Case No. NICT 04/18

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

Heard in public in the Tribunal Hearing Centre, Belfast on 22 November 2019
Before: Adrian Colmer (Chairman), Paul Artherton; Richard Ross

BETWEEN:

IAN McMANUS

Appellant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

Appearances:

Mr Trevor McKee for the Appellant

Mr Philip McAteer, of counsel, on behalf of the Charity Commission for the Respondent;

DECISION

The Tribunal unanimously dismisses the Appellant's application to extend time to appeal against the orders of the Respondent (i) restricting transactions by the Disabled Police Officers Association Northern Ireland; and (ii) appointing an Interim Manager of that Charity.

Introduction

1. This is the record of the Decision made by the Tribunal in respect of an application brought by Mr Ian McManus ("the Appellant") to extend the time period allowed for appealing against two orders made by the Charity Commission for Northern Ireland ("the Respondent") under the Charities Act (Northern Ireland) 2008 ("the 2008 Act").

2. The first of these two orders of the Respondent was made on 8 August 2014 under Section 33(1)(vi) of the 2008 Act. By that order, the Respondent prohibited the Disabled Police Officers' Association Northern Ireland ("the Charity") from entering into transactions over £250 without the written approval of the Respondent, for a period of three months.

3. The second of these two orders of the Respondent was made on 8 October 2014 under Section 33(1)(vii) of the 2008 Act. By that order, the Respondent appointed Harbinson Mulholland to be Interim Manager in respect of the Charity.

4. Upon the hearing of these Appeals, Mr Trevor McKee represented the Appellant. Mr Philip McAteer of Counsel appeared on behalf of the Respondent. The Tribunal is grateful to the representatives for their oral and written submissions.

The launching of the appeal; the application to extend time; and the general conduct of the hearing

5. Although the orders against which the Appellant wished to appeal had been made in 2014, the Appellant did not launch his appeal until 10 July 2018. As on the face of it the appeal was out of time, the Appellant's Notice of Appeal also comprised an application to extend time for bringing the appeal. In August 2018, at the direction of the Tribunal, the Secretary to the Tribunal liaised with the parties as to the convening of a hearing of the extension application.

6. The parties and the Tribunal agreed a timetable leading to a hearing in March 2019. However, shortly before that hearing was to take place, the parties applied to adjourn that hearing. The Tribunal acceded to that application. In September 2019, the Appellant applied to have the extension of time application listed for hearing. That application was opposed by the Respondent. The Tribunal acceded to the application to re-list the hearing, as appears in its Directions Notice issued on foot of a hearing on 20 September 2019.

7. In its Directions Notice, the Tribunal directed the parties to agree a timetable towards a hearing of the extension of time application. Thereafter, there were exchanges of suggested directions between the parties, which provided for the filing of affidavit evidence and skeleton arguments.

8. In the event, both the Appellant and the Respondent filed skeleton arguments. Further, the Respondent filed an affidavit sworn by Mr Myles McKeown, its Head of Compliance and Enquiries. The Appellant did not file any affidavit evidence, even though the directions exchanged between the parties had provided for him to have the opportunity to do so.

9. At the outset of the hearing, Mr McKee stated that he did not propose to cross-examine Mr McKeown, although Mr McKeown was in attendance. The Appellant did not attend the hearing. At an early stage in the course of the hearing Mr McAteer made the point that there was no direct evidence from the Appellant. However, no application was made by Mr McKee to adjourn the hearing to allow any such evidence to be adduced or received.

10. The hearing proceeded by way of Mr McKee making submissions by reference to a written statement and to the agreed bundle of papers. Mr McKee did not give evidence himself. However, throughout his submissions, Mr McKee made a number of assertions as to the underlying facts of the matter. These assertions were not made in the capacity of a witness, and were not tested under cross-examination. After Mr McKee had completed his submissions, Mr McAteer made his submissions on behalf of the Respondent, to which Mr McKee then replied.

