Appendix A(d)**). This has had the consequence, subject to appeal, of retaining for recreational use land that was otherwise being turned over to other (albeit charitable) uses.

44. In deciding that a trust to relieve poverty by providing, or assisting in providing, accommodation for people in necessitous circumstances, could properly carry out that object by the provision of loans to assist the purchase of accommodation by beneficiaries we had opportunity to review the various means by which poverty can be relieved by charities (**Garfield Poverty Trust, Appendix A(e)**). In the case of **Community Computing in Newcastle (Appendix A(f))** we agreed that the provision to charities of advice, training and information about information technology in direct pursuit of the objects of charities was charitable as improving the efficiency of the administration of those charities.

Investigation of Abuse and Protection of Charitable Property

Generally

45. At a time when Government and public alike are increasingly looking to a vigorous, healthy and effective voluntary sector it is critical that we should improve and expand our capacity to supervise charities effectively. Public confidence in the charitable sector is dependent to a considerable degree on our success in identifying, controlling and remedying abuse in individual charities.

46. We have continued to strengthen the resources devoted to this work and to the training of staff to meet the changing demands of their work. During the year the complement of the division was increased from 40 to 44 staff and staff in the division previously handling press matters have now been released for investigative work following the creation of a discrete Press Office.

47. A comprehensive training programme was introduced to provide staff with courses in accountancy, charity law and investigative methods. We believe this training to be an essential investment if staff are to meet the changing and challenging demands of their work, and all staff in the division involved in investigation have now received this training. The training programme has been supported by the accountants and lawyers on our staff. Our professionally qualified staff have also been engaged in those investigation cases requiring substantial accountancy or legal input, the development of the monitoring study, and in advising staff in the examination and analysis of accounts and on legal problems.

48. As part of the development of our management information system we have established priorities for our investigation cases to ensure that staff time is targeted on the most serious cases. Complaints which on initial inquiry are found to be of a trivial nature or which are mischievous are generally not pursued without very good reasons. We now identify our inquiries by the cause for concern calling for investigation (rather than, as in the past, merely by reference to the complaints received). During the year we opened inquiries in respect of 455 causes for concern. Inquiries into 303 causes for concern were concluded. Currently 26% of the causes for concern under investigation relate to deliberate fraud, 33% relate to maladministration and 10% to fundraising abuse. The remaining complaints are principally concerned with constitutional irregularities or improper political activities.

49. It is noteworthy that of the 303 inquiries concluded during the year 81 were found to be substantiated. The approximate value of charity property we protected was £7.8m, and the value of property recovered to charity during the year was £490,679. We issued orders freezing 26 charity bank accounts containing a total sum of £95,874. We removed one trustee, appointed five, referred 24 cases to the police and prohibited further fundraising in eight cases.

Monitoring

50. The development of our work in monitoring charities continues on two fronts: the routine examination of charity accounts and a special study to identify

the most appropriate means of monitoring charities in the longer term. During the year we examined the accounts of 4523 charities. The accounts included some called for by us from charities and a selection from unsolicited accounts submitted to us. Of the total examined 111 were referred for further investigation. The monitoring study, which was commissioned in 1989, is exploring the potential for selective monitoring of charities by means of a computer system based on the annual returns from all charities now being instituted. The Study Team are concentrating on the design and content of those returns, an analysis of the factors which place charities at risk and the identification of the means by which cases of concern can be readily identified. In liaison with several charities and voluntary organisations and with the assistance of the Office of Population Censuses and Surveys, the Study Team have developed a series of key questions for charities to answer. The efficacy of these questions in identifying causes of concern is being tested by means of a questionnaire sent to a random selection of charities. The study, the first part of which is due to be completed during the summer of 1991, will test the questionnaire on 2500 charities. During 1990 the questionnaire was sent to 1200 charities but so far the results have been disappointing, with only 45% of questionnaires having been returned completed. We are following up non-responders and will continue our work in this important area.

Cases of interest

51. In many cases under investigation the inadequacies involved stem from trustees either not appreciating or not fulfilling their responsibilities to maintain adequate financial and management controls. For example, in one investigation concerning the potential sale of charity property without our prior consent, inquiries revealed that the majority of the trustees were totally unaware of the proposed sale being taken forward by the clerk to the trustees. While there had been no deliberate attempt to misapply charity property it was nevertheless seriously at risk due to the lack of financial and management controls. A further investigation into a complaint about the levels of remuneration paid to employees of a charity revealed that an audit of its accounts as required by its trusts had not been carried out for the past three years. In both cases full corrective action has now been taken to tighten controls and procedures. In a third case, salaries amounting to some £160,000 were drawn by trustees. Our investigation showed that this arose not from fraud but due to a genuine belief that the trustees could be paid and the trustees have now repaid these moneys to the charity.

52. Other investigations revealed, however, a more cynical use of charity property in which the interests of those connected with the charity or of associated trading companies are put before those of the charity itself. A case conducted jointly with the Inland Revenue concerned the investment of substantial sums of charity money in a trading company connected with the deceased founder of the charity. The investment had been largely lost as a result of substantial trading losses in the company. The case, which was referred to the Attorney General, was subsequently settled by a substantial payment by the trustees to the charity in restitution. Further payment by way of a contribution to costs is being made, and an undertaking by the trustees to discharge personally all tax liabilities resulting from the use of tax relieved income or gains in relation to the improper investments has been given.

53. A further case identified through our monitoring exercise involved an unsecured interest-free loan of charity funds to three non-charitable associated trading companies. We have been able to secure a repayment of £139,711 to the charity which represents unpaid interest on these loans.

54. We look forward to the proposed legislation which will give us direct access to the courts to secure restitution of misapplied charity property. In the meantime only the Attorney General has such power. The following cases illustrate this position. In the first, an investigation concerning an educational charity found that the spouse of the founder of the Trust, who was a trustee with the founder, was in receipt of remuneration from the charity. The governing instrument of the charity clearly prohibited payments to the founder and his spouse and there

was no power to pay trustees. We advised the charity that payment of any remuneration to a trustee, apart from reimbursement of reasonable out-of-pocket expenses, was a misapplication of funds for which all the trustees might be personally liable. We asked the trustees to suggest how repayment would be made. They declined and the matter was referred to the Attorney General to consider whether any action could be brought to enforce the repayment of the salary. The trustees were able to argue that the trustee involved had been paid as a member of the academic teaching staff rather than as a trustee. It was also argued that the charity had suffered no loss as a result of the trustee's employment and that in fact it had greatly benefited by the trustee's continued commitment. In order that the charity could continue to receive the benefit of the trustee's considerable knowledge and experience, it was proposed that a new charitable company be established with similar objects to the existing charity and that the assets of the existing charity be transferred to the new charitable company. Neither the founder nor his spouse would act as trustee of the re-organised charity but the trustee involved would be paid as an employee of the new charity. On that basis the Attorney General agreed not to take action to recover the sums previously paid to the trustee.

55. During the course of our investigation into the affairs of another charity, we considered the validity of a legal charge of a property belonging to the charity executed by former trustees in favour of the founder of the charity. The former trustees appeared to have taken no independent legal advice before executing the charge and an examination of the charity's accounts showed that the trustees did not in fact receive all moneys secured by the charge. In view of the circumstances surrounding the execution of the charge, we considered there was some doubt as to whether it was in fact valid and binding on the present trustees of the charity. The Attorney General advised that the charge could not be valid for the whole amount of the sum secured but agreed, by way of compromise, that those sums which were actually received by the charity should be repaid to the founder in return for a release from the charge.

56. A third case concerned the use of a hostel belonging to a charity. One of the trustees of the charity lived at the hostel with his wife. Both provided services to the charity. After the death of the trustee his widow remained there and remarried. Later, she sought the consent of the surviving trustee to the transfer of the legal title to her. He declined and referred the matter to us. The charity had no property other than the hostel building which was no longer being used for charitable purposes and was in a dilapidated state. We appointed new trustees to act together with the surviving trustee and vested the legal title in the property in the name of the Official Custodian for Charities to safeguard the charity's interests. The widow pressed a claim against the trustees for ownership of the property. It was agreed that the property be sold, but before the sale took place the widow applied to the High Court for a declaration that she had obtained title to land by adverse possession. The trustees sought our further assistance and since we considered that the new trustees should not be put in the position of having to fund litigation out of their own pockets, we referred the matter to the Attorney General who agreed to protect the charity's interests in the forthcoming litigation.

Enforcement

57. We have power under section 7 of the Charities Act 1960 by order to require any person having in his possession or control any books, records, deeds or papers relating to a charity to furnish us with copies or extracts or to transmit the document itself to us for inspection. For the purposes of any inquiry under section 6 of the Act we, or any person appointed by us to conduct the inquiry, have power by order or precept to require any person to furnish accounts and statements in writing with respect to any matter in question at the inquiry and to attend at a specified time and place to give evidence. Failure to comply with such an order may be dealt with by the High Court. If any person wilfully alters, suppresses, conceals or destroys any document he is liable on summary conviction to a fine or imprisonment or to both. We are pleased to report that we have

hitherto rarely had to consider the necessity of such enforcement proceedings since the co-operation of trustees and officers of charities and their professional advisers is usually forthcoming. During the year, however, we had occasion to institute legal proceedings under section 41 of the Charities Act 1960 for the purpose of securing compliance by a trustee with an order requiring the supply of information and of papers.

58. The case concerned the disposal of charity property to the charity's detriment and our order had been ignored. A motion for committal was served upon the trustee, who at that point indicated his willingness to comply with the order and the motion was adjourned to give him the opportunity to do so. As he subsequently complied, no order was made on the motion except an order for him to pay our costs on an indemnity basis.

59. Inquiries into the case are still proceeding. We would wish to make it plain, however, that we will not hesitate in the conduct of our investigations to institute court proceedings if our orders are wilfully ignored.

Formal inquiries

60. The bulk of our investigations are carried out by our own staff acting in our name. From time to time, however, we exercise the power given to us under section 6(2) of the Charities Act 1960 to appoint a specific person to conduct an inquiry and to report to us, because of the complexity of the case, its importance or high public interest. During the year we commissioned four such inquiries three of which we mention briefly below.

OXFAM

61. We decided to hold an inquiry 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. We have been in discussion with the trustees of OXFAM for some time about the extent to which they could properly bring matters to the attention of the public and seek to influence Government, but we believed it right that, rather than continue to deal with individual complaints about separate campaigns piecemeal, a thorough review of the trustees' campaigning activities should be undertaken. We have received the full support of the trustees and we expect the inquirer to report to us in the first half of 1991.

War on Want

62. In April 1990 we appointed Mr David Spence CA, a partner in the firm of Messrs Grant Thornton Accountants, and Mr Charles Raikes, a senior lawyer with our investigation staff, to conduct an inquiry into the affairs of War on Want to ascertain the circumstances which had led to the potential insolvency of the charity and the extent to which members or past members of the Council, employees or past employees and the charity's professional advisers had contributed to this state of affairs, with particular reference to the treatment of special trust funds and special project funds in the hands of the charity. The inquirers reported their findings in February 1991 and our conclusions have been published separately (by HMSO).

Royal British Legion

63. During the year we were concerned about the circumstances surrounding the grant of a loan facility by the Royal British Legion in 1987 to the Legion Leasehold Housing Association Limited. We appointed one of our senior lawyers, Mr Kenneth Dibble, to conduct an inquiry and to report to us.

64. The Royal British Legion is a body established by Royal Charter with objects including the promotion by charitable means of the welfare of men and women who have served in the armed forces, the Mercantile Marine during hostilities afloat, or any Red Cross organisation while serving with the armed forces, and their dependants.

