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# Report of the Advisory Group on Charities/Fundraising Legislation

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(With the Compliments of the Secretary)

*2/1/98*

26 November 1996

## REPORT OF THE ADVISORY GROUP ON CHARITIES/ FUNDRAISING LEGISLATION

### **Background**

#### **The Costello Report**

The Report of The Committee on Fundraising Activities for Charitable and Other Purposes was presented to the then Minister for Justice in October 1989. The remit of the Committee was to examine the adequacy of the existing statutory controls over fundraising activities for and by charitable and other groups and to make recommendations for reform.

The Committee recommended over eighty specific changes to improve the situation, the main recommendations being:

- A system of registration of organisations fundraising for charitable and philanthropic purposes.
- A system of accounting requirements.
- The Registration Authority to have supervisory and investigatory powers.
- A prohibition on the sale of lottery lines by house to house visits and on the street. The sale of lottery tickets in the street to be prohibited.
- Greater controls on private lotteries, occasional lotteries and periodic lotteries.
- Telethons to operate under approved schemes.
- Registration and control of professional fundraisers.

(A more comprehensive summary of the recommendations of the Costello Committee can be seen at Appendix III.)

#### **The Charities Seminar**

There is a commitment in the Government Policy Agreement to reform the law relating to the administration and regulation of charities along the lines of the Costello Report. As part of the process of considering what legislative changes are needed in this area, the Minister of State, Ms. Joan Burton T.D., hosted a seminar in June 1995 with the aims of examining the recommendations of the Costello Report and the accounting practices and standards for charities. Guest speakers were invited to address the seminar on matters of relevance in this area and representatives of various fundraising and charitable groups were given an opportunity to raise issues of concern to them.

The Minister of State explained that the legislative aim is to facilitate a proper level of accountability on the part of charitable organisations to donors and to achieve accountability without placing undue burdens on organisations. The aim of the new legislative framework is to sustain and inspire public confidence in the fundraising area.

(A summary of the main points raised at the seminar can be found at Appendix IV.)

### Submissions

Following the seminar, over 20 submissions were received by the Department from a variety of types of voluntary organisations. (A list of those who made submissions can be found at Appendix V). These submissions were examined in detail and a position paper was prepared, drawing together the fundamental recommendations of the Costello Report, the submissions made following that Report and the possible options for the proposed legislation.

### Advisory Group

The Charities Seminar drew attention to the need for consultation with the sector before the finalisation of legislation. With this in mind, the Minister of State, Ms. Joan Burton, T.D., decided to establish an Advisory Group to provide a practical input into the drafting of the new legislation. Membership of the Advisory Group was drawn from a cross section of the charitable/voluntary sector including some umbrella organisations. The Advisory Group was launched by the Minister of State on 4 March 1996 .

(A list of the members of the Advisory group can be found at Appendix VI.)

### Procedure of Examination

The Advisory Group held a preliminary meeting on 4 March 1996, at which a copy of the position paper was provided. This position paper did not represent the firm policy of the Minister of State but formed the basis of discussions for the Advisory Group. The Group held fortnightly meetings and considered each particular aspect of the position paper in great detail.

The Group did not need to spend a great deal of time discussing the various types of fundraising and the current statutory controls as (a) the members are very experienced practitioners in this sector and (b) these aspects have been examined in great detail by the Costello Committee. The Group were anxious not to revisit Costello but to build on that very valuable work and apprise the Minister of State on the practical application of the fundamental recommendations, particularly in view of the changes in the sector since the time of the Costello Report.

(A summary of the Advisory Group's recommendations can be found at Appendix II).

### 1. Registration

#### *Costello's Recommendations*

The Costello Committee concluded that there should be a system of registration of all organisations fundraising for charitable purposes and philanthropic purposes, and that registered organisations should report and account annually to the registration authority. The Committee took the view that some groups should be exempt from the registration requirement - "(a) small voluntary organisations raising less than £10,000 per annum for charitable purposes; (b) certain charitable companies established by religious bodies (referred to in the *Companies Act, 1986*) as well as ministers of religion who raise funds for the purposes of religion". Costello

recognised the importance of having a clearly identifiable Authority "so that an interested member of the public can readily ascertain where an organisation raising funds for charitable purposes is registered."

*Advisory Group's views* (see also Minority Report at Appendix I)

All participants are supportive of the principle of registration and of a new registration system. It is accepted that registration can only enhance the credibility and public perception of the sector. For various reasons the voluntary/charitable area is expanding and though there are no particular concerns about the operation of the vast majority of voluntary organisations, it must be said that the opportunity for fraud exists. Because the existence of many of these organisations depends largely on public fundraising, the public have a right to be confident with the system, to know that their contributions are being applied as advertised and that the organisations are accountable.

The Group believe that there should be no exceptions to the registration requirement and that fundraising by non-registered organisations should be prohibited.

Several difficult aspects were tackled by the Group. Firstly, who should be obliged to register? The sector includes charities, voluntary and non-voluntary organisations. The group discussed the possibility of applying a new definition of "charities", but returned to a somewhat liberal interpretation of the Pemsel case. (The fact that the matter has been addressed, and abandoned, by three Government Committees - one in Ireland and two in Great Britain did not inspire us.)

