Case No. 1/13; 2/13

THE CHARITIES ACT (NI) 2008

THE CHARITIES ACT 2008 (TRANSITIONAL PROVISION) ORDER (NI) 2011

THE CHARITY TRIBUNAL RULES (NI) 2010

IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND

BETWEEN:

BANGOR PROVIDENT TRUST LIMITED

Applicant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

AND

VICTORIA HOUSING ESTATES LIMITED

Applicant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

Appearances

Ms. F. Quint, QC, instructed by Tughans, appeared for the Applicants.

Mr. M. Smith BL, instructed by the Respondent, appeared for the Respondent.

Panel: Damien McMahon (Chairman), P Artherton, T Donaldson, (Lay Members).

Introduction

1. The Respondent, by decisions dated 08.08.2012 and 28.09.2012, respectively, ('the Decisions') decided to institute an inquiry against each of the Applicants, pursuant to s.22 of the Charities Act (Northern Ireland) 2008 ('the Act'), citing a concern in relation to the governance of each of the Applicants and, in addition, in relation to the Applicant, Bangor Provident Trust Limited ('Bangor'), a concern in relation to financial matters.

2. The Applicants, and each of them, pursuant to s.12(3)(a) and Schedule 3 of the Act, applied to the Tribunal on 17.09.2012 for review of the Decisions.
3. In determining the Applications, the Tribunal could, pursuant to s.12(3)(a) and Schedule 3 of the Act, either dismiss the applications, or either of them, or, if it allowed the applications, or either of them, direct the Respondent to end its inquiry.

4. These proceedings, being *applications*, rather than *appeals*, required, pursuant to s.12(3)(a) and Schedule 3 of the Act, to be determined in accordance with judicial review principles, rather than being determined by way of re-hearings of the Decisions. In summary terms, this, essentially, required the Tribunal to consider whether there were any grounds to vitiate the Decisions by reason of illegality, irrationality, unreasonableness or proportionality: the Tribunal was not permitted in law to substitute its own view for that of the Respondent in either case.

5. However, the determination of these applications by reference to the principles of judicial review could only arise at all if the Tribunal firstly determined that the Applicants, or either of them, were charities in law, that is, bodies established for exclusively charitable purposes.

6. The Tribunal held a Pre-hearing Review on 07.12.2012, pursuant to Rule 13 of the Charity Tribunal Rules (Northern Ireland) 2010 ('the Rules') at which the parties were represented, following which, the Tribunal directed, inter alia, that the two applications be heard together.

7. At the Pre-hearing Review, consideration was also given to whether the papers should be sent to the Attorney-General for Northern Ireland ('the Attorney'), as envisaged in s.15(2) and (3) of the Act. No such direction was made by the Tribunal, having regard to the provisions of s.15(4) of the Act and Rule 22(2) of the Rules, the Tribunal having been advised by the Respondent at the Pre-hearing Review that it had already notified the Attorney of these proceedings of its own volition.

8. The hearing of the applications commenced on 22.02.2013, with oral evidence being taken from a number of witnesses of the Applicant, Victoria Housing Estates Limited ('Victoria') and detailed oral submissions being made on behalf of both Applicants.

9. It did not prove possible to complete the hearing of the proceedings on 22.02.2013 and the proceedings were adjourned to 12.04.2013.

10. The Attorney had locus standi, at all times, to intervene in these proceedings, at any time, pursuant to s.15 of the Act and Rule 22 of the Rules, in such manner as he felt fit or expedient. The Attorney notified the Tribunal, by letter from his solicitor of

04.04.2013, that he was intervening, but only through the medium of the letter, in the following terms:

> *"Having considered all of the written submissions presented to the Tribunal, the Attorney agrees with the submissions of the Charity Commission and submits that both of the [Applicants] properly fall within the jurisdiction of the Commission".*

The Attorney did not, at any stage, approach the Tribunal, whether to request that it send all necessary papers in the proceedings to him, as envisaged in Rule 22, or otherwise, before his intervention. The nature of the Attorney's intervention was such that, pursuant to Rule 2 of the Rules, he did not become a party to the proceedings.

