

IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND
THE CHARITIES ACTS (NORTHERN IRELAND) 2008-2013
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010

BETWEEN:

ROBERT CRAWFORD

Appellant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

DECISION:

The substantive appeals, and each of them, are dismissed. The Orders of the Respondent, and each of them, that are the subject of these appeals, are upheld.

Appearances

1. Mr. F. O'Donoghue, QC, instructed directly by the Respondent, appeared for the Respondent.
2. The Appellant appeared in person.

Introduction

3. The Respondent, by a series of 21 decisions, made Orders over the period from 08/08/2014 and 31/03/2015, *inter alia*, suspending, and later removing, the Appellant as a Trustee of the Disabled Police Officers' Association of Northern Ireland ('DPOANI'), a recognised charity ('the charity'); suspending certain other persons (three in number) as trustees of the charity; suspending the sole employee of the charity as an employee; appointing three, and then a further two, additional Trustees of the charity; appointing an Interim Manager of the charity; restricting transactions of the charity; and directing the five appointed new Trustees to undertake certain actions in relation to the charity.
4. The charity was originally an unincorporated association but was incorporated in 2002 as

a company limited by guarantee.

5. The Appellant, pursuant to s.12(3)(a) and Schedule 3 of the Charities Act (Northern Ireland) 2008 ('the Act'), lodged a series of appeals to the Tribunal on 12/08/2014, 17/11/2014, 20/02/2015 and 13/04/2015, respectively. He appealed 14 of the Orders made by the Respondent. In addition to the Orders made that personally concerned him, the Appellant also appealed the Orders suspending three others of the Trustees; the Orders suspending the sole employee of the charity; the Orders appointing an Interim Manager of the charity; the Orders appointing additional Trustees and the Order restricting transactions of the charity. In relation to appeals concerning the various Orders personally concerning the Appellant, those appeals were lodged pursuant to the right of a Trustee of a charity and/or a person suspended and/or removed by the Order in question made by the Respondent under s.31(1)(a) and (b) of the Act, set out in Schedule 3 to the Act, while the appeals lodged by the Appellant in respect of the Orders concerning the various other persons and the charity itself were lodged pursuant to the right of any person who was, or may be, affected by the Orders in question, as also set out in Schedule 3 to the Act.
6. The other suspended Trustees also lodged a series of appeals, as did the sole employee of the charity. The charity itself, as a corporate body, also lodged an appeal. However, ultimately, no appeals were pursued by any of the Appellants, save the Appellant herein, and, in those circumstances, the appeals of the other Appellants were all formally dismissed by the Tribunal.
7. In determining the appeals, the Tribunal could, pursuant to s.12(3)(a) and Schedule 3 of the Act, either allow the appeals, or any of them, and, in so doing, either quash the Orders, and each of them, in whole or in part, and remit the matter to the Respondent or, substitute for all or part of the Orders, or any of them, any other Order that could have been made by the Respondent or, add to the Orders, or any of them, anything that could have been contained in an Order made by the Respondent or, dismiss the appeals or any of them.
8. These proceedings, being appeals, required the Tribunal, pursuant to s.12(3)(a) and paragraph 1(4) to Schedule 3 to the Act, to consider afresh the Orders appealed against and take into account any evidence that was not available to the Respondent. In other words, these appeals were by way of re-hearing of the matters at issue and the Tribunal took the place of the Respondent in determining these matters. The Tribunal proceeded in that manner.
9. A series of interlocutory applications, 11 in total, were brought by the Appellant seeking various Orders from the Tribunal, including that details of the misconduct and mismanagement alleged by the Respondent be provided; that all suspended Trustees be kept advised of the proceedings; that time be extended to permit the Appellant to appeal also against the decision of the Respondent to institute a statutory inquiry against the charity; that the Respondent be directed to cease alleged interference with the legal representation of the then other Appellants; that certain evidence, allegedly obtained

illegally by the Respondent, be excluded; that disclosure of additional documents be made by the Respondent, and in an unredacted format, and that certain evidence obtained by the Respondent after the date of its various Orders be excluded. These applications were, essentially, determined by the Tribunal at a number of interlocutory hearings and, in relation to two, at the substantive hearing. In relation to the appellants' application to challenge the institution of the inquiry, this was dismissed at an interlocutory hearing since the application was out of time and, in any event, the Appellant did not have standing to bring such an application.