The Group sought advice from the Office of the Attorney General on the matter of the constitutionality of the registration requirement vis-à-vis the position of the Church. The reply from that Office considered the Advisory Group's proposal in the light of the reasoning of the Costello Committee on the same topic and, in particular, Article 44 of the Constitution. Quoting from the Costello Report, the Office raised the question as to whether ministers of religion who fundraise for charitable purposes, other than religious purposes, should be subject to the registration and accounting provisions proposed. In addition, the advice was that ministers of religion fundraising for religious purposes ought to be exempt and that " a constitutional court would be extremely slow to diminish the rights created under Article 44 in any way as respects the freedom of ministers of religion and churches to fundraise for religious purposes".

The Advisory Group considered this advice in great detail. Consideration was given to exempting collections within the church building and church grounds but as some such collections are not exclusively for religious purposes, it was found impractical to specifically define same. The group viewed their role as examining the activity of fundraising rather than the identity of the fundraiser. Following a thorough analysis of this issue, and while accepting the advice received from the Office of the Attorney General as policy which should be explored further, the

group recommend that there be no exemption to the requirement to register. The Minority Report at Appendix I concerns this issue.

Secondly, some organisations do not fundraise per se, but their income is derived from members' subscriptions, the corporate sector, and grants from government Departments and/or the EC. In the end, it was agreed that we recommend that all organisations (except those organisations which are governed by the proposed Electoral Act) which solicit funds from the public and from funding agencies will be obliged to register. A parent body may or may not have responsibility for its constituent groups. The organisation may choose whether the parent body's registration will include all affiliate groups or whether each affiliated group should register in its own right.

Thirdly, what is the optimum structure for such a registration authority? Several options were considered:

- a board drawn from both the voluntary and statutory sectors
- direct accountability to the Minister
- a registrar of fundraising bodies, similar to the Director of Consumer Affairs, without a board
- a registration authority along the lines of the Companies Registration Office.

On balance, the Group recommend that the registration authority would operate a structure similar to that of the Companies Registration Office (i.e. a separate body under the aegis of the Minister). Decisions in connection with applications for registration would be made by the registrar (the chief official of the registration authority). The Group recommends that there would also be an Advisory Board, composed, for example, of representatives of the voluntary sector, a lawyer, an accountant and a representative of the Minister the function of this board being a consultative forum for advice and information on policy issues and from which some members would constitute an Appeal Board where necessary (to appeal decisions of the registrar in relation to charitable status, suspension of registration, deregistration etc.).

#### *Recommendations*

- 1.1 All organisations (except those organisations which are governed by the proposed Electoral Act) which solicit funds from the public and from funding agencies should be obliged to register. There should be a prohibition against fundraising by non-registered organisations.
- 1.2 Registration should be administered by the Fundraising Registration Authority.
- 1.3 Organisations which solicit funds from the public and/or which fundraise in a place to which the public have free access and/or

which apply to public funding agencies should be obliged to apply for registration, including in their application a statement of the aims and objectives of the organisation or a copy of the Memorandum and Articles of Association.

- 1.4 An individual or local group running a cake sale etc., or inviting sponsorship for an event in the name of a fundraising body should not be obliged to register with the authority but should be required to obtain written authorisation from the receiving organisation.
- 1.5 The onus should be on the registered organisation to show that the fundraising is for a specific purpose and that the proceeds have been used for that purpose. The registration authority should monitor that the money has been used as intended.
- 1.6 The registration authority should operate along the lines of the Companies Registration Office (i.e. a separate body under the aegis of the Minister). Decisions in connection with applications for registration should be made by the registrar. There should be an Advisory Board, composed, for example, of representatives of the voluntary sector, a lawyer, an accountant and a representative of the Minister to provide advice or information on policy issues and from which some members would constitute an Appeal Board where necessary.
- 1.7 Registered bodies will be authorised and cleared to fundraise. Organisations will obtain tax exemption status from the Revenue Commissioners. The process will be dealt with through one application to the Fundraising Registration Authority who will register the body, thereby granting it the power to fundraise, and will then, if requested, pass on the relevant details to the Revenue Commissioners for a determination on the tax exemption status. If the Revenue Commissioners propose to refuse tax exemption status, they will be required to consult with the Advisory Board of the registration authority before a final determination.

## 2. Accounting Requirements

### *Costello's recommendations*

Costello recommended that "each registered organisation should annually renew its registration by filing an annual report and accounts" and that these accounts "should be in a form prescribed by Ministerial Regulation." The Committee recommended that there should be different accounting requirements depending on the organisation's income.

Costello further recommended

- (i) "consideration be given to a requirement that accounts be audited by professional auditors only when income for the accounting period exceeds a level of, say, £20,000 "

- (iii) that the ratio of expenses to funds raised should be stated separately and
- (iii) that there should be consultation with the industry before the setting down of accounts regulations.

#### *Advisory Group's views*

Initially, some members felt that most organisations are presently complying with the requirements of the Companies Registration Office and that this should be sufficient. However, company law does not require fundraisers to specify the proportion expended on administrative costs and this is one of the areas of interest to the public. The Group are conscious of the negative perception of administrative costs and that the quality of an organisation's work is difficult to convey particularly with foreign aid projects. Similarly a fundraising project may have high administrative costs at its initial stages but over a period of time that ratio is reduced. These particular aspects are covered in the UK by the Statement of Recommended Practice (SORP).

