**THE CHARITY TRIBUNAL RULES (NI) 2010**

**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

**APPLICATION NUMBER 12/14**

**BETWEEN:**

**ROBERT CRAWFORD**

**Appellant**

**-and-**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**Respondent**

1. This is a record of a decision of the Tribunal made in respect of an application brought by Mr Robert Crawford (“the Appellant”). The application is to extend time for the bringing of an application for a review of a decision of the Respondent to institute a Statutory Inquiry into the governance and financial controls of the Disabled Police Officers Association Northern Ireland (“the Association”). The application was opposed by the Respondent.
2. Upon the hearing of this appeal, the Appellant appeared in person, and Mr Frank O’Donoghue QC appeared on behalf of the Respondent. The Tribunal is grateful for their oral and written submissions.

The Charity

1. The Association is an organisation that represents the interests of disabled police officers in Northern Ireland. During the course of the hearing it was common case that the Association is not an incorporated body. Rather, it is an organisation that operates through a committee of trustees.

The Appellant

1. The Appellant was appointed a trustee of the Association in January 2014. By Order dated 8 August 2014, the Respondent made an order suspending the Appellant as a Trustee. The Appellant has launched an appeal against that order, as well as against other, related orders.

The Respondent

1. The Respondent was established by Section 6 of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”). Its objectives are set out in Section 7 of the 2008 Act, and its general functions are set out in Section 8(2).
2. Paragraph 3 of Section 8(2) of the 2008 Act defines one of the Respondent’s functions in the following terms:

*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.*

1. Section 9(2) of the 2008 Act sets out the Respondent’s general duties. Paragraph 4 of Section 9(2) defines one of those general duties in the following terms:

*In performing its functions, the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed).*

1. Section 22(1) of the 2008 Act provides as follows:

*The Commission may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.*

The right to apply for a review the decision to institute a Statutory Inquiry

1. So far as is relevant, Schedule 3 to the 2008 Act provides as follows:

*Paragraph 3*

*(1) In this Schedule references to “reviewable matters” are to (a) decisions on which sub-paragraph (2) applies;…*

*(2) This sub-paragraph applies to decisions of the Commission (a)to institute an inquiry under section 22 with regard to a particular institution;…*

*Paragraph 4*

*(1) An application may be made to the Tribunal for the review of a reviewable matter.*

*(2) Such an application may be made b (a) the Attorney General, or (b) any person mentioned in the entry in column 2 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.*

*(3) The Commission shall be the respondent to such an application.*

*(4) In determining such an application the Tribunal shall apply the principles which would be applied by the High Court on an application for judicial review.*

*(5) The Tribunal may (a) dismiss the application, or (b) if it allows the application, exercise any power mentioned in the entry in column 3 of the Table which corresponds to the entry in column 1 which relates to the reviewable matter.*

 *The Table*

*Column 1:*

*Decision of the Commission to institute an inquiry under section 22 with regard to a particular institution.*

*Column 2:*

*The persons are (a) the persons who have control or management of the institution, and (b) (if a body corporate) the institution itself.*

*Column 3:*

 *Power to direct the Commission to end the inquiry.*

1. Rule 4 of the Charity Tribunal Rules (Northern Ireland) 2010 provides as follows, so far as is relevant:

*Where an appellant has made a request under rule 17(8) to the Tribunal for a direction under rule 3 to allow an appeal or application to be made after the time limit for doing so has expired, the Tribunal must consider—*

*(a) what steps (if any) the Commission has taken to notify or publicise its final decision;*

*(b) when the appellant became aware of the Commission’s final decision; and*

*(c) when the appellant became aware of the right to make the appeal or application and of the time limit for making the appeal or application.*

1. Rule 17 provides as follows, so far as is relevant:
2. *An appeal or application must be made by way of an appeal notice signed, dated and filed by an appellant.*
3. *An appeal notice under paragraph (1) must be filed:*
4. *if the appellant was the subject of the decision to which proceedings relate, within 42 days of the date on which notice of the Commission’s decision was sent to the appellant; or*
5. *if the appellant was not the subject of the decision to which the proceedings relate, within 42 days of the date on which the Commission’s decision was published.*

The Statutory Inquiry

1. On 14 February 2014, the Respondent sent a letter to the Association. As this is an important letter in the context of the Appellant’s application, the more significant aspects of the letter are set out in full below:

***Decision to Institute a Section 22 Inquiry into the Governance and Finance of the Disabled Police Officers Association, Northern Ireland***

*Dear Sirs*

*As you are aware the Charity Commission for Northern Ireland has received a concern relating to the governance and financial control of the Disabled Police Officers Association Northern Ireland (DPOANI).*

*The Commission wrote to the DPOANI on 6 December 2013 seeking documents and information to assist us in our enquiries. Having reviewed materials received by the Commission we have concluded that not all of the information requested has been provided. Some documentation provided is incomplete; other information has been omitted entirely.*