65. In January 1987 the Finance and General Purposes Committee of the charity had agreed to give a secured loan facility to the housing association for the purpose of property development. The housing association is a registered non-

charitable housing association with objects primarily directed to provide housing for ex-servicemen and women of limited means and their dependants. During 1989 the financial position of the housing association had deteriorated and by the spring of 1990 it was in liquidation. Since a subsequent variation of the loan agreement made by the British Legion had left the loan unsecured, the eventual losses to the charity were expected to be substantial. We believed that this was a serious cause for concern calling for a full inquiry and we expect the inquirer to report to us by the summer of 1991.

Reports

66. During the year we received final reports from inquirers appointed to conduct investigations into two charities. One inquiry was instituted into whether the sale of the property and business of a charitable company constituted a management buy out at less than full market value. We have accepted that the price paid for the charity's undertaking could not unequivocally be shown to be less than the proper market value. We have nonetheless referred the inquirer's findings and conclusions to the Attorney General because we considered that the involvement of two of the trustees in the various proposals to sell the business of the charity to a company in which they were shareholders produced an irreconcilable conflict of interest and duty on their part. We have asked the Attorney General to consider whether these circumstances warrant proceedings for the recovery to the charity of some part of the profit made by the purchasing company when the business was subsequently sold.

67. In 1988 we instituted an inquiry into the affairs of the Industrial Trust to ascertain whether the Trust's funds during the three years after its registration as a charity in 1985 were applied for exclusively charitable purposes in accordance with its objects and whether the organisation could still be regarded as a charity in law. We found that there had been shortcomings in the administration of the Trust. The Council of the Trust had not exercised proper supervision over the application of funds for charitable purposes. In particular, we concluded that the Council should not have been making general payments to the Aldnor Trust, a non-charitable trust, nor to the general funds of Kennington Industrial Company (Kennington), a non-charitable body. The Council had, however, on balance applied the funds throughout the period with an intention to carry out the objects of the Trust, namely promoting the efficiency of industry, commerce and the public services for the public benefit. We accepted that there was evidence to suggest that the payments which had been made by the Trust to Kennington and by that body to the Industrial Research and Information Service Limited, another non-charitable body, had in fact been applied for purposes within the objects of the Trust, namely for improvements in the efficiency of commerce and industry.

68. The defects of the past administration of the Trust had been accepted by the Council. All payments held by the Aldnor Trust had now been applied to Common Cause College, a charity. The Council had given a clear undertaking that they would cease the practice of making grants to the general funds of Kennington and would concentrate on aiding particular projects for specified charitable purposes falling within the objects of the Trust. On this basis no further action will be taken with regard to the payments made to Kennington and we have agreed that the Trust should remain on the Register. We also found that payments amounting to £3250 made by the Trust to a consultant for which no work was undertaken due to his ill-health were *ex gratia* payments made without proper authority and were not justified expenditure for a charity. The Council has accepted this and has agreed to refund this sum to the Trust.

Fundraising abuse

69. Fundraising is undoubtedly one of the principal influences on the public's perception of charity. It is mainly in connection with fundraising that charities seek to capture the imagination of the public and enlist their support. The methods employed and the probity of fundraisers are, therefore, crucial to public confidence. This is, however, an area where the unscrupulous can use emotive charitable causes to raise money with which they can line their own pockets. Abuse in fundraising can seriously damage public confidence in charities and if exposed

in the media can have a general adverse effect on charities far out of proportion to the scale of the actual abuse. Trustees ought to manage and control fundraising effectively, efficiently and economically and ensure that they are aware of and approve of any fundraising activities carried out on behalf of their charity. The highest standards must be adopted and systems for protecting the moneys raised put into place.

70. Trustees must be particularly vigilant if they agree to allow others to raise funds in their name. This is especially true in the case of medical charities, where the public donate freely as a matter of good faith and support, and the publicity used may be emotive. We have been concerned by the lack of proper controls and vigilance by some hospital authorities over fundraising on their behalf in several cases during the year and we are bringing this matter directly to the attention of the authorities running hospitals.

71. We are pleased to report that throughout the year we have continued to receive excellent support and co-operation from police forces throughout England and Wales. That support is particularly valuable in increasing the effectiveness with which we can check fundraising abuse. We will continue to adopt a robust approach to protecting charity assets where evidence of abuse comes to our notice and we have not hesitated to take vigorous and swift action to protect property when appropriate. In one case, as a result of information brought to our attention by the police concerning suspected misappropriation of moneys donated to charity through collection boxes left in public houses, we made orders which restrained the fundraiser from any further activity. Our investigation officers traced and seized 50 collection boxes and, following the completion of the inquiry, we made arrangements for the transfer of the recovered funds to an appropriate charity.

72. Public houses are particularly prone to targeting by bogus collectors. During the year it came to our notice that fraudulent collections were being made in the name of cancer and leukaemia research in public houses in the North-West. We alerted the licensing trade press and are pleased to report that they have responded positively by publishing a letter reminding publicans throughout the country of the possibility of bogus collections and advising them to ensure that collectors have proof of identity and a collector's permit before being allowed access to premises to solicit donations.

Investigations and the media

73. Public awareness of charities and charitable work is enormously enhanced by the press, radio and television. The media can and do give positive support to charity by reporting on charitable activities, publicising events and achievements, and encouraging public involvement. During the year, for example, our own work and the Government's proposals for strengthening our powers was discussed in 84 articles in the national press. The media also play a vigorous and effective part in detecting and publicising cases of abuse and alleged abuse. We welcome their involvement. A good example occurred in December when the London Evening Standard published a number of news stories questioning the fundraising methods and activities of The Association for the Disadvantaged, an overseas charity operating in London. The information before us as highlighted by The Evening Standard, enabled us immediately to freeze the Association's accounts and thus to protect the funds which had been raised in this country for charity. Similarly, our own investigations into the activities of The Sportsmen's Fund for Handicapped Children were matched by a special report by the BBC's **THAT'S LIFE**, resulting in the winding up of the Fund.

74. In two other cases brought to our attention by journalists we have frozen bank accounts and stopped further fundraising where it was suspected that moneys raised were being misapplied for non-charitable purposes.

75. A further example concerned the publicity given to the International Boys' Town Trust. That publicity exacerbated a crisis of confidence in the work of the charity and, indeed, a major source of funding was suspended. We insisted that

the directors take action to secure greater accountability on the part of their employees and improve their administration in order to prevent further damage to the charity. We are monitoring the charity on a regular basis.

76. Of the causes for concern which we investigated during the year, three-quarters come to our attention from sources outside the Commission, for example, the Inland Revenue, the police, and the public; and 14% were high-lighted in the media. As our systematic monitoring procedures are developed, the proportion of causes for concern identified within the Commission will undoubtedly rise, but public vigilance will always be a vital element in discovering and restraining abuse.

77. It is, however, essential that the media are careful when reporting on charities. Allegations may be published which, although they subsequently prove to be without foundation, may in the meantime do harm to the particular charity involved and shake confidence in charities generally. Since approximately three-quarters of the causes for concern brought to our attention prove to be unfounded, care is essential in ensuring that undue credence is not given to allegations before they have been assessed and investigated. For example, during the year a national charity of repute which was incorrectly reported to be under investigation by us experienced a substantial drop in donations over the following weeks. Even where there may appear at first to be substance to the allegations, hasty and extensive publicity may well be counterproductive.

78. Charities are established for the benefit of the public and should be publicly accountable. It is right that journalists should uphold the public interest by scrutinising the way that they are run. This is one reason why we have now established a Press Office to help journalists obtain material for news stories and feature articles which is factual and soundly based. We hope that the media will make full use of this new facility.

Schemes

79. During the year we made 793 schemes, a 12% increase over the figure for 1987, illustrating a steady but increasing need by charities to modernise their trusts or provide a more suitable administrative framework in which to operate. The following two cases illustrate how, by exercising a flexible and constructive approach to the sometimes complex and unusual circumstances facing trustees of what are often old trusts, charities can be better equipped to meet contemporary needs while continuing to reflect the intention of their founders.

The Campden Charity

80. The Campden Charity was originally founded by the Will of Viscount Campden dated 12 October 1629. He bequeathed to trustees a sum of £200 to be yearly employed for the benefit of the poor of Kensington forever. The gift was applied in 1635 in purchasing 16 acres of arable land near Shepherds Bush Green. His wife also bequeathed a sum of £200 in trust to purchase land and to apply the rental income, partly for the better relief of the most poor and needy people inhabiting the parish of Kensington and partly to apprentice one poor boy or more. Her gift and a gift understood to have been made by Oliver Cromwell were used to purchase additional land in Kensington.

81. Until 25 July 1879, the income of the charities continued to be divided between an apprenticing fund and a fund for the poor of Kensington. The income of the charities increased substantially in the first half of the nineteenth century. The Commissioners' scheme made in 1879 to modernise the trusts unfortunately provoked considerable opposition from the inhabitants of Kensington which resulted in appeals to the Court for further amending schemes. This culminated in an order of the Board of Education of 31 May 1904 under which the apprenticing fund was hived off under the title "The Campden Educational Foundations". The educational and the non-educational charities continued separately, although with a common body of trustees, until in March 1990 we made a scheme which

re-united the two parts into one charity called "The Campden Charity". The area of benefit of the charity continues to be the former Parish and Royal Borough of Kensington. The scheme establishes a body of not less than 16 and not more than 18 trustees who are responsible for applying the annual income, which in 1989-90 amounted to approximately £1.4m. The trustees were finding it difficult to apply the income and the trusts have accordingly been considerably widened but still divide the income between the relief of those in need and educational purposes. Part of the income is to be applied in granting pensions or otherwise in relieving need by way of grants of money or paying for items, services or facilities aimed to reduce need or hardship. The remaining part of the income is applicable for educational purposes in awarding allowances, scholarships or grants to children or young persons needing assistance who reside in the area of benefit, or in assisting maintained schools attended by such children or other charitable organisations which provide facilities for the personal development of young beneficiaries of the charity.

**St Antholin's Lecturship
Charity**

82. The St Antholin's Lectureship Charity is in fact a collection of separate charities founded in the seventeenth century to provide an endowment for the payment of a lecturer or preacher to deliver a lecture based on the "Puritanical School of Divinity". Recently the trustees had found the income of the charity inadequate to attract lecturers and, following a review by the Archdeacon of London, we appointed trustees and later made a new regulatory scheme under which the charity's income is to be applied in promoting the doctrines of the Puritan School of Divinity by the provision of one or more lectures a year in the City of London. The "Puritan School" represents the Protestant Church tradition and has its roots in the 1662 Book of Common Prayer. The release of accumulated income which had been erroneously invested as capital enables the trustees to make a realistic payment for lecturers.

Dealings in Land

Generally

83. Sir Philip Woodfield's Report recommended that legislation should be sought to allow charity trustees to sell land without our consent provided they complied with certain statutory requirements, and that in the meantime we should also try to reduce staff resources doing this work so that they could be transferred to other aspects of our work where greater resources were required. We have accordingly made wider use of the power conferred on us by section 29(4) of the Charities Act 1960 to except by order any charity from the requirement imposed by that section to seek our consent. In 1990 we made a further 36 general excepting orders, bringing the total to 232 over the last three years. In addition we have renewed 265 similar orders made in 1980 for a 10 year period. The criteria we have adopted in determining whether to make such exceptions are that the charity should be engaged in a routine programme of land transactions; the trustees have expert qualified professional advice; the sales are fully marketed or are effected under statutory procedures (such as sales under the Leasehold Reform Act 1967), and the trustees have a satisfactory record of handling land transactions.

