

Report of the  
Charity Commissioners  
for England and Wales  
for the year  
1981

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

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*Ordered by The House of Commons to be printed  
15th June 1982*

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LONDON  
HER MAJESTY'S STATIONERY OFFICE



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REPORT OF THE CHARITY COMMISSIONERS FOR  
ENGLAND AND WALES FOR THE YEAR 1981

Charity Commission,  
14 Ryder Street,  
St. James's,  
London SW1Y 6AH

4th May 1982

TO THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Sir,

We, the Charity Commissioners for England and Wales, have the honour to make to you our report for the year 1981, in pursuance of section 1(5) of the Charities Act 1960.

We have the honour to be,

Sir,

Your obedient servants,

D. A. PEACH

C. A. H. PARSONS

B. T. DIXON

## **Introduction**

1. The year has been a difficult one for charities generally. The costs of administering charities and of carrying out charitable purposes have increased with inflation which, at the same time, has reduced the real value of the income from investments and, coupled with the recession, has tended to discourage charitable giving. The effect may to some extent have been mitigated by the fiscal benefits given by the Finance Act 1980, which encouraged subscriptions or increased subscriptions under deeds of covenant. The economic situation has not, however, blunted the enthusiasm of those who administer charities or wish to start new ones. As mentioned in paragraph 65 some 1,822 new charities were registered during the year, covering a wide range of charitable purposes.

2. In common with most other Government Departments, the Commission has had to reduce its staff (from 359½ at the end of 1976 to 330 at the end of 1981) but the volume of work carried out each year has not decreased. We shall, however, do our best to continue to provide good service for charities.

3. The problems which arise when charities engage, or wish to engage, in political activities continued to attract attention. The decision of the High Court in the case of the Amnesty International Trust helped to clarify the law on this. The case is of considerable importance and we have set out in detail in paragraphs 38 to 49 of this report the main points in the judgment. We have also taken the opportunity, in paragraphs 54 to 56, to supplement the guidance we gave to charities in paragraphs 13 to 16 of our report for 1969. We strongly advise trustees in doubt about political activities to consult us in advance of engaging in "campaigns".

4. In paragraphs 54 to 58 of our report for 1965 we dealt in detail with disaster funds which might continue in being for a considerable time after the tragedy, and in paragraphs 83 to 86 of our report for 1980 we commented on difficulties which can arise in connection with appeals for particular people in distress. These difficulties were forcefully illustrated by the main appeal, launched in December by the Chairman of Penwith District Council, for the families of the Penlee Lifeboat crew who so tragically lost their lives.

5. The launching of the appeal; the possibility that the fund might not be passed on in full to the dependants; that payments might be taxed; the sheer size of the fund; and the intentions of the donors; all aroused considerable public interest. Correspondence in the press and other comment in the media showed that opinion was divided on the question whether so large a fund should be entirely devoted to the small number of sadly bereaved families, or whether some part should not be used for a wider, but closely related, purpose.

6. A good deal of the speculation was based on the assumption that the fund was charitable in law, and that we had been consulted. Neither assumption was correct.



7. On the 5th January 1982 the Trustees of the Fund and their advisers discussed the matter with us and later with the Attorney General. The Trustees decided to proceed on the basis that the Trust was a private and not a charitable one.

8. The Attorney General has since issued a Statement which gives guidance to the legal profession, banks, local authorities, and other bodies who may be concerned with making, or giving advice on, appeals. If the intention is to make a charitable appeal we are always willing to advise the promoters as a matter of urgency. A copy of the Statement is at Appendix A.

9. To give a general picture of our work during 1981, we include in this report examples of cases in which we made schemes or orders to help charity trustees administer their charities more efficiently, and comment on the secure tenancy problems facing some charities which provide hostels and half-way houses. We refer briefly, in paragraphs 71 to 73 to the Attorney General's application to us for removal of the Unification Church from the register of charities, and also mention in the report legislation and certain decisions of the High Court affecting charities.

#### **Changes in Senior Appointments**

10. A number of changes in senior staff have taken place. Mr. Trevor Keith retired on the 30th September. He had been appointed a Commissioner on the 3rd October 1972 and became head of the legal staff in 1974. On his retirement Mr. C. A. H. Parsons, who had been the Commissioner in Liverpool since 1974, came to London and became the head of the legal staff. Mr. B. T. Dixon was appointed to be a Commissioner and took charge of the Liverpool office. At the same time Mr. J. Farquharson was promoted to be a Deputy Commissioner in Liverpool.

11. Mr. Terence FitzGerald retired in March 1982 having been Chief Commissioner since 1975. He was succeeded by Mr. Denis Peach.

#### **Legislation affecting Charities**

##### *(a) Disused Burial Grounds (Amendment) Act 1981*

12. The Disused Burial Grounds Act 1884 prohibits the erection of any buildings upon any disused burial ground, except for the purpose of enlarging a church, chapel, meeting house or other place of worship, unless the burial ground has been sold or disposed of under an Act of Parliament. This is an expensive procedure and, except in a small number of cases, has prevented wider use of disused burial grounds, including parts which have never been used, either by the churches or by subsequent owners. Under the Pastoral Measure 1968 the Church of England has power, subject to stringent conditions, to disregard the 1884 Act, and the Disused Burial Grounds (Amendment) Act 1981 gives the free churches and other religious bodies a similar conditional power. The conditions are mainly concerned with the publication

of notices, the disposal of human remains, the treatment of graves rendered inaccessible by a proposed development, the disposal of tombstones, monuments and memorials, and the keeping of proper records including the copying of inscriptions.

13. The new Act preserves the charitable jurisdiction of the High Court and the Commissioners and places a duty on trustees to apply for a scheme if the governing instrument relating to a disused burial ground does not provide for its future use or for the application of any proceeds of sale. The Act does not affect the powers of local authorities to acquire disused burial grounds for preservation as open spaces under the Open Spaces Act 1906, or for redevelopment under the Town and Country Planning Acts.

*(b) United Reformed Church Act 1981*

14. The United Reformed Church Act 1972 made provision for the property of those member churches of the Congregational Church in England and Wales and the Presbyterian Church of England which united to form the United Reformed Church. In 1980, proposals for the unification of the United Reformed Church and churches in membership with the Re-formed Association of Churches of Christ in Great Britain and Ireland were approved by the United Reformed Church and the Association and the main purpose of the United Reformed Church Act 1981 is to alter the trusts affecting the property of the member churches of the Association, all of which had resolved to unite with the United Reformed Church, with other consequential provisions. The Act also makes minor amendments to the trusts set out in the 1972 Act which affect places of religious worship and properties held as residences for ministers and other church workers of the United Reformed Church. The new Act also provides appropriate new trusts for the property of local churches which secede from the United Reformed Church.

*(c) Companies Act 1981*

15. Under section 19 of the Companies Act 1948, the Department of Trade had power to grant to certain companies, including charitable companies, a licence to omit the word "limited" from their name, a privilege which has been greatly prized by many charitable companies. The Companies Act 1981 repeals section 19 of the 1948 Act, but section 25 of the new Act exempts charitable companies limited by guarantee and certain other private companies from the requirement to include the word "limited" in their names provided that they fulfil certain conditions. The conditions to be fulfilled are that the objects of the company are the promotion of commerce, art, science, education, religion, charity or any profession, and that the memorandum or articles of association of the company (i) require its profits or other income to be applied in promoting its objects, (ii) prohibit the payment of dividends to its members, and (iii) require that on winding up, the assets of the company are transferred to another body with similar objects or to a charitable body. New companies and companies wishing to remove the word "limited" from their names, must submit to the Secretary of State a statutory declaration that they comply with the conditions.

16. The Act does not exempt charitable companies from the requirements of section 9(7) of the European Communities Act 1972. This requires all companies to state on all business letters and order forms the place of registration of the company, its registered number and the address of its registered office and, in the case of a limited company exempt from the obligation to use the word "limited" as part of its name, the fact that it is a limited company.

17. The 1981 Act provides that a company shall not be registered by a name which is the same as that of an existing company or of certain other bodies, and empowers the Secretary of State within 12 months of registration to require a change of name of a company which is "too like" that of an existing company or body. These provisions will enable a charitable company to object to the registration of a new company with a name the same as or similar to its own.

18. The Company and Business Names Regulations 1981 (S.I. 1981 No. 1685), made under sections 31 and 32 of the 1981 Act, specify certain words and expressions which may not be used in the name of a new company or business without the approval of the Secretary of State. The promoters of companies or businesses proposing to use the words "charity" or "charitable" in their names are required to write to the Charity Commissioners asking whether there is any objection to the proposed name, and a copy of the reply must be submitted to the Secretary of State with the application for registration of the company or approval of the name.

*(d) Licensing (Alcohol Education and Research) Act 1981*

19. Under the Licensing Act 1904 the renewal of existing on-licences (old on-licences) could be refused only on certain specified grounds or on the award of compensation by the local compensation authorities set up by the Act. Compensation was funded by levies on those licencees who retained their licences. In recent years there have been few claims for compensation and the Licensing (Alcohol Education and Research) Act 1981 provides for the use of the estimated £4.3m remaining in the hands of the compensation authorities.

20. The Act, which came into force on the 1st October, provides for the appointment of a liquidator to receive the assets of the compensation authorities which will then cease to exist. One-half of the net assets is to be transferred to the Alcohol Education and Research Fund for charitable purposes, namely, the education of the public as to the causes and effects of, and means of preventing, excessive consumption of alcohol; the care and rehabilitation of persons convicted of offences involving drunkenness; the provision of treatment and other help for persons dependent on, or given to excessive consumption of, alcohol; and research into matters relevant to such purposes.

21. One-quarter of the assets is to be transferred to the Licensed Trade Charities Trust (a registered charity) which was established on the 16th February 1981 for the primary purpose of making grants to charities connected

with the licensed trade. The remaining quarter is to be repaid to eligible persons who at the commencement of the Act had an interest in the premises in respect of which an old on-licence was then in force.

#### **Legal decisions affecting Charities**

(a) *The Kingston Meeting Rooms Trust (Feltham), Holmes and Others v. Attorney General (The Exclusive Brethren)*

22. We referred in paragraphs 128 to 132 of our report for 1976 and paragraph 24 of our report for 1979 to the differences which had arisen between two groups of the Exclusive Brethren, to the doubts whether the advancement of religion in accordance with the doctrines and practices of the Exclusive Brethren was charitable in law, and to our determination that pending a decision by the Court we would not register as a charity, or make a scheme for, a trust for the advancement of religion where the doctrines specifically included that of Separation from Evil as interpreted by James Taylor Jnr., i.e., the doctrines of the pro-Taylorite group.

23. The Kingston Meeting Rooms Trust (Feltham) was comprised in a trust deed dated the 31st August 1978. Application was made on behalf of the Trustees for the Trust to be registered as a charity and it was by mistake placed on the register. The entry was cancelled when the error came to light. The Plaintiffs appealed to the High Court for declarations that the Commissioners had no jurisdiction to decide that they had made a mistake and to remove the Trust from the register, that the Trust was at the date of that decision a valid charitable trust, and that the Trust was entitled to be registered.

24. Mr. Justice Walton, in a judgment delivered on the 11th February, said that he had heard argument at length only on the second and third points. The Brethren claimed to be a fundamentalist group of Christians founded at the beginning of the nineteenth century. Their main doctrine was, apparently, that members of the sect should separate themselves from the world. To a dispassionate observer, the line of separation appeared somewhat arbitrary: they were quite content to earn wages as employees but not to join in partnership with a non-brother. They did not watch television or go to the cinema nor, he gathered, listen to the radio. In other words, they claimed to be an ultra-puritan sect; and as happened with all such sects there had been divisions, most recently in 1959 and 1970.