10. To the extent that the Appellant sought to make interlocutory applications in ease of other Appellants who did not pursue their appeals, those applications were ultimately superfluous and ill-founded in any event on that basis. It was clear to the Tribunal in the substantive hearing of these appeals that the Appellant, by pursuing various of his appeals as a 'person affected', as was his right, in effect was seeking to act as a proxy Appellant, to a very great degree, to pursue appeals on behalf of other Appellants who had abandoned, withdrawn or not pursued, their own appeals and where those appeals were ultimately dismissed as a result. It was not accepted by the Tribunal that such approach by the Appellant was valid or lawful. The Appellant was only entitled to appeal the Orders that directly affected other persons to the extent, if at all, that the Appellant himself was directly affected.
11. Neither party made any application, at any stage, that the papers in these proceedings should be referred by the Tribunal to the Attorney-General for Northern Ireland ('the Attorney') pursuant to s.15 of the Act. The Attorney was not a party to these proceedings. The Tribunal saw no reason to make such referral of its own volition. The Attorney did, of his own volition, initially intervene in the proceedings, but did not, ultimately, proceed with that intervention.
12. The hearing took place over a three day period on 30/05/2015, 01/06/2015 and 12/06/2015 with oral evidence, under cross-examination, being taken from a number of witnesses of the Respondent, as requested by the Appellant. The Appellant himself gave oral evidence under cross-examination. In accordance with directions of the Tribunal, all witnesses who gave oral evidence under cross-examination had prepared written statements and those statements stood as the evidence in chief of each witness. Detailed written final submissions were furnished by the parties, for which the Tribunal was most grateful.

Issues (Preliminary)

13. Whether the Tribunal ought to exclude evidence allegedly illegally obtained by the Respondent.
14. Whether all discoverable documentation, that was properly disclosable, had been disclosed to the Appellant by the Respondent including, in particular, risk assessment documentation.

15. Whether the Appellant was a person affected, or who may have been a person affected, in respect of any of the Orders made by the Respondent that did not concern the Appellant directly and, if so, the extent of such right of appeal.

Issues (Substantive)

16. In circumstances where the Respondent had lawfully instituted a statutory inquiry under s.22 of the Act in respect of the charity, that was, ultimately, unchallenged, whether there had there been any misconduct or mismanagement in the administration of the charity **or** was it necessary or desirable that the Respondent should have acted as it did, or acted in any alternative manner, for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of any property coming to the charity, pursuant to s.33(1) of the Act, in suspending the Appellant as a trustee of DPOANI, or, insofar as those actions affected, or could affect, the Appellant directly, or as a person affected where the actions were taken against other persons, to suspend them as trustees of the charity or, in the case of the employee of the charity, to suspend her as employee.
17. In the said circumstances of a s.22 inquiry having been lawfully instituted in respect of the charity, whether there had there been any misconduct or mismanagement in the administration of the charity **and** was it necessary or desirable that the Respondent should have acted as it did, or acted in some alternative manner, for the same purposes set out in the preceding paragraph, pursuant to s.33(2) of the Act, to remove the Appellant as trustee of the charity.

The Respondent's Case

18. This may be summarised as follows. In relation to the two substantive matters that the Tribunal determined fell for determination in this appeal in relation to the Appellant, namely, his suspensions, and subsequent removal, from the office of Trustee of the charity, the Respondent considered there was mismanagement on the part of the Appellant in a number of respects. Firstly, that there was a clear, and undeclared, conflict of interest between the Appellant and Elaine Hampton, the former sole employee of the charity (who did not pursue her appeal against the Orders made by the Respondent against her), consequent on the existence of a personal relationship between them, and that the Appellant lied to the Respondent about that relationship and colluded with Ms. Hampton to mislead the Respondent on that issue. The Audit Committee did not function as would have been expected to the extent that the charity's affairs were largely unregulated. The Appellant signed off on a funding application for administrative support (where the only administrative support was provided by Ms. Hampton), as an 'independent referee', who was required to be external to the charity, when the Appellant fell into neither category. The Appellant failed to co-operate with the Respondent and, indeed, obstructed the Respondent. The Appellant failed to ensure that regular meetings of the Audit Committee of the charity were convened. There was a failure to respond to concerns of the charity's auditor concerning financial procedures and the question of reserves, along with the issue of duplicate funding.

