

## HOW BIG IS BIG? A SURPRISING OMISSION FROM THE CHARITIES ACT 1992

Christopher McCall QC<sup>1</sup>

Goliath was a mighty man; we know he was, the Bible tells us he was six cubits and a span in height. Enormous. The only trouble is that we do not know what a cubit was.

It is the same with the Charities Act 1993. We know that a charity with an income of £100,000 is big, very big; we know that a charity with an income of £1,000 is small, too small to need registration. We know that an income of £5,000 is significant, significant enough to introduce the criminal sanctions for failing to disclose the fact of registration. The only trouble is, we do not know what income is.

Of course we do. Dividends and rents and interest. It's all quite obvious. But what about donations? A covenant clearly produces an income receipt. A gift of shares to be held as an accretion to capital clearly does not. What about an unspecified one-off gift of £10? £100? £10,000? Who knows?

It is a serious lapse on the part of the draftsman that there should have been no explanation whether donations are to be included in the measurement of income. Why should criminal sanctions be imposed by reference to a test that is uncertain? Why should the right or obligation to register (depending on how it strikes you) be laid down in terms that are ambiguous?

There is a strong argument for saying that any receipt is an incoming for the purposes of the Act, in which case arguably even the gift of shares which are expressly made part of capital is income. This may well be thought to be implicit in the provisions of section 20(3) of the Act; and the author believes that this is probably the approach that is required looking to the spirit of the Act as a whole. Yet then the question arises how a charity with intermittent gift income should be dealt with in terms of tests that require its income to be measured not just in the last year but on a continuing basis (as in the case of the registration obligation).

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<sup>1</sup> Christopher McCall QC, 13 Old Square, Lincoln's Inn, London, WC2A 3UA.  
Tel: 071 404 4800. Fax: 071 405 4267.

Many a small charity starts with a year or two of gifts which build up a few thousand pounds of capital but then has income of only a few hundred pounds. Are such charities to be registered at the outset? Are they to be deregistered as time goes by?

Since a charity unregistered because of its size is nonetheless a charity, and is still in most respects subject to the control of the Charity Commission (albeit not subject to the obligation to make an annual report - see section 24(2)), it may be said that the uncertainty over the meaning of income is not of great significance at the lower end of the scale. Likewise at the upper end it seems comparatively clear that a charity whose incomings are over £100,000 a year, whether they be income or not, will be likely to have audited accounts. To that extent perhaps it does not matter that the Act has omitted to specify the details of the unit which it uses for measurement. But the omission is remarkable. Charity is a world of volunteers. It is no small thing if the volunteer is to face obligations so heavy that a criminal sanction will apply in the event of failure, still more so if failure is to be made an absolute offence; the least he can expect is that he should know where he stands. It is therefore regrettable that circumstances can easily be envisaged in which even with the benefit of advice the volunteer simply will not know for certain whether the criminal sanction does or does not apply.