

**ONE HUNDRED AND SIXTY FIFTH  
ANNUAL REPORT  
OF THE  
COMMISSIONERS  
OF  
CHARITABLE DONATIONS  
AND  
BEQUESTS FOR IRELAND  
FOR THE YEAR ENDED 31 DECEMBER 2012**

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## COMMISSIONERS

For the year ended 31<sup>st</sup> December, 2012

The Hon. Mr. Francis D. Murphy, Chairman.

Colm Gaynor B.C.L., Solicitor.

The Hon. Mr. Justice Declan N.O. Budd.

Venerable Gordon C.S. Linney.

The Hon. Miss Justice Mary Laffoy.

Ms. Mary Geraldine Miller, B.L.

Rt. Rev. Monsignor John Wilson.

Mrs. Daphne Tease B.A., F.C.A.

Mr. Peter H. Mullock F.C.A.

Mr. Graham Richards B.A., Solicitor

Ms. Justice Mary Irvine

**OFFICE:** 12 Clare Street, Dublin 2.

**SECRETARY:** Ms. Orla Barry Murphy B.C.L., Solicitor

## **REPORT TO THE GOVERNMENT**

We, the Commissioners of Charitable Donations and Bequests for Ireland (hereinafter called “the Board”), submit our one hundred and sixty fifth Report.

### **INTRODUCTION AND MISSION.**

*We affirm our Mission, which is:*

#### **To perform our statutory duties as set out in the Charities Acts.**

The Board is mandated under the Charities Acts, 1961 and 1973 to provide services to trustees of charities and to carry out the intentions of persons making donations and bequests to charity.

The Board provides various services for charities without charge. Many of the services are of a judicial nature and must be exercised according to the strict rules of law which affect charities. The services provided are as set out in the Strategy Statement 2011 – 2014, and in the April 1998 “Guide to the functions, records, rules and practices of the Office”.

The Charities Act, 2009 was signed into law on the 28th February 2009. The Act provides for the establishment of a Charities Regulatory Authority, the dissolution of the Office of the Commissioners for Charitable Donations and Bequests and the transfer of its functions to the new Body. Since its enactment, a number of sections of the Act have been commenced. Sections 1, 2, 5, 10 (other than subsections (3) and (4)), and 99 were commenced by the Charities Act 2009 (Commencement) Order 2009 (S.I. No. 284 of 2009), while sections 4 and 90 were commenced by the Charities Act 2009 (Commencement) Order 2010 (S. I. No. 315 of 2012). The Office of the Commissioners will continue to operate until such time as the Authority is established.

### **BOARD CASELOAD**

During the year ended 31<sup>st</sup> December 2012, we dealt with 422 applications and sealed 189 orders in respect of matters affecting charities and charity property. We held 11 meetings and an average of 38 items appeared on the agenda at each meeting.

As in previous years, there were many applications to approve transactions involving trust property. Charity trustees very often have no power permitting them to deal with property in

their trust instrument and so avail themselves of Sections 34 and 40 of the Charities Act, 1961, which give powers to deal with property in respect of transactions authorised by the Board. Section 40 provides that such authorised sales, leases, exchanges and other transactions will have the like effect and validity as if they have been authorised by the express terms of the trust instrument affecting the charity. A total of 106 transactions were sanctioned during the period. This figure is a slight reduction on last year reflecting the continued depression in the Irish property market.

Since 1973 the Board has had power to sanction sales between one charity and another whereby a public benefit results notwithstanding that the consideration money does not represent the full market value of the property. In this period 8 such sales were approved. In all other cases we deem ourselves obliged to ensure that the consideration paid represents the full current market value of the property.

Prior to the enactment of the 1961 Act a court application was necessary to have new trustees appointed over charity property, involving charities in considerable expense. Under the Acts of 1961 and 1973 we are empowered to appoint new trustees in any case where it appears necessary. Frequently it is found that although property has been in the possession of a charitable organisation for many years no title deeds can be traced. These powers save charities the expense and delay of a court application permitting them to apply to the Board to have new trustees appointed. In this period 55 such orders were made.