*In addition, the information provided has given the Commission cause to examine further the governance and financial controls of the DPOANI.*

***Institution of a Statutory Inquiry***

*We follow the principles of best regulatory practice, ensuring our actions are proportionate, consistent, transparent and targeted. In this instance the Commission has identified that the concerns raised present a significant risk to the charity and the Commission’s expectations of good governance within the charitable sector.*

*The Commission considers the response of trustees to date in the provision of documents and information to constitute non-compliance. Furthermore the information that DPOANI have provided to the Commission has given the Commission cause to further examine the DPOANI’s governance and financial controls.*

*On this basis and in response to the increased risk, the Charity Commission for Northern Ireland has instituted a statutory inquiry into the governance and financial controls of the DPOANI under Section 22 of the Charities Act (Northern Ireland) 2008 (“the Act”).*

*The Commission may also write to trustees, officers, agents and members of the charity and other parties pursuant to this statutory inquiry. …*

***Right to have Decision Reviewed***

*If you disagree with our decision to institute a statutory inquiry under Section 22(1) of the Charities Act (Northern Ireland) 2008, you have the right to make an application for the review of this decision to the Charity Tribunal. To make application, you application must be made to the Charity Tribunal.*

The letter then set out the contact details for the Charity Tribunal.

The Appellant’s substantive appeals

1. As indicated above, the Respondent suspended the Appellant as a trustee of the Association by Order dated 8 August 2014. By application dated 12 August 2014, the Appellant issued an appeal against that decision, as well as three other matters, namely the Respondent’s appointment of three additional trustees; the Respondent’s order placing restrictions on Association’s transactions and payments; and the Respondent’s alleged requirement that locks be changed. In addition to those appeals, the Appellant has lodged appeals against related decisions of the Respondent, taken in August and November 2014, as to which the Appellant says he is an “affected person”.

The Appellant’s intimation of a wish to review the decision to institute a statutory inquiry

1. By application dated 23 November 2014, the Appellant applied for a direction under Rule 3 of the Charity Tribunal Rules (Northern Ireland) 2010 (“the Rules”) that he be allowed to appeal the Respondent’s decision to initiate an inquiry under Section 22 of the 2008 Act. In that application, the Appellant referred to his earlier appeal notices of 12 August 2014 and 17 November 2014. The Appellant apologised for the failure to include in those appeal notices a request for an extension of time.
2. In the appeal of 12 August 2014, the Appellant referred to the statutory inquiry; he sought a review of all of the Respondent’s decisions; and he specifically contended that “the Respondent’s decision to institute a statutory inquiry and its subsequent actions were Wednesbury unreasonable and disproportionate.” Similar comments appear in the appeal of 17 November 2014.
3. In each of his appeal documents, the Appellant describes himself as Robert Crawford.

The hearing

1. The hearing to which this decision relates was conducted on 9 December 2014. The purpose of the hearing had been to decide not only the Appellant’s application for an extension of time to seek a review of the decision to institute the statutory inquiry, but also to decide similar applications brought by Ms Elaine Hampton and Mr William Allen.
2. However, due to what appears to have been administrative mishap on the part of those applicants’ representatives, the applications in respect of Ms Hampton and Mr Allen had not been prepared in accordance with the Tribunal’s directions, such that Mr O’Donoghue was not in a position to deal with them. In such circumstances, the only application to extend time that could proceed was the application brought by the Appellant.
3. For the purposes of the hearing, and in accordance with the Tribunal’s directions, the Appellant had prepared and served a witness statement. The parties had also prepared detailed written submissions. They had also prepared bundles of documents and an agreed bundle of authorities.

Whether the Appellant has the statutory right to bring an application for a review of the decision to institute a statutory inquiry (regardless of the time limits)

1. At the commencement of the hearing, the Tribunal drew attention to the question of whether or not the Tribunal had jurisdiction to hear a complaint from the Appellant about the Respondent’s decision to institute a statutory inquiry. This point was *not* concerned with whether the application was out of time and whether the time limit should be extended. Rather, it concerned whether an individual in the Appellant’s position had the right to seek the review of such decision at all.
2. This arose from the contents of the Table in Schedule 3 to the 2008 Order, and specifically that part which provides that the persons who may challenge a decision to institute a statutory inquiry are:

*The persons are (a) the persons who have control or management of the institution, and (b) (if a body corporate) the institution itself.*

