

THE CHARITIES ACT (NORTHERN IRELAND) 2008
THE CHARITIES ACT (NORTHERN IRELAND) 2013
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010

The Charity Tribunal for Northern Ireland

Appeal Reference: 6/16

Heard in public in the Tribunal Hearing Centre, Belfast

On

27 March 2017

Before

IAN HUDDLESTON
Chairman

BETWEEN

ROBERT CRAWFORD

Appellant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

-and-

ATTORNEY GENERAL FOR NORTHERN IRELAND

Notice Party

The Appellant appeared in person
Dr T McGleenan QC and Mr P Mateer BL appeared for the Respondent
Ms Maura McCallion for the Attorney General for Northern Ireland

DECISION

1. **The Preliminary Issue is dismissed**
2. **The Charity Commission of NI as a body corporate is entitled to delegate and utilise members of staff in accordance with properly adopted procedures**
3. **No Order as to costs**

Appearances:

1. Robert Crawford, Appellant
2. Dr T McGleenan QC and Mr P Mateer BL for the Respondent
3. Ms Maura McCallion BL for the Attorney General for Northern Ireland

The Preliminary Issue

1. The preliminary issue before the Tribunal relates to the decision made by CCNI to remove Mr Robert Crawford ("the Appellant") as a trustee and whether that decision pursuant to an Order issued under Section 33 of the Charities Act (NI) 2008 ("the Act") was a lawful decision of the Commission under the Act.

Background

2. The Respondent is the Charity Commission for Northern Ireland ("the Commission" or "CCNI"). The Commission started an inspection into the affairs of the Disabled Police Officers Association NI ("DPOANI" or "the Association") on 7 November 2013 as a result of an expression of concern raised by a former chairman of the Association.
3. On 14 February 2014 the Respondent initiated a statutory inquiry pursuant to Section 22 of the Act.
4. From 8 August 2014 onwards the Commission made a number of Orders under Section 33 of the Act the effect of which were to remove one trustee (including the Appellant) and one employee. The Order relating to the Appellant was dated 22 January 2015.
5. The Appellant lodged his Appeal Notice on 20 February 2015. That appeal was heard by the Tribunal over a number of days on 30 April, 1 May and 12 June 2015 with judgment being issued on 19 October 2015. The decision of the Tribunal was to uphold the Orders which had been made by the Commission.
6. The Attorney General for Northern Ireland appealed against that Order which led to a High Court hearing, the result of which was a remittal of the case for reconsideration to an independently constituted Tribunal.
7. By an application dated 28 October 2016, the Appellant sought a direction under Rule 3 of the Charity Tribunal Rules (NI) 2010 ("the Rules") seeking the trial, as a preliminary issue, of the lawfulness of the Order of 22 January 2015.

8. The grounds the Appellant asserts in challenging the lawfulness of the Order are: (1) that the Order is unlawful because it was not taken by the Commission (as defined in Section 6 of the Act) but rather by its staff and that as there is an absence of a proper power of delegation under the Act therefore the Appellant argues that the Order was unlawful; and (2) that an Order made under Section 33 could only be made by the Commission if it had lawfully instigated a statutory inquiry pursuant to Section 22. On a consistent basis the Appellant argues that as the statutory inquiry was undertaken by members of staff of the Commission as opposed to the Commission itself that the investigation was therefore unlawful with the result that the statutory requirement of a proper inquiry under Section 33(2) had not been met and that the resulting Order, therefore itself, was unlawful. This I will call the Appellant's second ground but fundamentally its root again goes to the question of the lawfulness of delegation by CCNI.
9. The preliminary issue, therefore, for the Tribunal is if those acts in the manner in which they were taken by the Commission were taken lawfully.