#### *Current Position*

##### Unincorporated charities

Currently in Ireland there are no accounting or filing requirements for charities which are not incorporated as companies.

##### Charities incorporated as companies

Charities which are incorporated as companies fall into two categories:-

- (a) Companies limited by guarantee  
Companies limited by guarantee are required to file an annual return and a set of accounts in the Companies Registration Office. However, there is no requirement for the accounts to detail the expenses of the company to any meaningful extent.
- (b) Companies limited by shares  
Small companies are defined under the 1986 Companies Act as having a turnover of up to IR£3 million, and total assets less than IR£1.5 million and less than 50 employees. If a charity which is incorporated as a company satisfies two of these requirements for two consecutive years then it has to file a balance sheet and related notes plus accounting policies with the Registrar of Companies. There is no requirement to file a profit and loss account or directors' report.

Mr. John McCormack, a member of the Advisory Group, made a detailed presentation to the Group in relation to the UK SORP for charities, covering such issues as the need for and the history of SORP. He outlined the new charity accounting framework in the UK which encompasses the Charities Act 1993, the SORP, and statutory instruments requiring all charities to prepare accounts in line with the requirements of SORP.

The main provisions of the new SORP are -

- . A statement of financial activities (S.O.F.A.) must be provided for all charities.



A trustees' or directors' report must be provided as part of the financial information.

The trustees' or directors' report must include the following:-

- 1) Explanation of objects.
- 2) Summary of policies.
- 3) Material changes since the last report.
- 4) Description of organisation.
- 5) Review of past year including progress, important events, donations-in-kind received.
- 6) Review of transactions including how funds have been applied, purposes for which assets are being held and current financial position.
- 7) Reasons for any changes in accounting policies.
- 8) Performance of subsidiaries.
- 9) The extent of the dependence on the support of any individuals.
- 10) Post balance sheet events.
- 11) Progress on specific projects must be reported.

The advantages of the SORP are:-

- a) The trustees' or directors' report must explain the objects of the charity and the progress that has been made to further the charity's aims. The report must be part of the charity's financial information.
- b) The new SORP attempts to achieve a uniformity in the production of charity accounts.
- c) The trustees' or directors' report should always show clearly who is running the charity.

The consensus among the Advisory Group is that this accounting system is currently being applied by many charities but that new requirements to adopt same would improve practices. The Group is broadly in agreement with the requirement to adhere to the Companies Act, the trustees' or directors' Statement and the SORP.

#### *Recommendations*

- 2.1 The Minister should be empowered to bring in a Statutory Instrument which would require a standard of accounting and that the registration authority should deal with the details of the accounting requirement.
- 2.2 All registered groups should be required to keep proper accounts including accounting records and an end-of-year statement.
- 2.3 Organisations with income over a specified level should be required to have audited accounts.

### 3. Collections

#### *Costello's recommendations*

Costello recommended that the role of the Chief Superintendent, in relation to the issuing of permits for collections, should continue. The Committee further recommended that

- the permission granted should not extend beyond the Division area of the Chief Supt.
- that the discretionary power to impose conditions on the grant of a permit should be maintained in the proposed legislation
- that, arising from difficulties which occur when a number of applications for collection permits relate to the same day and place, guidelines should be drawn up to assist C/Supt.s in the exercise of their discretionary powers.

#### *Advisory Group's views*

The main problems which have been identified in this area are (i) nuisance callers and (ii) doubts as to the bona fides of collectors. The Advisory Group agree that it is pointless to strive to include in legislation methods which combat all forms of fraud; the best that can be achieved realistically is that the public be protected as far as possible. Many submissions from small local organisations pointed out the vexing situation where local efforts on a particular day are swamped by the unexpected arrival of collectors from non-local or national organisations.

The public also appear to be concerned about the transfer of proceeds to the recipient organisation. Confidence and accountability are the key issues to be addressed in this area.

The Advisory Group considered the issue of nuisance callers, collections at traffic lights etc. and strongly urge that the criteria for awarding a permit should take account of the possible nuisance factor and public safety.

#### *Recommendations*

- 3.1 The gross proceeds of fundraising should always go directly to the fundraising body.
- 3.2 The overall monitoring system should be the responsibility of the registration authority.
- 3.3 Permits for local collections should be provided by the Chief Superintendent of the local division and permits for national collections provided by the registration authority, an application for the latter having been made six months in advance. The registration authority would make decisions in relation to national collection days and supply a list of same to the Garda Síochána.
- 3.4 All collection boxes should be sealed and remain unopened until received by the voluntary organisation.

- 3.5 The registration authority should have the power to grant permits for very frequent or regular collections. (This is to allow for regular church collections etc.)
- 3.6 The registration authority should have the power to appoint field officers who should have specific implementable powers e.g. checking permits etc.
- 3.7 The registration authority should make decisions in respect of collectors' badges, the details on same etc.
- 3.8 Collectors should have clear visible identification showing distinctly whether they are voluntary or professional.