25. The Judge said that the Brethren's perspective of themselves was a rather odd one. They apparently did not like to be denominated a sect, though any dispassionate observer would clearly think they were a sect. It was claimed in an affidavit that they had no creed or constitution and no hierarchy, merely local groups. But of course they had a creed although it was difficult for an outsider to gather precisely what it was. And while it was true that they had no formal constitution there was, undoubtedly, a settled informal constitution. Similarly, although there was no formal hierarchy, there was at any rate a leader, at present Mr. J. H. Symington. Equally, although the Brethren claimed to have no rituals, they undoubtedly had a ritual, however informal, in the celebration of the Eucharist. The Judge concluded that they were a religion.

26. The Judge said it was quite clear that the trust deed was one for religious purposes. There was, therefore, a presumption that the trust deed was charitable but that presumption was capable of being rebutted. It would be rebutted if it was shown that, although of a religious nature, the trusts were not for the public benefit, because it was not for the benefit of the adherents of the religion themselves that the law conferred charitable status but in the interests of the public.

27. The first question that arose was whether the Brethren were a totally enclosed type of organisation. The evidence, which was not challenged or adversely commented upon, showed first, that outsiders, provided they came in a proper spirit and not in a spirit of levity, were allowed to attend meetings of the Brethren other than the celebration of the Eucharist and business meetings. Second, that the Brethren or some of them attempted to proselytise by conducting public campaigns. It appeared to be quite impossible on the evidence to conclude that there was a lack of benefit under this head. The Judge referred to *Thornton v. Howe* (1862) 31 Beavan 14, and said that, although he had not been taken in any detail into the writings of the successive leaders of the Exclusive Brethren there was not the slightest reason to suppose that there was anything remotely adverse to the very foundations of all religion or subversive of all morality.

28. The final question was whether the practices of the Brethren, or some of them, might nevertheless be said to be contrary to the public interest, more particularly in relation to what they called "Discipline", notably in two branches, namely, "Shutting-up" and "Withdrawal". The evidence given was that discipline was applied where necessary, but that this was rare. The Brethren needed to exercise discipline to keep their assembly pure. "Shutting-up" meant that a person guilty of persistent or repeated evil, or error in the form of false doctrine, who was unwilling to repent would be banned from meetings of the assembly until he was able to show repentance. But the transgressor would not be cut off from contact with other Brethren, and would usually continue to live and associate with his family. Occasionally the transgressor would be "withdrawn from" by the assembly. This was usually final and involved complete separation from the transgressor and the evil which he represented, and would involve a severing of family ties.

29. The Judge said that this was all the evidence he had concerning discipline and as it came from the Brethren it might very well put the matter in a much more favourable light than it wore in reality. No evidence had been put before him concerning very serious allegations which had been made against the Brethren elsewhere and he was not, therefore, entitled to pay any regard to them judicially. The evidence was all one way, and indeed he had been urged on behalf of the Attorney General to accept that far from displacing a presumption of public benefit the evidence clearly strengthened such a presumption. The Judge accordingly declared that the Trust was a valid charitable trust and entitled to be registered under section 4 of the Charities Act 1960.

30. In view of the Court's decision we considered our future practice in respect of Exclusive Brethren trusts and decided that applications for

registration, for schemes not affecting doctrines, and for orders removing and appointing trustees, or authorising the sales of property and the application of the proceeds of sale, should be considered on their merits in the normal way. We also decided to resume the making of schemes dividing the property of an Exclusive Brethren trust between the pro-Taylorite and anti-Taylorite groups, provided that both parties were agreed on the division. Most Exclusive Brethren property comprised in pre-1976 deeds is held on broad trusts for the advancement of the Christian religion without detailed doctrinal qualifications, so that it might be argued that a scheme providing that part of the property should be held for promoting pro-Taylorite doctrines and part for promoting anti-Taylorite doctrines was, technically at least, changing the doctrinal basis. However, such schemes had previously been made by the Court and we decided that we could properly follow that lead.

(b) *Rule and Others v Charity Commissioners for England and Wales and Another (The Exclusive Brethren)*

31. In paragraphs 24 to 36 of our report for 1979 we outlined the circumstances leading up to, and summarised the decision of the Court in, the proceedings brought by certain members of the Exclusive Brethren against the Charity Commissioners and Mr. H. E. Francis, Q.C., whom we had appointed to conduct an inquiry under section 6 of the Charities Act into the religious charities of the Exclusive Brethren. We mentioned that the Plaintiffs were appealing against the order of Mr. Justice Fox (as he then was) and seeking a declaration that the inquiry had been conducted, and the Francis Report produced, contrary to natural justice or unfairly. The case came before the Court of Appeal on the 13th July, when the Plaintiffs applied for leave to withdraw the appeal, partly because of the decision of the Court in respect of The Kingston Meeting Rooms Trust (Feltham) to which we refer in paragraphs 22 to 30. The Defendants did not oppose the application and the Court formally gave leave for withdrawal of the appeal with no order as to costs in the Court of Appeal.

(c) *Inland Revenue Commissioners v. Helen Slater Charitable Trust Limited* [1981] 3 W.L.R. 377 [1981] 3 All E.R. 98.

32. We referred in paragraphs 37 to 39 of our report for 1979 to the decision of Mr. Justice Slade who dismissed an appeal by the Inland Revenue from a decision of the Special Commissioners who had allowed a claim by the Helen Slater Charitable Trust Limited for exemption from tax in respect of income and gains received during the years 1973–75 which it had donated to the Slater Foundation Limited but which had not been distributed by the Foundation during the year of receipt. The Inland Revenue appealed against the Court's decision.

33. Lord Justice Oliver said that the point at issue, shortly stated, was whether the Trust, as a charity, was entitled to tax exemption in respect of moneys representing income and capital gains which it received during the relevant accounting periods and which it paid to another charity but were not distributed by that recipient body. With regard to income, section 360(1) of the Income and Corporation Taxes Act 1970 provided for exemption "where

the income in question forms part of the income of a charity, or is . . . applicable to charitable purposes only, and so far as it is applied to charitable purposes only". So far as chargeable gains were concerned, section 360(2) of the 1970 Act, as amended, provided that a charity should be exempt in accordance with section 35 of the Finance Act 1965 (now superseded by a consolidating enactment) which provided that "a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes".

34. It was submitted first for the Inland Revenue that, contrary to what had been conceded before Mr. Justice Slade, money subject to charitable trusts was not "applied" for the purposes of the legislation unless it was actually expended "in the field", that is, on the expenses of managing the charity and distributions for the attainment of particular charitable objects. Accordingly, a grant-making charity did not "apply" its funds for charitable purposes when it made a payment to another charity. His Lordship said that this proposition was a startling one; it meant that the trustees of a grant-making charity, although they might discharge themselves as a matter of law by making a grant to another charity, were obliged, if they wished to claim exemption under the legislation, to enquire into the application of the funds given and to demonstrate to the Inland Revenue how those funds had been dealt with by other trustees over whom they had no control and for whose actions they were not answerable. Anything more inconvenient would be difficult to imagine, and he was unable to accept that the legislature could possibly have intended such a result. He had no doubt that, as a general proposition, funds donated by charity A, pursuant to its governing instrument, to charity B were funds which were "applied" by charity A for charitable purposes.

35. The Inland Revenue's second submission was that in order to qualify as an "application" the payment must have some further characteristic than simply being a payment made pursuant to the declared objects. There must be some mental element of dedication to a particular charitable purpose beyond mere retention as funds generally applicable for the charitable trusts. The argument proceeded in two stages. First, a charity which invested its income and gains as an accumulation to its general funds did not "apply" that income for charitable purposes. Second, where money, instead of being accumulated by one charity, was passed to and accumulated by another charity as part of its general funds, the money would have been "applied" for charitable purposes by the first charity only if there had been a significant change in the trusts upon which it was held. As the Trust and the Foundation had almost identical charitable objects and, as had been accepted, had been set up as a joint operation and intended to work in tandem, there was no "application" by the Trust, but merely an arrangement to accumulate money on charitable trusts common to both bodies.

36. His Lordship said that manifestly the legislature intended to impose some additional qualification for the exemption of income beyond that of merely being applicable for charitable purposes. He agreed with Mr Justice Slade that the word "applied" imported some affirmative requirement that the income should have been dealt with in some way. Charity trustees who simply left surplus income uninvested had not applied it and would be in breach of trust. But if the income was reinvested, as part of the charity's

funds, he was disposed to say that it had been applied for charitable purposes, although it was not necessary to decide the point.

37. Mr Justice Slade had rejected the argument that although there was a change in the bare legal title there was no significant change in the trusts on which the transferred income was held. The objects of the Trust included an express object of making donations to other charitable institutions, whether or not "parallel" institutions, and the only question was whether, in making the payment, the Trust was applying the money for charitable purposes. In his judgment it clearly was. His Lordship said he could not do better than adopt Mr Justice Slade's judgment that "Any charitable corporation which, acting *intra vires*, makes an outright transfer of money applicable for charitable purposes to any other corporation established exclusively for charitable purposes, in such manner as to pass to the transferee full title to the money, must be taken, by the transfer itself, to have 'applied' such money for 'charitable purposes', within the meaning of the two subsections, unless the transferor knows or ought to know that the money will be misapplied by the transferee". There was no question of lack of bona fides here or of money having been misapplied by the Foundation and he would dismiss the appeal. Lord Justice Fox and Lord Justice Waller agreed.

**Appeal under section 5(3) of the Charities Act  
against a decision not to register an institution  
as a charity**

*McGovern and Others v. Attorney General and Another (Amnesty International Trust)* [1982] 2 W.L.R. 222 [1981] 3 All E.R. 493

38. In paragraphs 65 to 72 of our report for 1978 we set out, with reasons, our decision not to register the Amnesty International Trust as a charity. The Trustees' appeal against our decision was dismissed on the 13th March by Mr Justice Slade whose judgment contains valuable guidance about political purposes and research in the context of charity law.

39. The purposes of the Trust declared in clause 2 of a declaration of trust dated the 2nd November 1977 were:—

"A. The relief of needy persons within any of the following categories:

- (i) Prisoners of Conscience
- (ii) persons who have recently been Prisoners of Conscience
- (iii) persons who would in the opinion of the Trustees be likely to become Prisoners of Conscience if they returned to their country of ordinary residence
- (iv) relatives and dependents of the foregoing persons

by the provision of appropriate charitable (and in particular financial educational or rehabilitational) assistance.

B. Attempting to secure the release of Prisoners of Conscience.



C. Procuring the abolition of torture or inhuman or degrading treatment or punishment.

D. The undertaking promotion and commission of research into the maintenance and observance of human rights.

E. The dissemination of the results of such research . . .

PROVIDED ALWAYS that the foregoing objects shall be restricted to those which are charitable according to the law of the United Kingdom but subject thereto they may be carried out in all parts of the world”.

“Prisoner of Conscience” was defined in the deed as:—

“any person who in violation of human rights is imprisoned detained restricted or otherwise subjected to physical coercion or restraint by reason of his or her political religious or other conscientiously held beliefs or by reason of his or her ethnic origin colour or language but does not include—

- (i) any person who has been party or privy to or has advocated or approved the use of violence
- (ii) any person who is lawfully imprisoned or detained within the United Kingdom”.

40. After reviewing the cases concerning trusts to promote changes in the law, the Judge enunciated the principle that:—

“the court will not regard as charitable a trust of which a main object is to procure an alteration of the law of the United Kingdom for one or both of two reasons. First, the court will ordinarily have no sufficient means of judging, as a matter of evidence, whether the proposed change will or will not be for the public benefit. Second, even if the evidence suffices to enable it to form a prima facie opinion that a change in the law is desirable, it must still decide the case on the principle that the law is right as it stands, since to do otherwise would be to usurp the functions of the legislature”.

