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

**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

**APPLICATIONS NUMBERS 2/13**

**BETWEEN:**

**TREVOR McKEE; GREGORY BURKE; MICHAEL SAVAGE; JOSEPH HUGHES; MICHAEL McGIVERN and ROBERT ORTON**

**Appellants**

**-and-**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**Respondent**

**Panel: Adrian Colmer (Chairman), Paul Artherton; Delia van der Lenden**

1. This is a record of the Decisions made by the Tribunal in respect of Appeals brought by the Appellants against Orders made by the Respondent concerning the affairs of Lough Neagh Rescue Limited (“the Charity”).
2. Upon the hearing of these Appeals, Mr William Dugan, a member of the Charity, acted as representative for all of the Appellants and Mr Richard Shields of Counsel appeared on behalf of the Respondent. The Tribunal is grateful to both representatives for their oral and written submissions.

The Charity

1. The Charity is a company limited by guarantee. It was incorporated on 10 January 1996 having earlier been established in 1989. As appears from the Charity’s Memorandum of Association, the Charity’s objects are as follows:

*(i) To provide and maintain apparatus, equipment, vehicles and vessels for the saving of life and assistance of persons in distress within Northern Ireland (the area of benefit);*

*(ii) to provide adequate arrangements for the secure and efficient search and rescue of any person or persons endangered by accidents or natural hazards within Northern Ireland; and*

*(iii) to train members to achieve these objectives.*

1. Although the objects of the Charity indicate an area of operation comprising the entirety of Northern Ireland, nonetheless, as suggested by the Charity’s name, the real focus of the Charity’s work is Lough Neagh.

Dispute within the Charity

1. The Charity has been subject to an internal dispute involving two distinct groups of members. The Respondent suggested that this dispute had been exacerbated by poor record keeping and a generalized failure to adhere to the Charity’s governing articles, company law and charity law. The Tribunal was not invited by any of the parties to adjudicate upon that dispute, and the Tribunal did not and does not consider that it was necessary to do so for the purpose of disposing of these appeals. Rather, the existence of the dispute is the historic background against which the subject matter of these appeals was played out.

The Appellants

1. The Appellants are members of the Charity. Further, it is contended by the Respondent that one of the Appellants, Mr Trevor McKee, is also a Director of the company comprising the Charity. At one time prior to and during these proceedings, the Respondent also contended that Mr Burke, Mr Savage, Mr Hughes, Mr McGivern and Mr Orton were also officers of the company comprising the Charity.
2. Running through the Respondent’s dealings with the Appellants, and through the conduct of the appeals, and through this Decision, there were and are numerous distinctions between how, on the one hand, Mr McKee was and is considered, and how, on the other hand, Mr Burke, Mr Savage, Mr Hughes, Mr McGivern and Mr Orton were and are considered.
3. On the occasions in this Decision when reference is made to those of the Appellants excluding Mr McKee, those Appellants shall be referred to as “Mr Burke and his colleagues.” In referring to Mr Burke and his colleagues in that manner the Tribunal does not intend any disrespect to Mr Savage, Mr Hughes, Mr McGivern and Mr Orton. Rather, the Tribunal’s wish is simply to have a short and convenient term of reference.
4. Upon the hearing of the appeal, Mr Hughes did not appear and was not represented.

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.*

1. In furtherance of the Respondent’s functions and powers referred to above, Sections 33 and 34 of the 2008 Act imbue the Respondent with various powers to make Orders against officers and members of charities in defined circumstances.
2. Section 33(2) of the 2008 Act is in the following terms:

*Where, at any time after it has instituted an inquiry under section 22 with respect to any charity, the Commission is satisfied –*

*(a) that there is or has been any misconduct or mismanagement in the administration of the charity; and*

*(b) that it is necessary or desirable to act for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity,*

*the Commission may of its own motion do either or both of the following things –*

*(i) by order remove any trustee, charity trustee, officer, agent or employee of the charity who has been responsible for or privy to the misconduct or mismanagement or whose conduct has contributed to it or facilitated it;*

*(ii) by order establish a scheme for the administration of the charity.*

1. Section 34(3) of the 2008 Act is in the following terms:

*If the order removes the person in question from office or employment, the Commission may also make an order –*

*(a) terminating that person's membership of the charity, and*

*(b) prohibiting that person from resuming membership of the charity without the Commission's consent.*

1. Section 40 of the 2008 Act provides as follows:

*(1) The Commission may not make any order under this Act to appoint, discharge or remove a charity trustee or trustee for a charity, other than*

*(a) an order relating to the official custodian, or*

 *(b) an order under section 33(1)(ii),*

*unless, before doing so, the Commission has complied with the publicity requirement in subsection (2).*

*This is subject to any disapplication of that requirement under subsection (4).*

*(2) The publicity requirement is that the Commission must give public notice of its proposals, inviting representations to be made to it within a period specified in the notice.*

*(3) The time when any such notice is given is to be decided by the Commission.*

*(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order if it is satisfied that for any reason compliance with the requirement is unnecessary.*

*(5) Before the Commission makes an order under this Act to remove, without the consent of the person concerned, a person who is*

*(a) a charity trustee or trustee for a charity, or*

*(b) an officer, agent or employee of a charity,*

*the Commission must give to that person not less than one month's notice of its proposals, inviting representations to be made to it within a period specified in the notice.*

*This does not apply if the person cannot be found or has no known address.*

*(6) Where the Commission gives notice of any proposals under this section, the Commission*

*(a) must take into account any representations made to it within the period specified in the notice, and*

*(b) may (without further notice) proceed with the proposals either without modifications or with such modifications as it thinks desirable.*

*(7) Any notice of any proposals which is to be given under this section*

*(a) is to contain such particulars of the proposals, or such directions for obtaining information about them, as the Commission thinks sufficient and appropriate, and*

*(b) (in the case of a public notice) is to be given in such manner as the Commission thinks sufficient and appropriate.*

*(8) Any notice to be given under subsection (5) (a) may be given by post, and (b) if given by post, may be addressed to the recipient's last known address.*

The Orders of the Respondent

1. Having considered the oral and documentary evidence before it, the Tribunal has found the following relevant facts as regards the Orders made by the Respondent.
	1. On 3 May 2013, pursuant to Section 22 of the 2008 Act, the Respondent instituted a Statutory Inquiry into administrative and governance issues pertaining to the Charity.
	2. During the course of 2013, the Respondent made a number of Orders concerning the Appellants.
	3. The making of the Orders fell into two main phases: the first phase, which comprised the making of the Order by which Mr McKee was removed by the Respondent as a trustee of the Charity; and the second phase, by which Mr Burke and his colleagues were removed as trustees of the Charity and as members.
	4. As regards the first phase of the Orders, concerning Mr McKee, on 10 July 2013, the Respondent, acting by Mr Neil Henry, its Enquiries Manager, posted and emailed to Mr McKee a letter referring to the Respondent’s intention to remove Mr McKee as a trustee of the Charity, under Section 33(2) of the 2008 Act. Enclosed with that letter was a draft Order, a Statement of Reasons, and Evidential Annexes, served, it was said, in accordance with Section 38 of the 2008 Act. The letter invited Mr McKee to submit a response for consideration within fourteen days.
	5. The reasons for the Respondent’s intended course of action in respect of Mr McKee set out in the draft Statement of Reasons may be summarised as follows:
		1. Without authority or good reason, Mr McKee sought to divert assets intended for donation to the Charity to another rescue charity;
		2. Mr McKee persuaded the Charity’s Bank, Danske Bank, to freeze the Charity’s bank account, which prevented the Charity’s volunteers and trustees from withdrawing funds to purchase fuel for the Charity’s lifeboats, thereby limiting their ability to train for and pursue the Charity’s life saving objectives;
		3. Without authority or good reason, Mr McKee attempted to decline potential financial support from Antrim Borough Council and without authority sought to divert that potential funding to an alternate charity;
		4. Without authority or good reason, Mr McKee, with others, sought to restrict other directors and members of the Charity having access to an asset of the Charity, namely a lifeboat;
		5. Mr McKee withheld financial information from the Respondent and his fellow directors;
		6. Mr McKee and others took actions and made statements to frustrate the Respondent and members of the Charity in their attempts to resolve an internal charity dispute, restore good governance and the reputation of the Charity;
		7. Mr McKee sought to regain full control of the Charity for himself and his associates regardless of the rights and interests of the other directors and members and, failing that, to render the Charity broken, to wrestle assets and potential funding from the Charity to another organisation of his own making or preference.
	6. Also on 10 July 2013, Mr Henry, on behalf of the Respondent, sent an email to Mr Terry Walsh, a member of the Charity, cc’d to Mr McKee and to Mr Aubrey McCrory, Mr James Walsh and Ms Yvonne Bell, in the following terms:

*Please find attached a letter from the Commission and for the attention of Trustees of LNR Ltd. Please take note of the disclaimer on this email and treat this matter with the confidentiality it deserves.*

* 1. So far as is relevant, the disclaimer was in the following terms:

*This email is from the Charity Commission for Northern Ireland. It contains information which is confidential and which may be privileged or subject to public disclosure under the Freedom of Information Act 2000. Any views or opinions presented are solely those of the author and do not necessarily reflect the views of the Charity Commission for Northern Ireland. It is for the exclusive use of the intended recipient. Any dissemination, distribution, copying or use of this communication or any attachment to it without prior permission of the addressee is strictly prohibited.*

* 1. The attachment to the email of 10 July 2013 was a letter from Mr Henry to the Trustees of the Charity, in the following terms (emphasis added):

*In accordance with Section 33(9) of the Charities Act (Northern Ireland) 2008 (the Act), the Commission hereby gives notice of its intention to remove Mr Trevor McKee as a trustee of Lough Neagh Rescue Limited under Section 33(2) of the Act.*

*Without prejudice to any final decision, and issue of an order for removal, this would have effect from Friday 9 August 2013.*

* 1. It is clear that the powers that the Respondent was purporting to exercise with respect to Mr McKee were the Respondent’s powers under Section 33(2)(a) and (b) of the 2008 Act.
	2. In pursuance of Section 40(4), the Respondent determined that the publicity requirement was not to apply as it was satisfied that compliance with the requirement was unnecessary. This matter is dealt with in greater detail at paragraphs 162-166 below.
	3. On 15 July 2013, Mr McKee received the posted copy of the Respondent’s notice of its proposal to make an order against him. This is apparent from an email dated 16 July 2013, from Mr McKee to Mr Henry, which, so far as is relevant, was in the following terms (emphasis added):

*I acknowledge receipt of your correspondence delivered* ***15/7/13…***

*I would be grateful to receive advice whether or not the draft order raised under section 33(2) (a&b) i. of the Charities Act 2008, once enforced, is appealable under Schedule 3.*

Mr McKee gave evidence, which was not challenged or contradicted, that he did not receive the email sent by Mr Henry on 10 July 2013 attaching the notice of proposal, until 15 July 2013, and specifically until after he had received the posted copy.

