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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 19 /02/2020

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

ON APPEAL FROM

THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

—————
CHANCERY DIVISION
—————

Between:

TREVOR McKEE AND JOSEPH HUGHES

First Appellants;

and

THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Second Appellant;

and

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent;

and

THE DEPARTMENT FOR COMMUNITIES

Intervener.

—————

2017/129608

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

—————
CHANCERY DIVISION
—————

Between:

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Appellant

and

SEAN CAUGHEY

First Respondent

and

THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Second Respondent

2017/129444

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

CHANCERY DIVISION

Between:

ROBERT CRAWFORD

First Appellant

and

THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Second Appellant

and

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

and

TREVOR McKEE

Intervener

Before Morgan LCJ, McCloskey LJ and Horner J

McCLOSKEY LJ (delivering the judgment of the court)

Preface

In the interests of simplicity the parties to this appeal are described in the title hereto as they were at first instance. There are four appeals in total. The Charity Commission for Northern Ireland (the "Charity Commission"/"the Commission") is the sole Appellant. The Attorney General for Northern Ireland (the "Attorney General"), who exercised his statutory right to intervene at first instance, has filed a Notice under Order 59, Rule 6. The Department for Communities ("the Department") is an intervening party. The other parties, all Respondents to this

appeal, are Robert Crawford, Sean Caughey, Trevor McKee and Joseph Hughes. Of these four parties only Mr Hughes was legally represented, both above and below.

The Contours of the Litigation

[1] The shape of the case is gleaned from the opening paragraphs of the judgment of the trial judge Madam Justice McBride (“the judge”):

“[1] The three appeals under consideration all raise the same question of law (“the key issue”) namely, whether the functions attributed to the Charity Commission by the provisions of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”) can lawfully be discharged by employees of the Commission, acting alone.

[2] The Attorney General, Mr McKee, Mr Hughes, Mr Crawford and Mr Caughey each submitted that employees of the Commission acting alone could not lawfully discharge the functions attributed to the Commission under the 2008 Act.

[3] In contrast the Commission and the Department for Communities (“the Department”) each contended that the functions in question could lawfully be discharged by employees of the Commission.”

[2] Fundamentally, there is a single question of law to be determined, namely whether the relevant legislation permits the discharge of the Charity Commission’s statutory powers, duties and functions by its “staff” (the statutory word). If “Yes” the inquiry ends. If “No”, there arises a second question of law namely whether the legislation permits delegation of some or all of the Charity Commission’s functions *et al* to be performed by its staff.

[3] In brief compass the backdrop to these appeals is formed by certain decisions purportedly made by the Charity Commission and ensuing appeals to the Charity Appeal Tribunal for Northern Ireland (“the Tribunal”), followed by appeals to the Chancery Division of the High Court.

Statutory Framework

[4] The statutory provisions of relevance are rehearsed *in extenso* in the judgment at first instance and are to be found in the Appendix to this judgment. Bearing in mind the contours of the litigation they may be reduced to the following summary:

- (i) The Charity Commission is a body corporate consisting of a chair, a deputy chair and at least three, but no more than five,

other members: s 6(1) and (2) of the Charities Act (NI) 2008 (the “2008 Act”).

- (ii) The sponsoring departmental body is the Department. It appoints the aforementioned members and must do so so as to secure that the appointees are persons with knowledge and experience of the law relating to charities, charity accounts and the financing of charities and the operation and regulation of charities of different sizes and descriptions, while at least one member must be legally qualified: s 6(4) and (5).
- (iii) The matters of terms of appointment, remuneration, employment of staff, annual report, expenditure, procedure, transfer of property and status are regulated by Schedule 1 to the 2008 Act.
- (iv) The Charity Commission has the series of statutory objectives enshrined in s 7.
- (v) The “*general functions*” of the Charity Commission are listed in s 8.
- (vi) The Charity Commission’s “*general duties*” are listed in s 9.
- (vii) The incidental power to do anything calculated to facilitate, or which is conducive or incidental to, the performance of any of its functions or general duties is conferred by s 10.
- (viii) The Charity Commission must maintain a register of charities and is empowered to remove institutions from this: s 8(3) and s 16.
- (ix) The trustees of unregistered charities must apply to the Charity Commission for registration, observing specified requirements: sections 17 - 18.
- (x) The Charity Commission may direct a registered charity to change its name: s 20.
- (xi) The Charity Commission is empowered to institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes: to be conducted either by itself or by an appointed person: s 22(1) and (2).

- (xii) A wide ranging power to require the production of information and documents is exercisable under s 23.
- (xiii) Having initiated an inquiry under s 22, the Charity Commission is empowered (*inter alia*) to suspend any trustee, charity trustee, officer, agent or employee of a registered charity, to appoint additional charity trustees and to vest any property held by or in trust for the charity in the official custodian (see s 11), all such powers being exercisable by formal order: ss 33 and 34.
- (xiv) Having initiated an inquiry under s 22 the Charity Commission is empowered to issue specific directions requiring action by *inter alios* the charity trustees.
- (xv) The Charity Commission may order the trustees of a registered charity to take any action considered expedient in its administration irrespective of whether this lies within their powers: s 46.
- (xvi) A similar power whereby the Charity Commission orders the trustees of a charity to make any application of the property of the charity is conferred by s 47.
- (xvii) The Charity Commission is empowered to issue directions to a charity relating to the conduct of specified bank accounts: s 48.
- (xviii) The Charity Commission has a wide power to provide advice and guidance to a registered charity: s 49.
- (xix) The power to determine the membership of a registered charity, to appoint an investigator for this purpose and also to authorise an enquiry is conferred by s 50.
- (xx) Every specified alteration of a registered charity's articles of association requires the prior written consent of the Charity Commission and in default is ineffective: s 96.

[5] The statutory provisions most prominently engaged by the issues raised in these proceedings are the following. First, s 6(7) and (8) of the 2008 Act:

"Schedule 1 makes further provision with respect to the Commission

Subject to Schedule 1, section 19 of the Interpretation Act (NI) 1954 applies to the Commission."

The second is paragraph 9(1) (a) of Schedule 1 to the 2008 Act:

“In determining its own procedure the Commission may, in particular, make provision about -

the discharge of its functions by committees (which may include persons who are not members of the Commission).

The third is s 19(1) (a) (v) and (vi) of the Interpretation Act (NI) 1954 (the “Interpretation Act”):

“Effect of words of incorporation

(1) *Where an Act passed after the commencement of this Act contains words establishing, or providing for the establishment of, a body corporate and applying this section to that body those words shall operate -*

(a) *To vest in that body when established -*

(v) *The right to regulate its own procedure and business; and*

(vi) *the right to employ such staff as may be found necessary for the performance of its functions ...”*

[6] There are two features of the 2008 Act which should be highlighted. The first is that there are three provisions (only) specifically conferring a power on “*a member of the Commission’s staff*”, namely (i) the power to do anything required to be done by, to or before the Official Custodian For Charities (s 11(4)), (ii) the power, if so authorised, to inspect and make copies of the records of any court, public registry or office of records without payment and (iii) the power to enter premises in the context of a section 22 inquiry (per section 52(1)). Subject to these three exceptions, the unremitting language employed throughout the statute unambiguously requires the Charity Commission to exercise and discharge all of the powers, duties and functions conferred on the body corporate. The second striking feature is that the language of delegation is nowhere to be found in the statute.

Composition of the Charity Commission

[7] From a variety of evidential sources one discovers the following about the composition of the Charity Commission, which describes itself as a “*non-departmental public body*” which, following the enactment of the statute, became operational from 27 March 2009:

- (a) There is a Chief Commissioner and a Deputy Chief Commissioner.
- (b) There are five other Commissioners, one of whom is described as the “*Legal Commissioner*”.
- (c) The staff of the Commissioner include a Chief Executive Officer, a Head of Charity Services, a Head of Corporate Services and Compliance (“HCSC”), an Enquiry Manager, an unspecified number of “case workers” – and, perhaps, others.

It would appear that the “Board” of the Commission consists of those noted at (a) and (b) above. The Commission’s “manuals” (*infra*) evidently require the approval of the Board and, further, are the subject of periodic review and updating.

