

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

The Charity Tribunal for Northern Ireland

Appeal Reference: 1/16

Heard in public in the Tribunal Hearing Centre, Belfast

On

11 November 2016

Before

IAN HUDDLESTON
Chairman
PAUL ARTHERTON
Tribunal Member
LORRAINE McCOURT
Tribunal Member

BETWEEN

PHENNICK COVE DEVELOPMENTS

Appellant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

Mr Trevor McKee for the Appellant
Mrs A McMullan for the Respondent

DECISION

1. The Appeal is dismissed.
2. Phennick Cove Developments is a charity and therefore is required to be entered on the Register of Charities pursuant to s.16 of the Charities Act (Northern Ireland) 2008.
3. No order as to costs.

REASONS

Background

1. Phennick Cove Developments (PCD) is a company limited by guarantee which operates the Marina at Ardglass, County Down (the "Marina"). The Company was incorporated on 11 January 1994.
2. On 9 September 1994 the International Fund for Ireland ("IFI") under the Rural Development Programme (Fishing Villages Initiative) made an offer to Ardglass District Development Association ("ADDA") to help fund the construction of the Marina. The offer anticipated that the project would consist of the construction of a boat park in two phases and include what was described as "associated environmental improvements" ("the Project"). The Offer itself was conditional on the applicant furnishing a "copy of the memorandum and articles of association...to be in terms which the Department [was] satisfied are consistent with the...Rural Development Programme". There was then a condition that the memorandum and articles of association would not be altered without the prior consent of the Department (in this case the Department for Agriculture and Rural Development ("DARD")).
3. The Tribunal was furnished with correspondence between DARD and the Charity Commission for Northern Ireland ("CCNI" or "the Commission") which confirmed that DARD as the funding agent was aware that ADDA would be trading as Phennick Cove Developments - a company limited by guarantee. It also confirmed that all conditions attaching to the funding remained in place for a period of 10 years (which period ended in 2004) and that both the funding conditions and the security which was granted to DARD for the loan then expired with DARD having no further interest in the Project.
4. At this stage it is also worth recording that the title to the Marina is held under a lease dated 24 May 1996 made between NI Fishery Harbour Authority (1) and Phennick Cove Developments (2). In the course of proceedings this was referred to as a lease negotiated on commercial terms but, firstly, it is for a term of 99 years (which would be considered less than commercial for a project of this type) and secondly, the lease reserved a nominal rent of 5p (if demanded) (which could be construed as donative in

nature) and thirdly, and perhaps more importantly, the lease is restricted to user limiting use of the premises for:

"(i) - the purposes of a Boat Park providing berthing facilities for leisure craft, car parking and administrative and other out offices ancillary thereto; and

(ii) - subject to clause 3.14, within the Amenity Building such other social, educational and recreational activities which shall be of general benefit to the local community of Ardglass".

Clause 3.14 simply details certain other restrictions but clause 3.15 makes it clear that the Landlord's consent to any proposed change in the use of the premises is required - and that its consent is unqualified.

5. The Lease, therefore, is considerably more restrictive in nature than one would generally expect in a commercial transaction (i.e. if PCD had "bought" the facility).
6. What then seems to have occurred is that the original ADDA fell away to be reactivated in 2013/14 by a different group of people who, from the press coverage and clippings with which we were briefed, dissent from the current operation of the Marina and are keen to see that the resources which are generated from it are used for a wider number of projects within the Ardglass area than is currently the case. From the information before us the dispute between the reformed ADDA and PCD has, at times, been acute. That, in turn, has led to a suspicion within PCD that the subsequent investigation of the Commission has been motivated by agitation from that or a politically motivated quarter.
7. The Commission for its part has strenuously resisted such claims and has maintained that it has conducted its investigation (details of which will appear below) purely in furtherance of its statutory obligation of keeping and maintaining a register of charities (as is required under section 16 of the Charities Act (Northern Ireland) 2008 (the "Act")) which brings us to the main issue to be determined in this appeal, namely whether PCD is a charity and whether it should properly be on the register of charities for NI.