1. The Tribunal referred to Rule 5 of the 2010 Rules which allows the Tribunal if it thinks fit to order any appeal notice (which includes an application) to be struck out at any stage of the proceedings, on a number of grounds, including that it discloses no reasonable grounds for bringing an application. The Tribunal further drew attention to its decision in McKee v Charity Commission for Northern Ireland (02.07.13) when it had struck out an application to challenge a decision to institute a statutory inquiry, where that application had been brought by an individual rather than the charity itself.
2. In the light of that issue, the Tribunal indicated that it wished to hear submissions from the parties, before moving on to address the application to extend time. The Tribunal indicated that it proposed to receive submissions on this issue, rather than evidence. The parties confirmed that they were in a position to proceed in this way.
3. The Appellant submitted that since January 2014, he had been one of a number of trustees of the Association. He said that, as such, he was part of the management and control of the Association. He and the other trustees comprised the board of the Association. The Appellant said that the composition of the Association had not changed until August 2014. The Appellant said that during that period of time, the board of trustees would have had the authority to seek a review. He stated that the Tribunal could proceed on the basis that the board of trustees opposed the inquiry. The Appellant said that the trustees had been preparing a challenge. The Appellant emphasised that the rules, by which persons concerned about the institution of an inquiry could apply to the Tribunal, were open to abuse. Specifically, the Respondent could institute an inquiry and then act to remove the charity’s trustees and thus prevent the charity from complaining about the inquiry itself. In that regard, he noted that he had been suspended. The Appellant submitted that the statute should be construed so as to avoid the legislation being abused in the manner described.
4. Mr O’Donoghue submitted that this was a matter of statutory construction. Table 3 provided that an application for a review could be made either by “persons” who have control or management of the charity or by the institution itself if it was a body corporate. The Appellant was not “persons who had control or management of the Association.” He was one person, and, in a situation where the Association acted by a board of trustees, the Appellant could not be regarded as “having control or management” of the Association. Mr O’Donoghue also submitted that the key time to be considered was the time at which the application for a review was made: did the would-be applicant have control or management at that time? In this instance, he said that the Appellant did not – he had been suspended. Mr O’Donoghue also said that there was evidence that the settled will of the Association in February 2014 and thereafter was not to challenge the decision to institute an inquiry. In any event, Mr O’Donoghue said that the Appellant was not making the application in a representative capacity.
5. In reply the Appellant said that the question of construction of the statute should ensure that fairness is done. He emphasised that if he could not bring a challenge then, given the changes in the composition of the board of trustees, brought about by the orders of the Respondent, and the Respondent’s restrictions on expenditure by the Association, no-one could bring a challenge.
6. The Appellant, in his closing written submission, referred to steps – in the way of placing restrictions on Association expenditure – which he contended had been taken by the Respondent and an Interim Manager appointed by the Respondent in respect of the Association, and which, the Appellant suggested, had had the effect of preventing the Association being able to bring an application for a review itself.
7. The Tribunal has considered the parties submissions carefully. The issue is one of statutory construction. The Tribunal has been created by statute. It has no powers and no jurisdiction other than that given to it by statute. The statute provides who has the right to make application to it. In that regard, the wording of the relevant part of Table 2 is of prime and determining importance, both as to what it says and as to what it does not say.
8. As to what the Table says, the relevant part provides that (apart from the case of e.g. a company) the application is to be brought by the “persons who have control or management of the institution” (emphasis added). In the Tribunal’s view, that means the persons, plural, who for the time being, comprise the governing body of the institution – be it a committee or a board of trustees – and are duly authorised to take decisions about the affairs of the institution. If those persons decide, in accordance with the rules of the institution, to bring an application for a review, then they may do so.
9. As to what the Table does not say, the relevant part – unlike other parts of the Table – does not extend the right to seek a review to “any other person who may be affected by the order”. That omission is significant. The Tribunal considers that it is clear that the right to apply for a review has not been extended to an individual member or trustee who has been affected by the order.
10. It is clear from the Appellant’s appeal notices that he has at all times been acting on his own account and on his own behalf, and not more widely, and certainly not on behalf of the Association. Admittedly, he has articulated concerns which are no doubt shared by many in the Association. But that does not mean that the Appellant can be regarded as “persons who have control or management of [the Association].”
11. The Tribunal therefore decides that it does not have jurisdiction to entertain an application brought by the Appellant for a review of the Respondent’s decision to institute a statutory inquiry. The Tribunal therefore exercises its power under Rule 5 to dismiss the Appellant’s application for such review.

Application to extend time

1. Having regard to the Tribunal’s decision set out immediately above, it is strictly unnecessary to decide whether the time limit should be extended. However, given that the Tribunal heard evidence and full argument on the point, it will nonetheless decide this issue as well.