Extra-statutory instruments

[8] The Charity Commission has adopted certain internal instruments, of an extra-statutory nature, relating to its *modus operandi* and the execution of its activities generally. It is necessary to observe that the evidence of these instruments before the court is plainly not comprehensive. This evidence includes the partial contents of the so-called “*Initial Concerns Manual*” and the “*Enquiries Manual*”. The first of these allocates a series of duties to *inter alios* the Commissioners, the Chief Executive, the HCSC, the Enquiry Manager and a legal adviser. By these arrangements it is clear, for example, that a decision to initiate a statutory enquiry must be made at a meeting attended by the HCSC, the Enquiry Manager and at least three Commissioners. It would appear that the necessary authorisation entails a decision to be made by the Commissioners. In contrast, an ensuing decision to suspend or remove a trustee, officer, agent or employee of the charity concerned is made by the Enquiry Manager, to be approved by the HCSC. Similarly the former must compile a “*Statement of Reasons*” and the latter must approve same. The next step is the preparation of a formal order and the receipt of legal advice. The manual makes no provision for the involvement of any of the Commissioners in any of these steps. An affidavit sworn by the Commission’s Chief Executive Officer confirms this analysis.

[9] It would appear from the manual extracts provided that, similarly, the Commissioners have no role in the appointment under section 33 of the 2008 Act of either additional trustees or an interim manager. This exercise involves *inter alia* the consideration of a prepared list previously compiled, the finalisation of a short list of three candidates and ensuing interviews. Also of note is the absence of any reference to the Commissioners in either the briefing prepared for the Social Development Committee of the Northern Ireland Assembly in February 2015 or the accompanying flow chart.

[10] The Standing Orders of the Commission are included in the materials before the court. Their avowed purpose is to regulate the meetings of the “*Board*” and

“Committees” of the organisation. This instrument confirms that the members of the Commission constitute the Board. The topic of decision making is addressed in paragraph 7.2:

“In keeping with the agreed decision-making procedures manual, the Board is kept fully aware of any potentially high risk or high profile cases. These and other cases may attract higher levels of correspondence addressed directly to individual Members of the Commission, possibly seeking their intervention in any particular case. Such correspondence should be referred to the appropriate Director and dealt with routinely at the appropriate level within the Commission in accordance with agreed practice and procedures. It is imperative to ensure that the integrity of case conduct is preserved and no impression is given that correspondence direct with individual Members of the Commission can bypass established procedures.”

Of particular note is the next ensuing passage, at paragraph 7.3:

*“All decisions made by Commission staff are made in the name of the Commission and therefore the Members of the Commission have a legitimate interest in any or all of them. In view of this, the Members of the Commission may **exceptionally and in appropriate cases**, at their discretion, decide collectively to:*

- *Make some case work decisions themselves; and/or*
- *Provide guidance to staff involved in handling a case.*

Although it is exceptional, any decisions by Members of the Commission to involve themselves in a case in this way are recorded formally.”

This is followed by, at paragraph 7.4:

“Members of the Commission can also be asked formally to review a decision taken on their behalf. The laid-down procedures for such decision reviews can be found in our operational guidance.”

Pre - enacting Materials

[11] The evidence of the background to the 2008 Act was augmented by the provision of certain materials by the Commission in response to a direction issued at the conclusion of the hearing. These were received *de bene esse*, without any formal

ruling on their admissibility. They disclose that in 2004 the NI Charities Advisory Panel, an *ad hoc* body established for the purpose of reporting to DSD, identified certain frailties and concerns relating to the extant legislative and regulatory framework of charities, in particular the absence of a system of registration; the weak regulatory framework; and the outdated nature of the existing legislation namely the Charities Act (NI) 1964 which it described as –

“... largely facilitative and non-interventionist and is particularly deficient as regards systems for registering and regulating charities and for supervising fundraising activities.

The panel made a series of recommendations, including the following:

“A NI Charity Commission should be established to operate a NI Register of Charities and act as a charities regulator for all charities operating in NI ...

The functions of the Commission will ensure that registered charities operate within the requirements of charity law. The development of a register and Commission is consistent with the outcome of reviews in Scotland and Ireland and the current position in England and Wales ...

The NI Charity Commission should be kept at arm’s length from government to ensure independence in operation and public presentation. It should be broadly and representatively based. It should be an independent NDPB similar to the Charity Commission for England and Wales.”

[12] The new evidential materials make clear that the 2008 Act was the product of an extensive public consultation exercise preceded by consideration on the part of the Select Committee on Northern Ireland at Westminster. The bill which preceded the statute had been the subject of extensive committee consideration within the Northern Ireland Assembly during a period of approximately one year. One of the consistent themes of these materials is that the creation of the new Commission would represent the most effective way of regulating the charities sector. One of the ministerial briefing papers states:

“The Department has sought to be consistent as far as possible with the rest of UK and Ireland ...

A new Charities Act was passed last year for England and Wales ...

Officials in DSD have been working closely with other jurisdictions through the UK and Ireland Charity Regulators Forum to ensure a common approach."

This briefing further noted that the new Commission would have a composition of a Chief Commissioner, one Deputy Chief Commissioner, three to five Commissioners (all of the latter recruited through the Public Appointments Procedure), a Chief Executive and twelve staff with estimated annual running costs of circa £800,000.

The Impugned Decisions of the Commission

[13] These are discerned from the bundle of appeal in the following sequence:

- (i) In the case of Robert Crawford, by letter dated 22 January 2015 the Commission notified an order removing Mr Crawford as a trustee of the Disabled Police Officers Association of Northern Ireland under s 33 of the 2008 Act, reminding him that by virtue of s 86 he was thereby disqualified for acting as a trustee of any other charity. By its decision in the ensuing appeal dated 13 December 2017, the Charity Tribunal, confining itself to the issue of *vires* only, determined that the impugned decision was lawful. Mr Crawford's appeal to the Chancery Court succeeded.
- (ii) In the cases of Trevor McKee and Joseph Hughes, both trustees of the registered charity Lough Neagh Rescue Limited, the Commission made a decision under s 96 of the 2008 Act consenting to proposed alterations of the constitution of the charity. The ensuing appeal of Mr McKee and Mr Hughes to the Charity Tribunal was dismissed. They then appealed successfully to the Chancery Court.
- (iii) In the case of Sean Caughey the impugned decision of the Commission entailed the appointment of an interim manager to the charity Newry and Mourne Carers under section 33 of the 2008 Act. The Tribunal allowed Mr Caughey's appeal. The Commission's ensuing appeal to the Chancery Court was dismissed.

[14] This court notes, with some concern, that the first of the impugned decisions in this series of appeals was made some six and a half years ago, in September 2013. This cannot be conducive to the furtherance of any public interest. It is manifestly antithetical to the values and standards driving the overriding objective which, expressly or otherwise, applies to all courts and tribunals. The agencies and individuals to whom these words are directed are exhorted to take careful note.

The Judgment of McBride J

[15] In a lengthy and considered judgment the judge's resolution of what she termed the "key issue" was focussed on s 19 of the Interpretation Act. This exercise yielded the following analysis and conclusion at [89] - [91]:

"[89] According to the Shorter Oxford English Dictionary "to regulate" means to "control or supervise by means of rules or regulation". Thus, regulation refers to the creation of an orderly system which would enable, for example, the Commission to supervise, oversee, police, monitor and control its functions. I do not consider that the word regulate is itself apt to describe a power to "delegate" such functions to staff. According to the Shorter Oxford English Dictionary, "to delegate" means to "assign or entrust (a duty, authority, etc) to another as agent or deputy". In light of this definition I consider that delegation is something which goes beyond the control and supervision envisaged by the use of the word "regulation". Accordingly, I am satisfied that the powers given to the Commission by section 19(1)(a)(v) "to regulate" its own procedures do not give to the Commission an express power "to delegate" any of its decision making functions to its staff.

[90] Further, I consider that the power given by section 19(1)(a)(vi) "to employ such staff as may be found necessary for the performance of its functions" is not a provision which gives the Commission an express power to delegate functions to staff. Rather it simply provides that the Commission has power to employ staff to assist it in carrying out the functions of the Commission. I therefore reject the Commission's submission that this provision gives it an express power to delegate its functions to staff.

[91] If section 19 were to be interpreted in the manner contended for by the Commission and the Department it would mean that the Commission, to use the words of the Attorney General, would have "a blank cheque" to delegate all the functions entrusted to it by the 2008 Act, to other persons or bodies when it so wished. Effectively this would mean that the Commission could abdicate all its decision making responsibilities in favour of other persons or bodies. I consider that the language used in section 19 does not accord with such a broad interpretation. I further consider that it was not

the legislature's intent that the Commission should be able, pursuant to the provisions of section 19, to delegate all its decision making functions to its staff."