11. Since the Attorney exercised his right to intervene, the Tribunal was required, pursuant to Rule 22(3) of the Rules, to fix a Directions Hearing on not less than 28 days' notice, unless the parties and the Attorney consented to a shorter notice period. Since these proceedings had already been part-heard, and were to be re-convened on 12.04.2012 at 10.00am, and having regard to the obligations of the Tribunal under Rule 3 of the Rules, the Tribunal invited the parties and the Attorney to consent to the necessary Directions Hearing being held at 9.30am on 12.04.2013. Such consent was forthcoming. The Tribunal also requested the Attorney to provide a full written submission setting out his position (he, not being a party, could not be directed to do so). The Attorney declined to provide such submission, but did appear, through his solicitor, at the Directions Hearing held on 12.04.2012. At that hearing, the Solicitor to the Attorney acknowledged that the position of the Attorney, as set out in the said letter, was inevitably limited or qualified since he had not heard the oral evidence in the Victoria application, nor the detailed oral submissions made on behalf of the two Applicants. The Tribunal concluded that it was sufficient to merely note the Attorney's view, as stated in the said correspondence dated 04.04.2012, that no further directions required to be made and issued and that the substantive hearing could be re-convened, as scheduled.

12. The Respondent declined to make any submission in relation to the intervention of the Attorney. The Applicants felt they were not in a position to make a submission on the intervention in the absence of any explanation or reasoning from the Attorney as to how he had come to his position.

Issues

13.1 Whether either or both of the Applicants were charities in law, that is, whether either or both were established for exclusively charitable purposes;

13.2 the effect, if any, on that question of the Charities Act 2008 (Transitional Provision) Order (Northern Ireland) 2011 ('the 2011 Order'), that is, whether either or both of the Applicants were, or should be deemed to be charities in law, by virtue of either or both being in receipt of tax relief;

13.3 additionally, in the case of Victoria only:

13.3.1 the affect, if any, of the actual or purported adoption or registration of new Rules by it in or about 1985;
13.3.2 whether there was any valid adoption of new Rules by it in or about 1985;
13.3.3 the affect, if any, of the registration of the said actual or purported new Rules;
13.3.4 whether, by some other device or reason, it subsequently became a charity in law; and,
13.3.4 if either or both Applicants were charities in law, whether the Decisions, or either of them, were vitiated in all the circumstances, applying the principles of judicial review.

14. The crux of the determination of these applications lay in the Tribunal's determination of the first issue. It was clear from the Attorney's limited intervention that he, too, had come to this conclusion: his intervention could only amount, in terms, to a somewhat bald assertion that both of the Applicants were charities in law. For reasons that appear below the Tribunal concluded that if this were the case, then the Decisions did not fall to be impugned on an application of the principles of judicial review. The thrust of the Applicants' cases were that the Applicants, or either of them, were not charities in law and, accordingly, the Respondent had no jurisdiction to instigate a s.22 inquiry against either of them. In addition, the Applicants asserted that the Decisions were disproportionate in all the circumstances. Conversely, the Respondent asserted that both of the Applicants were charities in law (and, therefore, fell within the jurisdiction of the Respondent) and that the Decisions were not disproportionate in all the circumstances.

Bangor

15. In summary, the Applicant submitted that it was not a charity in law since it was not, and never had been, established for exclusively charitable purposes only, as a matter of law and, in this respect, the subjective motives or intentions of an institution or corporate body, or its controllers or members, or the nature of its activities, were not determinative of that issue. Essentially, it was submitted that, in accordance with the Applicant's Rules, it could lawfully engage in purposes that were not wholly charitable. Particular reference was made in this regard to the dissolution provisions in the Applicant's Rules. A further and specific aspect of this submission related to the inclusion of the words ***"...and to do all things as are incidental or conducive to the attainment [of the Applicant's objects]"***. It was argued that this power was part of the objects of the Applicant as set out in its Rules rather than a power exercisable only in furtherance of the objects and that this, in itself, removed the Applicant from a finding that it was charitable in law (quite apart from the provisions of the Rules themselves having this effect in law). The Applicant accepted, however, that save for the effect, it submitted, of the 'conducive' wording, the objects of the Applicant were exclusively charitable.

16. The Applicant further submitted that the Respondent could not rely provisions of the Charities Act 2008 (Transitional Provisions) Order (Northern Ireland) 2011 ('the 2011 Order') only to the extent that the Applicant received charitable tax relief since the 2011 Order stated that an institution that received such tax relief also had to be

established for charitable purposes only: it was submitted that the Applicant did not fulfil the latter statutory criterion.

