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Judgment: approved by the Court for handing down | *Delivered:* **12/08/2014**
*(subject to editorial corrections)**

2013/072645

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Appellant

And

BANGOR PROVIDENT TRUST LTD

Respondent

THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Notice Party

MR JUSTICE DEENY

[1] The Charity Commission for Northern Ireland (the Commission) is a body established under Section 6 of the Charities Act (Northern Ireland) 2008 (the Act). On 8 August 2012 the Commission decided to institute an inquiry with regard to Bangor Provident Trust Limited (Bangor), the respondent.

[2] On 17 September 2012 Bangor applied to the Charity Tribunal for Northern Ireland (the Tribunal), a body established under Section 12 of the Act, for a review of the Commission's decision to institute an inquiry. This was pursuant to Section 12 of the Act and Schedule 3 paragraphs 3, 4 and the Table in paragraph 5. The Tribunal is empowered by those provisions to direct the Commission to end such an inquiry.

[3] Conjointly with its decision in Victoria Housing Estates Ltd v The Charity Commission for Northern Ireland on 10 May 2013 the Tribunal allowed the application by Bangor and directed the Commission to end its Section 22 Inquiry in relation to Bangor, pursuant to Schedule 3 of the Act. It did so on the basis that

Bangor was not in law a charity, and not, therefore, subject to the jurisdiction of the Commission for that or other purposes.

[4] The Commission sought and obtained the permission of the Tribunal to appeal to the High Court on the point of law as to whether Bangor was a charity, pursuant to Section 14 of the Act. The matter came before the Chancery Division of the High Court on 13 September 2013 and was listed for hearing and was heard on 14 May 2014 following the hearing of the appeal by Victoria Housing Estates Ltd. The court had the benefit of helpful written and oral submissions from Mr Michael Humphreys QC, with Ms Francesca Quint, for the respondent Bangor, Mr Michael Smith for the Commission and Mr William Gowdy for the Attorney General for Northern Ireland, who is, by virtue of Section 14, a party to all proceedings before the Tribunal. All those submissions have been taken into account even if not expressly referred to in this judgment.

[5] No application was made to me to adduce any evidence not already before the Tribunal at first instance which was before the court without objection. In its Reply of 9 November 2012 Bangor admitted it was at the relevant time in receipt of charitable tax relief for the purposes of The Charities Act 2008 (Transitional Provision) Order (NI) 2011. It stated in the same document that the sole issue was "whether on the true construction of the Applicant's Rules it is established under the law of Northern Ireland for charitable purposes only".

[6] The parties asked the court to reach its own conclusion on that point of law, excluding the possibility of leaving the rightness of the matter to the margin of appreciation of the Tribunal.

[7] Bangor Provident Trust Ltd is an industrial and provident society registered in Northern Ireland, originally under the Industrial and Provident Societies Act 1893. It was later deemed to have been registered under the Industrial and Provident Societies Act (NI) 1969 (the 1969 Act).

[8] The court was provided with the printed rules of the respondent. The following text is to be found both on page 1 of those rules and on the cardboard cover.

> "Register No. N. I.
>
> **Rules**
>
> **of**
>
> **Bangor Provident Trust Limited**
>
> Model H.3 1952 (Charitable)

> Published by the National Federation of Housing Societies
>
> 13 Suffolk Street, Pall Mall, London, SW1"

Counsel for the Commission draws attention to the fact that the model set of rules adopted by the respondent were those described as "Charitable".

Rule 1 gives the name of the Society as above. Rule 2 reads as follows and is at the heart of this appeal.

> "2. The objects of the Society shall be to erect, provide, improve and manage housing accommodation in Northern Ireland for persons of advanced years and limited means who are eligible to occupy or use housing accommodation provided under the Housing Acts (NI) 1890-1953 (or under any acts amending or substituted for the said Acts) on terms appropriate to their means and to provide such amenities as the Society shall think fit for the occupiers of such accommodation and to do all other things as are incidental or conducive to the attainment of the above objects."

[9] I pause to observe that it was part of Bangor's case before the Tribunal and the court that it was registered in 1952 but the reference to the Housing Act of 1953, presumably a reference to the Housing (Extension of Powers) Act (NI) 1953, must mean a slightly later date of incorporation and registration. I do not, however, think that anything turns on this.