We are empowered under Section 29 of the Charities Act, 1961 as amended by Section 8 of the Charities Act, 1973 to apply a charitable fund where necessary to suitable alternative purposes by way of a Cy-Prés Scheme thus obviating the expense or need to apply to the High Court to effect such alternative purposes.

The Social Welfare (Miscellaneous) Provisions Act, 2002 which extended our jurisdiction to settle Cy-Prés Schemes without monetary limit enabled us to deal with 66 such Schemes this year. Previously the Commissioners jurisdiction was limited to applications having a monetary value of up to £250,000.

Many of these Schemes are very lengthy and we have to satisfy ourselves that the Schemes submitted for our sealing contain proper and workable clauses for the operation of the

proposals contained in the Scheme. Of the applications made during this period 7 proceeded to conclusion.

If trustees experience any difficulty in administering a charitable trust, or executors in administering a charitable devise or bequest, they may ask the Commissioners for their advice or opinion. In this period 12 such cases were sealed. Trustees who act in accordance with the Commissioners' advice are deemed under Section 21 (3) of the Charities Act, 1961 to have acted in accordance with the terms of the trust.

Section 22 of the Act enables trustees to apply for approval of a compromise of a claim against a charity. The majority of these cases arise where the residuary estate is bequeathed for charitable purposes, and where a claim for all or portion of the estate is made against the personal representatives. This year 10 such applications were considered by the Board.

Sections 2 and 3 of the 1973 Act give the Board power to frame Schemes incorporating charity trustees. The provisions are most useful to solicitors. Trustees may become an incorporated body under a Scheme which will set out the terms of the Trust, and will provide effective machinery for the vesting of the charity property in the corporate entity. The merits are apparent, for example:- cheapness, clear definition of the objects, and the imprimatur, "so to speak", of the Commissioners as to the charitable nature of the Trust. On the framing of a Scheme, the trust property will automatically vest in the charity on the trusts applicable, subject to any prior rights and liabilities. The Commissioners sealed 2 such Schemes during the period.

Other matters dealt with included: 8 leases; 7 transfers; 12 mortgages; 37 financial matters; and 3 applications for the establishment of a Common Investment Fund.

A system was set up in July 1993 to enable the Charity Commissioners to exercise their statutory functions in relation to the protection of charitable bequests. This system was updated and revised during 2006 to take advantage of more advanced technology available to the Office. As a result all charitable legacies reported to the Board are investigated. A receipt is now sought from the recipient of every charitable legacy reported. This is a considerable increase over previous years when only 1 bequest in 10 was investigated. This increase is as a

result of the greater use of the resources available to the Office, and in particular, as a result of greater use of technology.

Solicitors applying for a Grant of Probate of any Will containing a charitable legacy are asked to lodge a simple summary form with the Probate Office supplying details of all charitable bequests. These forms are transmitted to the Office of the Charity Commissioners every month.

During the period a total of 2,295 bequests were investigated. Of these, receipts have been received in respect of 1,343 bequests. The remainder remain outstanding pending finalisation of the administration of the various estates but continue to be monitored by the Office. A review of any receipts currently outstanding since the introduction of this system is underway.

Section 32 of the Charities Act, 1961 as re-enacted in a new form by Section 9 of the Charities Act, 1973 allows the Board to invest charity funds under its control in securities neither authorised by law nor by the trust instrument, and permits charity trustees to do likewise. However, no applications for such authorisation were received this year.

The 1973 Act removes the restriction in the earlier Act, which, in general, confined investment to Irish equities. Under Section 9 (3) there is a complete discretion as to which investments can be chosen. However, in practice we maintain a Form of Authorisation for the Investment of Charity Trust Funds. This form has been revised and amended from time to time, and most recently on 15<sup>th</sup> March, 2005.

Other matters in respect of which the Commissioners' assistance was sought involved the approval of Scholarships and the amendment of Educational Endowment Schemes.

The Commissioners hold a number of scholarship funds in their Common Investment Fund, the grants from which are subject to the Commissioners approval. This year the Commissioners approved the payment of scholarships from 3 such funds.