Initial CCNI Involvement

8. PCD was not on the list of deemed charities - namely the list of HMRC recognised charitable entities which formed the initial basis of investigation for CCNI on its first inception. As a result of the potential concerns which had been expressed, however, PCD was called forward to establish if it were indeed a charity. At the start of that process PCD's accountant indicated that he was of the opinion that PCD was not a charity but was a trading company which charged for marine and berthing fees and for the sale of nautical supplies, equipment and marine fuel. At that stage CCNI indicated that it could only take a decision on charitable status on receipt of a completed

application. That application – albeit incomplete – was initially received on 1 July 2014. Correspondence between PCD and CCNI then ensued resulting ultimately in a meeting between CCNI and representatives of PCD on 18 December 2014 at which CCNI's legal requirements were set out in full. Whilst PCD continued to assert it was not a charity it did agree to supply – and subsequently did supply – the requisite documentation consisting of the constitutional documents of PCD, Trustee Declarations and an initial attempt at explaining the public benefit of the organisation. That it described as “*the benefit derived from our activities is local boat owners have a safe haven and tourism in the village of Ardglass is enhanced by visiting boats...*”. That information was received in January 2015. The case officer concerned (Ms Claire Higgins) took an initial decision that the organisation's purposes were not exclusively charitable and therefore determined that it could not be considered to be a charity. Subsequent to that, internal legal advice was taken (which took a contrary view to that of Ms Higgins) resulting in an internal CCNI case conference which was held on 8 September 2015. At this case conference there was: -

- Greater consideration of whether the expressed purposes of PCD in terms of economic regeneration and tourism could be regarded as a charitable purpose;
- Discussion as to the extent to which when faced with an ambiguity for an expressed purpose, the activities of organisation could be taken into account; and
- Acknowledgement that the organisation appeared to be run on a "not for profit" basis.

9. We heard evidence from Ms C Higgins and Punam McGookin as the Head of Charity Services at the Commission as to the steps taken in that decision making process. After making further internal checks and taking external Counsel's opinion, CCNI concluded that PCD, as constituted, had purposes which fell under the descriptions set out in section 2(2) of the Act which were exclusively charitable and, on the facts, were capable of being for the public benefit. On that basis CCNI concluded that the Appellant was a charity and should be registered as such – something which was implemented in April 2016. It is that decision to register against which PCD has appealed.
10. The Appellant has argued that the Commission did not provide sufficient reasons for that decision. Whilst a clearer explanation of its final position might well have been helpful we are satisfied – and the subsequent arguments between the parties confirms - that both were well aware of the reasons for the decision to register.

The Law

11. The legal basis for the determination of charitable status is governed by sections 1 – 3 of the Act. Section 1(1) of the Act defines, for the purpose of the law of Northern Ireland a "charity" as an "*institution which: (a) is established for charitable purposes only; and (b) falls to be subject to the control of the Court in the exercise of its jurisdiction with respect to charities*". It requires that the purposes must be **exclusively** charitable – the word "only" is what is used in the Act.
12. Section 2(1) of the Act then sets out what constitutes a "*charitable purpose*" as follows: "*For the purposes of the law of Northern Ireland, a charitable purpose is a purpose which: (a) falls within subsection 2; and (b) is for the public benefit (see section 3)*".
13. Section 2(2) of the Act then sets out a list of 12 descriptions of recognised charitable purposes.
14. The descriptions of those purposes (as at section 2(2)) which are relevant for the purpose of this appeal (because they are either specifically or indirectly engaged in the objects clause) are as follows:

"a purpose falls within this subsection if it falls within any of the following descriptions of purposes: -

(a) the prevention or relief of poverty;

(b) the advancement of education;

...

(e) the advancement of citizenship or community development;

...

(l) any other purposes within subsection (4)"

Specifically it should be noted that the purpose at section 2(2)(e) includes (by reason of section 2(3)(c)(i)) "*rural or urban regeneration*" and that the purpose set out at section 2(2)(l) includes other purposes recognised as charitable under the law as it stood before the coming into force of the Act which would include gifts for the benefit of a locality and gifts for the promotion of industry and commerce (see below).

15. In addition to falling within S.2(2) to be charitable a purpose must be for the public benefit (per section 3(1) of the Act) subject to the requirements that "*it is not presumed that [any] purpose...is for the public benefit*" (emphasis added).

16. As to the application of this process in assessing whether or not an institution's purposes are charitable or not, there is helpful guidance which the Upper Tribunal has given in the case of *R (Independent School's Council) v the Charity Commission for England and Wales* [2011] UKUT 421 (the "ISC case") which identified the steps which one should take in determining the issue of charitable status (see paragraph 82) as follows:

"(a) the starting point is to identify the purpose...of the institution...let us call this "the Particular Purpose".