[10] In its conjoined decision of 10 May 2013 the Tribunal dealt with Bangor in fairly short form, at paragraphs 15-17 and 30-32. The Tribunal did have before it submissions on behalf of both Bangor and the Commission from counsel experienced in the charity field. The emphasis in the argument before the Tribunal and before me, was that the concluding clause of Rule 2, and particularly the use of the word 'conducive' meant that, while the principal objects of housing the needy and aged were clearly charitable, the respondent could pursue an object that was not charitable and as its objects were not therefore exclusively charitable it was not a charity in law. Bangor relied on certain authorities to which I shall turn shortly. The Tribunal was persuaded of this argument, 'on balance', and concluded that Bangor was not a charity and that therefore the Commission could not instigate an inquiry in relation to it.

[11] Counsel agreed that the appropriate test was whether the objects of Bangor were exclusively charitable. While there is no one definition of charity Tudor on Charities, 9th Ed., 1-002 says that is generally accepted that three conditions must be

satisfied. The purposes of the institution must have charitable character, it must exist for the public benefit and it must be exclusively charitable. The Charities Act 2008 does not change the law in that respect in my view but restates it.
Section 1(1) reads as follows.
"For the purposes of the law of Northern Ireland, "charity" means 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 is clear in law that the subjective intention of the instigators of the corporate body concerned is irrelevant to the issue of construction which presented itself to the court. It was not in dispute that consistent with the modern dicta on the construction of documents this court should look at Rule 2 in the round and at the rules of Bangor generally in order to establish the correct interpretation of the objects and rules as set out originally.

[12] The thrust of the argument of Mr Humphreys I shall attempt to summarise. Rule 2 as the side label says, deals with the 'Objects of [the] Society'. It is the only objects clause and is to be distinguished from powers given to the Society. Rule 2 is in three parts and, while the first and second parts are indisputably charitable, the third part following the final 'and' enables Bangor to pursue non-charitable objects. The key word there is conducive.

[13] An important part of his argument was that Bangor might have wanted, in the 1950s when it was set up, to lobby the Parliament of Northern Ireland for legislative change to help the aged and needy. Such a political campaign would not be charitable but would be consistent with the concluding wording of Rule 2 i.e. to do all such acts and things as are incidental or conducive to the attainment of the above objects. He also gave the example of running restaurants and cafes. It was pointed out, ex arguendo, that surely there were many examples of charities doing exactly that without that being prohibited. I do not understand him to dispute that. He did say that if Bangor had been gifted land and applied for planning permission for housing and got that but chose not to build but to sell that land that might be consistent with Rule 2 but would not be charitable. However, to deal with that briefly it seems to me that if the proceeds of the sale were used to maintain other charitable housing that would not be so.

[14] When one turns to the reported cases one finds that these submissions are not in any event well founded. I shall begin with Inland Revenue Commissioners v City of Glasgow Police Athletic Association [1953] AC 380. A police athletic association claimed exemption from income tax under Schedule D on the profits of their annual sports meeting. The House of Lords (per Lord Normand, Lord Morton of Henryton, Lord Reid and Lord Cohen, Lord Oaksey dissenting) said the exemption could not be granted because the association was not "established for charitable purposes

only" within the meaning of Section 30 of the Finance Act 1921. Lord Cohen dealt with it in this way at pages 404, 405:

> "This question [as to whether the association was formed for charitable purposes only] has to be determined upon the construction of the constitution and rules of the association and of the findings of fact contained in the stated case, but before I turn to them it will be convenient to refer briefly to some of the authorities to which Your Lordship's attention was directed in the course of the argument. From them certain principles appear to be settled.
>
> (1) If the main purpose of the body of persons is charitable and the only elements in its constitution and operations which are non-charitable are merely incidental to that main purpose, that body of persons is a charity notwithstanding the presence of those elements – Royal College of Surgeons of England v National Provincial Bank Ltd [1952] AC 631.
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> (2) If, however, a non-charitable object is itself one of the purposes of the body of persons and is not merely incidental to the charitable purpose, the body of persons is not a body of persons formed for charitable purposes only within the meaning of the Income Tax Acts – Oxford Group v Inland Revenue Commissioners [1949] 2 All ER 537.
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> (3) If a substantial part of the objects of the body of persons is to benefit its own members, the body of persons is not established for charitable purposes only – Inland Revenue Commissioners v Yorkshire Agricultural Society [1928] 1 K.B. 611."