41. Regarding the status of a trust to secure the alteration of the laws of a foreign country, the Judge said:—

“The point with which I am at present concerned is whether a trust of which a direct and main object is to secure a change in the laws of a foreign country can *ever* be regarded as charitable under English law. Though I do not think that any authority cited to me precisely covers the point, I have come to the clear conclusion that it cannot”.

The Court would have no adequate means of judging whether a proposed change in the law of a foreign country would or would not be for the public benefit, i.e. the benefit of the community of the United Kingdom. The Court would also be bound to take account of the probable effects of attempts to procure the proposed legislation, or of its actual enactment, on the inhabitants of the country concerned, and would have no satisfactory means of judging such probable effects upon the local community. The Judge continued:—

“Furthermore, before ascribing charitable status to an English trust of which a main object was to secure the alteration of a foreign law, the Court would

also, I conceive, be bound to consider the consequences for this country as a matter of public policy. In a number of such cases there would arise a substantial prima facie risk that such a trust, if enforced, could prejudice the relations of this country with the foreign country concerned. . . .”

42. Mr. Justice Slade also concluded that as, under any legal system, the government and the executive and judicial authorities would have wide discretionary powers vested in them, within the framework of the existing law, a trust intended to procure a reversal of government policy or of particular administrative decisions of governmental authorities would not be charitable.

43. The Judge summarised his conclusions as follows:—

“Founding them principally on the House of Lords decisions in the *Bowman*<sup>1</sup> and *National Anti-Vivisection Society*<sup>2</sup> cases, I therefore summarise my conclusions in relation to trusts for political purposes as follows:

- (1) Even if it otherwise appears to fall within the spirit and intendment of the preamble to the Statute of Elizabeth, a trust for political purposes falling within the spirit of Lord Parker’s pronouncement<sup>3</sup> in *Bowman*’s case can never be regarded as being for the public benefit in the manner which the law regards as charitable.
- (2) Trusts for political purposes falling within the spirit of this pronouncement include (*inter alia*) trusts of which a direct and principal purpose is either (i) to further the interests of a particular political party, or (ii) to procure changes in the laws of this country, or (iii) to procure changes in the laws of a foreign country, or (iv) to procure a reversal of government policy or of particular decisions of governmental authorities in this country, or (v) to procure a reversal of government policy or of particular decisions of governmental authorities in a foreign country”.

The Judge made it clear, however, that if all the main objects of the trust are exclusively charitable, the fact that the trustees may have incidental powers to employ political means for their furtherance will not deprive the trust of its charitable status.

44. Turning to the trust deed constituting the Amnesty International Trust the Judge found the proviso to clause 2 to be “not very clear or satisfactory” but he thought that under it the Trustees, though entitled to carry out the trust purposes in any part of the world, were restricted to purposes which were charitable according to the law of the United Kingdom. If any one of the trust purposes set out in clause 2 was not charitable the proviso “cannot enable the trusts declared by the deed to escape total invalidity”.

45. It was common ground that the purposes declared in clause 2A (relief of needy Prisoners of Conscience), if read in isolation, were of a charitable nature. With regard to clause 2B (securing release of Prisoners of Conscience) the Judge accepted, as a broad proposition, that a trust for the relief of human suffering and distress was prima facie capable of being of a charitable nature

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<sup>1</sup> *Bowman v. Secular Society Ltd* [1917] A.C. 406.

<sup>2</sup> *National Anti-Vivisection Society v. Inland Revenue Commissioners* [1948] A.C. 31.

<sup>3</sup> At page 442—see also paragraph 51(i) of this report.

within the spirit and intendment of the Statute of Elizabeth. But it did not follow that a trust established for good compassionate purposes would necessarily qualify as a charity and he rejected the argument that the release of “Prisoners of Conscience” was charitable as analogous to the redemption and relief of captives within the spirit and intendment of the Statute. The Judge said that:—

“Expressed in one sentence, the main object of the broadly-defined trust contained in Clause 2B must in my judgment be regarded as being the procurement of the reversal of the relevant decisions of governments and governmental authorities in those countries where such authorities have decided to detain ‘prisoners of conscience’, whether or not in accordance with the local law. The procurement of the reversal of such decisions cannot, I think, be regarded merely as one possible method of giving effect to the purposes of Clause 2B. . . . On the construction which I place on Clause 2B it is the principal purpose itself. On this view of the matter, the trust declared by Clause 2B cannot in my judgment qualify as a charitable trust. It is a trust for political purposes within the fifth of the categories listed above”.

46. It had been submitted that clause 2C (Procuring the abolition of torture or degrading punishment, etc.) embodied a trust which fell within the spirit and intendment of the Statute of Elizabeth, that it promoted a public benefit and that, as being for the relief of suffering and distress, it was wholly and exclusively charitable. The trust, it was argued, could not be said to be of a political nature because any involvement of the Trustees with legislation would be merely ancillary to the attainment of good charitable purposes. Mr. Justice Slade could not accept this construction. If clause 2C had stopped with the word “torture”, there would have been much to be said for the view that the phrase “procuring the abolition of” should not be construed as referring specifically to the procurement of changes in the law. But the subsequent reference to the word “punishment” really put the matter beyond doubt. In its context, this word primarily connoted, in the Judge’s view, punishment by process of law, including capital and corporal punishment in any countries in the world where such punishments were for the time being lawful. The initiation of a campaign to procure the final and complete abolition of the death sentence in the United Kingdom (which could still be passed for treason and certain forms of piracy) would, in his judgment, fall within the ambit of clause 2C and this must render the trusts non-charitable. However, he preferred to base his conclusion in relation to the trusts of clause 2C on the wider grounds that:—

“they include the procurement not only of changes in the law of the United Kingdom but also of changes in the laws of foreign countries and the reversal of particular decisions of governmental authorities in foreign countries. They are therefore political trusts within the second, third and fifth of the heads categorised above. For these reasons, it must follow that, in my judgment, the trusts of Clause 2C are not charitable”.

47. Before expressing his views on clause 2D (research into human rights) and clause 2E (dissemination of results of research) the Judge set out certain principles deduced from the earlier authorities concerned with trusts for

research in the context of the law of charities, which he had stated in an unreported judgment in *In re Besterman's Will Trusts* delivered on the 21st January 1980, namely:—

- “(1) A trust for research will ordinarily qualify as a charitable trust if, but only if (a) the subject-matter of the proposed research is a useful subject of study; and (b) it is contemplated that knowledge acquired as a result of the research will be disseminated to others; and (c) the trust is for the benefit of the public, or a sufficiently important section of the public.
- (2) In the absence of a contrary context, however, the court will be readily inclined to construe a trust for research as importing subsequent dissemination of the results thereof.
- (3) Furthermore, if a trust for research is to constitute a valid trust for the advancement of education, it is not necessary either (a) that a teacher/pupil relationship should be in contemplation or (b) that the persons to benefit from the knowledge to be acquired should be persons who are already in the course of receiving ‘education’ in the conventional sense.
- (4) In any case where the court has to determine whether a bequest for the purposes of research is or is not of a charitable nature, it must pay due regard to any admissible extrinsic evidence which is available to explain the wording of the will in question or the circumstances in which it was made.

The correctness of this summary of the law, so far as it goes, was not challenged in the present case”.

48. The Judge said that:—

“If Clauses 2D and 2E had been the only trust purposes contained in the trust deed, I would have held them to be of a charitable nature. The subject-matter of the proposed research seems to me manifestly a subject of study which is capable of adding usefully to the store of human knowledge. . . . it appears that the study of human rights has become an accepted academic discipline; the subject is taught in many universities and is part of the curriculum in departments of many schools. I think that Clauses 2D and 2E when read together make it clear that it is contemplated that the knowledge acquired as a result of the research would be disseminated to others. Furthermore, if these two sub-clauses had stood in isolation I would have felt little difficulty in holding that the trusts thereby declared were for the benefit of the public. The mere theoretical possibility that the trustees might have implemented them in a political manner would not have rendered them non-charitable; the two sub-clauses would have been entitled to a benignant construction and to the presumption . . . that the trustees would only act in a lawful and proper manner appropriate to the trustees of a charity and not, for example, by the propagation of tendentious political opinions”.

“As things are, the trusts of Clauses 2D and 2E . . . must in my judgment fail along with Clauses 2B and 2C. None of the trusts of this trust deed can be regarded as being charitable”.

49. In his conclusion Mr. Justice Slade said:—

“Indisputably, laws do exist both in this country and in many foreign countries which many reasonable persons consider unjust. No less indisputably, laws themselves will from time to time be administered by governmental authorities in a manner which many reasonable persons consider unjust, inhuman or degrading. Amnesty International, in striving to remedy what it considers to be such injustices, is performing a function which many will regard as being of great value to humanity. Fortunately, the laws of this country place very few restrictions on the rights of philanthropic organisations such as this, or of individuals, to strive for the remedy of what they regard as instances of injustice, whether occurring here or abroad. However, for the reasons which I think adequately appear from Lord Parker’s pronouncement in *Bowman’s* case, the elimination of injustice has not as such ever been held to be a trust purpose which qualifies for the privileges afforded to charities by English law. I cannot hold it to be a charitable purpose now”.

### Political activities by Charities

#### (a) Generally

50. During the year we continued to receive some complaints about alleged political activities by charities and it seems timely, therefore, in the light of the judgment in the Amnesty International Trust case, mentioned in paragraphs 38 to 49, to supplement the advice we gave in paragraphs 13 to 16 of our report for 1969.

51. As we have emphasised in previous reports, the extent to which it is permissible for charities to promote, support or take part in political activities is not an area in which it is possible to lay down hard and fast rules. Each case has to be considered individually in the light of all the relevant circumstances and trustees should not hesitate to consult their legal advisers or seek our advice. The law has to be derived from a small number of decided cases. It is possible to deduce certain basic principles, and it may be helpful initially to set these out (as they were, in our view, before the Amnesty case which has confirmed and amplified the position):—

- (i) A trust for the attainment of a political object is not charitable since the Court has no way of judging whether a proposed change in the law will or will not be for the public benefit—*Bowman v. Secular Society Ltd.* [1917] A.C. 406; 442.
- (ii) To promote changes in the law, or maintenance of the existing law, is a political purpose and not charitable—*re Hopkinson* [1949] 1 All E.R. 346; 350.
- (iii) To seek, not necessarily particular legislation, but a particular line of political administration or policy, is a political purpose and is not charitable—*re Hopkinson* [1949] 1 All E.R. 346; 352.
- (iv) Political propaganda in the guise of education is not charitable—*re Hopkinson* [1949] 1 All E.R. 346.

- (v) The word “political” is not necessarily confined to party politics. Any purpose of influencing legislation is a political purpose and is not charitable—*Inland Revenue Commissioners v. Temperance Council of Christian Churches of England and Wales* [1926] 10 T.C. 748.
- (vi) A trust for the education of the public in one particular set of political principles is not charitable (although education in political matters generally could be)—*Bonar Law Memorial Trust v. Inland Revenue Commissioners* [1933] 17 T.C. 508.
- (vii) Although an association for promoting some change in the law cannot itself be a charity (see (i) and (ii) above), an association would not necessarily lose its right to be considered a charity if, as a matter of construction, the promotion of legislation were one among other lawful purposes ancillary to good charitable purposes: it is a question of degree—*National Anti-Vivisection Society v. Inland Revenue Commissioners* [1943–47] 28 T.C. 358; 368; 378 (HL).
- (viii) Research, to be charitable, must be directed to increasing the store of communicable knowledge in a public, as opposed to a private, way—*re Hopkins’ Will Trusts* [1965] Ch. 669.

52. In addition to removing any doubts on the question whether the constraints on domestic political activities extend to attempts to influence the politics and administrative policies of foreign countries, the Amnesty case has served to re-assert the validity of the principles set out above.