84. 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. These are that the trustees are proceeding on the advice of a qualified surveyor acting exclusively in the interests of the charity; the transaction has been advertised in the open market (except where that procedure would not be appropriate, for example, on the grant of an easement); the trustees are satisfied that the terms of the transaction are the best that can be reasonably obtained in the interests of the charity and have been advised to that effect by the surveyor; the purchaser is not a trustee of the charity; and there is no business association or family relationship between the purchaser and the charity's trustees, employees or professional advisers. A further 832 orders were made on this basis.

85. 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 1477 orders during the year relating to all types of land transactions. Of these, 288 authorised the sale of land; 541 authorised purchases, leases, easements; 296 authorised borrowing on security of charity property; and 64 authorised the release of rent charges. The remaining orders authorised such matters as conditional agreements to sell, exchanges and expenditure and recoupment arrangements.

86. 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. The number of cases referred to the District Valuer increased from 284 in 1989 to 414 in 1990.

Leases of Recreation Grounds to Sports Clubs

87. During the year we were asked by the trustees of a number of recreation grounds for consent to the granting of leases of part of the recreation field to non-charitable members' sports clubs (such as football clubs, tennis clubs, bowling clubs). Generally, there are two kinds of case. In one it is argued that the land which is to be let is surplus to requirements or is no longer required for the purposes of the charity. Public recreation is not, however, confined to organised games and the circumstances in which parts of a recreation field may genuinely be said to be surplus to the requirements of the charity are likely to be rare. We would, therefore, normally need to be satisfied that the land had been unused over many years. Furthermore, trustees when contemplating a disposal must take all reasonable steps to secure the most advantageous terms for their charity and should not confine themselves to considering a closed transaction with a single sports club. They should take advice on other possibilities including development potential. Any disposal to a sports club must be on full market terms.

88. In the other it is argued that since the sports club is to undertake a substantial capital project it will require security of tenure to protect its investment. This in itself is not a justification for proceeding since the benefit of the works is for the members of the particular sports club and not for the public generally. In such circumstances we need to be satisfied that the proposed arrangement was demonstrably in the interests of the charity. For all practical purposes, this means that the facilities would have to be both necessary and available for public recreation. They would also have to be under the control of the trustees of the charity for such substantial and convenient periods that it could be said that the balance of the arrangement was for the public benefit. An example might be the erection of changing rooms which were used by the sports club for its own fixtures but were made available for use by the public at large when not in use by the sports club. Few sports clubs would find it in the interests of its members to provide facilities on this basis but if such a situation did arise it might be possible to discount the market rent to take into account the use of the facilities by the general public.

89. It is often argued that a grant-making body would require the sports club to obtain a lease as a condition of giving assistance. This does not alter the general principle that trustees must administer their charity in accordance with its trusts and for its own purposes and beneficiaries; that they are not legally free to use property in their care for purposes outside the charity's declared trusts; and that they cannot dispose of charity property at less than full market value unless such a disposal directly furthers the charity's own purposes. It is a matter for the grant-making body to determine whether it is still prepared to assist with funding in circumstances where the benefits are not confined, for example, to the members of bodies affiliated to it. We have, however, been advised that the Sports Council does not require property to be let to sports clubs if the application for grant or loan assistance is made to them in the name of the charity concerned.

Church House, Westminster

90. The Church House, Westminster, is perhaps best known as the meeting place of the General Synod of the Church of England. The building is owned by the Corporation of the Church House incorporated by Royal Charter in 1888.

The present Church House was built 50 years ago and in recent years has been in multiple occupation: one third by administrative bodies of the General Synod and the Central Board of Finance of the Church of England, one third (including conference facilities) by the Property Services Agency under a lease which allowed the General Synod free use of the conference facilities three times a year and, as to the remaining third, by various tenants. The deteriorating state of the building had made it difficult for new leases to be granted as they came to expire in 1989. A major redevelopment project was costed at more than £20m and in view of the Church's other pressing needs, such expenditure was open to considerable criticism. An alternative proposal to move the administrative offices of the General Synod to a site at Millbank to be shared with the Church Commissioners was considered highly controversial. In the event the Council of the Corporation proposed that a lease should be granted to a trading company to carry out the necessary work of modernisation and refurbishment of the building and, in particular, its conference facilities to bring them up to a standard needed not only by the General Synod but also other bodies which could hire the facilities on a commercial basis. A separate trading company called "The Church House Conference Centre Limited" has been formed to carry out the improvements to the conference areas under a lease to promote the conference use of part of the building. We authorised the Corporation by order to grant a long lease to the company with periodic upward rent reviews and subject to a reservation of the right for the General Synod to use the property for a maximum of 21 days each year.

The Charities Act 1985

91. During the year we received 203 resolutions under the Charities Act 1985 of which 33 were made under section 2 for the amendment of objects and 154 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 16 charities from the Register as having ceased to exist. Since the Act was brought into force on 1 January 1986, more than 1100 charities have taken advantage of its provisions, the greatest number using section 3 to transfer the property of the charity to another with similar purposes. The Government's White Paper proposals to extend the scope of the Act and simplify its provisions along the lines now adopted in Scotland will, we believe, make a major contribution to the regeneration of local charities and, in particular, secure the improvement of the use of the resources of smaller charities.

The Official Custodian for Charities

92. Mr R J Crick, the Official Custodian for Charities since March 1986, was seconded to the Home Office at the end of December 1990 and has been succeeded by Mrs S E Gillingham.

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

94. When legislation is introduced we shall be able to set a date for the planned reduction in the Official Custodian's investment services and the subsequent divestment of the securities held on behalf of charities. In the meanwhile we have made good progress in our preparatory work to facilitate divestment. We have achieved notable success in tracing charity correspondents with whom the Official Custodian had no recent correspondence, reliance having been placed for many years on contact with the trustees' bank. Of the 15,404 charities whose correspondent was not known, a total of 14,131 (91.73%) had been traced by the end of the year. Confirmation of the address for those with no recorded change for five years is now being sought. On completion of this exercise in early 1991, the information obtained will enable the eventual divestment process to be

carried out comprehensively and effectively. The ability to contact the trustees of those charities with unsatisfactory undated fixed interest securities will be particularly important in our endeavour to persuade them to reinvest in a more suitable form of investment, such as common investment funds, as described in paragraphs 116-117 of our report for 1989.

95. One direct and welcome consequence of tracing charity correspondents has been the approach by some 306 charities seeking to have new trustees appointed and their trusts modernised, or to take advantage of the provisions of the Charities Act 1985 to update their objects or amalgamate with other charities. We expect similar requests to arise from our review of accumulating accounts mentioned in paragraph 114 of our report for 1989. In this way many small or moribund charities may be assisted to contribute more effectively to the community and be prepared to take responsibility for their investments as the divestment programme progresses.

96. Government approval was given during the year for expenditure on the replacement of the Official Custodian's current computer system which can no longer support normal investment business. The new computer will also enable our strategy for the automated divestment to be implemented. The project is on target and within its approved budget for live running in December 1991.

97. During the year the Official Custodian remitted a total of £94.3m by way of dividends and interest to charities. This is an increase of £3.5m over the previous year and continues the growth of this aspect of the Official Custodian's investment service. In spite of this trend we are pleased to report an improvement in the Official Custodian's ability to remit gross dividends to charities with the minimum of delay. The amount of undistributed dividends at 31 December 1990 (which at £1.4m represents 1.5 per cent of total receipts during the year) was significantly lower than last year: a reduction of 50%.

The Charities Official Investment Fund

98. In their 1990 report, the Trustees observe that in a year of significant political developments and one in which international interest rates rose and the USA entered recession, the UK economy, as well as experiencing both high interest rates and high inflation, also moved into recession. All world stock markets fell, first, in response to the economic situation and, secondly, at the time of the Gulf crisis in August. Against this background the Income Share value of the Fund fell in 1990 by 16% to 450.93p. The dividend, however, was increased by 8% to 28.4p per share, giving a yield of 6.3% at the year end. Over the last five years the share value has risen by 7.1% pa and the dividend by 9.9% pa compared with an estimated Retail Price Index rise of 6.4% pa.

99. The Accumulation Shares fell in value by 14% over the year to 1573.81p. Over the last five years the share value has however increased by 11.4% pa.

The COIF Charities Fixed Interest and Deposit Fund

100. The new Fund set up to deal with the problems described in paragraphs 120-122 of our report for 1989 was formed on 1 April 1990 following the termination of the Charities Deposit Fund. The Fund is made up of both fixed interest shares and deposit accounts. The former are represented by a portfolio of fixed interest stocks, principally UK Government stocks, and the latter by deposits with banks and building societies.

101. The Fixed Interest Income Shares rose in value from the issue price of 100p at 1 April 1990 to 105.85p at 31 December, or by 5.9%. Accumulation Shares, with income reinvested, rose by 8.6% to 111.85p from an issue price of

103.05p at 30 June. The annualised yield on the Income Shares at 31 December 1990 was estimated at 11%.

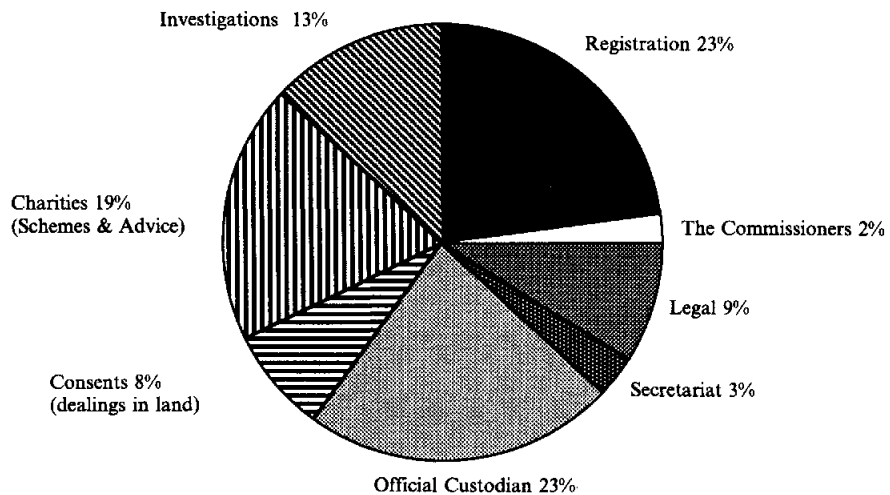
102. 97% of deposits in the Charities Deposit Fund, totalling just under £162m, transferred to the new Fund on 1 April 1990. In the first nine months total deposits increased to £205m at 31 December 1990. During the period an average rate of interest of 14.61% was paid, a slightly better rate than that paid by comparable funds.