17. The Respondent submitted that the effect of the 'conducive' wording in the Applicant's objects was qualified by stated charitable objects and pointed to three authorities where that submission had been held to be the case. The Respondent submitted that the authorities relied upon by the Applicant could be distinguished. The Respondent also submitted that it was not necessary to analyse the other provisions in the Rules identified by the Applicant to support its submission that the Applicant was not established for exclusively charitable purposes, essentially since, it submitted, these were matters of governance rather than being determinative of charitable status.

Victoria

18. In summary, the Applicant submitted that it, too, was not a charity in law since it was not, and never had been, established for charitable purposes only, as a matter of law and again, in this respect, the subjective motives or intentions of an institution or corporate body, or its controllers or members, or the nature of its activities, were not determinative of that issue. While the Applicant's 1952 Rules were such that it was clearly not charitable, the purported 1986 amended Rules clearly were charitable in form. However, it was submitted, those Rules were not validly adopted by the Applicant in accordance with its 1952 Rules and the subsequent registration with the Registrar of Industrial and Provident Societies ('the Registrar') was, therefore, of no effect. Further, in the particular circumstances, it was submitted that the doctrine of acquiescence or estoppel could not apply to validate the purported 1986 amendment of the Rules.

19. In accordance with the Directions issued by the Tribunal following the Pre-hearing Review on 07.12.2012, attested written statements were furnished by a number of witnesses. These related only to Victoria. The purpose of this witness evidence was to address the submission that no valid amendment of its Rules had taken place in 1986. In pursuance of the said Directions, these statements stood as the evidence in chief of each of those witnesses. The Respondent, also in pursuance of the said Directions, requested the attendance of four of those witnesses, namely, Kenneth Tughan, Derek Tughan, Kenneth Anderson and Ron Wood for cross-examination. Kenneth Tughan was not available. At the outset of the hearing, the parties indicated that this was not essential as the Applicant would not be relying on the last sentence of Kenneth Tughan's statement. However, it emerged towards the end of the hearing that the Applicant would seek to rely on the said sentence in the said statement in view of the nature of certain of the oral submissions made on behalf of the Respondent. Efforts to secure the attendance of Kenneth Tughan, in those circumstances, at short notice, proved unsuccessful. The other three witnesses attended, were sworn and gave oral evidence under cross-examination by the Respondent and, in the case of Derek Tughan only, under re-examination by the Applicant.

20. It was asserted by Derek Tughan in evidence that the affairs of Victoria were, essentially, directed and controlled by him alone and, before his father's death, by him and his father, to the essential exclusion of other members of the Tughan family who were members of Victoria, an Industrial and Provident Society. Victoria comprised five

Tughan family members and three non-family members at the relevant period. Derek Tughan stated that the purpose of the purported amendment to the Rules of Victoria in 1986 was to obtain charitable tax relief and this was achieved. He agreed that his signature appeared on the minutes of the meeting at which the amendment was adopted but did not think the meeting referred to in the minutes actually took place. He had no recollection of signing the 1986 Rules. He also could not recall a further amendment to the Rules in 2003 (to change the number of Committeemen of Victoria). The witness went on to state a lack of recollection on his part of a number of important and significant events concerning the affairs of Victoria and claimed to have not fully understood the meaning of 'charity' and 'charitable status'. The witness, in re-examination, stated that in referring to Victoria (and Bangor) as 'the family silver', he regarded himself as being in the role of trustee for his brother and sister.

21. Kenneth Anderson, a Chartered Secretary, specialising in accounting, was the company secretary for all of the Tughan companies (that were much greater in number than the two Applicants in these proceedings and were substantial enterprises that were unambiguously commercial and non-charitable in nature), and was one of the non-family members of Victoria. He confirmed that he had written to the Registrar and sworn a Statutory Declaration in connection with the registration of both the 1986 and 2003 amended Rules. He stated that he would not have carried out these actions unless he had believed that the Rules had been validly changed, but that he had not sought any further advice and had relied solely on what he was told by Derek Tughan and his father as he always had done.