* 1. There then followed an exchange of email correspondence between Mr McKee and the Respondent, including as to whether Mr McKee might attend an oral hearing and adduce witnesses and statements. The Respondent pointed out that it does not conduct oral hearings. In response to that, Mr McKee sent a further email dated 24 July 2013 (inappropriately labeled “without prejudice”), by which he complained about the adequacy of the time period for making a response; he questioned the justification and proportionality of the proposed order; he challenged in a broad way the evidence supporting the Respondent’s course of action; he highlighted the immense reputational damage that the proposed Order would have if it were to be made; and he encouraged mediation. The Tribunal notes that although it appeared that Mr Robert Orton had sent to the Respondent some comments on the proposed Order against Mr McKee, Mr McKee effectively disavowed those comments in an email to the Respondent dated 25 July 2013.
	2. On 15 August 2013, the Respondent made and issued the Order to remove Mr McKee, together with a Statement of Reasons and Evidential Annexes. There were some differences between, on the one hand, these documents, and, on the other hand, the draft Order, the Statement of Reasons and Evidential Annexes. The Statement of Reasons comprised, in large part, the reasons set out above, together with an additional distinct reason to the effect that Mr McKee had operated an unofficial website and other social media purporting to be the official website of the Charity and he had incorrectly represented himself as Chairman of the Board of Trustees, thereby causing confusion to beneficiaries and stakeholders and potentially causing reputational damage to the Charity.

The Tribunal notes that Mr McKee complained about the differences between the draft documents received by him on 15 July 2013, and the final form or Order and associated documents. The Tribunal is of the view that there is no merit to that complaint: Section 40(6)(b) expressly provides that the Respondent may, without further notice, proceed with the proposals either without modifications or with such modifications as it thinks desirable.

* 1. So far as is relevant, the Order was in the following terms:

*The Charity Commission for Northern Ireland hereby orders that Mr Trevor McKee … being a trustee and Company Director of the above-named Charity (“the Charity”) is hereby removed as a trustee and Company Director of the charity from the date of this Order.*

* 1. The Respondent did not purport to remove Mr McKee as a member of the Charity.
	2. As regards the second phase of the Orders, concerning Mr Burke and his colleagues, on 25 September 2013, the Respondent wrote a letter to each of Mr Burke and his colleagues, giving notice of intention to remove them both as agents and officers of the Charity and as members of the Charity. Each of these letters enclosed a draft Order, a Statement of Reasons and Evidential Annexes. Each of the letters invited Mr Burke and his colleagues to submit a response for consideration within fourteen days.
	3. For reasons that will become apparent in terms of the disposal of the Appeals brought by Mr Burke and his colleagues, the Tribunal does not consider it necessary or appropriate to set out in detail the reasons that were contained in the Respondent’s draft Statements of Reasons of 25 September 2013. Suffice it to say, these Statements of Reasons overlapped to some degree with the matters contained in the Statement of Reasons concerning Mr McKee, but, in large measure, they also comprised different and additional reasons, some of which were common to all of Mr Burke and his colleagues, and some of which related only to one or all of Mr Burke and his colleagues.
	4. By letters dated 25 October 2013, issued to each of Mr Burke and his colleagues, the Respondent purported to make two Orders in respect of each of Mr Burke and his colleagues, one relating to each of their status as agent or officer of the Charity, and the other relating to each of their status as member of the Charity. So far as is relevant, each of the general aspects of these Orders was, respectively, in the following terms:

*The Charity Commission for Northern Ireland hereby orders that … being an officer and agent of the above-named Charity (“the Charity”) is hereby removed as an officer and agent of the charity from the date of this Order.*

and

*The Charity Commission for Northern Ireland hereby orders that … being a member of the above-named Charity (“the Charity”) is hereby removed as a member of the charity from the date of this Order.*

The Appeals

1. Having considered the oral and documentary evidence before it, the Tribunal found the following relevant facts as regards the Appeals issued the Appellants:
	1. On 26 August 2013, Mr McKee filed with the Tribunal a Notice of Appeal against the Respondent’s Order of 15 August 2013. Mr McKee filed this Notice of Appeal in reliance on his status as a person removed by that Order. In this Notice of Appeal, Mr McKee in brief but clear terms rejected each of the matters comprised in the Respondent’s Statement of Reasons. In three places in his Notice of Appeal, Mr McKee described himself as a Director of the company comprising the Charity.
	2. Arising out of the Order made by the Respondent against Mr McKee on 15 August 2013, Mr Burke, on 28 August 2013, filed a Notice of Appeal as a person affected by that Order. On 3 September 2013, Mr Savage filed a similar sort of Notice of Appeal.
	3. By Notices of Appeal all dated 5 December 2013, Mr Burke and his colleagues each appealed to the Tribunal against the Respondent’s purported Orders dated 25 October 2013 removing each of them as officers and agents of the Charity and as members of the Charity. Again, given the ultimate disposal of those Appeals, suffice it to say that in each of their Notices of Appeal, each of Mr Burke and his colleagues rejected the matters contained in the Respondent’s Statement of Reasons. Furthermore, each of Mr Burke and his colleagues drew attention to and sought the Tribunal’s determination upon a contention that the Respondent had purported to make the Orders of 25 October 2013 without giving each of Mr Burke and his colleagues the statutory notice they were entitled to under Section 40(5) of the 2008 Act.
	4. Arising out of the purported Orders made by the Respondent against Mr Burke and his colleagues on 25 October 2013, Mr McKee on 5 December 2013, filed a Notice of Appeal as a person affected by those purported Orders.

Case management

1. Prior to these appeals coming on for hearing, the Tribunal, in the exercise of its power under Rule 3 of The Charity Tribunal Rules (Northern Ireland) 2010 (“the 2010 Rules”) convened hearings to consider the making of directions to enable the parties to prepare for the hearing of the appeals, to assist the Tribunal to determine the issues and to ensure the just, expeditious and economical determination of the appeals.
2. The Tribunal does not here rehearse the detail of the directions given at those directions hearings, and rather it refers to the written records of those hearings. Suffice it to say that the following were comprised within the directions given by the Tribunal:
	1. that the parties should attempt to compile a statement of agreed facts;

* 1. that the parties and their witnesses should make and serve witness statements which would stand as their evidence in chief;
	2. that the Respondent would bear the burden of proof as to whether Orders should be made;
	3. that the standard of proof was proof on the balance of probabilities;
	4. that the Respondent should open the case and call its evidence first.
1. Further, in advance of the last directions hearing convened before the full hearing, the Tribunal, on the basis of a preliminary consideration of the case papers, had prepared a list of issues in which it was particularly interested, in order to assist the parties in their preparation. This list drew largely but not exclusively on the contents of the witness statement of the Respondent’s main witness, Mr Henry and it did so because that witness statement comprised the “case” which the Appellants were going to have to meet.

The hearing

1. All nine of the appeals brought by all of the Appellants – six substantive appeals by removed persons and three appeals by persons affected – were listed for hearing over period of five days, week commencing 24 March 2014. In the event, the Tribunal did not sit for hearing on the morning of 24 March 2014 and rather spent that morning reading the witness statements in the case. Further, around only two hours of hearing time were used on Friday 28 March 2014. The parties delivered written submissions on or before 7 April 2014.
2. On behalf of the Respondent, the Tribunal heard evidence from Mr Neil Henry, the Respondent’s Enquiries Manager; Mr Terry Walsh, Company Secretary of the Charity; and Mr Paul Duffy, a Trustee of the Charity. On behalf of Mr McKee, the Tribunal heard evidence from Mr McKee; Mr Brian Morrison, former Treasurer of the Charity, and Mr Mark Cahoon.
3. Although the Tribunal does not here record all of the evidence and submissions received by it, it confirms that it has considered all of that evidence and those submissions.
4. As already indicated and as will be further explained below, in the event it was not necessary for the Tribunal to consider the issues and evidence relating solely to Mr Burke and his colleagues. Accordingly, the Tribunal considers that it is not necessary to here set out the issues which it had invited the parties to particularly address in order to assist it in determining the appeals of Mr Burke and his colleagues.
5. On the other hand, the Tribunal heard the entirety of the case concerning Mr McKee and this record comprises its decision on that case. The Tribunal considers that it would be helpful to here set out the issues which arose in Mr McKee’s appeal, as circulated to the parties at the directions hearing, as referred to above. The issues considered included the following:
	1. The alleged appointment of additional directors appointed in June 2011;
	2. The alleged dismissal of MK in July 2011;
	3. The alleged vote of no confidence in Mr McKee in August 2011;
	4. The status and effect of the AGM of 20 December 2011;
	5. The alleged establishment of a new charity (“LNS&RA”) in December 2011;
	6. The alleged dismissal of PQ in January 2012;
	7. The alleged diversion of assets (Portacabin) in January 2012;
	8. The alleged rejection of the ABC Pirate Day Event in January 2012;
	9. The alleged freezing of the Danske Bank Account in January 2012;
	10. The alleged restriction on access to the lifeboat in January 2012;
	11. The alleged rejection of Junction One event in May 2012;
	12. The alleged risk to ABC funding due to concerns re governance in Feb 2013;
	13. The alleged handling of collection boxes;
	14. The alleged withholding of financial information;
	15. The alleged actions to frustrate fellow trustees;
	16. The alleged actions to frustrate the Respondent;
	17. The procedure by which Mr McKee was removed.
6. It will be noted that this list of issues refers to matters that were not included within either the Respondent’s draft Statement of Reasons for removing Mr McKee as trustee/director, or in its final Statement of Reasons. Specifically, the list includes complaints that the Respondent had, for the first time in Mr Henry’s witness statement, articulated against Mr McKee concerning (i) the appointment of additional directors without authority; (ii) the dismissal of MK; and (iii) the dismissal of PQ.
7. At the start of the hearing, Mr Dugan objected to evidence about these new reasons or grounds being admitted in evidence. He said it was fairer to only allow evidence in respect of what appeared in the Statement of Reasons.
8. In response to that objection, Mr Shields drew attention to Paragraph 1(4) of Schedule 3 to the 2008 Act, which is in the following terms:

*(4) In determining such an appeal the Tribunal*

*(a) shall consider afresh the decision, direction or order appealed against, and*

*(b) may take into account evidence which was not available to the Commission.*

1. Having regard to (i) the fact that these ostensibly additional grounds had appeared in the witness statement; (ii) the fact they had also appeared in the list of issues prepared by the Tribunal; and (iii) that Mr Dugan did not articulate any specific prejudice to Mr McKee, during the hearing the Tribunal admitted the evidence about these additional matters, albeit reserving the question as to whether it would ultimately take that evidence into account when making its substantive decision.
2. The Tribunal has decided that, given (i) the factors set out in the preceding paragraph; (ii) the breadth of its role under Paragraph 1(4)(a) of Schedule 3, and (iii) the express provision of Paragraph 1(4)(b) of Schedule 3, the Tribunal is in principle entitled to take into account the evidence about these additional matters when making its decision on Mr McKee’s appeal, and it has done so the extent set out below.
3. Having said that, the Tribunal would discourage the Respondent from seeking to introduce, at a late stage in the proceedings, new grounds or reasons for the decision to remove a trustee or member. This is especially the case when the trustee or member is not legally represented.
4. After the hearing had completed and the submissions had been received, the Tribunal, whilst it was in the course of finalising its decision, considered that it required submissions on two distinct points that had not been the subject of evidence or submissions during the hearing. The two points were as follows:
	1. Whether the Respondent had complied with the publicity requirement in Section 40(2); and
	2. Whether the Respondent had given to Mr McKee not less than one month’s notice of the making of the proposed order, in accordance with Section 40(5).
5. On receipt of the parties’ submissions, it was clear to the Tribunal that the parties were not in agreement on whether the Respondent had complied with the publicity requirement under Section 40(2) or on whether Mr McKee had been given the requisite notice of the Respondent’s making of the proposed order as per Section 40(5).
6. In these circumstances, the Tribunal had no option but to reconvene in order to address the debates about these two points. Regrettably, it took some time to co-ordinate the diaries of the parties and the Tribunal, and a hearing was fixed for the afternoon of 27 June 2014.
7. On that occasion, Mr Shields applied to the Tribunal to re-open the Respondent’s case in order to allow the Respondent’s witness, Mr Henry, to give evidence on the two points in question. The Tribunal considered the application and acceded to it. Due to an issue relating to disclosure of a particular document, the hearing did not complete on 27 June 2014, but rather reconvened and completed on the morning of 1 July 2014.