53. The implications for charity trustees of the present state of the law—as confirmed by the Amnesty case—may be summarised as:—

- (i) Trustees who stray too far into the field of political activity:
  - (a) risk being in breach of trust;
  - (b) risk being held personally liable to repay to the charity the funds spent on such activity; and
  - (c) risk losing some tax relief for their charity, since this may be claimed only in respect of income applied to charitable purposes.
- (ii) Political activity by the trustees would not necessarily affect the charitable status of the institution or be a reason for removing it from the Central Register of Charities; *but*
- (iii) If the trustees could validly claim that the expressed purposes of the institution were wide enough to cover political activities, doubt would arise whether those purposes were exclusively charitable and, if the institution was registered as a charity, upon the correctness of the registration.

54. The following guidelines may be of help for the general guidance of charity trustees:—

- (i) A charity should undertake only those activities which can reasonably be said to be directed to achieving its purposes and which are within the powers conferred by its governing instrument;

- (ii) To avoid doubt being cast on the claim of an institution to be a charity, its governing instrument should not include power to exert political pressure except in a way that is merely ancillary to a charitable purpose. Whether a particular provision in the governing instrument of an institution is a substantive object or an ancillary object or power is a matter of the construction of the instrument. In general, what is ancillary is that which furthers the work of the institution, not something that will procure the performance of similar work by, for example, the Government of the day.
- (iii) The powers and purposes of a charity should not include power to bring pressure to bear on the Government to adopt, alter, or maintain a particular line of action. It is permissible for a charity, in furtherance of its purposes, to help the Government to reach a decision on a particular issue by providing information and argument, but the emphasis must be on rational persuasion.
- (iv) A charity can spend its funds on the promotion of public general legislation only if in doing so it is exercising a power which is ancillary to and in furtherance of its charitable purposes.
- (v) If a charity's objects include the advancement of education, care should be taken not to overstep the boundary between education and propaganda in promoting that object: for example, the distribution of literature urging the Government to take a particular course, or urging sympathisers to apply pressure to Members of Parliament for that purpose, would not be education in the charitable sense.
- (vi) A charity which includes the conduct of research as one of its objects must aim for objectivity and balance in the method of conducting research projects; and in publishing the results of the research must aim to inform and educate the public, rather than to influence political attitudes or inculcate a particular attitude of mind.
- (vii) Charities, whether they operate in this country or overseas, must avoid:—
  - (a) Seeking to influence or remedy those causes of poverty which lie in the social, economic and political structures of countries and communities.
  - (b) Bringing pressure to bear on a government to procure a change in policies or administrative practices, (for example, on land reform, the recognition of local trade unions, human rights, etc.).
  - (c) Seeking to eliminate social, economic, political or other injustice.

55. Unless its governing instrument precludes it from doing so, a charity may, generally speaking, freely engage in activities of the following kinds:—

- (i) Where the Government or a governmental agency is considering or proposing changes in the law and invites comments or suggestions from charities, they can quite properly respond.
- (ii) Where a Green or White Paper is published by the Government, a charity may justifiably comment.

- (iii) Where a Parliamentary Bill has been published, a charity is justified in supplying to Members of either House such relevant information and arguments to be used in debate as it believes will assist the furtherance of its purposes.
- (iv) Where a Bill would give a charity wider powers to carry out its purposes, it can quite properly support the passage of the Bill; and it can support or oppose any Private Bill relevant to its purposes, since private legislation does not normally have a political character.
- (v) Where a question arises as to whether a Government grant is to be made or continued to a particular charity, the charity is entitled to seek to persuade Members of Parliament to support its cause.
- (vi) Where such action is in furtherance of its purposes, a charity may present to a Government Department a reasoned memorandum advocating changes in the law.

56. In suggesting these guidelines to trustees, we are not purporting to say that certain activities are morally, socially, or politically wrong or undesirable or that they ought not to be done; but that it is not permissible for them to be carried out by a charity, according to our understanding of the law. We are concerned only with the law and must seek to ensure that funds and other property impressed with charitable trusts are used for the purposes of those trusts and not for purposes which the law does not accept as charitable. We are always willing to give further advice on any specific problem a charity may have in this connection; for example, on the distinction between education and propaganda, or between an ancillary purpose and a main purpose, and to consider the drafts of any publications such as advertisements, appeals, newsletters, etc, on which trustees have doubts.

*(b) War on Want*

57. In our report for 1978 (paragraphs 22 to 25) we mentioned our discussions with representatives of War on Want about certain of the Charity's publications and activities which seemed to us to be outside the legitimate scope of charity, and our advice that, if such activities were to be continued, it could only be by a separate non-charitable organisation financed from moneys not contributed for charitable purposes. Subsequently, we were informed that a non-charitable limited company called "W.O.W. Campaigns Limited" had been incorporated in February 1980 with the general aim of supporting and promoting the work of War on Want, but with power to engage in campaigns and other activities of a political nature outside the scope of a charity.

58. However, in the early part of 1981, we received complaints from Members of Parliament that a national campaign launched by War on Want "to fight poverty and unemployment" was essentially political in nature, and our attention was drawn in particular to campaign posters in the traditional colours of the Labour Party and to appeal literature giving prominence to support for the Charity from Labour Party members and from trade unionists. We sought the Trustees' views on these complaints, at the same time pointing out to them that, whereas it was open to a charity (with appropriate objects)



to apply its funds in the relief of need (poverty, sickness, etc.) caused by unemployment, merely to benefit the unemployed was not a charitable purpose. We also suggested to the Trustees that the use of language in their leaflets such as: "... this is not just a campaign to raise funds. It is part of a movement to show real solidarity with the unemployed and the poor and to work alongside them in the battle for a fairer deal," was difficult to construe otherwise than as proclaiming a political campaign.

59. In reply, the Trustees explained that they believed language of the kind in question was a necessary prerequisite to ensure an adequate response to their appeal for funds, given the nature of the Charity's traditional support base. We accepted the argument that modern-day charitable fund-raising called for a style and language calculated to strike a responsive chord in those to whom the appeal was mainly directed, but told the Trustees that this did not, in our view, justify a campaign which sought to exploit in an emotive and political way an issue such as unemployment. We expressed the view that War on Want's campaign had gone well beyond what was permissible, that it exposed the Charity to legitimate criticism, and that, even more serious, it had undesirable repercussions for the whole area of charitable endeavour generally. We found it difficult to understand why the campaign had not been conducted by W.O.W. Campaigns Limited.

60. The Trustees accepted the need to amend their advertising, and also the need to conform to our advice with regard to activities outside the permitted scope. They explained that they were experiencing teething troubles in working out a proper relationship between the Charity and the non-charitable Company, but assured us that once those difficulties had been overcome, activities of the kind we had criticised would be conducted within the framework of W.O.W. Campaigns Limited and that War on Want would refrain in future from impermissible political activities.

### **Remuneration of Trustees**

61. We commented in paragraphs 11 to 20 of our report for 1978 on the remuneration of charity trustees and referred to the judgment of Mr. Justice Walton in *In re Duke of Norfolk's Settlement Trust* [1978] 3 W.L.R. 655 which, although it related to a private settlement, seemed relevant to charitable trusts.

62. The Trustees of the Settlement included a trust corporation and the Judge decided that he had no inherent jurisdiction to authorise for the future any general increase in the trust corporation's remuneration permitted under the Settlement. The Trustees appealed against that decision.

63. Lord Justice Fox, giving the main judgment of the Court of Appeal (*In re Duke of Norfolk's Settlement (C.A.)* [1981] 3 W.L.R. 455, 3 All E.R. 220), reviewed the relevant cases over nearly 250 years and concluded that the Court has an inherent jurisdiction to authorise the payment of remuneration to trustees and that that jurisdiction extended to increasing the remuneration authorised by the trust instrument. His Lordship said that in

exercising that jurisdiction the Court had to balance two conflicting influences. The first was that the office of trustee is, as such, gratuitous; the Court will accordingly be careful to protect the interests of the beneficiaries against claims by the trustees. The second was that it is of great importance to the beneficiaries that the trust should be well administered. If, therefore, the Court concluded, having regard to the nature of the trust, to the experience and skill of a particular trustee, to the amounts which he sought to charge when compared with what other trustees might require to be paid for their services, and to all the other circumstances of the case, that it would be in the interests of the beneficiaries to increase the remuneration, then the Court might properly do so.

64. It is in our view inappropriate for a trust corporation which charges fees to be a charity trustee (though it may be the custodian trustee of a charity) and we see nothing in the judgment of the Court of Appeal to make us change the view expressed in 1978 which was, shortly, that only in very special cases will we agree to register as a charity an institution whose governing instrument provides for the remuneration of charity trustees, and then only if those provisions are necessary and reasonable in the exceptional circumstances.

### **Registration of Charities**

#### *(a) Generally*

65. During the year we registered 3,495 charities. Of these, 1,822 were new charities founded in 1981. We removed 254 charities from the register, most because they had been wound up or ceased to operate. The number of charities now registered is 139,289. The register is open to public inspection and we have many callers at our offices in St. Alban's House, Haymarket, London, and Graeme House, Derby Square, Liverpool.

66. Although the number of charities registered during the year was 460 fewer than the figure for 1980, there has been a fairly steady increase in work connected with registration over the last 11 years. The annual number of charities registered rose from 1,967 in 1971 to 3,495 in 1981 (3,955 in 1980), while the number of cases in which we were asked to consider and advise on the draft governing instruments of proposed charities rose from 689 in 1971 to 2,378 in 1981. Not all enquiries lead to the eventual establishment of charities, so this work is not fully reflected in the number of charities registered.

67. As usual, the new charities covered a wide range of activities, but there were no unusual trends. We continued to receive proposals for the formation of charities to help the unemployed.

#### *(b) The Earl Mountbatten of Burma Statue Appeal Trust*

68. Following the assassination in 1979 of Admiral of the Fleet, The Earl Mountbatten of Burma, a charitable trust (The Mountbatten Memorial Trust) having wide charitable objects was established. In addition, in July 1981 an appeal was made, including a letter in *The Times* signed by the Prime Minister

and other eminent people, for a public memorial to take the form of a statue of the Earl, in naval uniform, to be sited on the Foreign Office green overlooking Horse Guards Parade and the Admiralty, with a maintenance fund for its upkeep and repair. The project was estimated to cost £100,000 and any surplus was to be used for charitable purposes.

69. The law on the charitable status of public memorials is scanty and imprecise. The decision of Mr. Justice Clauson in *Murray v. Thomas* [1937] 4 All E.R. 545 indicated that a war memorial of a substantial kind (in that case a memorial hall) intended not only to commemorate the dead but to serve a useful purpose for the benefit of the community could be charitable; but the Judge reserved the question whether funds collected to provide a non-utilitarian object such as a statue might be charitable. We had registered as charities one or two funds for the upkeep and maintenance of statues but we had not previously considered whether a fund for the provision of a statue was charitable. In Halsbury's *Laws of England*, Fourth Edition, Volume 5, page 339, it is stated that "The erection of a monument, not of the donor, or memorial, may perhaps be charitable" and the foot-note numbered 17 adds that "The Charity Commissioners have treated some such cases as charitable, e.g. the Wellington Monument in Somerset and the Cobden Obelisk at Midhurst". However, the Wellington Monument was erected on land belonging to the National Trust so that there were other amenity aspects, which made for charity, and we were unable to trace any papers relating to the Cobden Obelisk.