22. Ron Woods in evidence explained that he was approached by Derek Tughan in 2009 to become involved in the affairs of Victoria (and Bangor) – a request apparently prompted by the introduction of the Act. Mr. Wood was appointed Committeeman of the Applicant. He maintained that it was possible that an institution could have charitable tax exemption granted by HMRC but not, in fact, to be charitable in law. Mr. Woods stated that the driving imperative to address the issue of apparent charitable status of the Applicant was to enable dividends to be paid to the members or shareholders and to set tax off against tax losses elsewhere in the Tughan group of companies. Mr. Woods engaged in extensive discussion with HMRC with a view, ultimately, to arranging repayment to HMRC of the charitable tax relief received over the years by both of the Applicants.

23. The Applicant submitted that the crucial issue in relation to whether a valid decision was made to effect the 1986 amendment was whether notice of the meeting that purported to amend the Rules had been ***sent*** to all the members and, further, that registration of the purported amended Rules was not sufficient on its own.

24. The Respondent submitted that if the 1986 amended Rules had been validly adopted by the Applicant, then the Applicant was a charity in law (a proposition not disputed by the Applicant) and that the issue of whether or not a valid amendment had been effected was an issue purely to be decided on the facts.

25. The Respondent further submitted that the registration of the amended Rules both in 1986 and in 2003 bound the institution, a corporate entity ***and*** its members, pursuant to s.13 of the Industrial and Provident Societies Act (Northern Ireland) 1969 ('the 1969

Act') and this had to be the case until such times as steps were taken to rectify the registration, if it was now alleged that the registration was made in error. It was submitted that the definition of a 'meeting' of the institution under the 1969 Act included a meeting of delegates of appointed members and that it should be concluded that Derek Tughan was, in effect, the delegate of the relevant members. The Respondent pointed to, it asserted, abundant evidence that supported that contention, corroborated by the written and oral evidence of non-family members of the Applicant.

26. The Respondent submitted, relying on the authority of Re Duomatic Limited, that the determining factor was not whether a meeting of the members had taken place to adopt the 1986 amended Rules, but whether a requisite number of members of the Applicant had agreed and intended that the amendment should occur: it was submitted that since Derek Tughan and the three non-family members had signed a copy of the 1986 Rules on the application to register those Rules with the Registrar, the Duomatic principle had been satisfied (quite apart from the fact that Derek Tughan had signed the relevant minutes of the Applicant that showed the Applicant had adopted the 1986 Rules).

27. A further purported amendment of the Rules of the Applicant occurred in 2003. The Respondent submitted that the Applicant clearly thought it was amending the 1986 Rules and, further, that it was done in the light of advice to Derek Tughan received by him in 1999, from the executor to the estate of his father, concerning the absence of value in the shares held by the members of the Applicant, either before or after the death of any shareholder.

28. It was also submitted by the Respondent that the Charities Act (Northern Ireland) 2013 ('the 2013 Act') was of no relevance to the determination of these applications since that Act was only concerned, essentially, with remedying an identified lacuna in the law in the 2008 Act concerning the matter of 'public benefit', a matter that was not at issue in respect of the substantive issues giving rise to these applications (as opposed to any issues raised as to the integrity of the impugned decisions on an application of judicial review principles).

29. The Respondent accepted that the 2011 Order was not relevant in the determination of the substantive issues in this application (and the Bangor application) if it was a charity in law and did not wish to argue that it was deemed to be a charity by virtue of the 2011 Order if it was not a charity in law (as opposed to any issues raised as to the integrity of the impugned decisions on an application of judicial review principles).

Findings and Reasoning

Bangor

30 The Tribunal concluded that the determinative issue in this application as to whether Bangor was a charity in law depended on whether the 'conducive' wording in the objects clause of its Rules took it outside the realm of being established for exclusively charitable purposes. An ancillary issue was the effect of the terms of several of the Rules of Bangor, but that the Rules did have to be examined on a cumulative basis.

The Tribunal agreed that the subjective intention of the parties at the time did not determine this issue.