Tests to be applied as to removal of Mr McKee as a trustee/officer

1. Having regard to the terms of the 2008 Act, and without derogating from or glossing the express terms thereof, it appears to the Tribunal that the Respondent bears the burden of proving the following:
	1. that there is or has been any misconduct or mismanagement in the administration of the Charity; and
	2. that Mr McKee has been responsible for or privy to the misconduct or mismanagement or his conduct has contributed to it or facilitated it; and
	3. that it is necessary or desirable to so remove Mr McKee for the purpose of protecting the property of the Charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity.
2. In his written submissions to the Tribunal, Mr Shields drew attention to the recent decision of the English First Tier Tribunal (Charity) General Regulatory Chamber in the case of Mountstar (PTC) Limited v The Charity Commission for England and Wales CA/2013/0001 (a decision of His Honour Judge Gerald and panel) and, in particular the following paragraphs thereof:

*[136] There is no statutory guidance as to what is meant by “mismanagement” or “misconduct”. Both are ordinary English words which should be given their ordinary meaning: Scargill v Charity Commissioner (unreported) 4th September 1998 (which was confined to the meaning of “mismanagement”). The [English] Commission has issued guidance:*

*“Misconduct includes any act (or failure to act) in the administration of the charity which the person committing it knew (or ought to have known) was criminal, unlawful or improper.*

*“Mismanagement includes any act (or failure to act) in the administration of a charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk.”*

*[137] Mr Smith submitted that both take their colour from the serious consequences which follow from the appointment of an interim manager, namely the powers it opens up as well as the reputational implications for the Charity, Mountstar and all those involved. Only serious mismanagement and even more serious misconduct will suffice to satisfy the statutory threshold, albeit that this argument shades into whether the decision to appoint a manager is proportionate to the acts of mismanagement or misconduct complained of by the Commission.*

*[138] We do not think it necessary to so qualify “mismanagement” and “misconduct”. We do however accept that it or the several acts or omissions complained of in their totality must be of some substance to justify the appointment of an interim manager rather than the alternative which would involve the use of some or all of the other statutory tools within the Commission’s armoury. The Commission’s guidance may provide illustrations of what might constitute mismanagement and misconduct, but cannot restrict their ordinary meaning.*

*[139] It is a question of fact and degree to be viewed in the overall context of each case whether the act(s) or omission(s) complained of constitute “mismanagement” or “misconduct”. In our view it would encompass a failure by the charity trustee to act as an ordinary prudent man of business both in terms of process (how decisions are made, including declaring and managing conflicts of interest) and substance (what decisions are reached and why they have been reached). If the process is adequate and the decision reasoned it may be rare for the Commission to challenge the decision per se.*

1. Needless to say, that decision is not binding on the Tribunal. However, the foregoing comments are helpful and instructive and the Tribunal has taken them into account when taking the decisions herein recorded.
2. The Tribunal notes that in the Scargill case which Judge Gerald referred to, Neuberger J said as follows:

*On behalf of the appellants, it is contended that “misconduct” is a more serious allegation that “mismanagement”. In the sense that “misconduct” will normally involved (sic) some dishonesty, whereas “mismanagement” will by no means necessarily do so, I agree. On the other hand, there can no doubt be cases where the “mismanagement” is wide scale, long standing, and very serious in its consequences, and cases where “misconduct”, though of itself serious, amounts to an isolated incident with no significant adverse consequences.*

1. The Tribunal notes that the Oxford English Dictionary defines misconduct as “1. Bad management; mismanagement; malfeasance or culpable neglect of an official in regard to his office; 2. improper conduct, wrong behaviour”; and the same Dictionary defines mismanagement as “Bad or improper management or administration”.
2. At this point it is convenient to record that at no stage did the Respondent contend that there had been any criminality, dishonesty, want of probity, or any attempt to make personal gain, that might justify a finding of misconduct or mismanagement on the part of any of the persons with whom these appeals are concerned.

Mr McKee’s alleged conduct

1. The Tribunal now turns to consider and evaluate the evidence with which it was presented as to Mr McKee’s alleged conduct.

(1) Attempt to divert assets: the Portacabins

1. The essence of the Respondent’s case against Mr McKee in this respect is that he, without the authority of the Charity, sought to deny the Charity the opportunity to procure, free of charge, Portacabins and other equipment which might have been incorporated into one of the Charity’s lifeboat stations, and that he sought to divert these to another charity.
2. The evidence that the Respondent relied upon in this regard was primarily comprised in two sets of emails: (i) emails between a senior officer in the Army and an officer of the Charity, “MK”, dated 20 and 24 January 2012, and, (ii) an email from Mr McKee to that same officer in the Army, dated 24 January 2012.
3. The email from MK to the officer of 20 January 2012 was in the following terms:

*[MK] Training Officer for Antrim crew of Lough Neagh Rescue. I have spoken to you on a few occasions at the Responders day at Aldergrove, Carrickfergus armed forces day and when you visited LNR.*

*There has [sic] been a few changes within LNR and I have been tasked by the Chairman [PQ] and his Board of directors to oversee the build of the Antrim Station. The MOD has kindly donated two portacabins and one container, which are an integral part of our build project which we now have planning approval. Our project is about to start would you have a contact name and number for the MOD representative that I could liaise with to arrange transfer of the containers.*

*Lough Neagh Rescue appreciate your ongoing help.*

1. The army officer in question responded to MK by way of an email dated 24 January 2012, copied to Mr McKee, in the following terms:

*I have spoken to [P] as promised about the Portacabins and he has given me the POC with [the company holding them] as [GMCM]…*

*We are aware of some of the recent developments with LNR, but we said that we would try to help LNR establish a base in Antrim and I believe that by putting you in touch with the current owners of the Portacabins, we are fulfilling this commitment.*

*I have to admit that I was only aware of the Portacabins (not the container) but I am sure that you will find [the company] helpful.*

*Please do not hesitate to contact me if I can be of further assistance.*

*Very good luck with the Antrim Station and I hope that calm waters return to Lough Neagh.*

1. In response to that email, Mr McKee sent an email to the officer on 24 January 2012, in the following terms:

*Great to hear from you again. As you may know our efforts in Antrim came to nought, although we had a fantastic team there, they have now migrated to CRS.*

*We have withdrawn our offer to Antrim Council to provide a response service in Antrim and any efforts in that direction should be directed to CRS.*

*Lough Neagh Rescue is now subject to a Charity Commission enquiry its accounts are froze [sic], and I relinquish any title to any assets which you had so kindly sought on our behalf.*

*My suggestion would be to offer the Portacabins to the new group being established in Antrim for their benefit and for the benefit of the community.*

*We will not know for several months how the Charity Commission investigation will go, and it would be wholly inappropriate for us to seek new assets at this time.*

*In my role as the current Chairman, please be aware that [MK and PQ] are no longer serving members of Lough Neagh Rescue.*

*Thank you for your considerable help over the past number of years, I am sure our paths will cross again soon.*

1. The Respondent asserts that this last email comprised evidence of Mr McKee’s attempted diversion of assets away from the Charity and towards another charitable body.
2. Mr McKee accepts that he sent the email to the army officer concerning the Portacabins, but he disputes the interpretation that the Respondent puts upon it. Specifically, he denies that the Portacabins were ever actually available to the Charity, and, therefore, he cannot have turned them away. In that regard, Mr McKee relied upon an email sent to him by the army officer on 22 August 2013 which was in the following terms:

*Good to hear from you.*

*We did have discussions about the potential donation of Portacabins to the new team in Antrim but I think that there is one key element you have overlooked.*

*The Portacabins would have come from the military estate, but they would not have been donated to any charity by the MoD – this would be against Treasury Rules. What we have been able to do in the past is to talk to the contractor who has been charged with their removal as part of a larger contract. In some cases the contractor will sell them or break them up; in others the contractors may choose to donate them to the charity and have even paid for the transport to the new site.*

*In this case, there was a delay in some of the contracts so the timings just did not work our [sic]. There may be some Portacabins available in the future (and I have several requests pending) but the eventual donation is in the hands of the contractor, not the MoD.*

*Clearly there was no question of delete LNR and insert CRS for Portacabins. There are currently none available and your email did not make a jot of difference to the disposal of Portacabins.*

*Frankly I struggle to understand how this is an issue as we gave no undertaking to provide LNR with portacabins at any stage and certainly none have been given to CRS to my knowledge.*

*I am very sorry that all your excellent work with LNR has come to this distressing outcome and I would have no hesitation in speaking up for you at a tribunal. I have the greatest respect for LNR and share your disappointment that it has come to this. Please let me know how I can help.*

1. In his evidence and in the cross-examination conducted on his behalf, Mr McKee’s response to the central allegation against him that he had taken actions without the authority of the Charity was that, arising from what he regarded as a failed Annual General Meeting on 20 December 2011, the Charity had no board of directors in place. Mr McKee gave evidence that the Charity was in dispute and actions had been taken by what he termed “the other side of the dispute” which prevented crew carrying out their lifesaving objectives. Mr McKee further said that after that AGM there was no board in place to give permission to seek additional assets or to deploy additional assets or to take on additional responsibility. The only board he recognised was what he described as the “last good board” elected in June 2011. In these circumstances, Mr McKee believed that he had to take steps to protect the interests of the Charity and its beneficiaries. That meant he had to take steps, such as sending the email to the army officer saying the Charity could not accept the Portacabins.
2. Mr McKee also gave evidence that in dealing with the Portacabins and other aspects of the Charity’s business at this time, he had acted with the knowledge and permission of members in good standing. Further, he took these various steps, usually after consulting a number of people, within the Charity, who shared his view. He also said that his actions were open and were not hidden from the Respondent, or from members or stakeholders.
3. Mr McKee made what he regarded as a further important point. This was that any steps that he might have taken had to be seen in the context of what he regarded as improper and inappropriate behaviour on the part of persons on the “other side” of the dispute within the Charity. He specifically drew attention to steps that had been taken by those persons, after the AGM of December 2011, in the way of changing locks on the premises, excluding members and turning off pagers. There were also suggestions of more direct intimidating and threatening behaviour.
4. Mr McKee contended that this behaviour had significance beyond the mere fact that it had occurred. Rather, Mr McKee drew specific attention to what he suggested was the unfair and inconsistent attitude of the Respondent in response to that behaviour. Mr McKee complained that the Respondent had failed to take any steps to investigate or sanction the behaviour of the people on the other side of the dispute; yet he had been the focus of scrutiny by the Respondent, leading to his removal as a trustee. Mr McKee suggested that that lack of even-handedness undermined the entirety of the Respondent’s case.
5. Given those points, before it comes to assess the significance of Mr McKee’s email about the Portacabins, the Tribunal must first decide the following matters at this interim stage:
	1. What was the status and effect of the AGM of 20 December 2011?
	2. What is the significance of the alleged inappropriate behaviour on the part of other persons within the Charity and the Respondent’s response to that behaviour?