The Charity

11. On the basis of the agreed bundle of papers, the Tribunal finds that the Charity is an organisation that represents the interests of disabled police officers in Northern Ireland. Mr McKeown in his affidavit deposed that the Charity was originally an unincorporated association but was incorporated in 2002 as a company, the principal purpose of which was the provision of support to police officers (and its reserve) who have sustained serious injury on duty. This description of the Charity was not challenged by the Appellant and it is accepted by the Tribunal.

The Appellant's role within the Charity

12. As appears from a letter written by the Appellant to the Respondent on 18 November 2014, and found in the agreed bundle before the Tribunal, the Appellant described himself as a "concerned member" of the Charity, and as a beneficiary. In this letter, the Appellant gave some indication of the work which the Charity undertook, stating that it provides social contact and support for its members, and attempts to limit social isolation.

13. The Appellant was one of the two authors and primary signatories of this letter, albeit it was signed by over twenty other persons. In the letter, the Appellant complained at some length and in some detail about the Respondent's actions with respect to the Charity, including the appointment of an interim manager. The letter noted that the Charity itself had launched an appeal to the Tribunal with respect to those actions. The Appellant said that he supported that appeal.

The Respondent's intervention in the Charity

14. The affidavit of Mr McKeown set out the factual background against which the Respondent intervened in the Charity. He described how on 14 February 2014, acting in response to concerns relating to the governance and financial control of the Charity, the Respondent had instituted an Inquiry into the Charity pursuant to the 2008 Act.

15. Mr McKeown stated that the Respondent had identified mismanagement within the administration of the Charity including, but not limited to, a failure to declare a significant conflict of interest, a failure to effectively respond to the Charity's accountants concerns around internal financial procedures; a failure to effectively address constantly increasing reserves; a failure to demonstrate propriety over the charity's resources; a failure to convene regular Audit Committee meetings; and the application membership criteria resulting in private benefit.

16. Mr McKeown went on to describe that the Respondent, on being satisfied that there was mismanagement within the administration of the charity, had issued a number of orders from 8 August 2014 to 31 March 2015. These orders had included suspending four charity trustees and later removing one charity trustee; suspending an employee of the charity; appointing three, and then a further two, additional charity trustees; appointing an Interim Manager of the Charity; restricting transactions of the Charity; and directing the five newly appointed charity trustees to undertake certain actions in relation to the charity.

17. As to the order restricting transactions, Mr McKeown said that on 8 August 2014, acting pursuant to Section 33(1)(vi) of the Act, the Respondent made an Order prohibiting the Charity trustees from entering into transactions over £250, on behalf of the Charity, without the written approval of the Respondent for a period of three months. He said that the Order was made because the Respondent had reason to believe that there was a lack of application of the Charity's financial procedures and policies in relation to elements of expenditure. Mr McKeown deposed that, given the Respondent's concerns regarding financial transactions, the imposition of a restriction on transactions was considered to be an appropriate measure to protect the funds of the Charity, but not to prevent legitimate transactions, for an interim period. He further stated that within the short three-month period in which the Order was in force, the Charity trustees had not made a request for the consent of the Respondent to enter into a transaction over £250.

18. Mr McKeown in his affidavit set out the circumstances in which the Interim Manager was appointed. He said that following the suspension of four charity trustees and the sole employee of the charity, the Respondent had appointed three additional Charity trustees on 8 August 2014 in order to constitute a quorate board. However, he said that there was a lack of co-operation from the remaining Charity trustees whom, he contended, refused to engage with the newly appointed Charity trustees, to manage the Charity effectively.

19. Mr McKeown deposed that the Respondent gave the Charity trustees the opportunity to present a plan of action on how they were going to manage the Charity. He also said that they had been informed that should an acceptable plan not be received, then the Respondent would have no choice but to appoint

an Interim Manager. The Charity trustees were then invited to a meeting with the Respondent to present their plan. Mr McKeown said that in response to this invitation, the Charity trustees (other than those appointed by the Respondent) failed to attend this meeting or to provide a plan for the management of the Charity. Mr McKeown explained, that, in these circumstances, the Respondent had no alternative but to appoint an Interim Manager. Accordingly, on 8 October 2014, the Respondent had appointed Harbinson Mulholland as Interim Manager of the Charity in the absence of an effective board, initially for eight weeks although it did subsequently extend their appointment until 31 March 2015. Mr McKeown deposed that from 8 October 2014 to 31 March 2015, the duration of the appointment, the Interim Manager managed the affairs and property of the charity, working with Charity trustees to transition the Charity back to full control of the board of Charity trustees.