A Summary of The Commission's Position

10. The Commission says that the Act gives it a wide range of powers geared at the protection and regulation of charities and that Sections 22 and 33 of the Act fall into that category.
11. As to its approach to the exercise of those powers CCNI say:
 - That by virtue of Section 6 of the Act it is constituted as a body corporate;
 - That as a body corporate, in the light of Schedule 1 of the Act that it has been given wide powers to employ staff (paragraph 4 of Schedule 1) and to delegate functions to subcommittees (which may or may not include persons who are members of the Commission (Paragraph 9 of Schedule 1));
 - That it does not dispute that there is no express provision in the Act authorising the delegation to staff which is equivalent to the provisions in Schedule 1 of the Charities Act 2011 insofar as it applies to and governs the operation of the Charity Commission of England & Wales ("CCEW") which includes an express power of delegation;
 - But that, notwithstanding the absence of such an express provision the Commission argues that by virtue of being a body corporate - and therefore a body to which Section 19 of the Interpretation Act (Northern Ireland) 1954 ("the Interpretation Act") applies - that it has the right to regulate its own practice procedure and business together with the right to employ staff - in short that the Interpretation Act gives it the general powers available to corporates on which the permissive provisions of the 2008 Act (and Schedule 1 in particular) adds;
 - That, in addition, Section 10 of the Act expressly gives CCNI the power "to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties"

(emphasis added) confirming the generally permissive approach for which it argues;

- That on the facts of this case the decision to commence a statutory inquiry was taken by or under the authority of three commissioners and that therefore the Appellant is incorrect on the facts to suggest that the statutory investigation was not properly authorised or undertaken by "the Commissioners";
- That, in fact, all decisions which were taken in the case were taken by the Commission and that where members of staff were involved that they did so on the basis of practices and procedures which had been lawfully authorised and approved by the Commission in general meeting;
- and, that, thereafter, the Commission is entitled to act through its staff and that all decisions which are taken and issued are the formal decisions of the Commission;

That is a summary of its position but I shall return later to its detailed arguments.

The Commission's Evidence

12. The Tribunal was provided with a witness statement from Ms Frances McCandless, Chief Executive of the Commission which was submitted formally in evidence together with a large number of exhibits consisting in the main of the Commission's legal operating manuals and the minutes of meetings of the Board in which they were approved. The principal purpose of the witness statement was to explain exactly the process by which the Commission takes its decisions - particularly those leading to the conduct of a statutory inquiry and the making of an Order under Section 33 of the Act.
13. In that specific regard Ms McCandless cited a process by which the legal and operating manuals were formally adopted by the Commission in a properly convened Board meeting after which they were then provided to members of staff who had to follow them when taking a decision on behalf of the Commission. Ms McCandless in her witness statement said *"the manuals specify the level of staff seniority at which each kind of decision is taken. All manuals are drafted and presented to the Board of Commissioners (the Board) for approval. In approving these manuals the Board agrees the decision making process to be adopted in the name of the Commission as a body corporate"*.

That is the core of CCNI's argument.

14. Applying that approach to the facts of the present case CCNI is of the view that a decision to remove pursuant to s.33 can lawfully be taken through a process by which the inquiry team (in this case commencing with Mr Neil Henry) completes an investigation and then makes a recommendation to a senior officer. Subject to that process being concluded and endorsed then the Commission can move to an Order to remove. Ms McCandless was clear however that the Order itself (and thus the decision) is only *"made when the Head of Charity Services, Head of Monitoring and Compliance, Head of Corporate Services or the Chief Executive signs and seals the Order"*.

15. The point which the Commission seek to emphasise is that the Order is not effective until it is signed off by the Commission in that way (and the seal of the Commission is affixed) and that the adopted manuals at all times makes that point clear.
16. In addition to the manuals, we were furnished with a copy of the Order in question which had the seal of the Commission affixed and we were informed that it had been sealed by Mr Myles McKeown as Head of Compliance and Inquiries with a document attached which had been signed by Mr Henry as an authorised signatory setting out the detailed terms of the Order as it applied to Mr Crawford. The Commission say (in effect) that the act of sealing the Order is an act of the Commission – as is therefore the Order itself.
17. As regard the second ground of appeal, as proposed by the Appellant (ie the unlawfulness arising from the manner of authorisation of this statutory inquiry) Ms McCandless in her witness statement stated that the Commission's process relating to the commencement of a Statutory Inquiry makes it clear that the decision to commence any inquiry is reserved to the Commissioners and that at least three Commissioners must endorse that decision. The relevant section of the Operating Manual contains the following directions:-

"The Enquiry Manager will contact all Commissioners and ensure a minimum of three Commissioners are available to meet with the HCE and Enquiry Manager to make a decision on the institution of a Statutory Inquiry..."

