



Charity  
Commissioners

for England and Wales

# Report of the Charity Commissioners for England and Wales for the year 1989

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

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REPORT OF THE CHARITY COMMISSIONERS FOR  
ENGLAND AND WALES FOR THE YEAR 1989

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

Charity Commission  
St Alban's House,  
57-60 Haymarket,  
London SW1Y 4QX  
11 April 1990

TO THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Sir,

We, the Charity Commissioners for England and Wales, have the honour to make our report for the year 1989 in pursuance of section 1(5) of the Charities Act 1960.

We have the honour to be,

Sir,

Your obedient servants,

R I L GUTHRIE

R M C VENABLES

J FARQUHARSON

D H YEO

M WEBBER

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## Introduction

1. The Government's resolve to introduce an effective system of supervising charities was reflected in the specific proposals for legislative change contained in the White Paper **CHARITIES: A FRAMEWORK FOR THE FUTURE** (Cm 694) published in May 1989 and the commitment of resources to enable us to take forward structural and management reform, including the computerisation of information held on the central register of charities as the basis for an effective monitoring system. We greatly welcome the proposals as a demonstration of the determination to improve the supervision of charities at a time when Government and the public alike increasingly look to a healthy and effective voluntary sector. The proposals in the White Paper have been widely welcomed as providing the right framework in which charities can flourish and which will ensure the confidence of the public in their probity. Representations have been positive and constructive, concentrating on matters of detail rather than principle, and Parliamentary response has been encouraging as demonstrated in particular by the debate in the House of Lords in November 1989.

2. The main aim of the fundamental programme of change on which we have embarked is to transform the Commission into an essentially proactive organisation. The key elements of the programme are

- *the establishment and maintenance of an up-to-date register of charities;*
- *the receipt of financial and other information necessary to provide the basis for an effective system of supervision;*
- *the development of techniques for closely monitoring charities whose activities give rise to concern;*
- *the institution of remedial measures wherever necessary; and*
- *the promotion of local reviews of charities.*

This programme is underpinned by the development of a computerised Database of Charities, with a capacity for quick and economical communications with charity trustees each and every year and the establishment of effective systems, computerised and otherwise, for the management and control of information and resources. We see these projects as critical to our success in achieving the Government's proposals for change.

3. The prospect of legislation within the lifetime of this Parliament, in order to provide the necessary statutory framework for the effective supervision of charities, sets priorities for us. Moreover, the achievement of an effective supervisory system as envisaged in the White Paper depends upon carrying forward a series of critical legislative and non-legislative measures, each of which is an integral and essential part of a co-ordinated programme. The importance to us, Parliament and the general public of updating the Register and providing the basis for effective monitoring of charities, cannot be overstated. In our view, progress in this area is dependent on the computerisation of key financial and other information about registered charities. Moreover, a computerised Database will also support an effective management system and the promotion of local charity reviews. In **paragraphs 40 to 46** we describe in more detail our progress to date in creating the Database and the effect that this will have on our relationship with charities.

4. The demanding programme we have set ourselves to meet Parliamentary and public expectations is in its early stages, but deadlines have already been met and the key elements are on schedule. As we report in **paragraphs 12 to 15** below, resources allocated to us have increased substantially as various elements of the programme have been initiated. The Government has more than doubled the resources allocated to us since it undertook the major programme of reforms proposed in Sir Philip Woodfield's Efficiency Scrutiny Report. The impact and

extent of the programme of change have placed a special demand upon senior managers. Accordingly, we considered it necessary to strengthen the Board of Management with the appointment of a Manager of Change and a Head of our Monitoring and Investigation Division. The need to increase manpower levels to cope with the programme of change has also placed, and continues to place, pressures on the accommodation in our London Office. As a result, and as we report in **paragraph 11**, we have established a regional office in Taunton.

5. In planning our strategy for the coming years, we have been concerned to identify our role and vision for the future, and to develop a clear understanding of our objectives not only in carrying through successfully the programme of change, but also in maintaining our continuing functions. We believe it may be useful to report our understanding of our role and functions which we established during the year and which is contained in our leaflet entitled **ROLE AND FUNCTIONS**.

### ***Role of the Commission***

6. Charity is precious in the life of a nation. People in every walk of life know what is meant by charity. Charity helps people in need, and promotes the common good. Its purposes consist of the relief of poverty, the advancement of religion, the advancement of education and other purposes beneficial to the community. The protection of charity is the concern of every citizen; and the Charity Commission, the Courts, certain Government departments, local authorities and the police all contribute to that end. **The role of the Charity Commission is to ensure that what people give and do in the name of charity is directed to the purposes and the beneficiaries for whom they were intended.** In fulfilling its role, the Charity Commission is playing its part in the wider mission of society so that we can say to one and all

***“You can trust charity”.***

### ***Functions***

7. We are appointed under the Charities Act 1960 principally to further the work of charities by giving advice and information and investigating and checking abuses. We function in three different ways. First, we act in a pro-judicial capacity on behalf of the Courts. Our decisions can be challenged, even by Government, only in the Courts. Secondly, we act on behalf of Government, fulfilling the will of Parliament in respect of charities. Thirdly, we act as managers of a business operation. Our functions in relation to the first two, accordingly, are:

#### **On behalf of the Courts**

- to determine whether trusts or institutions are charitable in law and so define charitable status;
- to make schemes and orders in order that charitable property may be more effectively used;
- to give consent to transactions proposed by charity trustees where they are in the interests of a charity;
- to give advice to charity trustees to make the administration of their charity more effective;
- to act where there is evidence of maladministration or misapplication of the property of a charity to correct the abuse and to protect or recover the property;
- to secure the vesting of the property of a charity in the charity trustees, the Official Custodian or other person authorised to hold it in order to protect it from loss;
- to give directions and to make orders for obtaining accounts and other information relating to a charity to enable us to carry out our functions.

### **On behalf of Parliament**

- to maintain an up-to-date and accurate Register of Charities available to the public;
- to receive charity accounts and make them available to the public in order to enhance the accountability of trustees; to provide information about the resources of charities and how they are used; and to enable a charity's affairs to be examined;
- to monitor registered charities to discover cause for investigation;
- to investigate misapplication, maladministration and other forms of abuse and take or recommend remedial action;
- to stimulate and promote reviews of local charities to secure the best use of charitable resources for the benefit of the community;
- to promote the sound administration of charities by trustees.

8. In the main body of this report, we describe our work during 1989 in fulfilling these functions; in **Appendices A and B** we mention certain decisions of the Courts and recent legislation affecting charities and in **paragraphs 16 to 25**, we note developments in Europe as reported to us by our consultant on these matters, Mr Harry Kidd. In the following paragraphs we detail the individual responsibilities of Members of the Board of Management charged with carrying through the programme of change.

#### ***The Board of Commissioners***

9. We meet monthly as a Board, to determine matters of law and to consider matters concerning the administration of the Commission and the discharge of our statutory functions on which we must report to the Secretary of State. Each member of the Board has equal responsibility with special expertise provided by the two legal Commissioners.

#### ***The Board of Management***

10. The Board of Management was established in 1988 to identify future needs, establish priorities, set goals, monitor expenditure, receive reports on all aspects of the work of the Commission and regulate progress. The Board of Management meets monthly and consists of the five Commissioners and five senior members of staff covering all aspects of the day-to-day operation of the Commission. It has proved an effective means of fulfilling these functions, and of achieving a unity of purpose and commitment from top management throughout the Commission.

**The Chief Commissioner, Mr Robin Guthrie**, takes particular responsibility for overall leadership and co-ordination and external representation. As Accounting Officer he is accountable to Parliament for the expenditure of the Department.

**The Commissioner (London), Mr Robert Venables**, who was appointed on 31 July 1989 in succession to Mr C A H Parsons on his retirement, is head of the legal staff with particular responsibility for the legal casework (other than charitable status), for national and southern counties, for issues affecting the Taunton Office and for legislative matters affecting charities.

**The Commissioner (Liverpool), Mr Jonathan Farquharson**, has particular responsibility for the legal and policy issues concerning charitable status, legal casework in Wales and the northern counties and issues affecting the Liverpool Office.

**The Commissioners (part-time)** are Charity Commissioners in the full sense of the term while having no direct responsibility for the management of staff. As Members of the Board of Management they are in a position to comment from a detached viewpoint on any aspect of the work of the Department and to become closely involved in issues or functions which require special attention from time to time. **Mrs Diane Yeo** takes particular

interest in the promotion of self-regulation of charities, fundraising issues, training within the Department and internal and external communications. **Mr Michael Webber's** areas of special interest include information technology, management systems, financial controls within the Department, the accounting practices of charities and monitoring and investigation.

**Mr David Forrest, Secretary to the Commission,** has responsibility for processing policy and legislative issues for the Board of Commissioners and Board of Management, in particular the proposed Charities Bill, as well as public relations.

**The Establishment Officer, Mr John Samuels,** is directly responsible to the Chief Commissioner as Accounting Officer for finance, personnel and industrial relations.

**The Director of Operations, Mr John Vining,** has operational responsibility for the Charities, Consents, Registration and Official Custodian's Divisions.

**The Head of Monitoring and Investigation, Mr Victor Mitchell,** is responsible for the development of our supervisory system and the effective discharge of our investigative work.

**The Manager of Change, Mr Christopher Noon,** has a particular responsibility for information technology and management information services and a general responsibility for managing the co-ordination of change across the Department as a whole.

## New South West Office

11. In our report for 1988, we described our intention to establish a regional office in South West England or South Wales. A number of possible locations were considered early in the year and staff visits arranged to those which appeared to offer the most suitable facilities. After careful consideration, we chose Taunton as the location for the Department's South West regional presence. As the first stage in a phased programme of development, we secured temporary office accommodation at The Deane, Tangier, Taunton, Somerset TA1 4AY (telephone 0823 321 102) in which to house an advance team of staff who combine experienced officers transferring from our London and Liverpool Offices with new entrants to the Department. The office opened for business on 23 October 1989 and initially is dealing with work relating to established charities only in the counties of Avon, Berkshire, Cornwall, Devon, Dorset, Gloucestershire, Hampshire, Oxfordshire, Somerset and Wiltshire. The present allocation of functions between our London and Taunton Offices is explained in detail in our leaflet **THE COMMISSIONERS' SOUTH WEST REGIONAL OFFICE** (reproduced at **Appendix C**). We shall build on this foundation by introducing additional work to the region over the next two years by which time we plan to occupy purpose-built accommodation providing a service similar to that given by our offices in London and Liverpool. Our plan is to achieve three offices of roughly the same size, each dealing with the full range of our functions for the areas covered by them and each contributing to the national functions of the Commission.

## Cost and Manpower of the Commission

12. The planned expenditure of the Commission for the financial year 1989-90 was £10,958,000 of which £5,090,000 was for salary related costs (not including Information Technology salaries), £3,444,000 for Information Technology, capital and revenue costs; £1,318,000 for Accommodation costs; and £1,106,000 for other costs.

13. The costs of running the Commission have increased substantially over the past few years, and are set to increase still further in the immediate future. These



increases are associated mainly with the implementation of the Woodfield programme of change, and particularly those aspects of it requiring the introduction of new computer technology. Additional costs also arise from the setting up of the new regional office in Taunton and from increases in the staff complement to strengthen the Commission's monitoring and investigation role and to begin the work of divesting the Official Custodian for Charities.

14. Chart 1 illustrates how costs have risen over the last three financial years and are expected to rise in the next financial year.

15. The overall staff complement of the Commission at the end of 1989 was 400. Chart 2 indicates the allocation of staff to the main divisions of the office.