20. Mr McKeown commented upon other steps taken by the Respondent. He explained that on 7 November 2014, the Respondent had directed the Charity to commission a forensic audit; to review policies including their membership criteria and to reconcile relationships. He said that the Charity was also directed to convene an Annual General Meeting to elect Charity trustees and an Extraordinary General Meeting to approve proposed changes to their Articles of Association, both of which were complied with on 28 July 2015 and 28 October 2015 respectively. Mr McKeown also pointed out that the Respondent closed its statutory inquiry on 7 March 2016.

21. As noted earlier, the Appellant did not give any evidence, whether orally or on affidavit. Nor did Mr McKee challenge Mr McKeown's evidence. In these circumstances, and having considered Mr McKeown's affidavit, the Tribunal records that it accepts his evidence, for the purposes of this application.

Matters agreed or not disputed

22. As appears in their respective written submissions and/or as expressly stated at the outset of the hearing, the parties helpfully agreed a number of matters between them and/or indicated that they were not in dispute:

    a. It was agreed that the Appellant was, so far as each of the two orders is concerned, a "person who is or may be affected by the order", within the meaning of Schedule 3 to the 2008 Act, and thus was eligible to bring an appeal in respect of each such order.

    b. It was agreed that although the order restricting transactions was made on 8 August 2014, it was not published on the Respondent's website until 4 December 2014.

c. It was agreed that although the order appointing an Interim Manager was made on 8 October 2014, it was not published until 14 October 2014.

d. It was agreed, having regard to Rule 17 of the Charity Tribunal Rules (Northern Ireland) 2010 ("the Rules") that, so far as the order restricting transactions is concerned, the Appellant was obliged to bring any appeal by 15 January 2015.

e. It was agreed, having regard to Rule 17, that, so far as the order appointing an Interim Manager is concerned, the Appellant was obliged to bring any appeal by 25 November 2014.

f. It was agreed that the Appellant did not submit his appeal until 10 July 2018.

g. It was agreed that the appeal was not submitted within the time limits applicable to an appeal against the orders in question.

h. It was not disputed that the order restricting transactions expired after three months.

i. It was not disputed that the order appointing an Interim Manager expired on 31 March 2015.

The law as to applications to extend time

23. Rule 4 of the Rules 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.*

24. Rule 17 of the Rules provides as follows, so far as is relevant:

> *(1) An appeal or application must be made by way of an appeal notice signed, dated and filed by an appellant.*
>
> *(2) An appeal notice under paragraph (1) must be filed:*

(a) 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

(b) 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.

(8) Where the time limit for making an appeal or application under paragraph (2) has expired, an appellant must include with the appeal notice a request for a direction under rule 3 to allow the appeal or application to be made after the time limit for doing so has expired.

(9) A request for a direction to extend time under paragraph (8) must include –

(a) a statement of the reasons for the delay in making the appeal or application;

and

(b) any information that will assist the Tribunal when it considers the matters set out in rule 4.

25. 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(8). The parties drew the Tribunal's attention to a number of authorities, all of which have been considered by the Tribunal.

26. 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;

(7) that the rules of court are there to be observed.

27. Both parties also drew attention to the comments of Morgan J in Data Select v HMRC [2012] UKUT 197 (TCC), 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.*

28. Mr McAteer also drew the Tribunal's attention to the following remarks of Tribunal Judge McKenna in Muhoro v Charity Commission for England and Wales CA/2015/0004:

> *18. The purpose of the time limit for initiating proceedings in charity cases is to allow charities a reasonably generous amount of time in which to decide whether to make an application to the Tribunal whilst balancing against that consideration the Respondent's wish to carry out its statutory duties as swiftly as possible.*

29. Attention was also drawn by the Respondent to Eba v Advocate General for Scotland (Scotland) [2011] UKSC 29 (21 June 2011), in which, at paragraph [8] Lord Hope referred to "the principle of finality", stating that "there is obvious merit in achieving finality at the tribunal level in the delivery of administrative justice."