31. The Tribunal preferred, on balance, the submissions of the Applicant in relation to the effect of the 'conducive' wording in the objects clause of the Applicant: the fact that this wording appeared in the objects clause and was not confined to a reference to 'incidental' had the effect of potentially empowering the Applicant to engage in activities that were not exclusively charitable. The Tribunal noted that there existed authorities that might tend to the opposite view as to the effect of a 'conducive' wording. The Tribunal accepted that use of the wording 'conducive' was not necessarily fatal in all cases but, on balance, it was enough in the case of the Applicant to reach a finding that the Applicant was not charitable in law, that is, it was not, in law, established exclusively for charitable purposes, since it could, potentially, lawfully engage in non-charitable activities, particularly when taken with a broad, cumulative overview of the Rules of the Applicant.

32. Accordingly, the Tribunal concluded, on balance that the Applicant was not a charity and the Respondent did not, therefore, have jurisdiction to open, nor to continue, a s.22 inquiry in relation to the Applicant.

Victoria

33. Oral evidence was heard from three witnesses.

34. The evidence of Derek Tughan was quite remarkable for his lack of recollection of matters crucial to whether or not the amended 1986 rules were validly adopted by the Applicant, to the extent that it was difficult to ascribe credibility to his evidence in these crucial matters. The Tribunal concluded that the affairs of the Applicant were essentially controlled by Derek Tughan and, before his father's death, by he and his father. The Applicant was one of a number of Tughan family enterprises and the role of Derek Tughan was critically important and significant to the long and effective operation of those enterprises, including the Applicant. There was at least an implied suggestion that Derek Tughan was somehow naive in business affairs and, in particular, the affairs of the Applicant, certainly to the extent that the charitable status, charitable or otherwise, of the Applicant was concerned. This apparent scenario, if correct, was rejected by the Tribunal. The Tribunal simply did not accept that Derek Tughan did not, at all times, know precisely what options were open to him in relation to the affairs of the Applicant; indeed, it was at all times open to him to seek advice and he did so from Elliott, Duffy, Garrett, Solicitors. In addition, he had received advice on the affairs of the Applicant (and Bangor) from the executor of his father's estate, an eminent former solicitor and then judge. The Tribunal found, on balance, that the other Tughan family members of the Applicant were quite content, at all times, to leave the conduct of the affairs of the applicant to Derek Tughan, or, at the very least, were not interested in questioning whether their interests were being adequately pursued. Derek Tughan stated in evidence that at least two of the family members of the Applicant did not even know they were members. The Tribunal had no basis upon which to dispute that assertion. Significantly, Derek Tughan described the Applicant (and Bangor) as 'the family silver'. This description provided support for the Tribunal's finding that Derek Tughan was left by the other family members to operate and manage the affairs

of the Applicant largely as he saw fit and, in that scenario, the question of whether or not certain family members of the Applicant knew they were members was not fatal to the issue at the heart of this case, namely, whether the Rules of the Applicant were validly amended in 1986. In any event, Derek Tughan was unable to explain how shares were repaid at part to those members if they did not know they were members. Further, it was not credible that Derek Tughan could have signed a minute of a meeting of the Applicant, in his role as Chairman, and then assert in oral evidence that he "... did not think there had been a meeting on 31.12.1986." Further, while Derek Tughan accepted that he had signed the said minutes, he stated he could not recall signing the 2003 amendment to the Rules. This further served to undermine his credibility, as was his evidence that he could not explain why there had been no application to date since 2010 to the Registrar when a discussion had taken place within the Applicant on the desirability of allowing the members to participate in profits.

35. Keith Anderson was a very experienced administrator, specifically with accounting responsibilities and the company secretary of all of the Tughan family companies, including the Applicant. The Tribunal found that he would have been completely familiar with the procedural matters required to amend the rules of the Applicant in 1986 and he attended to the registration of those amended Rules with the Registrar, swearing a Statutory Declaration to the effect that all requirements to affect the amendment had been carried out by the Applicant. Keith Anderson would also have been completely familiar with the statutory and common law duties and obligations attaching to him as a company secretary. He was also a member of the Applicant from 1969. In this context, his evidence was that he had believed that the Rules had been amended and he would not have made the necessary application to the Registrar if he had believed otherwise. This was accepted by the Tribunal. However, it was somewhat troubling that the company secretary of the Applicant did not ensure that this was in fact the case, namely, that a meeting of the Applicant, of which he was a member, as well as being the company secretary, to amend the Rules, may not have taken place and/or that notice of the said meeting was not sent to all of the members. This was another factor that led the Tribunal to reject, on the balance of probabilities, the submission of the Applicant that no meeting of the Applicant took place where the amendment of the Rules was effected. The Tribunal accepted the evidence of Keith Anderson that he understood that there had been agreement of 'all who mattered' in the Applicant in relation to the amendment of the Rules. Again, as a very experienced company secretary, there was an obligation upon him to be so satisfied and the Tribunal was entitled to rely on that fact and to infer that the necessary procedures had been undertaken by the Applicant to effect the amendment.