The evidence

1. In support of his application to extend time, the Appellant submitted a detailed witness statement. On coming to give evidence, and upon being sworn, the Appellant confirmed that he adopted the contents of the witness statement as his evidence in chief. The Appellant was then cross-examined by Mr O’Donoghue. Although the entirety of the evidence in chief, the evidence under cross-examination and the points put are not herein exhaustively set out, the Tribunal has considered all the evidence. What appears below is the essence of the evidence presented to the Tribunal. The Tribunal has also considered the contentions of the parties as made in their skeleton arguments, their submissions at the hearing, and the Appellant’s supplementary submission.
2. In his witness statement, the Appellant confirmed that he had in February 2014 received the Respondent’s letter of 14 February 2014 “several days later”. He stated that although the letter referred to the Respondent having received a “concern”, “no further detail about the concern was provided.” The Appellant also recorded that the letter stated that not all information requested by the Respondent had been provided; but, the Appellant suggested, that was incorrect: the Association “had complied with every request... and supplied everything that had been requested.” The Appellant further noted that the letter had claimed that the information provided by the Association had “given the Commission cause to further examine the governance and financial controls of the DPOANI”. But, said the Appellant, the letter did not provide any further explanation of this statement. The Appellant also recorded that the letter had not set out a right of appeal; it had merely referred to a right to seek a review, and no time limit was set out. The Appellant further recorded that later in February 2014, he saw an email from the Respondent, dated 12 February 2014, which referred to the intention to institute the statutory inquiry. The Appellant dew attention to what he suggested were inconsistencies between the contents of that email and the letter of 14 February 2014, as to the reasons for the inquiry.
3. In his witness statement, the Appellant explained why the Association had not considered an appeal at that point: the Respondent had not set out clearly the right of appeal, and what he described as “the serious flaws in the Commission’s approach to its investigation, including its bias against the DPOANI trustees and its failure to comply with its statutory duty with regard to best regulatory practice, were not then apparent.”
4. The Appellant said in his witness statement that, when he received a letter from the Respondent, dated 31 March 2014, “It was at this point that I began to realise that the Commission’s approach to the investigation was deeply flawed. My particular concerns were that it appeared to be acting on the basis of information that was out of date, that it had made allegations against me without setting out any evidence and that its investigations appeared to be biased.” The Appellant said he was particularly concerned about threatened criminal proceedings. He went on to record “It was at this point that I first considered an appeal against the Commission’s decision to institute a statutory inquiry, and I discussed this with the DPOANI Solicitor in early April. It clear to both of us that we were now outside the statutory time limit. However, we both felt that it would be necessary to have more information about the scope of the Commission’s investigation in order to set out the grounds for such an appeal.”
5. In that latter respect, in his witness statement, the Appellant set out the details of the ongoing and numerous attempts which he and his Solicitors made throughout April, May, June and July 2014 to try to elicit further information from the Respondent as to the basis of the allegations against the Association. Perhaps the Solicitors’ letter of 11 July 2014 best summarises the Appellant’s position:

*This office and the DPOANI have repeatedly requested the Charity Commission to disclose the allegations against the organization; there has been a systematic failure, which we believe is unreasonable, by the Charity Commission to co-operate with these reasonable requests.*

1. In the course of cross-examination by Mr O’Donoghue, the Appellant, said that it might be that he had received the letter of 14 February 2014 a few days after the date it was sent. He had read all of the letter. He also said that he believed all the Association’s trustees had received it too. Mr O’Donoghue, in cross-examining the Appellant, drew attention to those aspects of the letter which referred to the Respondent’s concerns about good governance, risk, and non-compliance. He also drew attention to the part of the letter which referred to the right of review.
2. Mr O’Donoghue referred to the fact that the Association had engaged solicitors. The Appellant said that there was a firm of solicitors from which the Association usually obtained legal advice, but it had not approached that firm for the specific purpose of seeking advice about whether to challenge the decision to institute the statutory inquiry. In that regard, Mr O’Donoghue referred to a letter which was sent by the solicitors acting for the Association, to the Respondent, dated 28 February 2010, which said that, amongst other things

*…we note that the Charities Commission has instituted a statutory inquiry and we can confirm that our clients will comply fully with the documents and investigations required.*

1. The Appellant responded by saying that that letter simply showed that the Association was willing to assist in providing information. It was not addressed to the question of whether to challenge the decision to instigate the inquiry.
2. Mr O’Donoghue asked the Appellant about his complaint that the letter from the Respondent had not advised him of the time limit for an appeal. The Appellant said that he was not arguing that there was a statutory provision requiring such information, it was rather that transparency, clarity and fairness required it. The information provided by the Respondent, including on its website, was not clear.
3. Mr O’Donoghue asked the Appellant about that part of his witness statement which referred to the period at the end of March 2014 when the Appellant said that he had concerns about the flawed and biased nature of the Respondent’s actions. The Appellant accepted that he probably expressed some of these concerns to his fellow trustees.
4. Mr O’Donoghue put it to the Appellant that there had been consultations between the Association and its Solicitors. Further, during one of these discussions, the question of the time limit for an appeal had been discussed, albeit briefly. The Appellant confirmed that he had looked at the Charity Tribunal Rules, on the internet.
5. Further, in the course of his cross-examination, the Appellant stated that after the Respondent’s letter of 31 March 2014, he was led to believe that there was something wrong with the Respondent’s investigation and approach. However, even though at that time the Appellant knew the appeal was out of time, he had insufficient information to allow an appeal to be launched, and the solicitor had agreed. The Appellant knew that he could apply out of time, but he felt that he had inadequate information. That was why he had made requests for information, including under the Data Protection Act and the Freedom of Information Act. The Appellant said that the letter of 14 February 2014 had been minimalist.
6. The Appellant said his approach had been informed by his occupation as a civil servant, which was to seek to get the information and then launch an appeal. He was doing this in his own name. He was averse to issuing proceedings. The Appellant drew attention to the fact that he was a litigant in person. The Appellant felt that he had insufficient evidence to launch an appeal.
7. In re-examination, the Appellant said that the general perception had been that when the inquiry was instituted, there was nothing to fear on the part of the Association. That changed in April but the time limit had run out. After that, it seemed not possible or preferable to launch an appeal without getting full information from the Respondent. He sought that information and did not receive it. He made ten requests for information.