During the year the Commissioners amended or amalgamated Educational Endowment Schemes at the request of the Governors of the Schemes on 7 occasions.

## FINANCIAL SUMMARY

The Commissioners hold funds on behalf of charities which are invested either in a Common Investment Fund established for that purpose or in shorter term deposits in Permanent TSB.

The Common Investment Fund was established by the Commissioners with Hill Samuel on 30th September, 1985 for the purpose of having the monies in their care managed by professional asset managers. Messrs. Hill Samuel have since been replaced by AIB Investment Managers and Prescient Investment Managers Limited.

The following is a summary of the activities on the Common Investment Fund for 2012. The audited Financial Statement in relation to the Fund for the 12 months to 31 December 2012 is attached hereto.

	<u>2012</u>	<u>2011</u>
Value of Common Investment Fund	€7,829,025	€6,514,785
No. of Units in issue	7,302,895	7,572,539
Basic value of Unit	€3.81	€3.50
Net income per Unit earned in respect of year	14.70	14.45 cent

Income arising from the Common Investment Fund for the year to 31st December, 2012 was made up as follows:

Investment Income	1,186,481
Deposit Interest Income	<u>28,632</u>
Total Income	1,215,113
Management and Administrative Expenses	<u>(82,304)</u>
Net Income	<u>1,132,809</u>

Appropriated as follows:

Transferred from the Equalisation Reserve	(29,898)
Reinvested	234,309
Distributed	<u>928,398</u>
	<u>1,132,809</u>

### Amount Distributed

The income available for distribution was calculated by the Trustees at 30 June, 2012 and 31 December, 2012 and each participating charity was allocated its entitlement based on the number of shares held by it on each of the respective valuation dates. Income was either paid to the charity or reinvested in the Fund on its behalf.

The distribution per share at 30 June and 31 December was as follows:

	2012	2011
30 June	7.70 cent	6.75 cent
31 December	<u>7.00 cent</u>	<u>7.70 cent</u>
Annual distribution	<u>14.70 cent</u>	<u>14.45 cent</u>

A copy of the Report of BDO Simpson Xavier, Chartered Accountants who audited the Common Investment Fund is attached hereto. The BDO Simpson Xavier Report gives a detailed analysis of the investments held in the Commissioners Common Investment Fund.

In relation to the performance of the Fund the twelve months to December 2012 were a strong period for global equity markets as growth in the U.S. economy picked up and the new President of the European Central Bank, Mario Draghi, announced a full scale bond market intervention, which gave investors renewed confidence that the Eurozone debt crisis could be curtailed. Also, the Eurozone bond market enjoyed a very strong year as Mr Draghi's comments prompted a rise in bond prices with an inverse drop in bond yields.

Distributions to unitholders totalling 14.70cts were approved for payment in respect of 2012 – an income yield (based on the average of the opening and closing unit prices) of +4%. The unit price increased strongly in value from €3.501 to €3.811 – a rise of +8.9%.

The Fund continues to have a diverse mix of investments in equities, government securities, property and cash assets.

### Permanent TSB Accounts

Short term deposits at 31st December, 2012 with the Permanent T.S.B. amounted to €4,437,385.19. These represent monies received by the Board on behalf of charities which are awaiting further decision as to their application or which require shorter term investment than is provided by the Common Investment Fund. During the year sums amounting to €1,477,695 were received by the Board for charities. A detailed Schedule of these funds is set out in Schedule 1.

Under the Exchequer and Audit Department Act, 1921 accounts in respect of sums voted to the Office by the Oireachtas for the year ended 31st December, 2012 were audited by the Comptroller and Auditor General. A copy of the Report of the Local Government Auditor who audited the Permanent TSB accounts held by the Commissioners is attached hereto.

### REPORT ON THE STRATEGY STATEMENT 2011 – 2014

The Board has framed a Strategy Statement 2011 – 2014 as required under the Public Service Management Act, 1997.

The Strategy Statement seeks to chart the development of the Office of the Board (hereinafter called “the Office) over this period. It was prepared in consultation with the staff of the Office and is set against the background of an organisational and management review by Deloitte & Touche Management Consultants.