[16] The judge then considered the contrasting provisions of the equivalent statute in England and Wales, namely the Charities Act 2011, at [93]:

"Paragraphs 5 and 7 of Schedule 1 to the 2011 Act enable the England and Wales Commission to appoint staff and to regulate its own procedures. Paragraph 8 of Schedule 1 permits performance of the Commission's functions by staff. Although slightly differently worded, I consider that the provisions of paragraphs 5 and 7 to Schedule 1 of the 2011 Act are essentially equivalent to the provisions of section 19 of the 1954 Act. If these provisions had been sufficient to grant to the England and Wales Commission a power to delegate performance of functions to staff then the provisions of paragraph 8 of Schedule 1 of the 2011 Act would have been unnecessary. Hence the provisions of the 2011 Act, rather than supporting the Commission's case actually lend further support to the view that the 2008 Act does not grant the Commission an express power to delegate its functions to its staff."

Adding, at [94]:

"I am further satisfied that section 19 does not grant to the Commission an explicit power to delegate its decision making functions to staff acting alone for the reasons set out below. Whilst none of these reasons when taken in isolation is conclusive, I consider that cumulatively they support my view that section 19 bears a restricted interpretation. These reasons are as follows:

- (a) If section 19 had created the extensive rights and powers contended for by the Commission it is surprising that section 19 was not relied upon in the case of Re Bell.*
- (b) It is further surprising that the drafters of section 19 in their commentary in the Northern Ireland Legal Quarterly did not reference the fact that section 19 created such extensive powers.*
- (c) If a right to determine procedure equated with delegation it is surprising that the representatives of the local Board in Barnard did not rely on this provision and did not seek to submit that such a power gave them an express right to delegate their functions to the Port Manager.*

- (d) *If section 19 created an expansive right to delegate to any person or body, the provisions of Schedule 1 paragraph 9 which provide for delegation of functions to a Committee would be superfluous. Bennion on Statutory Interpretation (6th Edition) at page 1031 states:*

“On the presumption that Parliament does nothing in vain the court must endeavour to give significance to every word of an enactment. It is presumed that if a word or phrase appears, it was put there for a purpose and should not be disregarded.”

Accordingly, I find that the existence of Schedule 1 paragraph 9 is inconsistent with an interpretation that section 19 grants an express power to the Commission to delegate all of its statutory functions to its staff.”

[17] The judge next focused attention on the interaction between paragraph 9 of Schedule 1 to the 2008 Act and section 19 of the Interpretation Act, at [101] – [104]:

“I consider that paragraph 9 of Schedule 1 which makes express provision for delegation of the Commission’s functions by Committees which may include persons who are not members of the Commission and further expressly provides that it can set a quorum for meetings of the Commission or a Committee is a provision which prescribes or limits the powers given by section 19.

The use of the word “may” in paragraph 9 simply means this procedure is not mandatory. The Commission, if it so wishes may discharge its functions through the entire Commission or it may choose to discharge its functions through the procedures prescribed in paragraph 9 of Schedule 1. I further find that the words “in particular” in paragraph 9, refer to the provisions of sub paragraphs (a) and (b) which, rather than being merely illustrative, actually set out the specific, particular and only ways in which the Commission can delegate its decision making functions.

Further, as section 19 is a general provision and contains no express power of delegation it must yield to the specific and express provisions of paragraph 9 of Schedule 1. I am therefore satisfied that the provisions of Schedule 1 paragraph 9 being express powers, set the high water mark of the extent to which the Commission can delegate its functions.

In addition I am satisfied that the provisions of Schedule 1 paragraph 4 regarding the employment of staff do not make any express provision for delegation of statutory functions to staff. Accordingly, I am satisfied that this provision which allows the Commission to employ staff does not contain any provision permitting it to delegate its decision making functions to its staff."

[18] The judge then turned to the arguments concerning s 10 of the 2008 Act, concluding at [107] – [109]:

"Section 10 states that the Commission has power to do "anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties". The word "facilitate" means to make easier. Section 10 therefore permits the Commission to take any steps which would have the effect of assisting, helping or otherwise easing the Commission in the discharge of the functions entrusted to it. Section 10 however being an incidental and general power must be read so that it is in conformity with the other provisions of the 2008 Act, including Schedule 1. In light of my interpretation of Schedule 1 paragraph 9, I find that section 10 cannot be interpreted as giving the Commission a broad power to delegate. Section 10 cannot be interpreted as a general "escape" clause from the other statutory controls set out in the main Act and cannot otherwise be interpreted to overrule the express provisions in the 2008 Act which deal with delegation. Such an interpretation is in line with the canon of construction that the general and incidental power must yield to the specific and express power. Therefore section 10 being general and incidental must yield to the specific and express powers granted by paragraph 9 of Schedule 1.

In addition, I find that section 10(2) is instructive in the interpretation of section 10(1). Section 10(2) sets out certain things the Commission may not do. Thus section 10 speaks to "what" the Commission can and cannot do in making the performance of its functions easier. It says nothing about "who" carries out the functions. I am therefore satisfied that section 10 being silent on the issue of "who" discharges functions cannot assist the Commission in the case it seeks to make.

I am further fortified in my interpretation of section 10 by the following matters:

- (a) *If section 10 created a wide power to delegate then Schedule 1 paragraph 9 would amount to superfluous drafting.*
- (b) *The 2011 Act and a number of Northern Ireland statutes contain provisions which are similar to section 10. Notwithstanding this, each of these statutes contains an express provision permitting delegation of functions to staff. This indicates that the provisions of section 10 cannot be interpreted in the expansive way contended for by the Commission.*
- (c) *Dr McGleenan accepted that in the event section 19 was not given the expansive interpretation the Commission contended for, section 10 in and of itself would not be sufficient to permit delegation of functions to staff."*

[19] The judge's attention then focussed on the arguments based on s 9, concluding at [111] – [113]:

"Section 9(4) requires decision making to be consistent and accountable. I consider that it is difficult to see how consistent and accountable decisions can be made if the Commissioners are not themselves involved in decision making. As appears in the case of McKee the decision was made by a case worker who was at pains to point out in her evidence that she acted independently and without reference to any other person. I consider that the only way in which consistency and the oversight required by section 9 can be met is by the Commissioners being involved in decision making either as a body corporate or by delegating these decisions to a Committee which must include at least one Commissioner or to a quorum of Commissioners. I am therefore satisfied that sections 9 can be read consistently with the interpretation that section 19 does not permit delegation of functions.

I am further satisfied that section 9 being a provision which deals with the general duties of the Commission cannot override the express provisions set out in Schedule 1.

Reading the provisions of the 2008 Act separately and in the context of the entire 2008 Act I find that the Commission does not have power to delegate its statutory functions to staff acting alone."

[20] The judge despatched the "workload argument" at [115] – [119] thus:

“The Commission further contended that an interpretation of section 19 that did not permit delegation of functions, would place an unacceptable workload upon the Commission having regard to the limited number of Commissioners and the breadth of the functions they had to undertake.

There was no evidence before the court about the workload of the Commission. The only available evidence was the evidence of Ms McGahey who informed the Tribunal that the Commission’s workload was light, although it had increased more recently.

I am therefore not satisfied on the basis of the evidence before the court that the Commission is in fact overburdened. If however, the Commission is overburdened, there are a number of steps it can take to deal with this. First, it can regulate its procedures so that staff can assist it in making its decisions, for example by preparing reports etc. In The matter of an application by the Belfast Telegraph Newspapers Limited for Judicial Review [2001] NICA unreported, Carswell LCJ considered the role staff could play in assisting the members of the Equality Commission. He stated:

“[The staff] may properly be entrusted with the responsibility of carrying out much of an investigation, by delegation from the Commission as was held in R v The Commission for Racial Equality ex parte Cottrell and Rotheron [1980] IRLR 279. They may also in my opinion conduct preparatory work for the Commissioners who have to make the decision in question, in the course of which they may well express their views. This is a well-recognised part of the work of senior officers in all branches of the public service. The deciders may be influenced by those views and may rely quite heavily upon their officers’ advice, based upon their experience and judgment. The important matter however is that in the end the deciders reach their own decision accepting whatever opinions and arguments they think fit from their officers but making up their own mind at the conclusion of the process.”

As appears from Belfast Telegraph, whilst staff can greatly assist the Commission in decision making, this does not detract from the important distinction between staff being advisors and the Commissioners being the “deciders”.