Cost and Manpower of the Commission

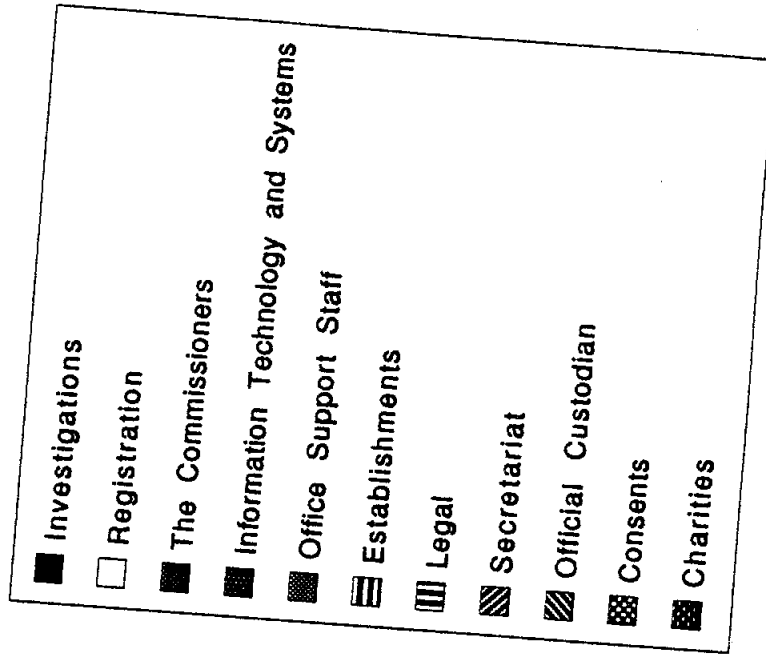
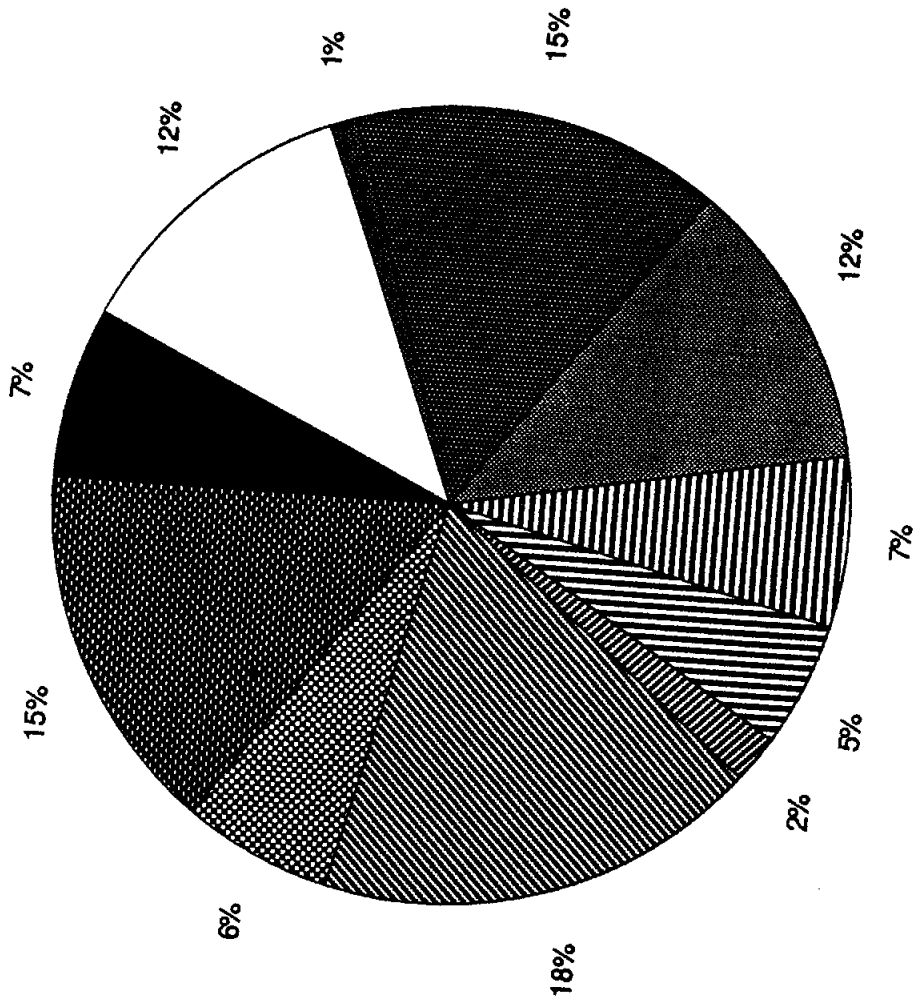
103. The planned expenditure of the Commission for the financial year 1990-91 was £13,938,413 of which £6,124,707 was for salary related costs (not including information technology salaries), £3,376,452 for information technology, capital and revenue costs; £1,846,312 for accommodation costs; and £1,658,690 for other costs. The allocation of resources and the allocation of staff to the main Divisions of the office are indicated in the following charts.

104. The costs of running the Commission have continued to increase over the past few years, and are set to increase further in the next financial year. These increases are associated principally with the implementation of structural and administrative reform crucial to our ability to provide effective support to and supervision of charities. Additional staff costs have arisen principally from the continued strengthening of the Commission's monitoring and investigation capacity, the preparatory work for divesting the Official Custodian for Charities, the launch of the census of registered charities and the work arising from establishing contact with charity trustees.

BREAKDOWN OF TOTAL COSTS BETWEEN OPERATIONAL DIVISIONS



Distribution of Staff by Function



Appendix A

(Paragraph 13)

DECISIONS ON CHARITABLE STATUS

(a) Bridge House Estates

The Bridge House Estates (the Estates) are of ancient origin. The original endowment was granted to and vested in the Common Council of the City of London (the Corporation) in 1282 by Royal Charter of Edward I. Originally the income was applicable for the maintenance of London Bridge but by subsequent Acts of Parliament it was now also applicable for the maintenance of Blackfriars, Southwark and Tower Bridges. The Estates are worth in excess of £300m and have an annual income of £18m. The question whether the Estates constituted a charity was raised with us by the Corporation as it was material to their and the Commission's deliberations concerning the very large surpluses of income which were now arising and which might need to be applied *cy-prés*.

In 1960, our predecessors had been approached on the question whether the Estates were a charity within the meaning of section 45(1) of the Charities Act 1960. They had concluded that there was no doubt that the property was held for charitable purposes within the Preamble to the Statute of 1601 and that the property was held in trust, but they doubted whether the Estates were subject to the control of the High Court in the exercise of the Court's jurisdiction with respect to charities as required by section 45(1) of the 1960 Act. They had taken the view that, in order to be a charity within the meaning of that Act, the Estates must have been subject to the jurisdiction of the old Court of Chancery expressly referred to in section 66 of the Charitable Trusts Act 1853, the effect of which had been reproduced in section 45(1) of the 1960 Act. Our predecessors had argued that this created two difficulties. The first was that several of the gifts dated from the 13th or 14th centuries and the Court of Chancery in the ordinary sense did not exist until the 15th century. Secondly, the essential characteristic of the Court of Chancery was that it had jurisdiction only where there were no other courts having jurisdiction. Where, for example, an obligation could be enforced by the Common Law Courts, the Court of Chancery had no jurisdiction to interfere. Thus, any public duty which was enforceable in the Queen's Bench Division was not subject to the control of the High Court in the exercise of the Court's jurisdiction with respect to charities. The Corporation had powers of government and was therefore, at least to some extent, subject to the control of the Queen's Bench Division at common law. They had argued, therefore, that the question was whether the obligations affecting the Estates were enforceable at common law or only in equity.

It had seemed to them that no-one really knew the answer to this, although it seemed a reasonable supposition that before the Court of Chancery was established the obligations would have been enforceable in common law. It also seemed noteworthy that there was no record of the charitable jurisdiction of the Court of Chancery having been exercised in relation to the Estates. Our predecessors had concluded therefore that it was doubtful whether the Estates constituted a charity in the strict sense. As a result, they had made an Order on 1 June 1961 excepting the Estates from the provisions of sections 4, 8(1) and 29 of the 1960 Act in so far as the Estates constituted a charity within the meaning of the 1960 Act.

The Corporation had again raised with us the question whether the Estates were a charity. This again depended on an interpretation of section 45(1) of the 1960 Act. For the purpose of that Act, if trusts were to be charitable they must come under the jurisdiction of the High Court "in the exercise of the Court's jurisdiction with respect to charities". When interpreting a statute, it is necessary to have regard to the circumstances at the time when it was passed. Section 45(1) had not been amended so there was no room for argument that a later date should be adopted. The question which had to be asked therefore was "what was the

jurisdiction of a Court in relation to charities in 1960?”. The Third Edition of Halsbury’s Laws of England was current in 1953 and Volume 4 (Charities), paragraph 863 dealt with general jurisdiction to enforce trusts:

“As a general rule the High Court has jurisdiction to enforce the observation or redress breaches of all trusts, charitable as well as private. . . .”

However, section 56 of the Supreme Court of Judicature (Consolidation) Act 1925 provided that:

“Without prejudice to any other provision of this Act there shall be assigned–

(i) To the Chancery Division –

. . . . (b) All causes and matters for any of the following purposes:

. . . .

. . . . The execution of trusts, charitable or private;”

That Act was repealed by the Supreme Court Act 1981, section 152(4) and Schedule 7.

Since it was accepted on all sides that the Bridge House Estates were held on trust, any proceedings relating to their status would appear to be caught by this provision. The preparatory notes on the clause which became section 45 of the 1960 Act suggested that the purpose of the words under consideration here was to exclude other bodies (such as local authorities) where the Court had jurisdiction derived from a specific statute. In these circumstances the doubts which had been entertained by our predecessors in 1960 did not appear to us to be well-founded and therefore we agreed that their somewhat tentative decision should be overruled. The consequence of this was that, but for the 1961 Order, the Estates should be registered as a charity. Following discussions with the Corporation the Order was revoked and the charity was registered.

(b) The Settle and Carlisle Railway Trust

We were asked to consider whether we would accept for registration as a charity a trust to be called the Settle and Carlisle Railway Trust if it were established to assist in the preservation of the historic and architectural features of the Settle and Carlisle railway lines and to promote public knowledge of the heritage associated with the lines.

The promoters of the proposed Trust informed us that the land on which the Settle and Carlisle railway and its associated lines ran was owned by the British Railways Board (the Board). It was not intended that the proposed Trust would acquire an interest in that land or in the land on which the structural features along the lines stood. It was, however, hoped to acquire adjoining land suitable for its educational activities. The proposed Trust would not operate its own rail service and the lines would continue to be operated by the Board for the carriage of passengers. The proposed Trust would assist in the restoration of the structures along the line in a manner which preserved the historic and architectural features. It would also extend the educational role of the line through the provision of one or more study centres and the publication of educational material about the line and the structures along the line, including books, videos and “school packs” for teachers and children. Public access already existed to structures along the line via roads, public footpaths or bridleways. Signs and guide books would be provided by the proposed Trust which would also seek to improve existing routes as well as establishing new routes to features of special significance. It was intended to launch a public appeal for funds and to seek local authority and government grants. It was envisaged that the Board might contribute in a small way as a gesture of goodwill.

The Inland Revenue did not agree to the registration of the proposed Trust as a charity. While they did not dispute that the features attached to the Settle and Carlisle railway line were of historic or architectural interest, they considered that the continued ownership of these structures by the Board was fatal to the proposed Trust's claim for charitable status. They took the view that the benefit to the Board (who would be relieved of the expense of maintaining the structures whilst retaining their ownership) far outweighed any benefit to the public from the preservation of features of educational value. In effect, the cost of running an unprofitable line which had been under threat of closure would be subsidised by the proposed Trust. The Inland Revenue were also concerned about the degree of public access and wanted to be satisfied that the public (other than fare paying passengers) would have full access to the stations and other structural features connected with the line. In their view the case of **Trades House of Glasgow v Commissioners of Inland Revenue [1969] TC 178** encapsulated their opinion on this subject.

Following a meeting between our representatives, the Inland Revenue, the Board and the promoters of the proposed Trust, a draft Memorandum of Understanding setting out the terms of arrangements which had been agreed between the Board and the intended trustees of the proposed Trust had been drawn up. Under the draft, the trustees declared that in considering the making of grants they would first discuss with the Board whether it was appropriate for the land on which the relevant structure stood to be conveyed to the Trust; that if the land on which the structure stood was not to be so conveyed, an agreement would be entered into between the trustees and the Board each time a grant was to be made, for the repayment of the grant in whole or in part in the event of the structure concerned or the line which included it, being sold or otherwise disposed of by the Board and that where a grant was made by the Trust, the trustees would ensure, so far as practical, that members of the public had free access to the structure concerned or to a place from which it could be safely viewed. Subsequently, the Inland Revenue confirmed that the terms of the draft Memorandum of Understanding were acceptable, and that they would await our decision on the charitable status of the proposed Trust.