70. After due consideration, and reference to the law in the U.S.A. (where statues have been accepted as charitable in some States) we concluded that the provision of a statue might be held to have a sufficient element of public benefit where the person being commemorated was nationally, and perhaps internationally, respected and could be said to be a figure of historical importance. In such a case the provision and maintenance of a statue can be held to be charitable as likely to foster patriotism and good citizenship, and to be an incentive to heroic and noble deeds. The Earl Mountbatten of Burma Statue Appeal Trust established by a declaration of trust dated the 9th October 1981 came into this category, its object being "the commemoration for the benefit of the public of the life and works of (the late Earl) by the erection of a statue . . . and by maintaining that memorial", and has been registered as a charity.

### **The Unification Church**

#### **1. The Holy Spirit Association for the Unification of World Christianity**

#### **2. Sun Myung Moon Foundation**

71. The title Unification Church appears to be an umbrella name for some 60 organisations, most of which are not within the jurisdiction of the Charity Commissioners because they are either established outside England and Wales or are non-charitable commercial and/or trading enterprises. The Holy Spirit Association for the Unification of World Christianity and the Sun Myung

Moon Foundation are two institutions associated with the Unification Church which have been registered as charities under section 4 of the Charities Act on the basis that they are charities for the advancement of religion. Their aims and objects are:—

1. *The Holy Spirit Association for the Unification of World Christianity:*  
“to promote the Christian Faith by the worship of God and the study teaching and practical application of Divine Principle and in particular to support expand and advance Christian Unity throughout the World”.
2. *Sun Myung Moon Foundation:*  
“... the following purposes but only so far as the same shall be considered by the Trustees to be conducive to the principles enunciated by the Founder and are exclusively charitable according to English law:—
  - (i) the advancement of such monotheistic religions and religious thought throughout the world as are in accordance with the Divine Principles by which God has been seeking to restore the Kingdom of Heaven on Earth
  - (ii) the general advancement of education including in particular but without prejudice to the generality of the foregoing the furthering of a greater understanding of the progress of civilisation and of the social economic and legal principles necessary to better society and the fostering and promotion of teaching in ecology in the preservation and extension of public amenities and in the improvement of the environment
  - (iii) such other exclusively charitable purposes for the benefit of mankind generally or of particular communities as the Founder or after his death the Trustees shall from time to time in writing direct”.

72. At the end of a suit for defamation against the Daily Mail (*Orme v. Associated Newspapers Group Limited*) the jury added a rider to their verdict for the defendants saying that the tax free status of the Unification Church should be investigated by the Inland Revenue Department on the ground that it was a political organisation. On the same day, the 31st March, the Inland Revenue explained that, while it could not discuss individual cases, as a general principle if a body was a charity in law and claimed tax exemption the way it spent its money and its charitable status were considered annually when it applied for the exemption. The Home Office, asked whether there would be an investigation, said that if there were any evidence that the Church had been involved in criminal activities this should be brought to the notice of the Police. Consistently with the timing of these two statements we issued a Press Notice on the 3rd April referring to the jury's rider and explaining that if the two charities had indeed engaged in impermissible political activities this might constitute a breach of trust but that it was not a ground for loss of charitable status. Our statement also referred to the allegations that the Unification Church engaged in certain undesirable activities, and said that it was for the Court or Parliament to decide whether these were contrary to public policy so as to affect charitable status.

73. On the 7th April a representative group of Members of Parliament pressed us to reconsider the case, on wider grounds than that of the jury's rider, and this we readily undertook to do. The next day the Attorney General

said that he was considering applying to the Commissioners for the removal of the two charities from the register, and on the 23rd June he did so. We considered the Attorney General's application carefully and sought the advice of Leading Counsel. At the time this report is written we are awaiting further and better particulars relating to the application which, on the advice of Counsel, we sought from the Attorney General's Agents at the beginning of October.

### **Schemes and Orders**

74. One of our most important activities is the making of schemes and orders. Schemes may deal with all or any of such matters as the appointment of new bodies of trustees, the vesting of property in new trustees or in a custodian trustee, the grouping or amalgamation of charities under a single body of trustees, the provision of new cy prè objects in place of objects which have become impracticable, the enlargement of the beneficial area within which the charity operates, and the erection or improvement of buildings used for the purposes of the charity. Schemes dealing with only one or two of these subjects are usually short and simple; others, including some which provide for the complete regulation of a charity, may be long and complicated and involve detailed discussions with the trustees. During the year we established 962 schemes, and to illustrate this side of our work we include in paragraphs 79 to 89 of this report brief accounts of a few cases. We also include in paragraphs 90 to 93 details of a scheme leading to the amendment of a Royal Charter, made under section 15 of the Charities Act.

75. The 962 schemes made in 1981 included 174 which provided for the amalgamation or grouping of 703 charities. Of these schemes, 22 provided for the administration of charities (132) as single charities. A further 122 schemes provided for the grouping of charities (475) so that although the individual charities are still separately administered those comprised in the same scheme have the same objects and are administered by the same body of trustees. The remaining 30 schemes provided for the grouping of charities (96), the charities in each group not necessarily having the same objects but being administered by a single body of trustees.

76. During the year we also made 3,973 orders relating to charities, more than three-quarters of these relating to transactions in land. Orders authorising charity trustees to sell property numbered 1,716, while a further 955 orders authorised the purchase or exchange of real estate or the grant of leases or easements. A further 176 orders were made excepting specific property transactions from the need for our consent to be obtained. In addition, 325 orders authorised charity trustees to borrow money on the security of charity property and 127 orders authorised trustees to release rentcharges.

77. The number of orders made was 462 fewer than in 1980 due mainly to the effect, from the 8th August 1980, of sections 122 and 123 of the Housing Act 1980 in that charities which are registered with the Housing Corporation as housing associations now require the consent of the Housing

Corporation to any transaction which comes within the provisions of section 29(1) and (2) of the Charities Act and no longer require our consent.

78. In paragraph 94 we give an example of a case in which we made an order under section 23 of the Charities Act and in paragraphs 95 to 98 we give brief accounts of illustrative cases in which we made orders under sections 23 and 29 of the Act authorising property transactions.

### **Cases of Interest**

#### *(a) Silver Thimble Fund 1939*

79. The "Silver Thimble Fund 1939" was raised during the Second World War to help the upkeep of the Little Company of Mary Hospital in Malta. The Company had been founded in 1877 and was the first religious community of Roman Catholic Sisters founded in Britain since the Reformation. The Sisters (generally known as the "Blue Nuns") established a fine reputation for nursing and in 1894 they were invited to Malta, initially to nurse the sick in their own homes. Later, through local fund-raising, a hospital was opened. This served the civilian population, but also treated casualties from the Dardanelles and Salonika during the First World War and from the bombing of Malta during the Second World War. Recently, the Maltese Government refused to renew the licence for the Hospital and the Sisters left the Island. In consequence we made a scheme appointing new trustees for the Silver Thimble Fund and enabling the funds to be used for the Sisters' general charitable purposes.

#### *(b) New College, London*

80. This College was incorporated and governed by the Hackney and New College Act 1924, its purposes being (a) the training of men and women for the Christian ministry especially in churches belonging to the Congregational order and (b) the propagation of the Gospel in general accordance with the principles and doctrines for the time being accepted by Congregationalists. By 1974 the Governors found there were insufficient entrants for the Christian Ministry and that salaries obtainable elsewhere by academic staff were higher than they could match. They decided that the College could no longer continue to fulfil its purposes, that the building would have to be disposed of and other ways found for applying the income. Accordingly, the Charity's work as a College and School of Theology in the University of London ceased in 1977, and in the following year the College building was leased for a term of 51 years at a substantial rent which, with income available from other endowments and associated trust funds, amounted to a considerable sum.

81. We were asked by the Governors to help resolve the conflicting views held by various groups with an interest in the future administration of the Charity, with the object of establishing a scheme which would be acceptable to all parties and would regulate the Charity in the future.

82. After consultations with all concerned we established a scheme which renamed the Charity the New College London Foundation and provided for a body of six Governors, three appointed by the United Reformed Church (which is to receive 81.814 per cent of the income after the payment of the expenses of management and of a small sum towards the upkeep of a burial ground), one by the Council of the Congregational Federation (which is to receive 10.520 per cent of the income), one by a general meeting of An Evangelical Fellowship of Congregational Churches (receiving 3.671 per cent of the income) and one by the Trustees for the time being of the Unaffiliated Congregational Churches Ministerial Training Fund (which is to receive 3.995 per cent of the income).

83. The income paid to the United Reformed Church is to be applied in furthering the training of men and women for the Christian Ministry particularly in that Church, and for the propagation of the Gospel in accordance with the doctrines and principles of the United Reformed Church. Analogous provisions apply in favour of the Congregational denomination in respect of the other three bodies and their shares of the income.

84. We also established a scheme dealing with 39 charities administered in connection with the former New College, London, providing that they should be administered together as one charity under the title of the New College Special Fund and making the income applicable, with one small exception, in augmentation of the income of the New College London Foundation.

*(c) The Foundation of Edward Storey, Cambridge*

85. Most almshouse charities provide self-contained accommodation for people who, though elderly, can take care of themselves. But as residents get older it is inevitable that some of them will no longer be able to look after themselves and that the accommodation will no longer be suitable for them. At this stage most almshouse trustees have to insist that the resident moves to accommodation of a more sheltered nature provided perhaps by the hospital service or by the local authority. But some hospitals and social service departments are reluctant to accept almshouse residents, particularly if the disability is temporary or the charity has a resident warden or matron, and this can throw intolerable pressures on the trustees and the warden or matron.

86. The Trustees of the Foundation of Edward Storey approached us about this problem and suggested that they should build an "extra care unit" to accommodate 12 people in bed-sitting rooms. The unit would provide full-time supervision and help, and meals and laundry service. We could see the great value of such accommodation and endorsed the Trustees' approach. The building, Edward House, took a little over a year to complete and was formally opened by His Royal Highness The Duke of Edinburgh.

87. This type of accommodation is extremely expensive both to provide and to maintain. The building cost £320,000 in all and annual running costs are expected to be about £63,000. The Trustees could meet this because the founder, Edward Storey who died in 1692-93, endowed the Charity with

land, and as a result of careful estate management over the years the Charity now has substantial endowments. Nevertheless, it was necessary for us to make a fully regulating scheme which, amongst other things, empowered the Trustees to charge the residents weekly contributions towards the cost of maintaining the properties. It is pleasing to record that this ancient Charity is making a novel and worth while contribution to a very real modern problem.

*(d) Parish Lands Charity (otherwise Leigh Candle Auction) Leigh, Dorset*

88. This Charity is of ancient origin, dating probably from the beginning of the 17th century. Its endowment consists of the right to sell the after-grass of two meadows from the 1st August to the 14th February. Traditionally the after-grass is auctioned in the village of Leigh during the burning of a candle; the bidder making the final bid before the flame goes out gains the right to graze cattle or sheep on the land during the autumn and winter.

89. The only evidence of the trusts of the Charity showed that the Charity had been administered by the Overseers of the Poor and the income applied in relief of the poor rate. Later it was administered by the Parish Council. Following local government reorganisation fears were expressed that the benefits of the Charity might be lost to the parish. We made a scheme setting up a new body of trustees and providing for the income of the Charity to be applied for the relief of need in the parish and, subject thereto, for the general benefit of the inhabitants of the parish for which provision is not made out of rates, taxes or other public funds.

#### **Scheme under section 15 of the Charities Act**

*The Almshouses (Municipal Charities), Stratford-upon-Avon*

90. The Trustees, in consultation with the National Association of Almshouses, proposed an extensive scheme of modernisation, to be financed partly with funds borrowed from the Housing Corporation, which would involve a reduction in the number of almshouses. The trusts were in need of modernisation and in particular did not allow the Trustees to charge the residents for their accommodation.