Secondly, the Commission can deal with a heavy workload by discharging its functions by committee and by fixing the quorum of members who can make decisions.

Notwithstanding all the steps it can take to mitigate this risk, in the event that it becomes overburdened with work, it can then request that the legislation is changed to allow it to delegate its functions to staff."

[21] As regards s 6 of the 2008 Act, the judge concluded at [120]:

"The Attorney General relied on the provisions of section 6 in support of his interpretation of section 19. Section 6 sets out the qualifications a Commissioner should have. These include expertise in charities and financial matters. The Commissioners are then selected on the basis of this expertise. Under the 2008 Act the Commission must undertake various functions including the removal of trustees and the creation of cy-près schemes. The discharge of these functions requires expertise in matters of charity law, finance and the exercise of discretion. I consider that it is therefore the Commissioners, rather than its staff who are especially equipped to undertake these functions. I find it difficult to see why the 2008 Act specifically requires the Commissioners to have the expertise set out in section 6 if, in accordance, with the other provisions of the 2008 Act, the Commissioners could delegate all their functions to staff. In such circumstances the expertise of the Commissioners would not be utilised in decision making where the section 6 qualifications would be highly relevant. I accept that the provisions in relation to the qualifications of Commissioners is not conclusive to the interpretation of section 19, especially as Commissioners in England and Wales with similar qualifications and experience are entitled to delegate their functions to staff. Given that the factual background in England and Wales is different as staff previously acted as lay commissioners, I find the provisions of section 6 lend some support to the view that section 19 should not be interpreted so as to allow wholesale delegation to staff."

[22] The next issue examined by the judge was the separate one of implied delegation of powers and functions. This yielded the following conclusion at [129] – [130]:

"In accordance with Noon I accept that the court can in certain circumstances find that there is an implied power to delegate to staff. In determining when such a power arises however it is necessary to consider a number of factors. First, as noted by

Beatson LJ there is a strong presumption against interpreting a grant of legislative power as empowering delegation. In the present case the Commission has been given power to carry out a number of functions and the legislature has conferred an express power to delegate some of these functions to a Committee. In these circumstances I consider that there is a strong presumption against implying a power to delegate to staff. Secondly, there is "a tendency to adopt a more restrictive approach to implied authority to delegate in the case of proceedings of courts and cases involving other "judicial" and "disciplinary" powers". The powers given to the Commission under the 2008 Act are very extensive. They involve, powers to give consent to amend the constitution of charities, powers to remove trustees, powers to appoint interim managers and powers to create cy-près schemes without financial limit. I consider that many of these powers are akin to judicial and disciplinary powers. Indeed, prior to the 2008 Act the power to remove trustees and the power to create a cy-près scheme beyond a modest financial threshold were reserved exclusively to the Court of Chancery. Thirdly, Noon at paragraph [26] notes that a strict approach is also likely to be taken if the power is conferred on the holder of a public office because of the personal qualifications and experience that the office holder is expected to have. Section 6 of the 2008 Act sets out the personal qualifications and experience required of Commissioners. As set out above at paragraph [117] their expertise, qualifications and knowledge is relevant to the functions which they have to discharge. I therefore consider that their qualifications and experience should contribute to the Commission's decision making functions rather than just being limited to policy making decisions. Fourthly, notwithstanding the breadth of functions the Commission has to undertake, there is no evidence before this court that the workload is such that delegation is inevitable. Unlike the case of Haw where there were 12,000 applications to be processed, the evidence before this court indicates that the workload of the Commission is modest. Accordingly I find that delegation is not inevitable.

For all these reasons I consider that a strict approach to implied delegation should be taken in relation to the Commission and in all the circumstances I find that there is no implied power to delegate to staff."

[23] The judge then formulated the following alternative conclusion, at [133] - [134]:

“I find that the need for the consent of the Commission introduced by the 2008 Act indicates that the legislature thought it was now important that there be proper oversight of changes to a charity’s objects. Such a decision involves deciding whether the changes in the charity’s constitution comply with charitable principles. I consider that this power should be exercised by the Commissioners rather than by the staff because of the qualifications and experience Commissioners have in respect of these complex aspects of charity law.

Having regard to the nature of the decision making at issue in the other two appeals I consider that an implied power of delegation would not extend to these decisions because they involve decision making of a judicial and disciplinary nature. Further, I consider that the expertise, experience and qualifications of the Commissioners is required in making these decisions. Accordingly, I find that even if there was an implied power to delegate some functions it would not extend to the decisions in the present appeals.”

[24] To summarise, via the route traced from [13] above the judge held that the powers, duties and functions conferred on the Charity Commission by the 2008 Act must be exercised and discharged by the Commission itself and are not exercisable by its staff. This omnibus conclusion is expressed at [138]:

“Therefore to determine the Commission’s powers to delegate it is necessary to look at the express and implied terms of the statute creating the Commission. I have found that the 2008 Act did not grant the Commission an express power to delegate to staff. I have further held that there is no implied power of delegation. Accordingly, the only way in which the Commission can carry out its decision making functions is either when it meets as a complete body or acts in accordance with the powers set out in paragraph 9 of Schedule 1.”

The Issues

[25] No formulation of the arguments, no matter how imaginative or resourceful, can distract from the fundamental reality that these appeals raise a narrow, self-contained question of statutory construction: see [2] above. This analysis is acknowledged in the first paragraph of the “Agreed Statement of Key Issues”, to which all of the parties have subscribed, which identifies the following central issue:

“Whether the functions attributed by provisions of the [2008 Act] to the Charity Commission for Northern Ireland can be lawfully discharged by employees of the Commission.”

The Court's Analysis

[26] The framework of legal principle within which the central issue falls to be determined appears uncontentious. In *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 3 Lord Bingham of Cornhill stated at [8]:

“The court’s task, within the permissible bounds of interpretation, is to give effect to Parliament’s purpose. So the controversial provisions should be read in the context of the statute as a whole and the statute as a whole should be read in the historical context of the situation which led to its enactment.”

In a celebrated passage, quoted in all the leading textbooks, Lord Simon of Glaisdale stated:

“... in statutes dealing with ordinary people in their everyday lives, the language is presumed to be used in its primary ordinary sense unless this stultifies the purpose of the statute, or otherwise produces some injustice, absurdity, anomaly or contradiction, in which case some secondary ordinary sense may be preferred so as to obviate the injustice, absurdity, anomaly or contradiction or fulfil the purpose of the statute: while, in statute dealing with technical matters, words which are capable of both bearing an ordinary meaning and being terms of art in the technical matter of the legislation will presumptively bear their primary meaning as such terms of art (or, if they must necessarily be modified) some secondary meaning as terms of art)”.

(*Maunsell v Olins* [1975] AC 373 at 391.)

The formulation of Tindal CJ also resonates in the context of this appeal:

“If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in that natural and ordinary sense ...

But if any doubt arises from the terms employed by the legislature, it has always been held a safe means of collecting that intention to call in aid the ground and cause of the making of the statute ...”

(*The Sussex Peerage Case* [1844] 11 CL and FIN 85 at 143.)

[27] The primary submission of Mr Tony McGleenan QC (with Mr Philip McAteer of counsel) was that the legal capacity of the Commission's staff to exercise and perform all powers, duties and functions contained in the 2008 Act derives from a combination of sections 6, 9 and 10 of the 2008 Act, paragraph 9 of Schedule 1 and section 19 of the Interpretation Act. The court debated with counsel whether it was being submitted that decisions requiring the exercise of evaluative judgement and/or expertise belong to the domain of the Commission, whereas decisions of an administrative and routine nature can be made by members of staff. Mr McGleenan did not espouse this division. In declining to do so, his position was consistent with paragraphs 7.2 - 7.3 of the Standing Orders (see [10] above). By these discrete provisions the Commission's self-devised model is that all of the powers, duties and functions enshrined in the 2008 Act are to be exercised and performed by members of Commission staff, it being envisaged that members of the Commission itself will do so only exceptionally.

[28] The starting point is that, as noted in [7] above, the unremitting language of the 2008 Act, with the three exceptions highlighted, confers all of the powers, duties and functions which it creates on the body corporate, the Commission. The effect of s 6, considered in tandem with paragraph 4(a) of Schedule 1, is that the Commission consists exclusively of the appointed chair, deputy chair and members, while engaged staff have the status of its employees. Thus there is a clear division between these two groups. Subject to the three exceptions noted, there is nothing in the statutory language which permits staff of the Commission to exercise any of the powers, duties or functions which the statute confers on the Commission. Accordingly, Mr McGleenan's primary submission can succeed only if the statute thus empowers staff by implication. In exploring whether this is so it is trite that the statute must be considered as a whole and the Commission's internal instruments (*supra*) must be disregarded.