The preservation for the public benefit of buildings of architectural or historical interest is charitable in law. (See, for example, **Halsbury's Laws of England: 4th Edition: Volume 5: paragraph 525**). The National Trust Act 1907, which incorporated the National Trust for Places of Historic Interest or Natural Beauty, provided that the National Trust should be established "for the purposes of promoting the permanent preservation for the benefit of the nation of lands and tenements (including buildings) of beauty or historic interest, and as regards land for the preservation (so far as practicable) of their natural aspect features and animal and plant life". In **Re Verrall [1916] 1 Ch 100**, Astbury J held that the purposes of the National Trust were charitable in law. **Re Verrall** was followed by Farwell J in **Re Cranstoun [1932] 1 Ch 537**. In that case there was a gift to the Royal Society of Arts of two Elizabethan cottages in order that the Society might preserve them in their present condition. There was a further gift of £700 to the Society to be held by the Society on trust to invest the same and apply the income to be derived therefrom in maintaining the property. The Society had issued an appeal to the public to form a fund for the preservation of ancient cottages as specimens and models of English craftsmanship so as to teach the lessons of such craftsmanship. Evidence was given that the testator was aware of this appeal. Farwell J held that the primary object of the fund was for the good of the community at large, and was charitable in the legal sense; and that the cottages fell within the objects of the fund; and that the devise of the cottages and the bequest of £700 were both charitable.

In **Trades House of Glasgow v Commissioners of Inland Revenue**, the Court of Session in Scotland was concerned with the Trades Hall in Glasgow which was erected in 1794 by the Trades House of Glasgow, a corporate body, and the Craft Guilds in Glasgow. The Hall was designed by Robert Adam and was a

building of outstanding architectural quality. The Hall was still owned and used by those bodies as a meeting place for their social and business activities. The accommodation was also let to outside societies at commercial rents for meetings, concerts, dances and dinners and the Hall was visited by members of the public for its architectural interest. In February 1966, a "Trades Hall Endowment Fund" was set up by the Trades House of Glasgow. Its income, after meeting administrative expenses, was to be used for the maintenance and improvement of the Hall and any surplus was to be used for charitable purposes to be selected by the Trades House of Glasgow. The Trades House of Glasgow, as trustee of the 1966 Endowment Fund, claimed that the Fund's income was exempt from tax as being held and applied for charitable purposes only. The Commissioners of Inland Revenue refused the claim. On appeal to the Court of Session, it was held that the maintenance and preservation of the Trades Hall, because of its outstanding architectural quality and its value to the citizens of Glasgow, was a charitable purpose, but that since the Fund relieved the owners of part of the expense of maintaining the Hall and thereby helped them to retain it as their home and place of meeting, the Fund was not established for exclusively charitable purposes. The Court of Session was unable to accept that the benefit to the owners of the Trades Hall was subsidiary and incidental to the main purposes of the Fund.

We considered that too much weight should not be placed on the **Trades House of Glasgow** decision. In the first place a decision of the Court of Session in Scotland is not binding on us. More importantly, the decision was obviously based on the circumstances of that particular case. That Fund was set up by the owners of the building, who then appointed themselves as trustees. The Fund was deliberately set up to relieve the owners from at least part of the burden of the maintenance of the building and the benefit to the owners of the Hall was not incidental and subsidiary to the benefit of the public. The circumstances were entirely different from the circumstances of the present case.

We also agreed that the purposes of the proposed Settle and Carlisle Railway Trust, as declared in its draft trust deed, were charitable in law on the authority of **Re Verrall** and **Re Cranstoun**, because of the engineering, constructional, architectural and historical importance of the structures, plant and equipment connected with the Settle and Carlisle railway and its associated lines. Public access to the structures, plant and equipment which the proposed Trust sought to preserve was available through roads, footpaths and bridleways. Public access would be further secured by the terms of the Memorandum of Understanding to be entered into between the trustees and the Board. The charitable nature of the purposes of the proposed Trust was not affected by the fact that the structures, plant and equipment which the proposed Trust sought to preserve would remain largely in the ownership of the Board. We accepted the arguments of the promoters that without a working line the preservation of the structures along the line would be meaningless and that the advantage of a working line was that it would give the opportunity to relate the present to the past in a relevant and educative way. As it was clearly beyond the expertise and resources of the proposed Trust to run its own passenger train service over the Settle and Carlisle railway and its associated lines, this service must continue to be run by the Board who had, in any event, been refused permission to close the lines. We also accepted the argument of the Board that they must retain ownership of the lines and the structures along the lines if they were to discharge their statutory functions relating to the carriage of passengers.

We took the view that provided that the trustees of the proposed Trust did not apply any part of the Trust's funds in relieving the Board from any responsibility which legally lay upon them to maintain the line in service, any private benefit conferred on the Board by the purposes of the proposed Trust should be regarded as incidental and subsidiary within the test laid by Lord Normand in **Inland Revenue Commissioners v City of Glasgow Police Athletic Association [1953] AC 380**.

The Trust was established in March and registered as a charity on 18 April.

(c) Chelsea Community Trust

The Trust had been established as a company limited by guarantee. The objects of the Trust as set out in its Memorandum of Association were to organise or provide or assist in the organisation or provision of facilities for recreation and other leisure-time occupations in, or in connection with, two specified areas and their respective neighbourhoods and for that purpose to erect a sports centre, and to advance such other charitable purposes for the benefit of the public as the Trust should from time to time determine.

If and when registered as a charity, the Trust expected to receive by way of gift a minority shareholding in a property company which owned land upon which Chelsea Football Club (the Club) had its ground. The Club had an option to acquire the freehold of that land, the benefit of which it intended to pass to the Trust. The Trust would seek to attract further funds which (used in conjunction with the shares and the option) would enable the Trust to purchase the freehold of the land. Parts of the land around the stadium would be sold for development and the football ground retained. Improvements would be carried out to the football ground including the erection of new spectator stands, a new football pitch and improved amenities. The remaining land (which formed a very small part of the total area) would be developed as a community sports centre catering for a range of indoor sports including netball, football, badminton, squash, basketball, gymnastics and volleyball. It was envisaged that the Trust would finance the erection of the sports centre and that the Club would finance the improvements to the football ground. It was unlikely that the Trust would be directly involved in any development of property other than the sports centre. The Trust would grant a long lease to the Club permitting the Club to use the football ground as its headquarters and the pitch. The Trust would reserve to itself the right to use the pitch for charitable recreational purposes when it was not required for use by the Club. The Club would pay a commercial rent calculated on an arm's length basis and that income would be applied towards the advancement of the Trust's objects.

The Inland Revenue had submitted a Memorandum of Objection to the registration of the Trust. They had sought to argue that the methods by which the Trust proposed to carry out its charitable objects were such that they demonstrated that the real purpose of the Trust was not as expressed in its objects because of the substantial benefit which would accrue to the Club both directly and indirectly as a result of such methods, and, accordingly, that the objects could not be considered to be wholly and exclusively charitable in law.

Whilst we accepted that the objects of the Trust as expressed in its Memorandum of Association were exclusively charitable in law, we took the view that it was necessary to consider the proposals as a whole. Those proposals had been put to us in the form of an interlocking package involving commercial companies, the Club and the Trust in the development of land for commercial purposes, the provision of a pitch and facilities for the Club and the erection of a sports centre for the Trust. The charitable activity and provision was subservient to, and of less importance than, the non-charitable activity and provision. No consideration appeared to have been given as to whether the provision of a football stadium, as opposed to an all-purpose stadium, was the best use of the land. It was therefore clear to us that the primary purpose in establishing the Trust was to benefit the club and that the benefit accruing to the public from the provision of a sports centre was secondary. In the circumstances, we agreed that the primary and essential purpose of the proposals was to promote non-charitable activities, that the charitable activity was secondary and subservient to that purpose and that the Trust was merely a vehicle through which the non-charitable activity could be favourably carried out. Accordingly, we refused to register the Trust as a charity.

(d) **King George's Field,
Canvey Island**

King George's Field, Canvey Island was held by Castle Point District Council (the Council) under three separate conveyances dated 1, 10 and 30 June 1953. Although those conveyances did not purport to declare any trusts, it was common ground that the land was acquired and intended for public recreation for use as a playing field and that the Council's predecessor, Canvey Island Urban District Council (the former Council), when acquiring the land, was exercising its powers under section 4 of the Physical Training and Recreation Act 1937 which enabled it to acquire land for such purposes. Accordingly, the Council held the land as part of its corporate property for statutory purposes.

As a result of applying to the National Playing Fields Association (the trustee of the King George's Fields Foundation) for grant aid in connection with the land, the former Council was required to produce evidence that the land had been acquired for public recreation and could be used for no other purpose and that its tenure was sufficiently secured to permit designation of the Field as a King George's Field. In consequence of that, the former Council had executed a deed dated 26 November 1954 which was endorsed on all the conveyances, purporting to preserve the Field in perpetuity as a memorial to his late Majesty King George V under the provisions of the King George's Fields Foundation.

The issue was whether the former Council had power to declare charitable trusts over the land which was acquired for statutory purposes and whether the deed of 26 November 1954 created a valid charitable trust. It was common ground that if it did have that power the land was held on charitable trusts. There was clearly no express power. The question was therefore whether a power could be implied under section 111 of the Local Government Act 1972 and its predecessors as being calculated to facilitate, or as being conducive or incidental to, the discharge of the former Council's statutory functions under section 4 of the 1937 Act.

The issue had arisen because of a dispute between the Council, the National Playing Fields Association (NPFA) and local residents as to whether the Field was settled on charitable trusts. On 16 March 1987 the Council purported to grant a lease of a small part of the recreation ground to the trustees of the Women's Royal Voluntary Service. The NPFA contended that the lease was void for lack of our consent under section 29 of the Charities Act 1960 since, in their view, the land was held on charitable trusts. The local residents were also concerned about the matter because the Council acted with very little or no publicity about the grant of the lease.

The Council had been advised by Counsel that it did not have power to declare a trust because a trust was inimical, rather than ancillary, to its statutory obligations. We considered that the point was not well taken since the declaration ensured the continued use of the land for that purpose and, in any event, the action had paved the way to a substantial contribution (from charitable funds) towards the cost of performing that function.

We had been asked to consider whether the Field should be registered as a charity. No application for registration under section 4 of the 1960 Act had been received from the Council who was the trustee if a charitable trust existed. The Council objected to registration on the grounds discussed above. Although the NPFA had made a formal application for registration they were not the trustee and there was doubt about whether they had *locus* under section 4 of the 1960 Act to make an application. The NPFA had no *locus* to make an application to the court for a determination that the land was held on charitable trusts (see **Hauxwell v Barton on Humber Urban District Council [1974] Ch 432**), save as a relator in proceedings brought by the Attorney General. The NPFA had declined to become involved in such proceedings because of the risk of incurring costs. Counsel had advised us that section 4 of the 1960 Act contained no express or implied qualification restricting us to the consideration of whether the trusts of an institution were exclusively charitable: we could also consider questions relating to whether

the institution proposed to be registered was legally constituted in law. Section 4 was widely drawn and it permitted us to take a view on those questions if we chose to do so. Counsel had gone on to advise, however, that in his view there might be cases where we felt that there was such a significant doubt about whether the institution was lawfully constituted that we would decline to register the institution on that ground.