Four key objectives were defined by the review and these objectives continue to be relevant to the work of the Office and are set out hereunder.

The key factors relating to their achievement are discussed, as is our ability to implement this Strategy Statement:-

## HIGH LEVEL OBJECTIVES.

In line with Government directions for the drafting of the Departmental Strategy Statements the Board developed four clear high level objectives. The four objectives which were set out in the Strategy Statement 2011 – 2014 are set out as Objectives 1-4.

In addition to this the Sustaining Progress Action Plan (2004) makes further commitments which may be summarised by a further three objectives set out as objectives 5-7.

### OBJECTIVE 1

*To contribute to the public good by ensuring the wishes of people making charitable donations and bequests are protected.*

The administration of a Charitable Bequest/Donation may continue over a number of years and, therefore, the following up on summary forms provided by the Probate Office requires effective systems. Until 2006 a manual system was in place but during 2006 a computerised system was implemented which allows all charitable bequests reported to the Probate Office to be checked. A signed receipt acknowledging receipt of the bequest is required in every case. It had been proposed that those bequests in respect of which receipts were outstanding would continue to be monitored on a regular basis, however, a reduction in the numbers of staff in the Office has delayed this process.

### OBJECTIVE 2

*To contribute to the effective administration of Charities by assisting Trustees of Charities to fulfil their functions where there is an existing structural or legal impediment.*

Assistance to Trustees, both formal and informal, must be accurate, clear, pragmatic and consistent. The Office is committed to dealing with as many applications/enquiries as possible in a timely and courteous manner in accordance with the expectations in our published Customer Service Action Plan.

Assistance must be given in good time to be useful to trustees. The Office should, following receipt of all necessary documentation from a solicitor, prepare memoranda for the Board in a timely manner. This is largely achieved but only by continually prioritising and dealing with larger and more critical cases, many of them out of turn. The Office employs both electronic and manual records to establish the current position of any case in hand. We also endeavour to ensure the delivery of an optimum service to charities in line with Board policy and consistent with the legal staffing of the Office. The result is that outstanding cases awaiting the consideration of the Secretary or Board approval are monitored in a professional manner and remedial steps taken where a backlog exists. This method is relied on particularly in those cases which are perceived to be more important or where external deadlines exist.

During 2012 two full-time positions continued to remain vacant but with the assistance of technology the work of the office continued to be carried out with minimal delays.

### OBJECTIVE 3

***To contribute to effective public service by maximising the use of the resources of the Office.***

Regular meetings with individual members of staff ensure that all staff are clear as to their functions and responsibilities.

The training and development programme operated by the Department of Justice and Equality has been extended to this Office providing specialised training and support for clerical staff in addition to constant on the job training enabling staff to discharge their particular functions.

A system has been established to examine summary forms (prepared by Solicitors applying for grants of Probate) received from the Probate Office supplying details of charitable bequests which has the following objectives:-

- to ensure that the Commissioners receive the summary forms at monthly intervals;
- to record data accurately and provide a monthly return to the Secretary for consideration by the Board;
- to track solicitors who do not respond to the requirements of the Board;
- to set up and refer cases requiring further legal action to the Secretary;

As a result of the continuing vacancies staffing resources did not permit action being taken in relation to the outstanding information sought. However, a record of such information has been maintained for future investigation once resources permit. The financial summary set out at pages 7 and 8 provide details of the returns achieved during the year.

#### **OBJECTIVE 4**

*To ensure a good return on monies invested in the Commissioners Common Investment Fund, consistent with an appropriate investment policy given the interest of Charities.*

The Commissioners' Common Investment Fund continues to be managed by professional investment managers who liaise with the Finance Committee of the Board. Regular investment monitoring reports are prepared.

#### **OBJECTIVE 5**

*To establish clear measurable standards against which performance can be measured on an ongoing basis*

A Charter of Customer Service Standards has been put in place and the Charter is on display in the Public Office. In addition a Quality Customer Services Action Plan has been prepared which sets out the standards we strive to achieve within the Office.