The law

1. As appears above at paragraph 10, Rule 4 of the Rules provides three matters which the Tribunal must consider when presented with an application to extend time, namely what steps (if any) the Respondent has taken to notify or publicise its final decision; when the appellant became aware of the Commission’s final decision; and when the appellant became aware of the right to make the appeal or application and of the time limit for making the appeal or application.
2. Having regard to the evidence presented to the Tribunal, the Tribunal makes the following findings of fact about these matters:
	1. The Respondent notified the Association of its decision to institute a statutory inquiry by sending a letter dated 14 February 2014 to the Trustees of the Association.
	2. The Appellant became aware of the Respondent’s decision to institute a statutory inquiry a few days after 14 February 2014.
	3. The Appellant became aware of the right to make an application for a review when he received the letter of 14 February 2014, a few days after 14 February 2014.
	4. The Appellant became aware of the time limit for making an application for a review in early April 2014.
3. However, the matters set out in Rule 4 are not exhaustive as to what the Tribunal is to consider when exercising its discretion under Rule 17(3). The parties drew the Tribunal’s attention to a number of authorities, all of which have been considered by the Tribunal.

1. The parties referred to the decisions of the Court of Appeal in Northern Ireland in Davis v Northern Ireland Carriers [1979] NI 19; Hegarty v EJO [2013] NICA 56; and Fontan v Teletech UK Limited [2012] NICA 44.
2. In Davis v Northern Ireland Carriers [1979] NI 19 Lowry LCJ set out the relevant applicable principles in relation to an application to extend time for an appeal. At 20A-D he stated:

*Where a time limit is imposed by statue it cannot be extended unless that or another statute contains a dispensing power. Where the time is imposed by rules of court which embody a dispensing power such as is that found in Order 64 r 7 the court must exercise its discretion in each case and for that purpose the relevant principles are:*

1. *whether the time is sped: a court will, where the reason is a good one, look more favourably on an application made before the time is up;*
2. *when the time-limit has expired, the extent to which the party applying is in default;*
3. *the effect on the opposite party of granting the application and, in particular, whether he can be compensated by costs;*
4. *whether a hearing on the merits has taken place or would be denied by refusing an extension*
5. *whether there is a point of substance (which in effect means a legal point of substance when dealing with cases stated) which could not otherwise be put forward; and*
6. *whether the point is of general and not merely particular, significance.*

*To these I add the important principle;*

1. *that the rules of court are there to be observed'.*
2. In the Hegarty judgment, Morgan LCJ, giving the judgment of the Court of Appeal, gave the following further guidance with respect to the Davis principles:

*[11] The temptation to analyse the application to extend time by reference to the evaluation of each of these issues should, however, be resisted. The broad nature of the exercise required in considering whether to accede to such an application was captured in the conclusion of the [Davis] judgment.*

*If we had left the case here my view would undoubtedly have been that the delay had not been satisfactorily explained and, that all the more so because there had been a hearing on the merits (which must, judged by the very exhaustive and obviously careful written decision, have been both full and painstaking), the application should be refused.*

*We decided, however, that in order to do justice it would be better to find out the strength of the appellant's case, so far as it was founded on points of law and therefore remained capable of being pursued by way of case stated. We therefore discussed the legal merits of the case in some detail …..It is not, however, necessary to expatiate on this branch of the case, if only because it may come before this court in another guise. I am content to say that nothing emerged to make me feel that justice demanded an extension of time in face of the principles to which I have already adverted.*