# Allocation of Resources

**1987-91**

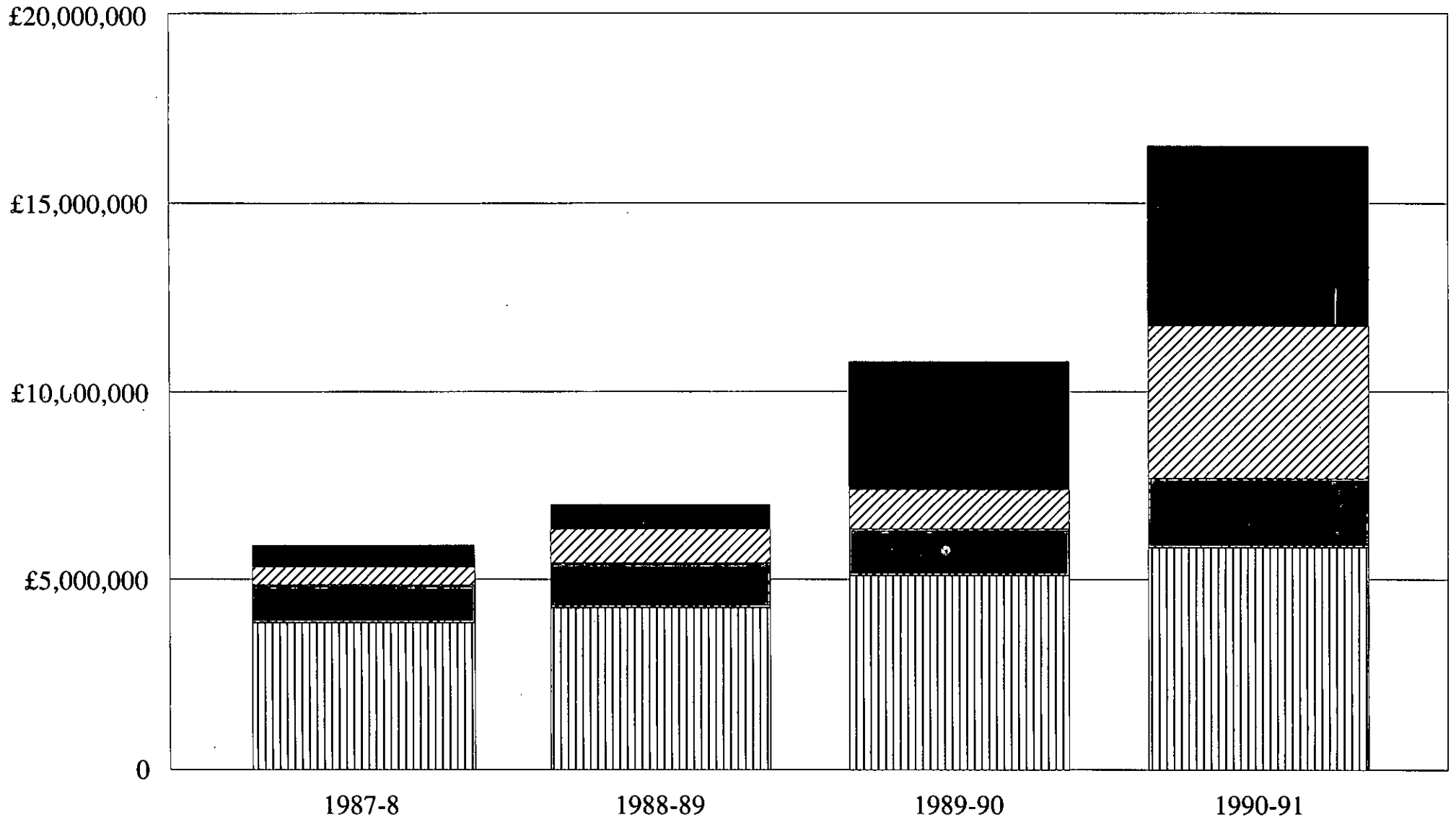


Chart 1

# Distribution of staff by function - 1989 (end)

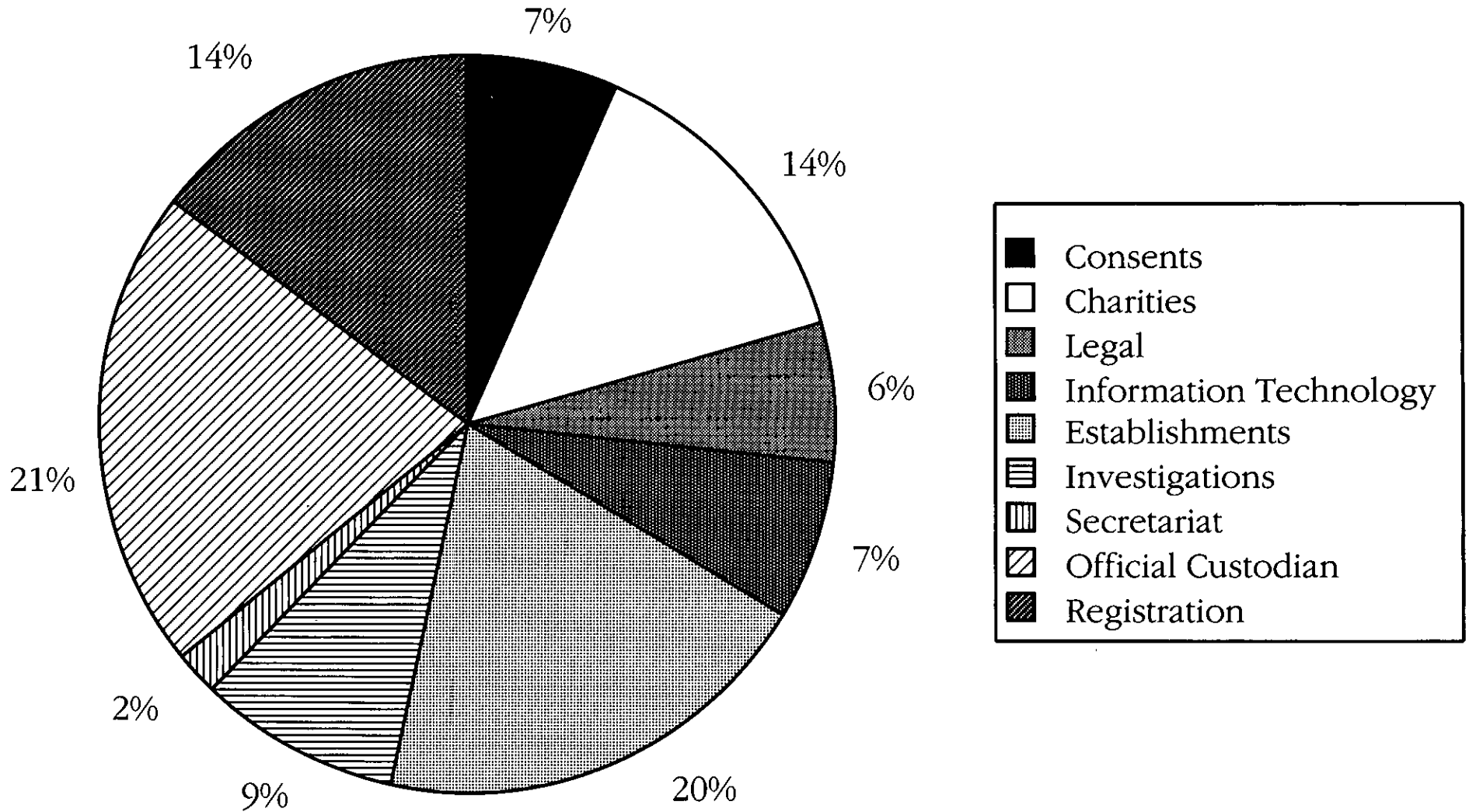


Chart 2

## Developments in Europe

16. As we noted in paragraph 12 of our report for 1988, we have retained the services of Mr Harry Kidd as Consultant to the Commissioners on European matters. During the year, he represented our interests in Paris and Brussels, where he has now established a number of important contacts and sources of information. We for our part, are, as a result, gaining a better understanding of the charitable position in other countries, as well as the work of the various European institutions generally.

17. One point to emerge very clearly is that community comparisons are fraught with difficulties, of which a particular example is the difference between the conception in England and Wales of charity and that of almost all other Member States. Broadly speaking, *their* concept of charity is limited to what would be described in England and Wales as the first head of charitable purposes; that is the relief of poverty. Other Member States have legal entities which serve the purposes served in this country by charities generally, but which they do not see as manifestations of one basic concept. These Member States, moreover, although closer together than we to them, are not entirely at one even in their classification. The principal bodies concerned tend to fall into two main classes, philanthropic grant-making foundations and associations. The association may be unincorporated but is much more often an incorporated body not very dissimilar to a company limited by guarantee. These bodies tend to have a degree of privilege, especially fiscal privilege, accompanied by restrictions; for example, in some jurisdictions there are prohibitions on acceptance of legacies without permission. The range of privileged purposes may go beyond the range of charities as we know it; for example, they may include the promotion of sport. On the other hand, in some jurisdictions the privileges allowed to religious organisations may be restricted.

18. Because we have no legal definition of charity difficulty is likely to be experienced if at any time it becomes necessary to spell out in Community law our conception of charity. The difficulty would be encountered if, for example, in European legislation any general provision and exemption for charities were to be sought. If the subject matter was such that the European Commission would be content to let the scope of the exemption depend in each Member State on that State's conception of charity all well and good; but in any matter of importance the Commission must secure equality of treatment of the Member State, and any provision for exemption must have a defined scope.

19. Almost certainly, the range of activity regarded in England and Wales as being charitable is wider than is to be found in any other Member State. This may be, therefore, an area in which our practice could be of interest to our European partners but it follows equally that we should be aware of any European attempts to legislate in this area. If there were to be any harmonisation of benefits to charity we should be concerned to carry forward the essential concept of charity in English law in discussion with our European colleagues. In this connection we are heartened to note the following remarks in a report to the European Parliament of its Committee on Legal Affairs and Citizens' Rights:

“This is an area in which it is particularly necessary to avoid excessive rules and regulations. Any action aiming... to give... too uniform a specific status would be contrary not only to the powers of the States, but also the spirit of freedom and independence... required. We must harmonise only what needs to be harmonised”.

20. At the present time there are no specific proposals (except in respect of VAT) for European legislation directly affecting charities, but Mr Kidd, on our behalf, will continue to monitor developments in Europe generally and to advise us on relevant developments. He will be concerned to ensure wherever necessary

that an awareness of the special status of charities is brought to bear in the right quarters.

21. The provisions of the Treaty of Rome exclude non profit-making bodies from the full scope of the Community's regulatory powers. The interpretation of this exclusion is, however, not entirely clear, since there is significant support for an interpretation of "non profit-making" as meaning "not engaged in economic activity", or something very close thereto. If this interpretation were to prevail, charities that provide goods or services for a consideration would fall within the scope of the Treaty's definition of "companies or firms".

22. Monitoring the effects on charities of community legislation in general is particularly difficult because of the wide range of activity carried on by charities, and perhaps still more by the even wider range of activity that may be carried on by ingenious fundraisers. The wider the range of activity, the greater the possibility of its being affected by the unforeseen and unintended effects of such legislation.

23. Mr Kidd also draws particular attention to the interest in charities of certain sections of the Commission, in particular its interest in "associations". In European jurisprudence an "association" tends to correspond to a company limited by guarantee having no share capital. Thus, there is a very wide overlap between the European class of associations and the class of charities in England and Wales. It must therefore be borne in mind that when Europe speaks of "associations" what it says is very relevant to many charities in this country.

24. Associations are at present treated by the European Commission as falling within what is known as "the Social Economy", which consists principally of co-operatives, mutual credit organisations and the like, all being regarded as directed not to making a profit to be distributed to shareholders or other proprietors, but to the benefit of the public or sections of the public, any profits that may incidentally be made being ploughed back and used to maintain or develop the activities of the organisation. The Social Economy is assigned to Directorate-General XXIII, which is also concerned with fostering small and medium sized enterprises. This Directorate will be concerned to see that associations enjoy the benefits of a single market without frontiers and are free from restrictions incompatible with such a market.

25. Mr Kidd also draws attention to the communication entitled *L'Economie sociale et la réalisation du marché européen sans frontières* presented to the Council of Ministers by the Commission in December 1989. This paper, which called for no action on the part of the Council but for an exchange of views, surveyed the Social Economy as a whole, drawing attention to its importance and to the need for measures to enable its institutions to take full advantage of the single market. It emphasised in particular the importance of reaffirming in this context the right of establishment and the principle of non-discrimination, with respect to the conditions under which some institutions may be set up and the fiscal treatment to which they are subject. In our opinion, while associations do not necessarily have much in common with other types of body comprised in the Social Economy, it is nevertheless important that charitable interests should be represented on a working group of national experts and officials which we expect to be set up by the European Commission to study these matters. The position of charities which overlap with the associations but are far from identical to them should receive careful and separate consideration. We have asked Mr Kidd to represent the Charity Commissioners on the working group if it is established.

## Registration of Charities

26. We registered 4,119 charities during 1989 and removed 483 charities from the Register, mainly because they had been wound up or ceased to operate. The total number of registered charities at the end of the year was 168,170 although the mailing we have done to test the validity of our plans for putting the index to the Central Register on to a computer-driven system suggests that some of the bodies registered with us over the last 30 years may no longer be in existence.

27. A substantial part of the work of the Registration Division concerns the giving of advice about the wording of draft governing instruments of proposed new charities. During the year we advised on 3,104 such documents. We mentioned in paragraph 11 of our report for 1987 that we had introduced the leaflet called **STARTING A CHARITY** to explain some of the purposes which the law regards as charitable and to suggest various ways in which a new charity might be constituted. This has now been substantially revised in the light of working experience and a questionnaire aimed to provide information for both registration purposes and the future monitoring of charities is being introduced.

28. The voluntary sector has continued to demonstrate a sensitivity to changing needs, whether in this country or abroad, and to develop a capacity to meet those needs. Three areas have been particularly prominent in the registration of new charities: the care of the environment, including the preservation of flora and fauna, the relief of the social problems of persons suffering or recovering from physical or mental illness, and the relief of persons who have suffered physical or mental deprivation.

29. The preservation of the environment, including its flora and fauna, continues to be a major concern. Development has been most marked in the number of charities for the protection of the environment outside the United Kingdom. We have registered charities concerned with the study of marginal regions, and of wetlands in Asia; charities for the conservation of the rain forests and their flora and fauna; charities to stimulate scientific research in waterfowl and their habitats and in the breeding of camelids; and charities to conserve elephants, the rhinoceros, birds in Portugal and the barn owl. More generally we have registered charities to research into waste recycling processes; to promote the protection of endangered flora and fauna; to educate the public in the ecological importance of trees and their planting, care and protection; to advance education and research in the field of energy and energy related subjects, including forms of renewable energy; and to educate the public in the value of clean air and the methods and consequences of air pollution.

30. In this country a charity for the clearance of fallen timber, the treatment of damaged trees and the planting and establishment of new trees was formed at the end of last year. This year the Prince of Wales Royal Park Tree Appeal was registered. Both these charities will have an added relevance following the recent storm damage. In Wales a charity for the conservation of broad leaved woods and trees was formed. We have also registered a charity for the conservation of Highgate Cemetery and its monuments.

31. There is an increasing recognition that persons suffering or recovering from a physical or mental illness or disablement need assistance not only directly in relief of the illness or disability but in meeting the social consequences of their condition. The voluntary sector is developing to meet this need and we are registering an increasing number of charities in that field. For example, charities have been registered for the rehabilitation of amputees; to provide assistance, advice, representation and services to the mentally handicapped; to relieve the needs of those suffering from leukaemia and their families; to aid sufferers from multiple sclerosis, cerebral palsy, rheumatic diseases and cancer; to enable the mentally ill to lead independent lives; to relieve the mentally ill through the provision of a centre where they can receive instruction or participate in musical

activity; and to provide recreational activities (including the provision of a broad-beamed canal boat and instruction in driving carriages and traps) and transport for the disabled.

32. Similar assistance is now provided for persons who are suffering from forms of abuse and deprivation. Charities continue to be registered for the assistance of persons suffering from drug abuse or crime, and their families. We have also registered charities for the relief of "street children", of persons who have suffered from child abuse, of persons who are suffering crises over their sexual identity and of persons suffering from distress after a pregnancy termination; and charities providing assistance to parents who may be in danger of abusing their children.

33. The trend in establishing charities with a European area of operation also continues. One such charity of interest is the European Script Fund. The object of the Fund is the support, encouragement and promotion of cultural and artistic excellence in the creation and development of original literary, dramatic, musical and artistic material, including story lines, screen plays and scripts for cinema and television and radio likely to appeal to or intended primarily to cater for, the taste of the public in the Member States of the European Community. The Trust has entered into agreements with European Community institutions through the European Commission. It will receive a financial contribution by way of an operational budget towards making grants and awards to applicants to fund the preliminary stages of artistic work and to meet administrative expenses so that grants received from other sources for similar purposes may be applied more effectively.

34. We also registered the *Institute for European Environmental Policy*, the objects of which are:

"To advance the education of the public in the protection of the environment of the continent of Europe and in all forms of national and international policy in relation thereto".

The Institute was promoted by the European Cultural Foundation, a charitable organisation incorporated under Dutch law, which has promoted the establishment of organisations having objects similar to those of the institute throughout Europe. The Institute has a very considerable reputation for its research work and carries out a large amount of work on behalf of the European Commission. Its work covers a range of fields, including air pollution control, major accident hazards, chemicals and cross-media pollution control, agriculture, water and nature conservation, biotechnology, social ecology, industry and energy.

*Charitable appeals and disaster funds*

35. During the year we registered *The BBC Children in Need Appeal*. The BBC has been broadcasting an appeal for children in need since 1927 and in the past funds allocated by the appeal have been distributed by the BBC on the advice of Advisory Committees from England, Wales, Scotland and Northern Ireland. Because of the enormous growth in the funds raised by this annual event, the Board of Governors of the BBC resolved that a charity should be constituted to take over the work of the appeal and this charity was formally established by a deed of 14 August 1989.

36. The public continue to respond magnificently to such appeals and to disasters whether here or abroad. Although most domestic disasters are now covered by non-charitable appeals, we were concerned to assist with the establishment of the *Clapham Junction Disaster Appeal* and with the charitable fund set up in association with the *Hillsborough Disaster Fund*.

37. The disaster at the Hillsborough Football Ground on 15 April 1989 in which 95 football supporters were killed is one which touched the Commission closely. Several of the staff of our Liverpool Office were in the football crowd

on that day and one, Mr Jack Anderson, tragically lost his life. Two days after the disaster one of our senior staff joined a meeting of officials of the Liverpool City Council, representatives of the Liverpool Football Club and various local authorities, which meeting led to the launch of the main non-charitable Hillsborough Disaster Fund. Its associated charitable fund, The Hillsborough Disaster Charitable Trust, was registered shortly afterwards. The tax treatment of disaster funds (both charitable funds and non-charitable discretionary trusts) is helpfully described in a leaflet issued jointly during the year by the Inland Revenue and HM Customs and Excise. The guidance notes explain the sort of tax issues which can arise when appeal funds are set up, suggest ways in which they might be handled, and explain how help and information about potential tax problems can be obtained.

*Bequests to unidentifiable charities*

38. From time to time speculation arises as to the use made of bequests to charities which cannot be identified. It has, for example, been suggested that they could form the nucleus of a national disaster fund. The disposal of such gifts has, however, always been subject to the Sovereign's direction, now delegated to the Attorney General. Where there is a bequest in a will to an unascertained charity with no trust upon which the personal representatives of the deceased can seek the directions of the Court or the Charity Commissioners, the gift lies within the direct disposition of the Crown (*see Moggridge v Thackwell (1803) 7 Ves 36 and Re Bennett [1960] Ch 18*). In 1986 Her Majesty delegated her power to dispose of charitable gifts under the Royal Sign Manual to the Attorney General. The Attorney General also acts under this power where the trust declared by the will is purely administrative, ie for the getting in and the distribution of the estate.

39. 89 applications were made to the Attorney General in 1989 for Royal Sign Manual Directions involving property to the value of just under £1¼ million. Of this sum, approximately £495,000 consisted of bequests to "cancer research" where no particular cancer charity was named in the will. A request for a Royal Sign Manual Direction should be made through the Treasury Solicitor.

*Computerisation*

40. In paragraphs 18 to 22 of our report for 1988, we outlined our thinking on the way in which information drawn from the register could be held on computer. We noted that we had employed BIS Applied Systems Limited as external consultants to advise us about the types of information which could be held and the systems and resources needed to handle the information. They reported in July 1989 and provided detailed proposals for the establishment of a comprehensive Database to enable us, among other things, to maintain up-to-date information on charities and undertake their systematic supervision.

41. In order to bring the register up to date, we must re-establish contact with the charities with which we have lost touch, validate the information on our records and remove those charities which have ceased to exist or no longer operate. Our first task, therefore, is the mammoth one of updating key items of information on the existing register.

42. To do this, we must first set up a computerised index to the Central Register of Charities, containing a digest of information about each registered charity. This will be initially taken from our own records. We shall then write to all charities on the register asking for up-to-date details of their correspondent, their annual income, bank account, and for copies of their last report and accounts. We shall use a mailing bureau for this initial exercise. We shall then be in a position to require charities each year to confirm or correct all the information on the Central Register index and supply their accounts.

43. The Database will also eventually enable us to incorporate information on our casework and other activities to improve our efficiency and to provide relevant information. It will also enable us to provide a system to assist in scheduling



charities for the purpose of carrying out local reviews. The chart overleaf shows how the Database will be built up over a period of some four years.

44. We are pleased that government approval was given to expenditure on the first of these stages and work began towards the end of 1989. We plan, in the spring of 1990, to enlist the help of voluntary agencies in tracking down charities with which we have lost contact in certain counties. If this proves viable, the work will be expanded throughout the country during the rest of the year.