The Appellant's Case

19. This may be summarised as follows. The continuance of the Appellant as a Trustee did not create any effective risk to the Respondent's conduct of its investigation. There was no misconduct or mismanagement on the part of the Appellant as a Trustee of the charity. He was denied a fair hearing by the Respondent. The Respondent failed to discharge its duty to promote equality of opportunity. The actions of the Respondent were to the detriment of the charity and associated persons. The Respondent had no, or no adequate, regard to the principle of proportionality in making its Orders, particularly in respect of any risk to the charity's property. The Appellant was a person affected by the other Orders made by the Respondent.

Findings and Reasoning

20. The Tribunal determined that the Appellant's application to exclude evidence allegedly illegally obtained was refused, holding that no evidence was obtained in that manner. In any event, the test governing for admissibility of evidence before the Tribunal is, essentially, whether that evidence is relevant. The question of the weight to be attached to that evidence is quite another matter. The alleged illegally obtained evidence was in the form of transcripts of voluminous text messages sent to various parties, including the Appellant, by the former sole employee of the charity - one of the parties who did not pursue their appeal. Crucially, this evidence was recovered from a mobile telephone that was the property of the charity. However, even if the evidence was, by some objective measure, illegally obtained, a proposition that is entirely rejected, that is irrelevant to the question of admissibility: the crucial issue is whether the evidence is relevant. The content of many of those messages was quite appalling and disgraceful. In particular, they showed an attitude of complete and utter contempt for the Respondent in its role as the statutory regulatory body of charities in Northern Ireland that is charged, in the public interest, to increase public trust and confidence in charities and guard against misconduct or mismanagement in the administration of charities to ensure there is no threat or risk to the charity's beneficiaries, services or assets. The Tribunal found the evidence admissible as being relevant to the matters at issue in these appeals. The Appellant himself, to his credit, did not engage in such reprehensible behaviour. In the circumstances, the Tribunal attached little weight to that evidence in determining these appeals. Nevertheless, in light of the personal and undeclared relationship found by the Tribunal to exist between the Appellant and the said former employee, given their respective roles within the charity, some concern in relation to the Appellant concerning his role in the charity, was raised in the mind of the Tribunal by dint of this particular evidence.

21. The Tribunal was satisfied that all documentation that was, or had been, in the possession of the Respondent, was properly disclosable by the Respondent to the Appellant, subject to that documentation being relevant to the matters at issue in these appeals. No issue ultimately arose in these proceedings concerning redaction of any disclosable documentation. Ultimately, however, the issue of discovery of documentation

ceased to be an issue between the parties by the conclusion of these proceedings.