1. The Appellant referred the Tribunal to two decisions of the equivalent Tribunal in England, namely UTURN UK CIC v The Charity Commission for England & Wales (Appeal No CA/2011/006) and McKay v The Charity Commission for England & Wales (Appeal No CA/2013/0010).
2. In the UTURN case, the Tribunal referred to guidance given by the Upper Tribunal (Administrative Appeal Chamber) in the case of Information Commissioner v PS [2011] UKUT 94 (AAC) at paragraph 17, as to what should be taken into account in considering an application to extend the period for making an application under the Rules. This included:
	1. *The lateness of the application;*
	2. *The extent to which the application has complied with Article [26(5)(a)];*
	3. *The date the applicant received the decision notice;*
	4. *Whether the reason for the delay was due to holiday, ill-health or other causes largely beyond the control of the appellant;*
	5. *The complexity of the decision appealed;*
	6. *The fact that an appellant is unrepresented and unfamiliar with the appeal process;*
	7. *The fact that the appellant had made enquiries about appealing before the deadline.*
3. In the McKay case, reference was made to the decision of the Upper Tribunal (Tax and Chancery Tribunal) in the case of Data Select v HMRC [2012] UKUT 197 (TCC), in which Morgan J said as follows:

*Applications for extensions of time limits of various kinds are common place and the approach to be adopted is well established. As a general rule, when a court or tribunal is asked to extend a relevant time limit, the court or tribunal asks itself the following questions: (1) what is the purpose of the time limit? (2) How long was the delay? (3) Is there a good explanation for the delay? (4) What will be the consequences for the parties of an extension of time? and (5) What will be the consequences for the parties of a refusal to extend time? The court or tribunal must make its decision in the light of the answers to those questions.*

Findings of fact

1. At paragraph 49 above there are set out the findings of fact as to when the Appellant became aware of the Respondent’s decision to institute a statutory inquiry; as to when he was aware of the possibility of applying for a review; and as to when he was aware of the time limit for making such an application. In short, the Appellant knew both about the decision to institute the inquiry *and* the right to apply for a review, shortly after 14 February 2014. Furthermore, as of early April he knew about the time limit for making an application.
2. The Tribunal finds that the Appellant did not raise the prospect of a challenge to the decision to institute a review until he filed a notice of appeal of 12 August 2014. He did not formally apply for an extension of time until 23 November 2014, albeit that was, the Appellant contends, a mistake: he says that the notice of 12 August 2014 ought to have included an application to extend time.
3. Having regard to the evidence presented to the Tribunal, it makes the following further findings of fact:
	1. At the time when he received the letter of 14 February 2014, the Appellant had, as per the contents of that letter, a clear statement of the reasons as to why the Respondent decided to institute a statutory inquiry. The reasons were expressed in general terms, and details were not given, but the reasons were no less clear for that: (i) the expression of a concern; (ii) alleged non-compliance with requests for information; (iii) risk to the charity; and (iv) a wish to examine further the governance and financial controls of the Association.
	2. The letter correctly referred to the means by which the decision to institute a statutory inquiry might be challenged: i.e. by an application for a review, rather than an appeal. The letter referred to the 2008 statute.
	3. As of shortly after 31 March 2014, the Appellant had serious concerns about how the Respondent was conducting the investigation. He considered that the Respondent’s approach was deeply flawed and biased.
	4. The Appellant personally had access to legal advice in the form of a firm of Solicitors who regularly carried out work for the Association. He met with a Solicitor and discussed filing an appeal and the time limits.
	5. The Appellant was aware that he could seek to make an application/lodge an appeal out of time, but he opted not to do so.
	6. The reason why the Appellant opted not to make an application/file an appeal was because he felt he did not have sufficient information to be able to set out the grounds of his appeal.
	7. The contemporaneous correspondence from the Association to the Respondent shows that, at least as at 28 February 2014, the Association was not opposed to the institution of the statutory inquiry.
	8. That initial benign reaction of the Association probably changed after March 2014, when the Appellant expressed his concerns to his colleagues about the correspondence which he had received from the Respondent. However, still no challenge was made to the decision to institute an inquiry.
	9. The Appellant first raised the prospect of a challenge to the decision to institute the inquiry in an appeal notice served after he had been suspended as a trustee.

Discussion

1. The Tribunal has come to the following conclusions with respect to the various factors to be considered in the exercise of its discretion:
	1. The purpose of the time limit

If a challenge is made to a decision of the Respondent to institute a statutory inquiry, that challenge may be heard and determined, by way of an application for a review, before the Respondent applies time and resources to the implementation of the inquiry. There is therefore considerable value in having challenges to such decisions brought at an early opportunity. Hence the 42 day time limit, albeit that might be extended in an appropriate case.

* 1. The lateness of the application

The letter advising of the decision to institute a statutory inquiry was sent to the Appellant on 14 February 2014. On that basis, the 42-day time limit for making an application expired on 28 March 2014. The Appellant was personally aware of the decision a few days after 14 February 2014.

However the Appellant did not raise the prospect of a challenge to the decision until 12 August 2014. Further, the Appellant did not make a formal application for an extension of time until 23 November 2014.