91. The legal position of the Almshouses was unusual. The substantive trusts were contained in a Royal Charter of King Edward VI dated the 28th June 1553 by which he granted to the bailiff and burgesses of Stratford-upon-Avon and their successors the almshouses and other property formerly belonging to the Ancient Guild of the Holy Cross which had been dissolved. The Charter imposed a duty upon the grantees, out of the income arising from certain estates granted under the Charter, to continue the almshouses, to maintain continually therein 24 persons, and to pay them weekly stipends. An order made in 1837 by the Court of Chancery, under section 71 of the Municipal Corporations Act 1835, provided that 15 trustees should be appointed to administer certain charities, including the Almshouses (but not the other property), which had previously been administered by the Borough Corporation, and which came to be known as the Municipal Charities.



Thereafter, the Commissioners from time to time made orders appointing new trustees, and schemes reconstituting the trustee body, culminating in a scheme of the 26th July 1977 which also vested the site of the almshouses in the Official Custodian for Charities. Although the almshouses were no longer administered by them, the Borough Council, and their successors, the Town Council, never failed to discharge their obligation under the Charter to “continue” the almshouses, by paying from the income of the estates in question (now registered as a separate Charity under the title of the Guild Estate), the costs of upkeep and maintenance.

92. The first problem was to modify the requirement to provide for the accommodation of 24 residents, and to remove the obligation to pay weekly stipends. This called for amendment of the Charter and, after discussion with the Privy Council Office, we established a scheme under section 15 of the Charities Act, to come into operation if and when Her Majesty saw fit to amend the Charter. Her Majesty by Order in Council subsequently ordered that the Charter should be amended in such a way as to permit these provisions in the scheme to have effect.

93. The second problem arose from the need to quantify the payments to be made by the Town Council for the support of the almshouses, and our scheme authorised the Trustees to enter into an agreement with the Council for periodical payments out of the income of the Guild Estate in discharge of the Council’s obligation to continue the almshouses. Our scheme also provided for the setting up of funds for the ordinary and extraordinary repair of the almshouses and authorised the Trustees to charge the residents contributions for their accommodation.

### **Order under section 23 of the Charities Act**

#### *Moor End Chapel, Mixenden, West Yorkshire*

94. By a deed dated the 14th March 1716 Moor End Chapel, Mixenden, West Yorkshire, was settled upon trust for use as a chapel but the deed provided that if the property was not kept in repair or was not used for divine worship for a period of six months or was converted to any other use then the trusts declared in the deed should cease and the Trustees should convey the property to the heirs of the settlor. Use of the property as a chapel ceased and the Trustees wished to sell the property. However, there was a dispute between the Trustees and a person claiming to be the heir of the settlor as to whether there was a valid resulting trust in favour of the settlor’s heirs. The cost of legal proceedings to resolve the dispute would have absorbed most if not all of the proceeds of sale and the Trustees, on the advice of their Solicitors, accordingly suggested a compromise under which the property would be conveyed by the Trustees and the claimant jointly and the net proceeds of sale would be divided equally between the Trustees and the claimant. The latter would, at his own expense, provide the Trustees with an insurance policy indemnifying them against any claims which might be made against them by any other persons claiming to be heirs of the original settlor.

We agreed that a settlement on these lines was in the best interests of the Charity and made an order accordingly.

#### **Orders under sections 23 and 29 of the Charities Act**

95. Under section 29 of the Charities Act trustees who wish to sell charity property which is permanent endowment or has been occupied for the purposes of the charity normally require our consent to the sale. It is our usual and long-established practice in such cases to require trustees, when they have received an offer for property which they wish to accept, to publish notices advertising the price offered and inviting higher offers. This practice is sometimes criticised on the grounds that the sale is delayed and that the prospective purchaser may withdraw his offer, but its value is illustrated by two cases given in paragraphs 96 and 97. Further, we are willing to dispense with the requirement if we are satisfied that the proposed sale has already been extensively advertised, and we mention one such case in paragraph 98.

##### *(a) The Marine Society*

96. The Trustees of The Marine Society applied for our consent to a sale of property for which an offer of £2.1m had been received and which their Surveyors recommended should be accepted. We were not satisfied that the proposed sale had been sufficiently advertised and our requirement that notices be published inviting higher offers resulted in three further offers being received. A final offer of £2,561,000 was obtained and we authorised the sale for this amount.

##### *(b) The Royal British Legion Attendants Company Limited*

97. The Trustees wished to sell a plot of land which had been used as a car park. They had received an offer of £2,000 and wished to proceed without providing a surveyor's report as the smallness of the transaction did not seem to warrant it. We asked them to obtain a report and this valued the property at £2,000. Not being satisfied that this was the best price obtainable, we required the sale to be advertised and this resulted in 19 further offers being received. The prospective purchasers were invited to submit their highest offer by way of tender and we subsequently authorised the sale for £10,000.

##### *(c) The Borden Buildings Trust Limited*

98. This Charity had acquired some buildings dating from the 15th century and in pursuance of the trust objects had carried out their restoration. On completion of the work the Trustees offered the property for sale on the open market with a reasonably wide coverage in the national and local press. Offers in the region of £140,000 were invited. An offer of £142,500 was received but as the proposed purchaser appeared to be having difficulty in completing the transaction the Trustees decided to readvertise. This produced offers ranging from £140,000 to £155,000. We were satisfied that the property had been sufficiently advertised and accordingly dispensed with the usual notices. We advised that the prospective purchasers should be invited to submit their final offers by way of tender, and as a result a sale at £180,500 was authorised.

### Hostels and “half-way houses”

99. Many charities, such as those concerned with moral welfare, battered wives, alcoholics or ex-offenders provide immediate but temporary shelter in hostels or homes for those they seek to help and then, after the initial crisis, provide them with individual accommodation (which may be self-contained) so that they can readjust to everyday life and a normal work routine before being discharged from the charity’s care. A number of such charities have expressed fears that the security of tenure provisions of the Housing Act 1980 may apply to the accommodation they provide thus crippling their work.

100. We cannot give an authoritative interpretation of the 1980 Act, but it appears that the secure tenancy provisions will normally apply if (a) the dwelling-house (whether house or flat) is a separate dwelling, and (b) the dwelling-house is occupied by the tenant or licensee as his only or principal home, and (c) the charity providing the accommodation satisfies the “landlord condition”, i.e., it is either a registered housing association or a housing trust. All three requirements must be satisfied.

101. With regard to (a), there is no definition of a “separate dwelling” in the Act and as yet no guidance from the Courts. Obviously a completely self-contained house or flat is a separate dwelling, but the matter is less simple where some facilities are shared. If the Courts follow the Rent Act cases, accommodation with shared bathroom and toilet facilities, but otherwise self-contained, would be regarded as separate accommodation whereas accommodation with shared kitchen and/or living room would not. Whether condition (b) is satisfied would depend upon the personal circumstances of the beneficiary.

102. With regard to condition (c), it will be a question of fact whether the charity concerned is registered with the Housing Corporation as a housing association. It will clearly be a housing trust, as defined in the Rent Act 1977, if the terms of its governing instrument require all its funds to be used for providing housing accommodation but the question whether a charity is a housing trust because in practice it devotes the whole, or substantially the whole, of its funds to the provision of housing accommodation may be less easy to determine since it requires consideration of the charity’s accounts and a judgment on what is meant by “substantially” in the particular case.

103. It seems unlikely that moral welfare charities (whose activities spread over many fields apart from the provision of temporary accommodation) will come within the “landlord condition” but charities providing “half-way houses” for battered wives, ex-offenders, etc., as their sole or main object may do so. Difficulties may also arise if the property concerned is held on special trusts by a charity with wider objects.

104. A charity cannot end a secure tenancy without an order of the Court and then only on one or more of the grounds listed in Schedule 4 to the 1980 Act. But where a charity seeks possession on the grounds that the occupant has been rehabilitated and can no longer be regarded as a beneficiary of the charity the Act empowers the Court to make an order for possession only if

alternative accommodation is available. Charities of this type usually work in close liaison with local authorities, who would normally be willing to provide alternative accommodation when rehabilitation is accomplished, but this cannot be guaranteed.

### **Inquiries and Investigations**

#### *(a) Generally*

105. Complaints about charities showed a slight increase over the previous year, but were about broadly similar issues. One disturbing trend is the small, but increasing, number of charities being set up as facades to give respectability to dubious fund-raising ventures, often involving lotteries. Where lotteries are being run illegally it is a matter for the Police. But where, as sometimes happens, lotteries are run ostensibly for the benefit of a named charity by a non-charitable company whose directors are also trustees of that charity, we check to see whether the directors are in receipt of emoluments and are thereby placing themselves in a position where their personal interests conflict with their duty as trustees.

106. All complaints were carefully investigated and, as in previous years, many were found to be based on misunderstanding. Others revealed weaknesses or inadequacies in the charity's administrative or financial procedures which were remedied after correspondence or discussions with the trustees.

107. In paragraph 127 of our report for 1976 we suggested certain precautionary measures which can be taken by trustees to protect charity funds against theft and avoid any question of a personal liability to make good any loss incurred by the charity, but experience suggests that that advice is not universally followed. For example, cases still come to light, particularly in the case of charities which run hostels, schools, almshouses, hospitals, etc., where the trustees employ full-time staff to take care of the day-to-day management, including the book-keeping, but fail to establish the machinery necessary for proper overall control. A particular danger arises when there are relatively frequent changes in trustees but the staff may be in post for many years, and there may be a natural tendency for the trustees to place too great a reliance on the integrity of their employees. On several occasions we were notified of cases where funds had been misappropriated by trusted and long-serving employees of the charity who, having been given power to sign cheques, had succumbed to temptation. In one case, although the power to sign cheques had been limited to sums not exceeding £100 per cheque, the Clerk to the trustees had managed, over a comparatively short period, to embezzle more than £10,000.

108. The law requires a trustee to show as great a care in administering a charity as a prudent man would exercise in dealing with his own private affairs so that, while a trust instrument may permit a trustee to delegate some of his duties, he is never entitled to abrogate his responsibilities entirely: ultimately the trustees must ensure that the assets of the charity are properly managed and adequately safeguarded.

109. Though it may be tempting to suppose that charities, established for altruistic purposes and administered by public-spirited volunteers, might be less prone than other organisations to internal disputes, such differences do, regrettably, arise from time to time, and we may be called upon to intervene and sort out the trouble. These requests sometimes reveal a lack of understanding of our powers.

110. While we have the general duty under section 1(4) of the Charities Act so to act in the case of any charity as best to promote and make effective the work of the charity in meeting the needs designated by its trusts, and while an internal dispute involving members of the trustee body and/or members of the charity may impede its effective operation, we are nevertheless statutorily precluded from acting in the administration of a charity, and are thus limited in our power to act where the trustee body is divided on questions of policy, or on other matters which are essentially internal ones. The decision of the majority of the trustees must prevail on matters of administration which are properly within the discretion of the trustee body, and we have no power to intervene provided that no breach of trust is involved.

111. Sharp differences of opinion on policy issues sometimes lead to accusations of unconstitutional behaviour or of infractions of rules of procedure, and sometimes one or other of the parties to the dispute will appeal to us to intervene and give an authoritative ruling on whether the terms of the charity's governing instruments have been infringed. Where this happens, we may have to explain that we have no power authoritatively to construe the terms of a charity's governing instruments or to adjudicate on alleged infringements of rules and procedures (eg, whether proper notice of a meeting has been given, whether resolutions have been properly submitted, whether memberships have been lawfully terminated, etc.), and that, ultimately, only the Courts can settle these issues. The best we can do in such cases, with the concurrence of all parties, is to offer our services as mediators.

*(b) The Legat School Trust*

112. In this case, a long-standing family connection with a Charity, an imperfectly worded trust deed, and the dominant influence of one trustee, combined to prevent the harmonious running of the Charity.