Discussion

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

    a. The Rule 4 factors

i. Without derogating from the precise wording of Rule 4, it will be recalled that it requires the Tribunal to consider three matters 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.

ii. Although, as noted above, the Appellant did not tender any evidence of any kind, other than was comprised in the agreed bundle of documents, he did set out his position as to the factors to be considered by the Tribunal under Rule 4.

iii. It was common case that the Respondent did not publish the 8 August 2014 order restricting transactions until after it had expired, that is, until 4 December 2014. It was also common case that the Respondent did not publish the 8 October 2014 order appointing an Interim Manager until 14 October 2014. There was thus an appreciable - and potentially practically significant – delay in publication with respect to the order restricting transactions in that it had not publicised that order at the time it was made or during its currency. These factors did not arise with respect to the order appointing the interim manager.

iv. Although there was a delay in publishing the order restricting transactions, the Tribunal has concluded that this failure did not have any practical significance *so far as the Appellant was concerned.*

v. As appears from Section 3 of the Appellant's Notice of Appeal, when asked for the date when he received the decision notice, the Appellant answered "8 August 2014" – clearly alluding to the order restricting transactions. This answer shows that the Appellant was aware of the order restricting transactions, at the time when it was extant, notwithstanding the failure to publish it. Further, in the papers he filed with his appeal in July 2018, the Appellant enclosed a letter to the Charity, dated 8 August 2014, notifying it of the making of the order restricting transactions. The Appellant clearly had this letter in his possession. No evidence was given, and it was not suggested, that the Appellant received this letter other than in August 2014.

vi. Moreover, paragraphs 6, 7 and 8 of the Appellant's skeleton argument, are in the following terms (**emphasis added**):

6. There is no dispute that the Respondent published its final decision with regard to the two Orders on its website on, or shortly after the dates on which they were made (8th August 2014 and 8th October 2014). ***The Appellant accepts that he was aware that the Orders had been made shortly after these dates.***

7. The Appellant accepts that he became aware of the right to appeal the Orders during the autumn of 2014, by virtue of being aware of and attending proceedings in the Tribunal in respect of the two attempts that were made to appeal the Orders which are the subject of this appeal (along with Orders made by the Respondent in the same time period).

8. One appeal was filed by Robert Crawford on 12 August 2014. His appeal related to a number of Orders made by the Respondent, including the Orders made under sections 33(1)(b)(vi) [the order restricting transactions] *and 33(1)(b)(vii)* [the order appointing an interim manager]…

vii. That is to say, in his Notice of Appeal and in his skeleton argument, the Appellant was candid – and commendably so – about his having known of the orders at or shortly after the time they were made; about having received notice of them at or about the time they were made; and about having been aware of his right to appeal against the orders during the time the orders were extant.

viii. The Tribunal acknowledges that in his written speaking note, presented to the Tribunal at the hearing, Mr McKee on behalf of the Appellant, said that, given the failure to publish the order restricting transactions until after it had expired, "[the Appellant could never have challenged this Order within the timescale set out in the Rules, because he could not have seen it within that period." This assertion did not constitute evidence. But whatever its status, it did not amount to an assertion that the Appellant was *unaware* of the order restricting transactions at or shortly after the time it was made.

ix. Thus, on the basis of the Appellant's own statement of his case, in his Notice of Appeal and his Skeleton Argument, for the purposes of Rule 4, the Tribunal accepts and finds:

1. The Appellant received notice of each of the orders shortly after they were made;

2. The Appellant was aware of each of the orders shortly after they were made;

3. The Appellant was aware of his right to appeal against each of the orders in the Autumn of 2014.

b. The Davis factors

i. In considering the Davis factors, the Tribunal is mindful of the warning given in Hegarty v EIO [2013] NICA 56 by Morgan LCJ. Referring 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.*

ii. See also Benson v Morrow Retail [2010] NIQB 14, wherein Gillen J held that the principles in Davis should not be viewed as a "series of hurdles to be negotiated in succession by an appellant with loss of the right to obtain an extension if he cannot pass any one or more of them." Gillen J also held that the Court should look at the substance of the application focusing on the "central underlying question": whether in the particular circumstances and in accordance with an overall desire to achieve justice, the discretion ought to be exercised in favour of the appellant.