22. The Tribunal accepted that the Appellant was a 'person affected' by those other decisions and Orders of the Appellant that related directly to other parties. While that term is not defined in the Act, the Tribunal adopted the definition contained in *R (oao International Peace Project 2000)* [2009] EWHC (Admin) 3446 (albeit, arguably, these remarks were *obiter* and, in any event, that case was not concerned with charity law and, further, was a judicial review proceeding) that "A person who is or may be affected....means someone who has an interest that is materially greater than, or different from, the interests of an ordinary member of the public". Given the Appellant's past association with the charity, and his extensive engagement with the Respondent about it, the Tribunal concluded that the Appellant did have an interest greater than that of an ordinary member of the public, so as to bring him within column 2 of Schedule 3 to the Act. However, this ruling did not extend to the Appellant being allowed, by proxy in effect, in the course of his own appeals, to pursue the various appeals brought, but abandoned, or not pursued, by each of the other five parties: his rights of appeal as a 'person affected' could only extend to an assertion of his own interests, not the interests of others. The Tribunal carefully considered the evidence before it in respect of this matter. The Tribunal concluded that the Appellant failed to demonstrate that he was particularly affected personally by the making of the other Orders to the extent that those Orders should be quashed or altered, as opposed to the effect on him of the making of the Orders that directly concerned him, and in circumstances where those directly affected by those other Orders did not pursue appeals against those Orders. To reach any other finding would be irrational.
23. The Tribunal concluded, on the balance of probabilities, that all of the Orders made by the Respondent concerning the substantive issues stood or fell together.
24. A different test applies to Orders made pursuant to s.33(1) of the Act and Orders made pursuant to s.33(2) of the Act. The former is concerned, *inter alia*, with a suspension of a Trustee and the latter with, *inter alia*, the removal of a Trustee. In the case of suspension, the Respondent, and the Tribunal on appeal, required to be satisfied that there had been misconduct or mismanagement in the administration of a charity **or** that the action(s) taken, that is, the Order(s) made, were necessary or desirable for the purpose of protecting the property of the charity or securing a proper application for the purposes of the charity of that property or of property coming to the charity. By contrast, in the case of removal, the Respondent, or the Tribunal on appeal, had to be satisfied that both limbs existed, that is, that there had been misconduct or mismanagement **and** the actions taken were necessary or desirable to, in summary terms, protect the property of the charity, to the extent set out in both s.31(1) and s.31(2) of the Act. The substantive issues fell for determination by reference to whether or not, on the evidence, both written and oral, having regard to the written submissions made by the parties, these tests were satisfied, on the balance of probabilities, in accordance with the said powers of the Tribunal.

25. The evidence seemed to point to a position that much of the concern of the Respondent came down to a number of discrete issues, including, an alleged lack of co-operation by the Appellant with the Respondent concerning, *inter alia*, circumstances surrounding a trip to Dublin organised for the members of the charity; an issue surrounding cash reserves of the charity; some duplication in funding and the Appellant's role in the appointment of the sole employee of the charity with whom he was having an undeclared personal relationship.
27. The Tribunal found as a fact that the Appellant had engaged in mismanagement by not declaring his personal relationship with the sole employee of the charity. This was compounded by reason of his role as Chairman of the Audit Committee of the charity (not merely as a trustee). This made the issue of mismanagement all the more serious.
28. The Tribunal found that the evidence of the Respondent concerning alleged profligacy on the trip to Dublin was not convincing and the Tribunal attached little weight to that evidence.
29. The Tribunal attached much significance to its finding that the Appellant's signature on an application for funding to a significant funder was forged, this being the only explanation in the absence of any other explanation from the Appellant. The Appellant's credibility was called into question when he was not prepared to accept or deny in evidence that a forgery of his signature had occurred. Again, given the Appellant's role both as a Trustee and as Chairman of the Audit Committee of the charity, this evidence was significant in leading the Tribunal to its decision in determining these appeals. The Appellant held a senior role in the affairs of the charity and, concurrently, was a senior civil servant. The forgery grounded the case concerning the duplication in funding. The Tribunal found as a fact that there had been duplication in funding as a result of this application made on behalf of the charity apparently signed by the Appellant. This involved an application for funding in the sum of £5,000.00 to the Northern Ireland Police Fund relating to payment of salary of the sole employee of the charity, Ms. Hampton, when an application for funding for the same purpose (salary and administration) had already been received from other funders. The Tribunal concluded that such duplication was a very serious matter and the Appellant, in view of his senior role in the affairs of the charity, had to bear much responsibility for that fact.
30. The Tribunal attached little weight to the evidence of the Respondent concerning the issue of the reserves of the charity, finding that this was a matter properly for the judgment of the Trustees and that was not of such a nature that would have required action to be taken to protect the property of the charity. Accordingly, the Tribunal did not make any adverse finding against the Appellant in that regard.
31. The Tribunal found no evidence to show any effect, adverse or otherwise, of the various actions taken, and Orders made, by the Respondent against the other parties who had either abandoned or not pursued their appeals. While the Tribunal accepted that the Appellant was perfectly entitled to appeal in respect of a number of those other Orders as a 'person affected', it concluded that, ultimately, the evidence did not support his

