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 MATTER OF AN APPEAL OF A DECISION OF THE CHARITY COMMISSION FOR NORTHERN IRELAND TO THE CHARITY TRIBUNAL FOR NORTHERN IRELAND
Appeal No. 1/22

BETWEEN
DISABLED POLICE OFFICERS' ASSOCIATION OF NORTHERN IRELAND
Appellant

and

THE CHARITY COMMISSION FOR NORTHERN IRELAND
Respondent

DECISION

Introduction

1. On 15 April 2022, the Appellant issued an application for a review of a decision, made on 30 January 2014 and communicated on 14 February 2014, by which the Respondent instituted an inquiry into the Appellant, pursuant to the Respondent's powers in section 22 of the Charities Act (Northern Ireland) 2008 ("the 2008 Act") ("the Respondent's Decision").

2. The hearing of the Appellant's application for a review came on for hearing before this Tribunal on 5 November 2025. At that hearing, the Appellant was represented by Mr David McMillen K.C. and the Respondent was represented by Mr Robert McCausland, Barrister-at-Law. The members of the Tribunal are grateful to Counsel for their helpful and focused oral and written submissions.

Grounds for review

3. The Appellant advanced two grounds in support of its application for a review, namely:

    a. The Respondent's decision to institute an inquiry into the Appellant was not made in compliance with the statutory duties set out in section 9 of the Charities Act (Northern Ireland) 2008 ("the 2008 Act"); and

    b. At the date the decision was made the Respondent had not delegated its powers to a subcommittee of Commissioners in accordance with Schedule 1 paragraph 9 of the 2008 Act.

4. The parties agreed that, as set out in paragraph 4(4) of Schedule 3 of the 2008 Act, (4), in determining an application for a review of a decision to institute an inquiry into a charity, the Tribunal shall apply the principles which would be applied by the High Court on an application for judicial review.

Ground 1: The Respondent's decision to institute an inquiry into the Charity was not made in compliance with the statutory duties set out in section 9 of the 2008 Act

5. The core of the Appellant's argument under Ground 1 was that the Respondent's decision to institute an inquiry into the Appellant was disproportionate, having regard to the Respondent's duty, set out in Section 9(2)4 of the 2008 Act. Under that provision, the Respondent's regulatory activities should be "proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed". The Appellant characterised an inquiry by the Respondent as "heavy handed" and thus inappropriate given the matters in issue.

6. In addition to this core argument as to proportionality, at the hearing, in response to a question from the Tribunal, Mr McMillen also briefly characterised the decision to institute an inquiry into the Appellant as irrational. That argument had not been advanced in his written submissions. It was not elaborated upon to any extent in his primary oral submissions and was not revisited in his closing reply. Mr McMillen also, in his main submissions raised the question of transparency, but, again did not elaborate on this argument and he did not revisit it at all in his closing.

7. Although the parties had been given the opportunity to file witness statements and thus to call oral evidence, neither party elected to do so. Accordingly, such findings of fact as the Tribunal is able to make are made based on the papers to which the Tribunal's attention was drawn during the hearing.

8. On that basis the Tribunal makes the following findings of fact:

    a. As appears from the Appellant's Memorandum of Association,

    "…the objectives of the Charity are to promote the relief and benefit of the members of the Disabled Police Officers' Association of Northern Ireland … who have received serious personal injury whether physical or mental whilst in the service of the Royal Ulster Constabulary, the Royal Ulster Constabulary Reserve or the Police Service of Northern Ireland by the provision of rehabilitation with the objective of preserving and protecting the health and improving the conditions of life of such members of the Association."

    b. On 8 November 2013, an officer in the Appellant, AB, filed a Concern Form with the Respondent. The contents of the Concern Form were verified by AB by way of a declaration of truth.

    c. In that Concern Form, AB made the following allegations:

        i. That, since his election to his official capacity as Chairman, he had repeatedly requested information from other officials in the Appellant, such as to allow him to transition smoothly into his new position. AB said that, despite his requests, he had received none of this information.

ii. That all financial matters were handled by another official, CD, without the involvement of the Board of the Appellant.

iii. That, since his election, despite the fact that he was one of three authorised signatories of cheques, he had not been called upon to countersign any cheques. Instead, all cheques had been signed by CD and another official, EF.

iv. That trips, at the Appellant's expense, had been undertaken without the approval of the Board of the Appellant.