#### 4. Private Lotteries

##### *Costello's recommendations*

Costello recommended that a distinction be drawn between small private lotteries - where the prize for any one private lottery does not exceed £3,000 and where the total prize fund for a series of such lotteries does not exceed £12,000 in the same year - and private lotteries where the prize fund is greater than that amount. The Committee further recommended that small private lotteries should still be governed by the provisions of the 1956 Act\* and larger lotteries must first obtain an authorisation from the Superintendent of the Garda District wherein the headquarters of the club, society etc., is situated. (\* A private lottery being where the sale of chances is confined to the members of one society established and conducted for purposes not connected with gaming, wagering or lotteries, or persons all of whom work or reside on the same premises and there is no written notice outside the premises of the society or to members of the society.)

##### *Recommendations*

4.1 The Advisory Group accept the recommendations of the Costello Committee in regard to private lotteries except that the limit for prize funds should be raised substantially.

#### 5. Occasional Lotteries

##### *Costello's recommendations*

The main recommendations of the Costello Committee were as follows:

- (a) The application should be to a Garda Superintendent and should state how many tickets are to be printed etc.
- (b) The application must be made within 6 months of the date on which the permit is to take effect.
- (c) A permit should not be granted more than once in 6 months to any beneficiary.
- (d) Each ticket should state price etc.
- (e) The expenses of the lottery should not exceed 20% of the proceeds and the permit holder should derive no personal proceeds from the lottery.
- (f) A reasonable opportunity should be given to the public to attend the draw.
- (g) Sale of tickets on the street should be prohibited and the sale house to house

should be authorised by a collection permit.

(h) The permit holder should make a return to the granting Supt. within 3 months of the draw and should publicise a statement of prizes and prize/winners.

#### *Advisory Group's views*

The Advisory Group accept the views of the Costello Committee on the topic of occasional lotteries (except for items (e) and (g)) but believe that the detail is not appropriate for primary legislation. The group consider that the sale of chances on the street needs to be tightly regulated but not compulsorily prohibited and that the detail of the regulations should be a matter for the registration authority.

#### *Recommendations*

- 5.1 There should not be a prescribed limit on expenses but there should be full disclosure of expenses in the accounts.
- 5.2 The registration authority should have the power to prescribe the details of the form of tickets, line selling etc.
- 5.3 The registration authority should be empowered to prescribe the detail of regulations governing the sale of chances on the street.

#### **6. Periodical Lotteries**

##### *Costello's recommendations*

The main recommendations of the Costello Committee were as follows:

- (a) a licence granted under S28 of the 1956 Act would operate only in the District Court district in which it is granted but applications could be submitted to more than one District Judge.
- (b) Nationwide periodical lotteries would be authorized by means of a Scheme registered with the Charity Commissioners.
- (c) the present weekly prize limit should be expressed as an average over a period of weeks.
- (d) not more than 35% of the proceeds should be disbursed in expenses
- (e) specific details should be included on the ticket.
- (f) reasonable opportunity should be given to the public to attend the draw.

##### *Advisory Group's views*

The Advisory Group are well aware of the many problems faced by voluntary organisations trying to comply with the present regulations governing periodical lotteries. There is a huge application of administrative resources in checking the tickets each week. At the time of the 1956 Act, charities sold fewer tickets which were of lighter quality; now more sophisticated tickets must be produced to compete with the National Lottery and it is difficult to comply with the present 40% rule in respect of expenses. In this era of the National Lottery it is hard to justify the capping of prize limits. SORP based accounts would identify imbalances in this area and it would be open to the registrar to comment on same in his/her annual report. The registration authority can play an important role in this area by

being proactive and promoting good practice.

*Recommendations*

- 6.1 All applications for nationwide periodical licences should be made in a prescribed format to the registration authority.
- 6.2 The cap on prize funds should be removed.
- 6.3 There should be no prescribed limit on expenses but full disclosure of same in the accounts.
- 6.4 The regulations for the running of lotteries should be the responsibility of the registration authority.

**7. Telethons**

*Costello's recommendations*

The Costello Committee recommended that Telethons be regulated as follows:

- (i) The Telethon organisers should establish a committee to manage and control the public collection.
- (ii) This committee to prepare a Scheme to be submitted to and registered with the Charity Commissioners and the Telethon to be held in accordance with this Scheme.
- (iii) Stated grounds for refusal would include the number of existing approved Schemes and the unavailability of dates.
- (iv) The Scheme should set out persons designated and responsible for local organisations of collections and for maintaining records and accounts, such accounts to be returned in a prescribed form within a prescribed time. Accounts to be made available for public inspection.
- (v) The Charity Commissioners should be empowered to make amendments in the Scheme by which the applicants would be bound and have investigative powers ensuring the Scheme has been operated as approved.
- (vi) The Scheme should state the charities which are to benefit, the precise collection dates and contain provisions designed to avoid unauthorised collections.
- (vii) When registered the organisers would be exempt from the other controls in the Act.

The Committee further recommended that no collections could be made in the State in respect of a Telethon originating outside the State unless an organising committee was established in the State.