On any reading of the chronology, there has been considerable delay in pursuing a challenge to the decision to institute the statutory inquiry: around 20 weeks had passed by the time of the first intimation of a challenge in the 12 August 2014 appeal notice; 36 weeks had passed by the time of the formal application of 23 November 2014. Those periods are to be contrasted with the initial 6-week application period.

* 1. The reason for the delay in making an application for a review

(i) Whilst the time limit was extant

The Tribunal has considered in this context the action – or more properly, the inaction – of the Appellant, and the reason for that inaction, whilst the time limit was still extant.

The Appellant put before the Tribunal a number of reasons why he did not make an application for a review while the time limit was extant.

One reason was that the letter from the Respondent did not refer to an appeal. The Tribunal does not accept that that was a good reason not to make an application at that time: the letter properly referred to the review process – a reference to an appeal would have been technically incorrect. But, in any event, in substance, the letter informed the Appellant that he could challenge the decision. There was no duty on the Respondent to set out the time limit; and that is something which the Appellant could have discovered himself if he had wished: one can be sure about that because, at a later stage, the Appellant did look at the Rules on the internet and he did find out the time limit. He also had ready access to a solicitor.

A further reason given by the Appellant was that the letter was “minimalist” and did not give enough information to allow a challenge to be made. The Tribunal does not accept that reason. The letter set out plainly a number of reasons for the institution of the inquiry. They were readily comprehensible. If the Appellant thought that there was no substance to the reasons, he could have easily made an application for a review, making that very point.

A further reason given by the Appellant was that, at the time when the letter was sent, the Association thought that there was nothing to fear from the inquiry. Arguably this reason for not acting somewhat contradicts the reason discussed just above. But the Tribunal attaches considerable importance to the letter from the Association’s **Solicitors**, dated 28 February 2014, which confirmed that it would co-operate with the inquiry. The Appellant gave evidence to the effect that the Association did not actively consider the question of an appeal at that time. That may be entirely correct. However the letter shows that, at the very least, the Association did not at that time consider there were grounds which even required it to consider its appeal options: on the contrary, the Association was, at that time, willing to co-operate with the inquiry.

For these reasons, the Tribunal considers that there was nothing to prevent the Appellant from making an application for a review, while the time limit was still extant.

(ii) After the time limit expired

The Tribunal has found that shortly after 31 March 2014, the Appellant had formed the view that the Respondent, in the course of the investigation, was acting in a manner which was deeply flawed and biased. By that time, the Appellant was aware of the time limit for making an application.

Yet, notwithstanding those serious concerns, and even though he was aware of the time-limit, the Appellant still did not make an application for a review. On the contrary, the Appellant, with the benefit of legal advice, took a conscious and deliberate decision not to make an application for a review. The reason for that decision was that the Appellant had inadequate information to allow him to make an application, coupled with his caution about engaging litigation.

The Tribunal considers that what this shows is that (i) the Appellant did have concerns which could readily have been framed into an application for a review; but (ii) a judgment was made by him, in conjunction with his solicitor, that an application would not be made.

In other words, the only reason for a delay in making an application for a review, in April 2014, was a deliberate, conscious judgment on the part of the Appellant that an application should not be made at that time. There was nothing external to the Appellant that prevented him from making an application for a review.

That remained the position throughout May, June, July and August of 2014. The explanation given by the Appellant for his failure to file an application for a review during this period was that his requests for information were going unanswered.

However, contrary to what the Appellant contends, the Tribunal considers that the alleged lack of information on an ongoing basis, was positively a reason to hasten to make an application for a review. Yet still the Appellant did not act.

Further, the Tribunal does not consider that the Appellant’s contention that, post March 2014, he did not have sufficient information to allow him to make an application, withstands scrutiny. From March 2014 onwards, the Appellant considered that the Association was the victim of biased and flawed procedures and the withholding of information. Those were grounds which, without more, could have readily been put formulated into an application for a review.

The Tribunal thus considers that there was nothing to prevent the Appellant from making an application for a review at any time in the period after 31 March 2014.

(iii) The reason for the delay - conclusion

The Tribunal considers that the delay in making an application for a review has not been satisfactorily explained. That is not say that the Appellant has not provided explanations for his ongoing failure to make an application. He clearly has done so. But the explanations are not satisfactory, in the sense that they do not provide justification to depart from rule that the application should have been made on or before the end of March 2014, or certainly by mid April 2014 at the latest.

On the basis of what was in the letter of 14 February 2014, the Appellant did have sufficient information in February and March 2014 to allow him to make an application for a review within the time limit.

Further, on the basis of the conclusions he had drawn after the 31 March 2014 letter as to bias and flaws, the Appellant had grounds for making an application for a review at that stage, and thereafter. But his judgment was that he would not make such an application, and that judgment remained for a number of months thereafter.

That judgment appears to have been revised in August 2014. By that time, the Appellant had been suspended as a trustee. But the Tribunal does not consider that such a change in judgment, in and of itself, is a satisfactory reason to extend a time limit set by the rules.