assertion that any interest of his was affected by the Respondent making those other Orders. (It should also be noted that the Appellant withdrew his appeal as a 'person affected' concerning the Order made against Mr. Stephen McAllister). Accordingly, the Tribunal concluded that only the appeals against the two Orders suspending the Appellant, made on 08/08/2014 and 07/11/2014 (the second suspension being merely to allow time to complete the necessary investigations, a position the Tribunal found to be in order), and the appeal against the Order removing the Appellant as a trustee of the charity, made on 22/01/2015, fell, ultimately, to be determined in addition.

32. Since the appeals brought by five of the original six Appellants were either abandoned, withdrawn or not pursued, the Orders made by the Respondent in respect of those other Appellants stand as unchallenged. The relevance of this is that the factual basis that justified the making of the Orders against those other Appellants were inextricably bound up with the factual basis for the making of the Orders suspending, and subsequently removing, the Appellant from the office of Trustee of the charity. In that sense, the basis of the making of the other Orders corroborated the basis of the making of the Orders against the Appellant. Further, it is also of significance that the decision of the Respondent to institute a statutory inquiry pursuant to s.22 of the 2008 Act was, ultimately, unchallenged: it is only following the institution of such statutory inquiry that the Respondent could, if satisfied that the criteria set out in s.33 of the 2008 Act existed, could take action by making the Orders it did, including those made against the Appellant.
33. The Tribunal was satisfied that there was no breach of the Appellant's human rights, identified by him as an alleged breach by the Respondent of his right to a fair hearing and a breach of his Article 8 rights too by contacting his employer as part of its investigation. Even if there had been a breach, whether that alleged, otherwise, any such breach was remedied by the hearing before the Tribunal. This is because the hearing was a re-hearing of all the issues and the Tribunal stood in the shoes of the Respondent in determining those issues. The Tribunal was satisfied, in any event, that no human rights issue concerning Article 6 or Article 8 was engaged at all in the circumstances of these appeals.
34. The Tribunal was satisfied that there was no breach of the Respondent's duty to promote equality of opportunity. This assertion was not pursued to any degree by the Appellant and the Tribunal could find no substance to support such a contention. The Appellant did not make any submissions as to support this assertion nor what implications, if any, flowed from any such failure on the part of the Respondent. In any event, however, again, since these appeals were by way of re-hearing, the Tribunal stood in the shoes of the Respondent so that any failure to have regard to the duty to promote equality of opportunity fell to the Tribunal in determining these appeals. It must be noted that the duty on public bodies is to have regard to the need to promote equality of opportunity but only among specified categories of persons: it does not provide any specific individual, including the Appellant, with a free-standing anti-discrimination ground. The Tribunal was satisfied, however, that no issue of discrimination involving the Appellant arose in this

case.

35. The issue of whether the charity and associated persons suffered a detriment as a result of the Respondent making its Orders was a bizarre submission. It could only rationally mean that the Respondent, if it were satisfied, on the balance of probabilities, that it needed, as the statutory regulator of charities in Northern Ireland, to intervene to protect the property of a charity (in the interests of the beneficiaries of the charity), to, *inter alia*, suspend and subsequently remove a Trustee from the office, should be prohibited from doing so if, in the subjective view of an affected Trustee, some detriment allegedly arose to the property of the charity and the interests of the beneficiaries. The Tribunal rejected this argument. The only issue for the Tribunal was whether the continuance in office of the Appellant as a Trustee of the charity was necessary or desirable to protect the property of the charity. The Tribunal had no hesitation, having regard to the entirety of the evidence, that the suspension, and subsequent removal, of the Appellant from the office of Trustee was required for that purpose.
36. The Tribunal accepted the submissions of the Respondent (and declined to accept the counter submissions of the Appellant), that the Orders suspending, and subsequently removing, the Appellant from the office of Trustee, were proportionate, on the balance of probabilities, having regard to the entirety of the evidence, both written and oral.