45. As we noted last year, we intend to keep the Central Register up to date by means of requiring charities to complete an annual return confirming the details of their registration and providing up-to-date information together with their annual report and accounts. Our computer system will enable us to do this efficiently by reference to the individual charities' accounting years. We propose to begin using the annual return towards the end of 1990. In effect this will put us in contact with the trustees of all registered charities on an annual basis and transform our relationship with them.

46. These proposals offer an exciting prospect. It is our intention to put in place, for the first time, a National Charity Database giving reliable, up-to-date, and useful information on individual charities and on the charitable sector generally. It is being designed to provide the basis for effective supervision of charities and to be an information source which can be drawn on with confidence by the public, by charities themselves and other voluntary organisations, by researchers and by policy makers. We believe that for all concerned the effect will be dramatic. Moreover, if the Government's legislative proposals are implemented they will enable us to mark the register indicating whether trustees are in default or whether a charity is under investigation. We believe that this will provide an essential warning to the donating public and complement the powers proposed to ensure compliance.




### The Commissioners' decisions on charitable status

47. As a Board we considered among others applications for registration from two very contrasting institutions which illustrate the wide variety of organisations that seek recognition as charities each year. Each case raised points of considerable importance in its own area and we therefore report them at some length.

#### *Birchfield Harriers*

48. Birchfield Harriers are, in the words of their solicitors, "the leading athletics club in Birmingham". Their objects are "to encourage and promote interest in athletics for both sexes from the age of 10 years upwards". Founded in 1877, the Harriers had about 1300 members at the end of 1988, 800 of whom were under 18. It was said that roughly 600 lived within 3 miles of the Harriers' premises in Perry Barr, near the inner city areas of Handsworth, Lozells, Witton, Aston and Gravelly Hill and that many of the members were unemployed and from the ethnic minorities. Letters in support of the Harriers' application placed much emphasis on the perceived social value of the Harriers' activities, both in promoting good relations between people of different ethnic origins and in promoting young peoples' personal development and sense of social responsibility through the discipline of organised sport. The Harriers' solicitors claimed that, although the rules required prospective ordinary and junior members to be proposed and seconded, and details of their applications were displayed on the club notice-board, in practice no prospective member in recent years had, to the Harriers' knowledge, experienced difficulty in finding a proposer and seconder. In addition, no prospective member was ever refused membership save on grounds of bad character, a breach of the rules of the Amateur Athletics Association or a need to restrict numbers for reasons of safety. Although the membership application form asked for details of performances to date, it was said that no-one was ever refused membership on the grounds of lack of attainment of any specific level of performance.

# Charity Database

	1989	1990	1991	1992	1993
<b>First stage</b> Computerisation of Central Register Index					
<b>Second stage</b> Establishing a computer - based supervisory system					
<b>Third stage</b> Casework and management information; local reviews					

49. Apart from competing against each other or against set times and distances, members of the Harriers were said to participate, both as individuals and on a team basis, in external competitions, including competitions at the highest national and international levels. Members had, with one exception, been selected to compete in every Olympic Games since 1908, and had on occasion won medals. Nationally, in the ranking list of amateur athletics clubs prepared by the National Union of Track Statisticians, the Harriers were listed in both 1986 and 1987 as first for women and second for men. It was conceded that some members did come from far afield because they found the atmosphere “more competitive” and were, as a result, assisted to attain higher standards of performance. It was said that while the Harriers did not go out of their way to recruit top sports people they did not decline to accept them as members. In effect, we were being asked to treat this element in the Harriers’ membership as insignificant in determining the question of their charitable status. The overwhelming impression given by the documentary evidence, however, was that the Harriers saw their success, not in terms of the provision of recreational facilities to a wide cross section of society, but in terms of results achieved in external competitions, particularly at national and international level.

50. Their solicitors contended that the Harriers’ activities furthered purposes which were charitable at common law both because their activities promoted physical education and health and because the facilities they provided, meant that they fell within the principles established by *Re Hadden [1932] 1 Ch 133* and *Re Morgan [1955] 2 ALL ER 632*. They also contended that the Harriers’ activities furthered purposes which were charitable under the Recreational Charities Act 1958.

51. It is clearly established (see Lindley L J in *In Re Nottage [1895] 2 Ch 649* at page 656) that the encouragement of “mere sport” is not charitable unless it is part of a wider purpose which is itself charitable, such as the promotion of the efficiency of the armed forces (*Re Gray [1925] Ch 362*) or the promotion of the efficiency of the police (*Inland Revenue Commissioners v City of Glasgow Police Athletic Association [1953] AC 380*) or the promotion of education (*Inland Revenue Commissioners v McMullen [1981] AC 1*).

52. We took the view that the claim of the Harriers to charitable status under the second head of Lord Macnaghten’s classification, on the ground that their purposes were directed for the advancement of physical education, should be rejected since there was an insufficient element of education in the activities of the Harriers to support it. The coaching in athletics given to members was only one aspect of the Harriers’ activities and the informal educational opportunities offered by contact between young people of different ages, races and cultures must be regarded as incidental.

53. We also rejected the Harriers’ claim for charitable status under the fourth head of Lord Macnaghten’s classification, on the ground that they promoted health and wellbeing. The Harriers placed reliance on the Ontario decision in *Re Laidlaw Foundation [1984] 48 OR (2d) 549*, where it was held by the Surrogate Court judge, and confirmed by the Ontario High Court, that the promotion of amateur athletic sports, under controlled conditions, was itself a charitable purpose in that it promoted health. *Re Laidlaw*, based on a Canadian statute, is not binding on the English courts and, in our view, the decision paid insufficient regard to the decision in *In Re Nottage* and in particular to the words of Lindley L J when he said (at page 655):

“Now, I should say that every healthy sport is good for the nation - cricket, football, fencing, yachting or any other healthy exercise and recreation; but if it had been the idea of lawyers that a gift for the encouragement of such exercise is therefore charitable, we should have heard of it before now”.

In that case Lopes L J also based his decision on a wider ground than the mere rejection of the particular benefit alleged by The Yacht Racing Association, making it clear that although the promotion of sport may have certain beneficial side effects (including the promotion of health) it was not a charitable purpose.

54. We also rejected the claim of the Harriers to charitable status under the principle of *Re Hadden*. Although it might be difficult to draw the line in certain cases, there is a thin, but discernible, line between a gift whose dominant purpose is to improve the health of the public by providing facilities where they can take healthy recreational exercise (*Re Hadden*; *Re Morgan*), and cases where the dominant purpose is to encourage competitive sport for the benefit of the spectators or the enjoyment of the participants (*Re Nottage*). In the case of the Oxford Ice Skating Association Limited (see paragraphs 19 to 25 of our report for 1984) we had decided that the provision of an ice skating rink to be open to the public at large was a charitable purpose by analogy with *Re Hadden* and *Re Morgan*. However, the nature of the facilities provided by the Harriers pointed firmly in the direction of competitive sport, so placing them on the other side of the line from the Oxford Ice Skating case. A further difficulty to the Harriers' claim for charitable status on the basis of *Re Hadden* lay in the fact that the facilities provided by the Harriers were available only to members and, in view of the restrictive membership provisions, it was difficult to see that the membership constituted a sufficient section of the public to satisfy the public benefit requirement. Membership of another club affiliated to the Amateur Athletics Association would be sufficient to preclude membership of the Harriers.

55. In order to qualify under the Recreational Charities Act 1958 a trust or institution must, under section 1(1) of the Act, be for the public benefit. The Harriers did not at present satisfy the test of public benefit because of the restrictive membership provisions contained in their Rules. Apart from the issue of public benefit the Harriers would, in order to attain charitable status, still need to satisfy the requirements of subsection 1(2) of the 1958 Act by showing that the facilities were provided "in the interests of social welfare". We did not accept the suggestion made by Walton J at first instance in *IRC v McMullen* that the persons for whom the facilities are primarily intended must be to some extent and in some way deprived persons. We preferred the liberal approach of Bridge L J in the Court of Appeal in that case which required us to consider objectively whether the facilities are of a type which were capable of improving the conditions of life for the recipients. The facilities provided by the Harriers were, however, neither provided for any of the special classes mentioned in section 1(2)(b)(i) of the Act nor, because of the restrictive membership requirements, for the benefit of the public at large within section 1(2)(b)(ii) of the Act.

*The Society of the Precious Blood*

56. The Society of the Precious Blood, an enclosed Community of Anglican Nuns centred on Burnham Abbey, was governed by a constitution which declared the following object:

"The Society of the Precious Blood is a contemplative community devoted to perpetual intercession. The members are bound by the Vows of Chastity, Poverty and Obedience.

By the Vow of Chastity they undertake to remain unmarried, and to observe those disciplines of mind and body which will free them to give themselves wholly to God.

By the Vow of Poverty they renounce possession of their property and all right to dispose of or administer it except under will.

By the Vow of Obedience they promise to obey the Rule and Constitutions of the Society, except when dispensed from any particular part of them by the proper authority. They also undertake to obey the duly elected Reverend Mother in all things lawful relating to the life of the Society, and all who hold office in matters relating to their respective offices".

57. The Society had a growing involvement with an increasing number of people who turned to them for counselling and support. There was substantial supportive and counselling work carried on by correspondence and, alongside it and complementary to it, there was a ministry by telephone for those who preferred to use this way of communicating with the Sisters in times of need, despair or loneliness. Indeed, the Society claimed that their counselling service invited comparison with other better-known agencies like the Samaritans. Increasing use was also being made of the Society for varied educational purposes by groups of Christians. Visitors to the Abbey included individuals interested in archaeology, school children engaged in projects, university students pursuing research in medieval history and local historians. The Society also gave talks to visiting groups on prayer, the Religious Life, the relevance of Christianity to whatever problems visitors wished to consider and the history and archaeology of Burnham Abbey.

58. The Inland Revenue had lodged a formal Memorandum of Objection to Registration in which they contended that the Society's constitution disclosed that the purpose of the Society was contemplation and devotion to perpetual intercession and that the outward expression of that purpose was merely incidental. Accordingly, they argued, under the principle established in the case of *Gilmour v Coates* [1949] AC 426, there was no public benefit and the Society was not charitable in law. The Inland Revenue also contended that even if it were appropriate to take into account evidence relating to the activities of the Society with a view to construing the objects, the evidence of the Society's activities supported the conclusion that such activities as may be for the public benefit were *de minimis* and incidental to the Society's contemplative purpose which was not for the public benefit. Therefore the Society was not charitable.

59. It is well established in law that the advancement of religion is a charitable purpose; but not every activity associated with religion is necessarily charitable and this will be the case where the necessary element of public benefit is not present. Where, however, a trust is established the purposes of which are of a religious nature, the Court will assume public benefit unless the contrary is shown (*Income Tax Special Purposes Commissioners v Pemsel* [1891] AC 531, per Lord Simonds at page 65 and *In re Watson* [1973] 1 WLR 1472, per Plowman J at page 182). Where, as in the case of *Gilmour v Coates*, the issue of public benefit has arisen, the Court must decide whether there is benefit to the community and must determine this in the light of evidence that is cognizable by the Court or in the light of facts of which it may take judicial notice. Where, as in that case, a religious order is strictly cloistered and purely contemplative, the nuns devoting themselves entirely to worship, prayers and meditation and engaging in no activities for the direct benefit of anyone outside their own association, public benefit was not shown to be present. In that case it was held that the value of intercessory prayers in bringing spiritual benefit to mankind and the example of pious lives led by the nuns as a source of great edification to others, was both incapable of proof and too vague and intangible to satisfy the test of public benefit.

60. However, the existence of a primary object tending towards the personal sanctification of the members of an order by prayer and contemplation, does not in itself prevent a religious order from being recognised as established for charitable purposes if that object is achieved through activities which are themselves charitable. See, for example, the objects of the Sisters of the Charity of St Paul at Selley Oak in the case of *Cocks v Manners* [1871] LR 12 Equity 574 and the objects of the Poor Sisters of Nazareth and the Little Sisters of the Assumption in the case of *In re Delaney* [1902] Ch 642. We therefore concluded that because the objects of the Society of the Precious Blood disclosed that it was a contemplative community devoted to perpetual intercession, public benefit could not be assumed and must be established by proof.

61. It appeared clear to us that the work of the Society revealed a real and substantial charitable element which was for the public benefit and which could not be regarded as *de minimis*. The Society's activities, which included public religious services, religious and secular education of the public and the relief of suffering, sickness, poverty and distress through the counselling service and other work, disclosed that the principal activity was charitable. We took the view that the publicity the Society gave to its charitable work and the numbers of Associates, Companions and Oblates who were said to be an integral part of the community but lived outside it, overcame the arguments against charitable status on the ground that the charitable activities took place within the community rather than outside it. The public benefit inherent in these activities was not in doubt.

62. The question remained, however, whether, on the proper construction of the constitution of the Society, this charitable work was merely incidental to the Society's contemplative purpose or whether it was an integral part and manifestation of the Society's actual purpose. We had to decide whether the charitable activities were the outward manifestation of the life of intercessory prayer and, as such, could be regarded as the actual purpose of the Society or whether they were incidental to the contemplative life. The Society's constitution stated that "the life of prayer finds an outward expression in caring for guests". Given the way, and the extent to which, the Society's purposes were actually carried out in this connection in its charitable activities and the absence of strict rules relating to complete exclusion of the public, the charitable activities could be accepted as the outward and visible object of the Society and, consequently, we considered that the Society could be regarded as established for charitable purposes. However, the way in which the Society's constitution spelled out the relationship between its objects and its activities was not entirely satisfactory. As the constitution could be amended by the legislative body of the Society we recommended to them that they might usefully amend it to reflect more closely the extent of the charitable work actually carried out by them and to render the Society exclusively charitable in law in a manner which was completely free from doubt.

## Investigation and Protection of Charitable Property

63. The extent to which our Monitoring and Investigation Division is effective in detecting and controlling abuse will be one of the main yardsticks by which our success in future will be judged. We have continued to increase the resources devoted to this work and we now have a total complement of 40 staff with legal, accountancy and investigative skills engaged on this work. During the year we appointed a new departmental head of Monitoring and Investigation Division. Mr Victor Mitchell joined the Commission from HM Customs and Excise where he gained considerable experience in investigation work, in management and in the design and implementation of management information systems. His unique range of experience should prove most valuable in developing our monitoring systems, enhancing our investigative effort and remedying abuse.

64. We received over 1000 complaints during the year of which approximately 20% alleged deliberate fraud, 40% maladministration and 18% fund-raising abuse. A further 15 cases were referred to us by the Inland Revenue for investigation during the year: the amount at risk in these cases exceeded £800,000. In many of the cases which we have investigated, problems stem from the trustees' failure to ensure that proper records and financial controls are maintained. Trustees have not kept adequate records of their decisions or the reasons for them and in some cases the financial controls and procedures have been insufficient to ensure proper application of the charity funds. We believe the Government's proposals to remedy the defects in the present arrangements regarding financial information and the audit of the accounts of the larger charities to be essential

if this type of inadequacy is to be overcome and charities are to be fully and properly accountable.

65. During the year we have continued to strengthen our liaison with other supervisory agencies. In particular, we wrote to the 43 police authorities in England and Wales notifying them of our investigative functions into alleged abuse. As a direct result, we were notified by the North Staffordshire Police about an apparent fund-raising fraud in their area. We undertook inquiries running parallel with the police inquiries and assisted them in their investigation of the appeals. Following those inquiries we have frozen the assets of the charity, one of charity's trustees has been arrested and papers have been forwarded to the Crown Prosecution Service. In another case we co-operated with the Manchester Police in their investigation into three fraudulent charitable appeals in which some £440,000 was raised from the public and only £10,000 devoted to charity. The principal organiser pleaded guilty to obtaining property by deception and was sentenced to four years imprisonment.

*Formal inquiries* 66. The bulk of the investigations undertaken by our staff is carried out informally in the course of carrying out the Commissioners' functions. Each year, however, a number of cases give us special cause for concern because of the nature of the complaint, the complexity of the problems or the legal issues raised. In such cases we may by order formally appoint a person or persons to conduct the inquiry and to make a formal report to us.

67. During the year we considered the final reports of five formal inquiries which we had instituted into the affairs of charities. The aims of three of the charities concerned were to benefit handicapped people in one way or another while the fourth charity was involved in animal welfare and the fifth with public navigation rights. In all but the last of these cases, the reports revealed that the problems which the charity faced could be attributed in part to a failure by the trustees to conduct their affairs in accordance with the provisions of the governing instruments. In all these four cases the absence of adequate financial records and controls compounded the problems. The reports also showed that there was a general lack of business expertise among the trustees which meant that for one charity a major fund-raising event proved to be a financial disaster, and, for another, the trustees did not exercise a sufficient degree of financial control. We agreed with the recommendation of the inquirer in one case that we should use our powers in section 20 of the Charities Act 1960 to remove the only trustee, on the grounds that he had mismanaged the charity by administering it in a manner not authorised by the constitution and by not keeping accounts, and to appoint in his place new trustees to secure a proper application of the charity's remaining funds. For the rest, we agreed that specific follow-up action was required by us to help restore the charities to an even keel. These inquiries highlighted that it is no longer sufficient, even for a charity of modest size, to rely wholly on a group of well-intentioned volunteers who have no particular business management or financial expertise. Whether it be negotiating with commercial concerns, hiring and managing staff or keeping detailed financial records and accounts, there is a need for the trustees to include people who have relevant experience. (In paragraphs 81 to 86 below we discuss the need generally to raise standards of administration whilst retaining the voluntary nature of trusteeship).