36. Ron Woods had submitted in evidence that an institution could be entitled to charitable tax relief but still not be a charity in law. This was evidence of opinion, rather than fact. However, more importantly, that was not a proposition argued by the Applicant; rather, it was argued that, if the amending Rules in 1986 had been validly made, the Applicant ***was*** charitable in law, but that the necessary requirements of the Applicant's 1952 Rules to effect an amendment of the Rules were not followed. The Tribunal attached significance to the evidence of Ron Wood in two specific instances: firstly, he stated that Derek Tughan expressly informed him in mid-2012 that the meeting of 31.12.1986, that amended the Rules of the Applicant, did not, in fact, take place.

However, the evidence of Derek Tughan to the Tribunal was that he did not *think* that the meeting had taken place. This further undermined the reliability and credibility of the evidence of Derek Tughan on these central issues relating to the case of the Applicant. Secondly, the Tribunal found it troubling that the investigations undertaken by Ron Wood (at the request of Derek Tughan, prompted by the introduction of the 2008 Act and the fact that the Applicant had been in receipt of charitable tax relief from 1986) led him to form several suppositions, but in evidence, he stated that none of the views to which he had come was based on asking questions of anyone in relation to the possible or perceived facts. Ron Wood, moreover, had little to add in relation to whether or not a meeting of the Applicant had taken place on 31.12.1996 to effect an amendment of the Rules.

37. The Tribunal accepted the submission of the Respondent, in any event, that, notwithstanding a dispute as to whether a valid meeting of the Applicant took place to effect an amendment to the Rules in 1986, the fact that the amended Rules were submitted to the Registrar, and registered, accompanied by a Statutory Declaration that all procedural matters to effect the amendment had been met, meant that the amended Rules were effective from the date of registration. While the submission of the Applicant that registration was of no effect if a valid meeting had not taken place, had its attractions, the Tribunal could not accept that submission as to do so would only serve to undermine the system of statutory regulation of Industrial and Provident Societies if, some considerable number of years later, such or institution could argue that, the procedural imperatives governing the institution had not, in fact, been met, in circumstances where there was provision to rectify a registration. In other words, the Tribunal accepted that unless and until steps were taken to rectify an alleged error on application to the Registrar, the registered Rules remained in effect. It was common case between the parties that the 1986 Rules, if effective, resulted in the Applicant being charitable in law.

38. In light of the finding of the Tribunal set out in the preceding paragraph, it is not necessary to make findings on the other submissions, namely, whether or not a meeting of the Applicant actually took place to give effect to the amendment of the Applicant's Rules in 1986; whether such meeting was actually necessary; whether all members required to have notice of the meeting sent to them and so on. However, since these are the very first proceedings to come before the Charity Tribunal for Northern Ireland and since these proceedings are applications, as opposed to appeals, the Tribunal decided to address those other matters also in its decision.

39. The Tribunal, on the balance of probabilities, concluded that a meeting of the Applicant did take place on 31.12.1986 and lawfully adopted an amendment to its rules, the effect of which was that the Applicant had charitable status from the date of registration of those amended Rules with the Registrar, which registration was effected. The parties are referred to the findings of the Tribunal on the evidence of the three witnesses who attended and gave oral evidence set out in paragraphs 35, 36 and 37.

40. However, even if no such meeting took place, the crucial issue was whether a requisite number of members of the Applicant agreed to the course of action involved, relying on the authority of Re. Duomatic Limited. This occurred in the case of the Applicant as

evidenced by the documentation submitted to the Registrar. The Respondent submitted that, if necessary, the Duomatic principle could be extended, on the authority of Pena v. Dale. However, the Tribunal did not conclude that there was any such need, but in any event, would not have been persuaded that this would have been an appropriate step to take in all the circumstances.