37. Suspension

- 37.1 While the Respondent relied on the first limb of s.33(1), to impose both suspensions on the Appellant, since this appeal was by way of re-hearing, it was open to the Tribunal to rely, in the alternative, on the second limb, namely, s.33(1)(b), that is, that suspension was necessary or desirable to, in terms, protect the property of the charity. In all cases, suspension of a trustee is to allow the Respondent to consider whether that trustee should be removed from the office of trustee.
- 37.2 The Tribunal, taking a broad overview of all of the evidence, concluded, on balance, that the case advanced by the Respondent to justify suspension of the Appellant on the grounds of misconduct or mismanagement, while weak in certain respects, was proved on the balance of probabilities. In any event, had the Tribunal not been satisfied that there was sufficient evidence of misconduct or mismanagement on the part of the Appellant, the Tribunal would have had no hesitation in finding that it was necessary or desirable to suspend the Appellant, on both occasions, in order to protect the property of the charity.
- 37.3 The reasons advanced by the Respondent to justify its suspension decision related to the issues of the charity's accounts; its reserves; the trips undertaken; the issue of duplication of funding; the number of meetings of the charity's Audit Committee (eight over four years instead of twelve over three years) and issues of conflict - including the Appellant's failure to declare the fact of his personal relationship with the only employee of the charity - was evidence, on the balance of probabilities, of

misconduct and mismanagement on the part of the Appellant. Significantly, the written evidence of William Allen was that he believed the Audit Committee of the charity to have been doing its job when, patently, that was not the case. This fact was confirmed by the written and oral evidence of David Carroll, a former Treasurer of the charity. The Tribunal preferred the evidence of Mr. Carroll in that regard, particularly given his role as one time Treasurer of the charity.

- 37.4 A discrete issue raised by the Respondent was the role of the Appellant in the appointment of Elaine Hampton, the sole employee of the charity, with whom he had an undeclared personal relationship. However, the Tribunal concluded, on the evidence, that this did not, on balance, in itself, raise any significant or substantive issue for the purposes of determining this appeal. It was, however, one further piece of the overall picture that contributed to the concern at the implications flowing from the personal, but undeclared, relationship between the Appellant and Ms. Hampton.
- 37.5 The picture that emerged from a broad overview of all of the evidence was that of a very concerning situation. While this was not, by any stretch, due entirely to the actions or inactions of the Appellant, the Appellant played a significant role due, not least, to his senior role in the affairs and administration of the charity.
- 37.6 The Appellant failed to deal with the duty he owed, as a Trustee, to the Respondent, as the statutory regulatory body of the charity: this was a statutory duty placed on him as a Trustee and he had a duty to co-operate with the Respondent. He failed to do so. On the contrary, the Tribunal concluded, on the evidence, that the Appellant, in fact, obstructed the Respondent. Further he did not, as Trustee, challenge Elaine Hampton's lies to the Respondent concerning their personal relationship, nor did he himself bring the existence of that relationship to the attention of the Respondent or to the attention his fellow Trustees.
- 37.7 The Appellant was not an 'external person' in connection with a funding application and he failed to explain how it came to be that his signature was forged on a funding application document that led to duplication in funding.
- 37.8 The terms of reference of the charity's Audit Committee were that it was to oversee the governance and financial affairs of the charity. As chairman of the Audit Committee, and later Trustee, of the charity, there was a particularly heavy onus, responsibility and expectation on the Appellant, both in a personal capacity as one of the body of Trustees, to ensure that there was no mismanagement or misconduct in the affairs of the charity. On the balance of probabilities, the Appellant failed in the discharge of that responsibility on the evidence before the Tribunal.
- 37.9 The Tribunal considered that the proper approach to these matters was to consider the cumulative effect of all of them in assessing whether or not there were grounds

to justify suspension of the Appellant, on each of the two occasions in question, having regard to the provisions contained in s.33(1)(a) and (b) of the 2008 Act. On that basis, on the balance of probabilities, the Tribunal had no hesitation in finding that grounds to suspend the Appellant, on each occasion, did exist.