v. That items had been purchased, ostensibly by the Appellant, but without the approval of the Board of the Appellant.

vi. That CD had informed AB that the Board did not need to be involved in the day-to-day running of the Appellant.

vii. That CD had informed AB that the Board did not need a finance committee as CD dealt with finance.

viii. That one of the Board directors had not attended a Board meeting in over a year but had not sent any apologies.

ix. That since assuming office, "Chairman's Expenses" had been recorded as having been incurred, yet AB had not incurred or received those expenses.

d. In response to the Concern Form, on 15 January 2014, the Respondent compiled what was described as a Risk Assessment Form.

e. In that Risk Assessment Form, the Respondent identified the following issues which it characterised as "High Risk":

i. "Loss or misuse of charitable funds for an improper or unlawful purpose"

ii. "Serious governance failures".

iii. "Financial mismanagement".

iv. "Poor financial controls".

v. "Internal Dispute and Conflicts".

f. Those assessments of risk had been made based on a "Summary of Facts" set out in the Risk Assessment Form. The Summary of Facts was really a detailed and comprehensive part of the Risk Assessment Form, extending to some seven pages of analysis. The Tribunal does not set out the entirety of that Summary of Facts, although it has considered it in full. The Tribunal draws particular attention to the following aspects of this document:

i. The first section of the Summary of Facts was entitled "The Concern". It was said to comprise four elements: (i) bank statements showing Chairman's expenses which had not been incurred by the Chairman; (ii) the Appellant's expenses as shown on a bank statement; (iii) a lack of transparency on the part of the Treasurer and CEO; and (iv) Conflict of interest – CEO's partner works for DOJ and is the outside member of the audit committee.

ii. The second section of the Summary of Facts comprised a chronology of requests for information and documents which the Respondent had made of the Appellant. Notable aspects of this chronology were as follows:

    1. Most requests for information and documents were dealt with quickly by the Appellant.

    2. However, some of the requests for documents which the Respondent made of the Appellant were refused on the grounds of data protection. Other documents sought had pages missing or were not provided at all.

    3. Correspondence from the Appellant, sent in response to AB's Concern, alleged that there had been misconduct on the part of AB and two other directors, GH and IJ.

    4. Correspondence from GH to the Respondent complained about AB's removal as chairman and otherwise supported AB's Concern.

    5. A further Concern form was received from another individual, alleging mismanagement of the Appellant.

    6. Documents provided to the Respondent included a record of a formal grievance by CD against AB.

    7. An email was received from another individual, MN, expressing concerns about the Appellant.

    8. A situation was received from another individual, OP, which referred to a "power struggle" within the Appellant.

iii. The third section of the Summary of Facts comprised "Considerations", which were broken down as follows:

    1. Financial Considerations: the details set out here concerned alleged Chairman's expenses which had not been incurred by the Chairman; unspecified Appellant expenses on bank statements; missing pages from Charity accounts; and accumulation of

reserves, then standing at £170,000, on foot of an annual increase of around £20,000 to £30,000 per year.

2. Removal of the Chairman, AB: the details set out here recorded the activities in November and December 2013 and January 2014, by which AB had walked out; by which the Board then considered removing AB as chairman; by which the Board agreed no further action was to be taken against AB; and by which the Board agreed to suspend and expel AB.

3. Issues with respect to the role of an employee, CD, as CEO: the details set out here concerned a presentation which CD had given the Board in September 2013 as to the extent of CD's rights and responsibilities. One aspect of this was that Directors of the Charity "do not enter office unless CEO is present due to Security Clearance/Data Protection"; "All office equipment is out of bounds to all Directors unless they have sought the permission of CEO and he/she is present"; "Domain of the office is the CEO's responsibility and not that of the Board". Also under this heading was an exchange of correspondence between the Secretary of the Appellant and CD, by which the Secretary had sought to introduce new procedures for information management. CD's response to this had been to refuse to agree to any of the suggested changes.

4. Other issues: the details set out here comprised some missing Board minutes, from 2012 and 2013; the purchase and relabeling of bottles of wine; the recording and distribution of invitations to events; requirement for clarification on funding needs; the need for new policies; the alleged relationship between CD and QR, the Charity auditor; and interest shown by a journalist in the Charity.

iv. The fourth section of the Summary of Facts comprised a precis of the earlier aspects of the form.

v. The fifth section of the Summary of Facts comprised a section entitled "Next Stage", and provided as follows:

> - *The Commission should write to the charity informing them that documentation provided to the regulator is incomplete. Relevant pages have been omitted from the annual accounts and various sets of board meeting minutes have not been provided. Failure to provide this information will be considered an act of non-cooperation.*
>
> - *Further documentation is also required relating to organization policies and procedures, all*

director/employee expenses claims, bank statements and cheque stubs.