a. The status and effect of the AGM of 20 December 2011

1. As the validity of this AGM is central to Mr McKee’s explanations for many of his alleged actions, the Tribunal considers it important to set out the competing contentions and the main evidence relating to this meeting, before setting out its findings of fact and conclusions as to the validity or otherwise of the meeting.
2. Mr McKee contended that a large number of members of the Charity had questioned the legitimacy of the meeting of 20 December 2011. He asserted that there were persons in attendance at the meeting who were not members of the Charity. He said that it was a somewhat heated and at times confrontational meeting. Mr Mark Cahoon supported Mr McKee’s account of this meeting.
3. Mr McKee also drew to the attention of the Tribunal documents which appeared to show an acceptance by third parties – such as the Bank, the PSNI but also the Respondent – that the AGM had not lawfully elected a board. With particular regard to the Respondent, two instances may be set out by way of example:
	1. In his “interim report” letter to the Trustees of the Charity dated 3 May 2013, Mr Henry said as follows:

*In relation to the December 2011 AGM, other parties within Lough Neagh Rescue have accepted that the atmosphere during the aforementioned meeting was not comfortable and indeed proper attendance records were not kept. As this latter aspect demonstrated that the AGM was not properly conducted, the Commission is again mindful to remove any person found to be responsible for this misconduct or mismanagement.*

* 1. An emailed letter from the PSNI to Mr McKee dated 3 December 2012, included the following comments:

*I today have spoken with the Charity Commission and have been advised that a recognised “Board” is not in place… I have asked the Charity Commission to advise me when the Board is properly established…*

1. On the other hand, Mr Terry Walsh, Secretary of the Charity, giving evidence for the Respondent, said that on the evening of the meeting, the entire organisation had been aware why they were at the meeting. He said that preparations had been made for the meeting in that the members had selected those who they wished to put before the meeting for election to the board, and a room had been rented to hold the meeting in. He said a solicitor had been requested to attend and to co-chair the meeting. He had done so. Mr Walsh said that during the meeting, a request had been made for anyone standing for election to the board to make themselves known. No-one had made any objections to anyone who had been nominated during this process. Those nominated were elected and approved by the meeting, with there being no opposition to any election, to the best of his recollection. He said that once the election had concluded, the solicitor concluded the meeting, suggesting that the new board meet to prepare the way forward.
2. Mr Walsh said that nothing during the process had led him to believe that anything would lead to anyone questioning the legitimacy of the decisions taken during the meeting, although was aware following the AGM that there were some emails going around questioning the legitimacy of the meeting. However the board that had been elected recognised that it was a temporary, interim board, designed to keep the Charity afloat until a further AGM could be held. In response to Mr Dugan’s assertion that there were persons present at the AGM who were not members, Mr Walsh stated that there was no suggestion that a lot of those who attended were not members. He believed that the vast majority were members, and he did not recall anyone attending the meeting who should not have been there. Mr Walsh noted that one long-serving member who would have known most of the members had raised no objections about anyone present at the meeting. Mr Walsh also stated that, during the meeting, Mr McKee had given no impression that there were persons present who should not have been. He further stated that no-one raised the question that persons were present who should not have been, although he accepted that he did not have definitive proof that only members were present: no attendance record had been signed by him.
3. Mr Henry was adamant in his evidence to the Tribunal that he was satisfied that the 20 December 2011 AGM was lawful. That firm view was perhaps, on the face of it, somewhat at odds with what was said in the documents that Mr McKee invoked as evidence showing that the Respondent was itself of the view that no lawful Board was in place. However, the Tribunal has noted that, in the documents specifically referred to at paragraph 59.a. and b. above, Mr Henry seemed, on the one hand, to be questioning an aspect of the procedures adopted at the meeting, and, on the other hand, to be reflecting the reality that not everyone recognised the Board, rather than saying that the AGM of 20 December 2011 was unlawful. As to the views of third parties, such as the Bank, the Tribunal has considered those matters but they were just that – the views of third parties.
4. The Tribunal also noted the following evidence. The meeting of 20 December 2011 appears to have been convened by Mr McKee, by way of an email dated 21 November 2011. Before the meeting took place, the propriety of the meeting was challenged by a number of persons, apparently on the opposite side of the dispute from Mr McKee, as is evidenced by a letter from a Mr Paddy Prunty to a solicitor dated 15 December 2011, complaining that members had not been adequate notice (21 days) in what they claimed was the proper manner (via mail). This letter advised that legal proceedings might be issued. The solicitor responded to that letter by way of an email dated 16 December 2011, indicating that he thought there was no good reason why members had not been properly notified and commenting that if that had not been done, the meeting could not go on.
5. The Tribunal also saw two separate sets of minutes purporting to record the events of the AGM. Whilst these two sets of minutes are different in how they describe the events that evening, they both describe that an election did take place, and that a solicitor conducted the election of directors, with Mr McKee and six others being elected.
6. A further piece of evidence was put before the Tribunal as to the lawfulness and/or legitimacy of the AGM of 20 December 2011. This was an email sent by the Charity’s former patron, the late Mr Eric McKinley, to Mr McKee, on 18 January 2012. Whilst this email purports to record the opinion of a third party, as to the validity of the AGM, and therefore in evidential terms can hardly be described as the best evidence on the point, the contents of the email are nonetheless of some note and the following part is worth setting out, as follows:

*I have been speaking to [the solicitor who was present at the meeting] and he is of the opinion that the Board elected at the last shambolic AGM are properly elected.*

1. The Tribunal also notes Article 7 of the Charity’s Articles of Association provides as follows:

*The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice shall not invalidate the proceedings at that meeting.*

1. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal found the following facts as regards the AGM of 20 December 2011:
	1. The meeting was convened by Mr McKee.
	2. Adequate notice of the meeting was given by Mr McKee.
	3. The meeting was heated and confrontational at times.
	4. There may have been some persons present at the meeting who were not members of the Charity. However, the vast majority of the persons present were members.
	5. Despite any concerns that there may earlier have been about adequacy of notice and despite any concerns about non-members being present, the consensus at the meeting was that the meeting should proceed, and, more specifically, that the election of directors should proceed.
	6. A solicitor conducted the election of directors,
	7. Nominations for election as directors were invited, made and received.
	8. No-one objected to any of the nominations.
	9. Mr McKee was nominated for election as a director. He accepted the nomination. He was then elected as a director.
	10. Six other persons were nominated for election as directors. They accepted their nominations. They were then elected as directors.
	11. The solicitor concluded the election of directors and invited the board to meet.
	12. Soon after the meeting was completed, objections emerged as to the validity of the meeting.
2. Having found these facts, the Tribunal further considers, on balance, that the AGM was lawful and that it served to lawfully elect an interim board of directors with authority to govern the Charity, in accordance with the Articles and Memorandum of Association of the company, pending a further AGM.
3. Moreover, having found those facts, the Tribunal finds that, at the very least, the AGM served to elect a legitimate interim board of directors with authority to govern the Charity, in accordance with the Articles and Memorandum of Association of the company, pending a further AGM.
4. In short, the Tribunal finds that the Board elected by the AGM of 20 December 2011 was the elected, chosen, lawful and legitimate repository of the authority of the Charity.
5. Having made those findings, the Tribunal goes further and says that where such a Board was in existence, no individual had the right to take steps, with regard to the Charity and its affairs, on a unilateral basis, without reference to that Board and without the authorisation of that Board.

b. The significance (if any) of the alleged inappropriate behaviour on the part of other persons within the Charity

1. The Respondent did not dispute that persons on the other side of the dispute from Mr McKee and Mr Burke and his colleagues had taken steps to exclude their opponents from the Charity. The following appears in Mr Henry’s letter of 3 May 2013:

*Concerns were raised that security cameras at Ardboe were disconnected and locks were changed on 17 January 2012, which prevented certain individuals’ access to the station. Some members were also discharged in writing by Trustees whose authority they disputed.*

*These are internal matters of behaviour by individual members and attempts to either assert or reject attempts to govern membership by two sides of the dispute, neither accepting nor recognising the legitimacy of the other. The Commission responded by offering to determine membership, highlighting the need for a further AGM to elect Directors in a lawful and open manner and then issued that new board of directors with further regulatory guidance to deal with governance issues at the heart of this dispute.*

*The locking out of members has not been investigated by the Commission as it is not disputed, but regular contact with both the Coastguard and the PSNI has provided reassurance that emergency rescue services have not been affected. Indeed it appears response times have improved markedly. There have been precautionary suspensions of a trustee and other members by the newly elected board, which was not a matter directed or advised by the Commission. Those are internal decisions made by the board of trustees in response to a protracted and emotive dispute…*

1. Apart from that letter, the Tribunal heard evidence that clearly established that persons on the “other side” of the dispute from Mr McKee had indeed taken steps to exclude and suspend their “opponents”. Mr Terry Walsh accepted that, shortly after the AGM, locks had been changed at one of the stations and that sixteen members of the Charity had been suspended.
2. Mr McKee and Mr Dugan said that these admitted actions by persons on the other side of the dispute were extremely significant, in that they showed that the Respondent had failed to act in a fair, consistent and transparent manner. It had failed to be even-handed. The Respondent investigated and took action against Mr McKee and Mr Burke and his colleagues, but it entirely failed to take steps to investigate or to take action against those who had changed locks and suspended members.
3. The Tribunal recognises that there was indeed a difference in how, on the one hand, the Respondent dealt with Mr McKee and Mr Burke and his colleagues, and how, on the other hand, it dealt with those on the other side of the dispute.
4. The Tribunal further considered that this difference in treatment did call for an explanation from the Respondent. Such an explanation was provided to the Tribunal. The explanation emerges from the letter of Mr Henry, set out above, and from the evidence of Mr Walsh to the Tribunal.
5. In his letter, Mr Henry said the decisions to change locks and to suspend members were the “internal decisions made by the board of trustees in response to a protracted and emotive dispute.”
6. In that regard, Mr Walsh specifically told the Tribunal that the locks had been changed “because the Board was trying to run the organization.” He also told the Tribunal (emphasis added):

*In order to maintain the service and continuity as a board we felt obliged to be able to provide a safe environment for beneficiaries and those using the station. …Mr McKee … and others were not accepting validity of the Board. They were acting on their own behalf and causing confusion. This was to protect the organisation and assets, we needed to be in sole control of our assets*

1. As regards the decisions to suspend members, Mr Walsh emphasised that the Board felt it was incumbent to protect the assets, members and reputation of the Charity, as it was believed they were under attack. The Board needed to show that the Charity was being led and controlled. The Board felt that Mr McKee was a threat to the organisation including the reputation of the organization and therefore there had been an active choice to suspend members.
2. Significantly, Mr Walsh at two points in his evidence said that it was “ok to be in dispute” with the new Board – but it was “not ok to cause confusion and damage the reputation of the Charity, such as Mr McKee had done.”
3. The Tribunal must assess whether (i) the actions of the persons on the other side of the dispute from Mr McKee and Mr Burke and his colleagues and (ii) the response of the Respondent to those actions, have any significance for how the Tribunal should approach its consideration of the Respondent’s case against Mr McKee.
4. The Tribunal notes that the key point, and the key distinction, is that it was the elected Board of 20 December 2011 that took the decisions to change the locks and suspend the members; whereas it was Mr McKee alone who (as appears in detail below) took the decisions to take steps with respect to (for example) the Portacabins and the bank account.
5. The Board was entitled to take decision on behalf of the Charity; an individual was not entitled to take decisions on behalf of the Charity. For that fundamental reason, the Tribunal does not consider that the Respondent is to be criticised for taking action against Mr McKee, but not taking action against the “other side.” Further, the Tribunal does not consider that this difference of approach undermined the generality of the Respondent’s case.
6. That said, it is convenient for the Tribunal to here record that there appeared to be an element of tension running through some of the exchanges between the Respondent and the Appellants, which the Tribunal did not detect in the corresponding exchanges between the Respondent and the members of the Charity with whom the Appellants were in dispute. The Tribunal does not go so far as to say that there was any hostility on the part of the Respondent towards the Appellants. Rather it appeared to the Tribunal that there were some limited instances when the Respondent omitted to display consistency of tone in its dealings with the various parties. Given the principles of best regulatory practice to which the Respondent is bound to adhere (see paragraph 12 above), that should have been avoided.
7. On a somewhat related note, Mr McKee generally criticised the Respondent for taking at face value the evidence that it relied upon in making its order, and for not interviewing him or witnesses. On the particular facts of this case, the Tribunal considers that this criticism is misplaced for at least three reasons:
	1. There is evidence of direct contact between Mr McKee and the Respondent, including via email and in face to face discussion;
	2. Much of the evidence upon which the Respondent relied comprised written communications from Mr McKee which admitted of only one interpretation i.e. that he was taking steps relative to the Charity which he appeared to have had no authority to take; and
	3. As appears from the chronology set out at paragraph 18.l. above, the Respondent, acting in accordance with the statutory scheme, provided Mr McKee with an opportunity to make representations to it as to why an order should not be made. Mr McKee was provided with the evidential annexes justifying the making of the order. Yet Mr McKee failed to take advantage of that facility in any meaningful way.

