

**THE CHARITIES ACT (NORTHERN IRELAND) 2008
THE CHARITIES ACT (NORTHERN IRELAND) 2013
THE CHARITIES ACT (NORTHERN IRELAND) 2022
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND
IN THE MATTER OF A REFERENCE PURSUANT TO SCHEDULE 4 TO THE
CHARITIES ACT (NORTHERN IRELAND) 2008**

DETERMINATION

Determined Remotely on the Papers on 20 October 2025

Before

Damien McMahon, President of the Tribunal.

Parties:

The Charity Commission for Northern Ireland

Referrer

Background and Introduction

1. These proceedings concern a Notice of Reference ('the Reference') made by the Charity Commission for Northern Ireland ('the Referrer') on 23/01/2025, pursuant to paragraph 2(b) of Schedule 4 to the Charities Act (Northern Ireland) 2008 ('the Act') by which the Referrer sought the Tribunal's determination of two questions ('the Questions') of charity law in Northern Ireland, namely –
 - (1) what is the definition of 'office-holder' for the purpose of section 24 of the Act?

- (2) are Members of Parliament (MPs), Ministers of the Northern Ireland Executive and local councillors 'office-holders' for the purpose of sharing information under section 24 of the Act?
2. The necessary consent of the Attorney-General for Northern Ireland ('AGNI') to the Referrer making the said Reference was granted to the Referrer by the AGNI, pursuant to paragraph 1(2) to Schedule 4 of the Act, on 28/11/2024.
 3. The Referrer is the only party to these proceedings. The AGNI expressly declined her entitlement to be added as a Respondent to these proceedings.
 4. The Tribunal published the Reference on the judiciaryni website, in a document dated 17/04/2025, and published Initial Directions dated 23/04/2025 on that website inviting any person who wished to be joined as a Respondent to the Determination of the said Reference by the Tribunal, pursuant to paragraph 2(3) to Schedule 4 to the Act, to make such application, in writing, to the Secretary to the Tribunal by 4.00pm on Thursday, 19/06/2025, setting out how they considered they satisfied the statutory criteria to be so joined set out in paragraphs 1(4) and 2(3)(b) to Schedule 4 to the Act by strict reference to the precise two questions of charity law in Northern Ireland identified by the Referrer in its Reference to the Tribunal. No person made an application to be joined as a Respondent to these proceedings.
 5. Following further Directions dated 25/06/2025 issued by the Tribunal to the Referrer, the Referrer, *inter alia*, stated that it was content that this Reference be determined on the papers alone without a hearing and that it did not propose to make any further submissions on the substantive issues raised in the Reference. In Directions issued by the Tribunal dated 23/07/2025, the Tribunal decided that the Reference would be determined on the papers only without a hearing, as invited by the Referrer.
 6. The object of a Reference being made to the Tribunal by a Referrer is to seek clarification from the Tribunal of a discrete issue(s) of charity law in Northern Ireland of general application.

The Referrer's Submissions

7. The only submissions of the Referrer were those contained within the Notice of Reference itself dated 23/01/2025, comprising 11 pages. This was supplemented by the Referrer proving a 'List of Authorities' bundle containing statutory materials, case law (comprising one judgement, that of the Supreme Court in ***Gilham v. Ministry of Justice*** [2019] UKSC 44) and an extract from the 10th Edition, 2009 of the leading text 'Wade & Forsyth on Administrative Law').
8. The Questions, as set out in paragraph 1 of this Determination are, strictly, the only questions that are the subject of this Determination. This Determination does not consider, or offer an opinion upon, the impact of any other legislation or caselaw authority that may, or may not, impact on the Tribunal's Determination of the Questions and, indeed, the Referrer, in its detailed written

submission contained in the Notice of Reference, points out that, pursuant to section 24(5) of the Charities Act (Northern Ireland) 2008 ('the Act'), the power of the Referrer to *disclose* information, pursuant to Section 24(1) or (2) of the Act, is subject to any express restriction imposed by or under any other statutory provision.