68. During the year we instituted formal inquiries into five charities where it was alleged to us that improper personal benefit had been received by leading officers of the charities. The inquiries have so far revealed various administrative deficiencies and in certain respects inadequate accounting records. Independent Chartered Accountants have now been appointed to assist the inquirers. In one of these charities our inquiries have suffered as a result of the total lack of cooperation from the chartered accountants acting for the charity and in another as the result of the disregard of our requests for information from the company

secretary. We have accordingly given instructions to start committal proceedings under section 41 of the Charities Act 1960 for breach of our Order requesting information.

69. A further seven formal inquiries continue. In one case, a charity with a highly emotive name was set up by those associated with a commercial fundraising organisation and with which it entered into a contract enabling 80% of the proceeds to be retained by the commercial organisation. No adequate financial records have been produced and we have acted to protect over £100,000 until such time as either the money can be released to charities of repute or the trustees can produce proper statements of account and acceptable proposals for the future regulation of the charity. In four other cases we instituted formal inquiries on the basis of information given to us by the Inland Revenue suggesting that charities may have been manipulated as part of tax avoidance schemes, one charity alone having an aggregate turnover in excess of £100 million. These cases are unusually complex, and involve substantial work and determination on the part of the Commission's staff. A further inquiry was instituted into whether the sale of the property and business of the charitable company, including the assets of its wholly-owned subsidiary trading company, constituted a management buy out at less than the full market value. Although we have received the full co-operation of those involved, the inquiry has proved to be lengthy and as yet not all information is to hand to enable a final view to be taken. Lastly, an inquiry continues into information which we received suggesting that the headmaster and former owner of a boys' school in Sussex had benefited substantially from the property of the charity.

70. All these cases go to show how important it is to protect charities and public confidence in them. Assets can indeed be protected, and malefactors brought to book, even if the process calls for time and determination on the part of the investigators. The additional powers heralded in the White Paper will greatly strengthen our capacity in this respect, particularly in taking remedial as well as protective action.

#### *Monitoring*

71. We are continuing to develop the selective monitoring exercise whereby the accounts of charities are called in for examination and followed up by further inquiries if necessary. During the year we called in the accounts of over 4,000 charities for examination. Of these fewer than 10% called for further inquiry and only 18 gave rise to full investigation. Nevertheless, in one of those cases we are investigating the possible misapplication of sums in excess of £1 million. In many of the cases we have examined we have been able to give the trustees advice on such matters as their responsibilities in accounting standards and application of funds. The exercise has culminated in the commissioning of a study involving a targeted and larger group of charities. This study, which is to be completed by April 1991, will test and explore the potential of selective monitoring of charities by means of a computer system based on periodic returns. The study will concentrate on the design and content of forms, the identification of risk areas and the development of suitable credibility checks.

#### **Schemes**

72. During the year we made 742 schemes, a similar number to those made in previous years. The making of schemes to modernise trusts of charities or to provide an administrative framework more suitable to modern-day circumstances is an essential - if somewhat unsung - part of our functions and is integral to our function of promoting the efficient application of charitable resources and controlling abuse. In making schemes we exercise the same functions as the courts. We are concerned to provide an expert, authoritative service to trustees, responsive to the needs of each charity, and to act in a way which is both flexible and imaginative. Many of these cases are complex and demanding; in one case during



the year we made a scheme revising and consolidating the 39 schemes made since 1891 amending the Central Scheme governing the City Parochial Foundation. The system is in essence a relatively swift and economic substitution for the courts themselves, and no significant changes are proposed in the White Paper.

*Cy près schemes* 73. We have now completed the review of the guidance given to our staff on the application of the cy près doctrine, envisaged in paragraph 54 of our report for 1988. We reproduce some of that guidance in the paragraphs which follow.

74. The application of the cy près doctrine is a legal process involving the establishment of a scheme. The determination of the new purposes to be conferred is essentially a practical issue in which usefulness and practicality as well as proximity to the existing trusts must be taken into account. In determining the appropriate cy près application, regard must first be had to the trusts of the charity. With these in mind the nearest practicable charitable purpose needs to be ascertained. Consideration must be given to whether that purpose is suitable and effective, bearing in mind the situation of the charity in the community and the needs of that community. If the view is taken that the nearest practical purpose is not suitable or effective, then other purposes may be selected. To choose a purpose which may be the nearest practicable purpose to the original purposes of the charity, but which is already adequately provided for, or which cannot provide a suitable and effective method of using the charity's property, would be to impose purposes which will have already failed within the circumstances laid down in section 13 of the Charities Act 1960. Thus, for example, the proceeds of sale of an almshouse or a school might not be appropriated solely for the relief of poverty or for educational purposes respectively if the area of benefit were already adequately provided with poor or educational charities. Similarly, there would be no point in extending the area of benefit of a charity if the adjoining areas to which it might be extended already had adequate provision in the terms of the charity's purposes. Instead, the purposes might be extended within the existing area of benefit. The physical location of the charity within its existing area of benefit might also be a factor in determining a practical cy près application: adjoining areas might not be readily combined with the existing area of benefit.

75. In determining the new purposes, it is essential not to erect artificial barriers to a flexible use of the doctrine. Factors which are relevant but not overriding should not be rigidly applied as immutable legal rules or principles. In the course of consultation following the Woodfield Report the following areas were mentioned as giving rise to problems:

- (i) *The elevation of the Macnaghten classification into a rigid legal definition which creates four distinct and mutually exclusive types of charity.*

The Macnaghten classification is not a definition and there is no rule of law which prohibits the charity whose purposes fall within one part of the classification from being schemed so that its new purposes include other areas of the classification. The extent to which a charity's purposes can be altered would depend upon the circumstances pertaining to the charity mentioned in the preceding paragraph. The degree of flexibility which can be applied in altering the purposes of a charity is all the greater when the existing purposes already include elements of more than one part of the classification, for instance trusts for the education of poor persons or a trust for the poor and for the public benefit. Whilst closed schools would normally, on cy près principles, be schemed for educational purposes, there may be cases where the local nature of the trust is clearly present and the circumstances warrant consideration being given to widening the objects rather than altering the area of benefit.

- (ii) *The pursuit of ostensible legal points at the expense of practical consideration.*

It is claimed that schemes proposing mutually beneficial amalgamations of charities have in the past been turned down because the purposes of the charities were not wholly coincidental. There is no legal rule which restricts amalgamations of charities to those whose purposes are identical. "Similar" in section 13(1)(c) of the 1960 Act does not mean "the same". There is no reason why adjustments cannot be made to beneficiary classes and areas of benefit where the practical considerations are clearly in favour of it.

*(iii) The automatic placing of greater weight on one part of a charity's objects than another.*

Where the beneficiary class of the charity is defined by reference to a number of components, for instance poor women resident in the parish of X, care should be taken not to attach undue importance to one component as against the remainder. It may be that other factors in the charity's foundation or trust deed will indicate that one element is more important than another but in the absence of any such indication, rules should not be created which would inhibit flexibility.

*(iv) The concept that a charity's objects can never be changed so as to exclude any part of its existing purposes.*

As a matter of general practice this is a sound rule but if taken to excessive lengths it can effectively frustrate radical reorganisations of trusts where such reorganisation would be appropriate. It is, for instance, sensible when making regulating schemes for schools to amalgamate the varied and various prize funds into a single fund so that the identity of the separate fund is lost. Such an amalgamation may be administratively and practically sound as the individual prize funds established many years ago may now be insufficient to provide the prizes intended. The process can be applied to other groupings of charities.

*(v) The idea that certain elements of a trust are sacrosanct, for instance the age limit included in educational schemes, religious qualifications in essentially secular charities, sex qualifications particularly in relation to schools.*

We take the view that no part of a charity's trusts is unalterable.

76. In the following paragraphs 77 and 80 we give two examples of the application of the cy près doctrine.

*The Tottenham Grammar  
School Foundation*

77. A free grammar school appears to have been established in Tottenham sometime before 1686 in which year the school received an endowment of £250 under the will of Sarah Dowager Duchess of Somerset for providing additional school buildings and a further sum of £1,100 towards the provision of land as income-producing endowment for the support and maintenance of the school. Tottenham Grammar School, as it was known, continued to flourish until recent times. In April 1959 the Minister of Education made a regulating scheme for the charity which confirmed the School as a voluntary school. In 1967 the School was enlarged and renamed the "Somerset School". It continued as a comprehensive school for boys until its closure in 1988. At that time the School premises were sold for approximately £9.5 million.

78. We made a scheme on 2 March 1989, by which a new body of between nine and 11 trustees was constituted, including trustees appointed by the London Borough of Haringey and the University of London. The substantially increased income of the charity was made applicable for the promotion of education of young persons of Haringey who are in need of financial assistance in a number of ways; for example, in awarding scholarships or maintenance allowances tenable at any polytechnic, university, etc or in providing books, instruments, tools, etc in assisting the beneficiaries to pursue their education, or to travel in furtherance of their education or to prepare for entry into a profession or trade on leaving

school. Power was also given to the trustees to provide such special benefits at any maintained school or college in Haringey as are not normally provided by the Local Education Authority.

79. To assist the trustees in administering their substantial capital endowment, the scheme empowers the trustees to appoint professional investment advisers qualified under the Financial Services Act 1986 to whom the power to buy and sell investments could be delegated. The duties of the investment adviser include keeping the investments of the charity under review at all times and reporting to the trustees promptly of any change in investments.

*The Hampton Fuel  
Allotment Charity*

80. In paragraphs 56 to 62 of our report for 1988, we described the circumstances which led the Court to make an order on 22 October 1988 authorising the sale of land belonging to the Hampton Fuel Allotment Charity for £21 million. Prior to the sale of the land, the charity's gross annual income was under £13,000 to be applied in relieving those in need living in the area of the ancient town of Hampton; after the sale the interest on investments alone was accruing at the rate of £48,000 per week. Such a dramatic transformation in the charity's finances made it imperative that a scheme be made to enable the trustee body and the management of the charity to be strengthened, and its purposes widened. We made a scheme on 27 July 1989 which extended the scope of application of the increased income of the charity by enabling income to be applied in the area of the London Borough of Richmond upon Thames, priority being given to charitable purposes in the original area of benefit. In addition, the trustees can now consider additional charitable needs such as disability or sickness, education and recreation. The scheme also empowers the trustees to purchase land and buildings for use as offices of the charity.

## Administration Costs and Payment of Trustees

*The costs of administration*

81. The cost of administering charities is a matter which arouses strong feelings and varied opinions. It is sometimes assumed that people who work for charity should do it for nothing, or, at most, for a pittance. Donors often express a wish that their money should go exclusively to the objects and beneficiaries, and none towards the cost of administration. Charities have on occasion colluded with such attitudes, advertising that no part of any contribution from the public will be spent on administration, and some claiming ever lower administrative costs in a competitive downward spiral. Such attitudes, however, imply that administration is a bad thing, and that the ideal administrative cost is nil. If carried into actual practice, such an attitude can only lead to badly administered charities and to inefficiency and abuse.

82. Effective and efficient administration cannot be bought on the cheap. It is an absolute necessity for the corporate achievement of any purpose. Good administration is all the more desirable where charity is concerned — carrying, as it does, the goodwill of individual donors into the public domain. The critical task is, therefore, not simply to reduce administrative costs as an end in itself (that might also reduce the charity's capacity successfully to pursue its objects): it is to identify what level of administration is necessary in each case and to ensure that the strength of a lean and efficient administration is wholly devoted to the objects of the charity in question.

83. No attempt to identify a level of administrative costs applicable to all charities has ever succeeded. Charities vary too much. This does not mean that excessively high administrative costs cannot be identified in any particular case. This is a matter of concern to us, particularly since undue expenditure on administration may well be a symptom of positive abuse calling for corrective

action on our part. While a small charity relying on voluntary effort may not even have to pay for the postage, telephone and petrol of its honorary officers (although it should always be ready to do so), any medium-sized or large charity needs accountable and efficient administration. Such charities then face a crucial question: since they cannot address their objects, let alone achieve them, without sound administration, how can they persuade the public that money spent on administration is money well spent?

84. Although many charities have high standards of management such standards are not universally adopted and in many instances the standard is capable of improvement. Considerable effort is now being made - and with increasing momentum - to raise those standards. The National Council of Voluntary Organisations took an early lead in the voluntary sector itself with the establishment of its Management Development Unit. More recently, Lord Nathan has chaired a Working Party on Efficiency and Effectiveness in the Voluntary Sector under its auspices. The Working Party's Report was published on 2 April 1990. We greatly welcome this initiative and expect it to contribute significantly to the vitality of trusteeship and the raising of standards generally. Brunel University and others have already been running courses with charities and the voluntary sector specifically in mind; the London School of Economics has launched the Centre for Voluntary Organisation; and the Open University has established a special place for the voluntary sector in its Business Studies courses. The enterprise of the Forbes Foundation in the evaluation of management in the charitable sector has also been welcomed, and a number of initiatives have emerged in the private sector to meet the need.

85. These developments have been matched by an increasing number of institutional donors, both charitable and commercial, not only taking into account the competence of the organisations they support in allocating their funds, but also seeking ways in which they can contribute directly by way of expertise and finance.

86. It seems to us that these developments will need to be matched by charities themselves, not only in making sure their own houses are in order, but also in educating the public in the necessity for good administration if charitable purposes are to be achieved. This will require conscious, corporate effort and a good deal of trust between charities themselves.

*Payment of trustees*

87. As we commented in our reports for 1978 and 1981 (paragraphs 11-20 and 61-64 respectively) the concept of remuneration of trustees does not easily accord with principles of the law relating to trusts. Moreover, to profit from trusteeship of a charity is not consistent with the traditionally voluntary nature of charity. Nevertheless, we continue to be pressed by the promoters of some new charities and by the trustees of existing charities to agree that some or all of the trustee body should be paid for acting as trustees, in addition to reimbursement for reasonable and proper out-of-pocket expenses. Occasionally it is also argued that certain key employees should be appointed as trustees. We have now prepared a leaflet (Payment of Charity Trustees CC41) (**Appendix C**) for the guidance of trustees and promoters of new charities explaining our understanding of the legal position and our own approach to requests of this kind, but it may be of interest to discuss the subject in this report in more general terms, given the representations made to us from time to time that we should be more flexible in our approach.

88. It is contended that a relaxation of our current approach to the payment of charity trustees would result in higher standards in the administration of charities. It is said that the loss of professional expertise as professional persons find it harder to accept trusteeship increases the number of charities needing to approach us for advice and, more seriously, increases the number of charities

proceeding in ignorance of their need for advice and that to allow charities to appoint professional trustees who charge for their services would help to ensure that they operated effectively, the use of their resources was maximised, and mismanagement was avoided. It is said that we too often resist the inclusion in charities' governing instruments of charging clauses for professional trustees. It is also argued that there are other circumstances, in addition to those where a trustee is paid for his professional services, in which remuneration of trustees would be justified. Such cases would include those where a person had contributed substantial assets to endow or found a charity, but wished to act in some capacity related to the assets. Instances are quoted such as further fund-raising for the benefit of the charity, or where a person possesses some particular skill or talent directly related to the main object of the charity without which the object would be less likely to be realised. Finally, it is argued that it should be possible for a trust corporation which charges fees, for example a bank, to be a charity trustee and thus provide continuity of trusteeship as well as a competent professional service.

89. To some degree these arguments reveal a misunderstanding of the current position. We do not normally require charity trustees to justify the inclusion in their governing instrument of a charging clause. Where it is proposed that trustees should be paid simply for acting as trustees, we need to be satisfied that the inclusion of the clause does not have the effect of extending the purposes of the institution so that it is incapable of being a charity since it exists at least in part to benefit the trustee or trustees. Whilst the payment of fees for specific services provided by trustees to a charity may be permissible (see *Re Coxen [1948] Ch 747*) a different situation pertains where a trustee simply receives remuneration for being a trustee and where remuneration is not associated in any particular way with the service actually given. In these circumstances the trustee may be deemed to have a beneficial interest in the charity (see *Re Barker [1886] 31 Ch D 665*; *Re Pooley [1888] 40 Ch D 1*). Accordingly, we have to scrutinise all charging clauses to determine whether the beneficial interest conferred is such that the proposed charity can no longer be regarded as one for exclusively charitable purposes. Thus, for example, if the payment to trustees were to be out of all proportion to the size of the endowment or payment proposed unrelated to the degree of service expected from the trustees, we could well take the view that the trusts simply conferred a personal benefit upon trustees in such a way that it could not be exclusively for charitable purposes.