- *The Enquiries Team invites commissioners to consider accepting this matter as sufficiently serious to endorse the Commission instituting a statutory inquiry under Section 22 of the Charities Act (Northern Ireland) 2008 ("the Act").*

- *This step is required to enable the Commission to exercise its statutory power under section 22 of the act to direct individuals to provide the information previously requested.*

- *The Commission cannot preempt the content and nature of the material provided in response to any direction or order issued so cannot suggest any further outcomes at this time, but if actions detailed above are correct in relation to the removal of trustees without the authority of the quorum or the Articles of Association or Company Law has been breached, then this would evidence misconduct/mismanagement and additional steps would be would need to be considered to protect the assets of the charity for the beneficiaries.*

vi. The next section of the form comprised a list, entitled "Recommended Action". Under that title there were listed five options, as follows: "Refer to compliance team for monitoring", "Self-regulatory matter"; "Regulatory Inquiry"; "Statutory Enquiry" and "Refer to Another body". The officer who had filled in this form had chosen the option "Statutory Enquiry".

vii. The next section of the form comprised a further list, entitled "Criteria for opening a statutory enquiry". Under that title were listed ten criteria, as follows:

- Criminal unlawful or improper activity
- Necessary to establish facts and verify evidence
- Risk to a charity's reputation or the regulation of charities generally
- Risk to a charity's beneficiaries
- A concern so serious that it warrants us opening an inquiry and to investigate the facts and to formalize our engagement with the trustees
- The only way of getting or verifying the facts
- Where there are risks to drawing conclusions outside the formality of an inquiry i.e. of legal challenge

- Where there is significant public interest where there is a need for public accountability in relation to issues of serious concern in administration of charities
- Where there is a risk to public confidence in the effective regulation of charities.

The officer who had filled in this form had confirmed that all these criteria were satisfied – save only for the assertion that a statutory inquiry was "The only way of getting or verifying the facts".

The parties' submissions as to breach of duty

9. For the Appellant, Mr McMillen's general submission was that the institution of a statutory inquiry into the Appellant was a wholly disproportionate reaction on the part of the Respondent. He characterised the Appellant as having been subject to a falling out between members, leading to resignations. Mr McMillen said that in opting for an inquiry, the Respondent had "lost the run of itself." He accepted that there was evidence of an internal dispute. He said that all of the information sought was provided to the Respondent. Mr McMillen suggested that the Respondent could and should have taken a lesser step than instigating an inquiry. He contended that the Respondent's evaluation of its chosen course of action was not properly recorded. The intervention was a disproportionate response to "a storm in a teacup". The complaints made were grossly overstated by the Respondent. For example, the concerns about purchases of gifts were trivial matters: they were not matters of substance. The various matters identified by the Respondent, neither individually nor cumulatively, warranted the inquiry. Instead of instigating the inquiry, the Respondent could have gone back to the Appellant and sought outstanding documents and information. The Respondent had not been transparent with the Appellant. Mr McMillen contended that all proper regulatory standards had "gone out the window". He suggested that there was a limited number of matters in issue and the Respondent could and should have utilised its powers under Section 23 to require documents to be produced.

10. For the Respondent, Mr McCausland emphasised that the initial Concern submitted to the Respondent had come from the Appellant's own chairman. This was not a mere squabble between members. In any event, it was not the Respondent's role to come to an interim view as to the merits of the Concern. He drew attention to the part of the Concern by which AB had stated "The two persons who have involved themselves in the running of the DPOANI [CD and EF] refuse to answer any questions and when asked for documentation ask why?" Mr McCausland pointed out that the Concern form had contained a declaration of truth which AB had completed. It was submitted that the Respondent had not jumped to the conclusion that an inquiry should be instituted. For example, it had written to the Appellant on 6 December 2013, stating amongst other matters, that it wanted to work constructively with the Appellant. Mr McCausland drew attention to the fact that this was a case of allegation and counter-allegation. This was shown by a letter from the Appellant to the Respondent, dated 11 December 2013. In that letter, a counter-allegation of misconduct was made against the person who had submitted the initial concern from. This same letter, from the Appellant, revealed that there had been media interest in the Appellant and its operations, with a BBC journalist attending at the home of the CEO. Mr McCausland drew the Tribunal's attention to the

Risk Assessment process and its detailed and properly formulated procedures for considering how to respond to concerns. In summary, he said that the Appellant was divided; there were questions about how resources, finances and records were being managed; the Appellant had accumulated reserves which were not being distributed to the beneficiaries; the Appellant was not following internal procedures; the Respondent had considered all options at its disposal; but it had concluded that a statutory inquiry was appropriate.