The principles at (1) and (2) above are unhelpful to Bangor as the word incidental is to be found coupled with conducive in Rule (2) and clearly Bangor cannot go so far as to say that one of the objects is for the benefit of its own members as in (3), because Rule (2) clearly relates the doing of all things "to the attainment of the above objects". Bangor seeks to argue that there is a non-charitable object here which is not merely incidental to its charitable purpose. One might think the decision as a whole was against it and also this passage from Lord Reid at page 402:

> "But it is not enough that one of the purposes of a body of persons is charitable: the Act requires that it must be established for charitable purposes only. This does not

> mean that the sole effect of the activities of the body must be to promote charitable purposes, but it does mean that that must be its predominant object and that any benefits to its individual members of a non-charitable character which result from its activities must be of a subsidiary or incidental character."

[15] McGovern and Others v Attorney General and another [1982] Ch. 321 was a case about Amnesty International. That body had never sought to be regarded as a charity but set up a pilot trust, as its counsel Leonard Hoffman QC called it, with a view to obtaining charitable status for some of its activities. Mr Humphreys relies on this case because Slade J refused a declaration that the Trust ought to be registered as a charity. He found that although a trust set up for the relief of human suffering and distress would be capable of being charitable in nature it would not be charitable if any of its main objects were of a political nature; that trusts for the purpose of seeking to alter the laws of the United Kingdom or a foreign country or persuading a country's government to alter its policies or administrative decisions were political in nature; and that, accordingly, the object of the trust to secure the release of prisoners of conscience by procuring the reversal of governmental policy or decisions by lawful persuasion was of a political nature and since that object affected all the trusts of the trustee, the trust was not a charitable one. But the object clauses of the Trust set up by Amnesty were very different from the rules of Bangor and the decision seems to me clearly distinguishable.

[16] Slade J refers to the relevant case law including the decision of the House of Lords in National Anti-Vivisection Society v Inland Revenue Commissioners [1948] AC 31; [1947] 2 All ER 217. There their Lordships, in a case which Viscount Simon described as "most difficult" concluded, Lord Porter dissenting, that the main object of the Society was political viz, the repeal of the Cruelty to Animals Act 1876, and for that reason the Society was not established for charitable purposes only and was not entitled to exemption from tax under the Section. Slade J summarises it in this way at page 341 in his judgment:

> "The House of Lords seems to have accepted that the object of the Society could have been a charitable one, if, on a true analysis, this was to secure the abolition of vivisection and if legislation was merely to be regarded as ancillary to the attainment of this object: see for example at page 61 per Lord Simonds and at page 77 per Lord Normand."

What Lord Simonds pointed out at pages 61 and 62 of the Appeal Cases judgment was that the object of repealing the Act of 1876 was "a main object, if not the main object, of the Society, to obtain an alteration of the law…" Seeking an amendment of acts of parliament, or even their repeal, where that is ancillary to one of the established charitable objects in common law did not deprive an organisation of its

charitable status. But this society "has chosen to restrict its attack upon cruelty to a narrow and peculiar field, and it has adopted as its leading purpose the suppression of vivisection by legislation": per Lord Normand, page 77. Turning back to Rule (2) of Bangor for a moment the submission that it might seek to amend the Housing Acts in Northern Ireland in a way that would be "conducive to the attainment of the above charitable objects", which are indisputably charitable in this case ie the relief of poverty, is in my view a matter that is ancillary rather than a main object of the Society and, therefore, not inimical to charitable status..

[17] Counsel for Bangor placed great reliance on the decision of Dunne v Byrne [1912] AC 407 a decision of the Privy Council (Lord MacNaghten, Lord Shaw of Dunfermline, Lord Mersey and Lord Robson) dismissing an appeal from the High Court of Australia to the effect that a gift of a Catholic clergyman by way of residuary request was not charitable. The clause in question read as follows:

> "I will and bequeath … that the residue of my estate should be handed to the Roman Catholic Archbishop of Brisbane and his successors to be used and expended wholly or in part as such Archbishop may judge most conducive to the good of religion in this diocese."

[18] In the course of his judgment on behalf of the Board Lord MacNaghten said, at 410, the following:

> "It can hardly be disputed that a thing may be "conducive", and in particular circumstances "most conducive," to the good of religion in a particular diocese or in a particular distract without being charitable in the sense which the Court attaches to the work, and indeed without being in itself in any sense religious."