113. The Legat Ballet School was founded as a private enterprise run mainly by members of the Legat family to teach a particular style of Russian ballet dancing developed by the Founder and her husband. Because of financial difficulties the school was taken over in 1966 by the Legat School Trust, established by a declaration of trust which sought to perpetuate the predominant influence of the Legat family as trustees.

114. Complaints were received from non-family Trustees, from the School staff, and from parents and pupils, to the effect that some of the Trustees were receiving remuneration and other benefits from the Trust, that the family Trustees tended to take administrative decisions without consulting the others, and that one family Trustee in particular was exercising undue influence. At the same time the validity of certain Trustee appointments was in doubt

because of the imperfect wording of the provision in the declaration of trust relating to appointment. We accordingly instituted a formal inquiry.

115. The Inquirers found that three of the Trustees had benefited from the Trust by occupying rent-free accommodation at the School and receiving remuneration, but that these Trustees had acted in good faith. The Trustees' position stemmed from the situation which prevailed before the School was established as a charity, and from a mistaken belief that a right to remuneration reserved in the declaration of trust for the Founder extended to the other family Trustees.

116. With regard to alleged misuse of funds, the Inquirers considered that the Trustees' explanations were unsatisfactory but that nothing would be gained by pursuing the matter further: goods had been purchased on the School account, but their appropriation and use for private benefit could not be proved.

117. The Trustee who had been accused of exercising undue influence, and the Trustees who had been receiving benefit from the Trust, resigned. New Trustees independent of the Legat family were appointed and a Board of Management, consisting of the Trustees and the five heads of Department of the School was set up to take over the day-to-day management of the School. Better accounting procedures were introduced and more business-like arrangements made for the running of the School. We agreed to make a scheme to vary the provisions of the declaration of trust so as to provide a self-perpetuating body of Trustees and to dispense with the arrangement designed to ensure the continued dominance of the family Trustees.

*(c) Town Estate Charity, Thorndon, Suffolk*

118. As a result of complaints about the administration of the Town Estate Charity and allegations of dissension among the Trustees and of breaches of trust, we instituted a formal inquiry. The Inquirers found that a much criticised sale in 1952 of land belonging to the Charity to the son of one of the then Trustees was not a breach of trust or in any way improper. The sale had been authorised by the Commissioners after it had been advertised in the locality and after careful consideration of the objections received. The identity of the purchaser did not in itself render the sale contrary to the interests of the Charity.

119. Complaints of unauthorised disbursements of charity funds were unsubstantiated and there was no evidence of misappropriation of funds. Complaints that proper statements of Account had not been submitted to the Parish Meeting were true only in so far as the accounts did not comply with the Charities (Statements of Account) Regulations 1960.

120. The Inquirers considered that the Trustees had been in breach of trust in allowing the occupier of land belonging to the Charity to establish a possessory title to it. This appeared to be the result of negligence on the part of the Trustees at some stage between 1946 and 1976. Questions of title to

land can only be determined by the Court and we decided that the cost of legal proceedings would be out of all proportion to the value of the land.

121. The Charity was regulated by a scheme dated the 11th June 1869, and the Trustees were at fault in not observing that scheme, as affected by legislation. The administrative provisions were complex and obscure and we established a new scheme amalgamating the Charity with the Town Estate Educational Foundation and providing an up-to-date constitution for the future regulation of the amalgamated Charity under the title of The Town Estate.

122. The Charity appears to be functioning satisfactorily under the new scheme.

*(d) St. Mungo Community Trust*

123. The Trust was founded by a declaration of trust dated the 14th May 1970 to relieve poverty by providing accommodation for the socially inadequate and distributing free food and drink to them. The Trustees had power to delegate to management committees consisting either of one or more of the Trustees with others selected by them, or persons selected by memorandum in writing. They also had power to transfer trust moneys to such committees, the receipt for such moneys being an absolute discharge to the Trustees. Projects for which the Trustees were responsible included a nightly soup run and the provision of residential "caring" houses, but their main activity was the provision and management of hostels, including in particular hostels in the old Charing Cross Hospital and the Nurses' Home.

124. The Trustees were also the Committee of Management of the St. Mungo Housing Association, an exempt charity. Following a routine inspection of the Housing Association's books the Housing Corporation had instituted a formal inquiry into the affairs of the Association and their accountants were examining the Association's books. However, the accountants had been refused access to the books relating to the Trust and as the Housing Corporation had grounds for thinking that there had been misappropriation of funds belonging to the Housing Association, and that the Trust was also involved, they drew the matter to our attention. We instituted a formal inquiry into the affairs of the Trust, and also appointed two members of the Housing Corporation's staff to investigate and audit the condition and accounts of the Trust.

125. The audit was confined to income and expenditure arising from the Trust's activities within the old Charing Cross Hospital and Nurses' Home. The auditors concluded that the Director of the Trust had failed to reveal to the Trustees, the auditors, and others, full details of the lettings of rooms and the capacity and occupancy of hostel accommodation, had failed to satisfy them that unbanked rental income had been spent on valid Trust or Association activities, had attempted to obstruct the audit and had failed to exercise adequate financial or management control over the affairs of the Trust. Prime accounting records were missing and they had been unable to authenticate

certain invoices. They also concluded that the Trustees had failed to exercise adequate control over the actions of the Director or the affairs of the Trust.

126. As the audit had been confined to the Trust's activities within the old Charing Cross Hospital and the Nurses' Home, the Trustees were asked to supply detailed and audited accounts for the other projects administered by the Trust. The Trustees were asked for their observations on the auditors' conclusion that they had failed to exercise adequate control over the Director and the affairs of the Trust. They were also asked what steps had been taken, or were proposed, to ensure adequate internal control systems of accounting and management, and full Trustee control, assuming that the Trustees accepted that the auditors' criticisms were justified. Certain matters, including the loss of prime accounting records and the use made of unbanked Trust income, were at that time the subject of Police investigations.

127. The inquiry involved a long and detailed investigation. The Inquirer found that the central administration of the Trust had been inadequately staffed and that financial control had broken down so that proper records were not kept and accounting procedures not implemented. The administration of the projects which were managed by separate Committees of Management was also unsatisfactory. The Trustees had not ensured that the staff was adequate in numbers and experience, had abandoned a system of detailed regular financial and management reports, and relied upon the Director to manage the Trust. As a result they had been ignorant of the true state of the affairs of the Trust and of the inadequate control over the receipt of donations and rents and of expenditure incurred without their authority. The Inquirer concluded, therefore, that the Trustees had not exercised the care, diligence and control required of them. However, they had now introduced proper financial and management controls and we accepted the recommendation that no action should be taken under section 20(1) of the Charities Act to remove any of the Trustees from office.

128. The Director was tried on 12 charges under the Forgery Act 1913 and the Theft Act 1968. After a trial lasting four weeks he pleaded guilty to a charge of issuing a forged invoice and was formally acquitted of the other charges, the Crown accepting that there was insufficient evidence to support them.

129. We are glad to record this example of co-operation between the Housing Corporation and ourselves, much as we regret the reason for it.

#### **Access to Charity Commission files**

130. With the approval of the Lord Chancellor under the Public Records Act 1958, we retain custody of our records, including in particular files relating to charities. Public records, other than those to which members of the public have access under other legislation, are not normally available for public inspection until 30 years after the date of the latest papers on the file. Most charities continue to operate for many years, and indeed those having a permanent endowment continue in perpetuity, so that a large proportion of



charity files which contain old papers also contain papers which are less than 30 years old. After consulting the Public Record Office, we have decided to make available all charity files containing papers more than 30 years old, papers which are less than 30 years old being removed from a file before it is produced for public inspection. No papers will be removed from any file shown to the public where no action has taken place for 30 years or more. We hope that this may be of some help to those undertaking research.

131. The Central Register of Charities and copies of the governing instruments of any registered charity will continue to be open to public inspection at all reasonable times as required under section 4(7) of the Charities Act.

#### **Official Custodian for Charities**

132. The Accounts of the Official Custodian for Charities are set out in Appendix B.

133. The volume of business transacted was slightly less than in the previous year due mainly to the effect of uncertain conditions in the stock market.

134. The total amount paid to charities by way of dividend and interest again showed an increase on the previous year, the growth arising partly from additional securities transferred to the Official Custodian and partly from increases in the dividends received, particularly from common investment funds and unit trusts.

#### **Charities Official Investment Fund**

135. To assist charities owning shares in the Fund the financial year now ends on the 31st December and the valuation dates are the last day in each month. In their Report for the period ended the 31st December 1981, the Trustees say that in their policy for income shares they continued to emphasise investment in equities and property as the only means of providing a growing income over the years and some protection for capital value in real terms. The proportion invested overseas was increased to 10.9%. The income of the portfolio, including increased rents from property, showed further growth.

136. The investment policy for accumulation shares was directed at combining good quality ordinary shares with scope for capital growth, but often on low yields, with gilt edged stocks on high yields. The proportion invested overseas was increased from 8% to 16%.

137. The number of income shares in issue rose from 45,878,484.14 to 47,231,177.37 and their value by £8,091,248 to £76,137,014. The value of an income share rose by 12.88p to 161.20p. The number of accumulation shares in issue fell from 2,541,892.46 to 2,431,978.55 but their value rose by £515,257 to £9,679,896. The value of an accumulation share rose by 37.49p to 398.03p. The investment portfolio for income shares at the 31st

December consisted of 82.8% ordinary shares and convertible loan stocks, 7.1% fixed-interest securities, 9.2% freehold property and 0.9% liquid assets, while the portfolio for accumulation shares consisted of 75.0% ordinary shares and convertible loan stocks, 20.7% fixed-interest securities and 4.3% liquid assets.

138. The distribution for an income share was higher than in the previous accounting period (12.10p for 49 weeks compared with 12.0p for 53 weeks). This was equivalent to an increase of about 7% for a full year. The distribution per income share has been raised every year since the Fund began.

## **APPENDIX A** (Paragraph 8)

### **Disaster Appeals**

Action to set up a public appeal following some tragic accident or disaster or an occasion on which some special misfortune is brought to the public eye is generally taken with little time to prepare the ground. The community may well feel an urgent need to give practical expression to its sorrow and respect; and the response may well exceed expectations.

In these circumstances it is not unnatural that questions should arise over the precise status of appeals after they have been set up; and events following the tragedy of the loss of the Penlee Lifeboat show how much unhappiness can be caused by these questions.

The Attorney General is anxious that doubts about the nature of appeals should be avoided if at all possible, and that those who answer an appeal should know that their generosity will have the results which they intend.

Accordingly, the Attorney General, after consultation, has prepared the following guidelines which might usefully be taken into account by those faced with the responsibility of making appeals in the future.

#### *1. The Making of the Appeal*

1. Those who use these guidelines must remember that no two appeals can ever be quite the same, and should do all that they can to ensure that their own appeal is appropriate to the particular circumstances of their case, and runs into no unforeseen difficulties, whether personal, administrative, or fiscal. Amongst the most important and urgent decisions which must be made will be whether or not a charitable appeal is called for, and it may well be desirable to take advice on such questions before the appeal is issued. Generally speaking, the terms of the appeal will be all-important in deciding the status and ultimate application of the fund.

2. Once the terms are agreed, it will generally be desirable to publish the appeal as soon as possible, and as widely as appropriate in the circumstances.

3. Sometimes gifts may be sent before publication of the appeal. If there are more than can be acknowledged individually, the published appeal should indicate that gifts already made will be added to the appeal fund unless the donors notify the organisers (say within ten days) that this is not their wish.

## 2. *Pros and Cons of the Types of Appeal*

1. *Charitable funds* attract generous tax reliefs; donations to them may do so (and in particular will for the most part be exempt from capital transfer tax). But charitable funds, being essentially public in their nature, cannot be used to give individuals benefits over and above those appropriate to their needs; and the operation of a charitable trust will be subject to the scrutiny of the Charity Commissioners.

