

CHARITY COMMISSIONERS REPORT FOR 1991

The Charity Commissioners Annual Report for 1991 was published in May 1992.¹ As ever, it contains some very interesting and useful information concerning the work of the Commission.

Facts and Figures

The value of charity property protected by the Charity Commission in 1991 was approximately £16.8 million - more than double the total for the previous year. Charity property recovered during the year amounted to £800,000 - an increase of more than 60% on the 1990 figure of £490,679.

During 1991, over 4,000 new charities were registered. With the benefit of a computerised register, for the first time, accurate figures for the total number of registered charities have been provided. At the end of 1991 there were 166,503 charities on the computerised register. This is lower than the number recorded as registered for previous years, partly because charities which have ceased to operate or which have been wound up are now being systematically eliminated as information from the Charity census² becomes available, and partly because charities connected with hospitals had not yet been entered on the computer.

The quality of the information available to the public through the register is higher now than at any time in the thirty years it has been in existence.

The Commission's financial resources have more than trebled and the number of staff has doubled over the last five financial years. Major new computer systems have been introduced and administrative systems established to underpin the work of the operational division.

The planned expenditure of the Commission for the financial year 1991/2 was £19.6 million, including £8.8m for salary related costs, about £3.8m for information technology and £2.4m for accommodation costs. The number of staff in post at the end of 1991 was 590.

In October 1991 the new Southwestern regional office at Taunton, Somerset, was formally opened, and it now houses the centre of information technology systems and support for the Commission.

¹ Report of the Charity Commissioners for England and Wales for the year 1991, HMSO (1992).

² Post.

Developments in Europe

Developments within the European Community will increasingly influence the structure and activities of charities in this country.

At one time it seemed likely that the European Commission would publish an interpretation of Article 58 of the Treaty of Rome that would, *inter alia*, have the effect of bringing many voluntary organisations within the scope of future company law directives. These might be at variance with the regulatory provisions of English charity law.

In June 1991, therefore, Mr John Patten, Minister of State at the Home Office accompanied by the Chief Charity Commissioner, went to Brussels to discuss the matter. It was indicated that the European Commission might be able to achieve its purpose by an alternative route. This entailed the creation of a new legal vehicle - the European Association. Such an Association would be an incorporated body established under European legislation which would ensure equal recognition for Associations in all Member States and allow them to operate freely throughout the European Community. A draft Instrument for voluntary associations has now been approved by the European Commission for submission to the Economic and Social Committee, the European Parliament and ultimately the Council of Ministers.

Restructuring

The Commission has now regrouped its functions under two principal heads, Charity support and Charity supervision. Charity support is responsible for providing charities with the legal framework, authority and advice to secure their effective administration. Charity supervision is responsible for ensuring the accountability of trustees and the protection of charitable property.

CHARITY SUPPORT Schemes

The Commission continued to assist charities by modernising purposes which have become outdated or restricted. During the year 748 schemes were made.

The Commission expects that a large number of new schemes will be required, following the planned re-organisation of the Armed Forces and the dissolution, in 1992, of the London Residuary Body.³

Giving Advice

The Commission continued its programme of reviewing and extending its range of advisory leaflets in order to give trustees objective and authoritative advice. In particular, in the wake of the B.C.C.I. collapse, guidance was published, agreed with the Bank of England and the Building Societies Commission, on the steps trustees should take when investing charity cash.⁴ Also the leaflet on relief of the poor⁵ was revised in order to clarify the extent to which charities may assist people who receive state benefits.

Trustees' Personal Liability Insurance

Having completed a detailed policy review, the Commission concluded that there would be no objection if, in appropriate cases, a charity paid for insurance to cover a trustee for personal liability arising from acts either properly undertaken or undertaken in breach of trust but under an honest mistake.

Charitable Bequests: Wills

The Law Society approached the Commission concerning the propriety of a charity requiring a solicitor employed by it to draft wills for prospective benefactors of the charity. The Commission advised them that not only was will drafting unlikely to be a proper activity for a charity but that also any will drafted in such circumstances would be at grave risk of challenge on the grounds of undue influence.⁶

³ The L.R.B. acted as trustee of a large number of educational charities in London - a function it inherited from the former Inner London Educational Authority.