*Advisory Group's views*

Telethons have become an extremely popular method of community involvement in fundraising and of raising public awareness of needful situations. At present there is no statutory control and the public are anxious to see some level of accountability.

*Recommendations*

- 7.1 Telethon Organisers should be obliged to (a) register a scheme, in a prescribed format, with the Fundraising Registration Authority and

(b) return accounts and records to the authority.

7.2 The registration authority should have investigative powers in respect of Telethons.

## 8. Professional Fundraisers

### *Castello's recommendations*

The recommendations in respect of professional fundraisers were:

- (i) there should be a system of annual registration with the Charity Commissioners of professional fundraisers.
- (ii) Applicants for registration should obtain a certificate of qualification from the Chief Superintendent.
- (iii) Applicants should maintain a fixed deposit in the High Court and the certificate of deposit should be submitted to the Charity Commissioners when applying for registration.
- (iv) Contracts between professional fundraisers and charitable organisations should be in writing, should contain certain particulars to be prescribed and should be registered with the Charity Commissioners.
- (v) All monies received by a professional fundraisers should be paid to the charity before deduction of any remuneration or expenses.
- (vi) Professional fundraisers should be required to furnish accounts within three months of the termination of the promotion.
- (vii) All accounts furnished and contracts entered into should be open to public inspection.

### *Advisory Group's views*

The Advisory Group agree in principle that:

- professional independent fundraisers should be required to register with the registration authority.
- employees of registered organisations should not, but other independent fundraisers should, be required to register with the registration authority.
- independent fundraisers should be obliged to show proof of registration to the voluntary organisation.

The percentage of remuneration to independent professional fundraisers will be clear from SORP based accounts. The registrar's annual report could highlight issues such as this for the benefit of the public.

### *Recommendations*

- 8.1 Children under the age of 14 should not receive a monetary reward for fundraising.
- 8.2 The possible issue of a pre-registration certificate is more appropriately a matter for the registration authority.
- 8.3 The question of a fixed deposit should also be dealt with by the registration authority, perhaps along the lines of the Travel Trade Bonding Scheme.
- 8.4 Contracts between independent professional fundraisers and charitable organisations should be in writing, should contain certain particulars to be prescribed and should be registered with the authority.

- 8.5 All monies received by an independent professional fundraiser should be paid to the fundraising body before the deduction of any remuneration or expenses.
- 8.6 The question of whether independent professional fundraisers should be required to furnish accounts within a certain time after the termination of the promotion is a matter for the authority.
- 8.7 All accounts furnished and contracts entered into should be open to public inspection.

## 9. Supervision and Investigation

### *Costello's recommendations*

The Committee saw this aspect of the Charity Commissioners' role as being analogous to that of the Ombudsman and recommended as follows:

- they be empowered to receive complaints from members of the public and the Gardaí of fraud and malpractice generally and they should be empowered to investigate such complaints.
- the Gardaí should be empowered to carry out investigations in respect of fundraising organisations.
- the investigative powers should include a power to obtain bank accounts and a power to apply *ex parte* to the High Court for an order to enter a premises to inspect and remove records for safekeeping.
- they should have the power to remedy situations which are capable of being remedied where an organisation is being mismanaged.
- they should be empowered to serve a notice on such an organisation to take steps to remedy the situation or alternatively to agree to the revocation of its registration.
- in default of compliance with the notice, they should be empowered to apply to the High Court for an "Administration Order" to regulate the affairs of the organisation.

### *Advisory Group's views*

The Advisory Group consider that supervision and investigation are operational matters for decision by the registration authority.

## 10. General

In our discussions, we identified other issues which are of vital importance to the charitable fundraising sector in Ireland. Though we recognise that they are not strictly within our remit, we believe that it is important to enumerate them in our report.

- 10.1 The Group agreed the aspiration that charities should not have to pay irrecoverable VAT.
- 10.2 The Group agreed that tax deduction for charitable fundraising should be looked at favourably.

26 November 1996

## **Appendices**

- I Minority Report**
- II Summary of recommendations of Advisory Group**
- III Summary of recommendations of The Report of the Committee on Fundraising Activities for Charitable and Other Purposes (The Costello Report).**
- IV Summary of Seminar on Charities**
- V List of people who made submissions**
- VI List of members of the Advisory Group**



**Minority Report**

1. In view of the constitutional issues involved, CORI and the Society of St. Vincent de Paul are not prepared to endorse the registration recommendations in the Report of the Advisory Group on Charities/Fundraising as they relate to fundraising by religious bodies without some prior involvement of the main Church Bodies in the discussions.

As a significant number of Dóchas members might be affected by the above mentioned recommendations, Dóchas would endorse the need for wider consultation on this issue.

2. However, CORI, Society of St. Vincent de Paul and Dóchas are committed to the principle of public accountability for charities and endorse all other aspects of the Report.