Consideration

11. The Tribunal bears in mind the following provisions of the 2008 Act:

Section 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.*

Section 8

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

(2) The general functions are—

1. ...

2. Encouraging and facilitating the better administration of charities.

3. ...

Section 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.*

12. The Tribunal finds the following facts:

    a. The Respondent was presented with material by the initial complainant, AB, which raised concerns about how the affairs of the Appellant were being conducted.

b. That initial complaint prompted a counter-complaint from other members of the Appellant raising concerns about how AB was conducting the affairs of the Appellant.

c. The concerns which were brought to the attention of the Respondent by both the initial complainant and the counter-complainants related to the following matters:

    i. Management of finances and resources.

    ii. Record-keeping.

    iii. Adherence to internal procedures.

    iv. Accountability.

    v. Accumulation of reserves.

    vi. Appointment and removal of office holders.

d. The picture with which the Respondent was presented was of a charity, which should have been focused upon the interests of former police officers who had been injured when serving the people of Northern Ireland in the RUC and the PSNI, but was instead riven by division and acrimony.

e. Almost exclusively, the concerns with which the Respondent was faced were serious and they were of substance; they were not trivial or insignificant.

f. The only exception to this general position may have been what was said in the Risk Assessment Form with respect to "the purchase of wine and the removal of labels" – it was said there that this "would appear to be an unethical practice and potentially illegal". During the hearing, in response to a question from the Tribunal, Mr McCausland confirmed that the concern here may have been one of "passing off", and he did not press this point. The Tribunal considers that this issue, viewed alone, was perhaps not a serious matter. But its inclusion in the Respondent's consideration does not detract from the other matters of concern.

g. Otherwise, the concerns with which the Respondent was faced had the potential to be detrimental to the beneficiaries of the Appellant: undue time and energy were being expended on internal disputes, meanwhile reserves were being accumulated, some of which might have been distributed to those beneficiaries.

h. The potential damage arising from the internal disputes, within the Appellant, obviously affected the Appellant itself and its intended beneficiaries. That potential damage also extended to the public perception of the Appellant: if the disputes within it were to continue, unchecked and without investigation, that would plainly put at risk the willingness of members of the public to contribute funds to the Appellant.

i. In a similar vein, it was common case that journalists had taken an interest in the Appellant. Unless addressed and, as might be necessary, corrected, the Tribunal considers that it was conceivable that public concern about this specific Charity could affect public confidence in the charitable sector more generally.

j. The Respondent had established detailed procedures, in the way manuals and guidance, governing the consideration of whether to institute an inquiry or whether to adopt other regulatory interventions. The Respondent had applied those procedures.

k. The Respondent carefully conducted as detailed an evaluation of these matters as it could, bearing in mind that this was a decision to institute an inquiry, rather than the inquiry itself. This evaluation included the preparation of a detailed risk assessment and decision paper which set out all relevant factors. The risk assessment weighed those factors. The risk assessment considered and applied mitigations against more significant intervention.

l. The basis for the Respondent's decision was set out in detail in that detailed risk assessment and decision paper. The Commissioners who made the decision, as evidenced by their signatures thereon, endorsed and thereby adopted the reasoning in that paper. Given their adoption of the recommendation for an inquiry, further commentary from them was unnecessary.

m. The Respondent considered all options at its disposal. It did not jump to the conclusion that an inquiry was the only course open to the Respondent. The suggestion that the Respondent might have avoided instituting an inquiry if it had only taken the time to go back to the Appellant is fanciful. The Appellant was divided into factions. Furthermore, the production of information by the Appellant had not been entirely satisfactory: important records had not been produced and there had been some delay in compliance with some requests.

13. Having regard to the foregoing findings of fact at paragraphs 8 and 12 above, the Tribunal has decided that, given the material with which the Respondent was presented, the decision to institute an inquiry into the Appellant was reasonable and proportionate.