⁴ *Investing Charity Cash*, Commissioners' Explanatory Leaflet CC14(a) (1992).

⁵ *Charities for the Relief of the Poor*, Commissioners' Explanatory Leaflet CC4 (1991).

⁶ See *Wintle v Nye* [1959] 1 WLR 284.

The Official Custodian for Charities

With the Charities Act 1992 in place, the work of divesting the role of the Official Custodian goes on at some speed.⁷ She remitted a total of £98 million by way of dividends and interest during 1991.

Because many charities are too small to use professional financial services, the Commission recommends that they use common investment funds, which will provide charities with the opportunity to secure a proper balance between capital growth and income.

CHARITY SUPERVISION

Registration

Newly registered charities of particular topical interest include *The Kurdish Charitable Trust*, established to relieve the sickness, hunger, homelessness and distress of Kurdish people; *The Kurdish Life Aid Trust*, to relieve poverty and provide food, shelter, clothing and medicine for Kurdish refugees; and *The Amar Trust*, a charity which will initially concentrate its effort on the relief of poverty and distress among Shias caught up in the continuing atrocities in the South of Iraq.

Relatives of victims of the Lockerbie air disaster, and survivors of the Marchioness river boat disaster have, with others, established a charity called *Disaster Action*, to promote the safety of the public against disasters involving multiple deaths or injury whether on land, sea or in the air, and to provide support and succour to those affected by such disasters.

Charities to relieve poverty or sickness, or to advance education in territories of the former Union of Soviet Social Republics continued to be formed.

There has been a noticeable increase in the number of applications for registration of charities for the advancement of public education in the protection and improvement of the natural environment. One example is *The Wilderness Trust*, whose objects include the promotion of greater understanding of "wilderness" by providing opportunities for direct experience of "areas of sea or land the primeval state of which has not been discernibly affected by man."

⁷ See Charities Act 1992, s.29.

The organisation or provision of sports at universities is a valid charitable purpose.⁸ Of particular interest is *The Cliff Richard Tennis Development Trust* established to promote and facilitate the playing of tennis amongst school children who would not otherwise have the opportunity to do so.

Charity Census

This involved writing to registered charities seeking confirmation of the information already held on them, details of income and copies of their latest accounts. The census started in October 1990 and was completed by Autumn 1991. The total number of accounts submitted in 1991 represents some 46% of the total number of main charities on the register. This contrasts with a return rate of 11% in 1989. It is believed that the target of obtaining 80-90% of the accounts of active registered charities is achievable by 1994.

A second mailing commenced in March 1992. This was directed to charities that responded to the census together with charities that operate in groups of newly registered charities. This second mailing will ask for more information than the first. Meanwhile, special sections have been set up in each of the offices in order to track down those charities that did not respond.

Apart from its primary purpose, the mailing has prompted many enquiries from charities which might not otherwise have been brought to the Commission's attention. This gives an opportunity to provide advice and information in order to help trustees to improve the effectiveness of their charities.

Decisions on Charitable Status

The Commission was asked to consider whether an institution, to be known as the *Margaret Thatcher Foundation*, would be eligible for registration if it were established on the terms as drafted. It advised the promoters that a substantial part of the organisation's activities was concerned with arguing and advancing a particular political viewpoint and as such was not educational in the charitable sense.⁹ No application for registration has been received.

The Albert Kennedy Trust recruits and trains older homosexual men and lesbian women to act as role models and provide stable and supportive homes for young homosexuals and lesbians in need of care and counselling. The Commission sought advice from the Official Solicitor as to whether its activities and procedures met the requirements of other areas of the law, particularly in relation to the care of children under 16 years of age. The advice received from him and others enabled the Commission to accept the Trust for registration.

Investigation

The number of staff engaged in investigating and monitoring charities has risen from

⁸ *IRC v McMullen* [1981] AC 1.

⁹ See, for example, *Re Hopkinson* [1949] 1 All ER 346.

44 to 50. During the year over 550 inquiries were opened, mostly as a result of internal monitoring of information or expressions of concern from the public and the media. 397 inquiries were concluded during the year. Irregularities were found in 129 of these cases broken down as follows:

Maladministration	40%
Malpractice	26%
Constitutional irregularities	21%
Fund-raising abuse	10%
Political activities	3%

Fund-raising

Cynical abuse of the good name of charity by unscrupulous fund-raisers can have an adverse effect far beyond the actual damage caused by their activities.