## Summary of Recommendations of Advisory Group on Charities/Fundraising Legislation

### Registration

- 1.1 All organisations (except those organisations which are governed by the proposed Electoral Act) which solicit funds from the public and from funding agencies should be obliged to register. There should be a prohibition against fundraising by non-registered organisations.
- 1.2 Registration should be administered by the Fundraising Registration Authority.
- 1.3 Organisations which solicit funds from the public and/or which fundraise in a place to which the public have free access and/or which apply to public funding agencies should be obliged to apply for registration, including in their application a statement of the aims and objectives of the organisation or a copy of the Memorandum and Articles of Association.
- 1.4 An individual or local group running a cake sale etc., or inviting sponsorship for an event in the name of a fundraising body should not be obliged to register with the authority but should be required to obtain written authorisation from the receiving organisation.
- 1.5 The onus should be on the registered organisation to show that the fundraising is for a specific purpose and that the proceeds have been used for that purpose. The registration authority should monitor that the money has been used as intended.
- 1.6 The registration authority should operate along the lines of the Companies Registration Office (i.e. a separate body under the aegis of the Minister). Decisions in connection with applications for registration should be made by the registrar. There should be an Advisory Board, composed, for example, of representatives of the voluntary sector, a lawyer, an accountant and a representative of the Minister to provide advice or information on policy issues and from which some members would constitute an Appeal Board where necessary.
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status. If the Revenue Commissioners propose to refuse tax exemption status, they will be required to consult with the Advisory Board of the registration authority before a final determination.

### Accountability

- 2.1 The Minister should be empowered to bring in a Statutory Instrument which would require a standard of accounting and that the registration authority should deal with the details of the accounting requirement.
- 2.2 All registered groups should be required to keep proper accounts including accounting records and an end-of-year statement.
- 2.3 Organisations with income over a specified level should be required to have audited accounts.

### Collections

- 3.1 The gross proceeds of fundraising should always go directly to the fundraising body.
- 3.2 The overall monitoring system should be the responsibility of the registration authority.
- 3.3 Permits for local collections should be provided by the Chief Superintendent of the local division and permits for national collections provided by the registration authority, an application for the latter having been made six months in advance. The registration authority would make decisions in relation to national collection days and supply a list of same to the Garda Síochána.
- 3.4 All collection boxes should be sealed and remain unopened until received by the voluntary organisation.
- 3.5 The registration authority should have the power to grant permits for very frequent or regular collections. (This is to allow for regular church collections etc.)
- 3.6 The registration authority should have the power to appoint field officers who should have specific implementable powers e.g. checking permits etc.
- 3.7 The registration authority should make decisions in respect of collectors badges, the details on same etc.
- 3.8 Collectors should have clear visible identification showing distinctly whether they are voluntary or professional.

### Private Lotteries

- 4.1 The Advisory Group accept the recommendations of the Costello Committee in regard to private lotteries except that the limit for prize funds should be

raised substantially.

#### Occasional Lotteries

- 5.1 There should not be a prescribed limit on expenses but there should be full disclosure of expenses in the accounts.
- 5.2 The registration authority should have the power to prescribe the details of the form of tickets, line selling etc.
- 5.3 The registration authority should be empowered to prescribe the detail of regulations governing the sale of chances on the street.

#### Periodical Lotteries

- 6.1 All applications for nationwide periodical licences should be made in a prescribed format to the registration authority.
- 6.2 The cap on prize funds should be removed.
- 6.3 There should be no prescribed limit on expenses but full disclosure of same in the accounts.
- 6.4 The regulations for the running of lotteries should be the responsibility of the registration authority.

#### Telethons

- 7.1 Telethon Organisers should be obliged to (a) register a scheme, in a prescribed format, with the Fundraising Registration Authority and (b) return accounts and records to the authority.
- 7.2 The registration authority should have investigative powers in respect of Telethons.

#### Professional Fundraisers

- 8.1 Children under the age of 14 should not receive a monetary reward for fundraising.
- 8.2 The possible issue of a pre-registration certificate is more appropriately a matter for the registration authority.
- 8.3 The question of a fixed deposit should also be dealt with by the registration authority, perhaps along the lines of the Travel Trade Bonding Scheme.
- 8.4 Contracts between independent professional fundraisers and charitable organisations should be in writing, should contain certain particulars to be prescribed and should be registered with the authority.
- 8.5 All monies received by an independent professional fundraiser should be paid to the fundraising body before the deduction of any remuneration or expenses.
- 8.6 The question of whether independent professional fundraisers should be required to furnish accounts within a certain time after the termination of the promotion is a matter for the authority.

- 8.7 All accounts furnished and contracts entered into should be open to public inspection.

**Supervision and Investigation**

The Advisory Group consider that supervision and investigation are operational matters for decision by the registration authority.

**General**

- 10.1 The Group agreed the aspiration that charities should not have to pay irrecoverable VAT.
- 10.2 The Group agreed that tax deduction for charitable fundraising should be looked at favourably.

**SUMMARY OF THE MAIN RECOMMENDATIONS OF THE COMMITTEE ON  
FUNDRAISING ACTIVITIES FOR CHARITABLE AND OTHER PURPOSES**

**REGISTRATION**

1. There should be a system of registration of organisations fund-raising for charitable purposes involving both annual accounting and reporting to a registration authority possessing statutory supervisory and investigatory powers with a prohibition on fund-raising by non-exempt, non-registered organisations.
2. There should be an exemption from the registration provisions for small local charities raising funds not in excess of £10,000, and an exemption for certain charitable companies and ministers of religion raising funds for the purposes of religion.
3. There should be a dual system of registration with organisations raising in excess of £50,000 registering with the Charity Commissioners and bodies raising less than that figure registering locally with the appropriate Garda Chief Superintendent.
4. There should be an Index of Registered Fund-raising Organisations maintained by the Charity Commissioners.