(b) The Particular Purpose is a charitable purpose if: (a) it falls within section 2(2); and (b) is for the public benefit;

(c) the Particular Purpose falls within section 2(2) if it falls within any of the categories listed in section 2(2); and

(d) the Particular Purpose is for the public benefit if it falls within section 3(3)... The question is not whether the categories in section 2(2) are inherently or necessarily for the public benefit: the focus is on the particular purpose of a particular institution. The relevance of section 2(2) is that it presents a hurdle: the purpose must fall within one of the categories and if it does not, the question of public benefit is not relevant."

17. With that context in mind we must then look how PCD was originally constituted and thus assess if the "hurdle" is overcome and then assess if the public benefit requirements have been satisfied.

PCD's Constitution

18. The determination of the status of PCD must start with a proper construction of its Memorandum and Articles of Association. As one would expect they divide into the **objects** (for which it was incorporated) and the **powers** by which it can fulfil those objects. There are a number of provisions which are obviously relevant but the one we must first concentrate on is the objects clause contained in clause 3 of the Memorandum and Articles which provides as follows:

"The objects for which the Company is established are: to commission a programme of economic regeneration in the Ardglass district of County Down, for the development of tourism through establishments of tourist and leisure facility, to increase employment opportunities, for the relief of poverty and to promote the benefit and advancement of and for the education of the inhabitants of County Down in particular and of its environs in general without distinction of sex, political, religious or other opinion and to do all such other things beneficial to the public anywhere in the world as may be charitable under the laws of Northern Ireland" (emphasis added).

19. Clause 4 then proceeds to set out certain powers which the Company has and which are exercisable in furtherance of those objectives. The first of these (sub clause 4(a)) is the power to construct "*buildings...other premises...and maintain and manage [them]...in furtherance of the objectives*"... and we assume was the power which was relied upon to build the Marina.

20. Beyond this, a good number of those powers are generic in nature but there are some which are worthy of comment: -

- 4(f) – "*to accept subscriptions, requests and donations...for...any of the purposes of the Company*".
- 4(g) – "*to take such steps by personal or written appeals, public meetings or otherwise as may from time to time be deemed expedient for the purpose promoting contributions to the funds of the Company in the shape of donations, annual subscriptions or otherwise*".
- 4(i) – "*to establish and support and to aid in the establishment and support of any other charitable associations or companies formed for all or any of the Company*".
- 4(j) – "*to subscribe to any local or other charities and to grant or make donations to any charitable purpose connected or associated with the objects of the Company*".
- 4(m) – "*to purchase or otherwise acquire and take over all or any part which the Company may lawfully acquire or takeover of the property, assets, liabilities and engagements or any one or more charitable companies, societies, associations or bodies having objects similar to those of the Company and to amalgamate...*".
- 4(q) – "*to promote, incorporate or form any charitable company, body or group which may lawfully be undertaken by the Company and may be conducive to its objects...*".

To give additional context those powers need to be read subject to the following specific restrictions:

- 4(iii) – "*[the Company] ...shall take or hold any property subject to the jurisdiction of any competent education or charitable authority...*".
- 5 – "*The income and property of the Company shall be applied solely towards the promotion of its objectives...and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the Company...*".

Finally, at clause 8, are the provisions which apply on the winding up or dissolution of the Company:

"8. If upon the winding up or dissolution, (except in the case of reconstitution or amalgamation between charitable trusts having similar objects) of the Company there remains after one satisfaction of all its proper debts and liabilities any property whatsoever the same shall not be paid or distributed among the members of the Company but shall be given or transferred to one or more other charitable company, group, institution or institutions, having objects similar to the objects of the Company, and which shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as herein before imposed by the Company, such charitable institution or institutions to be determined by the members of the Company at or before the time of dissolution, and if so far as effect cannot be given to such provisions then to some other object which the law regards as charitable". [emphasis added]

It is clear, even from a cursory examination, of the constitutional documents of the Company that they are not particularly well drafted and indeed PCD themselves within the pleadings accepted that they are "unfit for purpose".