* 1. Whether a hearing on the merits has taken place; the effect of extending time; the effect of not extending time

It is important to appreciate that an application for a review of a decision to institute a statutory inquiry is strictly not a hearing on the merits of that decision: it is rather a review of the decision according to the principles of the law of judicial review.

However, more significantly, even if the Appellant is denied the opportunity to challenge the decision to institute the review, he nonetheless will still have the right to challenge the merits of the decisions taken about him personally, and the decisions taken about other persons and by which he claims to have been affected.

In the course of the Appellant’s appeals, the actions, motives, evidence, conclusions, practices and procedures of the Respondent will be the subject of robust analysis by the Tribunal. In line with the factors considered in Davis the Appellant, in the course of his appeals, will be able to advance all his complaints and all the points of substance about how the Respondent has conducted itself since the inquiry was instigated, regardless of the fact that he will not be able to challenge the decision to institute the inquiry itself.

On the other hand, if time were to be extended to allow a challenge to the decision to institute the inquiry, the progress of an inquiry which had been underway some six to nine months before the challenge was brought, would be delayed.

* 1. The merits of the putative application for a review of the decision to institute the statutory inquiry

As was said in Davis, and as was emphasised in Hegarty, one of the factors that the Tribunal should consider is the merit or otherwise of the putative application for an appeal.

In the skeleton argument submitted on behalf of the Respondent, the Respondent suggested that the Appellant’s various complaints about the actions of the Respondent did not raise any “public law issue” which might have justified the Tribunal in quashing the decision to institute an inquiry.

The Tribunal notes that many of the points which the Appellant made as to the basis upon which he seeks to challenge the decision to institute the inquiry concern matters which post-date that decision. For example, he has complained about flaws during the course of the investigation; that the inquiry proceeded on the basis of out-of-date information; and that information was withheld throughout 2014. Whilst those points may have *some* evidential significance as to the validity of the earlier decision, the Tribunal considers that they would be far from determinative of it.

Rather, the justifiability or otherwise of the 14 Februrary 2014 would be assessed, primarily if not almost exclusively, by reference to the evidence which existed at the time the decision was made. In that regard, the Tribunal notes that that letter of 14 February 2014 (i) referred to a process of gathering of information which preceded the decision to institute the inquiry; and (ii) set out a number of issues which had led the Respondent to consider that further investigation was required under the auspices of a statutory inquiry.

For these reasons, the Tribunal is not satisfied that the merits of the putative application for a review are such as to outweigh the other considerations set out above.

Conclusion on application to extend time

1. The Tribunal considers that the time limit for bringing a challenge to the decision to institute a statutory inquiry serves an important purpose: it allows the Respondent to know at a relatively early stage whether the inquiry is to proceed. On any reading of the chronology, the Appellant has been late in raising the prospect of a challenge to the review and even more so in making his application. The Appellant has provided an explanation, but not a satisfactory explanation, for his delay. He had to hand the knowledge upon the basis of which he could have made an application for a review at any time from shortly after February 2014 onwards. But he chose not to do so. However, even if he cannot challenge the decision to institute the inquiry, the Appellant will still be able to challenge, before the Tribunal, the orders made in respect of himself and others. Given that the Appellant’s other appeals will proceed, the merits of any challenge to the decision to institute the review do not require that challenge to proceed.
2. For the foregoing reasons, the Appellant’s application to extend time to allow him to make an application for a review of the decision to institute a statutory inquiry is dismissed.

Mr A Colmer (Chairman)

NI Charity Tribunal

18 December 2014

**ADDENDUM**

1. As appears from paragraph 2 of its decision in the above application, the Tribunal made its decision on the footing that the Disabled Police Officers Association Northern Ireland (“the Association”) was an unincorporated association. As further appears at that paragraph, the Tribunal proceeded on that basis, having understood that to be the agreed position of the parties, as appeared in the course of their submissions.
2. However, subsequent to the issuing of its decision the Respondent brought to the attention of the Tribunal that the Association is a company limited by guarantee, rather than an unincorporated association. Thereafter, at the invitation of the Tribunal, Mr Crawford confirmed that that is correct.
3. The Tribunal has considered whether this point has any implications for its decision. The Tribunal considers that the fact that the Association is a company limited by guarantee, rather than an unincorporated decision, does not alter the decision that it has made. Indeed, if anything, the fact that the Association is a company confirms the Tribunal in its conclusion that an individual, such as Mr Crawford, does not have standing to bring an application for a review of the Respondent’s decision to launch a statutory inquiry. The legislation is clear. In the case of a body corporate, the person who brings an application for such a review is the body itself – in this case, the Association.
4. In these circumstances, the Tribunal confirms its earlier decision, subject only to the issue as to the corporate status of the Association.

Mr A Colmer (Chairman)

NI Charity Tribunal

15 January 2015