We were provided with a document entitled "Risk Assessment Form" which detailed the findings of Mr Henry as the investigating officer, the approval of Mr Myles McKeown as Head of Compliance and Inquiries and the "authorisation" (as it is termed) of three Commissioners. The form on its face stipulates that a "minimum" of three signatures are required for that authorisation to be effective and the Form in this case was, in fact, so signed. The wording of that endorsement/form of authorisation is in the following terms:-

"We the Commissioners confirm our authorisation of a Statutory Enquiry"

18. As regards the Appellant's second ground the Commission's position, therefore, is that, on the facts, the inquiry was properly commenced and signed off by three Commissioners and that consequently the Inquiry was properly commenced by a meeting convened for that purpose and, therefore, the subsequent Order was validly made.

Statutory Background

19. The 2008 Act established the Commission as a body corporate. Section 6(1) of the Act provides:

"There shall be a body corporate to be known as the Charity Commission for Northern Ireland".
20. Section 6(8) then provides as follows:

"Subject to Schedule 1, Section 19 of the Interpretation Act (Northern Ireland) 1954 applies to the Commission".

21. Section 19 of the Interpretation Act (Northern Ireland) 1954 makes general provision for the effect of certain words across all statutes – a type of shorthand or lexicon which can then be cross-referenced or simply taken to subsist as a foundation for statutory (or indeed other) drafting. On its face, the effect of Section 19(1)(a) of the 1954 Act is to vest in a body corporate (ie the Commission arguably in this case) *inter alia* the following rights and powers:

- "(i) The power to sue in its corporate name;...*
- (iii) The right to have a common seal;...*
- (v) The right to regulate its own procedure and business;*
- (vi) The right to employ such staff as may be found necessary for the performance of its functions".*

It is the latter two provisions (with emphasis added) upon which the Commission rests (in large part) its case.

22. Turning then to the Act itself, Section 8 of the Charities Act itself sets out the general functions of the Commission and Section 8(2) in particular provides that:

"(2) The general functions are: -

- (1) Determining whether institutions are or are not charities;...*
- (3) Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein".*

23. Section 9 then imposes a number of duties on the Commission one of which is relevant, namely that in performing its functions the Commission:

"(2)(1)(b) [must operate] in the way it considers most appropriate for [meeting its objectives], and

(3) in performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way" (emphasis added).

24. Section 10 of the Act provides the Commission with certain incidental powers:

"10(1) The Commission has power to do anything which is calculated to facilitate or is conducive or incidental to the performance of any of its functions or general duties"

25. Turning to the specific powers of the Commission which are raised in this appeal the general power to initiate inquiries is provided by Section 22 of the Act. It is expressed in terms that "the Commission may" institute inquiries with regard to Charities or (under Section 22(2)) may appoint a person to undertake such an inquiry. Which obviously is a specific form of delegation.

26. As regards the Order to remove the Appellant that was granted under Section 33(2), that particular provision provides that:
- "Where at any time after it has instituted an inquiry under Section 22 with respect to any charity, the Commission is satisfied: -*
- (a) *that there is or has been any misconduct or mismanagement in the administration of the charity;*
 - (b) *that it is necessary or desirable to act for the purposes of protecting property...*
- the Commission may of its own motion do either or both of the following things:*
- (i) *By order remove any trustee, charity trustee, officer agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or whose conduct has contributed to it or facilitated it;*
 - (ii) *By order establish a scheme for the administration of the charity".*
27. At this stage it is also probably sensible to set out the provisions of Section 175(4) of the Act which is a general saving provision and is in the following terms:
- "...an Order made by the Commission under this Act should be deemed to have been duly and formally made and not be called in question on the ground only of irregularity or informality, but (subject to any further order) have effect according to its tenor".*
28. As referred to by the representatives, those are the statutory provisions which are most relevant to the determination of this preliminary issue.