21. PCD's position is that fundamentally they resist PCD being considered as a charity because of the additional administrative burden which it would place upon the directors and have suggested that a community interest company is a more appropriate reflection of the Company's true position. PCD has (to use its own words) "*consistently maintained that PCD may become unstable and unsustainable if the burden of charitable status is unfairly conferred upon them*".
22. What they say (in summary) is that PCD has a community ethos, but the original promoters never intended for it to be a charity. They do, however, acknowledge the "not for profit" basis upon which the Company operates.

Are the purposes of PCD Charitable?

23. The Upper Tribunal in the ISC case (at paragraph 118) provides the following helpful guidance namely that the Tribunal should consider "*what it is the institution was set up to do, not how it would achieve its objects or whether its subsequent activities are in accordance with what it was set up to do*".
24. I think it is important at this stage to say that there appears to be confusion in the minds of some of the parties as to what are the **purposes** of PCD as an institution as against what are its current **activities**. The first i.e. the expressed purposes are obviously crucial in terms of assessing whether or not the institution is charitable in law. The second - its activities - are of secondary significance - to be referred to in cases of ambiguity - as per the decision in *Helena Partnerships Limited v Revenue & Customs Commissioners* [2011] UKUT 271. That case identified the principles to be adopted in determining when extrinsic evidence and the circumstances in which the

relevant factual background may be taken into account in ascertaining whether or not the purposes of an organisation are charitable in the following terms:

"In accordance with well-established principle, the motives and intentions of the founders of HHL are irrelevant to the exercise of construction. Further, it is not generally relevant to consider evidence about the activities of the company in construing its memorandum and articles of association any more than it is permissible in the case of a contract to see how the parties have in fact acted under it. However, where there is a doubt or ambiguity about whether the objects of an institution are charitable the Court may examine the activities of the institution. This is done not for the purpose of construing its constitution, but for the purpose of assisting in assessing whether the implementation of the objects would achieve a charitable end result".

25. Applying that approach to the present case it is the Tribunal's view that it is clear from the Memorandum and Articles of Association that PCD was not, as PCD have suggested, set up to simply build the Marina. The expressed objects are much wider than that singular activity. The act of building the Marina, however, was clearly a permitted exercise of the power set out in clause 4 and therefore an activity of the Company through which it could further the purposes for which it was originally established as set out in clause 3.
26. As I have said – and now emphasise – that distinction between the expressed purpose and an activity is an important distinction to bear in mind in coming to the question of whether PCD is, in law, a charity or not.

The CCNI Case

27. The Commission's case broadly is that the cumulative effect of the memorandum and articles display all the hallmarks of what is a charitable constitution. With specific reference to the objects clause (i.e. clause 3) CCNI, based on the exact wording of the clause, argues that by the use of the words, "and" and "to" it divides down into three different categories of purpose:-
28. **Purpose 1: to commission a programme for:-**
 - (a) economic regeneration in the Ardglass district of County Down;
 - (b) the development of tourism through establishment of tourist and leisure facilities to increase employment opportunities;
 - (c) the relief of poverty; **and**

29. **Purpose 2:** to promote the benefit of the advancement of and for the education of the inhabitants of County Down in particular and of its environs; and
30. **Purpose 3:** to do all such other things beneficial to the public anywhere in the world as may be charitable under the laws of Northern Ireland.
31. The representative for CCNI argued that each of those purposes in turn falls within section 2(2) namely, Purpose 1 (as falling within section 2(2)(e) - advancement of citizenship and community development); Purpose 2 (as falling within section 2(2)(b) advancement of education); Purpose 3 (as falling within the catch all provision at section 2(2)(l)) and that each of those separately are capable of being exclusively charitable.
32. Of these purposes the one which has proven most problematic – and subject to the greatest disagreement between the parties – is the question of whether "urban and rural regeneration" has a particular meaning within the context of the Act as it applies to PCD and the question if it is charitable. The representative for CCNI advanced the following proposition:-
- for regeneration to be charitable there must first be a need [as per *Joseph Rowntree Memorial Trust Housing Association v A-G* [1983] 1 ALLER 288].
 - To establish such a need she relied upon the evidence of the DARD/IFI grant and the findings of the Public Audit Commission on the outputs of the Rural Assistance Programme under which the Grant had been awarded in order to "revitalise" the town of Ardglass suffering, as it had from a decline in the fishing industry;
 - From that basis she argued that the promotion of economic regeneration and development of tourism was equivalent to the promotion of industry and commerce – something which has been held to be charitable as in *Crystal Palace Trustees v Minister of Town and Country Planning case* [1951] ch 132 **subject to** the promotion of that purpose being for the benefit of the public or community and not just the furtherance of individual interest or gain, and that finally;
 - On that basis (and subject to the public benefit requirement being satisfied) the representative for CCNI argued that Purpose 1 (i.e. limbs (a) (b) and (c)) was capable of being an exclusively charitable purpose in itself.