[19] Counsel relies on this and points to the widening effect of the word conducive in Rule 2 of Bangor's rules. However, it is quite clear that the wording of this clause, apart from it being in a will rather the rules of a charity, is clearly distinguishable from the language in Bangor. The clause is leaving the residue to the Archbishop of Brisbane and his successors to be used wholly "or in part as such Archbishop may judge was conducive to the good of religion in this diocese". Not only is the gift clearly leaving a discretion to the then Archbishop and any of his successors but he is not obliged to expend monies wholly i.e. exclusively, for the good of religion, which is a charitable cause. This is to be contrasted with the clause on which Bangor rely i.e. "to do all other things as are incidental or conducive to the attainment of the above objects". There is no phrase such as "in whole or in part" or any reference to the Society or its Committee being left with a wider discretion, as in Dunne v Byrne. See also [26] below.

[20] Even allowing for these points, which I consider dispose of this authority for these purposes, I note that their Lordships arrived at their decision "not without reluctance" and finding that the costs of both parties should be paid out of the estate on a solicitor and client basis.

[21] The respondent relied on Oxford Group v Inland Revenue Commissioners [1949] 2 All ER 537. The Oxford Group, a company limited by guarantee was principally for the advancement of the Christian religion, which is a charitable purpose in law. But clause 3(c) (xi) read:

> "To establish and support or aid in the establishment and support of any charitable or benevolent associations or institutions and to subscribe or guarantee money for charitable or benevolent purposes in any way connected with the purposes to the association or calculated to further its objects. (10) to do all such other things as are incidental, or the association may think conducive, to the attainment of the above objects or any of them."

[22] The Oxford Group sought exemption from Income Tax on the ground that it was a body of persons established for charitable purposes only. It failed before the Special Commissioners, Croom-Johnson J and the Court of Appeal. For the purposes of this case it can be seen that its clauses were significantly wider than that applying in this case.

[23] Furthermore, it does not seem to me that the judgments of the members of the court assist Bangor in reality. If one turns to pages 544 and 545 in the judgment of Cohen LJ one finds the following:

> "Then, again, under paragraph (10) of sub-clause (C) the association is empowered to do, not merely things which are incidental or conducive to the attainment of the main object, but also such things as the association may think conducive to it. In other words the question which the court would have to decide, if any activity of the association was being challenged as being ultra vires, would not be whether, in the opinion of the court, the activity was conducive to the main object, but whether the association, in undertaking it, had thought it conducive. It seems to me that in this case the observations of Lawrence LJ in the Keren Kayemeth case are directly in point. He said ([1931] 2 KB 482):
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> "The company can exercise any or all of these powers whenever in its opinion such an exercise would be conducive to the attainment of the so-called primary

> object, which from a practical point of view means that it can exercise them whenever it is minded to do so, and further such exercise is in fact conducive to the attainment of that object or not, as neither the court nor anyone else can control the company's opinion or otherwise interfere with the manner in which it chooses to carry out its objects. It would be difficult in any case to determine whether any particular enterprise undertaken by the company under its wide powers was or was not in fact conducive to the attainment of the primary object, but when the question whether it is or is not so conducive is left to the decision of the company itself. I cannot avoid the conclusion that the objects mentioned in sub-clauses 2 to 22 can be carried out by the company just as freely as the object mentioned in sub-clause 1, and that there is no substantial difference in degree between them."

[24] I respectfully agree with what is being said there. Like Dunne v Byrne a discretion is being allowed and a discretion in wide terms. One must contrast that with the closing clause at Rule 2 of Bangor as follows:

> "To do all other things as are incidental or conducive to the attainment of the above objects." (Authorial underlining)

[25] The wording of Rule 2 allows the court, or the statutory bodies now set up, to consider whether in fact the taking of some step by Bangor was "incidental or conducive to" its primary charitable objects. It does not seem to me therefore that the Oxford case assists Bangor here.

[26] Counsel for Bangor then relied on Associated Artists Ltd v Inland Revenue Commissioners [1956] 2 All ER 583. This plaintiff was a company limited by guarantee set up by a lover of the theatre whose objects included at (a) "to present classical, artistic, cultural and educational dramatic works …" It was not that clause that the revenue commissioners objected to when arguing that it was not established for charitable purposes. The clause of particular relevance for the purposes of this court is clause (l) "to do all such other things as are incidental or which [the tax payer] may think conducive to the attainment of any of the above objects". Upton J held that the company was not established for charitable purposes only. It is immediately apparent, as he found, that the clause here introduced the same discretionary and subjective element to be found in Dunne v Byrne op cit and condemned therein. It was not an objective judgment as to what was "conducive" to the attainment of the charitable object but what the tax payer thought was conducive. I will return shortly to the issue as to whether the matter is to be read conjunctively or disjunctively. Upton J, as he then was, considered that that decision

is in each case a pure question of construction but what was clear was that "the words must be read grammatically".