There were three options open to us. First, we could register the Field as a charity on the basis that the former Council had legal capacity to create a charitable trust over its corporate property. Secondly, we could decline to register the Field as a charity on the ground that the former Council had no power to create a charitable trust. Thirdly, we could defer consideration of registration until the question of the powers of the Council to create a charitable trust in the land had been determined by the Court.

We took the view that there were clear opinions from Counsel that the deed of 26 November 1954 had created a valid charitable trust. We concurred with this view and we agreed therefore that the Field should be registered as a charity forthwith.

On 18 October 1990 the Council issued an originating summons appealing to the High Court, under the provisions of section 5(3) of the 1960 Act, against our decision to register the Field as a charity under section 4 of the Act. The entry in the register of charities for the Field is accordingly now in suspense in accordance with the provisions of section 5(4) of the Act.

(e) Garfield Poverty Trust

The Garfield Poverty Trust was established by a trust deed dated 7 March 1990. The purposes of the Trust as defined in clause 3 of the deed included the following –

- “(i) the relief of poverty amongst the Brethren (as hereinafter defined) and in particular but without prejudice to the generality of the foregoing the Trustees in applying any part of the Trust Fund or the income thereof for this purpose may –
 - (a) provide or assist in the provision of accommodation for members of the Brethren in necessitous circumstances on terms appropriate to their means”.

Since 1971 approximately 15 organisations had been registered as charities with the same trusts in relation to the relief of poor members of one section of the Exclusive Brethren. It was known that one of the activities of these charities (and one of the intended activities of the new Trust) was the provision of low interest or interest-free loans to assist poor young Brethren to purchase freehold or leasehold housing accommodation. The Inland Revenue maintained that the activity was not charitable since to help poor people to buy their own homes went beyond the relief of poverty.

Poverty can manifest itself in many ways. Clearly, financial deprivation is a common characteristic of poverty but while a poor person might have sufficient funds with which to provide some necessary elements for life, such as food and clothing, he might have insufficient funds with which to provide others such as heating and accommodation. Just as poverty can manifest itself in various ways, so it can be relieved by various means. Cash grants are only one means of relieving poverty: poverty can also be relieved by providing services or facilities for the poor or even by the purchase of goods in kind such as cookers and furniture. The provision of accommodation in the form of almshouses and property for letting has long been recognised as a proper activity for relieving poverty. It is not necessary that poverty should be relieved by an outright grant. The provision of loans has been recognised as a proper charitable activity for many years (*In Re Monk* [1927] 2 Ch 197). For instance, in 1566 Sir Thomas White established loan charities in 24 of the major cities of England. Those loans were simply to

young men resident in those cities and could be for terms of 10 years. The purpose of Sir Thomas White's Charities was clearly to enable young men to set up in business by providing them with loans until they became established. We found it difficult to find any difference in principle between a charity which sought to relieve a person's poverty by setting him up in business and a charity which sought to relieve a person's poverty by providing him with necessary accommodation.

It seemed to us that three arguments had been advanced against loans to purchase accommodation being a charitable activity:

- (i) That the beneficiary might eventually derive a capital profit at the expense of the charity.**

We regarded this argument as misleading. A charity simply provided the loan. The recipient of the loan purchased the property and his sole obligation was to repay the loan. If he subsequently sold the property then he might make a profit but it was not at the expense of the charity.

- (ii) That the benefit derived from the provision of accommodation was not commensurate with the need.**

We found it difficult to understand this argument. The need was for accommodation and that need could be met in a variety of ways: by the charity itself providing houses for occupation or for letting or by the charity providing grants which would assist the beneficiary in providing or furnishing his own accommodation whether by letting or by purchase. The fact that the financial benefit might be made by way of loan to facilitate a purchase of property did not invalidate the essential underlying principle, that the need of a poor person for accommodation was being met.

- (iii) That the benefit might continue with the beneficiary even when he might no longer be poor.**

This argument could be equally advanced in respect of those charities for the relief of poverty which paid pensions or regular grants to poor people. That problem had been met by the requirement that the trustees should review the position regularly and we saw no reason, as indeed the trustees of the Garfield Poverty Trust had suggested, why a similar condition in respect of the loans should not be stipulated. If the means of a poor person who was in receipt of a charity loan improved to the extent that he was able to afford an ordinary commercial mortgage, then the trustees of the Garfield Poverty Trust should call in the loan so that they might make fresh loans to other poor people.

We agreed that the Garfield Poverty Trust should be registered as a charity provided that the trustees agreed to the following conditions –

- (1) that the people in receipt of loans to enable them to purchase accommodation should –
 - (a) have a need for accommodation; and
 - (b) be poor people. (In this respect we took the view that, in the absence of any special circumstances, a person who had sufficient means to afford to take out a sufficient mortgage himself would not be a poor person);
- (2) that all loans should be subject to a condition that they could be called in at any time by the trustees and that the trustees should formally assess the financial status of the recipients of loans annually;

- (3) that the amount of the loan and the accommodation being acquired by the loan should not be disproportionate to the needs of the borrower.

We agreed that the trustees should be strongly advised to lay down the criteria against which applications for loans would be considered and to retain evidence of the circumstances of each applicant on which their decision to grant a loan was based so that they could demonstrate that they were acting charitably and assisting only those in need. We decided that the trustees of those charities which were already on the register and whose trust deed contained a clause similar to clause 3(i)(a) of the Garfield Poverty Trust should be required to accept the conditions specified in the previous paragraph and should be advised of the need to lay down the criteria and to retain evidence as mentioned above.

**(f) Community Computing
in Newcastle**

A non-charitable company called Community Computing in Newcastle proposed to establish a charity to provide advice and assistance in the field of information technology to charitable organisations. Its proposed objects were:

“ to promote any charitable purpose for the benefit of the community in the counties of Cleveland, Durham, Northumberland and Tyne and Wear (hereinafter called the “Area of Benefit”), by providing charitable organisations operating within the area of benefit with (a) advice, training and information about information technology, and (b) any other assistance appropriate to the use of information technology, so as to enable such organisations to carry out their charitable work more effectively and efficiently for the benefit of the community”.

The promoters stated that it was well established that the appropriate use of information technology enabled all organisations to attain greater effectiveness and efficiency. The services to be provided to client charitable organisations would have an anticipated “knock on” beneficial effect on the work of those organisations and their clients. The aim of the proposed charity was to provide advice, training and information about information technology. This would entail visiting charitable organisations’ premises, evaluating their office needs, and assisting those organisations to choose the appropriate hardware and software for their project. The proposed charity would demonstrate the opportunities that information technology made possible and train staff and volunteers in its appropriate use. It would also provide an advice service following installation of technology and would offer assistance with routine administrative tasks by the use of its computer systems.

We identified three ways in which the provision of services to promote the efficiency of charitable activities had been accepted as validly forming part of a charity’s objects. First, services or facilities could be provided where these were ancillary to the main charitable purpose. In the case of **Inland Revenue Commissioners v Clerkenwell Green Association for Craftsmen [1980] TLR 55**, the provision of workshops for craftsmen was held to be valid as it advanced the object of the Association which was to promote any charitable purpose which would encourage the exercise and maintain the standards of crafts both ancient and modern, preserve and improve craftsmanship and foster, promote and increase the interest therein. It was on that basis that the registration of Charity Equipment for Development and Relief Services Limited could be justified (**paragraphs 40-44 of our Report for 1982**). Secondly, there was a line of cases which clearly indicated that the provision of a facility or service directly related to and furthering a charitable purpose might itself be charitable. Thus, in **Re White’s Will Trusts [1951] 1 All ER 528**, a bequest to provide a home of rest for nurses in the Royal Infirmary, Sheffield was held to be charitable because it was conducive to the work of the hospital and the immediate objects of it, the nurses, were themselves administering to the relief of sickness and so to a charitable purpose. Thirdly, we had also registered a number of charities whose objects included, along with other charitable purposes, the provision of some form of service.

In the light of the activities which the proposed charity was to undertake, we considered whether the improvement of the efficiency of charities could in itself be a charitable purpose. We concluded that it could, provided that –

- (1) it was expressed to be in direct pursuit of the objects of charities;
- (2) the means by which the efficiency of the charities was to be improved was stated (in order that we might judge whether the proposed charity's activities would in fact improve the efficiency of charities in direct relationship to the pursuit of their objects); and
- (3) all the beneficiaries were themselves charities.

We agreed that if the objects of the proposed charity to be established by Community Computing in Newcastle were to be amended to meet these points, it would be acceptable for registration.

Appendix B

(Paragraph 14)

THE SUPERVISION OF CHARITIES IN SCOTLAND

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990

This Act received the Royal Assent on 1 November 1990. Part I (sections 1-15) deals with charities but has not yet been brought into force. In brief Part I of the Act provides as follows:

Under section 1, the Inland Revenue which keeps details of all bodies to which it has granted tax relief as charities, will be empowered to tell any member of the public the name and address of any such body and the year of the last communication between the Inland Revenue and the trustees. An organisation treated as a charity for tax purposes by the Inland Revenue is designated a "recognised body" and may be referred to as a "Scottish charity". The Act's principal provisions relating to accounting standards, public accountability, investigation and remedy apply to these recognised bodies. Non-recognised bodies are precluded from publicly holding themselves out to be charities (**section 2**).

Although there will be no official public register of charities which can be searched at will, trustees are required by the Act to supply a copy of their charity's governing instrument and its accounts to any member of the public requesting them. There are strict mechanisms to enforce compliance with these requirements.

Parallels to two major provisions of English charity administration are introduced in Scotland. First, a power of inquiry similar to section 6 of the Charities Act 1960, is conferred by section 6 of the Scottish Act upon the Lord Advocate (or an officer nominated by him). It extends to any English or Welsh charity operating in Scotland. The inquiring officer, as in England, has powers to enforce disclosure of information. The Lord Advocate is also given power to suspend for a short period trustees of a charity in which misconduct or mismanagement has been uncovered. The exercise of this latter power is not linked to the institution of a statutory inquiry, nor are the new powers of protection and remedy that the Court of Session is granted under the Act. Under section 7 the Court's **protective** powers are exercisable *either* where misconduct has occurred *or* where action is desirable to protect charity property, but its **remedial** powers are exercisable only where both criteria apply. This represents a refinement of the current provisions in the Charities Act 1960, under which no action, whether protective or remedial, can be taken unless both criteria are satisfied. In addition section 8 of the Scottish Act disqualifies from acting as a trustee any person who has been convicted of an offence involving dishonesty, who is an undischarged bankrupt or has previously been removed from trusteeship under the Act. The Lord Advocate is given power to waive the disqualification in certain circumstances. A similar provision is expected to be introduced in England and Wales.

The second provision is analogous to the Charities Act 1985, but with notable departures from that model. Section 10 of the Scottish Act allows the trustees of any public trust (which includes but is not limited to any charitable trust) with an annual income of £5,000 or less to determine, if certain criteria apply, to modify the trust's purposes, to transfer its assets to another trust, or to amalgamate with another trust or trusts. The differences between that provision and those contained in the Charities Act 1985 are that the latter Act does not apply to any non-charitable body, and, except in relation to the modification of local charities for the poor, can be used by only the very smallest charities (those with an annual income less than £200). The proposed legislation will be used to allow more charities in England and Wales to take advantage of this simple method of reorganising without the need for a scheme made by us or the Court. The Scottish limit of £5,000 annual income is significantly higher than the White Paper figure of £1,000 annual income. We estimate that as many as one fifth of all the charities

on our Register may have an annual income somewhere between the two figures. Section 11 of the Scottish Act also introduces a provision allowing the trustees of very small public trusts (those with £1,000 or less annual income) to expend their otherwise non-expendable capital in certain circumstances. This reflects section 4 of the Charities Act 1985, and again the income threshold is significantly higher than currently applies under the 1985 Act (£5) and that proposed in the White paper (£250).