14. Moreover, having regard to the foregoing findings of fact at paragraphs 8 and 12 above, the decision to institute an inquiry into the Appellant was:

a. Entirely in keeping with the Respondent's objectives, as set out in Section 7 of the 2008 Act, namely:

- Increasing public trust and confidence in charities.

- Promoting compliance by charity trustees with their legal obligations in exercising control and management of the administration of their charities.

- Promoting the effective use of charitable resources.

- Enhancing the accountability of charities to donors, beneficiaries and the general public.

b. Entirely in keeping with the Respondent's functions as set out in Section 8 of the 2008 Act, namely

- Encouraging and facilitating the better administration of charities.

c. Entirely in keeping with the Respondent's duties as set out in Section 9 of the 2008 Act, namely

- The duty so far as relevant, to 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).

15. As noted above, Mr McMillen had briefly raised an irrationality challenge, albeit he did not pursue it with any detail or vigour, nor did he open any authorities to the Tribunal on this point.

16. As HM Court of Appeal in Northern Ireland said in Re McCallion's Application [1997] NI 457 at 491, "To succeed in such a case, the challenger must be able to demonstrate that the decision was such that no reasonable decision-maker could have reached the decision and, of course, proper regard must be accorded to the decision-maker's proper margin of appreciation."

17. The Tribunal can concisely deal with this issue: given the material with which the Respondent was presented, as set out above, it is not remotely tenable to argue that the decision to institute an inquiry into the Appellant is one decision that no reasonable decision-maker could have reached.

18. Insofar as Mr McMillen raised the question of transparency, the Tribunal can equally quickly dispose of this point. The Respondent's procedures, consideration and conclusions were exhaustively documented at the time. It is notable that the Appellant did not articulate what the prejudice or consequence of any alleged lack of transparency might have been. The Tribunal notes that in the years since the Respondent's Decision was taken, that decision has been the subject of challenge, in this Tribunal and in the Courts.

19. Accordingly, the first ground of review is dismissed.

Ground 2: At the date the decision was made the Respondent had not delegated its powers to a subcommittee of Commissioners in accordance with Schedule 1 paragraph 9 of the 2008 Act.

The Appellant's submissions

20. For the Appellant, Mr McMillen's general submission was that the decision to institute an inquiry had been taken by, it appeared, three Commissioners, rather than by a

properly constituted sub-committee. He drew attention to paragraph 9 of Schedule 1 to the 2008 Act, which is in the following terms:

(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.

21. Mr McMillen contended that the *Respondent's* position was that the decision to institute an inquiry had not been taken by the full Board but rather had been taken by a committee. Mr McMillen's said that the Appellant's point was that such a committee had not been formed. Therefore, if the decision was not taken by the full Board and if it was not taken by a properly constituted committee, then the decision was unlawful.

22. Mr McMillen emphasised the breadth of the power which Section 22 of the 2008 Act conferred upon the Respondent. He said it was a far-reaching and invasive power in itself. Mr McMillen submitted that no other body was imbued with such a power, whether the police, the Serious Fraud Office or HMRC. Mr McMillen said the Tribunal should assiduously regulate the exercise of the Section 22 power. It was, Mr McMillen said, a "gateway" to the exercise of other powers.

23. Mr McMillen drew the Tribunal's attention to a number of the Respondent's "constitutional documents". He began with the Respondent's Standing Orders, which, the Tribunal was told, were formulated in 2011. Mr McMillen submitted that these Standing Orders showed what was required of the Board in terms of proper procedure, good governance and transparency, stating that transparency is necessary to ensure that everyone is satisfied s to the propriety of processes in a democratic society.

24. Mr McMillen noted the statement of the Respondent's general functions, at paragraph 2.3 – which mirrored Section 8 of the 2008 Act. Mr McMillen also referred to paragraph 3, which set out the role and function of the Respondent's Board; and to paragraph 4, entitled "Meetings and Proceedings of the Board".

25. As to the role of Committees, Mr McMillen drew the Tribunal's attention to paragraphs 4.25 to 4.29 of the Standing Orders which, he said, addressed, sequentially, the existence, approach, chair and terms of reference and the quorum of, and the papers to be considered by, such Committees.