[27] These cases are those which might have supported Bangor. I can deal with the other authorities cited to me more concisely. In D v National Society for the Prevention of Cruelty to Children [1978] AC 171 one finds that that undisputed charity has as its fourth purpose pursuant to Royal Charter in 1895:

> "To do all other such lawful things as are incidental or conducive to the attainment of the above objects."

[28] The Incorporated Council of Law Reporting for England and Wales v Attorney General [1972] Ch 73 is a decision of the English Court of Appeal in which they dismissed an appeal by the Revenue Commissioners from a judgment of Foster J holding that the council was established for exclusively charitable purposes. Among the objects of the council set out in clause 13 of its Memorandum of Association was the following:

> "4. The doing of all such other lawful things as are incidental or conducive to the attainment of the above objects."

[29] Counsel also referred to Rosemary Simmons and Moyle Housing Association Ltd v UDT Ltd [1987] 1 All ER 281 and to Helena Partnerships Ltd v The Commissioners for HM Revenue and Customs [2011] UKUT 271 (TCC) and to Attorney General v Ross [1985] 3 All ER 334 and to IRC v Yorkshire Agricultural Society [1928] 1 KB 611; per Atkin LJ.

[30] In the light of this case law and bearing it in mind I return to the Rules of the Bangor Provident Trust Ltd. Rule 2 has been set out above. I state quite plainly that it seems to me that in its natural and ordinary meaning, in the context of a body set up to provide housing "for persons of advanced years in limited means" the natural and ordinary meaning of it is that the third clause was to facilitate such objects and not to allow the Society to launch into non-charitable activities.

[31] In support of that view I consider that the proper interpretation of the Rule is to read its three clauses conjunctively. Firstly, that is because they are not broken up by letters or numbers as is the case in certain of the authorities just cited. Secondly, that it is because the conjunctive 'and' commences the third clause which Mr Humphreys has to rely on as creating a non-charitable objective.

[32] It is true that the disjunctive "or" is interpolated between incidental and conducive. That might justify the interpretation that conducive could be somewhat wider than incidental but it does not seem to me to create an interpretation that would remove "conducive" and the clause it is part of from the performance by Bangor of the first two parts of Rule 2.

[33] Counsel for Bangor stressed that this was the only objects clause in the Rules and that the question of the objects of a body are crucial in determining whether it is for exclusively charitable purposes. This point would not prevail in any event in light of the authorities summarised above and the natural and ordinary meaning of the Rules but I take into account the point that the powers clause to be found at Rule 49 deals with the "Powers of Committee". There is therefore in these rules no Powers Clause for the Society as a whole. Therefore, although the side label at Rule 2 does indeed read "Objects of Society" it does in fact provide the Society, as opposed to the Committee, with the legal powers to achieve its objects.

[34] The charitable nature of the Society is re-enforced by Rule 90 relating to Dissolution. It reads, inter alia, as follows:

> "If on the winding up or dissolution of the Society there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the Society but shall be given or transferred to some other institution or institutions having objects similar to the objects of the Society and which shall prohibit the distribution of its or their income and property amongst its or their members, such institution of institutions to be determined by the members of the Society at or before the time of dissolution, or in default thereof by such Judge of the High Court of Justice as may have or acquire jurisdiction in the matter, and if and so far as effect cannot be given to a foresaid provision then to some charitable object." (Authorial underlining)

[35] Finally, I observe that the Shorter Oxford English Dictionary defines "conducive" as "tending to promote or encourage". While mindful of the judicial observations on its meaning the starting point, it seems to me, and consistent with the Incorporated Council of Law Reporting op cit, is that this language of "incidental or conducive to the attainment of the above objects" is not inconsistent with merely allowing the Society to engage in activities ancillary to its main and indisputably charitable objects. It may be that they would include the lobbying of the legislature in regard to the provision of housing to the aged of limited means. That would be ancillary. That would not, on a proper reading of these rules, at the time the Society came into existence, lead one to conclude that its objects were not exclusively charitable.

[36] In the light of all the factors before the court I consider that the Charity Tribunal erred in finding that Bangor was not a charity. I allow the appeal of the Charity Commission which is at liberty to proceed to discharge its statutory functions in regard to Bangor Provident Trust Ltd.