Inquiries into the activities of fund-raisers found that in 19 cases the proportion of funds handed over to charities was less than 10% of the amounts collected. The Commission has acted in these cases to prevent further fund-raising and has protected the assets of the charities by freezing bank accounts containing the funds collected.

The Commission has written to over 1,000 hospital authorities recommending control procedures which they should adopt when dealing with fund-raising. Charities involved with hospitals are particularly vulnerable to unscrupulous fund-raisers because of the public's natural enthusiasm and generosity in this area.

Former Inquiries

1 Oxfam

In May 1991 the Commission published the Report of the Inquiry and its conclusions into whether, in advocating and campaigning for political change, in this country or abroad, the trustees of Oxfam were acting in accordance with their trust and the restrictions of charity law.¹⁰

Although the value and importance of the work of the charity and the experience and commitment of the trustees was recognised, it was nevertheless concluded that in recent years the trustees had on occasion exceeded the charity's objects and the law which restricts charities from undertaking political activities. The trustees were informed that the unacceptable political activities of the charity must stop.

The Commission will continue to monitor closely the activities of Oxfam and other campaigning charities to ensure their campaigns are within their powers and limitations imposed by charity law.

2 War On Want

The inquiry into the circumstances which had led to the potential insolvency of War On Want was probably the most complex ever conducted on behalf of the Commission. It involved the inquirers in the detailed examination of accounts and accounting records of one of the United Kingdom's major charities and in the taking of evidence from a considerable number of people who had been connected with the charity.

The Report, published in March 1991,¹¹ identified many grave deficiencies in the administration of the charity. War On Want's new Council of Management have made progress towards correcting the mistakes of its predecessors, but much remains to be completed before the rehabilitation of War On Want can be said to have been successfully achieved.

¹⁰ *Oxfam - Report of an Inquiry submitted to the Charity Commissioners*, 8th April 1991, including the response of the Commissioners and a note of the Commissioners' published guidance on political activities by charities, HMSO (1991).

¹¹ *War On Want - Report of an Inquiry submitted to the Commissioners*, 15th February 1991, HMSO (1991).

Other Inquiries

Failure to keep proper accounts and to manage bank accounts properly are illustrated in two further unpublished inquiries completed in 1991.

1 Animal Defence Trust

Many complaints were received about the Trust and the Commission had grave difficulty obtaining the accounts from the trustees and in securing satisfactory responses to the queries raised. The report disclosed that the trustees had no proper accounting systems.

For these and other reasons it was concluded that the charity had been mismanaged and that the property of the Trust was at risk whilst the present trustees remained in office. Consequently, an order was made removing the trustees and appointing four new trustees in their place.

2 South Tyneside Disablement Advice Service

This inquiry followed the receipt of numerous complaints, the chief of which was that there had been a lack of financial control by the committee which administered the Service. In February 1991, an employee of the charity pleaded guilty to a single specimen charge of theft of £700. The committee took steps to tighten up their procedures for operating their bank account once the fraud had been uncovered, but the Commission advised the committee of its concern over what had happened and said that it would monitor closely the charity's future performance.

Comment

The Charity Commission has a key part to play in maintaining the health and vitality of the charitable sector. The Commission considers it essential that it should be able to:

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

By transforming the Commission into a body fully equipped to supervise and support charities effectively, it seems that these objectives are now largely being achieved. The existence of the computerised database means that both the Commission and the public now have speedy access to accurate information about charities. The operational benefits for the Commission itself are immense - it will be in touch with charities every year to ensure their continued public accountability, to monitor their performance and to offer assistance where necessary.

The Commission's powers for supervising charities in order to ensure that they do not abuse the privileges that charitable status brings will be enhanced following the Charities Act 1992.

The Commission is also contributing to trustee training initiatives and the promotion

of self-regulation. It is working with the NCVO to identify ways in which the training needs of trustees can be met. It has also commissioned research to identify ways to improve administrative effectiveness through systems of self-support.

It is hoped that this dual approach of supervision and support will ensure the promotion of the effective use of charitable resources and their protection.

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