90. Where a trustee does receive remuneration for services given, we would scrutinise very closely any clause in the governing instrument which purported to relieve the trustee from liability for any loss caused by his actions or neglect. In particular, if the trustee were a trust corporation or a professional person being remunerated for his skills, we would normally expect the higher duty of care defined in *Barlett v Barclays Bank Trust Co Ltd [1980] Ch 515* to apply. We should also be concerned to see that the charges made were not out of proportion to the service provided.

91. As far as commercial trust corporations are concerned, our view, as stated in paragraph 64 of our Annual Report for 1981, is that it is inappropriate for a trust corporation which charges fees to be a charity trustee. This does not mean, however, that we would automatically reject an application for registration as a charity if a commercial trust corporation is a sole or joint trustee and entitled to receive remuneration. There may be exceptional circumstances which would not preclude an institution from being registered in such circumstances, but each case would have to be considered on its merits.

92. If the trustees of an existing charity wish to have the power to remunerate one or more of their number and the governing instrument contains no charging clause, they would have to apply to us or the court for a scheme or order authorising it. Such a scheme or order would be needed even if the governing

instrument contained a power of variation, since trustees cannot exercise a power conferred upon them by their trust in order to confer upon themselves a personal benefit (see *Re French Protestant Hospital* [1951] Ch 567). Accordingly the exercise by the trustees of a power of variation to insert a charging clause in a governing instrument would be an improper exercise of their discretion and therefore ineffective. The court has, however, an inherent jurisdiction to authorise the payment of remuneration to trustees if such a payment would be beneficial to the administration of the trust (see *Marshall v Holloway* [1820] 2 Swan 432 and *Bainbridge v Blair* (1845) 8 Beav 588). The principle which the court would apply in deciding whether to authorise the payment of remuneration to trustees is set out in *Re Duke of Norfolk's Settlement Trusts* [1982] 1 Ch 61. In deciding whether to confer upon trustees the power to remunerate themselves or one of their number, we would apply the same principles as the courts.

93. There is therefore a degree of flexibility to allow remuneration of trustees in certain circumstances, but there seems little scope for extensive relaxation within the law as it now stands. Any prospect of statutory amendment would give rise to a number of questions, not least whether it should be possible to pay all trustees, or whether payment should be confined to professionally qualified persons for acting as trustees generally (rather than solely for their professional services). It would also need to be established whether such a provision should apply to all charities or only those over a certain size, or whether the scale of remuneration should be limited by the assets of the charity.

94. It seems to us, however, that a general power to pay trustees would be open to abuse and exacerbate public concern (whether legitimate or not) that administrative costs of charities are excessive and that charities are often run to the personal advantage of those administering them rather than of the beneficiaries. Moreover, it does not seem too fanciful to suggest that, once trusteeship had become a potential source of income, the motives of some of those prepared to act as trustees would change and a class of professional trustees would develop, possibly to the extent of collecting trusteeships along with the associated fees without being particularly or necessarily committed to the charities' causes. Quite apart from increasing the chances of a conflict between a trustee's own interests and those of the charity which the current legal position seeks to avoid, there could be greater scope for fraud and sharp practice by a minority of charity trustees who cannot be trusted, but whose numbers could well increase. In our view, none of this would be good for the image of charities nor help to encourage the voluntary spirit on which charity is traditionally dependent and which successive governments have been keen to stimulate.

95. In our opinion it would be wrong in any case to equate automatically voluntary effort with inefficiency and paid trusteeship with competence. If the trustees of a charity need special expertise or professional advice, it is open to them to employ an agent. It is not clear why that person needs to be a trustee, let alone a paid trustee. Accordingly, given the existing flexibility - albeit limited - and the adverse consequences which could follow should paid trusteeship become widespread, we question the justification for going beyond the current position and making an exception from trust law for charities.

#### *Conflict of Interest*

96. During the year we were asked whether it would be appropriate for the chairman designate of a substantial trust to be appointed a non-executive director of one of the Trust's four investment manager companies. The trustee had been selected for his financial and business experience and it was important for him to keep in close touch with the City and the financial world. The investment management company concerned was one of four responsible for managing funds for the Trust worth several million pounds, and a decision to reallocate the Trust Funds between the investment managers could significantly increase the funds under management by the particular investment company. In these circumstances,

and notwithstanding that the trustee would not receive any remuneration for his position as a non-executive director of the company, we believed that such a person would always be faced with a potential conflict of interest both in relation to the allocation of the Trust's assets between its investment managers and in relation to the review of performance and subsequent retention of the services of that investment management company as fund managers. Moreover, since he had been selected as a trustee for business and financial experience, and particularly if he were to be appointed chairman of the trustees, it would not be in the interests of the charity that he should be prevented from advising his colleagues on certain financial matters. For these reasons we did not believe it appropriate to make an order under section 23 of the Charities Act 1960 to allow him to accept appointment as non-executive director of the investment management company.

## Dealings in Land

97. We have continued our practice, described in paragraphs 52 and 53 of our report for 1987, of conferring a general exception from the need to seek our consent to property sales where it can be shown that the charity is engaged in a routine programme of land transactions; the trustees have expert qualified professional advice; the sales are subject to full marketing or follow statutory procedures (such as sales under the Leasehold Reform Act 1967); and the trustees have a satisfactory record of handling land transactions. A further 40 such orders were made in 1989 and the existence of those orders, and those made in previous years, has contributed to the overall drop in the number of orders relating to the sale of land from 1,723 in 1988 to 1,187 this year but the decline in the residential housing market, particularly in the south east of England, has probably been the major factor.

98. Of the 2,238 orders which were made relating to all types of land transactions, 254 authorised the sale of property; 524 authorised purchases, leases, easements, etc; 319 authorised borrowing on the security of charity property; and 42 authorised the release of a rentcharge.

99. The Government's proposals for replacing our supervision over charity land transactions under section 29 of the Charities Act 1960 will enable trustees to proceed without the need for our consent provided they follow certain statutory procedures. These proposed procedures foreshadow those which are already imposed in cases where we except individual transactions from our specific consent. 935 such orders were made during the year where it could be certified by or on behalf of the trustees that they were proceeding on the advice of a qualified surveyor acting exclusively in the interests of the charity; the transaction had been advertised in the open market; the trustees were satisfied that the terms of the transaction were the best that could be reasonably obtained in the interests of the charity and were advised to that effect by the surveyor; and there was no business association or family relationship between the purchaser and the charity trustees, employees or professional advisers.

100. In those cases where the market had not been fully tested, our ability to ask the District Valuer's Office for a confirmatory valuation has continued to be invaluable. 284 such valuations were made during the year. In two examples alone the amount secured to charity as a result of further marketing based on the District Valuer's advice, amounted to £1,126,000.

### *Acquisition of Land*

101. In paragraphs 73 to 75 of our report for 1988 we outlined our procedure for conferring power to invest in land on those trustees who are not empowered to do so. We have now produced a leaflet which deals with this issue and also with the purchase of land for occupation by the charity in order to carry out its purposes - for example, hostels, village halls and community centres. This leaflet (CC 33) is reproduced at **Appendix C**.

102. During the year we considered an application from the Governors of the Central Young Men's Christian Association for consent to borrow £35 million on the security of the charity's assets, including its premises at 112 Great Russell Street in the London Borough of Camden. The purpose of the loan was to enable the charity to buy back the leasehold interest in part of the premises, to refurbish those premises and to discharge certain existing liabilities. It was the Governors' intention that, when the property was refurbished, part of it would be operated as a commercial hotel by a wholly-owned subsidiary trading company, and that the profits from the hotel business would be used to pay off the loan and to provide funds for the Association's charitable activities. Financial forecasts provided by the Governors' advisers indicated that the loan could be paid off over a period of approximately 25 years if all went according to plan.

103. In our view the proposals would have placed the property of the charity at undue risk and we were not prepared, therefore, to give our consent. We were particularly concerned that the financial viability of the scheme depended upon the profitability of the hotel business which in itself was subject to factors outside the control of the charity. Moreover, the term of the loan offered to the charity was only seven years with no guarantee that it would be extended or renewed at the end of that term. Generally, we considered that the Governors had not given sufficient consideration to options which would not put the property of the charity at risk.

104. Eventually, the Governors modified their proposals to a disposal of an interest in the part of the premises that was to be used for hotel purposes as soon as suitable arrangements could be made. To enable the disposal to take place on the most advantageous terms, it would still be necessary for the charity to buy back the existing lease and to refurbish the property to an acceptable standard for hotel use. For these purposes, and to meet existing liabilities, the charity would need to borrow up to £31 million which would be repaid when the property was sold or leased. We considered that this was an acceptable solution to the problem and we accordingly made an order authorising the borrowing for up to three years pending the disposal.

## Charities Act 1985

105. During the year we received a further 269 resolutions made under the Act. Of these 35 were made under section 2 for the amendment of objects and 234 under section 3 for the transfer of property to another charity. Following action by trustees under section 4 of the Act to spend capital as income, we removed 22 charities from the Register as having ceased to exist. In the four years since the Act was brought into force, trustees of some 945 charities have taken advantage of its provisions. This is a modest but nevertheless significant contribution to the better use of charitable resources and we very much welcome the Government's proposals to simplify the Act and extend its scope and provisions. In our view this will make a significant contribution to the modernisation of charities and, in particular, the improvement in the effective use of the endowment of small charities.

## The Official Custodian for Charities

106. The financial report of the Official Custodian for Charities for the year is set out in **Appendix D**.

### *Strategy for divestment*

107. In paragraphs 85-88 of our report for 1988 we described the circumstances which had led the Government to conclude that the Official Custodian's investment services should be discontinued. Chapter 8 of the Government's White Paper details the way in which it is believed that divestment can best be achieved. In fulfilling this objective we are confident that the Official Custodian's Division can contribute uniquely to the achievement of the Commission's other objectives



— particularly in the creation of the Charity Database and in the preparation for local reviews. The information held by the Official Custodian, particularly on small charities, will be invaluable for these purposes, and the process of divestment, which will bring the Official Custodian's own services to an end, will do as much for the Commission's new objectives as the Division has done in the past for the Commission as a whole.

108. Although divestment itself cannot start until enabling legislation is brought into force, we have continued to develop a Strategy Plan for divestment.

109. The approach for the larger active charities will be simply to transfer existing investments to trustees. We are not happy, however, about transferring the large numbers of often unsatisfactory securities to the trustees of smaller charities, not least because in many cases the cost of transfer would exceed the value of the investments concerned. It is, therefore, proposed that these be sold wherever possible and the proceeds sent to the trustees together with comprehensive information and advice which will enable trustees to revitalise and improve the potential of their charities in line with the general thrust of the Woodfield recommendations and the Government's proposals.

110. The divestment strategy envisages that maximum use will be made of computer processes on a systematic basis, for reasons of economy and speed. The Official Custodian will require a new computer system to permit divestment to be carried out in the manner proposed and to enable his existing services to be maintained up to the end of the divestment process - some four years after enabling legislation comes into force. The existing computer system has neither the capacity nor the life expectancy to handle this considerable task. Work has already started to ensure that the replacement computer system is ready to coincide with the start of divestment.

111. We have already carried out certain preparatory work to facilitate the complex process of divestment. During the year we have attempted to trace the trustees of those charities using his services whose correspondents are not currently known to the Official Custodian. We were successful in establishing contact with 93% of the 7,300 charities approached. We have also begun to write to those trustees for whom the Official Custodian holds investment accounts accumulating at compound interest (mainly in the form of extraordinary repair funds and sinking funds established to replace moneys borrowed from permanent endowment). We have pointed to the practical and economic disadvantages of holding certain fixed interest securities once the Official Custodian is no longer able to perform his present investment services. We have suggested that trustees consider the advantages afforded by charitable common investment funds as an alternative investment medium. Response to this initiative has, however, been very disappointing with only 20% of those charities contacted replying.

112. We have reviewed our practice of requiring trustees (particularly those of almshouse charities) with responsibility for the maintenance and repair of buildings to invest specified annual sums in the name of the Official Custodian for the purpose of meeting future costs of extraordinary repairs. The setting aside of sufficient funds to ensure the proper maintenance and repair of buildings is the responsibility of trustees and a practice which we shall continue to encourage. No new extraordinary repair funds will be held by the Official Custodian although existing funds will remain with him until divestment. This policy is explained in a new leaflet **CC39** which is reproduced at **Appendix C**.

113. The decision to withdraw the Official Custodian's investment services also led us to reappraise the way in which we allow trustees of permanently endowed charities to expend capital provided they replaced the capital so spent out of future income. A typical example would be the realisation of invested capital in order to renovate or replace existing buildings or to erect new ones. Since trustees

have no power to spend capital we can only authorise this to be done where the capital spent is to be replaced out of income over a fixed period of time; in essence, this is a form of borrowing. For many years we have taken advantage of the Official Custodian's capacity to invest small sums of variable amounts (by consolidating a number of sums for investment) and required that the capital spent be replaced by means of a sinking fund held by him.

114. We have concluded that the system by which capital is replaced must be one which trustees find easy to understand and to operate. In future, we will authorise replacement on a pound for pound basis by the investment of annual instalments equivalent to the sum spent divided by an agreed number of years. For instance, if trustees spend £10,000 of their capital this would necessitate the investment by annual instalments of £500 over 20 years or £1,000 over 10 years. We will no longer require income arising from the invested instalments to be invested as an accretion to a sinking fund. In future the income from each invested instalment will be available to the trustees for expenditure as income.

115. It is particularly important that trustees invest each instalment in a security which they believe will protect the value of the charity's capital. The new system is explained in detail in a new leaflet **CC38** which is reproduced at **Appendix C**.

#### *Common Investment Funds*

116. In **paragraph 111** above we refer to considerable advantages to be gained from investment in Common Investment Funds (CIFs), particularly for charities unable to afford the services of professional financial advisers. CIFs, which are established by schemes made by us and which are open exclusively to charities, can afford a solution to many practical problems associated with investment management and can provide a sound basis for charities' investment needs. Charities have the power to invest in a CIF by virtue of section 22(8) of the Charities Act 1960. CIFs enable the funds of contributing charities to be pooled and invested in a large and diversified portfolio of stocks and shares. Units in the CIF equivalent to the sum invested are allocated to each charity. The funds are actively managed by professional fund managers. Their expertise and the ability to spread the investment portfolio over a wider range of investments than may be available to individual charities, should secure a safer balance of risk and growth than individual trustees could achieve. CIFs may however differ both in their investment portfolio and in the balance between capital growth and income. Before investing trustees should select the one which will be most appropriate to the needs of their charity.

117. The administrative advantages to charity trustees of investing in CIFs are considerable. The investment process is simple and the cost of making investments and withdrawals is low. Transactions can generally be carried out for any amount and without the need to act through a stockbroker. Holdings in CIFs are registered in the name of a charity rather than in the names of individual trustees, which avoids the need to re-register new trustees on any changes in trusteeship occurring. Finally, because CIFs hold only charity funds, dividends and interest are remitted gross automatically, thus avoiding the need to claim any tax relief due.

### The Charities Official Investment Fund

118. In their 1989 report, the Trustees note that against a background of steady economic growth worldwide, the United Kingdom experienced rising inflation, a substantial trade deficit and high interest rates. Profits, however, especially of the larger companies, grew satisfactorily and stock markets continued the recovery begun in 1988. The Trustees' strategic policy emphasised overseas investment with the proportion invested in overseas equities and bonds rising to 26% during the year. The yield at the year end was 4.9%. The Income Share value rose by 26.9% in the year to 536.88p, as a result of the rise in UK and overseas equity markets. The dividend was increased by 12.9% from 23.3p to 26.3p, mainly

because of strong UK dividend growth. Over the last five years, the Share Value has risen by 12.8% per annum and the dividend by 10.9% per annum compared with a rise of 5.4% per annum in the Retail Price Index.

119. The Accumulation Share Value (with income reinvested) increased by 34.6% to 1817.29p, also benefiting from substantial investment in overseas equities. The Trustees comment that in the United Kingdom, as for COIF Income Shares, a good weighting in the newly privatised water issues was achieved and the Shares also benefited from the takeover for cash of several holdings.

## Charities Deposit Fund

120. As we reported in paragraph 61 in our report for 1984, we made a scheme under section 22 of the Charities Act 1960 enabling the Trustees of the Charities Official Investment Fund to broaden their investment services to charities by creating a Deposit Fund exclusively for charities. Under the terms of the scheme, the trustees were able to accept only deposits of money and participating charities were entitled to the repayment of the amount deposited and interest. The Fund has grown to its present size of £150 million in 4883 accounts by offering a competitive rate of interest closely linked to the money markets and payable on deposits of any amount, and many charities, especially small ones, have benefited accordingly. The average interest rate paid by the Fund during 1989 was 13.27% which was higher than the rates paid by comparable commercial market money funds throughout the period.