37.10 The Tribunal was satisfied, on the evidence, both written and oral and on the submissions of the parties, that no issue arose whereby any human rights of the Appellant were breached, or that any equality issues arose. The Tribunal was also satisfied that the suspensions of the Appellant from the office of Trustee of the charity were proportionate.

38. Removal

38.1 Removal of a Trustee of a charity from office by the Respondent is governed by s.33(2) of the 2008 Act, that is, where after a statutory inquiry into a charity has been instituted, the Respondent is satisfied that there is, or has been, any misconduct or mismanagement in the administration of a charity **and** that it is necessary or desirable to act to, in terms, protect the property of the charity, the Respondent may, by Order, *inter alia*, remove a Trustee who has been responsible for, or privy to, the misconduct or mismanagement or whose conduct has contributed to it or facilitated it.

38.2 The Tribunal made a finding that a statutory inquiry had been initiated into the charity in this case, an action that was not, ultimately, the subject of successful challenge; that the Respondent was satisfied that there had been misconduct or mismanagement in the administration of the charity and that it was necessary to take action in relation thereto. The issue for the Tribunal in these proceedings was whether the action taken in removing the Appellant from the office of Trustee, by Order, was appropriate, that is, necessary or desirable to protect the charity. This had to mean, in addition, to protect the interests of the beneficiaries of the charity.

38.4 The Tribunal was satisfied, on the balance of probabilities, on a broad overview of the entirety of the evidence, that there was mismanagement or misconduct in the administration of the charity and that it was necessary or desirable that the Respondent took action within its powers.

38.5 As Chairman of the Audit Committee of the charity, the Appellant had an important, integral and central role in ensuring good governance and administration of the charity. Consequently, it was inconceivable that, amongst a series of actions undertaken by the Respondent, that the Appellant should not be removed from the office of Trustee of the charity in order to protect the charity and its beneficiaries.

38.4 The Tribunal attached much significance to the fact that the Appellant admitted that he was aware of the contents of the Statutory Declaration sworn by Elaine Hampton, the sole former employee of the charity with whom the Appellant was in an undeclared personal relationship; indeed, the Appellant attended with Ms. Hampton

to swear her Statutory Declaration and, at all relevant times, was closely involved in the drafting of that Statutory Declaration. The evidence before the Tribunal confirmed that the Appellant was aware not only of the contents of the Statutory Declaration of Ms. Hampton but that he was also aware that she had sworn the Declaration. Action was also taken by the Respondent against Ms. Hampton. She appealed against the Orders made against her but she abandoned her appeal. The Appellant also swore a Statutory Declaration. However, in his oral evidence to the Tribunal, the Appellant contradicted the contents of his own Statutory Declaration concerning his relationship with Ms. Hampton. In the course of this appeal, the Appellant was at pains, to a great degree, to defend Ms. Hampton and her actions. The Tribunal found that this was the reason why he was so anxious to object to the admission into evidence of various telecommunications documentary evidence, having regard to their content, that came, in great measure, from Ms. Hampton. It also was strong evidence of the existence of the close personal relationship between the Appellant and Ms. Hampton – a relationship that should have been declared to the charity and his fellow Trustees but was not declared – thus casting raising one concern, among others, as to the appropriateness of the Appellant to remain a Trustee of the charity.

- 38.5 The Tribunal acknowledged that to make an Order removing a Trustee of a charity from office was a significant and far-reaching step. It had a character of permanency and was not a step to be undertaken lightly. The Tribunal concluded that the necessity or desirability of that step required to be determined by reference to a higher standard than in the context of suspension of a Trustee from office. However, the Tribunal did not require to be certain that any of the specific instances of misconduct or mismanagement alleged against the Appellant by the Respondent existed beyond doubt. Further, it was appropriate to determine this question in the context of a cumulative impression of misconduct or mismanagement on the part of the Appellant. The question could be framed in terms of what, if any risk was there to the property of the charity unless the Appellant was removed from the office of Trustee? The Tribunal ultimately concluded, on the balance of probabilities, that there was such risk unless the Appellant was removed from the office of Trustee.
- 38.6 The Appellant should have challenged Ms. Hampton on her actions, not least her lying to the Respondent concerning the personal relationship between her and the Appellant; instead, rather than do so, the Appellant connived with the Ms. Hampton in her actions, not least by doing nothing about her Statutory Declaration. This was probably a natural consequence, in many ways, of the Appellant's undeclared personal relationship with Ms. Hampton and a reason why the Appellant's failure to declare that interest was so significant. Even so, this, in itself, might not have been regarded as sufficiently significant to justify removal of the Appellant from the office of Trustee.
- 38.7 Of much greater significance was the failure of the Appellant to work in co-operation with the Respondent as the statutory regulator of charities in Northern Ireland. He