**ACCOUNTABILITY**

5. There should be a tiered system of accounting requirements related to the size of the fund-raising organisation.
6. Every registered organisation should be required to keep prescribed books of accounts which should be available for public inspection.

**SUPERVISION**

7. Both registration authorities should have supervisory and investigatory powers.

**PERMITS AND LICENCES**

8. Applicants for collection permits or lottery permits or licences should be required to produce evidence of compliance with the registration requirements as a condition precedent to being granted a licence or permit.
9. The power to make regulations under the street and house to house legislation should be vested in the Minister for Justice rather than the Garda Commissioner.
10. The sale of lottery tickets by house to house visits should be prohibited

unless a collection permit has been obtained from the Chief Superintendent.

11. House to house sales in respect of periodical licences should also be regulated but in a way that favours organisations traditionally using this method.

12. The selling of lottery lines on a street or by house to house visits should be prohibited.

13. The selling of lottery tickets in the street should be prohibited.

14. The sale of "scratch-card" lotteries should be brought within the scope of the 1962 Act.

15. The sale of articles for charitable purposes by means of house to house visits should be prohibited.

16. A charity collecting on church grounds with the consent of the church authorities will not require a collection permit but must comply in all other ways with the requirements of the 1962 Act as well as informing the Divisional Officer of their intention to collect.

17. Divisional Officers should remain the licensing authority for collection permits.

18. The geographical scope of the collection permit should not extend beyond the division of the Chief Superintendent granting it.

19. The Charity Commissioners should draw up guidelines to assist the Gardai in exercising their discretionary powers relating to collections.

20. All authorisations should be stamped by the Chief Superintendent and unsealed or open collection boxes prohibited.

21. Accounts relating to the collection should be submitted to the relevant Chief Superintendent and be available for public inspection.

22. The definition of a lottery in legislation should be drafted to encompass anti-avoidance schemes.

23. Occasional lotteries should be better regulated by requiring greater details at the time of the permit application, controlling the level of expenses, regulating sales, requiring returns and accounts to be submitted and ensuring that the public are able to ascertain the outcome of the lottery.

24. A periodical lottery licence should operate only in the District Court District in which it is granted with provision for nationwide periodical lotteries by means of an approved Scheme.

25. The existing monetary limit of prize money should be expressed as an average figure.

#### **TELETHONS**

26. Telethons should be registered in a similar way to nationwide periodical lotteries and should operate only under an approved Scheme.

#### **PROFESSIONAL FUND-RAISERS**

27. There should be a system of annual registration with the Charity Commissioners of professional fund-raisers.

28. Applicants for registration should obtain a certificate of qualification from the Chief Superintendent.

29. The applicants should maintain a fixed deposit in the High Court and the certificate of deposit should be submitted to the Charity Commissioners when applying for registration.

30. Contracts between professional fund-raisers and charitable organisations should be in writing, should contain certain particulars to be prescribed and should be registered with the Charity Commissioners.

31. All monies received by a professional fund-raisers should be paid to the charity before deduction of any remuneration or expenses.

32. Professional fund-raisers should be required to furnish accounts within three months of the termination of the promotion.

33. All accounts furnished and contracts entered into should be open to public inspection.



**SUMMARY OF THE PROCEEDINGS OF THE SEMINAR ON CHARITIES -  
DUBLIN CASTLE, JUNE 1995**

**Introduction**

There is a commitment in the Government Policy Agreement to reform the law relating to administration and regulation of charities along the lines of the Costello Report. As part of the process of considering what legislative changes are needed in this area, the Minister of State, Ms. Joan Burton, T.D., hosted a seminar at Dublin Castle with the aims of examining the recommendations of the Costello Report and the accounting practices and standards for charities. Guest speakers were invited to address the seminar on matters of relevance in this area and representatives of various fundraising and charitable groups were given an opportunity to raise issues of concern to them.

**Minister of State, Ms. Joan Burton T.D.**

The Minister explained that the legislative aim is to facilitate a proper level of accountability on the part of charitable organisations to donators and to achieve accountability without placing undue burdens on organisations. The Minister stated that she is anxious that the registration and accounting requirements "strike the right balance" and has similar concerns in the area of collections where there is the critical problem of the opportunity for the unscrupulous to take advantage of people's generosity. She does not believe that the "plastic bucket" syndrome is in anyone's interest. The aim of the new legislative framework is to sustain and inspire public confidence in the fundraising area.

**Mr. Mel Cousins**

Mr. Mel Cousins, Researcher and Lecturer in Social Policy at University College Maynooth, gave an overview of the Costello Report. He commented that, at present, charitable bodies may register for tax purposes under one set of criteria with the Revenue Commissioners and may register for exemption from rates where the word charitable may have a slightly different meaning. This issue needs further consideration lest there be confusion with the new system.