The Legal Framework

9. Section 24 of the Act addresses 'disclosure of information by and to the Referrer in the following terms:
 - a) the Referrer **may** disclose any information to any public body or **office-holder** essentially anywhere in the world, so long as such disclosure is –
 - for any purpose connected with the exercise of the Referrer's functions (its general functions being set out in section 8 of the Act), or;
 - for the purpose of enabling or assisting the public body or **office-holder** to exercise any of their functions.
 - b) A specific range of public bodies, including one class of **office-holder** who is an individual, may disclose any information to the Referrer for the purpose of enabling or assisting the Referrer to exercise any of its functions, namely –
 - any Northern Ireland authority (defined as the First Minister, the Deputy First Minister, a Northern Ireland Minister or a Northern Ireland department);
 - the Northern Ireland Assembly Commission;
 - any district council;
 - any constable, and
 - any other public authority whose functions are exercisable only or mainly in or as regards Northern Ireland and relate only or mainly to transferred matters.
10. There is no definition of 'office-holder' in the Act; indeed, the term can have different meanings in particular circumstances, as recognised in Wade and Forsyth in their leading text on administrative law and in various contexts in other Northern Ireland legislation and by the Supreme Court in *Gilham*.
11. The Explanatory Note to the Act reminds readers that section 24 is part of the statutory framework in Part 5 of the Act that empowers the Referrer to institute statutory inquiries into any aspect of the work of a charity or class of charities and specifically mentions other examples of specific public bodies from who, and to who, it might request disclosure of information and / or, make such disclosure in pursuit of the Referrer's functions.
12. There is a subtle difference in approach in section 24(1) of the Act (disclosure **by** the Referrer) and that in section 24(2)-(4) of the Act (disclosure **to** the Referrer), the latter being in arguably narrower terms that, conceivably, could

restrict the Referrer in conducting its important function in opening and conducting its said statutory inquiries.

13. The Charities Act 2022 ('the 2022 Act') makes additional statutory provision to require 'a relevant institution' (that is not defined in the 2022 Act) or 'a person connected with a relevant institution', should Regulations be made under section 16A of the Act, as amended by the 2022 Act, to provide the Referrer with information or evidence for the purpose of enabling the Referrer to determine whether the institution is, or is still, a charity exempted from being registered in the Register of Charities under section 16A. However, this is of no consequence for the purpose of determining this Reference.
14. In the jurisdiction of England and Wales, the statutory provision governing disclosure by and to the Charity Commission, contained in the Charities Act 2011, is broadly similar to the provisions in Section 24 of the Act (that is, the Charities Act (Northern Ireland) 2008), and has never raised any controversy. However, disclosure **to** the Charity Commission in that jurisdiction **may** be made by 'any relevant public authority', that is, any government department (including any Northern Ireland department), any local authority, a constable or any other body or person discharging functions of a public nature (including a body or person discharging regulatory functions in relation to any description of activities), but is confined to disclosure for the purpose of enabling or assisting the Charity Commission there to discharge any of its functions. Disclosure **by** the Charity Commission there is permitted to be made to any of the same public authorities of **any** information received by the Charity Commission there in connection with any of the Commission's functions if disclosure is made for the purpose of enabling or assisting the said public authorities to discharge any of their functions, or the information so disclosed is otherwise relevant to the discharge of any of the functions of the said public authorities. The term 'office-holder' is not defined in statute in that jurisdiction either.

Reference Proceedings

15. The Questions, expressly approved by the AGNI in granting her consent to the Referrer to make this Reference, are properly a question of charity law in Northern Ireland of general application. The Tribunal finds, in those circumstances, that the nature of the Reference made by the Referrer, and the terms of the Reference, were appropriate.
16. Reference proceedings are a novel legal process, unique to the charity law jurisdiction in all three separate legal jurisdictions of the United Kingdom. There has only been one previous reference to the Tribunal in Northern Ireland (made by the AGNI in which the instant Referrer declined to be added as a Respondent), and only two References to the Charity Tribunal of England and Wales. None of these three References concerned the subject matter of the instant Reference.
17. The statutory intention behind the creation of a declaratory jurisdiction such as the Reference procedure is to enable the Referrer to seek the ruling of the

Tribunal on either a hypothetical question(s), or the application of charity law in Northern Ireland to a particular state of affairs. Reference proceedings are not intended to be adversarial. Unfortunately, there is no equivalent in the Charity Tribunal Rules (Northern Ireland) 2010 ('the Rules') to Rule 33(2) of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 that apply only in the legal jurisdiction of England and Wales. That statutory Rule empowers the Charity Tribunal in that jurisdiction to permit or request any person to attend and take part in a hearing to such extent as the Tribunal considers proper; or to make written submissions in relation to a particular issue. However, Rule 29 of the Rules gives a wide discretion to the Tribunal in the conduct of proceedings before it: the Tribunal must, indeed, conduct all hearings before it in such manner as it considers most suitable to the clarification of the issues before it, and generally to the just, expeditious and economical determination of the proceedings. If appropriate, Rule 29 of the Rules may provide an avenue for persons with a more remote interest in the subject-matter of the Reference who have made application to be joined as a party to participate should one or more of them not be given permission to be joined as parties. However, in any event, no person, whether of one or more of the range of persons referred to in the Reference, or otherwise, sought to be joined as a Respondent to these Reference proceedings.