33. As regards the other two purposes (Purpose 2 and Purpose 3) CCNI argued that these provided less of a difficulty in terms of analysis - falling more squarely within the express provisions of section 2(2) of the Act (i.e. respectively within Section 2(2)(b) and (l)) as being capable of a charitable purpose as expressly set out in the Act subject only then to satisfaction of the public benefit test.
34. As regards to the public benefit test itself CCNI quite properly said that there are two distinct elements, one that there must be a benefit (and not a harm) and secondly that it must be for the public (or section of the public). As regards this the representative for CCNI indicated, firstly, that there was nothing in the Memorandum of Association to suggest that carrying out any of the expressed purposes would not be for the public benefit in the sense discussed in the ISC case and, secondly, the inhabitants of a specified locality such as a county or town (in this case Ardglass and/or County Down and it(s) or their environs) could qualify as the collective beneficiaries of a charity (*Shillington v Portadown UDC [1911] 1 IR 247 applied*). As a consequence she concluded, therefore, that the public benefit requirements of section 3 of the Act were met.

PCD's case

35. In addition to the representations of Mr McKee we heard from Mr Paul Smyth, a Director of PCD. As I have already said PCD has acknowledged that the Memorandum and Articles of Association which relate to the Company are "unfit for purpose".
36. Mr Smyth confirmed in his evidence that PCD argues that there was never any intent on the part of the promoters of PCD to be a charity and that they did not throughout the life of the Company avail of any of the tax concessions which relate to or are available to charitable entities. In short his argument is that PCD was set up for "*the specific purpose of delivering one project, to build a Marina*". The promoters of PCD are of the view that the beneficiaries of that Marina are its users i.e. people who own boats and have, therefore, more than average disposable income - a small class of people who do not exemplify 'need'. As to the tourist dividend to which the Commission have referred PCD's view is that it is "*inconsequential and [a] secondary by-product*".
37. In summary PCD's position is that economic regeneration and tourism are not purposes which are, in the terms in which they are expressed within the Company's objectives, exclusively charitable.
38. Mr McKee, as PCD's representative approached or divided the objects clause into the following categories - still in three parts - but with an entirely

different emphasis to that of CCNI – namely that the objects of the Company are properly: -

“(a) to commission a programme for economic regeneration in the Ardglass district of County Down;

(b) the development of tourism through the establishment of tourism and leisure facilities to increase employment opportunities; and

(c) for the relief of poverty and to promote the benefit and advancement of and for the education of the inhabitants of County Down and its environs etc.”

In summary PCD says that purpose (a) is not charitable because PCD does not have effective criteria for determining if the area needs regeneration (a reference to the requirements of CCEW guidance on the point); that as regards (b) tourism is not charitable **and** the “increase of employment” (which it considers not charitable) is not the same as and can be distinguished from the relief of unemployment (which PCD accepts might be charitable). Finally, as regards (c) there is acceptance that relief of poverty and the advancement of education are recognisable as charitable but in the objects clause as drafted there needs to be clarity as to “how” that was to be done. PCD say that the words “by” or “through” need to be inserted into Purpose (c) failing which it is ambiguous and therefore arguably not exclusively charitable. In the specifics PCD argues that “*it was set up specifically to provide a marina [and] enhance the harbour*” which could (but failed) to provide employment and that the objective of the relief of poverty therefore failed.

39. In relation to the question of public benefit PCD's view is that "*those who benefit most from the appellant's activities are boat owners, both local and visiting. They are a part of the appellant's business and therefore cannot be regarded as the public in general or a sufficient section of it*". On that basis they say there is no – or little – public benefit in the sense required by the Act.
40. Fundamentally, as I have said, they feel that registering the Company as a charity imposes an additional administrative burden to which they are resistant although, again as I have said, they do suggest that a "more sustainable vehicle" would be to transform it into a Community Interest Company. The starting point of their argument is, therefore, very much based on what the company does or has done (i.e. its activities) as opposed to an analysis of what it strictly was originally set up to do. The issue of what the Company does as opposed to the original purpose for which it was set up are, however, two very distinct questions – as the authorities such as the ICS case confirm.