These include:

- Fair and equitable treatment of all who come in contact with the Office.
- Prompt and efficient service.
- Implementing quality standards for those services provided by the Office.
- Ongoing improvements in service standards.
- Making information available in published form.

Throughout 2012 there were no complaints from the Public regarding the quality of the service provided by the Office. In addition, the Office has put in place a mechanism which ensures regular communication with applicants in order that they might have confidence that their

application is being dealt with as speedily as possible but knowing also that a system of fairness exists where each application is treated on an equal basis.

## **OBJECTIVE 6**

### ***To promote equality***

The Office is committed to service-wide policies on equality and diversity and to this end promotes existing diversity and gender equality policies throughout the Office, equality proofing of all of the Office's policies, publications and procedures.

## **OBJECTIVE 7**

### ***To secure the highest standards of ethics***

The Office is committed to securing the highest standards of ethics and to this end:-

- promotes the Civil Service Code of Standards and Behaviour as centrally agreed and embodies the principles in its HRM strategy;
- applies the Ethics Act to all grades down to and including H.E.O. and equivalent;
- requires declarations of interests of all staff involved in tendering procedures;
- requires full implementation of procurement procedures.

Schedule No. 1

Funds received for charities in the period ended 31<sup>st</sup> December, 2012 amounted to €192,152.32 (this is the correct figure for 2012) made up as follows:

<u>Charity</u>	<u>Amount</u>	<u>Source</u>
J. S. O'Grady	€242.46	Income from Investments
Anna M. Fitzgerald	€2514.36	Income from Investments
Irish Musical Fund	€138.71	Income from Investments Computershare, Compustore, & H.M. Treasury
Eileen Farrelly	€1,788.20	Funds received pending resolution of dispute
Ann Westropp	€3.46	Income from Investments
Department of Education & Skills	€53,385.13	Funds received from Department of Education & Skills for Investment for Educational Endowments.

The Commissioners also hold Prize Bonds to the value of €70 on behalf of Charities.

A copy of the report of the Local Government Auditor who audited the Permanent TSB accounts held by the Commissioners is attached hereto.

In witness whereof the Common Seal of the Commissioners of  
Charitable Donations and Bequests for Ireland has been affixed hereto:

This 14<sup>th</sup> day of January 2014.

PRESENT WHEN SEAL AFFIXED:

SEAL

John A. Wilson  
A Commissioner.

Orla Barry Murphy  
Secretary.

**THE COMMISSIONERS OF CHARITABLE DONATIONS AND BEQUESTS FOR IRELAND**

**ANNUAL FINANCIAL STATEMENTS**

**FOR**

**YEAR ENDED 31<sup>st</sup> DECEMBER 2012**

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**COMMISSIONERS**

**For the year ended 31<sup>st</sup> December 2012**

The Hon. Mr. Francis D. Murphy, Chairman.

Mr. Colm Gaynor B.C.L., Solicitor.

The Hon. Mr. Justice Declan N.O. Budd.

Venerable Gordon C.S. Linney.

The Hon. Miss Justice Mary Laffoy.

Ms. Mary Geraldine Miller B.L.

Rt. Rev. Monsignor John Wilson.

Mrs. Daphne Tease B.A., F.C.A.

Mr. Peter H. Mullock F.C.A.

Mr. Graham Richards B.A., Solicitor.

The Hon. Ms. Justice Mary Irvine.

**OFFICE:** 12 Clare Street, Dublin 2.

**SECRETARY:** Ms. Orla Barry Murphy B.C.L., Solicitor.

## **STATEMENT OF COMMISSIONERS RESPONSIBILITIES.**

The Commissioners prepare accounts for each financial year which present fairly the state of affairs of the administrative office of the Commissioners and of the income and payments for the year.

In preparing these accounts, the Commissioners are required to:

- select suitable accounting policies and then apply them consistently; and
- prepare the accounts on a going concern basis.

