

**THE CHARITIES ACT (NORTHERN IRELAND) 2008
THE CHARITIES ACT (NORTHERN IRELAND) 2013
THE CHARITIES ACT (NORTHERN IRELAND) 2022
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

The Charity Tribunal for Northern Ireland

Application Reference: 1/22

Remote Oral Hearing in Public via WebEx on 17/10/2022

Before Damien J. McMahon, Tribunal President

BETWEEN

DISABLED POLICE OFFICERS' ASSOCIATION OF NORTHERN IRELAND

Applicant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

DECISION NOTICE

Background and Introduction

1. The Applicant, by way of an application for review dated 15/04/2022, received by the Tribunal on 16/04/2022, applied for review of a decision dated 14/02/2014 made by the Respondent to institute a statutory inquiry into the affairs of the Applicant, a decision made pursuant to section 22 of the Charities Act (Northern Ireland) 2008 ('the 2008 Act').
2. The said decision was stated by the Applicant to a 'relevant action' within the meaning of section 1 of the Charities Act (Northern Ireland) 2022 ('the 2022 Act') that provides for refreshed appeal rights (that includes an application for review), including allowing an appeal to be made to the Tribunal within 91 days of the coming into operation of the 2022 Act, that is, 91 days from 30/03/2022.

3. The Applicant also applied for a Direction pursuant to Rule 3 and Rule 14 of the Charity Tribunal Rules (Northern Ireland) 2010 ('the 2010 Rules') that a preliminary hearing be held by the Tribunal to consider –
 - (1) whether a lawfully constituted committee of, presumably, the Respondent in accordance with paragraph 9 to Schedule 1 of the 2008 Act, took the said decision on 14/02/2014 to institute a statutory inquiry into the Applicant;
 - (2) if no such committee existed, whether the said decision was, therefore, *ultra vires* the powers of the Respondent and, accordingly, void.
4. The Respondent, by correspondence dated 10/06/2022, received by the Tribunal on that date, denied that the said decision, the subject of this application, was a 'relevant action', pursuant to the 2022 Act as it was not a decision made, or purported to be made, by a member of staff of the Respondent and, instead, was a decision made by a committee comprising three Commissioners of the Respondent, and that, therefore, fresh appeal rights, as envisaged by the 2022 Act, did not arise and the application was, therefore, out of time. The Respondent further submitted, in those circumstances, that a preliminary hearing to determine whether the said decision was made by a lawfully constituted committee was not required since it was of no consequence, in any event, whether or not the committee of Commissioners of the Respondent was properly convened as the provisions of section 1 of the 2022 Act only apply to a 'relevant action' taken by staff of the Respondent and not to decisions taken by Commissioners of the Respondent.
5. The Respondent, too, applied for a Direction, presumably pursuant to Rule 3 of the Rules, that the Tribunal require the Applicant to request a direction under Rule 3 to extend time in which to bring the application, time to do so having expired, it stated, pursuant to Rule 17(8) of the Rules and declined to furnish its Response until the Tribunal made a decision on its submission to that effect.
6. By letter dated 11/07/2022, sent by email on that date to the Tribunal, but not copied to the Respondent, the authorised representatives of the Applicant submitted, *inter alia*, that Rule 18 of the Rules required the Respondent to submit its Response within 28 days of being sent the papers by the Tribunal but had failed to do so but instead, on 10 June 2022, made an application seeking the making of the said Direction by the Tribunal addressed to the Applicant, and advised that the Applicant had made certain observations to the Respondent on 15/06/2022 on the position adopted by the Respondent, but had received no acknowledgement of this - representations that were not copied to the Tribunal, and submitted that in the absence of any permission from the Tribunal to apply any longer timescale, the Respondent was in breach of its statutory obligation pursuant to Rule 18(2) of the Rules.
7. The Attorney-General for Northern Ireland ('the Attorney-General'), by letter dated 19/07/2022 from her solicitor, to the Respondent, copied to the Tribunal, declined to participate in these proceedings (meaning, the Tribunal decided, that she declined to join the proceedings as an Intervening Party), but

confirmed that she would be willing to assist the Tribunal, if required, a role governed by Rule 23 of the Rules. The Attorney-General did, at the request of the Tribunal, furnish written submissions to the Tribunal on 26/09/2022, copied to the parties.