Discussion & Decision

41. Clearly emotions locally within the Ardglass area have run quite high in relation to the nature and direction of PCD. To some extent the correspondence has betrayed a lack of understanding between the protagonists as to the nature of what PCD has or owns – which in essence is a restrictive lease from NIFHA – and the freedom of decision making which it has over the income generated by the Marina's operations. There also appeared – certainly in the initial stages of this case – to be a confusion in the minds of the personnel behind PCD as to whether they were directors or trustees – and to what extent that differed in the nature of their particular role. Although those issues are clearly there, the fundamental question before this Tribunal is if a) the purposes for which PCD were originally established are exclusively charitable; b) if they are, are they for the public benefit?

The Purposes

42. We find that PCD as incorporated is charitable. We say that for the following reasons.
43. We have set out above what has been described as the "hallmarks" of the Memorandum and Articles of Association. We find that on a construction of that document the approach adopted by the draftsman was clearly focused on creating something that was charitable. Whether the draftsman confused "charitable" with "not for profit" is not for us to speculate upon. If however, one looks at each of the provisions in turn – clauses 3, 4, 5 and 8 – and then look at them collectively they disclose an approach that is entirely consistent with the setting up of a Charity. They also disclose that thought was given to the nature of the powers which the Company as a charity needed, for example the ability to raise funds through collections, the nature of the holding of property, the restrictions on the application of income and, most importantly of all, the consequences of what would happen on a dissolution of the Company where the assets would – in all circumstances – end up in another charity. That approach as a strand running through the document we find cannot be an accident and indeed is the complete antithesis of the approach that would be taken in setting up a trading or non-charitable company. We accept that that may not have been the intention of the original promoters of PCD but it is the result of the constitution as drafted – a point implicitly accepted by PCD which makes no claim beneficially to the assets of the Company acknowledging that a community interest company may have been an equally valid alternative. As the authorities cited to us and referred to above, however, make clear it is the constitution of PCD we must interpret not the promoters' intentions.

44. Specifically, as regards to the interpretation of clause 3 – the critical objects clause itself – we prefer the approach adopted by CCNI as set out in paragraphs 26 et seq. That interpretation does not require – as PCD suggested – a realignment of the text of the clause or the insertion of additional words to give effect to its meaning. The provision is capable of interpretation as originally drafted and we agree that use of the words "and" and "to" provides the appropriate segregation within the text of that clause to give it its correct meaning. On that basis we do not find the objects clause at all ambiguous.
45. In that context the promotion of education and the catch all (Purposes 2 and 3) we find clearly fall within section 2(2)(b) and (l) respectively. There was no serious objection to either as between the parties given that each falls within the existing relevant statutory descriptions set out in that section. The greater issue in respect of each is if the public benefit test is met – a point we deal with below.
46. The more difficult provision is Purpose 1 and more particularly if it is exclusively charitable. The first question in dealing with that question is whether Ardglass needed regeneration in the sense used in the *Roundtree case*. In determining that we were provided with the original terms of the grant offer letter, the nature and scope of the Fund from which the grant assistance came and the conclusions of the Public Audit Committee who looked into the success of the programme overall – including a brief reference to what had happened in Ardglass. The evidence to the latter was of a development programme that was not only focused on jobs but on "areas of severe disadvantage" where the objectives were "not only economic but social and community based". Mr Small who gave evidence to the Public Accounts Committee on 22 October 2000 made it clear that the Marina was not merely a job creation project, it was to further tourism activity with the consequent provision of additional bed and breakfast facilities, new restaurant bars etc. resulting in economic regeneration and increase of jobs. In short it was for economic regeneration leading to a wider community benefit.
47. Looking at that in the context of the objects clause PCD in turn was set up "to commission a programme for economic regeneration... for the development of tourism... to increase employment opportunities... for the relief of poverty..." and therefore, we find, to address that perceived need. PCD suggested that the Marina was the Company's sole purpose. We do not agree. As originally constituted the objective as expressed was one of pursuing a wider objective of economic regeneration and development. That objective as originally drafted was directed overall to addressing perceived deprivation and through that to increase employment thereby relieving poverty (using that term in a relative sense). It was that overall purpose for which the funding was given. The distinction for which PCD has argued i.e. as between "an

increase in employment" (which they say is not charitable) as opposed to "*relief of unemployment*" (which they accept is potentially charitable) is not one frankly which we see. They are one and the same and both, we find, are directed – not to individual or corporate gain in this case – but the relief of poverty in the sense provided for in S 2 (2) and community gain and, if the Company so decided, the promotion of Purposes 2 and/or 3.