121. During the year doubts were expressed about the extent of our power under section 22(5) to make such a scheme. We considered the point carefully and took the advice of Counsel. We concluded reluctantly that the proper interpretation of section 22(5) means that it is not possible to constitute a common investment fund restricted solely to the deposit of money. Such deposit facilities have to be included in a common investment scheme established under section 22(1) of the Act under which investing charities have shares in the value of the fund which may fluctuate in value.

122. To deal with the problems that have occurred we have made a new scheme. The COIF Charities Fixed Interest and Deposit Fund will provide facilities for charities either to invest in fixed interest stocks through Fixed Interest Income or Accumulation shares or to place money on deposit. The Deposit Account service given by the new fund will be identical to that of The Charities Deposit Fund. The Trustees have written to all the holders of deposits in the original scheme inviting them to transfer their deposits to the new scheme which started operation on 1 April 1990. We are grateful to the Trustees who operated both the original and the new scheme for their help in bringing this about. We hope that it will be possible for section 22(5) of the Charities Act 1960 to be amended by the proposed forthcoming legislation.

## Appendix A

(Paragraph 8)

### LEGISLATION AFFECTING CHARITIES

*Local Government and  
Housing Act 1989*

Part IV of this Act provides for new safeguards to ensure proper control and accountability of local authorities' finances. Part V of the Act extends the new safeguards to cover the financial transactions of companies "controlled" by local authorities (including those companies operating at arms' length) and companies "influenced" by local authorities as defined in sections 68 and 69 of the Act respectively. These definitions apply whether or not such companies are charities, but the Secretary of State has power to grant exemption by directing that a particular company or description of companies are not to be regarded as "controlled" or "influenced".

Ministers have accepted that companies set up solely for charitable purposes should be included in the categories of companies to be exempted if they meet the criteria in the Act for being regarded as subject to the influence of one or more local authorities.

The Secretary of State has power to direct that other individual companies should be excluded from the categories of "controlled" and "influenced" companies.

Part VIII of the Act concerns grants made by local housing authorities for the improvement or repair of housing accommodation. Under section 109, application for a grant made by an owner occupier or tenant is to be means tested. Where, however, the applicant is a charity (which in this Part of the Act does not include a registered housing association), section 110 provides that other considerations are to be applied by the local housing authority for determining the amount of any grant. These include any obligation or practice on the part of the applicant to let dwellings at less than the open market rent, financial resources available to the applicant in addition to the rent from the dwelling, and the circumstances of the applicant generally. Grants are mandatory only where the relevant works will make the dwelling fit for human habitation or are necessary to comply with a notice issued under certain statutes.

*Common Land  
(Rectification of Registers)  
Act 1989*

This Act received the Royal Assent on 21 July 1989. It provides that any person may, by notice in writing given to the registration authority maintaining a register of common land and of town and village greens under the Commons Registration Act 1965, object to the inclusion on either of the registers of land that was on 5 August 1945, and has since then always been, land on which a dwellinghouse stands or land ancillary to a dwellinghouse. For these purposes "land ancillary to a dwellinghouse" means a garden, private garage or outbuildings used and enjoyed with a dwellinghouse and "dwellinghouse" includes a building consisting of two or more separate buildings. Any objection must be given in writing within three years of the passing of the new Act. On receipt of the objection, the registration authority must refer the matter to a Commons Commissioner for consideration. If he upholds the objection, the land concerned must be removed from the register. The detailed procedures to be followed in these cases are contained in the Common Land (Rectification of Registers) Regulations 1990 (SI 1990/311).

*Law of Property  
(Miscellaneous Provisions)  
Act 1989*

This short Act gives effect to recommendations made by the Law Commission in three reports. Section 1, which had not at the time of going to print come into force, abolishes the requirement that individuals must seal deeds. It provides that deeds must be signed and witnessed, and it must be clear on the face of the document that it is intended to be a deed. Section 2 provides that contracts for the sale or other disposition of land must be made in writing and signed by all

the parties to the contract: it is no longer possible to make an oral contract for the disposal of land. Section 3 abolishes the rule laid down in *Bain v Fothergill* [1874] LR 7HL 158 which limits the damages that a purchaser can receive for breach of contract if a vendor is unable to give good title to the land he has contracted to sell. These two latter sections came into force on 27 September 1989.

*The National Savings Bank  
(Amendment) (No 2)  
Regulations 1989 (SI  
1989/2045)*

These Regulations amend the National Savings Bank Regulations 1972 and came into force on 1 January 1990. On that date, Friendly Societies, Building Societies, Industrial and Provident Societies, charitable and other societies and corporations ceased to be entitled to open accounts with the National Savings Bank (other than as trustees of private trusts in specified circumstances). The Regulations do not affect accounts opened by charities and other institutions prior to that date.

*Finance Act 1989*

The Finance Act 1989 increases from £240 to £480 a year the maximum tax-free donation which an employee may make to charities through the payroll deduction scheme. The Act also has the effect of conferring tax relief on a covenanted subscription to a charity whose sole or main purpose is the preservation of property or the conservation of wildlife for the public benefit if, in consideration of the payment, the person concerned is entitled to free admission, or admission at a reduced charge, to view the property or observe the wildlife concerned.

This Act also makes a number of changes to the Value Added Tax Act 1983. One of the most significant renders the construction of new buildings subject to Value Added Tax if they are neither dwellings nor intended for use solely for a relevant charitable purpose. In this context, use for a relevant charitable purpose means use by a charity otherwise than in the course or furtherance of a business and/or as a village hall or in providing social or recreational facilities for the local community.

*Companies Act 1989*

The provisions of section 111 of the Companies Act 1989 will, when this part of the Act is brought into force, affect the administration of charitable companies in a number of ways:

- (i) *No change to the objects clause of a charitable company will be registered by the Registrar of Companies unless the prior written consent of the Commissioners has been obtained.*
- (ii) *A special regime of ultra vires is established for charitable companies.*
- (iii) *The consent of the Commissioners is required in the case of a charitable company to validate the ratification by members of the company of certain types of transaction to which the directors have committed it, without proper authority.*
- (iv) *Where a company is a charity and its name does not include the word "charity" or "charitable" the fact that the company is a charity shall be stated in a range of documents issued by or on behalf of the company.*

## Correction

### **HOUSING AND BUILDING CONTROL ACT 1984 – COMMISSIONERS' REPORT FOR 1984 – APPENDIX E – PARA (D)**

The words in parenthesis in the first sentence of the second paragraph should be deleted. The extension of the right to buy to cases where the landlord does not hold a freehold cannot be applied against charitable housing associations and charitable housing trusts.

## Appendix B

(Paragraph 8)

### LEGAL DECISIONS AFFECTING CHARITIES

*Regina v Westminster Roman Catholic Diocesan Trustee, ex parte Andrews*  
*Law Report Independent 27*  
July 1989 [*Brunyate v ILEA* [1989] 2 All ER 417]

The trustee of the Cardinal Vaughan Memorial School, a Roman Catholic voluntary aided secondary school for boys maintained by the Inner London Education Authority, was empowered by an instrument of government to appoint the majority of the school's governing body, and to determine the term of office of such a governor at any time. The articles of government provided that the governors should have the general direction of the conduct and curriculum of the school.

The school site was held on trust for use as a secondary Roman Catholic school and for other Roman Catholic educational charitable purposes as the Trustee thought fit. The trust deed vested the management or control of the school in the governors, who also had power to make regulations in respect of admission ages.

The Trustee, which was also the trustee of seven other schools in the Diocese, had proposed to close two schools, remove the sixth forms in the remaining six schools and establish a sixth form college. The majority of governors at the Cardinal Vaughan school opposed the proposals. The president of the board of directors of the Trustee wrote to two governors appointed by the Trustee requesting their support for the scheme. They were unable to do so and were dismissed and replaced by governors prepared to support the Trustee's policies.

On application on behalf of the school's parents' association for judicial review of the decision to determine the governors' appointments the Court of Appeal held that having regard to the provisions of the trust deed and the articles of government, the control of the characteristics of the school and the nature of the education provided was a matter exclusively for the governors. It was not a matter over which the Trustee had control. There was no material distinction between the relationship between the Trustee and the governors here and that between ILEA and the governors in the case of *Brunyate v ILEA* [1989] 2 All ER 417. In that case the House of Lords held that in relation to a voluntary controlled school, a local education authority could not remove a governor it had appointed for failure to comply with its wishes because governors of voluntary schools had both the right and duty, so long as they held office, to exercise their function independently of the local education authority and in accordance with their own judgment, and that the discretion to remove from office could not be used in such a way as to usurp the governors' independent role.

The Trustee's purported determination of the office of the two governors was, therefore, not a valid exercise of its powers under the articles of government.

*Customs and Excise Commissioners v Bell Concord Education Trust Limited* [1989] 2 WLR 679

This case involved consideration of whether the educational services provided by the charity were services provided "otherwise than for profit" within the meaning of item 2(a) of Group 6 of Schedule 6 of the Value Added Tax Act 1983 and accordingly whether the charity was not registrable for value added tax.

The charity was a company limited by guarantee. Its objects were to promote the advancement of education and to carry on, acquire and develop boarding or day schools. Its memorandum and articles provided that its income and property were to be applied solely towards the promotion of its objects and that no portion of them should be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to its members. The charity's only activity was carrying on an educational establishment known as Concord College.

The issue was whether the charity was registrable for value added tax and this depended upon whether the services it supplied were exempted. A supply of services is exempt from VAT under section 17(1) of the Value Added Tax Act 1983 if it is of a kind specified in Schedule 6 to the Act. Item 2(a) of Group 6 of that Schedule includes: "The provision, otherwise than for profit, of - (a) education or research of a kind provided by a school or university;...". Manchester Value Added Tax Tribunal as a fact found that the charity ran, and budgeted for, a substantial revenue surplus to build up cash reserves to maintain and improve the quality of the facilities which it offered to its students. The Tribunal held that the charity was operating "otherwise than for profit" and was not registrable for value added tax. However, on an appeal, Mr Justice Taylor construed the Act of 1983 in the light of an EEC Directive, the Sixth Council Directive (77/388/EEC). On that basis he found that the exemption did not apply where, for the time being, an organisation was aiming to make a surplus or profit on current account. Accordingly, he held that the charity was not operating "otherwise than for profit" and that the charity was registrable for value added tax.

On appeal to the Court of Appeal, Sir Nicolas Browne-Wilkinson V-C concluded that there were two possible views. First that, even though the surplus would only ever be applied for the educational charitable purposes of the charity, those services were being provided for profit so long as the charity was pursuing a policy of making a surplus on their provision. This view focused on the policy for the time being pursued by the organisation, irrespective of the objects for which it was established. Alternatively, since the surplus could never redound to the profit of an individual but must be applied for the educational charitable purposes of the charity, the services were being provided otherwise than for profit.

The Vice-Chancellor concluded that the phrase "otherwise than for profit" was capable of either of the two meanings. He considered it inconceivable that Parliament would have intended the exemption to depend upon ascertaining the subjective state of mind of an educational body at regular intervals, and that common sense suggested that the exemption should depend on some lasting objective yardstick such as the objects of the company. On its true construction, the phrase "otherwise than for profit" referred to bodies which were non profit-making in the ordinary sense rather than bodies which from time to time aim to make a profit on revenue account.

He concluded that as there was an ambiguity in the United Kingdom legislation it was permissible and necessary to construe that legislation in the light of the Directive so as to produce compliance by the United Kingdom with its treaty obligations by making the United Kingdom provisions accord, so far as possible, with the provisions of the Sixth Directive. Since he found no help in the English text, he considered the French text of the Sixth Directive. He found that it clearly referred to one kind of organisation: one which was not established with a view to systematic profit, any profit being applicable to the furtherance of its objects. This led him to conclude that the United Kingdom Government could only have withheld the exemption from organisations which had in their power to distribute profits for private gain. The sole question was whether the provision of education by the charity was or was not "otherwise than for profit" within the meaning of item 2.

The other members of the Court had reservations about minor points but agreed in allowing the appeal.

*Family Housing  
Association v Jones and  
Another Times Law Report  
6 November 1989*

This case involved the question of whether a homeless person given self-contained accommodation by a housing association which retained a key under an agreement, was a tenant or a licensee of the premises occupied.

The Court of Appeal, having reviewed the authorities and in particular the case of *Aslan v Murphy* 3 AER 130, concluded that the agreement created a weekly tenancy. The occupier paid a weekly charge for her right to occupy the flat and the agreement fulfilled all the requirements appropriate for the creation of a tenancy.

The retention of a key by the Association could not itself be decisive. The rights retained by the housing association might be slightly greater than those usually retained by a landlord under a lease, and the Court considered that the arrangement was more akin to a tenancy than to a licence.



## Appendix C

(Paragraph 11)

### THE COMMISSIONERS' SOUTH WEST REGIONAL OFFICE

#### **The Commissioners' South West Regional Office**

##### **The need for a regional office**

The Charity Commission has embarked on a programme of major change which will have significant impact on the structure, functions and statutory powers of the Department. This, together with accommodation and staffing difficulties faced by the Commissioners' London office, has convinced the Commissioners of the advantages of enhancing the Department's regional presence by transferring work from London to the South West.

Accordingly, they have secured temporary office accommodation at The Deane, Tangier, Taunton, Somerset, TA1 4AY (Tel 0823 321102). This will open for business on **23 October 1989**. In the longer term (2 or 3 years), the Commissioners plan to extend the work dealt with by the regional office to work relating to charities in most of the southern counties of England and Wales.

Initially, however, the temporary office will deal with certain work relating to **established** charities only in the counties of:

- Avon
- Berkshire
- Cornwall
- Devon
- Dorset
- Gloucestershire
- Hampshire
- Oxfordshire
- Somerset
- Wiltshire.

For the time being the London office will continue to be responsible for **all** charities in the following counties:

- Bedfordshire
- Buckinghamshire
- Cambridgeshire
- Essex
- Hertfordshire
- Kent
- Norfolk
- Suffolk
- Surrey
- Sussex.

The London office will also continue to be responsible for:

- National charities
- London charities
- Services charities.

**Liverpool office**

The Commissioners' office in Liverpool will **not** be affected by this reallocation of work.

**What will the regional office do?**

For the charities in the counties listed on page 1, the temporary office will concentrate on:

- the authorisation of land transactions;
- the exercise of the Commissioners' Scheme and Order making powers;
- the giving of advice under the Charities Act 1960; and
- the consideration of resolutions made under sections 2 and 3 of the Charities Act 1985.

**Central Register of Charities and accounts**

Until further notice, there will be no public access to the Central Register of Charities at the temporary Taunton office and registration enquiries should continue to be addressed to the Central Register of Charities, St Alban's House, 57/60 Haymarket London SW1Y 4QX (Tel 01 210 4533/4405). Statements of Account should also continue to be sent to the Central Register in London.

**How exactly will the work be divided between London and Taunton?**

The precise division of functions between the London and Taunton offices is set out in more detail in the Annexes to this leaflet, but if you have any doubts about the correct office to contact please telephone our general inquiries point in London (Tel 01 210 4455) or Taunton (Tel 0832 321102).

*Version 1*

September 1989

**Initial division of functions between the  
London and Taunton offices**

**ANNEX A**

<b>FUNCTION COUNTY</b>	<b>Authority for land transaction</b>	<b>Schemes and Orders</b>	<b>Advice and Corres- pondence</b>	<b>Charities Act 1985</b>	<b>All other work</b>
Avon	Taunton	Taunton	Taunton	Taunton	London
Berkshire	Taunton	Taunton	Taunton	Taunton	London
Cornwall	Taunton	Taunton	Taunton	Taunton	London
Devon	Taunton	Taunton	Taunton	Taunton	London
Dorset	Taunton	Taunton	Taunton	Taunton	London
Gloucestershire	Taunton	Taunton	Taunton	Taunton	London
Hampshire	Taunton	Taunton	Taunton	Taunton	London
Oxfordshire	Taunton	Taunton	Taunton	Taunton	London
Somerset	Taunton	Taunton	Taunton	Taunton	London
Wiltshire	Taunton	Taunton	Taunton	Taunton	London
Bedfordshire	London	London	London	London	London
Buckinghamshire	London	London	London	London	London
Cambridgeshire	London	London	London	London	London
Essex	London	London	London	London	London
Hertfordshire	London	London	London	London	London
Kent	London	London	London	London	London
Norfolk	London	London	London	London	London
Suffolk	London	London	London	London	London
Surrey	London	London	London	London	London
Sussex	London	London	London	London	London
London	London	London	London	London	London
National	London	London	London	London	London
Services Charities	London	London	London	London	London

## Functions

## ANNEX B

### Authority for land transactions

Correspondence concerning transactions requiring the Commissioners' consent under section 29 of the Charities Act 1960 including:

- consent to sales and exchanges of land;
- consent to sales of rentcharges;
- consent to the grant and surrender of leases;
- consent to the grant of easements and other transactions.