**Mr. Roger Acton**

Mr. Roger Acton, Chief Executive of the Disability Federation of Ireland, addressed the conference and his proposals were extremely well received by the participants. He said that the 1956 and 1962 Acts are quite specific in relation to the detail of workings of fundraising organisations and that with the passage of time, the details of the legislation become outdated and more restrictive than originally intended. This is one of the difficulties from having legislation with such a strong emphasis on detail. He summarised the main recommendations of the report and disliked what he felt was an emphasis on control. The legislation should be enabling. He felt that exemptions and allowances could only lead to

confusion. "All groups who engage in fundraising activities must be bound by any new legislation. There can be no cop-outs."

Mr. Acton sees the need for completely new legislation that does not set artificial and arbitrary limits on prize funds and which is open to interpretation. The legislation must be very clear and fair with very clear and strict penalties for those who break it's terms. All funds raised publicly must be recorded and accounted for, with varying degrees of accountability, and all accounts to be submitted to the new Authority.

The new Agency will need it's own ethos and a "vibrant management system" headed by a Charity Commissioner who has a clear understanding of and the support of the sector, financed by but independent of the Government and reporting back directly to the Dail. All charitable organisations should be obliged to register and all fundraisers obliged to submit accounts. The Registry would be responsible for the issuing of licences and permits, empowered to remove or refuse licences and to compel reluctant organisations to submit accounts. The Registry should resist from setting out maximum limits for areas of expenditure.

The essential aspect of Mr. Acton's address is his recommendation that the new legislation should set out the broad parameters and policy with the establishment of a Registry of Charities as the principal feature. The Registry would then have the powers to focus on the details and controls of fundraising organisations. The new legislation will only work if it has the complete support of the voluntary sector and the State genuinely involves the voluntary sector in discussions before it's introduction.

#### **Mr. Richard Fries**

The next speaker was Mr. Richard Fries, the Chief Commissioner for the Charity Commission for England and Wales. He explained that The Charities Commission has a staff of 600 and a budget of £24m. It reports through the Home Secretary to Parliament, is independent of political control and is financed wholly by the Exchequer. The aim of the Charity Commission is to enhance charity by (i) improving it's effectiveness and accountability and (ii) supervision. Any ordinary charity with an annual income over £1,000 must register and those with an annual income of over £10,000 must provide annual accounts and report, which accounts are supervised by routine sift. At present the Commission is having consultations with the sector with a view to bringing in a statutory graded accountability structure.

#### **Ms. Úna Curtis**

Úna Curtis, Chartered accountant and a Director of Professional Standards with KPMGSKC, addressed the seminar on the issue of accountability and accounting regulations. She stated that, at present, unless a charity is a company or a providence society subject to the regulations of that body there are no real requirements to account. It is necessary to achieve a balance between the benefit of being accountable and the cost. Charities need controls to see the full picture of income received and income used. All charities regardless of size

should have the absolute requirement to keep proper accounts.

She suggests this model for accounting requirements:-

- (i) organisations with an income of between £1,000 and £10,000 should provide a very simple annual return giving the name, purpose, trustees, turnover and total reserves with accounts compiled by receipts and payments accounting.
- (ii) organisations with an income of between £10,000 and £100,000 should provide audited accounts.
- (iii) larger organisations should provide an annual report giving a narrative description with the objects of the charity and analysis of reserves, and financial statements with full accrual accounting.

**Open Forum**

The seminar invited the views of the sector representatives who welcomed the opportunity to express their opinions. There appeared to be general agreement with the issues raised by the guest speakers, particularly with the address of Roger Acton. There was no objection to the idea of a system of registration and accountability but some representatives echoed the point that the Registration authority should be in place before any decisions are finalised on regulations.

The other major issues raised were:

- The Authority must be adequately resourced.
- There should be harmonisation in the financial requirements across Government bodies.
- Is the accounts band decided retrospectively?
- Should affiliated groups register separately or under the umbrella organisation?
- The issuing of permits should be left to the Gardai.
- The inspective functions should be carried out by the Gardai.
- There is a problem with the present system of application for and obtaining permits particularly on a nationwide basis on the same day.
- The prohibition of line selling either in the street or house to house would be devastating for some organisations. If they suggest ways of minimising the opportunity for abuse they should be allowed to continue.
- The Charity Authority in Northern Ireland is the Department of Health and Social Security, which is, at currently undertaking a review with particular emphasis on the registering charities and an annual report-back system. As many organisations fundraise throughout the 32 counties, it would be beneficial to liaise with the DHSS before introducing any legislative change.

**Members of the Advisory Group on charities/fundraising legislation**

**Ita Mangan, Chairperson - Special Advisor to Minister of State, Ms. Joan Burton T.D.**

**Stephen Farrelly, Director of Communications and Fundraising. The Rehab Group.**

**Sarah Gormley, National Parents Council.**

**Bill Cleary, National President, Society of St. Vincent de Paul.**

**Roger Acton, Chief Executive, Disability Federation of Ireland.**

**Siobhán McGee, Dóchas.**

**Kate O'Sullivan, Director, Carmichael Centre for Voluntary Groups.**

**Fr. John Byrne, Conference of Religious of Ireland.**

**John McCormack, National Charities in Ireland.**

**Éimear Fisher, Secretary to the Advisory Group - Department of Justice.**