The nature and effect of Mr McKee’s email regarding the Portacabins

1. Having addressed the status of the AGM and the Board elected by it, and the relevance of the actions of other Trustees and members and the Respondent’s response thereto, the Tribunal now returns to assess Mr McKee’s actions with regard to the Portacabins.
2. The Tribunal must consider whether Mr McKee had authority to send the email, either in a general sense or a specific sense. Throughout the hearing, the Tribunal repeatedly encouraged Mr McKee and Mr Dugan on his behalf to articulate what authority Mr McKee had to take steps on behalf of the Charity after the December 2011 AGM.
3. At no time during the case did Mr Dugan contend that Mr McKee believed he had the authority of the Board elected on 20 December 2011 to generally act unilaterally on its behalf. More specifically, Mr Dugan and Mr McKee did not contend that Mr McKee had the authority of the December 2011 Board to send the email with respect to the Portacabins.
4. When pressed by the Tribunal, it became apparent that the extent of Mr McKee’s consultation with other persons about his actions had generally been limited to discussions with some solicitors, and with Mr Orton, Mr Burke and Mr McGivern and occasionally with some of the wider membership. Although Mr McKee said that he had the support of what he described as the “last good board” elected in June 2011, no evidence was placed before the Tribunal to substantiate that claim.
5. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding Mr McKee’s dealings with the Portacabins:
	1. Mr McKee sent the email of 24 January 2012.
	2. The email from Mr McKee was an unequivocal and clear attempt to reject assets which might have become available to the Charity. The email requires no interpretation to come to that conclusion: the words are clear. The facts that the assets were not definitively available to the Charity in January 2012, or that they may never have become available to the Charity or anyone else, are beside the point: Mr McKee purported to relinquish title to the assets and to suggest that they be offered to a new group. As a result of that email, whatever theoretical possibility of acquiring the Portacabins that had existed up to that point was extinguished.
	3. Mr McKee’s explanation for attempting to relinquish the Portacabins was that there was no Board in place to receive and manage the assets. Given the Tribunal’s findings about the AGM, set out above, Mr McKee’s explanation cannot be accepted. Therefore, there was no objective or operational or good reason for Mr McKee to attempt to relinquish the Portacabins.
	4. The email was also a clear and unequivocal attempt to divert the assets towards another entity, the “CRS” organisation or the “new group” referred to in the email. Again, the email requires no interpretation to come to that conclusion.
	5. Mr McKee’s email of 24 January 2012 and his attempted rejection of the portacabins, were not authorised by the Board and thus were not authorised by the Charity.
	6. The email misrepresented Mr McKee’s status as chairman of the Charity: he was not chairman of the Charity after the meeting of 20 December 2011 – that was a role that had passed to PQ.

(2) Denying funding: rejection of involvement in the Pirate Day Event

1. The Respondent complained that Mr McKee had denied the Charity the opportunity to participate in a significant fundraising event when, on 19 January 2012, Mr McKee had sent an email to staff at Antrim Borough Council in the following terms:

*Please be advised, Lough Neagh Rescue will not be in a position to hold the Pirate Day Event in Antrim this year. We no longer have the members in that area to safely manage and co-ordinate the event.*

*I have nothing but praise and thanks to offer the Antrim Council staff who treated us with respect and support over the past two years.*

1. It was Mr McKee’s case that the Pirate Day was an event that had been organised by the Charity for the previous two years in conjunction with Antrim Borough Council. He said it was organised by the Charity’s Antrim team with assistance from the Charity’s Kinnegoe team. Mr McKee contended that all his email did was to indicate that the event could not proceed because of health and safety reasons. Mr McKee contended that the decision to cancel the event, some months before it was due to take place in June 2012 was to protect the Charity from reputational damage: hundreds of people turned up to the event and the Charity could not cancel at a late stage.
2. In giving evidence on behalf of the Respondent, Mr Paul Duffy rejected Mr McKee’s contention that the Pirate Day was cancelled for reasons of health and safety, i.e. insufficient volunteers. Mr Duffy said that the Pirate Day was run by Antrim Borough Council and not by the Charity. He said that the Charity was the beneficiary of any fundraising. Mr Duffy said that the members of the Charity were not asked to perform any role or to fund raise: all they had to do was attend to publicise the Charity. Mr Duffy said that a crew from the Charity took part in the Pirate Race, that the lifeboat was brought along, and that adults and children could come on board and view it.
3. Mr McKee produced some documents in the way of health and safety policies and the like which, he claimed, showed that the Charity was involved in the Pirate Day, in an organizational way. The Tribunal considered those documents.
4. Mr McKee and Mr Dugan on his behalf did not contend that Mr McKee had any general or specific authority from the Board elected on 20 December 2011 to send the email to Antrim Borough Council. Further, Mr McKee and Mr Dugan did not seek to make any points as to Mr McKee having authority to send the email other than those referred to above.
5. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding the Pirate Day:
	1. Mr McKee admitted sending the email of 19 January 2012.
	2. The Charity’s role in the Pirate Day was as beneficiary not organiser.
	3. The policy documents produced by Mr McKee did not show that the Charity was anything other than a beneficiary of the Pirate Day.
	4. There was no objective or operational or good reason for Mr McKee to terminate the Charity’s involvement in the Pirate Day. The members of the Charity could have attended the Pirate Day as they had done in prior years and reaped the benefits in terms of income and enhancement of the Charity’s profile.
	5. Mr McKee’s email was simply designed and intended by Mr McKee to prevent the Charity taking part in a fundraising event.
	6. As a result, Mr McKee deprived the Charity of the opportunity to gain the benefit of income from the event.
	7. This email was not authorised by the Charity.

(3) Denying funding: non-participation in Junction One event

1. By an email dated 3 May 2012, Mr McKee wrote to the management of the Junction Outlet at Antrim, in the following terms:

*Dear Sir/Madam*

*I understand that Lough Neagh Rescue Limited has been awarded Charity of the Year at Junction 1.*

*Although this is a great honour, and as someone who spent a considerable amount of time fundraising at your complex last year, on behalf of LNR I must respectfully decline.*

*At this point LNR is not in a position to avail of your kind offer, we are heading to an EGM before the end of May and feel that this is a decision the new controlling board will have to take.*

*We have many dedicated crew within Antrim the following are the contacts you may wish to seek clarification from…*

*If you need any further information from myself, I can be contacted by using any of the details below, or by pressing reply.*

1. The Tribunal notes that in the footer to his letter, Mr McKee was described as Chairman of Lough Neagh Rescue.
2. Mr McKee and Mr Dugan on his behalf did not contend that Mr McKee had any general or specific authority from the Board elected on 20 December 2011 to send the email to Junction One. Further, Mr McKee and Mr Dugan did not seek to make any points as to Mr McKee having authority to send the email other than those points set out above.
3. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding the Junction One funding:
	1. Mr McKee admitted sending the email of 3 May 2012.
	2. The Charity’s role in Junction One was simply to be the outlet’s preferred beneficiary, having been identified as the Outlet’s Charity of the Year.
	3. There was no objective or operational or good reason for Mr McKee to reject that status or preferred beneficiary or, more significantly, the income which would likely have flowed from it. The members of the Charity could have assumed the role of Junction One’s Charity of the Year and thereby have reaped the associated benefits in terms of income and enhancement of the Charity’s profile.
	4. Mr McKee’s email was designed and intended by Mr McKee to prevent the Charity enjoying the status of a preferred beneficiary of Junction One event.
	5. As a result, Mr McKee deprived the Charity of the opportunity to gain the benefit of income from its status as preferred beneficiary.
	6. This email was not authorised by the Charity.

(4) Denying funding: collection boxes

1. On 20 March 2012, Mr McKee in an email again describing himself as Chairman, wrote to a number of members of the Charity in the following terms:

*Hi All*

 *…*

*Please, as soon as possible, remove all collection boxes from their sites.*

*We at present have no audit trail from income generated and considering the Financial investigation about to take place, it’s [sic] best if you properly account for any Boxes within your responsibility. Boxes and their contents need to be counted, receipted and lodged with the Treasurer Brian Morrison as soon as possible. If you have responsibility for multiple boxes, you will at some stage need to be able to account for every collection. Please can you give this your immediate attention.*

*This instruction has been recorded and copied to CC, Auditors, and Stakeholders. Please contact me for a definitive list or feel free to forward to your contacts.*

1. On 28 July 2012, Mr McKee issued a further email which included the following:

*Dear All*

*Please see below from 20th March 2012.*

*I know this instruction was carried out by Antrim and Kinnegoe crews, however the evidence tends to suggest, boxes are still popping up in retailers. I would ask if you enter a retailer that is displaying a box, please remove it immediately and log it with Brian. The audit trail ended in March this year.*

*If you feel unable to do this, please pass me the name of the retailer and I will lodge a note of concern, which will tag onto the current C&C with the PSNI. I will also arrange immediate removal of the box and an explanation and apology to the retailer.*

*Please do not be deceived by suggestions that you distribute boxes. Anyone instructing you thus will pass on responsibility to you at a later date….*

1. In his cross-examination of Mr Henry on behalf of Mr McKee, and pursuing the general theme of Mr McKee’s case, Mr Dugan suggested that the reason for Mr McKee’s instructions about the removal of the collection boxes was that, after the AGM of December 2011, there was confusion about who the directors of the Charity were, and it followed from that that there would be confusion about whether there was authority to make collections. Mr Dugan suggested that there was no board in place to adequately collect, account and audit the donations from members of the public, and Mr McKee was concerned that there would be reputational damage done to the Charity if money did not go to the Charity as had had happened in respect of another charity in Northern Ireland.
2. In response, Mr Henry said that there was no need to call in the collection boxes. He stated that Mr McKee had by calling in the collection boxes stopped the Charity having access to direct funding from the public. Further when considered alongside the steps Mr McKee had taken to “freeze” the Charity’s bank account (as to which see below) Mr Henry said that Mr McKee had deployed a “pincer movement” on the Charity’s finances.
3. Under cross-examination by Mr Shields, Mr McKee maintained that the collection boxes could have been a source of reputational damage. He said there was a question of risk versus reward: the greater risk was with the boxes being out there rather than being collected and logged. Mr McKee emphasised that his intention was to protect the Charity from getting any worse, whilst accepting that the downside was that it would possibly not getting any better.
4. On the question of having authority to send out these emails, Mr McKee and Mr Dugan referred to the fact that traditionally Mr McKee had been a signatory of the Charity’s cheque book, but they did not suggest that Mr McKee had any general or specific authority from the board elected on 20 December 2011 to send the emails calling in the collection boxes.
5. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal found the following facts regarding the collection boxes:
	1. Mr McKee admitted sending the emails of 20 March 2012 and 28 July 2012.
	2. The collection boxes were a source of income for the Charity.
	3. There was no objective or operational or good reason for Mr McKee to call in the collection boxes and to thus deprive the Charity of the income from them. There was a Board and a Treasurer in place that could have managed the collection boxes.
	4. The effect of Mr McKee’s email calling in the collection boxes would have been to interfere with an important source of income.
	5. These emails were not authorised by the Charity.