iii. Clearly the time limit applicable to an appeal against these orders has long since sped. As regards the order restricting

transactions, the Appellant had a period of forty-two days from 4 December 2014 (the date of publication) within which to appeal. As regards the order appointing an interim manager, the Appellant had a period of forty-two days from 14 October 2014 (the date of publication) within which to appeal. Yet he did not appeal until 10 July 2018. On any reading, the Appellant significantly delayed in lodging his appeal.

iv. Associated with the consideration of this chronology of the delay is the question of the reason for the delay. Having considered the papers and Mr McKee's submissions at the hearing, the Tribunal initially had difficulty in discerning precisely what the reason for the delay was, as the reason appeared to change and evolve.

v. In his Notice of Appeal, the Appellant asserted that it was not until 15 June 2018 that he received information from the Respondent, in the way of a reply to a Freedom of Information request, which suggested – to the Appellant - that the decision to impose the order had not been lawfully made. The Appellant said he had asked the Respondent to provide evidence that the Commissioners had given permission to impose the restriction. The Appellant said the Respondent's response was that they did not hold the requested information. The Notice of Appeal went on to say that there was no opportunity to appeal this order, it having been presumed it had been made lawfully. The Appellant also referred to what he described "newly made case law", comprising decisions of the High Court and the Tribunal, which had held that Commissioners, and not members of the Respondent's staff, ought to have taken decisions about orders.

vi. In a paper prepared for the Tribunal on 22 February 2019, the Appellant repeated the points alluded to above, and identified the case law in question as the Decision of the Tribunal in Caughey v Charity Commission, dated 3 November 2017. The Appellant made a new point, referring to an investigations manual, dated September 2011, of which he had recently learned.

vii. In his skeleton argument, dated 8 November 2019, the Appellant made three principal points relating to the reason for the delay in appealing.

    1. The Appellant blamed the Respondent for the delay. It was submitted that "the delay [by the Respondent] in responding to [the Appellant's] requests for information

and his complaints, and their subsequent provision, materially contributed to the delay in the appellant being sufficiently aware that the Respondent may have acted ultra vires in the making of the impugned orders. For example, the complaint answered on the 15th June 2018 was submitted to the Respondent on the 8th April 2018."

2. It was submitted that "new evidence has come to light which shows that the Commission had not approved the relevant sections of its operational manuals relating to the exercise of powers under Sections 33(1)(b)(vi) and 33(1)(b)(vii) of the CANI 2008, and that the Commission failed to comply with its statutory duties in section 9 of the Act." In Annex A to his skeleton argument, the Appellant sought to elaborate upon this point by drawing attention to a document, prepared by the Respondent, dated 15 December 2014, which stated that the Respondent's "procedures include for the first time a process for the appointment of Interim Managers."

3. It was submitted that although "[the Appellant] was aware of prior cases in these matters, the grounds were different in those cases. The law was confirmed in Caughey and then underpinned by the judgment of McBride J."

viii. In his written statement, presented to the Tribunal at the hearing, the Appellant advanced an entirely new reason for the delay in appealing. The Appellant asserted that in circumstances where other persons had appealed the subject orders – e.g. the Charity itself and one of its trustees – "It was a perfectly reasonable decision by the Appellant and others not to appeal when the charity's Board had engaged legal representatives on their behalf… it was not unreasonable for Mr McManus to wait to see how this would turn out… The Appellant believed it was reasonable for him to await the outcome of that attempt, rather than lodge parallel proceedings…". This written statement also alluded to the Caughey Decision and judgment of McBride J as being a "spur" to the appeal; to the new evidence about procedures arising in December 2014; and to the "question of delegation of the exercise of powers to [the Respondent's staff] [which] was first raised in late 2016…"