Under section 9 the Scottish Court is to be given new powers to make schemes in cases where, broadly, the purposes of larger public trusts can no longer fully be carried out. The trustees must apply to the Court before a scheme can be established. These scheme-making powers are similar to those which we and our predecessors have been able to exercise for many decades.

The Scottish Act also provides in sections 4 and 5 for the keeping and preservation of accurate accounting records and for the preparation and submission of accounts, consisting of a balance sheet, an income and expenditure account (both of which must show a true and fair view) and a report on the activities of the charity. Regulations may be made prescribing the form and content of accounts; and establishing requirements for the audit of accounts. We believe that these provisions may well serve as a useful model for new legislation in England and Wales, and indeed officials responsible for the formulation of the Scottish Act were active and valued members of the Charity Accounts Working Group which we set up to refine the proposals for English legislation. In both jurisdictions the purpose is to impose uniformity, so that the accounts of different charities can be compared as a means of judging their effectiveness, and to make the accounts more informative.

Two interesting sections were introduced into the Scottish Act during its passage through Parliament. One has an analogy in English charity law, but the other is entirely new. The first, section 3, concerns the treatment of religious bodies, which can apply to the Secretary of State for “designated” status under the Act. A religious body with this status is automatically exempted from many of the Act’s other provisions: broadly, those relating to accounts; to the courts’ powers to deal with abuse and to suspend trustees; and to the Lord Advocate’s powers of inquiry. In England and Wales certain charities, among them many religious charities, have been granted excepted status but this does not exempt them from the Commissioners’ powers of inquiry and remedy. To be “designated” under the Scottish Act, a religious body must satisfy the Secretary of State that it meets certain criteria regarding its activities, the size of its membership, and its length of establishment. A fourth criterion is that it must be subject to some supervising authority which imposes upon it a regime similar to that prescribed by the Act for non-“designated” charities. The last criterion is the basis upon which charities in England and Wales are currently excepted.

The second provision, section 12, introduced during the passage of the Bill is one aimed at reactivating charity money held in dormant bank accounts. Where a bank or building society holds a charity account on which there have been no transactions for at least 10 years (known as a ‘dormant account’), and where the identity of the trustees is unknown to the holding bank or society, it may disclose certain details of the account to a nominee appointed by the Secretary of State. If an account holds less than £5,000 the nominee has power to transfer the dormant money to another charity if he cannot find a trustee. Accounts of over £5,000 must be notified to the Lord Advocate, who has power either to arrange for their management or to allow the nominee to dispose of them as if they were less than £5,000. Clearly, the success of this measure will rely to a large degree on the willingness of the financial institutions to identify dormant charity accounts and to alert the proper authority.

Appendix C

(Paragraph 13)

LEGISLATION AFFECTING CHARITIES

- (a) **The Housing Benefit (General) Amendment Regulations 1990 (SI 1990/546)**
- These Regulations, which came into force on various dates in April and October 1990, make two significant changes to the amount that a claimant may receive regularly from charitable sources without affecting his entitlement to Housing Benefit, Income Support, Family Credit and Community Charge Benefit.
- The Housing Benefit (General) Amendment (No 2) Regulations 1990 (SI 1990/1775)**
- First, up to £10 (formerly £5) a week of income which is paid, or due to be paid, regularly by a charity to a claimant is now disregarded for the purpose of calculating social security benefits provided that the £10 disregard has not already been allowed on another source of income, such as a war pension.
- The Income Support (General) Amendment Regulations 1990 (SI 1990/547)**
- Second, when regular charitable payments are made direct to a claimant and they are *intended and used* for items other than food, ordinary clothing or footwear, household fuel, community charge, water charges or housing costs covered by social security benefit, the whole of the payments are disregarded. There is no limit on the frequency or amounts of such payments provided they are regular.
- The Family Credit (General) Amendment Regulations 1990 (SI 1990/574)**
- The Community Charge Benefits (General) Amendment Regulations 1990 (SI 1990/834)**
- The Community Charge Benefits (General) Amendment (No 3) Regulations 1990 (SI 1990/1773)**
- (b) **The Value Added Tax (Charities) Order 1990 (SI 1990/750)**
- The Value Added Tax (Charities) Order 1990 has the effect of extending the zero rate of Value Added Tax to –
- (a) the sale of donated goods by any taxable person (such as a trading company) covenanting all his profits to a charity established primarily for the relief of distress or for the protection or benefit of animals;
 - (b) any preparatory work relating to printed media advertising supplied to charities for the purpose of fundraising or making known their aims and objectives.
- This Order, which came into force on 1 May 1990, also has the effect of widening the zero rate for the purchase from charitable funds or voluntary contributions of equipment used by various eligible bodies, including charities which provide care or medical or surgical treatment for the handicapped and charities which provide rescue or first-aid services. The zero rate is now more generally available than previously for equipment used in medical research, training, diagnosis and treatment; for ambulances (including air and water ambulances); and for accessories to these two groups.
- (c) **The Value Added Tax (Transport) Order 1990 (SI 1990/752)**
- The Value Added Tax (Transport) Order 1990, which also came into force on 1 May 1990, applies the zero rate of Value Added Tax to all sea rescue charities, for the supply of lifeboats and certain ancillary equipment, and for the construction,

modification, repair and maintenance of slipways used solely for the launching and recovery of their lifeboats. Previously these provisions applied only to the Royal National Lifeboat Institution.

**(d) Finance Act 1990
Payroll Giving**

The Finance Act 1990 increases from £480 to £600 a year the maximum tax-free donation which an employee may make to charities through the payroll deduction scheme.

The Gift Aid Scheme

Sections 25 to 27 of the Finance Act 1990 introduced schemes designed to encourage individuals and companies to make one-off donations to charities of larger sums of money.

The scheme for individuals (known as "The Gift Aid Scheme") allows single gifts of £600 or more (ie gifts which equal or exceed the new payroll giving limit) to be made to a charity net of basic rate tax, as with covenant payments. The charity is then entitled to claim repayment of the tax from the Inland Revenue; and the individual donor is eligible for higher rate tax relief. There is no limit on the number of qualifying gifts which an individual may make in any one tax year, provided that the total of these gifts does not exceed £5m in that year. Any amount over this figure will not qualify for tax relief.

In order to qualify under the scheme, a gift must take the form of a payment of a sum of money; it must not be subject to a condition as to repayment; and it must not be a covenanted payment or a payment under the payroll giving scheme. The donor, as a consequence of making the gift, must not receive in return a benefit exceeding a certain specified nominal value; and, at the time the gift is made, the donor must be resident in the United Kingdom.

The new relief for gifts by companies also applies to single gifts of £600 or more, with a maximum limit of £5m on total qualifying gifts in any accounting period. The £5m maximum limit is to be shared equally between companies which are "associated" with one another: a company is associated with another if one has control of the other or if both are under the control of the same person or persons.

At present companies which are not close companies can obtain corporation tax relief for single gifts to charities up to a limit equivalent to 3% of the dividends paid by the company in the same accounting period, and this form of relief will still be available where it is more favourable.

In order to qualify for the new reliefs, gifts must have been made after 1 October 1990 in the case both of individual and company gifts. Gifts made earlier do not qualify.

(e) Companies Act 1989

In Appendix A to our Report for 1989 we set out briefly the principal ways in which the administration of charitable companies would be affected by the provisions of section 111 of the Companies Act 1989 when that section was brought into force. The section became effective on 4 February 1991 and it is probably worth repeating that from that date:

- (a) No change to the objects clause of a charitable company will be registered by the Registrar of Companies unless the prior written consent of the Commissioners has been obtained.
- (b) Where a company is a charity and its name does not include the word "charity" or the word "charitable" the fact that the company is a charity must be stated in English in legible characters in all of the company's business letters, notices and other official publications, in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, in all conveyances purporting to be executed by the company and in all its bills of parcels, invoices, receipts and letters of credit.

Appendix D

(Paragraph 13)

LEGAL DECISIONS AFFECTING CHARITIES

(a) In the matter of the Estate of Leopold Muller deceased (Unreported)

Under the provisions of the will of Leopold Muller deceased, the residuary estate was held by his Executors and Trustees on trust to be applied by them for such charitable institutions or such other charitable objects in England as they might in their absolute discretion select. By an originating summons issued in the Chancery Division of the High Court, the Executors and Trustees, as plaintiffs, claimed among other things a declaration that under the powers conferred on them by the will and the general law they could properly execute a charitable trust deed for the purpose of creating a charitable settlement to be known as 'The Leopold Muller Foundation' and might assent to the residuary estate being vested in them as Trustees on the trusts of the deed.

The Attorney General was joined as a defendant and the proceedings, which also involved the Court's jurisdiction to establish a scheme, were authorised by the Commissioners as charity proceedings. The matter was heard before Mr Justice Hoffmann on the 22 June 1990. The plaintiffs argued that the charitable intention of the Testator would be best secured by transferring the residuary estate to a charitable foundation with permanent existence and that this could properly be done under the terms of the will. The Judge decided that the proper construction to be given to the will was that the residuary estate was to be applied by the plaintiffs for charitable institutions or for charitable purposes and that such a power of selection should be exercised within a reasonable time. He held that a distribution to a charitable foundation constituted by the plaintiffs having a permanent existence could not as a matter of English and common sense be described as a selection of charitable objects within the meaning of the provisions of the will.

(b) Pepper (Inspector of Taxes) v Hart (Court of Appeal) The Independent, 28 December 1990

This case concerned the taxable value of the benefit enjoyed by employees of an independent school whose children were educated at that school on payment of reduced fees. The question at issue was how the value of the concessionary fees was to be calculated for the purpose of assessing the income tax payable by the taxpayers under Schedule E.

On appeal to the Court of Appeal the Court held, confirming the view of Vinelott J at first instance, that the taxable benefit enjoyed by each taxpayer was to be calculated not simply by reference to the additional costs incurred by accepting employees' children but by reference to a proportion of the general running expenses of the school.

Leave was granted to appeal to the House of Lords.

(c) Smallpiece v Attorney General (Unreported)

This decision of his Honour Judge Paul Baker QC, sitting as a Deputy High Court Judge, illustrates the reluctance of the Court to sanction the remuneration of charity trustees at the expense of the charity except in very special circumstances. The initial application to the Court had been necessary in order that certain payments which had been made in good faith to members of the charity's Council of Management should be excused so that these payments should not have to be returned. Coupled with this request for relief, however, was an application that the Court should sanction an amendment to the charity's Memorandum of Association permitting, within very narrow limits, members of the Council to receive modest remuneration in future and also officers of the charity who were also directors of its subsidiary training company to retain remuneration received from that company. We allowed this further request for relief to go ahead in the hope that it would provide useful guidance for the future.

The Court accepted that the payments made in the past had been made at a time when the charity had been in considerable difficulty and drastic action was required to put its affairs in order, that the persons receiving the payments had had particular expertise in the field in which the charity had operated, and that the amounts paid were reasonable in all the circumstances. The Attorney General did not object and the Court granted the relief sought.

The Court declined, however, to sanction the proposed amendment to the Memorandum of Association, not being satisfied that a sufficient case had been made out. The Judge was prepared to adjourn the proceedings to give the trustees an opportunity to adduce further evidence, but the application was withdrawn. The case also illustrates that it is not permissible for a charity to seek to remunerate members of its governing body by establishing a subsidiary trading company with the intention that the charity trustees should be paid for services rendered to the trading company.