[29] The effect of s 6(8) of the 2008 Act is that section 19 of the Interpretation Act applies to the Commission in a qualified way: it does so "*subject to*" Schedule 1. An illustration of the operation of this qualified impact is provided in the matter of employing staff. The power to employ staff is capable of being imported by section 19(1)(a)(vi). However, taking into account the express "*subject to*" qualification, no such importation occurs given the express empowerment of the Commission to employ staff, in the terms specified, by paragraph 4(1)(a) of Schedule 1. Mr McGleenan submitted, correctly in our view, that paragraph 4 does not impose any express constraints on what staff can lawfully do. However, by the same token, it does not contain any prescription of their capacity to act or the limits thereof. Furthermore, paragraph 4 in no way dilutes or qualifies the main provisions of the statute, in particular those relating to the powers, duties and functions of the Commission.

[30] We consider that, in the language of section 19(1)(a)(vi) of the Interpretation Act, the Commission's "*right to regulate its own procedure and business*" does not speak to the question of who is empowered by the 2008 Act to exercise and perform the

powers, duties and functions which it creates. There is a clear distinction between the regulation of the Commission's "*procedure and business*" and the identification of those who are authorised and required by the 2008 Act to exercise and perform the Commission's substantive powers, duties and functions. The former is subservient to the latter. The former is confined to the practical arrangements and day to day mechanics for the exercise and discharge of the statutory powers, duties and functions. Statutory models have traditionally and consistently distinguished between jurisdiction, or capacity or *vires*, the terms being interchangeable (on the one hand) and process and procedure on the other. We consider that section 19(1)(a)(v) recognises this distinction.

[31] This distinction, moreover, is to be found in paragraph 9 of Schedule 1 to the 2008 Act. It is identifiable by juxtaposing and contrasting the words "*procedure*" and "*functions*". In this discrete context the word "*functions*" is clearly intended to embrace the Commission's substantive powers and duties also. These "*functions*" are not to be found in paragraph 9. Rather they are ascertained by reference to the panoply of provisions in the statute noted in [4] above. Paragraph 9 is, therefore, purely procedural in nature. It is harmonious with the substantive provisions of the statute, all of which – with the three exceptions noted – state unambiguously that the powers, duties and functions of the Commission are to be exercised and performed by the body corporate. The harmony is found in the words in parenthesis "*(which may include persons who are not members of the Commission)*". In short, the Commission's functions are to be discharged by its members.

[32] The procedural mechanism devised by paragraph 9(1)(a) of Schedule 1 is twofold. First, it authorises the discharge of the Commission's functions by committees. This makes clear that procedural arrangements which do not require that certain decisions be made by the Commission corporate will be lawful. Second, the membership of such committees can extend to persons who are not members of the Commission. This, in passing, is consistent with provisions of the statute such as s22(2). We consider it clear from paragraph 9 as a whole and the word "*include*" in particular that membership of any committees established under this provision must include one member of the Commission. (In passing the court received no argument on what the minimum composition of a Schedule 1 committee should be) The final noteworthy feature of paragraph 9 is that the word "*staff*" is nowhere to be found.

[33] The argument in opposition to that of Mr McGleenan was framed with particular force and clarity in one of the core propositions formulated by Mr Doran QC (with Mr Aidan McGowan of counsel) on behalf of Mr Hughes:

".... paragraph 9 of Schedule 9 delimits the extent to which the Commission may enable its functions to be discharged other than by the Commission itself ... it clearly provides no basis for the discharge of the Commission's functions by a member of the Commission's staff acting alone."

The court accepts this submission. If any reinforcement is required it is, as submitted by the Attorney General, found in the three provisions of the statute which expressly empower “*any member of staff of the Commission*” to act in specified ways. Furthermore, while the court does not consider resort to any discrete principle of statutory construction necessary, given the clear meaning and import of the statutory language, still further support is provided by the *expressio unius* principle. This, we observe, was one of the strands of the reasoning of the trial judge.

[34] Mr McGleenan’s argument also prayed in aid section 9 of the 2008 Act. This contains a series of “*general duties*” to be performed by the Commission. By these provisions the Commission must *inter alia* act in a way which it considers most appropriate for the purpose of meeting its objectives and have regard to the need to use its resources in the most efficient, effective and economic way. We consider that these high level duties, which are stand-alone provisions in the scheme of the statute, do not sound on the question of who is authorised and required by the legislation to exercise and discharge the powers, duties and functions which it creates. Section 9 is directed to the question of how rather than by whom.

[35] Reliance was also placed on section 10, the “*incidental powers*” provision. This is a familiar drafting measure. We consider it clear that the focus of this provision is what the Commission’s powers are. It does not speak to the “by whom” question.

[36] The voluminous materials assembled for the court include the statutory codes governing a range of other statutory corporations and public authorities. While the industrious researches of the parties are to be commended, we consider that the fundamental exercise to be carried out by the court in determining this appeal belongs squarely to the four corners of the 2008 Act and section 19 of the Interpretation Act, supplemented to any material extent by general legal principles. The statutory models for which the legislature has elected in other contexts do not sound on this exercise. The same observation applies to the equivalent statute in England and Wales, the Charities Act 2011. The most striking feature of this statutory model is the express provision made for the discharge by any authorised member of staff of the Commission of anything authorised or required to be done by the Commission itself under the Act, per paragraph 8 of Schedule 1. Mr McGleenan’s submission that a statutory model of this nature in a neighbouring jurisdiction was evidently considered both appropriate and viable is unexceptional. However the short point in response is that no comparable provision is to be found in the Northern Ireland statute. Furthermore, there is no suggestion, much less evidence, that this omission was inadvertent.

[37] Finally, we make clear that none of the Commission’s internally adopted instruments, some of which are included in the evidence before the court (partial elements of the manuals, together with the standing orders), can have any bearing on the exercise of construing the statute. Furthermore, and without prejudice to their admissibility, the court has been unable to identify anything in the pre-enacting materials (considered in [11] – [12] above) lending support to the

Commission's statutory construction arguments. Fundamentally these materials contain nothing to support the Commission's contention that there is a legislative intention, unexpressed but properly to be implied, that its statutory powers, duties and functions can be exercised and discharged by members of employed staff.

[38] For the reasons elaborated in the foregoing paragraphs the court concludes, agreeing with the trial judge, that the 2008 Act does not empower any member, or members, of staff of the Charity Commission to exercise any of the Commission's statutory powers or to discharge any of its statutory duties or functions.

The Implied Delegation Issue

[39] *Delegatus non potest delegare*: as a general rule, the repository of a statutory power, duty or function is the delegate of the legislature and as such is impotent to sub-delegate absent express statutory authorisation. However, certain exceptions to this hallowed principle of the common law have been recognised. The specific question is whether the Charity Commission can lawfully delegate its statutory powers, duties and functions, or any of them, to its staff.

[40] The argument on this issue was presented in the main by Mr Michael Humphreys QC (with Mr Robert McCausland of counsel) on behalf of the Department, aligning itself with the Commission. Counsels' submissions drew on sections 9 and 10 of the 2008 Act, paragraph 9 of Schedule 1 and s 19(1) (v) of the Interpretation Act, all considered above. More specifically, Mr Humphreys focused on the distinction between an "*administrative act*" and a "*judicial determination*". He also drew attention to the rights of appeal to the Charity Tribunal. His written submission ends with the following:

"It is inevitable that the taking of operational decisions be delegated to full time members of staff rather than taken by a Board which is made up of part time Commissioners."

The emphasis is ours: we shall examine the juridical pedigree of this adjective in this context.

[41] As was reflected in the submissions of all parties, the most important of the decided cases bearing on this issue is *Noon v Matthews* [2014] EWHC 4330 (Admin). The central issue in this case, an appeal by case stated, was whether the statutory body concerned (the "*Conservators*") was empowered to delegate one of its statutory powers and functions, that of initiating prosecutions, to an employee and officer of the entity. The district judge answered this question in the negative and stated certain questions for the opinion of the Divisional Court. The issue which the court formulated for its determination was whether the Conservators had an implied power to delegate the function in question. Beatson LJ identified the following point of departure, at [25]:

“The starting point is the principle that powers conferred by statute should be exercised by the person or authority on whom they are conferred, ‘even where [this] causes administrative inconvenience, except in cases where it may be reasonably inferred that the power was intended to be delegable’: Wade and Forsyth, Administrative Law, 11th Edition page 259 and see also De Smith’s Judicial Review (7th Edition), paragraph 5-148FF.”