### Schemes and Orders

○ The exercise of the Commissioners' Scheme-making powers under the Charities Act 1960; and  
○ Orders of the Commissioners for the following purposes:

- appointing trustees;
- vesting property;
- discharging the Official Custodian for Charities in respect of investments;
- authorising the purchase of property;
- the authorisation of charity borrowings charged on charity property;
- the authorisation of expenditure from capital including directions regarding its replacement;
- the constitution of extraordinary repair and cyclical maintenance funds for almshouse charities;
- sanctions under the New Parishes Measure 1943;
- sanctions under Section 10 of the Methodist Church Act 1976.

**Advice and  
Corres-  
pondence**

- Advice under section 24 of the Charities Act 1960.
- Legal problems concerned with the administration of an established charity.
- Notification of the appointments of trustees.
- Approval of appointment of trustees.

**Charities  
Act 1985**

Correspondence (including the consideration of resolutions) concerning sections 2 and 3 of the Charities Act 1985.

**All other  
work**

- Instructions regarding or enquiries relating to the investment of charity funds in the name of the Official Custodian for Charities.
- Enquiries of the Central Register of Charities.
- Enquiries concerning the registration of charities under section 4 of the Charities Act 1960 including the presentation of draft governing instruments of proposed charities.
- Resolutions passed by trustees under section 4 of the Charities Act 1985.
- Notices of proposed vesting under the Incumbent and Churchwardens (Trusts) Measure 1964.
- The submission of charity accounts for all charities.
- Notification of any alterations in the registered particulars of charities.
- Complaints about the administration of charities concerning the misapplication of charity property or the misuse of charity funds.
- General questions concerning the administration of charities not specific to a particular charity.

## Appendix C

(Paragraph 87)

### PAYMENT OF CHARITY TRUSTEES

**Introduction** This leaflet describes the restrictions on the extent to which charity trustees may be paid and those circumstances where payments may be made. Restrictions on the ways in which charity trustees may benefit from their trust go beyond actual payments of money. The expression "payment" is used here to include all such benefits. In particular the leaflet explains:-

	<b>Page</b>
<b>Why should trustees be paid?</b>	<b>1</b>
<b>Who are charity trustees?</b>	<b>2</b>
<b>Restrictions on payment of trustees</b>	<b>2</b>
<b>Employment of agents</b>	<b>3</b>
<b>Proposed charities</b>	<b>3</b>
<b>Charities funded by the public</b>	<b>4</b>
<b>Existing charities</b>	<b>4</b>
<b>Further information</b>	<b>5</b>

**Why should trustees be paid?** Promoters of new charities and trustees of existing charities sometimes propose that some or all of the trustees should be paid for acting as trustees as well as being paid reasonable and proper out-of-pocket expenses. They also suggest that certain key employees should be able to act as trustees.

It is said that with the growth in the size and complexity of charities it is more and more difficult to persuade people with the right skills and experience to accept the burden of trusteeship without some payment, and that as a result charities are neither as efficient nor as effective as they could be. On the other hand, to profit from

trusteeship of a charity does not fit with the traditionally voluntary nature of charity. Nor does the idea of payment easily agree with the law relating to trusts.

**Who are charity trustees?**

In this leaflet the term "trustees" means "the persons having the general control and management of the administration of a charity"\*. These words include:

- trustees of charitable trusts;
- directors of companies established for charitable purposes;
- members of the executive committees or other managing bodies of unincorporated associations (e.g. a community association or club) established for charitable purposes;
- people who hold money raised from an appeal to the public for a charitable cause.

\*See Charities Act 1960 section 46

**The Legal Position**

**Restrictions on payment of trustees**

The general legal principle is that trustees cannot charge for their time, trouble or expertise in administering a charity or derive any benefit from their charity. This principle is based upon the general rule that a trustee must not make a profit out of his position of trust, or put himself in a position where his duties and responsibilities as a trustee might conflict with his own personal interests. The application of this general principle may in some circumstances be modified by the document governing the charity.

A power in a governing instrument which enables trustees to be paid as trustees or to be appointed to paid positions under the charity confers a benefit on the trustees. In some circumstances this may extend the purposes of the institution to the private benefit of the trustees so far that the purposes will not be exclusively charitable. Accordingly that institution cannot be a charity.



**Employment of agents**

Charities must, however, be administered efficiently and, if necessary, must employ staff and agents to carry out their work. There is no difficulty if those people are not also trustees and benefits given to them are reasonable. Trustees are also allowed to employ agents such as solicitors, bankers and stockbrokers or others to provide professional assistance in the administration of a charity\*. They cannot however delegate their authority and remain responsible for the acts of any such agent.

\*See Trustee Act 1925 section 23

**Proposed charities**

It is usually for the promoters of a new charity to decide what provisions are included in its governing instrument.

A document setting up a charity may, at the start, specifically allow professionally qualified trustees to charge for their services whilst acting in a professional capacity for the trustees as a whole.

Clauses of this kind usually allow any trustee who is a solicitor or other person engaged in any profession to charge and be paid all usual professional or other charges for work done by him or his firm in connection with the execution of the trusts but not to receive payment simply for acting as a trustee.

A person who settles substantial property on charitable trusts may include provision for the payment of trustees. If the gift is to remain charitable, however, the provision must not be out of proportion to the size of the gift, nor should the payment be unrelated to the degree of services expected from the trustees. Payment on such a scale or which conferred no significant benefit on the charity would be to profit those trustees in a way which meant that the trust was not wholly charitable.

The Commissioners will therefore reject a proposed charity with such a clause if that clause affects its charitable status.

Even when the governing instrument of a charity does contain a permissible clause allowing trustees to charge for work done by them, they can be remunerated only in accordance with that clause and in no other way. The

clause will be strictly applied.

**Charities  
funded by the  
public**

The position would be different if the proposed charity was to be principally funded by direct appeals to the public. In such a case the public would reasonably expect the no benefit rule to apply. Where funds are raised from the public no provision may be made for the payment of trustees unless contributors were aware that part of the funds raised would be kept by the trustees as payment.

**Existing  
charities**

If trustees of an existing charity wish to depart from a specific power contained in the document governing a charity or to obtain a power to pay trustees when none exists they will have to apply to the Commissioners or to the Court for specific authority to do so. This authority may be given in the form either of an order to allow a specific payment or a scheme if a more general power is to be given. Where there is no such power the Court and the Commissioners will generally give such an authority or power only if there are special circumstances.

A scheme or order will be needed even when the trusts of a charity contain a power to amend them. Trustees cannot exercise a power given to them by the document governing the charity to confer a personal benefit on themselves. This would be an improper exercise of their powers and ineffective. A power to pay one of their number would constitute a personal benefit. (Each trustee might be influenced by the hope that the others would do the same for him). This means that a power of amendment cannot be used to add a power enabling trustees to pay themselves for administering their trust.

It is only in very exceptional circumstances that a trustee may be permitted by scheme or order to be paid for acting as a trustee when the document governing the charity does not already include provision for that. These arise only when it is possible to show that it is both **necessary** and **reasonable** in the interest of the charity and its beneficiaries. It might be possible, for instance, to show that payment was necessary to obtain the services of a particular individual trustee whose

services were of special value to the charity and would not otherwise be available to it. It may also be possible where it is necessary to obtain the services of a professional trustee such as a trust corporation as a custodian trustee.

Where, however, people have skills or special qualifications which are needed by the charity and for which the charity has to pay, it will usually be possible to obtain their services by means of employing them as an agent or member of staff of the charity. Wherever possible, that should be done. It is only where it can be shown that it is **necessary** for that person to be a trustee as well that such an appointment can be regarded as proper. If, however, such an arrangement is made it cannot be too strongly emphasised that the amount of the payment must be reasonable having regard to the service actually given by the person appointed.

The persons who benefit must always be absent from discussions concerning their own appointment or payments to be made to them. They must never form a majority on the trustee body.

**Further information** Further information may be obtained by writing to the Commissioners.

V1

March 1990

## Appendix C

(Paragraph 101)

### ACQUIRING LAND

#### Acquiring Land

**What is this leaflet about?** This leaflet gives general guidance to charity trustees who are thinking about acquiring land, whether for the charity's own use or as an investment. It is not intended to replace professional advice which trustees will need to take if they wish to acquire land. In particular, the leaflet gives information about:

	<b>Page</b>
<b>Trustees' general duties</b>	<b>2</b>
<b>Dealing with local opposition to a purchase</b>	<b>3</b>
<b>Whether trustees can acquire land for their charity's use</b>	<b>3</b>
<b>Whether trustees can invest in land</b>	<b>3</b>
<b>How to get an order of the Commissioners</b>	<b>4</b>
<b>Whether trustees can buy land on mortgage</b>	<b>5</b>
<b>General authority for larger charities to invest in land</b>	<b>6</b>
<b>Whether it is a good idea to invest in land</b>	<b>7</b>
<b>Further information.</b>	<b>7</b>

**Who is this leaflet for?** Although the leaflet is written with the needs of trustees of charitable trusts in mind, the advice and information which it gives will be generally applicable to directors or committees of charitable companies.

**What are the general duties of trustees?**

The duties of charity trustees are the same as those of private trustees. The primary duty of trustees is to carry out their trust in accordance with its terms. To that end trustees have a general duty to act reasonably and in the interests of their charity. They must exercise the same care in managing the charity's affairs as a prudent man would exercise in looking after his own affairs. This means that when trustees are considering acquiring land, they should take all reasonable steps to ensure that:

- the property is suitable for the use to which it will be put and in particular is not subject to any legal restrictions or conditions which might conflict with such use, and which the trustees might have difficulty in fulfilling;
- any necessary planning permission is obtained; the price or rent to be paid is a fair one compared with similar properties on the market;
- the charity can afford the purchase, in particular that if the property is being bought with a mortgage, the mortgage can be financed out of the income of the charity and that the possibility of a rise in interest rates is budgeted for;
- when acquiring a lease, the terms of the lease are fair and reasonable;
- advice is obtained on specialised matters from qualified professional advisers (such as a solicitor, a surveyor, and an architect if necessary).

*The cost of taking professional advice can be met from the charity's income.*

If trustees are buying land with the help of a loan, it is their duty to secure the best loan terms reasonably obtainable by "shopping around" and comparing interest rates and other terms between different lenders.

**Dealing with local opposition to a purchase**

Some charity projects involving the acquisition of land arouse opposition locally even to the extent of active hostility. Where this is likely, trustees are advised to plan carefully in advance, to consult widely and to provide full information about their proposals and the reasons for them.

**Can trustees acquire land for the charity's use?**

The Commissioners take the view that in general charity trustees have the power to acquire land if it is needed to carry out the purposes of the charity. The governing instruments of some charities include an express power to acquire land but, where this is not the case, the power can usually be taken as implicit in the trusts. An order of the Commissioners is not needed to authorise this type of purchase but if trustees are in any doubt about their powers they should write to the Commissioners.

If moneys representing permanent endowment are being used to acquire land other than freehold land, then the Commissioners may need to authorise the expenditure and to set up an account to replace the capital spent. Further, if trustees are proposing to buy land with the help of a loan which is to be secured by a mortgage or charge on any of the charity's property, the Commissioners may need to make an order to authorise the mortgage or charge. Mortgages are discussed later in this leaflet.

*Property constitutes permanent endowment if the trusts of the charity do not permit it to be spent as if it were income.*

**Can trustees invest in land?**

Yes, if the governing instrument of the charity contains a power to invest in land or the trustees obtain an order of the Commissioners authorising them to do so.

One exception to this rule is where trustees are purchasing land with funds which represent the proceeds of sale of land settled on trust for sale. In this case the Commissioners' consent to the purchase is not needed even if the governing instrument does not include a power to invest in land.

**How do trustees go about getting an order?**

The Commissioners can authorise, under section 23 of the Charities Act 1960, certain actions which trustees would not otherwise have power to take. The Commissioners cannot, however, authorise under that section any action which is expressly prohibited by the trusts of the charity or which would have the effect of extending or altering the purposes of the charity. One such possible action is the purchase of land. But before the Commissioners can give their authority they must be satisfied that the proposed purchase is expedient in the interests of the charity.

To enable the Commissioners to consider making an order, trustees should write to them with a brief explanation of their proposal and how it will benefit the charity. The Commissioners will also need to see a report from a qualified surveyor (a member of the Royal Institution of Chartered Surveyors or the Incorporated Society of Valuers and Auctioneers), who is acting for the trustees and for no other party to the transaction.

The surveyor's report should include:

- a description of the property;
- details of any planning permission, if needed by the trustees;
- a valuation of the property;
- advice on the price the trustees should pay, or at auction, the maximum bid they should make;
- a description of repairs or alterations the trustees would need to make, and the estimated cost;
- a positive recommendation that it is in the charity's interests to purchase the property;
- anything else the surveyor thinks relevant.

If the purchase is by way of investment rather than for the charity's own use, the surveyor should state in addition:

- the initial yield on capital invested;
- the scope for increases in rent, by way of rent reviews or otherwise;
- the prospects for growth in capital value.

The trustees should also send in a copy of the charity's latest accounts, if they have not already done so.

**Can trustees buy land on mortgage?**

In general they can, but the Commissioners do not recommend trustees to borrow money on mortgage for buying land as an investment. An order of the Commissioners under section 29 of the Charities Act 1960 may be needed to authorise the mortgage, even if an order is not needed to authorise the purchase itself.

Usually the property offered as security for a mortgage loan is the one being purchased, but on occasions trustees will want to mortgage a property the charity already owns.

The Commissioners' consent to a mortgage (or legal charge, or deposit of title deeds) will be needed if:

- the property to be mortgaged will represent permanent endowment of the charity; or
- the property being mortgaged has been or is being occupied for the purposes of the charity when the mortgage is given (this happens sometimes, for example, when a charity is buying the freehold of property it already occupies as tenant or licensee).



The Commissioners consider that if the charity moves into a property on the same day as the mortgage is given (usually the day the purchase is completed), then the property will not count as having already been occupied for the purposes of the charity.

*When applying for consent to a mortgage, trustees will be asked to fill in a form giving details of the loan they are taking out, and to supply the Commissioners with at least the last three years' charity accounts if they have not already been filed.*

**General  
authority  
for larger  
charities**

The Commissioners are prepared to make orders giving some charities a general authority to purchase land as an investment. This type of authority relieves the trustees of the need to seek a separate order for each purchase.

A general authority is suitable only for a charity which either:

- has traditionally held land as an investment; or
- has no tradition of holding land but has a sufficiently wide and varied portfolio of other investments into which land could reasonably be introduced.

The Commissioners will only give a general authority to a charity which:

- has a recent history of well handled and uncontroversial property transactions;
- the Commissioners believe will take suitable professional advice before proceeding with any purchase;
- has a particular purchase in mind at the time the order is offered; and
- is not prohibited by its governing instrument, or an Act of Parliament, from investing in land.

**Is it a good idea to invest in land and buildings?**

This is a question on which trustees should seek professional advice. The needs and resources of charities differ widely, and property will be an appropriate way to invest the funds of some charities, but totally unsuitable for others.

Some of the points to be considered when thinking about buying property as an investment are:

- no two properties are the same, and their values have to be assessed individually;
- property cannot be turned into cash as readily as many other investments;
- a holding of stocks or shares can be sold piecemeal to raise an exact sum which may be needed: this is unlikely to be possible with property;
- repairs and necessary improvements will need to be budgeted for;
- once acquired, investment property will need active management of a specialised kind; the Commissioners consider that charities without the resources to provide this should avoid acquiring investment property.

**Further information**

It is possible to invest indirectly in property, by buying shares of property companies and through property-based unit trusts. If an investment of this kind can be shown to be justified, the Commissioners will be willing to consider authorising it if it is not already within the trustees' investment powers.

Many issues raised in this leaflet will require the advice of the trustees' surveyor or solicitor. If however you wish to obtain further information about the Commissioners' procedures please write to the Charity Commission.

*Version 1*

June 1989

## Appendix C

(Paragraph 112)

### EXTRAORDINARY REPAIR FUNDS

#### Extraordinary Repair Funds

**Introduction** For many years it has been the Commissioners' practice to require in some of their schemes that trustees with responsibility for buildings (particularly almshouse trustees) should set aside a specified sum out of the charity's yearly income in a reserve fund to provide for the extraordinary repair and maintenance of the buildings. Frequently, these reserve funds were required to be invested in the name of the Official Custodian for Charities and accumulated at compound interest in his name until the need arose to call on them.

**Review of practice** The Commissioners have reviewed their practice in the light of the Government's acceptance of the thrust of a Report under the Chairmanship of Sir Philip Woodfield. This suggested that the Commissioners should place a greater emphasis on the monitoring and supervision of charities and that in order to do so they should disengage themselves from those areas of the management of charities which are properly for the trustees.