8. The Tribunal declined to hold a preliminary hearing. However, the Tribunal directed on 30/08/2022, that a remote oral Directions Hearing take place by WebEx on 17/10/2022 to determine the applications brought by each party for a Direction in respect of the respective matters set out above, at which the parties, through their representatives, were present, and made oral submissions supplementing their respective written submissions, and at which the Attorney-General was also represented and made oral submissions. The parties, and the Attorney-General were represented as follows:
 - Mr. R. Crawford and Mr. T. McKee for the Applicant;
 - Mr. R. McCausland, of counsel, for the Respondent;
 - Ms. M. McCallion, solicitor, for the Attorney-General.
9. By consent, the focus of the instant Directions Hearing addressed only the question of whether the application was a 'relevant action' within the terms of the 2022 Act as the Tribunal's determination of that question would determine how these proceedings might progress. (This was outside the terms of the Applicant's original request for Directions).
10. The instant Directions Hearing was never intended to, and did not, address the determination of the substantive issue, namely, whether, the Respondent was justified in instituting a statutory inquiry on 14/02/2014 into the Applicant and whether that decision was lawfully made by the Respondent.
11. By consent, the issue of *res judicata* did not arise in the context of this Directions Hearing.

Attorney-General

12. It was submitted on behalf of the Attorney-General that the Tribunal, ultimately, would have to decide whether the said decision to institute a statutory inquiry into the Applicant body was made, or purported to be made, by staff of the Respondent on 14/02/2014 ('the impugned decision'), or by the Respondent itself (that is, the Commissioners acting collectively); if the former, it was submitted, the decision was made invalidly.
13. However, it was also submitted that s.1(2) of the 2022 Act (the 'deeming' provision) provided that if the impugned decision was made or was purported to have been made by a member of staff of the Respondent, that decision was treated as a decision made by the Respondent and, in those circumstances, s.1(7) of the 2022 Act provided the Applicant with a fresh right to bring an application to review the impugned decision.

14. Pursuant to s.1(3) of the 2022 Act, it was submitted that the deeming provision did not alter the decision of the Tribunal dated 09/10/2015 dismissing the previous application of the Applicant for review of the impugned decision.

Respondent

15. The Respondent endorsed the submissions of the Attorney-General and submitted that the application against the impugned decision was not a 'relevant action' within the terms of the 2022 Act. It was accepted, however, that if the Tribunal decided to the contrary, then the Applicant, pursuant to the 2022 Act, may have refreshed appeal rights that would enable the application to be brought again.

16. The basis of the Respondent's application for the Direction sought by it, namely, that the Applicant be directed by the Tribunal to apply for an extension of time to bring its fresh application for a review of the impugned decision, was to save time and costs as envisaged in the Charity Tribunal the Rules.

17. It was submitted that a 'relevant action', on the proper interpretation of the 2022 Act, envisaged a decision taken, without lawful authority, by the Respondent's staff and if this was not the case, the impugned decision could not amount to it being a 'relevant action' and, therefore, did not attract refreshed appeal rights. The Respondent denied that the impugned decision was taken by the Respondent's staff but, instead, was a decision taken by the Respondent itself.

18. If this was correct, then, it was further submitted, the instant substantive application was out of time unless time to bring the application were to be extended by the Tribunal should an application for a Direction be made by the Applicant to that effect.

19. The Respondent submitted that the impugned decision was taken by the Respondent itself and not by the Respondent's staff.

Applicant

20. It was submitted that s.(1) of the 2022 Act envisaged not simply the final impugned decision being a 'relevant action' (attracting refreshed appeal rights) but anything done in connection with that decision.