The Commission's Position

The challenge to the Statutory Inquiry (i.e. the Appellant's Second Ground)

29. The Commission's position is that insofar as the Appellant is permitted to challenge the lawfulness of CCNI's decision to institute a statutory inquiry that he is being allowed a collateral opportunity to bring an appeal against a decision which, in the absence of the current proceedings, would otherwise stand as duly and properly made - the Appellant having already been refused his application to extend time to bring an appeal against that decision.
30. Without prejudice to that view, however, CCNI make the case through Ms McCandless' witness statement on the point, that the decision to open the inquiry was, under the adopted procedures of the Commission (as ratified by the Board) made by three Commissioners and not, therefore, solely by a member of staff as the Appellant suggests and that, therefore, his argument on this point is flawed both in fact and in law.

The Decision Making Process

31. The principal point in relation to the determination of this preliminary issue is, of course, the approach which CCNI has adopted to the delegation of decision making. CCNI's position is that the investigation, recommendation and decision making is undertaken by staff but that that process is undertaken under the

direction of the Commission and that it is empowered to delegate to staff by virtue of being a corporate body and indeed further is obliged to adopt such approach given the limited number of Commissioners (a minimum of five) and the statutory obligation under which it operates namely to operate in "*an efficient, effective and economic way.*"

32. Ms McCandless' witness statement makes the point that the Commission has taken the deliberate policy of adopting manuals which govern the operation and procedure by which its business is undertaken but that at all times those decisions are acts of the Commission itself. That approach, Dr McGleenan, as Counsel on its behalf argued, is one which is supported by Section 19 of the Interpretation Act, (as cited above) as augmented by the provisions of the Charities Act itself such as Section 10 which permits the Commission the broad power to do "*anything which is calculated to facilitate or is conducive or incidental to the performance of any of its functions or general duties...subject to an overall requirement (at Section 9(2)) to [utilise] its resources in the most efficient, effective and economic way*". Its argument is that the legislative provisions, when taken together, provide an argument for the general empowerment of the Commission.

33. The Commission says that the most "*efficient, effective and economic way*" for it to perform its function is to utilise staff who then operate under the internal processes which the Commission has already adopted (for such purposes) and to which reference has been made above and in Ms McCandless' witness statement. In support of that view, Dr McGleenan cited the decision of the President of this Tribunal in the case of *Caughey v The Charity Commission for Northern Ireland* (applicant reference: 8/16) where he said of Sections 7, 8 and 9 of the Act:

"This entitles the Respondent to decide, in its discretion, that certain decisions may be taken by an officer of the Respondent. Where so arranged, this does not mean that such decision is not a decision of the Respondent..."

34. On both points therefore, the Commission argues that it has addressed the concerns both regarding the process (the s.22 Inquiry) and the actual decision making (the s.33 Order) by which the Appellant was removed as a trustee of the charity.

The Attorney General for Northern Ireland

35. The Attorney General who appealed the original Order is a party in these proceedings has a contrary view to that of the Commission.

36. He approaches this from the basis that Section 19 of the Interpretation Act is expressed to apply: "*Subject to Schedule 1 of the Charities Act*". On that basis he says that the general proposition for reliance on Section 19 must give way to the specific provisions which are detailed in Schedule 1. To give an example of how that operates he refers in particular to paragraph 9(1)(a) of the Schedule which provides that:

"In determining its own procedure the Commission may, in particular:

(a) make provision about the discharge of its function by committees (which may include persons who are not members of the Commission)".