**Current policy** The maintenance and repair of charity property (and the setting aside of sufficient funds to ensure that this is done) is the proper responsibility of charity trustees. The Commissioners have, therefore, decided that no new Extraordinary Repair Funds should be held by the Official Custodian and that existing funds held for such purposes in his name should be transferred to the trustees whenever the opportunity arises, for example, if a scheme or order is being made for other purposes. Otherwise, existing Extraordinary Repair Funds will remain with the Official Custodian for Charities until legislation is in place which removes the requirement that he shall hold the investments in the Fund. New schemes and orders directing the transfer of income to existing funds and the establishment of a new one will simply direct that trustees shall set aside such yearly sums as they think sufficient.

**Investment of funds**

The choice of a suitable form of investment for an Extraordinary Repair Fund requires careful consideration by trustees. To a large extent it should depend on when, as far as the trustees can foresee, they will need to call on the Fund.

Where a call is likely to arise within a year or so, an investment with the National Savings Bank or in the Charities Deposit Fund will provide a high interest return and easy withdrawal with no associated costs. Information on National Savings Bank investments is available from National Savings Public Enquiries (telephone 01 605 9461). The Charities Deposit Fund is referred to in the Commissioners' leaflet *CC15*.

For longer periods of investment of up to, say, 4 or 5 years, a fixed interest British Government stock maturing on, or around, the likely date of expenditure may offer a better overall return. But where comparatively small sums are available for investment, the commission costs associated with investment through stockbrokers can be disproportionately high. Similarly, where comparatively small sums are to be raised from an Extraordinary Repair Fund (other than on the maturity of the stock), stockbrokers' commission costs can significantly reduce the net amount of the proceeds of sale. Trustees should bear in mind, therefore, that British Government stocks can be bought and sold (without the need of a stockbroker) on the National Savings Stock Register at much reduced incidental cost.

For funds which are likely to remain invested for 5 years or more, the most suitable investment could well be one of the common investments funds available to charities. The Commissioners' leaflet *CC15* outlines the nature and purpose of this type of investment and gives brief details of the individual funds. Further information can be obtained from the relevant Fund Managers.

**Further information**

Many issues raised in this leaflet will require professional advice. If, however, you wish to obtain further information about the Commissioners' practice or procedures please write to the Charity Commission.

## Appendix C

(Paragraph 115)

### CAPITAL EXPENDITURE BY CHARITY TRUSTEES

#### Capital Expenditure by Charity Trustees

<b>What is this leaflet about?</b>	This leaflet explains the circumstances in which trustees can spend part of the charity's permanent endowment. It is concerned mainly with expenditure on repairing, improving or extending property but the Commissioners are prepared to consider the expenditure of permanent endowment for other purposes, if this can be shown to be in the interests of the charity. In particular the leaflet explains:	
		<b>Page</b>
	<b>The meaning of "permanent endowment" (capital):</b>	<b>1</b>
	<b>The conditions under which capital can be spent.</b>	<b>1</b>
	<b>The Commissioners' requirements before capital can be spent.</b>	<b>2</b>
	<b>How capital is recouped.</b>	<b>3</b>
	<b>How recouped capital is invested.</b>	<b>4</b>
	<b>The advantages of obtaining professional advice.</b>	<b>4</b>
	<b>The advantages of using common investment funds.</b>	<b>4</b>
<b>What is meant by "permanent endowment"?</b>	"Permanent Endowment" is the property of a charity which cannot be spent under the trusts of the charity as if it were income. This property, which may consist of land or buildings, investments or cash, is referred to in this leaflet as <b>capital</b> .	
<b>Can a charity spend its permanent endowment?</b>	Normally, trustees cannot spend any part of the charity's capital. If they did, the permanent endowment would be reduced and there would be less income available for charitable purposes. Eventually a time might come when the charity simply ceased to exist because of lack of funds. Not only would this be against the wishes of the founder, it would also deprive	

**What information will the Commissioners need before allowing a charity to spend part of its capital?**

the community of the help or facilities which the founder had intended would last forever and thereby serve successive generations.

Trustees may sometimes need to find extra money to pay for essential work or finance essential purchases. In such circumstances the Commissioners are prepared to consider authorising the trustees to spend part of the charity's capital on the strict understanding that it will be recouped out of future income. This amounts to borrowing from capital.

Unless authorised by statute or by a charity's governing instrument trustees can spend its capital only if they are authorised to do so by an order of the Commissioners. The Commissioners will make such an order only if they are satisfied that what is proposed is in the interests of the charity. The Commissioners will usually need information about the following:

**The Work Needed**

If the trustees have sought the advice of an architect or surveyor, the Commissioners should be supplied with copies of any plans or drawings which might have been prepared.

**The Estimated Cost**

If builders have been asked to submit tenders for the work, estimates or copies of them should be sent to the Commissioners for information.

**Sources of Finance**

If part of the cost of the work is being met out of accumulated income or from repair funds, grant aid or any other source, the Commissioners should be supplied with details. They will also need to know the value of the charity's investments and be satisfied that the charity will have enough resources to recoup "borrowed" capital.

**How should this information be provided?**

The simplest way of providing the information is for the trustees to ask for an application form and return it to the Commissioners with the information requested in it.

**How is the "borrowed" capital to be recouped?**

Once the Commissioners are satisfied that the proposals are in the interests of the charity and are financially viable, they will discuss with the trustees the steps which need to be taken to recoup the capital which is to be spent. Recoupment is now required on the basis of a simple pound-for-pound repayment by the investment of annual instalments for an agreed number of years out of the income of the charity. The trustees may be asked to prepare a budget showing the charity's expected income and expenditure **after** the work has been completed and how they will be able to recoup the capital borrowed.

*As an example, £10 000 borrowed from capital would require annual instalments of £500 if paid back over 20 years or annual instalments of £1000 if paid back over 10 years.*

**Can the recoupment terms be changed?**

If, part-way through the recoupment period, the trustees find that they can afford to make larger annual payments (perhaps because of an increase in income brought about by investing a number of annual instalments), the terms of the recoupment could be adjusted so that it is made more quickly.

**What is the maximum period over which recoupment can take place?**

This will depend upon the charity's circumstances and will be open to discussion between the trustees and the Commissioners. The period of recoupment and therefore the amount of each instalment will normally depend upon the amount that the trustees can afford to pay out of the charity's income each year without unduly restricting the way in which the charity operates. But recoupment should take place as quickly as possible and certainly within the expected "life" of the work to be carried out.

**Who decides how the annual instalments should be invested?**

The charity trustees are responsible for the management and investment of funds entrusted to them. They are under a legal duty to act in the best interests of the charity.

- When choosing investments they may invest only in securities which are either authorised expressly by the terms of the charity's governing instrument(s) or by statute (Trustee Investments Act 1961).
- In choosing an investment for a charity, trustees should pay particular attention to the need to protect the charity's capital and the purchasing power of its income against the effects of inflation. This is particularly true when recouping permanent endowment which has been spent.

This means choosing a form of investment which offers a good prospect of capital growth. It is wrong to choose an investment which simply offers high income, often at a fixed rate. Fixed interest stocks can provide high current income returns but they generally give little prospect of income growth. The result is that the charity's endowment produces less income in real terms.

- Most smaller charities cannot afford either to appoint full-time advisers or to invest in a wide range of separate stocks and shares. In particular, if small sums are invested on the stock exchange, commission costs can be high. Investment in unit trusts or common investment funds provides a low cost and practical means for trustees of such charities to overcome these difficulties and obtain the benefits associated with large scale investment under expert continuous supervision.

**How do common investment funds work?**

Common investment funds are established under schemes of the Charity Commissioners. Like unit trusts, they enable trustees to invest their funds in a large and diversified investment fund under expert management. They are designed to provide a practical way for charity trustees to carry out their responsibilities at a



low cost and in an effective way. A guide to the funds available is set out in a leaflet (*CC15*) which is available free of charge from the Commissioners.

**If the Commissioners agree to capital expenditure, when will the money be available?**

Once the Commissioners and the trustees have agreed on the method and period of recoupment, the Commissioners will make an order authorising the trustees to spend the capital up to a specified amount and provide for its replacement. As soon as the trustees receive the order, they can proceed with the planned work. If the work is being financed from various sources, all the other monies should be used before the capital is spent. Once all expenditure has been completed, the trustees should let the Commissioners know exactly how much capital has been spent, and what arrangements they have made to recoup it.

**Further information**

Further information can be obtained by writing to the Commissioners.

v1

January 1990

## Appendix D

(Paragraph 106)

### OFFICIAL CUSTODIAN FOR CHARITIES

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

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

2. S3(6) of the Charities Act 1960 provides that the Official Custodian shall keep such books of account and shall prepare such accounts as the Treasury may direct.

3. The Official Custodian has the same powers, duties and liabilities as a custodian trustee appointed under s4 of the Public Trustee Act 1906, except that he has no power to charge fees for his statutory services. He is expressly precluded from taking any part in the administration of any charity (s17(1) of the Charities Act 1960). The responsibility for managing charity property held in the name of the Official Custodian remains wholly with the managing trustees.

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

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

6. The Official Custodian acts as registrar for the Charities Official Investment Fund. Shares in this Fund may be held only in his name.

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

R J. Crick, Official Custodian for Charities  
March 1990

## OFFICIAL CUSTODIAN FOR CHARITIES

### Receipts and Payments Account for the year ended 31 December 1989

	Notes	£,000	£,000	Previous Year £,000
<b>CAPITAL</b>				
<b>Receipts:</b>				
From trustees for investment (including dividends and interest retained)	2a, c	26,246		31,205
From disposal of investments	2a	59,567		44,501
			85,813	75,706
<b>Deduct payments:</b>				
Purchase of investment	2a	37,808		45,922
Amounts remitted to trustees	2a	47,723		29,416
			85,531	75,338
	2d		282	368
<b>DIVIDENDS AND INTEREST</b>				
From investments held	2b	93,765		89,783
Deduct amounts remitted to trustees (including amounts retained for investment)	2b, c	91,922		89,668
	2e		1,843	115
			2,125	483
<b>OTHER: receipts (payments) net</b>	3		(213)	(363)
<b>EXCESS: of receipts over payments (payments over receipts)</b>			1,912	120
<b>Statement of balances as at 31 December 1989</b>				
Balance at 1 January 1989			3,354	3,234
Add (deduct) excess of receipts (payments)			1,912	120
Balance at 31 December 1989			5,266	3,354

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

## Notes to the Account

### Note 1

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

### Note 2 – Accounting policies

- (a) The Official Custodian has no funds of his own and no power to make investment decisions on behalf of charity trustees. In the investment or disinvestment of charity funds, he may act only on, and in accordance with, instructions from the trustees. The proceeds of investment disposals may be reinvested or remitted to the charity trustees. Where capital funds are involved, the Official Custodian will not normally release the funds without taking steps to ensure that the capital is reinvested in his name. Funds expendable for the purposes of the charity may normally be withdrawn at the trustees' discretion.
- (b) Investments held by the Official Custodian for more than one charity are registered in aggregated holdings in his name. Where an aggregated investment holding is held, the Official Custodian apportions dividends or interest payments received (with the benefit of all recoverable tax) between the charities concerned. Dividend and interest amounts in the Account include recoverable tax.
- (c) The Official Custodian either remits dividends and interest payments to the charities' bank accounts or retains them for investment in accordance with standing instructions from the trustees. The amount retained for investment in 1989 was £993,195.
- (d) Investment transactions are carried out promptly by the Official Custodian. Unavoidable delays in settlement of investment transactions result in relatively small differences between total receipts and payments over the year.
- (e) The Official Custodian retains dividend and interest payments under £1 as they are received and remits them once a year or on demand. Dividends and interest due to trustees (£1,843,136) include these accumulated sums, amounts received late in the year, advances of tax from the Inland Revenue and balances held while investment holdings are reconciled with registrars' books.

### Note 3 – OTHER: Receipts (payments) net

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

### Note 4 – Securities

- (a) The schedule at 4d. reflects –
  - (i) acquisitions and disposals of investments by the Official Custodian acting on the instructions of charity trustees;
  - (ii) purchases and sales carried out in the Official Custodian's name by investment agents acting directly for trustees; and
  - (iii) other transfers of investments to and from the Official Custodian.

In the case of (ii) and (iii) above, no cash passes through the books of the Official Custodian and the transfers are not reflected in his Receipts and Payments Account.

- (b) Share and unit holdings, whether with or without a par value, are shown as numbers of shares or units. Holdings of UK stock and foreign debentures are shown as nominal amounts in the relevant currency.
- (c) Transactions in investments are recorded on the basis of contractual entitlement. Transactions carried out by the Official Custodian are recorded without delay. Where the transaction has been carried out by the trustees' own investment agents, however, there can be a delay before the Official Custodian is notified of the transaction. Transactions occurring in the current year, but notified to the Official Custodian after 31 December, are included in the following year's Account.
- (d) Total amounts of securities placed to the account of the Official Custodian and transferred therefrom in the year ended 31 December 1989 and the balances standing to the account of the Official Custodian at that date are as follows:

	Balance on 1 January 1989		Transferred to Official Custodian		Transferred from Official Custodian		Balance on 31 December 1989
<b>British Investments:</b>							
Issued or guaranteed by the government –							
Dated Stocks	£373,493,151		£55,923,759		£97,107,651		£332,309,259
Undated Stocks	£21,242,312		£218,666		£988,517		£20,472,461
Issued by Local Authorities –							
Dated Stocks	£2,887,878		£137,420		£473,941		£2,551,357
Undated Stocks	£906,862		£524		£136,579		£770,807
Mortgages and Bonds	£2,783,899		£10,466		£896,534		£1,897,831
Temporary Loans	£699,204		£16,000		£443,471		£271,733
Issued by other Statutory authorities	£2,961,556		£102,571		£372,278		£2,691,849
Issued by Companies –							
Loan Capital	£52,310,077		£23,701,814		£20,300,898		£55,710,993
Preference Capital	22,818,300	Shares	15,104,460	Shares	10,979,340	Shares	26,943,420
Ordinary Capital	232,646,276	Shares	119,205,904	Shares	93,768,832	Shares	258,083,348
Interest-bearing Deposits	£31,065,996		£13,655,953		£13,331,570		£31,390,379
Real Securities	£20,500		Nil		Nil		£20,500
Miscellaneous Shares	248,545	Shares	79,000	Shares	211,504	Shares	116,041
Currency	£152,369		£213,900		£101,415		£264,854
<b>Annuities</b>	£1,913		Nil		£1,850		£63
<b>Commonwealth Investments:</b>							
Government, Provincial and other Securities	£1,758,522		Nil		£177,435		£1,581,087
Foreign Government, Municipal and other Securities	£115,908		Nil		Nil		£115,908
<b>Investments expressed in other currencies:</b>							
Shares of Commonwealth and foreign undertakings	1,318,419	Shares	269,978	Shares	332,409	Shares	1,255,988
Debentures							
Roubles (Imperial)	93,750	Roubles	Nil		Nil		93,750
Irish Punt	56,333	Punts	Nil		15,895	Punts	40,438
US Dollars	3,500	Dollars	Nil		500	Dollars	3,000
<b>Investments not expressed in Currency</b>							
National Savings Certificates	696	Units	Nil		56	Units	640
Charitable Investment Funds –							
Charities Official Investment Fund	57,769,262	Income Shares	2,224,140	Income Shares	1,232,154	Income Shares	58,761,248
	2,720,631	Accumulation Units	181,376	Accumulation Units	198,155	Accumulation Units	2,703,852
Other Funds	88,734,972	Income Shares	6,878,954	Income Shares	4,123,363	Income Shares	91,490,563
	3,948,159	Accumulation Shares	264,182	Accumulation Shares	221,085	Accumulation Shares	3,991,256
Unit Trusts	118,402,296	Units	28,151,729	Units	22,255,708	Units	124,298,317
Shares of No Par Value	795,688	Shares	20	Shares	598,968	Shares	196,740
Subscription Warrants	763,046	Warrants	370,245	Warrants	343,321	Warrants	789,970
Participation Units	452		Nil		Nil		452

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

R J Crick  
Official Custodian for Charities

21st March 1990

Mrs S E Gillingham

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

**Certificate and Report of the Comptroller and Auditor General**

I certify that I have examined the financial statements on pages 64 to 66 in accordance with the Charities Act 1960 and the National Audit Office auditing standards.

In my opinion the financial statements properly present the receipts and payments of the Official Custodian for Charities for the year ended 31 December 1989 and the balances held at that date and have been properly prepared in accordance with s.3(6) of the Charities Act 1960.

I have no observations to make on these financial statements.

**NATIONAL AUDIT OFFICE**  
4 April 1990

**JOHN BOURN**  
Comptroller and Auditor General