21. It was submitted that the documentation submitted by the parties evidenced that staff of the Respondent were involved in the processes of the Respondent that led to the making of the impugned decision on 14/02/2014, on the recommendation of those staff, and that this meant that staff of the Respondent were involved in actions in connection with the discharge of the Respondent's functions in the making of the impugned decision, and were part of the decision-making process. Accordingly, it was submitted, as a result, the impugned decision was one that was a 'relevant action' within the terms of the 2022 Act and the impugned decision was only made after consultation with staff of the Respondent.

22. It was also submitted that the Respondent's Risk Assessment document associated with the making of the impugned decision confirmed that the role of the Respondent (that is, the Commissioners themselves) and its role to comply with its statutory duties.
23. The Tribunal was referred to a letter dated 14/02/2014 from the then Enquiry Manager of the Respondent to a person associated with the Applicant that, it was submitted, purported to him being authorised by the Respondent's Chief Executive to exercise on behalf of the Chief Executive, on her behalf, '...all the powers conferred by Section 22 of the [2008 Act] for the purposes of investigating the affairs of [the Applicant]'. It was submitted that there was no statutory power to authorise 'another' member of the Respondent's staff to exercise the powers of the Commission.
24. Accordingly, it was submitted, there was no need that the Applicant should apply for an extension of time to pursue its application for review of the impugned decision.

Decision

25. The only matter, by consent of the parties, that ultimately fell for determination by the Tribunal in this Directions Hearing was whether the decision of the Respondent made on 14/02/2022, to open a statutory inquiry into the affairs of the Applicant ('the impugned decision') was 'relevant action' within the terms of the 2022 Act.
26. The Tribunal found that the said decision was not a 'relevant action' since it was satisfied, on the balance of probabilities, on the written evidence and the written and oral submissions of the parties, and the written and oral submissions of the Attorney-General, that the impugned decision was made by the Respondent and not by staff of the Respondent.
27. The submission of the Applicant that because staff of the Respondent were involved in preparing and making a recommendation to the Respondent, as set out in the various documents submitted to the Tribunal, not least the 'Risk Assessment Form' dated 30/01/2014, that resulted in the Respondent making the impugned decision, that this was evidence that the impugned decision was a 'relevant action', as staff of the Respondent were involved in actions in connection with the discharge of the Respondent's functions in the making of the impugned decision, and were part of the decision-making process, and, therefore, meant that the making of the impugned decision was a 'relevant action', was not accepted by the Tribunal. To decide otherwise would mean that the Respondent could not have any staff carrying out any functions of the Respondent of any nature. This simply cannot have been the intention of the legislature as a matter of statutory interpretation.
28. The Tribunal declined to direct the Applicant to take any other particular action with a view to it pursuing its instant application for review of the impugned decision.

29. The Tribunal, by this Decision, made no decision on the substantive issue, namely, whether it was appropriate and lawful on the part of the Respondent to make the impugned decision (save to the extent that the substantive issue may already have been determined by the Tribunal in its Decision made on 09/10/2015 dismissing the Applicant's application for review of the said decision, a decision that was not the subject of any further application).
30. Since this Decision on the application for a Direction, confined, by agreement, as to whether the impugned decision was a 'relevant action' within the terms of the 2022 Act, is not a decision on the substantive application by the Applicant for review of the impugned decision, making a final disposal of that application, no question arises of notification of a right of appeal to the High Court against this Decision of the Tribunal on the application for a Direction. The substantive application currently still subsists.
31. The Applicant is directed to confirm, within 14 days of the date of this Decision, whether it intends to pursue its substantive instant application for review, whereupon the Tribunal, subject to any representations made by the Applicant, may issue fresh further Directions and/or may hold a preliminary hearing or further Directions hearing.

Signed



Damien J. McMahon
President,
Charity Tribunal for Northern Ireland.

Date: 26 October 2022