(5) Interference with the Charity’s bank account

1. On 18th January 2012 at 12.57, Mr Trevor McKee sent an email to the Charity’s Bank in the following terms:

 *Dear Sirs/Madam,*

*With regret only after exhaustive attempts at mediation, I have today requested the accounts of Lough Neagh Rescue to be frozen.*

*Lough Neagh Rescue cannot with certainty identify its Directors which will lead to spiralling governance issues if we do not take affirmative action.*

*As a consequence, I must advise HMCG and the PSNI that as Lough Neagh Rescue is a declared facility, potentially we may not be able to fulfil our obligations to the public.*

*I acknowledge the potential risk for life following this action and in mitigation I must ask the PSNI to engage with ourselves and an alternative service provider who may be able to assist Lough Neagh Rescue through this most difficult of times.*

*This has been no easy decision, but in the interests of public safety and to best serve the wider public good, the Directors of good standing in the Company feel they have no alternative. The Charity Commission have been asked to intervene and we welcome their involvement.*

1. Reference has already been made to part of the email that the late Mr McKinley sent to Mr McKee on 18 January 2012. The entirety of the email is set now out below in full:

*This is a serious step you have taken without the approval of the Board of LNR and there would be a question if you have the authority to so act without Board approval.*

*I have been speaking to [the solicitor who was present at the meeting] and he is of the opinion that the Board elected at the last shambolic AGM, are properly elected.*

*I also agreed that I would try to convene a meeting of the new Directors and see if we could work something out that might resolve the but I doubt that, after this action you have taken today, it would now be of any use.*

*I am sorry I was not at home when you rang but I did try to contact you this evening but you were not answering your mobile*

*Have you consulted with [the solicitor] before sending this email?*

*If not I would suggest that you contact him as soon as possible.*

*In the meantime I will not take any action re convening a meeting until I hear from you and/or [the solicitor]*

1. Mr Dugan, in his cross-examination of Mr Henry, suggested that Mr McKee had the authority to raise his concerns about the Charity, by way of having the account frozen, because there was confusion about who had authority after the December 2011 AGM; because he had been a signatory of the cheque book; because he had discussed the matter with Mr Burke, Mr Orton and Mr McGivern; and because he had discussed the matter with a firm of solicitors. (For the avoidance of doubt the firm named in the hearing in this regard was **not** the firm a member of which had attended the meeting on 20 December 2011).
2. In response, Mr Henry said he did not see how the interests of the crews had been served by freezing the Bank Account. On the contrary, this had created a risk and he queried how the starving of a lifeboat of fuel was consistent with the objectives of the Charity. Further, Mr Henry countered suggestions that any difficulties in obtaining access to the account had been overcome by funding received from local councils. Mr Henry said that it cost circa £1000 to fill up the lifeboat’s fuel tank and that level of finance had not been provided by the councils. Evidence was also given that whilst Craigavon Borough Council had made up some of the funding shortfall for the Kinnegoe Boat, there had been no comparable funding from the council in which the Ardboe Station lay, and, as such the freezing of the Bank account was most keenly felt there.
3. Under cross-examination by Mr Shields, Mr McKee stated that steps had been taken to freeze the account, following the best advice from a firm of solicitors (Again, for the avoidance of doubt the firm named in the hearing in this regard was **not** the firm a member of which had attended the meeting on 20 December 2011). The Tribunal, pointing out that legal advice was privileged from production, nevertheless gave Mr McKee the opportunity to elaborate on that advice. The Tribunal notes that no such elaboration was provided.
4. Mr McKee said under cross-examination that he had taken the step to have the account frozen in order “to focus minds”. He also contended that he had tried to mitigate the effect of the account being frozen by maintaining a stream of funding.
5. The Tribunal noted that in his evidence to the Tribunal, Mr Brian Morrison, the former treasurer, said that the cheque account was used to buy fuel and equipment, to pay for utilities, and to pay for anything that the Charity required. A couple of times per month a cheque was written for everything that needed paid. Mr Morrison said that with the cheque account stopped, he could not do anything.
6. On the question of having authority to freeze the bank account, Mr McKee and Mr Dugan referred to the fact that traditionally Mr McKee had been a signatory of the Charity’s cheque-book, but he they did not suggest that Mr McKee had any general or specific authority from the board elected on 20 December 2011 to take this step.
7. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal found the following facts regarding the Bank Account:
	1. Mr McKee admitted sending the email of 18 January 2012.
	2. The bank account was crucial to the operation of the Charity.
	3. The effect of Mr McKee’s email was to freeze the account for a time and to create confusion with the Charity’s bank.
	4. There was no objective or operational or good reason for Mr McKee to have the account frozen. Rather his action was a tactic in the dispute within the Charity, and was, in Mr McKee’s own words, simply taken to “focus minds.”
	5. Mr McKee knew that in freezing the bank account he was compromising the operations of the Charity.
	6. Mr McKee acknowledged the potential risk for life.
	7. The effect of Mr McKee’s action in having the bank account frozen was to interfere with a vitally important aspect of the Charity’s operations
	8. The email was not authorised by the Charity.

(6) Restriction of access to the lifeboat

1. The Respondent complained that after the December 2011, Mr McKee and others succeeded in restricting the Charity’s access to and use of a lifeboat that, up to that point, had been made available for training of the crew. Specifically, the Respondent complained that Mr McKee and others procured the removal of the lifeboat from its storage place – on Lord O’Neill’s estate in Antrim – to the local PSNI Station. The Respondent contended that there was no good reason for this action.
2. Mr McKee contended that steps had been taken to secure the lifeboat because a threat had been made to burn it. Mr Dugan, in cross-examination of Mr Henry, suggested that in the light of the threat to the lifeboat, Mr Joseph Hughes approached the Charity Commission with these concerns. He said it was considered that the Company could not identify its Directors. In order to keep the asset safe, Mr Dugan suggested that the Charity Commission told him to take the concerns to PSNI as it was a criminal matter.
3. Both Mr Shields and the Tribunal asked Mr McKee and Mr Dugan to give details of this alleged threat. Mr McKee’s response was that the particulars of the threat were not known to him, but rather were known to Mr Hughes, one of the Appellants. Mr McKee’s position was that it was for Mr Hughes to divulge this information if he wished.
4. Mr Henry said there was never any evidence to support a threat against the boat, and he believed that the Police seized the boat because the Police believed the boat had been stolen. Mr Henry said this interference with the lifeboat was all part of a plan to bring the Charity into disrepute and to reduce it to its knees.
5. The Tribunal has considered the evidence relating to the alleged restriction on use of the lifeboat. The Tribunal has concerns about the circumstances in which the lifeboat, which was a key and important asset for the use of the Charity, came effectively to be out of commission for several months. The Tribunal notes that these steps were taken with respect to the lifeboat at or about the time at which Mr McKee took other actions which interfered with the operation of the Charity (e.g. the freezing of the bank account; the rejection of possible new assets; the withdrawal from fundraising events; and the instruction to call in collection boxes).
6. The Tribunal notes that a letter written by Mr Hughes to Lord O’Neill on 30 January 2012, and copied to Mr McKee, was in terms which made absolutely no reference to any threat to the lifeboat, as follows:

*Since arranging with you for the storage of our rescue boat in the “Banshee shed”, several major difficulties have arisen within the governance and operations of the Lough Neagh Rescue charity.*

*To ensure that our benevolent relationship with the estate is not spoilt by the on-going investigation into these issues, I have made arrangements for the boat to be held by the local PSNI, in Antrim.*

*I would like to thank you for the kindness shown to the local Lough Neagh Rescue team, and trust you will appreciate our motivations for this action.*

*In consideration of any “approaches” made to the estate reference the boat, I would respectfully request that its location not be disclosed, until I have transferred stewardship to the Charity Commission of Northern Ireland.*

1. It is entirely clear that Mr McKee was intimately involved in the process by which the lifeboat was delivered into the custody of the PSNI. His letter to the PSNI of 7 November 2012 (again signed as Chairman of the Charity) reads as follows, so far as is relevant:

*My name is Trevor McKee and I am Chair of Lough Neagh Rescue.*

*In February this year myself and other concerned Directors of the Company, placed in your care our Antrim Lifeboat…*

1. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding the lifeboat:
	1. Mr McKee was by his own admission involved in having the lifeboat taken out of commission.
	2. Mr McKee refused to give details of the reason for having the lifeboat seized.
	3. The contemporaneous reason given for the removal of the boat had nothing to do with any supposed threat to it.
	4. There was no objective or operational or good reason for Mr McKee to have the lifeboat taken out of operation. Rather, as appears from Mr Hughes’ letter, the lifeboat was taken out of commission as part of the dispute within the Charity.
	5. The interference with this asset compromised the ability of the Charity to conduct its roles, particularly as regards training.
	6. Mr McKee’s actions as regards the life boat were not authorized by the Charity.