26. Paragraph 4.25 stated that the Board will establish an Audit and Risk Committee and a Human Resource and Remuneration Committee and that "In addition it may establish

a Committee for any purpose within its function and the Act and shall determine the powers and functions of any such Committee." Paragraph 4.26 said that the Board shall appoint members of the Committees, including persons not members of the Respondent. As to paragraph 4.27, this said that "The Board shall appoint a Chair for every Committee, keep under review the structure and scope of activities of each Committee and set out the Terms of Reference of each Committee." Paragraph 4.28 set the quorum and one-half of the total membership of the Committee, with at least one commissioner present. As to circulation of papers, recording of meetings, voting procedures and declaration of conflict of interests, paragraph 4.29 said that these were the same as for the Board.

27. In response to Respondent's position that a committee, rather than the Board, had taken the decision to institute the inquiry, Mr McMillen submitted that it was a committee in name only: it did not come close to what was required of committees by the Standing Orders. For example, as regards Terms of Reference, Mr McMillen contrasted the detailed statement of the Terms of Reference of the Audit and Risk Committee and the Human Resource and Remuneration Committee, saying that nothing comparable was produced for the claimed Committee in this case.

28. Mr McMillen invited the Tribunal to look at a paper, produced by the Respondent, dated 14 March 2011, entitled "Audit and Risk Committee – Investigation Procedures." He said that this seemed to be the Respondent's first attempt to set out how Section 22 inquiries should be dealt with, noting that it had established four categories or risk: zero tolerance, high risk, medium risk and low risk. Mr McMillen suggested that there was a lack of clarity of thinking on the part of the Respondent. However, he volunteered that this was not a major point in his case. In a similar vein, Mr McMillen criticised as "poorly thought through" a statement, in the same document, of how the Head of Corporate Services and Compliance might review a file with a view to considering whether to institute an inquiry. He suggested that the document betrayed a lack of understanding of the decision-making process. Mr McMillen took the Tribunal to the Board Minutes for the Board Meeting on the same day, 14 March 2011. At that meeting, the investigation procedures had been approved.

29. He also drew the Tribunal's attention to a further paper, produced by the Respondent on 16 May 2011, entitled "Investigation procedures and Section 22 Authority." The aspect of this paper to which Mr McMillen referred was concerned with members of staff being empowered to conduct investigations, rather than with who might decide to institute an inquiry. In the minutes of the Board Meeting on that same day, 16 May 2011, Mr McMillen highlighted paragraph 8, which reads as follows:

8. Investigations Procedures and Section 22 Authority

Commissioners noted the contents of the paper and commended staff for the work carried out in developing this very clear and helpful set of procedures. Commissioners agreed that the High-Level Process Map would be a useful tool for external publication. The Chief Executive advised that authority was required to delegate Commissioners' powers to officers for the purposes of investigations. The processes and delegation of powers were approved…

30. Mr McMillen referred to a further set of Board Minutes, dated 20 June 2011, saying that these recorded how the Board, led by the Chief Executive, had addressed the question of how to go about making a decision whether to institute a Section 22 inquiry. The Tribunal notes that this minute records that "Members discussed governance and oversight arrangements for statutory investigations [and it] was agreed that further high-level procedures be developed and circulated to Commissioners in advance of the next Development Day and the matter would be considered further at the next Board meeting."

31. That decision was addressed in the next document to which Mr McMillen drew attention, namely a Board paper dated 19 September 2011, labelled "Investigation procedures (Commissioners' Authorisation). Mr McMillen said that this paper addressed two matters, namely the timing of authorisation of a Section 22 inquiry; and the means of authorisation of a Section 22 inquiry. The former point – timing – was addressed in terms of the initial concerns stage.

32. The latter point – means – was addressed by proposing four options. Mr McMillen drew the Tribunal's attention to the first three options. The first option was described in the paper as the "do nothing option" and entailed that "The Board accept the HCSC and Enquiry Manager (EM) decision to initiate a statutory inquiry". Mr McMillen dismissed this a "non-option": the Board could not leave this sort of decision to a manager. He suggested the mere floating of this "option" showed a lack of understanding on the part of the Respondent and its officials. The second option was that all Board members should take the decision whether to institute a Section 22 inquiry. The third option was that the Board nominate three Commissioners who will form a sub-committee. For completeness, the fourth option provided for the nomination of two Commissioners who would be security cleared. Mr McMillen said that what happened was that instead of opting for either Option 2 or Option 3, the Respondent adopted a blended, hybrid approach, seemingly comprising a committee of the whole Board. He said that this was an entity which was unrecognised in the Respondent's constitution or in its governing statutes. Mr McMillen said that in adopting a hybrid approach, the Respondent had "fallen between two stools".