ix. In his oral submissions to the Tribunal, Mr McKee accepted that the Appellant had not launched an appeal in 2014/2015; he said it was not necessary for the Appellant to appeal at that time; he

accepted that the Appellant could have launched an appeal at that time; but he said it was reasonable for him not to launch an appeal at that time, as this would have led to duplication. He submitted that other people were better placed to appeal. Mr McKee did not contend that the Appellant would have been incapable of launching an appeal in 2014/2015. When asked by the Tribunal about the "new evidence" which had come to light, justifying an appeal, Mr McKee clarified that this was a document, dated December 2014, which had come to his attention in 2019 – that is to say, *after* the appeal was launched in July 2018. Mr McKee accepted that that "new evidence" therefore played no part in the decision to launch the appeal. When asked by Mr McKee, he accepted that the only matter that had "changed" was the Decision in Caughey of November 2017.

x. Analysing the foregoing, the Tribunal has concluded as follows:

1. The case made on behalf of the Appellant, in submissions, that the Respondent bears some measure of responsibility for his delay in appealing is without any basis. No evidence was given to support it. This point was made for the first time in a skeleton argument in November 2019. Even if the Respondent delayed in answering a letter of April 2018 until June 2018, this does not explain the delay in launching an appeal prior to those dates.

2. The case made on behalf of the Appellant, in submissions, that "new evidence" came to light with respect to a document of December 2014, and which justified the making of a late appeal, is without any merit. No evidence was given to support it, other than was comprised in the document itself. In any event, it emerged in the course of Mr McKee's submissions that far from this "new evidence" having been a catalyst for the late appeal, in fact the Appellant only became aware of it at least six months *after* the appeal was launched. A document discovered after the appeal was launched cannot have had any bearing on either the failure to appeal or the decision to appeal. Further, so far as the Tribunal can tell, the document did itself not support the case which the Appellant sought to make arising from it.

3. The case made on behalf of the Appellant, in submissions, that the Respondent's response of June 2018 to a letter of April 2018, justified the making of an appeal

in July 2018, is without any merit. No evidence was given to support it. The Respondent's response recorded that the requested information was not held, and did not do any more than that. The confirmation of that fact did not either justify the failure to launch an appeal prior to that point; and nor did it of itself justify the making of an appeal at that time.

4. The case made on behalf of the Appellant that the Decision in the Caughey case justified making an appeal is without merit. No evidence was given to support the contention that this decision was instrumental in the Appellant deciding to appeal. Indeed, if anything, the Appellant's own written submissions contradicted this position: the statement handed in to the Tribunal at the hearing noted that the delegation issue had been extant since late 2016. The Appellant could have investigated the delegation issue at any time. Most notably, the Caughey Decision was given in November 2017 and no explanation (and certainly no satisfactory explanation) was given as to why no appeal was launched for a further 7-8 months.

5. Drawing on the Appellant's written submissions presented to the Tribunal on the day of the hearing, and as confirmed by Mr McKee in his submissions, the Tribunal can only conclude that in 2014/2015, being fully aware of the orders that had been made, the Appellant made a conscious and deliberate decision not to appeal, and instead, left the question of a challenge to other persons. Whilst it was contended by Mr McKee that there were other people who were better placed to appeal, and it was reasonable for the Appellant not to duplicate proceedings, the Tribunal does not accept this suggestion. It will be recalled that, earlier in this Decision, reference was made to a letter of November 2014, co-authored by the Appellant, and sent to the Respondent challenging its actions. It is clear from this letter that the Appellant was active and instrumental in the affairs of the Charity, including in its dealings with the Respondent. It was accepted in submissions that the Appellant was capable of launching an appeal, if he had wanted to. Some years later, for reasons which have not been satisfactorily explained, demonstrated or proven, the Appellant has had a change of heart and now wishes to appeal. However, the Tribunal does not consider that a

change of heart in these circumstances is a satisfactory explanation for the failure to launch an appeal at an earlier stage.