Beatson LJ considered it necessary to examine “the context and nature of the power” under consideration. He noted “a strong presumption against interpreting a grant of legislative power as empowering delegation”. He continued:

“A strict approach is also likely if the power is conferred on the holder of a public office because of the personal qualifications and experience that those who hold the office can be expected to have.”

This was followed by:

*“But where the exercise of the power in question is not final or conclusive, where the power is given to the head of an organisation which is itself hierarchically structured and where the responsibilities of the person or body named in the statute are such that the court considers delegation is **inevitable**, a less strict approach is taken and authority to delegate is likely to be implied.” [Emphasis added]*

[42] None of the parties questioned the correctness of the principles formulated by Beatson LJ and this court shall do likewise. We consider that the court in *Noon* did not intend or purport to formulate the “inevitability” test in an exhaustive or conclusive way. Thus, there may be scope for the argument that a statutory power, duty or function may lawfully be delegated by reference to some other test. This issue does not arise in the present case since the arguments of the parties were based on how the test of inevitability should be applied to the statutory model under scrutiny viz the 2008 Act.

[43] We accept as a matter of principle that evidence such as relevant pre-enacting materials – green papers, inquiry reports, consultation reports and kindred materials – could legitimately bear on the application of this test in any given case. As noted above, however, there is nothing of significance of this nature in the present context. We consider that the test of inevitability imports considerations of viability and practicability. Common sense and an appreciation of practical reality are to be applied. A court will not blind itself to the obvious. Judicial notice of the obvious and uncontroversial will be taken where considered appropriate. The court will also look for and consider anything of relevance in the evidence before it.

[44] Giving effect to the foregoing approach this court is unavoidably struck by the paucity of evidence supporting the inevitability argument. As already noted the evidence which the Commission has provided of both its organisational composition and its *modus operandi* does not purport to be exhaustive. The court has found this evidence to be somewhat scattered and piecemeal. When one switches the focus from evidence to that of the statute itself there is, as the Attorney General submitted, nothing in the key provision in this context – section 6 – requiring that the chair or deputy chair or appointed members of the Commission (five maximum) be engaged on a part time basis. Standing back and adopting a panoramic view the court is unable to identify any indicators of the inevitability of delegation to staff of the statutory powers, duties and functions of the Commission corporate. The threshold of inevitability is to be distinguished from that of administrative convenience and desirability. It denotes a more exacting standard which, in principle, will not be easily satisfied. Furthermore, we can identify nothing in the statute or the wider canvas to confound the analysis that the scheme of the 2008 Act is that the role of the Commission is to make all of the decisions required in the exercise and discharge of the statutory powers, duties and functions while that of its staff is one of research, information gathering, briefing, advice and recommendation: compare the analysis of Carswell LCJ in *Re Belfast Telegraph Newspapers Application* [2001] NI 178 at 185B/F.

[45] This court is unable to identify anything in either the statute or the broader canvas supporting the view that a power of delegation of the Commission's statutory powers, duties and functions must be implied so as to prevent frustration or paralysis of the operation of the Commission or the statutory scheme to a material extent. This court, again concurring with the trial judge, rejects the argument of implied delegation.

Omnibus Conclusion

[46] For the reasons given the court dismisses the appeal of the Charity Commission and affirms the decision and order of Madam Justice McBride.

[47] If the effect of our decision is to require some review and amendment of the 2008 Act, careful consideration should be given to the question of whether any of the powers and functions therein enshrined can properly be discharged by the staff of the Commission and, if appropriate, to reflect this in unambiguous language. The business of administering and overseeing charities in Northern Ireland is a matter of significant public importance, engaging a public interest of some potency.

APPENDIX OF RELEVANT STATUTORY PROVISIONS

Charities Act (Northern Ireland) 2008

PART 2 THE CHARITY COMMISSION FOR NORTHERN IRELAND

Establishment of the Commission

The Charity Commission for Northern Ireland

6—(1) There shall be a body corporate to be known as the Charity Commission for Northern Ireland (in this Act referred to as “the Commission”).

(2) The Commission shall consist of a chair, a deputy chair and at least 3, but no more than 5, other members.

(3) The members shall be appointed by the Department.

(4) The Department shall exercise the power in subsection (3) so as to secure that—

(a) the knowledge and experience of the members of the Commission (taken together) includes knowledge and experience of the matters mentioned in subsection (5), and

(b) at least 1 member is legally qualified.

(5) The matters mentioned in this subsection are—

(a) the law relating to charities,

(b) charity accounts and the financing of charities, and

(c) the operation and regulation of charities of different sizes and descriptions.

(6) A person is not legally qualified for the purposes of subsection (4)(b) unless the person is a barrister or solicitor of not less than 7 years' standing.

(7) Schedule 1 makes further provision with respect to the Commission.

(8) Subject to Schedule 1, section 19 of the Interpretation Act (Northern Ireland) 1954 (c. 33) applies to the Commission.

The Commission's objectives, general functions, etc.

The Commission's objectives

7—(1) The Commission has the objectives set out in subsection (2).

(2) The objectives are—

1. The public confidence objective.

2. The public benefit objective.
3. The compliance objective.
4. The charitable resources objective.
5. The accountability objective.

(3) Those objectives are defined as follows –

1. The public confidence objective is to increase public trust and confidence in charities.
2. The public benefit objective is to promote awareness and understanding of the operation of the public benefit requirement.
3. The compliance objective is to promote compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.
4. The charitable resources objective is to promote the effective use of charitable resources.
5. The accountability objective is to enhance the accountability of charities to donors, beneficiaries and the general public.

The Commission's general functions

8 – (1) The Commission has the general functions set out in subsection (2).

(2) The general functions are –

1. Determining whether institutions are or are not charities.
2. Encouraging and facilitating the better administration of charities.
3. 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.
4. Determining whether public collection certificates should be issued, and remain in force, in respect of public charitable collections.
5. Obtaining, evaluating and disseminating information in connection with the performance of any of the Commission's functions or meeting any of its objectives.
6. Giving information or advice, or making proposals, to the Department on matters relating to any of the Commission's functions or meeting any of its objectives.

(3) The Commission's fifth general function includes (among other things) the establishment and maintenance of an accurate and up-to-date register of charities under section 16.

(4) The Commission's sixth general function includes (among other things) complying, so far as is reasonably practicable, with any request made by the Department for information or advice on any matter relating to any of the Commission's functions.

The Commission's general duties

9–(1) The Commission has the general duties set out in subsection (2).

(2) The general duties are –

1. So far as is reasonably practicable the Commission must, in performing its functions, act in a way –

- (a) which is compatible with its objectives, and
- (b) which it considers most appropriate for the purpose of meeting those objectives.

2. So far as is reasonably practicable the Commission must, in performing its functions, act in a way which is compatible with the encouragement of –

- (a) all forms of charitable giving, and
- (b) voluntary participation in charity work.

3. In performing its functions the Commission must have regard to the need to use its resources in the most efficient, effective and economic way.

4. 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).

5. In performing its functions the Commission must have regard to the desirability of facilitating innovation by or on behalf of charities.

6. In managing its affairs the Commission must have regard to such generally accepted principles of good corporate governance as it is reasonable to regard as applicable to it.

The Commission's incidental powers

10–(1) The Commission has power to do anything which is calculated to facilitate, or is conducive or incidental to, the performance of any of its functions or general duties.

(2) However, nothing in this Act authorises the Commission—

(a) to exercise functions corresponding to those of a charity trustee in relation to a charity, or

(b) otherwise to be directly involved in the administration of a charity.

(3) Subsection (2) does not affect the operation of section 36 or 37 (power of Commission to give directions as to action to be taken or as to application of charity property).

The official custodian for charities in Northern Ireland **PROSPECTIVE**

The official custodian for charities in Northern Ireland

11–(1) There shall be an officer to be known as the official custodian for charities in Northern Ireland (in this Act referred to as “the official custodian”) whose function it shall be to act as trustee for charities in the cases provided for by this Act; and the official custodian shall be [F2a corporation sole whose official seal] shall be officially and judicially noticed.

(2) Such individual as the Commission may designate shall be the official custodian.