(7) Withholding of financial documents

1. The Respondent contended that Mr McKee withheld financial information from the Respondent and his fellow directors. The Respondent contended that this information was necessary to allow the Charity’s accounts for the year 2011/2012 to be filed and also to explain how the Charity’s funds were being administered. The Respondent said that the failure to provide the information delayed the filing of statutory returns and thus exposed the Charity to financial penalties.
2. According to the witness statement of Mr Henry, the Respondent had in emails dated 13 March 2013 and 26 March 2013 requested Mr McKee to produce this financial information. Mr Henry also referred to an earlier request or requests. He drew attention to the fact that the Respondent had on 3 May 2013 issued a direction to Mr McKee, under Section 22(3) of the 2008 Act, to produce financial information, which direction Mr McKee had sought to challenge before the Tribunal. Mr Henry recorded that on 3 July 2013 the Respondent had written to Mr McKee informing him that if the documents were not produced by 10 July 2013, enforcement proceedings, including an application to the High Court, might be taken against him. In his statement to the Tribunal, Mr Henry went on to say that materials were delivered to the Respondent’s office on 8 July 2013; although Mr Henry said the documents delivered were incomplete. Mr Henry recounted further correspondence between himself and Mr McKee throughout the remainder of 2013. He stated that the Charity was fined £1500.00 for the late filing of its 2011/2012 accounts.
3. Mr Henry also gave an account in his witness statement of Mr McKee “frustrating” his fellow Directors in the handling of financial information.
4. On the other hand, Mr McKee emphatically rejected the suggestion that he had withheld any financial information. Moreover, he contended that he had been the one person in the Charity who was consistently making efforts to draw accounting records together and to make returns. Mr McKee drew attention to a number of documents which, he said, showed that he was anxious about and active in ensuring that financial documents were properly handled.
5. In a significant exchange in the course of Mr Dugan’s cross-examination of Mr Henry, it was put to Mr Henry that Mr McKee had not withheld any documents from Mr Henry in 2012. In response, Mr Henry said that that was true, and that Mr McKee was first asked for information after 31 December 2012. It was only in 2013 that the accounts were overdue. Mr Henry said it had not been down to the Respondent to intervene in the period from August to December 2012.
6. Mr Henry qualified this by saying that during 2012, Mr McKee was setting the terms upon which financial information should be handled. He drew attention to the fact that Mr McKee had on 26 July 2012 directed Mr Duffy to pass all financial information to “our Treasurer Brian Morrison” – yet Mr McKee had been told by Mr Morrison on 28 March 2012 that he had been stood down from that post.
7. In Mr Shields’ cross-examination of Mr McKee on these issues, Mr Shields asked Mr McKee why he had not delivered up the documents sought by the Respondent in its direction of 9 May 2013? Mr McKee responded by saying that this was because of queries about the registration of the Company; because he felt excluded; because he wanted the Company to be properly audited; because he wanted full visibility for the Respondent and stakeholders; because the Company had filed two sets of abbreviated accounts; and because there were questions about the finances.
8. The Tribunal has considered all the evidence and submissions put before it on the question of whether Mr McKee withheld financial information from the Respondent and his co-directors.
9. The Tribunal noted that as the hearing progressed, the focus of the Respondent’s complaint, certainly as regards itself, was 1 January 2013 onwards and, more particularly, the period May 2013 to July 2013. The Tribunal also noted the ongoing correspondence throughout 2012 and 2013 by which Mr McKee regularly advertised his concerns about the need to file the accounts on time and the consequences of failing to do so. That correspondence appeared, superficially at least, to portray a responsible and pro-active approach on the part of Mr McKee to the Charity’s financial information.
10. However, the Tribunal noted that in pursuing this matter in this way, Mr McKee assumed a role in the financial affairs of the Charity which had not actually been deputed to him by the Charity. The Tribunal also considered the significance of Mr McKee’s insistence that Mr Morrison should continue to receive the financial information, even though he was no longer the Treasurer.
11. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding Mr McKee’s handling of the Charity’s financial information:
	1. Mr McKee viewed the ownership, holding and delivery up of the financial documents as “pieces of ground” that were being fought over in the period after the December 2011 AGM, rather than being the responsible management of the Charity’s affairs, as might have first appeared. The Tribunal is confirmed in that conclusion when regard is had to the other actions of Mr McKee at this time.
	2. The Tribunal is thus satisfied that Mr McKee was involved in the management of the financial records of the Charity in a manner that was unnecessary.
	3. The Tribunal is thus satisfied that Mr McKee was involved with the financial records of the Charity in a manner that was not authorised by the Charity.
	4. The effect of Mr McKee’s involvement was to frustrate the delivery of the Charity’s financial documents to the properly elected officers of the Charity, and, at a later stage, to the Respondent.
	5. The effect of Mr McKee’s involvement was to frustrate the properly elected officers of the Charity in the exercise of their duties and thus the management of the Charity.

(8) Refusal of grant monies from Antrim Borough Council

1. The Respondent contended that Mr McKee was instrumental in ensuring that funding from Antrim Borough Council’s GROW project was not received by the Charity. In support of this contention, the Respondent relies on a letter from Cllr Adrian Watson of Antrim BC dated 12 September 2012. The Tribunal notes that the Respondent did not seek to adduce a formal witness statement from Mr Watson. The Tribunal further notes that, apart from the reference to the letter from Mr Watson, the Respondent’s evidence in respect of this matter is essentially confined, on the one hand, to setting the failure to secure the grant in the context of Mr McKee’s other alleged actions, and, on the other hand, to comments made in Mr McKee’s own witness statement about the Charity not being in a position to accept assets.
2. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal considers that the Respondent has not adduced sufficient evidence to allow it to conclude that Mr McKee was instrumental in declining funding from Antrim Borough Council and this matter is not further taken into account by the Tribunal.

(9) Creation of an alternative website

1. In its final Statement of Reasons for making an Order against Mr McKee, the Respondent suggested that Mr McKee had operated an unofficial website and other social media purporting to be the official website of the Charity and he had incorrectly represented himself as Chairman of the Board of Trustees, thereby causing confusion to beneficiaries and stakeholders and potentially causing reputational damage to the Charity.
2. Under cross-examination by Mr Shields, Mr McKee accepted that he had registered an alternative website regarding the Charity. Mr McKee said he had not recalled that anyone other than the Respondent saying it was causing confusion. Mr McKee said that the other website was part of a process of excluding or locking out the crew. He said that 35 members required some sort of identity and wanted a .net website to contain material supporting the Charity. Mr McKee said that the use of the word *“official*” on the website an internet “trick” to ensure that there were more hits on the website.
3. Having considered all the oral and documentary evidence before it and the parties’ submissions, the Tribunal has found the following facts regarding the website:
	1. Mr McKee was instrumental in establishing an alternative website for the Charity;
	2. The creation of an alternative and official looking website was a source of potential confusion and damage to the Charity.
	3. There was no objective or operational or good reason for Mr McKee to have been instrumental in the creation of this website. If some members had wanted to establish a forum by which they could communicate with each other, a website purporting to be the official website of the Charity (when it patently was nothing of the kind) was not the way to go about it.

(10) Frustration of fellow trustees and the Respondent and attempts to regain control of the Charity

1. Part of Mr Henry’s witness statement was devoted to what he described as Mr McKee’s “actions to frustrate the Commission and fellow trustees”; and a further section bore a heading that Mr McKee was seeking to “regain control or render broken” the Charity.
2. Dealing with the alleged actions to frustrate the Respondent and Fellow Trustees, the Tribunal notes that this heading covered a wide range of alleged activities on the part of Mr McKee. The activities referred to included (i) Mr McKee purporting to be chairman of the Charity; (ii) the existence of the alternative website; (iii) Mr McKee’s failure to recognise the authority of elected trustees; (iv) the issue of the collection boxes; (v) Mr McKee’s attempts to influence the outcome of the EGM; (vi) Mr McKee’s actions relating to the Charity’s accounts; (vii) the holding of an alternative AGM; and (viii) the altering of Companies House records.
3. It is clear that most of these matters are, by and large, merely another way of characterising the “headline” aspects of Mr McKee’s actions, which have been dealt with in detail above. The Tribunal does not intend to take the majority of these matters into account as separate reasons for making an Order. However there are some of these matters that call for separate consideration.
4. The Tribunal noted that the Respondent drew attention to an email which Mr McKee wrote to Mr Duffy on 25 April 2012, in the following terms:

*As you know I have terminated all Directors from the Company Register (except Paul Quinn). I have also terminated [name of firm] as solicitors. They have been put on notice, in writing to their trading address.*

1. The Tribunal is satisfied that in April 2012, Mr McKee had no authority to alter the Charity’s records on the Company Register, and that this is something which the Tribunal should take into account.
2. The Tribunal has also considered the alleged actions of Mr McKee in respect of the conducting of the AGM in 2013. The suggestion is that he and others were wrong to raise concerns about the venue of the AGM and to seek to arrange an alternative AGM. Mr Henry, in his witness statement, complained that Mr McKee “was seeking to influence the General Meeting to be held, where it should be held, and who could vote for whom.” The Tribunal is not satisfied that those types of matter should be taken into account adversely to Mr McKee.
3. Equally, the Tribunal is not satisfied that many of the matters referred to by Mr Henry in his statement under the heading “Regain Control or Render Broken” overlap with other matters complained of by the Respondent, and therefore, the Tribunal does not consider it necessary or appropriate to making a separate finding in respect of these matters.

(11) Additional matters relied upon by the Respondent

1. The Tribunal now returns to the additional matters relied upon by the Respondent as reasons justifying an Order against Mr McKee. First, Mr McKee’s role in allegedly appointing additional directors in June 2011; secondly, his role in allegedly dismissing PQ; and thirdly, his role in allegedly dismissing MK.
2. As regards the appointment of additional directors, given the existence of two sets of minutes of the meeting of June 2011 at which the matter may have been discussed, the Tribunal is not satisfied that this is matter which should be taken into account in deciding whether an Order should be made against Mr McKee.
3. As regards the dismissal of MK, the Tribunal notes that this matter is alleged to have occurred in August 2011, that is before the AGM of December 2011. To say the least, it is apparent that the Charity was in a state of flux at that time and it is not clear how dismissal procedures were being applied. The Tribunal is not satisfied that that this is a matter which should be taken into account in deciding whether an Order should be made against Mr McKee.
4. As regards the dismissal of PQ, the Tribunal noted that under cross-examination by Mr Shields, Mr McKee accepted that he had discussed with PQ the possibility of his dismissal in January 2012. The Tribunal is satisfied that, at that time, Mr McKee had no authority to dismiss PQ and the Tribunal considers that this is a matter which should be taken into account in deciding whether an Order should be made against Mr McKee.

Decision: Mr Burke and his colleagues

1. On the last day of the main part of the hearing, the Tribunal raised two issues by way of case management under the Rules. The issues were first of all whether or not, Mr Burke and his colleagues were officers or agents of the Charity, such that they might be removed by the Respondent from the position of officers and agents and, therefore, from the position of members. Secondly, whether Mr Burke and his colleagues were given the notice period required by the Legislation before the Orders in respect of them were made. The Tribunal had invited the Respondent to clarify its position.
2. Mr Shields in response said that these were points which the Respondent had been aware of and was alive to. Mr Shields indicated that he considered that the Respondent had a fairly and properly reasoned position on those points. However, Mr Shields said that, without addressing or commenting on the points in question, he had instructions, under Rule 24 of the Rules, not to oppose the appeals which had been brought by Mr Burke and his colleagues. Mr Shields sought the Tribunal’s permission to withdraw the Respondent’s opposition to the appeals of Mr Burke and his colleagues. Needless to say, Mr Dugan did not oppose this application.
3. In delivering its decision on this application, the Tribunal noted the points that it had raised with the parties. The Tribunal noted that the Respondent had not sought to make any arguments or lead any evidence on these questions. The Respondent rather had applied to withdraw its opposition to the appeals and Mr Dugan did not object to that. The Tribunal was conscious of the need to make a cost effective disposal of the matter and in the circumstances, having regard to the foregoing matters, the Tribunal acceded to the application made by the Respondent.
4. In those circumstances, the Tribunal allowed the Appeals of Mr Burke and his colleagues and quashes the Orders made in respect of them.
5. All parties sought permission to withdraw their appeals as affected persons to which applications the Tribunal acceded.

Decision: Mr McKee

(i) Whether Mr McKee an officer or agent

1. In the light of the developments in respect of Mr Burke and his colleagues, Mr McKee sought the leave of the Tribunal to give further evidence that he was not an officer or agent of the Charity and thus the Tribunal had no jurisdiction in respect of him. The Tribunal acceded to this application and Mr McKee gave evidence as to the following matters:
	1. The Board had purported to suspend him in January 2012;

* 1. The Board had purported to suspend him on 10 April 2013;
	2. He had not been permitted to undertake any duties on behalf of the Charity after his suspensions;
	3. Mr McKee did not submit any forms to Companies House to have himself registered as a director.
1. In cross-examination, Mr Shields put it to Mr McKee that, up until the evidence which he had just given, Mr McKee had consistently referred to himself as a Director.
2. The Tribunal has considered the evidence given by Mr McKee in this regard and the points made by he, Mr Dugan and Mr Shields. The Tribunal is satisfied that Mr McKee was a director of the Company and thus an agent or officer of the Charity at the time when the Respondent made its Order. The Tribunal makes this finding have regard to the following matters:
	1. Mr McKee was elected as a Director at the AGM on 4 April 2013;
	2. The Tribunal did not receive any evidence which suggested that Mr McKee had ceased being a director at any time thereafter (apart from the removal Order made by the Respondent in August 2013);
	3. It was not clear that the Company enjoyed a power to suspend directors, but even if it did, that suspension did not vacate the office, it merely prevented the holder from exercising the powers embodied in it.

