

**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**  
**THE CHARITIES ACT (NORTHERN IRELAND) 2008**  
**THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

**BETWEEN:**

**TREVOR MCKEE**

**Applicant**

**-and-**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**Respondent**

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**DECISION**

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1. This is the Tribunal's decision on an application made by Mr McKee for an order pursuant to Rules 24 and 33 of The Charity Tribunal Rules (Northern Ireland) 2010 ("the Rules") that the Respondent pay the costs of this appeal.
2. The immediate context for Mr McKee's application for costs is the decision of the Respondent to withdraw its opposition to his application for a review of its decision, made in 2013, to institute an inquiry into the affairs of Lough Neagh Rescue Limited ("the Charity"). As the preceding sentence reveals, there is a longer-running context to this application for costs, involving numerous substantive and interlocutory hearings over the years. It is convenient at this point to record the courtesy and diligence which have characterised Mr McKee's conduct throughout the entirety of this litigation. The Tribunal also thanks Mr McKee and McAteer for their focussed written and oral submissions on this costs application, which have been fully taken into account in reaching this decision.
3. The Tribunal notes the provisions of Section 13(6) and (7) of the Charities Act (Northern Ireland) 2008, which provide as follows

*(6) If the Tribunal considers that any party to proceedings before it has acted vexatiously, frivolously or unreasonably, the Tribunal may order that party to pay to any other party to the*

*proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.*

*(7) If the Tribunal considers that a decision, direction or order of the Commission which is the subject of proceedings before it was unreasonable, the Tribunal may order the Commission to pay to any other party to the proceedings the whole or part of the costs incurred by that other party in connection with the proceedings.*

4. The sole initial focus of the submissions to and before the Tribunal was Section 13(6). Moreover, Mr McKee did not contend that the Respondent had acted either vexatiously or frivolously. Rather he contended that the Respondent had acted unreasonably in defending his application for a review, up until the time when the Respondent decided to withdraw its opposition. At the invitation of the Tribunal, and after the hearing, the parties also made submissions on the applicability of the costs jurisdiction under Section 13(7).
5. The Respondent explains its actions in first opposing and then withdrawing its opposition to, Mr McKee's appeal, by reference to two matters. First, it was not until 19 February 2020 that Her Majesty's Court of Appeal in Northern Ireland in its judgment in McKee & Hughes v The Charity Commission for Northern Ireland [2020] NICA 13 (19 February 2020), clarified the law as to the delegation of decision making within the Respondent. Second, given the intervention of the pandemic of 2020 (and ongoing), it was not until late 2020 that the Respondent was able to consult upon and consider the implications of that judgment for the purposes of this case.
6. Mr McKee countered these submissions by suggesting that it should have been clear to the Respondent, from its own procedural manuals, and from as long ago as 2011, that the Respondent's staff did not have the power to take decisions about the institution of inquiries: it did not need the Court of Appeal to clarify that point. This was a point which Mr Crawford reiterated on behalf of Mr McKee. Further, whilst making all reasonable allowances for the impact of the pandemic, the Respondent had taken too long to come to a decision on whether to continue to oppose the application for a review. Mr McKee also referred to the impact that the decision to institute an inquiry had had upon him, over many years.
7. In considering these submissions, the Tribunal notes that its jurisdiction to make an order for costs under Section 13(6) is concerned with an evaluation of the Respondent's conduct in respect of these proceedings. There have been other and related proceedings between Mr McKee and the Respondent over the years. As noted above, those other and related proceedings provide some of the context for Mr McKee's application for a review. But the Tribunal does not consider that the mere fact of those proceedings having occurred is capable of forming a basis for making an order for costs in the instant case. Indeed, Mr McKee's application for costs was not presented on that basis, and, in the Tribunal's view, that was properly and understandably the case.
8. The question of how the Respondent should conduct its decision-making functions has been the subject of argument before the Tribunal, before the High Court and before the Court of Appeal. The Tribunal accepts that the position as to how the Respondent ought to have taken its decisions was not finally clarified until the Court of Appeal gave judgment in February 2020. In the light of the decision of the Court of Appeal, the Respondent adjusted its position in these proceedings and abandoned its opposition to Mr McKee's application, and an agreed order was

drawn up, disposing of that application. Admittedly some time passed between the Court of Appeal giving judgment and the Respondent conceding the application. But the Respondent has explained the reason for its delay. In these circumstances, the Tribunal has concluded that the Respondent's conduct cannot be regarded unreasonable.

9. As to Section 13(7) of the 2008 Act as a basis for making an order for costs against the Respondent by reference to the unreasonableness of the *underlying decision* which was the subject of Mr McKee's application, on the basis of the material before the Tribunal, it is simply not in a position to come to a view as to whether that *underlying decision* was unreasonable. In order to come to a view on that question, the Tribunal would in effect have to undertake a full hearing as to the circumstances of that decision – something which was avoided by the Respondent's abandonment of its opposition to Mr McKee's application.
10. Having considered the parties' written and oral submissions the Tribunal therefore declines to make an order for costs against the Respondent.
11. 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 QC**  
**26.04.21**