(3) The duties of the official custodian shall be performed in accordance with such general or special directions as may be given by the Commission, and the expenses of the official custodian (except those re-imbursed, or recovered by, the official custodian as trustee for any charity) shall be defrayed by the Commission.

(4) Anything which is required to or may be done by, to or before the official custodian may be done by, to or before any member of staff of the Commission generally or specially authorised by it to act for the official custodian during a vacancy in the office of the official custodian or otherwise.

(5) The official custodian shall not be liable as trustee for any charity in respect of any loss or of the mis-application of any property unless it is occasioned by or through the wilful neglect or default of the official custodian or of any person acting for the official custodian; but the Commission shall be liable to make good to a charity any sums for which the official custodian may be liable by reason of any such neglect or default.

(6) The official custodian shall keep such books of account and such records in relation thereto as may be directed by the Department and shall prepare accounts in such form, in such manner and at such times as may be so directed.

(7) The accounts so prepared shall be examined, certified and reported on by the Comptroller and Auditor General.

(8) The Comptroller and Auditor General shall send to the Commission a copy of the accounts as certified in accordance with subsection (7), together with the report on them.

(9) The Commission shall publish and lay before the Assembly a copy of the documents sent to it under subsection (8).

Status of registered charity to appear on official publications, etc.

19 – (1) The fact that a charity is registered shall be stated in legible characters –

(a) in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity;

(b) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity; and

(c) in all bills rendered by it and in all its invoices, receipts and letters of credit.

(2) Subsection (1)(a) has effect whether the solicitation is express or implied, and whether the money or other property is to be given for any consideration or not.

(3) Any person who issues or authorises the issue of any document falling within paragraph (a) or (c) of subsection (1) which does not contain the statement required by that subsection, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) Any person who signs any document falling within paragraph (b) of subsection (1) which does not contain the statement required by that subsection, is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

General power to institute inquiries

22–(1) The Commission may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(2) The Commission may either conduct such an inquiry or appoint a person to conduct it and make a report to the Commission.

(3) For the purposes of any such inquiry the Commission, or a person appointed by the Commission to conduct it, may (subject to the provisions of this section) direct any person (P) –

(a) to provide accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which P has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to P on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to provide copies of documents in P's custody or under P's control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;

(c) to attend at a specified time and place and give evidence or produce any such documents.

(4) For the purposes of any such inquiry evidence may be taken on oath, and the person conducting the inquiry may for that purpose administer oaths, or may instead of administering an oath require P to make and subscribe a declaration of the truth of the matters about which P is examined.

(5) The Commission may pay to P the necessary expenses of attending to give evidence or produce documents for the purpose of an inquiry under this section, and P shall not be required in obedience to a direction under paragraph (c) of subsection (3) to go more than 10 miles from P's place of residence unless those expenses are paid or tendered to P.

(6) Where an inquiry has been held under this section, the Commission may either –

(a) cause the report of the person conducting the inquiry, or such other statement of the results of the inquiry as the Commission thinks fit, to be printed and published, or

(b) publish any such report or statement in some other way which is calculated in the Commission's opinion to bring it to the attention of persons who may wish to make representations to the Commission about the action to be taken.

Power to act for protection of charities

33—(1) 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; or

(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 one or more of the following things—

(i) by order suspend any person who is a trustee, charity trustee, officer, agent or employee of the charity from the exercise of that person's office or employment pending consideration being given to that person's removal (whether under this section or otherwise);

(ii) by order appoint such number of additional charity trustees as it considers necessary for the proper administration of the charity;

(iii) by order vest any property held by or in trust for the charity in the official custodian, or require the persons in whom any such property is vested to transfer it to the official custodian, or appoint any person to transfer any such property to the official custodian;

(iv) order any person who holds any property on behalf of the charity, or of any trustee for it, not to part with the property without the approval of the Commission;

(v) order any debtor of the charity not to make any payment in or towards the discharge of liability to the charity without the approval of the Commission;

(vi) by order restrict (notwithstanding anything in the trusts of the charity) the transactions which may be entered into, or the nature or amount of the payments which may be made, in the administration of the charity without the approval of the Commission;

(vii) by order appoint (in accordance with section 35) an interim manager, who shall act as receiver and manager in respect of the property and affairs of the charity.

(2) 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.

(3) The references in subsections (1) or (2) to misconduct or mismanagement shall (notwithstanding anything in the trusts of the charity) extend to the employment for the remuneration or reward of persons acting in the affairs of the charity, or for other administrative purposes, of sums which are excessive in relation to the property which is or is likely to be applied or applicable for the purposes of the charity.

(4) The Commission may also remove a charity trustee by order made of its own motion –

(a) where, within the last 5 years, the trustee –

(i) having previously been adjudged bankrupt or had estate sequestrated, has been discharged, or

(ii) having previously made a composition or arrangement with, or granted a trust deed for, creditors, has been discharged in respect of it; or

(iii) having previously been the subject of a debt relief order, has been discharged from all the qualifying debts under the debt relief order;

(b) where the trustee is a corporation in liquidation;

(c) where the trustee is incapable of acting by reason of mental disorder within the meaning of the Mental Health (Northern Ireland) Order 1986 (NI 4);

(d) where the trustee has not acted, and will not declare willingness or unwillingness to act;

(e) where the trustee is outside Northern Ireland or cannot be found or does not act, and that absence or failure to act impedes the proper administration of the charity.

(5) The Commission may by order made of its own motion appoint a person to be a charity trustee –

(a) in place of a charity trustee removed by the Commission under this section or otherwise;

(b) where there are no charity trustees, or whereby reason of vacancies in their number or the absence or incapacity of any of their number the charity cannot apply for the appointment;

(c) where there is a single charity trustee, not being a corporation aggregate, and the Commission is of opinion that it is necessary to increase the number for the proper administration of the charity;

(d) where the Commission is of opinion that it is necessary for the proper administration of the charity to have an additional charity trustee because one of the existing charity trustees who ought nevertheless to remain a charity trustee either cannot be found or does not act or is outside Northern Ireland.

(6) The powers of the Commission under this section to remove or appoint charity trustees of its own motion shall include power to make any such order with respect to the vesting in or transfer to the charity trustees of any property as the Commission could make on the removal or appointment of a charity trustee by it under section 31.

(7) Any order under this section for the removal or appointment of a charity trustee or trustee for a charity, or for the vesting or transfer of any property, shall be of the like effect as an order made under section 31.

(8) The power of the Commission to make an order under subsection (1)(i) shall not be exercisable so as to suspend any person (P) from the exercise of office or employment for a period of more than 12 months; but (without prejudice to the generality of section 175(1)), any such order made in the case of P may make provision as respects the period of P's suspension for matters arising out of it, and in particular for enabling any person to execute any instrument in P's name or otherwise act for P and, in the case of a charity trustee, for adjusting any rules

governing the proceedings of the charity trustees to take account of the reduction in the number capable of acting.

(9) Before exercising any jurisdiction under this section otherwise than by virtue of subsection (1), the Commission shall give notice of its intention to do so to each of the charity trustees, except any that cannot be found or has no known address; and any such notice may be given by post and, if given by post, may be addressed to the recipient's last known address.

(10) The Commission shall, at such intervals as it thinks fit, review any order made by it under paragraph (i), or any of paragraphs (iii) to (vii), of subsection (1); and, if on any such review it appears to the Commission that it would be appropriate to discharge the order in whole or in part, the Commission shall so discharge it (whether subject to any savings or other transitional provisions or not).

(11) Any person who contravenes an order under subsection (1)(iv), (v) or (vi), is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(12) Subsection (11) shall not be taken to preclude the bringing of proceedings for breach of trust against any charity trustee or trustee for a charity in respect of a contravention of an order under subsection (1)(iv) or (vi) (whether proceedings in respect of the contravention are brought against that person under subsection (11) or not).

96—(1) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—

(a) any property acquired under any disposition or agreement previously made otherwise than for full consideration in money or money's worth, or any property representing property so acquired,

(b) any property representing income which has accrued before the alteration is made, or

(c) the income from any such property as aforesaid.

(2) Where a charity is a company, any regulated alteration by the company —

(a) requires the prior written consent of the Commission, and

(b) is ineffective if such consent has not been obtained.

(3) The following are “regulated alterations” –

- (a) an amendment of the company's articles of association adding, removing or altering a statement of the company's objects,
- (b) any alteration of any provision of its articles of association directing the application of property of the company on its dissolution, and
- (c) any alteration of any provision of its articles of association where the alteration would provide authorisation for any benefit to be obtained by directors or members of the company or persons connected with them.