**(d) Hazell v Hammersmith
and Fulham London
Borough Council [1991] 2
WLR 372**

The case involved consideration of the question of the extent to which it is lawful for a local authority to seek to reduce or crystallize the cost of borrowing money by entering into so called "swap" transactions with banking institutions, where gains would accrue to the authority from the successful prediction of movements in interest rates (but where losses would result if the prediction was not successful).

Schedule 13 to the Local Government Act 1972 establishes a comprehensive code which defines and limits the powers of a local authority with regard to its borrowing. The code does not provide any express authority for this type of transaction. The primary question in the litigation was whether this type of transaction was or was not incidental to a local authority's borrowing function having regard to the provisions and limitations of the 1972 Act regulating that function. If incidental, the transaction would be within the capacity of the authority, notwithstanding the absence of explicit statutory power. It was held that the Schedule was expressed in such a way as to be inconsistent with the existence of any incidental power to enter into this type of transaction, which was, accordingly, beyond the capacity of the local authority.

The borrowing and investment powers of charity trustees are not established by this particular statutory framework. Nevertheless, Lord Templeman, in the course of his speech, made certain observations concerning the speculative nature of this type of transaction in certain circumstances; these observations may be relevant to any analysis of the duty of charity and other trustees to avoid speculative activity in the administration of their trusts.

Lord Templeman said that the type of transaction described above "may involve speculation or may eliminate speculation. In most cases the advantage sought. . . . is the elimination of speculation and uncertainty". But he said that speculation "was inherent in a . . . transaction which is undertaken *solely* for the purpose of obtaining a profit by forecasting future interest trends". Transactions which are entirely unrelated to the management of the debts of a charity are plainly within the ambit of this observation. Moreover, where a decision has once been taken to contract for a loan on particular terms as to payment of interest etc, any *subsequent* attempt to reduce or crystallize the burden of interest payable by means of a swap transaction is simply a matter of speculating on future interest rate movements. He contrasted this type of transaction with that where a *prospective* borrower is in a position, by reason of his credit rating or otherwise, only to borrow money at a variable rate of interest, but needs the security of a fixed rate borrowing. In these circumstances a swap transaction is not inherently speculative; it can be seen as a legitimate means of enabling the borrower to obtain a loan on the terms which he conceives as being in his best interests.

**(e) Minsham Properties Ltd
v Price (Inspector of Taxes)
[1990] STC 718**

This case concerned the administration of a loan account between a charitable company and one of its wholly-owned subsidiaries, engaged in a trade. The charity had loaned the subsidiary £270,000 at interest. A loan account was opened

in the books of each company; a charge for interest was periodically entered in the account. The subsidiary claimed relief from corporation tax in respect of the interest charges under what is now section 338 Income and Corporation Taxes Act 1988. In order to qualify for relief, the interest must have been "paid" out of the company's profits brought into charge to corporation tax. Both the Special Commissioners for Income Tax and the Judge considered that the periodic journal entries, in which the interest charges were credited to the charity's account and debited to the subsidiary's account, did not amount to evidence that the interest had been paid. The entries merely amounted to evidence that the interest had not been paid, and had, in consequence, been added to the debt. The relief from corporation tax was, accordingly, not available.

**(f) Freedman and Others v
British Railways Board and
National Carriers Limited**

**Church Commissioners for
England and Wales v
British Railways Board and
National Carriers Limited**

(Unreported)

The subject matter of the action concerned a proposal by the British Railways Board (BRB) and the National Carriers Limited (NCL) to develop approximately 125 acres of largely derelict land near King's Cross Station. A substantial part of this land will not be needed in connection with the projected new international terminus of the Channel Tunnel rail link and a consortium of developers had been formed to acquire the surplus land to build an ambitious new development of offices, shops etc. The plaintiffs, the Special Trustees of St Bartholomew's Hospital and the Church Commissioners, claimed that British Rail and National Carriers were not free to dispose of the surplus land as they wished because under the terms of the Great Northern Railway Company Act 1846 which gave the railway company compulsory powers to acquire the relevant land in the 19th century and a deed by which some of the land was conveyed, the plaintiffs had the right to buy it back at the price for which it was originally sold.

In medieval times this land in the Parish of St Pancras-in-the-Fields had belonged to the Dean and Chapter of St Paul's. In the year 1200 or thereabouts they granted the farm known as Aylesbury or Alinsbury to the friars of St Bartholomew the Less, whose hospital in nearby Smithfield was already established. After the dissolution of the monasteries the hospital was re-established as a royal foundation. King Henry VIII regranted the farm and other land to the hospital governors whose full title was the Governors of the House of the Poor commonly called Saint Bartholomew's Hospital near West Smithfield, London of the Foundation of King Henry the Eighth. When land was needed for the construction of a railway in 1846 a good deal of the land required for King's Cross station was owned either by the Ecclesiastical Commissioners for England, as successors to the Dean and Chapter of St Paul's, or by the Governors of the Royal Hospital of St Bartholomew. The railway company acquired most of the land under compulsory powers given by the Great Northern Railway Company Act 1846 and the remaining land under a conveyance of 17 January 1851 from the hospital governors.

In respect of the land acquired from the hospital governors under compulsory powers, section 57 of the 1846 Act provided that if the land should no longer be used for the purposes for which it was acquired, then the railway company was required to offer the land to the hospital governors at a sum not exceeding the original price paid by the railway company. A general provision of the Act (section 102) provided that if at any time after the completion of the railway any part of the land ceased to be used for railway purposes, then the railway company must offer the land back to the original owners at a price not exceeding the original price. The conveyance of 1851 reserved a right in favour of the hospital governors on terms that if, after a period of 3 years from the date of the conveyance any part of the land should not be required by the railway company for the completion of the railway construction, then the governors and their successors would have a pre-emptive right to purchase such land at the original price.

The Special Trustees, as the successors of the hospital governors, and the Church Commissioners applied to the Court to establish whether the rights arising under the 1846 Act and the 1851 conveyance were still subsisting. After analysing the legislative and historical background in some detail, Mr Justice Hoffmann

determined that the claims of the Special Trustees and the Church Commissioners against BRB and NCL under the 1846 Act should succeed. But he decided against the Special Trustees with regard to their claim under the 1851 conveyance on the grounds that once land had been used by the railway company for designated purposes the provision became spent and the right of pre-emption could not arise thereafter. Accordingly the defendants were held to be under a duty to offer the relevant land to the plaintiffs to re-purchase at the original price. It is believed that the railway company paid approximately £70,000 to the hospital governors in the 1850's in respect of the land acquired which is now worth several millions of pounds.

APPENDIX E

(Paragraph 93)

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. Shares in this Fund may be held only in her name.

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 1991

OFFICIAL CUSTODIAN FOR CHARITIES

Receipts and Payments Account for the year ended 31 December 1990

	Notes	£,000	£,000	Previous Year £,000
CAPITAL				
Receipts:				
From trustees for investment (including dividends and interest retained)	2a, c	28,308		<u>26,246</u>
From disposal of investments	2a	43,323		<u>59,567</u>
			71,631	85,813
Deduct payments:				
Purchase of investments	2a	41,506		<u>37,808</u>
Amounts remitted to trustees	2a	30,558		<u>47,723</u>
			72,064	85,531
	2d		(433)	282
DIVIDENDS AND INTEREST:				
From investments held	2b	93,673		<u>93,765</u>
Deduct amounts remitted to trustees (including amounts retained for investment)	2b, c	95,418		<u>91,922</u>
	2e		(1,745)	1,843
			(2,178)	2,125
OTHER: receipts (payments) net	3		7	(213)
EXCESS: of receipts over payments (payments over receipts)			(2,171)	1,912
Statement of balances as at 31 December 1990				
Balance at 1 January 1990			5,266	3,354
Add (deduct) excess of receipts (payments)			(2,171)	1,912
Balance at 31 December 1990			<u>3,095</u>	<u>5,266</u>

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 1990 was £1,000,764.
- (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 remitted to trustees in 1990 included receipts carried forward from previous years.

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 4d. 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 1990 and the balances standing to the account of the Official Custodian at that date are as follows:

	Balance on 1 January 1990		Transferred to Official Custodian		Transferred from Official Custodian		Balance as at 31 December 1990
British Investments:							
Issued or guaranteed by the Government—							
Dated Stocks	£332,309,259		£102,834,717		£79,361,082		£355,782,894
Undated Stocks	£20,472,461		£289,763		£698,186		£20,064,038
Issued by Local Authorities—							
Dated Stocks	£2,551,357		£106,419		£691,716		£1,966,060
Undated Stocks	£770,807		Nil		£19,391		£751,416
Mortgages and Bonds	£1,897,831		£1,000		£815,360		£1,083,471
Temporary Loans	£271,733		Nil		£61,885		£209,848
Issued by other statutory authorities—	£2,691,849		£28,815		£199,788		£2,520,876
Issued by Companies—							
Loan Capital	£55,710,993		£23,838,294		£25,211,803		£54,337,484
Preference Capital	26,943,420 Shares		7,721,229 Shares		6,942,345 Shares		27,722,304 Shares
Ordinary Capital	258,083,348 Shares		82,017,868 Shares		78,765,323 Shares		261,335,893 Shares
Interest-bearing Deposits	£31,390,379		£23,881,569		£20,689,414		£34,582,534
Real Securities	£20,500		Nil		Nil		£20,500
Miscellaneous Shares	116,041 Shares		1,144,888 Shares		1,179,960 Shares		80,969 Shares
Currency	£264,854		Nil		£100,000		£164,854
Annuities	£63		Nil		Nil		£63
Commonwealth Investments:							
Government, Provincial and other Securities	£1,581,087		£15,192		£71,873		£1,524,406
Foreign, Government, Municipal and other Securities	£115,908		£2,000		£55,000		£62,908
Investments expressed in other currencies:							
Shares of Commonwealth and foreign undertakings	1,255,988 Shares		280,784 Shares		467,771 Shares		1,069,001 Shares
Debentures							
Roubles (Imperial)	93,750 Roubles		Nil		Nil		93,750 Roubles
Irish Punt	40,438 Punt		41,950 Punt		4,231 Punt		78,157 Punt
US Dollars	3,000 Dollars		Nil		Nil		3,000 Dollars
Investments not expressed in Currency:							
National Savings Certificates	640 Units		Nil		Nil		640 Units
Charitable Investment Funds –							
Charities Official Investment Fund	58,761,248 Income Shares		2,488,861 Income Shares		875,556 Income Shares		60,374,553 Income Shares
	2,703,852 Accumulation Shares		164,063 Accumulation Shares		146,944 Accumulation Shares		2,720,971 Accumulation Shares
Other Funds	91,490,563 Income Shares		8,342,191 Income Shares		3,024,670 Income Shares		96,808,084 Income Shares
	3,991,256 Accumulation Shares		335,733 Accumulation Shares		152,549 Accumulation Shares		4,174,440 Accumulation Shares
Unit Trusts	124,298,317 Units		24,652,019 Units		17,560,907 Units		131,389,429 Units
Shares of No Par Value	196,740 Shares		52,482 Shares		45,720 Shares		203,502 Shares
Subscription Warrants	789,970 Warrants		1,167,674 Warrants		482,800 Warrants		1,474,844 Warrants
Participation Units	452 Units		Nil		Nil		452 Units

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

Mrs S. E. Gillingham
Official Custodian for Charities

27th March 1991

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 41 to 43 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 1990 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
10 April 1991

JOHN BOURN
Comptroller and Auditor General

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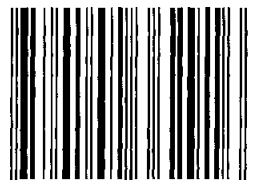
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