18. While Rule 40 of the Rules envisages the Tribunal convening a Directions hearing, pursuant to Rule 7(3) of the Rules, following the filing of a Notice of Reference and (in this case) the Respondent's (that is, in this case, the Referrer's Notice) Notice, the Referrer did not request a hearing in this case. Accordingly, the question of convening a Directions hearing in this case is otiose.

Determination

19. There is a public interest in approaching the two questions raised in the Reference with a maximum degree of openness and transparency.
20. There is no definition of 'officeholder' in the Act, nor is there an overarching, single definition of 'officeholder' in any statutory provision. Many pieces of legislation define 'officeholder' for specific and differing purposes. In particular, as pointed out by Wade & Forsyth, an officeholder, in a given set of circumstances, is someone who has been given a status which will be specifically protected by law, while, equally, in another given set of circumstances, an 'officeholder' holds that status by reason of a mere employment under a contract of service.
21. Assistance, by reference to statutory interpretation, with regard to who may be an 'officeholder' for the purposes of Section 24 of the Act, must be gleaned from other statutory provisions, many of which are mentioned by the Referrer in its Notice of Reference. It may be that, in general terms, for the purpose of charity law in Northern Ireland, the proper approach to 'officeholder' should be confined to the first category identified by Wade & Forsyth, that is, the holder of an 'office' has a status that the law will protect specifically, as opposed to holding an 'office' that is a mere employment under a contract of service. This

must, however, be subject to any specific statutory designation of a person as an 'office-holder'.

22. The Referrer, in carrying out any of its activities by reference to its statutory powers, must act only in accordance with its statutory objectives, functions and duties set out in Sections 7-9, inclusive, of the Act.

23. The **discretionary** 'sharing of information' power by, and to, the Referrer, within the limited class of 'public authorities' and specific 'officeholders' that is set out in Section 24 of the Act, flows from, and must be exclusively associated with the power of the Referrer set out in Section 22 to institute a statutory inquiry into a charity or class of charities since both Sections 22 and 24 are contained within Part 5 (Information Powers) to the Act. However, the only persons who can make an application to the Tribunal challenging the opening of a statutory inquiry are the charity itself (if incorporated) or the persons who have control or management of any charity who is, or who are, a member(s) of the class of institutions in question as set out in paragraph 4 of Column 2 to Schedule 3 of the Act. Significantly, and possibly with some incongruity, this is a much narrower class than a 'public body' or 'officeholder' referred to in Section 24 of the Act. However, this can be rationalised since the discretionary power afforded to the Referrer in Section 24 of the Act is concerned only with the sharing of information by or to the Referrer within the limited classes or persons, corporate or otherwise, contained within Section 24.

24. Answers to the Questions raised in the Reference

(1) Definition of Office-holder for the Purposes of Section 24 of the Act.

This question is not capable of definition even for the limited purpose of section 24 of the Act, having regard, in particular, to the differing statutory provision governing disclosure by and to the Referrer. The Referrer should, having regard to the wording of Section 24, and the suggestions of Wade and Forsyth, adopt a purposive interpretation that allows for as much openness and transparency as possible, but having regard to the restrictions on disclosure by, or to, the Referrer contained in the Act and in other statutory provisions, having regard too that disclosure by and to the Referrer can only be in the context of a statutory inquiry.

(2) Are the Specified Individuals 'Office-holders for the Purposes of Section 24?

None of the specified individuals are expressly identified as office-holders for the purposes of Section 24 of the Act. However, they may be regarded, in more general terms, as 'office-holders'. The question asks whether a range of **individuals** are office-holders for the purposes of Section 24 of the Act. However, only one individual office-holder, a constable, is expressly identified in that capacity. Bearing in mind that Section 24 of the Act is a **discretionary** power to permit the Referrer to disclose, or to seek information, but only in circumstances where it is exercising its power to open and conduct a statutory inquiry, it is difficult to see how the range of

individuals identified by the Referrer could not properly be found to be ‘office-holders’ in a more general sense who would properly be entitled to disclose information to the Referrer, and the Referrer properly be entitled to disclose information to those office-holders in the discharge by the Referrer of its statutory functions that engage the sharing of information by, and to, the Referrer, also bearing in mind the statutory general functions, objectives and duties of the Referrer set out in the Act.

Signed

Damien J. McMahon
President
Charity Tribunal for Northern Ireland

Date: 20 October 2025