48. We find that the evidence to the Tribunal demonstrates that there was "need" (in the sense used in the *Rowntree Case*) and that that need was ideally to lead to a programme of regeneration and development of tourism that would help in terms of job creation but would also have wider community benefits. That purpose clearly falls within section 2(2)(e) of the Act (as augmented by section.2(3)(c)) and is directly analogous to the promotion of industry and commerce in the sense in which that phrase was used in the *Crystal Palace case*.
49. It follows that we also therefore accept that CCNI are justified in taking a wider and more purposive approach to the concept of "need". It is not fatal that PCD had not adopted criteria by which to measure it.

That argument was based on the CCEW Guidance which dated from 1999 and therefore before the enactment of the Charities Act 2006 in which the statutory ground was codified. On the facts of the case, the setting up of PCD was based on the acceptance by ADDA; DARD, IFI and others (including the original promoters of PCD) that need existed and all that followed was with the intended purpose of addressing it.

50. If one also accepts (as PCD has impliedly) that the Company has no commercial/personal interest in the pursuit of such purposes then they must by their nature be exclusively charitable insofar as they are directed entirely towards that objective or purpose. In short, PCD does not appear to us under its constitution to be set up to do anything else other than to pursue that/those purposes. It is, further, no accident in our view that the drafting of the lease was consistent with that approach.
51. We find, therefore, that each of the purposes (i.e. 1, 2 and 3) referred to above are exclusively charitable – subject in each case to the satisfaction of the public benefit requirement.

The Public Benefit Requirement

52. As I have said above (and as the ICS case confirms) when considering public benefit there are two distinct elements, a) firstly there must be a benefit; and b) it must be for the public – or a section of it.

53. In turn the benefit must have three essential features: i) It must flow from the purpose; ii) It must be capable of being demonstrated; and iii) finally the benefit must be beneficial (in the sense of not being harmful).
54. On the question of “benefit” PCD in its representations on this point, has taken a narrow construction. Their case, in simple terms, is that the Marina is for the benefit of a narrow class of beneficiaries with higher disposable income and that the result does not equate to “public benefit”. This is a further example of where, I feel, they have confused the activities which have been carried on by the Company with the purposes for which it was originally set up. As I have said above one only needs to refer to the activities in the case of ambiguity. In the present case it is the Tribunal's view that it is clear that the purposes as drafted and contained in the Memorandum and Articles of Association all fall within section 2(2) of the Act in that they are exclusively charitable.
55. If one goes back to looking at the original purpose (“Purpose 1”) as set out in the memorandum that was to bring forward a *"programme for economic regeneration in Ardglass... for the development of tourism... for the relief of poverty"*. This is charitable and was intended to create benefit which is directed to a geographical area (ie Ardglass & district).
56. We find that in the context of the grant assistance which was provided the intention was to regenerate Ardglass and the wider district because of perceived economic deprivation. The method by which that purpose or objective was approached was initially through the construction of a Marina but it equally would have been possible for PCD – as constituted under its Memorandum and Articles – to undertake other endeavours which may or may not have been part of its original business plan, such as in the training of young people to meet the perceived increase in tourism that may have arisen from the Marina. On that point it is not, however, for us to speculate. The point is that the pursuit of the Company's particular purposes (to use the language of the ISC case) was capable of public benefit – and was very much the public benefit about which the Public Audit Commission heard evidence in the course of its proceedings in 2000.

As to the “public” or “section of public”, to whom the benefit could accrue we further find that *"the Ardglass district of County Down"* is a sufficiently wide definition of the public or section of it to satisfy the requirements of section 3 (*Williams' Trustees v Inland Revenue Commissioners* [1947] AC447 and *Shillington* applied).