33. Mr McMillen also took the Tribunal to a further Board paper, also dated 19 September 2011, which addressed the undertaking of the investigation. He drew attention to paragraph 5.0, which stated "Approval to instigate a statutory inquiry will already have been **provided by the Board** at the initial concern stage…" (**emphasis added**).

34. These papers were presented to the Board at a meeting on 19 September 2011. Mr McMillen referred to paragraph 6 of the minutes of this meeting, which recorded as follows:

6 Statutory Investigation Process

6.1 Commissioners' Authorisation

The Head of Charity Services outlined the various options. Following discussion and proposal by Rosemary Connolly and seconding by Philip McDonagh, the Board agreed that all Commissioners would be security cleared, and for decision making all Board

members would be contacted to identify a minimum of three available within the required timescale for decision making.

35. Mr McMillen submitted that the Respondent did not have the power to proceed in this way. He said the Respondent can only act within the terms of its constitution and the 2008 Act. It was obliged to set up a committee; that committee must have a chair; and that committee must have procedures. He reminded the Tribunal that, in a democratic society, controls were required: there had to be a committee in substance.

36. The next document to which Mr McMillen drew attention was the further iteration of the Investigative Procedures Manual. He referred to Step 9, which provided as follows:

Contacting the Board Members

The Enquiry Manager will contact all Commissioners and ensure a minimum of three Commissioners are available to meet the HCSC and Enquiry Manager to make a decision on the institution of a Statutory Enquiry (sic). If authorisation is granted: Agreement must be recorded from the Commissioners by way of a signature on the Risk Assessment Form indicating that the recommended action is a proportionate response to the concern raised. The Commissioners will record their comments as appropriate.

37. Mr McMillen's criticism of this scheme was limited to the point that the group of decision-making Commissioners was not referred to as a "committee". Otherwise, he candidly stated, he did not have a great problem with the scheme as set out in this document.

38. When asked by the Tribunal where it was stated that the group of decision-making Commissioners had to be a committee, Mr McMillen responded saying that the Respondent is a corporate body, and that the exceptions as to when it can act as such are set out in Schedule 1, paragraph 9. At this point in the proceedings, Mr McCausland interjected to state that the Respondent's position is that this group of decision-making Commissioners was a committee. In any event, it was common case that this was the scheme of decision making when the decision of January 2014, which is the subject of this case, was taken.

The Respondent's submissions

39. Mr McCausland drew attention to breadth of the Respondent's discretion in the conduct of its affairs, as set out in Schedule 1, paragraph 9. Paragraph 9(1) provided that the Respondent can determine its own procedure, and, in particular, it **may** make provision about the discharge of its functions by committees and quorum. He emphasised paragraph 9(2), which provides that the validity of any proceedings of the Commission or a committee shall not be affected by a vacancy in the office of chair or deputy chair or a defect in the appointment of a member.

40. Turning to the Standing Orders, in paragraph 4.25 Mr McCausland noted the distinction between two Committees which the Board "will" establish, and other Committees which the Board "may" establish. He submitted that, at the meeting of the Board on 19 September 2011, the Board had resolved that there should be created, and it had thereby

established, a Committee comprising all of the members of the Board. He contended that this was entirely in keeping with Schedule 1, paragraph 9(1).

41. He suggested that each of the requirements with respect to the Board, set out in Standing Orders, paragraph 4.21 (as to minutes) and paragraphs 4.26 to 4.29, (as to composition, quorum etc) had been satisfied in this case.

    a. The requirements as to minutes (paragraph 4.21) had been addressed in substance when the three commissioners appended their signatures to the following statement: "We 'the Commissioners' confirm our authorisation for the institution of a Statutory Inquiry". That was an adequate record of their decision, albeit it was not a detailed record. The terms of Step 9 of the Manual simply provided that all that the Commissioners had to do to indicate their agreement to an Inquiry, and to record their conclusion that that was a proportionate step, was to sign the form. They could record comments if they wanted to, but they did not have to do that.

    b. The requirement as to appointment (paragraph 4.26) had been addressed: Mr McCausland referred to the passing of the Board resolution on 19 September 2011, by which all Commissioners had been appointed as the persons who would take the decision whether or not to institute a Section 22 inquiry.