6. In short, therefore, the Tribunal concludes that the Appellant has not demonstrated a good reason for his delay in appealing.

xi. Turning to the remaining Davis factors, the Appellant contends that if he is not permitted to appeal at this time then, on the one hand, the opportunity will be denied him to investigate the lawfulness of the order restricting transactions and the order appointing an interim manager, and, on the other hand, there will be no investigation of the more general question of whether the Respondent has properly conducted its affairs, having regard to delegation of decision-making.

xii. The Tribunal has concluded that there is no merit in either contention. As is clear from the Decision of the Tribunal in Crawford v Charity Commission NICT 12/14, which was in the agreed bundle of authorities, the two orders which are the subject of the Appellant's appeal were considered – and upheld – by the Tribunal. Accordingly, there has been a full hearing on the merits, albeit involving a different appellant. It is correct that one aspect of the Tribunal's Decision was subject to an application for permission to appeal to the High Court – namely the question of the removal of a trustee. The other elements of the Decision – including those relating to the order restricting transactions and the order appointing an interim manager – were not appealed, much less overturned: *see* the judgment of Horner J in The Attorney General for Northern Ireland v The Charity Commission for Northern Ireland [2016] NICh 18, which also appeared in the agreed bundle of authorities. That is to say there has already been a full hearing on the merits of each order.

xiii. Equally, insofar as there is a broader, general or significant point of principle or practice, touching on the general conduct of the Respondent as regards its capacity to delegate decision-making, the Tribunal notes this very point is the subject-matter of a current appeal to the Court of Appeal. Thus it simply cannot be contended that, unless the Appellant's appeal proceeds, this point will not be investigated or ventilated. On the contrary, the point is to be examined at the highest judicial level in this jurisdiction. It has to be said that Mr McKee in his submissions sought to argue that the point arising in the Appellant's case is

somehow distinguishable from that arising in the cases before the Court of Appeal, by reference to the December 2014 document concerning manuals and procedures. As noted above, this is a point which emerged from documents discovered *after* the appeal was lodged and, as such, this "distinction" appears to be something of an afterthought. Thus, the Tribunal does not accept that Mr McKee was able to demonstrate any meaningful distinction which requires this appeal to be pursued.

xiv. In short, the Tribunal has concluded that there is neither a point of substance which could not otherwise be put forward, nor a point of general and not merely particular, significance, such as might require this appeal to proceed. Having come to that conclusion, the Tribunal has further decided that the effect of allowing the appeal to proceed would be consuming of both time and cost to no practical or useful end given the passage of time.

xv. Having reached those conclusions on the "primary" Davis principles, the Tribunal has reminded itself of the aspect of the Davis judgment to which Morgan LCJ drew attention in Hegarty i.e. a consideration of the merits of the appeal. As appears from this Decision, the Appellant's attack on the two orders was, in large part, based on the argument concerning delegation. However, no evidence was led to support that attack, other than a reference to a document created in December 2014 which, at best, made an oblique reference to the point, and to the response to the Freedom of Information request, in June 2018, which, in the Tribunal's view, also added little to the case. It should also be said that, during the hearing, the greater part of Mr McKee's oral submissions with respect to the two orders were (in the Tribunal's view) misdirected towards how the orders had been *implemented after* they were made, rather than the circumstances in which the orders were *made* in the first place. Those submissions on those points provided no basis for allowing the appeal to proceed.

xvi. Having allowed Mr McKee to develop his arguments to the full on all these points, the Tribunal is satisfied that (in the words of Davis) nothing emerged to make the Tribunal feel that justice demanded an extension of time in face of the principles to which this decision has already adverted.

31. The Tribunal has also reminded itself of the comments in the Data Select and Muhoro cases, set out earlier in this Decision, and considers its conclusions to be in accordance with the principles discussed in them.

Disposal

32. In these circumstances, and for the reasons set out above, the Tribunal dismisses the Appellant's application to extend time to appeal against the orders of the Respondent (i) restricting transactions by the Disabled Police Officers Association Northern Ireland; and (ii) appointing an Interim Manager of that Charity.

Right of Appeal

33. 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 to 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 2 December 2019