2. *Non-charitable funds* attract no particular tax reliefs and donations to them are subject to no special tax treatment (and will have to be taken into account for capital transfer tax purposes unless, as is likely to be the case for the bulk of donations, they are within the normal reliefs). But under a non-charitable trust there is no limit on the amount which can be paid to individual beneficiaries if none has been imposed by the appeal; and only the Court acting on behalf of the beneficiaries will have control over the trust, which will not be subject to scrutiny by the Charity Commissioners.

3. The terms of the non-charitable appeal must be prepared with particular care to ensure that there is no doubt who is to benefit, whether or not their benefit is to be at the discretion of the trustees, and whether or not the entire benefit is to go to the beneficiaries, and if not, for example because specific purposes are laid down and the funds may be more than is required for those purposes, or because the beneficiaries are only to take as much as the trustees think appropriate, what is to happen to any surplus. If specific purposes are laid down, and after they have been fulfilled a surplus remains for which no use has been specified, the surplus will belong to the donors, which may lead to expensive and wasteful problems of administration.

## 3. *Forms of Appeal*

1. If a *charitable* fund is intended then the appeal could take the following form:—

“This appeal is to set up a charitable fund to relieve distress caused by the accident/disaster at \_\_\_\_\_ on \_\_\_\_\_. The aim is to use the funds to relieve those who may be in need of help (whether now or in the future) as a result of this tragedy in accordance with charity law. Any surplus after their needs have been met will be used for charitable purposes designed:—

- (i) To help those who suffer in similar tragedies.
- (ii) To benefit charities with related purposes.
- (iii) To help the locality.”

2. If a *non-charitable* fund is intended and those affected are to take the entirety of the fund in such shares as the trustees think fit the appeal could

take the following form:—

“This appeal is to set up a fund, the entire benefit of which will be used for those injured or bereaved in the accident/disaster at \_\_\_\_\_ on \_\_\_\_\_ or their families and dependants as the trustees think fit. This fund will not be a charity.”

3. A non-charitable fund in which the trustees would have a discretion to give as much as they think fit to those who have suffered with any surplus going to charity could be set up on the basis of the following form:—

“This appeal is to set up a fund for those injured or bereaved in the accident/disaster at \_\_\_\_\_ on \_\_\_\_\_ and their families and dependants. The trustees will have a discretion how and to what extent to benefit individual claimants: the fund will not itself be a charity but any surplus will be applied for such charitable purposes as the trustees think most appropriate to commemorate those who died.”

#### 4. *Appeals for Individuals*

1. It sometimes happens that publicity given to individual suffering moves people to give. In such a case it is particularly desirable for those who make appeals to indicate whether or not the appeal is for a charitable fund. It is also desirable for those who give to say whether their gift is meant for the benefit of the individual, or for charitable purposes including helping the individual so far as that is charitable; if no such intention is stated, then the donation should be acknowledged with an indication how it will be used if the donor does not dissent. Those who make appeals should bear in mind the possibility that generous response may produce more than is appropriate for the needs of the individual, and should be sure to ask themselves what should be done with any surplus.

2. Thus, if a child suffers from a disease, there are two alternatives, to appeal for the benefit of the child, or to appeal for charitable purposes relating to the suffering of the child, such as may help him and others in the same misfortune, for example by helping find a cure. It may be that the child will not live long, and so may not be able to enjoy generosity to him as an individual; alternatively, he may be intended to receive as much as possible, because he faces a lifetime's suffering. Once again, the pros and cons of setting up a charitable fund or a non-charitable fund should be considered before the appeal is made and the appeal should indicate which alternative is intended; once again, even if a non-charitable appeal is made, it may be thought right to make it on terms that any surplus can be used for charity.

#### 5. *Generally*

The suggestions made in this memorandum are only examples of forms which can be used; and before making an appeal it is always wise to seek advice on what form to use. The Charity Commissioners will always be ready as a matter of urgency to advise on the terms of any intended charitable appeal, or to consider whether a proposed appeal is likely to be charitable, and if so to advise on the likely consequences.

In conclusion, the Attorney General would like to emphasise that those organising an appeal should do all they can to make sure that the purpose of the appeal is clear and that donors know how their gifts will be used. This will do much to reduce the risk of confusion and distress. It is considered undesirable to make a general appeal postponing until the size of the fund is known decisions whether the fund ought to be charitable and whether those affected should take the entire benefit; this can all too easily lead both donors and beneficiaries to form the view that the ultimate result is not what was intended, as well as giving rise to legal problems.

This memorandum is being provided to local authorities' associations, the Law Society and the major banks, amongst other bodies, in the hope that it may become available to all those who may be concerned with making public appeals.

APPEN  
(Paragraph  
TABLE

**Official Custodian**

ACCOUNTS showing the total cash receipts and payments of the Official Custodian transferred therefrom in the year ended 31st December 1981 together with the close of the year.

CASH

Previous Year £		£
757,056	BALANCE ON 1ST JANUARY 1981	1,001,713
	RECEIPTS:	
18,444,597	From trustees for investment .....	18,199,016
25,775,231	From disposal of investments .....	21,612,777
51,690,343	Dividends and interest from investments held .....	56,184,710
240,532	Miscellaneous .....	13,900
96,907,759		97,012,116

SECURITIES

	Balance on 1st January 1981	
Sterling securities (nominal values) .....	£371,587,262	
Annuities .....	£1,916	
National Savings Certificates .....	827	Units
Commonwealth and foreign currencies (nominal values)		
Australian Dollars .....	128,534	Dollars
Bermudian Dollars .....	4,354	Dollars
Canadian Dollars .....	45,362	Dollars
Dutch Florins .....	110,850	Florins
Hong Kong Dollars .....	706,295	Dollars
Irish Pounds .....	140,406	Pounds
Israeli Pounds .....	10	Pounds
Roubles (Imperial) .....	93,750	Roubles
Indian Rupees .....	1,200	Rupees
Malaysian Dollars .....	17,676	Dollars
New Zealand Dollars .....	2,300	Dollars
Papua New Guinea Kina .....	5,500	Kina
Singapore Dollars .....	200	Dollars
South African Rands .....	5,129	Rands
U.S. Dollars .....	54,867	Dollars
West German Marks .....	600,000	Marks
Charitable investment funds:		
Charities Official Investment Fund .....	45,878,484	Income Shares Accumulation
Other funds .....	2,541,892	Shares
Other funds .....	53,890,620	Income Shares Accumulation
Other funds .....	4,072,886	Share
Shares of no par value .....	19,507	Shares
Participation units .....	452	Units
Unit trusts .....	22,061,580	Units
Subscription warrants .....	5,660	Warrants

I have examined the above Accounts. I have obtained all the information and explanations that I have required, and I certify, as the result of my audit, that in my opinion the above Accounts are correct. I have no observations to make upon them.

Exchequer and Audit Department  
18th May 1982

GORDON DOWNEY  
Comptroller and Auditor General

DIX  
132)  
1  
**for Charities**

for Charities and also the total amounts of securities placed to his account and balances of cash and securities standing to his account at the commencement and

ACCOUNT

Previous Year £		£
	PAYMENTS:	
28,106,581	Purchase of investments .....	26,087,073
50,812,567	Dividends and interest remitted to trustees .....	55,135,341
16,754,110	Capital remitted to trustees .....	14,313,693
232,788	Miscellaneous .....	1,960
1,001,713	BALANCE ON 31ST DECEMBER 1981 .....	1,474,049
96,907,759		97,012,116

ACCOUNT

Transferred to Official Custodian		Transferred from Official Custodian		Balance on 31st December 1981	
£120,360,266		£91,036,831		£400,910,697	
—		—		£1,916	
100	Units	—		927	Units
141,417	Dollars	11,712	Dollars	258,239	Dollars
3,600	Dollars	980	Dollars	6,974	Dollars
51,356	Dollars	—		96,718	Dollars
87,100	Florins	94,150	Florins	103,800	Florins
436,444	Dollars	128,374	Dollars	1,014,365	Dollars
30,891	Pounds	24,319	Pounds	146,978	Pounds
10	Pounds	—		20	Pounds
—		—		93,750	Roubles
—		—		1,200	Rupees
—		—		17,676	Dollars
2,300	Dollars	2,300	Dollars	2,300	Dollars
—		—		5,500	Kina
—		—		200	Dollars
7,948	Rands	950	Rands	12,127	Rands
83,003	Dollars	11,464	Dollars	126,406	Dollars
—		—		600,000	Marks
2,379,917	Income Shares Accumulation	737,624	Income Shares Accumulation	47,520,777	Income Shares Accumulation
144,549	Shares	208,767	Shares	2,477,674	Shares
6,685,404	Income Shares Accumulation	1,590,864	Income Shares Accumulation	58,985,160	Income Shares Accumulation
287,321	Shares	194,641	Shares	4,165,566	Shares
21,163	Shares	1,961	Shares	38,709	Shares
—		—		452	Units
6,459,800	Units	1,369,030	Units	27,152,350	Units
6,592	Warrants	1,000	Warrants	11,252	Warrants

The Seal of the Official Custodian for Charities was affixed hereto in the presence of  
S. H. WAY  
Official Custodian for Charities  
R. J. CRICK

Authorised under section 3(4) of the Charities Act 1960  
Charity Commission, St. Alban's House, 57/60 Haymarket, London, SW1Y 4QX  
5th May 1982

APPENDIX B  
(Paragraph 132)

TABLE 2

Particulars of the nominal values of sterling stocks and securities shown as the first item in the Securities Account.

	<i>1st January</i> 1981 £	<i>31st December</i> 1981 £
British Government Stocks (including Government Guaranteed Stocks):		
Bank of England Register .....	251,622,589	280,822,011
National Savings Stock Register .....	150,679	105,359
Money employed at interest (including Savings Bank Deposits) .	7,808,522	8,968,285
Local Authorities		
Stocks .....	18,210,029	14,208,927
Mortgages .....	6,555,116	6,186,019
Short Dated Bonds .....	1,368,000	1,244,000
Temporary Loans .....	7,256,118	5,524,823
British Railways .....	26,009	26,009
Water Companies .....	3,067,876	2,923,321
Canals, Docks and Harbours .....	323,021	271,932
Commonwealth Governments and Corporation Stocks .....	528,900	423,020
Commonwealth Railways .....	36,722	34,123
Foreign Government and Municipal Funds .....	62,928	62,928
Foreign Railways .....	1,218	1,218
Commercial, Industrial and other companies:		
Loan Capital .....	30,260,855	31,197,263
Preference Stocks and Shares .....	1,031,950	1,433,075
Ordinary and Deferred Stocks and Shares .....	43,147,668	47,359,231
Real Securities .....	65,925	52,315
Sundry Securities (Building and Housing Societies, etc) .....	63,137	66,838
	<u>371,587,262</u>	<u>400,910,697</u>



APPENDIX B  
(Paragraph 132)

TABLE 3

Transactions in Securities held by the Official Custodian for Charities

	<i>Number of transactions</i>	
	<i>1980</i>	<i>1981</i>
Purchases and sales:		
By Official Custodian—		
Investment of dividends .....	3,084	3,116
Other purchases and sales of investments and kindred transactions .....	6,352	6,495
By Trustees—		
Through agents of their choice with whom direct settlement is effected .....	12,394	13,181
Redemptions and conversions .....	2,851	2,697
Bonuses .....	1,004	983
Other acquisitions and disposals:		
Transfers from trustees and others .....	1,172	962
Transfers to trustees and others .....	88	49
Participation in common investment funds .....	4,633	4,082
Transfers between charity accounts .....	3,052	2,839
	<hr/>	<hr/>
	34,630	34,404
	<hr/>	<hr/>





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