(4) For the purposes of subsection (3) –

- (a) “benefit” means a direct or indirect benefit of any nature, except that it does not include any remuneration (within the meaning of section 88) whose receipt may be authorised under that section; and
- (b) the same rules apply for determining whether a person is connected with a director or member of the company as apply, in accordance with section 89(5) and (6), for determining whether a person is connected with a charity trustee for the purposes of section 88.

[F5(5) Where a company that has made a regulated alteration in accordance with subsection (2) is required –

- (a) by section 26 of the Companies Act to send to the registrar of companies a copy of its articles as amended,
- (b) by section 30 of that Act to forward to the registrar a copy of the special resolution effecting the alteration, or
- (c) by section 31 of that Act to give notice to the registrar of the amendment, the copy or notice must be accompanied by a copy of the Commission's consent.

(5A) If more than one of those provisions applies and they are complied with at different times, the company need not send a further copy of the Commission's consent if a copy was sent on an earlier occasion.

(6) Section 30(2) to (4) of that Act (offence of failing to comply with section 30) apply in relation to a failure to comply with subsection (5) as in relation to a failure to comply with that section.]

SCHEDULE 1 THE CHARITY COMMISSION FOR NORTHERN IRELAND

Terms of appointment

1 The members of the Commission shall hold and vacate office as such in accordance with the terms of their respective appointments.

2—(1) An appointment of a person to hold office as a member of the Commission shall be for a term not exceeding 5 years.

(2) A person holding office as a member of the Commission—

(a) may resign that office by giving notice in writing to the Department, and

(b) may be removed from office by the Department on the ground of incapacity or misbehaviour.

(3) Before removing a member of the Commission, the Department shall consult the Commission.

Remuneration, etc.

3 The Department may, with the approval of the Department of Finance and Personnel, pay to or in respect of members of the Commission—

(a) remuneration;

(b) allowances and fees; and

(c) sums for the provision of pensions.

Staff

4—(1) The Commission may with the approval of the Department and the Department of Finance and Personnel as to numbers and as to remuneration and other terms and conditions of employment—

(a) employ such staff as the Commission considers necessary;

(b) employ the services of such other persons as the Commission considers expedient for any particular purpose.

(2) The Commission may, in the case of such of its staff as may be determined by it with the approval of the Department and the Department of Finance and Personnel, pay such pensions, allowances or gratuities, or provide and maintain such pension schemes, as may be so determined.

(3) Payments made or expenses incurred under this paragraph shall be defrayed out of money appropriated by Act of the Assembly.

5—(1) The Commission may make arrangements with the Department for persons employed in the Northern Ireland civil service to be seconded to the Commission.

(2) Such arrangements require the consent of the Department of Finance and Personnel.

Annual report

6—(1) The Commission shall, as soon as reasonably practicable after the end of each financial year, make a report to the Department on—

- (a) the discharge of its functions,
- (b) the extent to which, in its opinion, its objectives (see section 7) have been met,
- (c) the performance of its general duties (see section 9), and
- (d) the management of its affairs.

(2) In sub-paragraph (1), “financial year” means—

- (a) the period beginning with the date on which the Commission is established and ending with the next 31st March following that date, and
- (b) each successive period of 12 months ending with 31st March.

(3) Sub-paragraph (4) applies if there is a period of one or more days which—

- (a) began on the day after the end of the last year for which the Department made a report under section 34 of the Charities Act (Northern Ireland) 1964; and
- (b) ended on the day before the coming into operation of section 6.

(4) The first report published by the Commission under this paragraph shall also be a report on the operations of the Department under that Act and the Charities (Northern Ireland) Order 1987 (NI 19) during the period mentioned in sub-paragraph (3).

(5) The Department shall lay a copy of the report before the Assembly.

Money

7—(1) Expenditure incurred by the Commission may be defrayed as expenses of the Department if authorised by that Department and the Department of Finance and Personnel.

(2) Expenditure defrayed under this paragraph shall be defrayed out of money appropriated by Act of the Assembly and an authorisation for the purposes of this paragraph may be general or specific.

8—(1) The Commission shall keep accounts and financial records in a form approved by the Department.

(2) The Commission shall—

- (a) prepare a statement of accounts in respect of each financial year containing such information, and in such form, as is directed by the Department with the consent of the Department of Finance and Personnel; and
 - (b) send a copy to the Department and to the Comptroller and Auditor General for Northern Ireland within such period after the end of the financial year as the Department directs.
- (3) The Comptroller and Auditor General for Northern Ireland shall –
- (a) examine, certify and report on the statement of accounts; and
 - (b) send a copy of the statement of accounts and of the report to the Department.
- (4) The Department shall lay a copy of the statement of accounts and the Comptroller and Auditor General's report before the Assembly.
- (5) For the purposes of this paragraph –
- (a) a financial year is a period of 12 months ending on 31st March; but
 - (b) the first financial year is the period beginning with the day on which section 6 comes into operation and ending with the first 31st March which falls at least 6 months after that day.

Procedure

- 9**–(1) In determining its own procedure the Commission may, in particular, make provision about –
- (a) the discharge of its functions by committees (which may include persons who are not members of the Commission);
 - (b) a quorum for meetings of the Commission or a committee.
- (2) The validity of any proceedings of the Commission or a committee shall not be affected by –
- (a) a vacancy in the office of chair or deputy chair; or
 - (b) a defect in the appointment of a member.

Power to transfer property

- 10**–(1) This paragraph applies where the Department –
- (a) acts as trustee of any property for a charity, and
 - (b) is of the opinion that the official custodian should so act in exercise of any function conferred on the official custodian by or under this Act.

(2) The Department may by order transfer to the official custodian any such property, and any rights and liabilities to which the Department is entitled or subject in connection with that property.

(3) Sub-paragraph (2) –

(a) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of whatever nature) which would prevent or restrict the transfer of the property, rights or liabilities otherwise than under that sub-paragraph; but

(b) does not apply to rights or liabilities under a contract of employment.

(4) The Statutory Rules (Northern Ireland) Order 1979 (NI 12) shall not apply to any order made under sub-paragraph (2).

Status

11 The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and property of the Commission shall not be regarded as property of, or held on behalf of, the Crown.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

12 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies whose members are disqualified), at the appropriate place insert – “ The Charity Commission for Northern Ireland ”.

The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)

The Freedom of Information Act 2000 (c. 36)

14 In Part 7 of Schedule 1 to the Freedom of Information Act 2000 (bodies, etc. which are public authorities for the purposes of the Act) at the appropriate place insert – “ The Charity Commission for Northern Ireland ”.

Interpretation Act (Northern Ireland) 1954

19 Effect of words of incorporation.

(1) Where an Act passed after the commencement of this Act contains words establishing, or providing for the establishment of, a body corporate and applying this section to that body those words shall operate –

(a) to vest in that body when established –

(i) the power to sue in its corporate name;

(ii) the power to enter into contracts in its corporate name, and to do so that, as regards third parties, the body shall be deemed to have the same power to make contracts as an individual has;

(iii) the right to have a common seal and to alter or change that seal at pleasure;

(iv) the right to acquire and hold any real or personal property for purposes for which the corporation is constituted and to dispose of or charge such property at pleasure;

(v) the right to regulate its own procedure and business; and

(vi) the right to employ such staff as may be found necessary for the performance of its functions;

(b) to make that body liable to be sued in its corporate name;

(c) to require that judicial notice shall be taken of the common seal of that body, and that every document purporting to be a document sealed by that body and to be attested in accordance with the statutory provisions, if any, applicable to the attestation of documents so sealed shall, unless the contrary is proved, be received in evidence and be deemed to be such a document without further proof;

(d) to vest in a majority of the members of that body the power, subject to any quorum fixed by the enactment under which it is established or by any relevant standing orders, to bind other members thereof; and

(e) to exempt from personal liability for the debts, obligations or acts of that body, such members thereof as do not contravene the provision of the Act under which the body is established.

(2) Without prejudice to sub-section (1) of section two, the application of this section to a body corporate shall not —

(a) prevent additional powers being conferred by any enactment on that body; or

(b) prevent the powers conferred by virtue of such application being limited by any enactment; or

(c) prejudice or affect any liability of any member of that body to be surcharged with the payment of any amount which may be disallowed, by an auditor acting in pursuance of any statutory provision, in the accounts of that body.