37. Looking at the interplay between that provision and Section 19 leads the Attorney General to conclude that whilst the former (ie Section 19) permits a body corporate to employ staff and decide how it will make decisions, the latter (ie paragraph 9) only permits the CCNI (in this case) to take decisions as the body corporate or by committees set up for that purpose which may, in turn, include persons who are not members of the body corporate (ie staff and others). The Attorney General's view is:
- "The power of the Commission to regulate its own procedure as a result of the application of the Interpretation Act cannot extend as far as allowing it to abdicate to its staff the exercise of statutory powers that the legislature has entrusted to the Commission".*
38. In short he says that Section 19 does not provide for empowerment or a "blank cheque" (as he termed it) in the sense in which the Commission argues and in support of the restrictions on delegation of statutory powers he refers to the comments of Lord Carswell in the *Belfast Telegraph Newspapers Limited Application [2001] NICA* where Lord Carswell said (obiter):
- "They may properly be entrusted with responsibility for carrying much of an investigation...[or] conduct preparatory work [and] the deciders may be influenced by those views and may rely quite heavily upon their officers' advice...The important matter however is that in the end the deciders reach their own decision, accepting whatever opinions and arguments they think fit".*
39. Applying the ordinary principles of statutory interpretation, the Attorney General argues, therefore, that the inclusion of a reference to a committee structure is something to which anyone construing the statute must give effect. The Attorney General's construction of that provision is that it allows the possibility of delegation but only to a committee structure by which decisions must then be taken and is fundamentally inconsistent, therefore, with a general delegation of authority to members of staff.
40. To quote the case of *Vine v National Dock Labour Board (1957)* the Attorney General asserts that:
- "The duty...is too important to delegate..."*
41. As regards what Section 19 could mean in that context we were also referred by way of analogy to the case of *NIPSA's Application (2014) NIQB16* where Tracey J concluded that there may be grounds for implied delegation of matters as between the Policing Board for Northern Ireland and the Chief Constable – a conclusion he reached not on a reliance of the provisions of Section 19 of the Interpretation Act but upon an implied power under the Police (NI) Act 2000 itself.
42. To further support his argument we were referred to the history of the constitution of the Charity Commission of England & Wales. On its inception in 1993 the CCEW was constituted as a body of individual Charity Commissioners receiving corporate status only on the codification of charity law under the Charities Act 2006. The Attorney General made the point that within that codification process (and thus incorporation of the Commission) specific provision was still made in the 2006 Act (Schedule 1A, paragraph 8) to provide for a general power of delegation to members of staff – a provision which now has effect under (and has been replicated

in) Schedule 1, paragraph 8 of the Charities Act 2011. No such provision exists in the Charities Act (NI) 2008.

- Finally, we were referred to what the Attorney General cited as a specific example of delegation within the Act – namely S.11 which deals with specific delegation by the Commission to the person appointed to the role of Official Custodian. That is used (broadly) to base the argument that where delegation is intended it is specifically provided for in the Act.
43. It is based on that analysis the Attorney General has argued, in support of the case of advanced by the Appellant, that the decision made by the Commission to make the Order by which Mr Crawford was removed was unlawful.

The Appellant's argument

44. The Appellant's position as I have said is that the enabling statutory provision (ie Section 32 (2)) speaks only of the Commission as the body empowered to make an Order. He makes the point that the Order itself firstly bears the signature of Mr Henry who signed as a "*member of staff of the Commission authorised to act on [its] behalf*" (19 January 2015) and is then "*authorised*" by Mr Myles McKeown (by the affixing of the seal) on 22 January 2015. Mr Crawford's point is that nowhere is there any reference to the decision being authorised by the Commission itself.
45. Quoting from a long line of cases starting with *Allingham v Minister for Agriculture and Fisheries* [1948] 1 A ER 780 he cited the "*well established principle ... that prima facie a person to whom powers and duties are delegated cannot themselves delegate their performance to someone else ...*" and, then citing *Vine* (as supra) that given the importance of the decision on his ability to hold the role of trustee in future – which in turn he argues engages his rights under Article 8 ECHR – that the instant power is "*too important*" to delegate.
46. Mr Crawford also relies on examples of the operation of other statutory bodies. Indeed, between he and the Attorney General we were referred to some 15 such examples. In 11 of those 15 examples Mr Crawford says that delegation is dealt with expressly within the relevant legislation. The point he makes is that if Section 19 has the effect for which the Commission argues then the powers of delegation as detailed in those 11 cases or statutes would not actually be required.
47. The express power of delegation within the Charities Act 2006 to CCEW, he asserts, further strengthens that particular argument.
48. Indeed he goes further to say that the actions taken by CCNI are – far from "regulating" its business and procedures – abrogating its statutory responsibilities by the delegation of decision making to its staff.
49. As to the specifics of the commencement of a Statutory Inquiry (ie his second ground of appeal) he suggests that the requirement of three Commissioners as adopted by CCNI does not constitute a quorate meeting of the Commissioners in the manner required in Section 22. He referred us to the Standing Orders of the Commission which suggests that for the Commission to be quorate there must be a minimum of four commissioners present at any given board meeting and further makes the point that again under the Standing Orders the meeting of the Statutory