The Commissioners are responsible for keeping proper accounting records which describe with reasonable accuracy at any time the financial position of the office. The Commissioners are also responsible for safeguarding the assets of the office and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities. As such the Commissioners have employed competent accounting personnel with appropriate expertise and the provision of adequate resources to the financial function. The books of account are maintained at 12 Clare Street, Dublin 2.

Given under the Common Seal of the Commissioners of Charitable Donations and Bequests for Ireland.

This 10<sup>th</sup> day of December, 2013

Mary Laffoy  
A Commissioner

Orla Barry Murphy  
Secretary

## **AUDIT REPORT**

I have audited the annual financial statements as set out on pages 6 to 9 for the year ended 31<sup>st</sup> December, 2012.

### **Responsibilities of the Commissioners and the Local Government Auditor**

The Commissioners' responsibilities for the preparation of the Annual Financial Statements are set out on page 4. In accordance with Section 14 of the Charities Act, 1961, it is my responsibility, based on my audit, to form an independent opinion on the statements.

### **Basis of Opinion**

I conducted my audit in accordance with the principles and practice of Local Government Audit. An audit includes examination, on a test basis, of evidence relevant to the amounts and disclosures in the annual financial statements. It also includes an assessment of whether the accounting policies are appropriate to the Office's circumstances, consistently applied and adequately disclosed.

I planned and performed my audit so as to obtain all the information and explanations which I considered necessary in order to provide sufficient evidence to give reasonable assurance that the annual financial statements are free from material misstatement, whether caused by fraud or other irregularity or error.

### **Opinion**

In my opinion the annual financial statements present fairly the financial position of the Office of the Commissioners at the 31<sup>st</sup> December, 2012 and its income and payments for the year then ended.

Maurice O'Neill  
Local Government Auditor.

Date: 16<sup>th</sup> December, 2013

## **STATEMENT OF ACCOUNTING POLICIES.**

The accounts are prepared on an income and payments basis.

The main sources of income are:

- the closing of accounts held in the Common Investment Fund;
- the receipt of charity funds pending settlement of a Scheme; and
- interest earned.

The principal payments are:

- the payments to the trustees of the various charities arising from the closing of Common Investment Fund Accounts;
- transfer's into the Common Investment Fund Accounts.

**Statement of Income and Payments – year ended 31<sup>st</sup> December, 2012**

	2012 €	2011 €
<b><u>Income</u></b>		
Common Investment Fund: Distributions – Other	42,080	62,918
Interest on Deposits	126,083	143,370
Charity Funds Received: New Charity Funds	188,141	1,477,695
<b>Total Income</b>	<b>356,304</b>	<b>1,683,983</b>
<b><u>Payments</u></b>		
Charities	527,307	904,890
Bank Charges	44	45
<b>Total Payments</b>	<b>527,351</b>	<b>904,935</b>
Net Movement	(171,047)	779,048
Opening Balance at January 1 <sup>st</sup>	5,030,065	4,251,017
Closing Balance at December 31 <sup>st</sup>	<b><u>4,859,018</u></b>	<b><u>5,030,065</u></b>

**STATEMENT OF BALANCES AS AT 31<sup>st</sup> DECEMBER, 2012**

	<b>2012</b>	<b>2011</b>
	<b>€</b>	<b>€</b>
Cash on deposit	<b>4,859,018</b>	4,994,208
Accrued interest	-	35,857
	<u><b>4,859,018</b></u>	<u>5,030,065</u>
 Represented by:		
Charity accounts	<u><b>4,859,018</b></u>	<u>5,030,065</u>

## **NOTES TO THE ACCOUNTS.**

### **1. COMMON INVESTMENT FUND**

The Common Investment Fund (“The Fund”) was established in April, 1985 by the Board of Commissioners of Charitable Donations and Bequests for Ireland (“the Board”) under a Scheme pursuant to Section 46 of the Charities Act, 1961. The Board is mandated under the Charities Acts 1961 and 1973 to provide services to trustees of charities and to assist in the carrying out of the intentions of persons making donations and bequests to charity including the administration of assets or funds of any charity which are vested in the Board.

**2.** Prize Bonds to the value of €70 are registered in the name of the Commissioners of Charitable Donations and Bequests for Ireland.