    c. The requirements of (paragraph 4.27) had been addressed or were not problematic:

        i. As to terms of reference, over a course of months, from around March 2011 to September 2011, a process of amendment to the investigative procedures manual had been undertaken. The final iteration of the Statutory Enquiry Manual had been approved at the Board meeting on 19 September 2011 – see paragraph 6.2. As part of this process, the Initial Concerns Stage had been amended to make specific provision as to how Commissioners would undertake an authorisation of a proposed Section 22 inquiry. As appears in the paper presented to, and approved at, the 19 September 2011 Board meeting, the decision-making Commissioners were to be given a risk assessment and recommendation, comprising (i) details of the concern raised; (ii) summary of the investigative actions taken; (iii) facts and findings; (iv) recommendation; and (v) detailed rationale for any restrictions. The flow-chart which governed the entire process, including Commissioner involvement, and the statement of process in the various "Steps" – in particular Step 9 – was amended accordingly.

        ii. As to the appointment chair, it was correct that no person has been identified for the meeting at which the decision was taken to launch the inquiry. However, Mr McCausland submitted that, on this point, Schedule 1, paragraph 9(2)(a) provided the answer: "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…"

d. The requirement as to quorum (paragraph 4.28) had been addressed: Mr McCausland referred to the minimum requirement of three Commissioners set at the Board meeting on 19 September 2011.

e. The requirement as to papers, records, voting (paragraph 4.29) had been addressed: Step 9 of the process required all Commissioners to have a copy of the risk assessment, with all its prescribed contents. The Commissioners had had all relevant papers.

Consideration

42. The Tribunal makes the following findings:

a. On 19 September 2011, the Respondent created an entity, comprising all the Commissioners, which would decide whether a Statutory Inquiry would be launched.

b. On that same occasion, the Respondent decided that the quorum for meetings of that body would be three Commissioners.

c. There is no evidence before the Tribunal that a separate chair was appointed for that body, either (i) on an ongoing basis; or (ii) for the specific meeting in January 2014 at which the decision to launch the Statutory Inquiry was made.

d. The role which that body and its members was to perform had been laid down in amended procedures, manuals and flowcharts e.g. Step 9 of the Manual.

e. The outcome of the meeting between the Commissioners was recorded on the risk assessment form.

43. Having regard to those matters, the Tribunal must consider whether or not the circumstances in which the decision-making body took its decision was in accordance with the 2008 Act and the Respondent's own Standing Orders.

44. The Tribunal has concluded as follows:

a. The Respondent is entitled to discharge its functions by committee.

b. The label "committee" was not ascribed to the decision-making body created on 19 September 2011.

c. However, it is clear to the Tribunal that that body was, and was intended to be a committee, of the Respondent. It was a committee of the Board rather than the Board itself.

d. Further, it is clear to the Tribunal that that committee comprised all members of the Board.

e. That committee was a lawful committee within Schedule 1, paragraph 9(1) of the 2008 Act.

f. That committee was lawfully created in accordance with and for the purposes of paragraph 4.25 of the Standing Orders.

g. All of the members of the Board were lawfully appointed to members of that committee, in accordance with and for the purposes of paragraph 4.26 of the Standing Orders.

h. The terms of reference of that committee were clearly established by the Statutory Inquiry Manual, Step 9 in accordance with and for the purposes of paragraph 4.27 of the Standing Orders.

i. The quorum of that committee was set at the meeting on 19 September 2011. Insofar as that required any amendment to paragraph 4.28 of the Standing Orders, the adoption of the resolution at that meeting effected an such an amendment for the purposes of paragraph 4.31 of the Standing Orders.

j. The documentary evidence, in the form of the risk assessment form, shows that, as required, three commissioners attended the committee meeting. There was no evidence that any other commissioners attended that meeting. The form shows that the committee's decision to institute an enquiry was supported by the three commissioners present. That decision was recorded on the risk assessment form, in accordance with Step 9 in the Statutory Inquiry Manual, and thus, paragraph 4.21 and 4.29 of the Standing Orders were complied with.

k. There may well have been a vacancy in the chair of that committee. Given the terms of Schedule 1, paragraph 9(2)(a), that vacancy does not invalidate the proceedings of that committee.

45. Accordingly, the second ground of review is also dismissed.

Right of appeal

46. Right of Appeal

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

Adrian Colmer KC
Lorraine McCourt
Irene Ringland

2 February 2026