(ii) Whether Order made in compliance with Section 40(2) (publicity requirement) and Section 40(5) (not less than one month’s notice)

1. As noted at paragraphs 33 to 36 above, the Tribunal, in the course of its consideration of its decision, sought the submissions of the parties on two issues which had not been canvassed during the hearing or in the submissions to date, namely (i) whether the Respondent had complied with its obligations as to publicity, under Section 40(2) and (ii) whether the Respondent had given Mr McKee not less than one month’s notice of its proposals as required by Section 40(5).
2. The Tribunal received written submissions from the parties. The Tribunal then gave the parties the opportunity to have a further hearing convened at which they might call evidence and/or make further submissions. Further, in the context of the issue of one month’s notice, the Tribunal also drew to the attention of the parties the judgment of the English Court of Appeal in E J Riley Investments Limited v Eurostile Holdings Limited [1985] 3 All ER 181.

a. The publicity requirement

1. Upon Mr Shields successfully applying to re-open the Respondent’s case, Mr Henry gave evidence as to the Respondent’s decision not to comply with the publicity requirement in Section 40(2).
2. Mr Henry said that Mr McKee had brought to the attention of the Respondent concerns about “reputational damage” to Mr McKee, were the publicity requirement to be complied with, and the proposed making of the order publicised. In cross-examination of Mr Henry, Mr Dugan suggested that Mr Henry had had no basis for coming to the conclusion that Mr McKee was concerned about such reputational damage.
3. Mr Henry also said that the Respondent had considered that compliance with the publicity requirement was “unnecessary” because the bulk of the matters upon which the Respondent was relying in considering making an order against Mr McKee involved evidence generated by Mr McKee himself e.g. emails. It was necessary to inform Mr McKee about what was proposed so that he could respond; and it was necessary to inform the trustees about what was proposed so that that they were aware of a matter that might affect the Charity; but it was not necessary to more widely publicise the proposal: the Respondent did not need to hear from anyone else about Mr McKee had or had not done.
4. The Tribunal notes the breadth of Section 40(4) of the Act, which provides as follows (emphasis added):

*(4) The Commission may determine that the publicity requirement is not to apply in relation to a particular order* ***if it is satisfied that for any reason compliance with the requirement is unnecessary****.*

1. On the evidence before it, the Tribunal is satisfied that the Respondent did comply with the statute in this regard.

(b) The notice requirement

1. Having considered all evidence before it and the parties’ submissions, the Tribunal has decided as follows regarding the question of whether the Respondent gave to Mr McKee not less than one month’s notice of its proposals:
	1. The scheme of the 2008 Act, and specifically Section 40, is that a person who is facing being removed as an officer etc of a Charity has the right to have notice of such proposed action, and moreover, has the right to make representations against. Those factors mean that the person in question should receive the notice of the proposed action.
	2. Mr McKee contends that he did not receive the notice of the Respondent’s proposals until 15 July 2013. The Tribunal accepts that contention and so finds as a fact.
	3. The Respondent made the Order in respect of Mr McKee on 15 August 2013 and the Tribunal so finds as a fact.
	4. Applying the reasoning in Riley Investments Limited v Eurostile Holdings Limited [1985] 3 All ER 181, the Tribunal decides that Mr McKee was given not less than one month’s notice of the Respondent’s proposals. On the contrary, Mr McKee was given one month’s notice of those proposals – he received the notice on 15 July 2013 and the order was made on 15 August 2013.
2. On the evidence before it, the Tribunal is satisfied that the Respondent did comply with the statute in this regard.

(iii) Mr McKee’s actions: findings of fact

1. The Tribunal refers to the findings of fact set out at paragraphs 67; 90; 96; 100; 107; 116; 124; 135; 140; 145 and 151 above. Without derogating from the detailed findings of fact there set out, the Tribunal can summarise the conduct of Mr McKee as follows:
	1. Mr McKee sought or attempted to reject the possible acquisition of new assets in the shape of the Portacabins;
	2. Mr McKee sought or attempted to suggest that those assets should be diverted to a new, alternative group;
	3. Mr McKee cancelled the Charity’s role in the Pirate Day fundraising event;
	4. Mr McKee rejected preferred charity status with Junction One;
	5. Mr McKee brought about the freezing of the Charity’s Bank account;
	6. Mr McKee called in the Charity’s collection boxes;
	7. Mr McKee was instrumental in restricting the Charity’s use of a major asset in the form of a lifeboat;
	8. By involving himself with regard to the Charity’s financial records, Mr McKee frustrated his co-directors in the discharge of their duties and thus the management of the Charity;

* 1. Mr McKee was instrumental in creating an alternative website for the Charity;
	2. Mr McKee amended the Charity’s Company Records;
	3. Mr McKee was instrumental in the dismissal of PQ.
1. Further, having regard to the evidence discussed in detail in this decision above, the Tribunal considers that Mr McKee was responsible for and privy to each of these matters and further that his conduct has contributed to each of them and facilitated each of them.

(iii) Mr McKee’s actions: whether misconduct or mismanagement or both

1. The Tribunal has set out above the legal tests and definitions that it considers should be applied when assessing whether Mr McKee’s conduct amounted to misconduct or mismanagement.
2. In considering how to characterise Mr McKee’s conduct, in terms of misconduct or mismanagement, the Tribunal considers it proper to recall that there undoubtedly was a deep and acrimonious division between the members of the Charity. The Tribunal entirely appreciates that there was a context for Mr McKee’s actions.
3. The Tribunal wishes to emphasise that it has concluded that up to the time when the current dispute broke out within the Charity, Mr McKee had given over twenty years faithful and effective service to the Charity.
4. The Tribunal also recognises that Mr McKee was entirely open about all the steps he took: he did not hide them in any way, but rather highlighted and publicised them through emails and correspondence.
5. Moreover, the Tribunal notes that there was absolutely no suggestion that anything that Mr McKee did was for his personal benefit. The Tribunal also records that at the outset, Mr McKee approached the Respondent with his concerns about the Charity.
6. All that said, the actions which the Tribunal has found that Mr McKee was responsible for and privy to, and which he contributed to and facilitated, are to be contrasted with objects of the Charity and which should have informed how Mr McKee should have conducted himself. The objects bear repeating below, as follows:

*(i) To provide and maintain apparatus, equipment, vehicles and vessels for the saving of life and assistance of persons in distress within Northern Ireland (the area of benefit);*

*(ii) to provide adequate arrangements for the secure and efficient search and rescue of any person or persons endangered by accidents or natural hazards within Northern Ireland; and*

*(iii) to train members to achieve these objectives.*

1. The Tribunal also takes account of the duties which Mr McKee owed as a director of the Company comprising the Charity, as set out in Sections 171, 172 and 174 and 175 of the Companies Act 2006, being the duties (respectively) to act within the Company’s powers; the duty to promote the success of the Company; the duty to exercise reasonable care and skill; and the duty to avoid conflicts of interest.
2. Mr McKee, in his own correspondence, acknowledged that freezing the bank account created a potential risk to life; and he must have appreciated that interference with the lifeboat would have restricted training opportunities. Further, Mr McKee’s actions with regard to possible new assets and the Charity’s income stream (whether from fundraising events or collection boxes) directly interfered with, or at the least had the potential to directly interfere with, the operation and effectiveness of the Charity and thus the interests of the Charity’s beneficiaries. Mr McKee’s actions in these respects directly conflicted with the objectives of the Charity, objectives that he was obliged to uphold rather than frustrate.
3. Mr McKee had no authority to commit any of these actions. Regardless of his views as to the lawfulness or legitimacy of the December 2011 AGM, Mr McKee was not entitled to take any of these actions. Furthermore, any concerns Mr McKee had about the conduct of other members of the Charity did not entitle him to take these steps, which were so potentially damaging to the Charity and its beneficiaries.
4. The Tribunal recalls the non-binding but helpful description of conduct which might constitute mismanagement, as set out in the guidance of the English Charity Commission:

*Mismanagement includes any act (or failure to act) in the administration of a charity that may result in significant charitable resources being misused or the people who benefit from the charity being put at risk.*

1. Having regard to the foregoing, the Tribunal has come to the conclusion that Mr McKee’s conduct, set out at paragraphs 67; 90; 96; 100; 107; 116; 124; 135; 140; 145 and 151 above, and summarised at paragraph 169 above, is properly characterized as mismanagement in the administration of the Charity.
2. In circumstances where the Tribunal has made a finding of mismanagement, that is a sufficient basis to uphold the Respondent’s Order of 15 August 2013 and to dismiss Mr McKee’s appeal. It is strictly unnecessary for the Tribunal to come to or express a view as to whether this conduct also constitutes misconduct. Further, the Tribunal is mindful that Neuberger J, in the Scargill case, said that misconduct is more serious than mismanagement, and would normally involve some dishonesty. There is no allegation of dishonesty in this case. Indeed, as has been noted above, a striking feature of Mr McKee’s actions was the extent to which he advertised and publicised them – including telling the Respondent about many of them. For these reasons, and on the facts of this case, the Tribunal does not consider it necessary or appropriate to characterise Mr McKee’s actions as misconduct.

(iv) Whether necessary or desirable to remove Mr McKee as a trustee

1. The Tribunal is mindful of the impact upon the individual concerned of removal from the office of trustee. This was something alluded to by Neuberger J in his decision in Weth v Attorney General (29.04.99, unreported) as follows:

*The removal of anyone as a charity trustee is a serious matter, and should not be lightly ordered by the Commissioners or (at least save in a fairly clear case) summarily upheld by the Court. The removal of a trustee by the Commissioners, particularly if upheld by the Court, can often result in disappointment and upset for the former trustee, who may also feel a certain degree of public stigma at having been removed. In a case such as this, where the trustee concerned has devoted a huge amount of unpaid and dedicated work for the benefit of the charity, where he is acting and has at all times acted in what he honestly believes to be in the best interests of the charity, and where there is no question of his having been dishonest, it could be perceived as being particularly hard that a removal order should be made and confirmed. This aspect also ties in with the general interest aspect; it is obviously greatly in the public interest that individuals should be prepared to act as charity trustees. Accordingly, it would be thoroughly regrettable if either the Commissioners or the Court was too ready to be critical of charitable trustees, or to criticise or even penalise them for failures which fell short of being dishonest, and might be argued to amount to more than a over zealousness. Quite apart from this, removal as a charitable trustee … does not merely involve the person concerned being removed as a trustee of the charity in question: he cannot thereafter act as a trustee of any charity without the prior consent of the Commission.*

1. However, having regard to Mr McKee’s mismanagement, the Tribunal is satisfied that it is both necessary and desirable to act for the purpose of protecting the property of the Charity or securing a proper application for the purposes of the Charity of that property or of property coming to the charity, specifically to act by removing Mr McKee as a trustee and Company Director of the Charity.
2. This is because the Tribunal considers that there is no prospect of Mr McKee productively contributing to the administration of the affairs of the Charity. On the contrary, during the entirety of the time during which these proceedings have been before the Tribunal, the Tribunal has not received any indication from Mr McKee that he has any intention of recognising the authority of the current Board of the Charity or of working constructively with it. In those circumstances, the Tribunal concludes that unless Mr McKee is removed from office, there will be further conflict and disharmony in the management of the Charity, which will interfere with the proper application of the Charity’s property.

(iv) Disposal

1. In these circumstances, the Tribunal dismisses Mr McKee’s appeal.

Right of Appeal

1. 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: 3 July 2014

Signed: Adrian Colmer

Chairman