Inquiry Team with the Commissioners is not a Committee because under those Standing Orders as currently drafted a Committee requires Terms of Reference, a Chairman and to be quorate must have a minimum of one Commissioner together with 50% of the declared members of the Committee. His position therefore is that, regardless of the arguments made by CCNI, the decision to commence the Statutory Inquiry was not one which was validly taken because under the auspices of a committee structure because no such committee actually formally existed.

Discussion

What is the correct interrelation between Section 19 and The Charities Act

50. It seems to the Tribunal (unsurprisingly) that the answer to the question of delegation lies squarely in the interpretation of the Charities Act. References to other equivalents or similar constitutions whilst helpful do not set a precedent as in the end each case must be looked at on its particular facts and the statute under which the relevant body has been incorporated.

In the present case it seems to the Tribunal that:-

- On its face the creation of CCNI as a body corporate coupled with the "shorthand" addition of Section 19 of the Interpretation Act tends to suggest to us a generous empowerment of CCNI to "*regulate its own procedure and business*" - to use the language of S19(1)(a);
 - That degree of empowerment is confirmed when one looks at specific provisions within the Charities Act - such as Section 10 - which allows CCNI to do "*anything*" which is conducive or incidental to the performance of its functions; and
 - Is further enhanced with the benefit of the deeming provisions such as that which is contained in Section 175 (4) which deem as valid any acts of the Commission to which that section applies.
51. As against that generous "empowerment" argument the Attorney General has argued that
- (a) Section 19 is only relevant to the extent that it is "*subject to Schedule 1*"
 - (b) that Schedule 1 paragraph 9 (11(a)) in particular restricts the operation of such a generous empowerment because it makes provision for decision making by committees; and
 - (c) that applying ordinary statutory principles of statutory interpretation one has to give effect to those words and that they are, therefore, restrictive of any power to delegate.
52. Indeed on that basis the Attorney General says that CCNI are restricted to the delegation of its functions only to Committees - a position also adopted by Mr Crawford. I have already mentioned his reference to the Official Custodian as an example of his view of express statutory delegation.

53. This argument, I would suggest, depends very much upon the provisions of paragraph 9 the exact wording of which is as follows:

"Procedure

9.1 In determining its own procedure the Commission may in particular make provision about:-

- (a) *the discharge of its functions by Committees (may include persons who are not members ...)etc. (emphasis added).*

54. For the Tribunal's part we find the tenor of that provision to be essentially permissive in nature. Rather than it being restrictive in the sense of requiring a Committee structure we find the word "may" to be wholly permissive and one that builds on the powers of Commission which have been expressly given both as set out in the Charities Act itself (as exemplified by Section 10) but also as directly incorporated by the reference to Section 19. The inclusion of the wording "in particular" further lends credence to the view that delegation to (a) committee(s) – far from being restrictive is, in context, simply one example of the potential exercise of such a power. Simply one example of the potential exercise of a power to determine its own procedure.

55. In short we feel:

- (a) that when construed together with the Charities Act paragraph 9 itself is permissive in nature and not, as was suggested to us by the Attorney General and Mr Crawford, as forcing the Commission into taking decisions only either as the Commission or through a Committee constituted for that purpose; and
- (b) that we can give effect to the wording of Schedule 1 paragraph 9(1) in line with ordinary statutory interpretation and giving an ordinary meaning to the wording of that provision – one that is consistent with the empowerment approach to which we have referred;

56. Accordingly, Paragraph 9, we find, suggests merely one way of indicating how the Commission may operate but is not drafted in a manner which forces it to operate in that particular way. Indeed, we take the view that if it were the latter (i.e. as asserted by the Attorney General) then paragraph 9(1) would have adopted mandatory language such as "shall" rather than the permissive wording which is evidenced by use of the words "may" or "include".