57. As to purposes 2 and 3 these (as drafted) (a) have no restriction as to whom they could benefit and (b) in terms of both (i.e. promotion of education (to the inhabitants of County Down and its environs) and promotion of charitable purposes generally or on a global basis) are in our view directed

entirely at public benefit – and then to an even wider section of the public than simply Ardglass and its district. In this regard the language used in clause 3 "*and to do all such other things beneficial to the public anywhere in the world ...*" is helpful in underlining the intent to further public benefit.

58. In summary, therefore, a) we find that the purposes set out in the constitution for PCD are sufficiently clear to be exclusively charitable; and b) the public benefit test in relation to each has been met.
59. On that basis we find that PCD is a charitable body and that the Commission were correct to register it.
60. As a rider to this determination it does appear that PCD's principal objection to the registration of the company as a charity is because of the additional administrative burden which it perceives will be placed upon it. With respect we do not quite understand its reservations. We certainly do not accept that it would require the services of a full time employee – which is what was suggested to us. PCD already has company filing requirements to which it must adhere and the adherence to the filing requirements under the Act do not greatly add to that requirement given the current level and nature of activities carried out by the company.
61. The greater fear seems to be the local dispute regarding the application of the small surplus (currently £60,000 per annum) that is generated by the activities of PCD itself. On that we would say that it is entirely a question for the directors of PCD as to how that is to be applied – providing it is applied for the Company's purposes. The determination of this case is that PCD was constituted as a charity. If its funds are properly applied for its purposes then we fail to understand how a local dispute can impact upon that determination. That question, however, is not before us but we think it is useful in putting the issues which have clearly been a motive in a long running dispute into some degree of context.

The Nature of the Commission's Decision

62. There is one more issue with which we must deal. PCD through its representative Mr McKee raised, as an issue, that the Commission's decision to register was "*not taken lawfully as it was taken by a member of staff of the Commission and not by the Commission itself*".
63. This issue has come before the Tribunal before in various guises and has been ruled upon by the President of the Tribunal in the case of *Sean Caughey v CCNI (case reference 8/16)* at paragraph 3.

64. As applied to the facts of this case we find that the decision to register PCD as a charity was that of the Commission as a body corporate. Section 6 of the Act clearly establishes the Commission as a body corporate and that, when read in conjunction with section 19 of the Interpretation Act (Northern Ireland) 1954, makes it clear that body corporates have the right to regulate their own procedures and employ such staff as may be necessary for the proper conduct of its business – see section 6(7) and Schedule 1 to the Act.
65. On the facts of this case that is exactly what happened as detailed above. When the case was originally undertaken the preliminary investigation was carried out by Ms C Higgins. That determination was subject to review with her line manager and ultimately the subject of at least two case conferences and external legal advice. At each of those stages the decision taken was by the Commission who, as I have said, as a body corporate was entitled to put in place the processes by which it arrived at its determination.
66. On that basis we find that the decision was a collective decision taken by the Commission as a body corporate and therefore was lawful.

Decision

67. The appeal brought by PCD is dismissed.

Costs

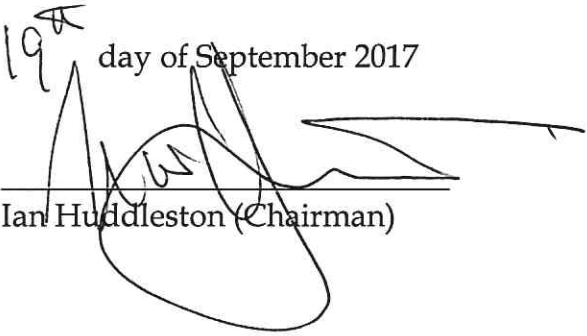
68. The Tribunal has jurisdiction to award costs in favour of any party to proceedings before it against any other party to the proceedings, in whole or in part, but only where it considers that the other party has acted vexatiously, frivolously or unreasonably, subject to that party having an opportunity to make representations against the making of the costs order. Costs do not follow the event.
69. The Tribunal does not consider that the said criteria existed in these proceedings. Accordingly the Tribunal declines to make any costs order in respect of these proceedings in the circumstances.

The Right of Appeal

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

grounds on which the person applying intends to rely before the High Court.

Dated this 19th day of September 2017

Signed:  _____
Ian Huddleston (Chairman)