41. Alternatively, in light of the advice given to Derek Tughan by his father's executor, the Tribunal accepted and found, that any subsequent steps taken by the Applicant amounted to ratification of the 1986 rules and, specifically, the 2003 amendment was clearly envisaged as an amendment to the 1986 Rules – not the 1952 Rules.

Integrity of Decisions

42. Having decided that Bangor was not a charity in law it was not necessary to go on and consider whether the Decision in respect of Bangor could still be sustained on an application of the principles of judicial review, since the jurisdiction of the Respondent to open a s.22 inquiry only arose where Bangor was found to be a charity in law.

43. Having decided that Victoria was a charity in law, it was necessary to consider whether the Decision could still be impugned by reference to judicial review principles.

44. The Applicant submitted that it had been unreasonable, disproportionate, irrelevant and irrational for the Respondent to have opened a s.22 inquiry when the law on charity in Northern Ireland was not yet settled, particularly when the action of opening an inquiry had such far-reaching affects on the Applicant in that it could not continue its activities, at least for the time being, and that the law was only settled with the enactment of the 2013 Act. It was submitted that any concerns of the Respondent could have been addressed through informal inquiries. It was further submitted that the Respondent knew before it opened its inquiry that the Applicant disputed that it was a charity. Finally, the Applicant submitted that, in opening its inquiry, the Respondent had acted illegally since it misinterpreted the affect of the 2011 Order, proceeding on the basis that the only criterion was whether the applicant had been awarded charitable tax relief by HMRC.

45. The Respondent submitted that, essentially, the only issue that was engaged was whether the Respondent, in opening its s.22 inquiry, had acted in a way that no reasonable authority could make if acting in a proper manner. In relation to the enactment of the 2013 act, the Respondent submitted that this was only concerned with the public benefit issue, an issue that had no relevance to the substantive issues in these proceedings. Finally, the Respondent submitted that the 2011 Order was of no relevance if the Applicant was found to be a charity. However, if the Applicant was found not to be a charity, the Respondent submitted that it could not have been the intention of the legislature that the 2011 Order would only apply to institutions which were in receipt of charitable tax relief which were, in fact, charities in law.

46. The Tribunal could not substitute its own view for that of the Respondent and, in essence, could only consider whether the Decision of the Respondent to open a s.22 inquiry was so unreasonable that no reasonable public authority such as the Respondent, acting reasonably, could have made the impugned Decision. Having considered the totality of the context and background to these proceedings and having

regard to the functions of the Respondent as a regulator and protector of charities, their funds and assets, the Tribunal could find no grounds to conclude that the Decision to open the s.22 inquiry was not within a band of reasonable options open to the Respondent. The Tribunal accepted the submission of the Respondent that proportionality was an incidence of the concept of reasonableness and that it was not, therefore, disproportionate to open its s.22 inquiry. However, the Tribunal did accept the submission of the Applicant that the 2011 Order only applied where not only the institution was in receipt of charitable tax relief but, in addition, was established under the law of Northern Ireland for charitable purposes only: it may well be that the legislature did not foresee the merit of that argument. Nevertheless, the Respondent confirmed that it would not pursue its inquiry on the basis of the 2011 Order where the Applicant was found not to be a charity. For the sake of completeness, the Tribunal accepted the submission of the Respondent in relation to the affect of the 2013 Act and rejected, therefore, the other submissions of the Applicant in relation to the issues of irrationality, illegality and irrelevancy.

Decision

47. The application brought by Bangor is allowed. The Respondent is directed to end its s.22 inquiry in relation to Bangor.

48. The application brought by Victoria is dismissed. The Respondent is entitled to continue its s.22 inquiry in relation to Victoria.

Costs

49. The Tribunal has jurisdiction to award costs in favour of any party to proceedings before it against any other party to the proceedings, in whole or in part, but only where it considers that the other party has acted vexatiously, frivolously or unreasonably, subject to that party having an opportunity to make representations against the making of a costs order. Costs do not follow the event.

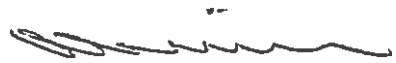
50. The Tribunal does not consider that the said criteria existed in these proceedings. Accordingly, the Tribunal declines to make any costs order in respect of these proceedings, or either of them, in all the circumstances.

Right of Appeal

51. 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.

Dated this 10th day of May 2013.

Signed:



Damien McMahon,
President.