57. The alleged difficulty between the interpretation of Section 19 and the Charities Act itself is one which we consider to be soluble on that basis. Namely that the cross reference to Section 19 of the Interpretation Act is empowering and that Schedule 1 paragraph 9 simply gives one example of how that power may be deployed.

It is also significant in looking at the question of Section 19 and the Interpretation Act generally to remember that it and its operation is exclusive to Northern Ireland and on that basis its adoption by reference to the Charities Act distinguishes the CCNI from its English counterpart – a position we consider was intentional on the part of the drafts.

Can CCNI delegate to staff?

58. That leads us then to the principal question of whether CCNI as a statutory corporation can delegate its functions to members of staff? There was debate between the Parties as to whether or not it was useful, by way of analogy, to refer to an "ordinary company" but on balance I think that analogy is helpful. Generally speaking, if a company is working within the confines of its constitution i.e. generally its Articles of Association - it can do all that a natural person can do and indeed corporate constitutions are often expressly drafted to allow a company the ability to do anything which a natural person can do. The only time it is estopped from then so acting is if there is an actual restriction within its constitution.
59. The analogy is helpful in the present case. CCNI was created as a statutory corporation. The approach the draftsmen took in framing the 2008 Charities Act - as we have found - was generous in terms of empowerment and the creation of provisions that were largely permissive in nature (viz Section 6 (8) and Section 10). We were not referred to any actual restrictions in those practices and procedures other than the reference to Schedule 1 paragraph 9(1) highlighted particularly by the Attorney General and upon which we have commented above. Restrictions (such as that relating to the Official Custodian) are of a particular and, we find, limited kind.
60. That leaves us then with a review of the wording of the actual sections which are in point.

Sections 22 and 33

61. Section 22 very clearly speaks in terms of the acts being taken by the Commission and it being empowered to institute statutory inquiries either by itself or through the appointment of another (S22.(2)) in the form of external delegation. Section 33 for its part, speaks in terms of a power (inter alia) to remove trustees where the Commission is satisfied that there has been misconduct.
62. As to this the CCNI have said that
- (a) the Statutory Inquiry is validly commenced only where approved by three Commissioners in line with its adopted procedures ; and
 - (b) an order for removal is only effective where it is duly sealed by the Commission after an exhaustive authorisation process which in turn has been already approved by CCNI through the adoption of its manuals.

The Statutory Inquiry under Section 22

63. The argument that CCNI have adopted in relation to the Appellant's second ground (i.e. that to be valid the process has to be actually commenced by the Commission) is effectively that (a) it can delegate to employees or (b) the Risk Assessment Form - being signed off by three Commissioner - represented a valid act of the Board.

64. To that proposition the Appellant argues that:-

- (a) for the commencement of an Inquiry to be an act of the Commission the Board needs to be quorate and that as paragraph 4.9 of its Standing Orders requires a quorum of four the condition is not met by the authorisation of three Commissioners (as purportedly is the case under the Authorisation to the Inquiry before us);
- (b) in the alternative for it to be a committee that the Standing Orders require (inter alia) terms of reference, a Chair and to be quorate a requirement of at least one Commissioner and 50% of the Committee itself;

In reply to that Dr McGleenan referred us to paragraph 4.25 of the Standing Orders:-

"4.25 The Board will establish an Audit and Risk Committee and a Human Resources Committee. In addition it may establish a committee for any purpose within its functions..."

The process adopted leading to the Inquiry, it was suggested, was in effect an ad hoc committee set up for the purposes of authorising the Inquiry as a precursor to the Order for removal.