had a duty, as Trustee, to do so and he failed to fulfill that duty; on the contrary, the Appellant obstructed the Respondent in carrying out its statutory regulatory role in relation to this charity or connived with one or more others to do so.

38.8 Of great significance too was the evidence concerning the Appellant's signature being forged on an application for funding for the charity that the Appellant was unable to explain and, indeed, appeared reticent in admitting it was a forgery. This was despite the fact that this document was in the possession of the Appellant for some considerable time in advance of these proceedings, not least by reason of its disclosure by the Respondent to the Appellant as part of the progress of the proceedings. If, however, the Appellant did not know of this forgery at the time that, in itself, was significant and tended to show that the Appellant was not adequately fulfilling the role of Trustee.

38.9 The Tribunal accepted entirely that no personal gain accrued to the Appellant arising out of the misconduct and mismanagement of the charity alleged by the Respondent and found by the Tribunal to have existed. The Tribunal also accepted entirely that such misconduct and mismanagement was not entirely due to the actions or inactions of the Appellant. A benign view of the actions or inactions of the Appellant might be that his approach to his responsibilities as a Trustee was one of laxity. However, even if it were concluded that the removal of the Appellant as Trustee was 'desirable' rather than it being 'necessary', his removal was still dictated. The suitability of a person to act as Trustee of a charity goes well beyond whether or not he made a personal gain from any misconduct or mismanagement: the Respondent, and the Tribunal on appeal, had to keep uppermost the interests of the beneficiaries of the charity who, in this case, were vulnerable people. The risk to those interests by reason of a risk to the property of the charity did make it, at the very least, on the evidence, on the balance of probabilities, desirable that the Appellant be removed from the office of Trustee of the charity.

38.10 The Tribunal was satisfied, on the evidence, both written and oral and on the submissions of the parties, that no issue arose whereby any human rights of the Appellant were breached, or that any equality issues arose. The Tribunal was also satisfied that the removal of the Appellant from the office of Trustee of the charity was proportionate.

Decision

39. No illegal evidence was obtained by the Respondent. The Appellant's application to exclude such evidence on that basis was, therefore, refused. The evidence in question was relevant and, therefore, admissible. Had it been illegally obtained, it would still have been admissible in these proceedings on that basis.
40. No further ruling was ultimately required of the Tribunal in respect of discovery of documentation.

41. The Appellant was properly a 'person affected' and could bring proceedings in that capacity (in addition to his bringing proceedings in his own right concerning decisions and Orders made by the Respondent that directly concerned the Appellant personally). His appeals, brought in that capacity, are dismissed.
42. The substantive appeals, concerning the Orders that directly affected the Appellant, that is, those suspending and removing the Appellant as a Trustee of the charity, are dismissed. The said Orders of the Respondent are upheld.

Costs

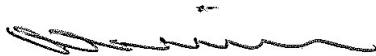
43. The Tribunal has jurisdiction to award costs in favour of any party to proceedings before it against any other party to the proceedings, in whole or in part, but only where it considers that the other party has acted vexatiously, frivolously or unreasonably, subject to that party having an opportunity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

Right of Appeal

45. Pursuant to Rule 32(2) of the Charity Tribunal Rules (Northern Ireland) 2010, a right of appeal lies from this decision of the Tribunal to the High Court of Justice in Northern Ireland. Any party 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 of 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 19th day of October 2015.

Signed:



Damien McMahon,
President.

Adrian Colmer
Legal Member.

Delia van der Lenden,
Lay Member.