- 65. For the Tribunal's part, it would seem to us that the question of authorisation rests not on the issue of whether, in terms of the commencement of the Section 22 procedure, the Board was quorate or not or if there was a validly constituted Committee (whether ad hoc or otherwise) but on whether or not as a fundamental matter of principle the Commission as a body corporate had properly adopted a process - through the adoption of its Manuals - which envisaged and permitted the authorisation by three Commissioners followed by an investigation carried out by its members of staff - with in certain cases (and indeed this one) - the order for removal being ultimately sealed as an act of the Commission and then issued in accordance with those adopted manuals and directed procedures.
- 66. The crux of the Commission's argument is that *"all the decisions in this case were taken by the Commission regardless of whether they were taken by staff, its members or by committee. The impugned decisions were made properly and lawfully"*.
- 67. As we have said above, the Tribunal finds that the Commission as a body corporate was empowered in generous terms to *"regulate its own procedure and business"* and to employ staff for the proper performance of its functions. This power the Commission has exercised to employ staff and has then adopted the approach of empowering those staff members strictly within the confines of legal and operating manuals - an approach which it adopted to ensure its *"effectiveness efficiency and economy"*. That is the method by which the Commission discharges its functions - it does not liberate employees to act autonomously which in a different concept entirely. Given the statutory empowerment we have found (as above) in the absence of a restriction we accept that the adoption of those manuals (and the forms and processes embedded within them) were therefore part of an approach validly taken by the Commission in its legal position as a body corporate and were

authorised at quorate meetings of the Board who then stipulated or directed as to how decisions were to be taken. To that extent, the Commission sought to "regulate" the persons in its employment by placing certain safeguards and authorisations into the process such as, for example, the requirement of a sign off by three Commissioners in the case of the instigation of a Statutory Inquiry which I would suggest it properly identified as an important power. As long as staff and members operate within the confines of those procedures they had both actual and ostensible authority in relation to the acts which they took. Those "acts" provided they were carried out in compliance with those adopted procedures therefore were nonetheless "acts" of the Commission - as opposed to individual employees - and therefore we find were valid.

68. The question turns for the Tribunal not so much on whether the three Commissioners were a quorate meeting of the Board or a separate (formal) committee but if the legislation (ie the Charities Act and the Interpretation Act) provided the requisite degree of empowerment in the absence of restrictions and we find it does. We also find that staff working within those confines were acting at all time for and under the direction of the Commission that the decisions taken were those of the Commission.

Order under Section 33

69. As for the Order for removal we unsurprisingly take the same view. The significance for us is that the adopted process culminated in an Order that was sealed by the Commission in accordance with its adopted procedures. It was empowered, we find, to determine the requirements, which had to be satisfied before such an Order issued but in the final instance the sealing of the Order we find is the act and more in particularly the decision of the Commission as a body corporate operating in accordance with its own duly authorised procedures.

Decision

70. The Preliminary Issue is dismissed.

The adoption for detailed structure of operational manuals and guidance we find goes directly to the question of how the CCNI took decisions rather than constituting an abrogation of power to staff. In reality staff were at all times constrained by those requirements which were, in turn, dictated by the Board. As we have said that is an analogous to the operation of any other corporate vehicle and we take the view that that was the intention of the draftsman. That form of operation we feel distinguishes this case from the cases of *Allingham* and the Belfast Telegraph.

Costs

71. The Tribunal has jurisdiction to award costs in favour of any party to proceedings before it against any other party to the proceedings, in whole or in part, but only where it considers that the other party has acted

vexatiously, frivolously or unreasonably, subject to that party having an opportunity to make representations against the making of the costs order. Costs do not follow the event.

72. The Tribunal does not consider that the said criteria existed in these proceedings. Accordingly the Tribunal declines to make any costs order in respect of these proceedings in the circumstances.

The Right of Appeal

73. Pursuant to rule 32(2) of the Rules a right of appeal lies from this decision of the Tribunal to the High Court of Justice in Northern Ireland. Any party or the Attorney General, seeking permission to appeal must make a written application to the Tribunal for permission for appeal to be received by the Tribunal no later than 28 days from the date on which the Tribunal sent notification of this decision to the person seeking permission to appeal. Such application must identify the alleged error(s) in the decision and state the grounds on which the person applying intends to rely before the High Court.

Dated this 13 day of December 2017

Signed:



Ian Huddleston (Chairman)