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(subject to editorial corrections)*

2015/115421

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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CHANCERY DIVISION

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IN THE MATTER OF THE CHARITIES ACT (NORTHERN IRELAND) 2008

Between

THE ATTORNEY GENERAL FOR NORTHERN IRELAND

Applicant

and

ROBERT CRAWFORD

and

THE CHARITY COMMISSIONER FOR NORTHERN IRELAND

Respondents

_____

HORNER J

Introduction

[1] This is an application by the Attorney General ("AG") to appeal a decision of the Charity Tribunal for Northern Ireland ("the Tribunal") dated 19 October 2015 on various points of law. It is accepted that the AG played no role in the original proceedings before the Tribunal. He is exercising the right given to him under Section 14 of the Charities Act (Northern Ireland) 2008 ("the Act").

[2] Section 14(2) of the Act provides that:

> "(a) An appeal may be brought under this section against the decision of the Tribunal only on a point of law."

Where, as here, if the tribunal has refused permission the court may grant it: see Section 14(4)(b).

Section 14(1) provides that:

> "A party to proceedings before the Tribunal may appeal to the court against the decision of the Tribunal."

However, it will be noted that sub-section (5) provides that:

> "(a) The Commission and the Attorney General are to be treated as parties to all proceedings before the Tribunal."

[3] The AG sought to appeal the decision of the Tribunal to remove Robert Crawford ("RC") as a trustee of the charity, The Disabled Police Officers' Association of Northern Ireland ("the Charity"). Leave was refused by the Tribunal on 20 November 2015. The original grounds sought to be relied on by the AG were amended after the initial hearing. The grounds on the Notice, as amended, are as follows:

> "1. The Tribunal erred in concluding that the removal of Robert Crawford as trustee of the charity was 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', and, further, offered no satisfactory basis or reasoning for this conclusion.
>
> 2. The Tribunal erred in relying on a 'cumulative impression of misconduct or mismanagement' by Robert Crawford rather than giving weight only to misconduct or mismanagement that had been established to the requisite standard.
>
> 3. The Tribunal erred in drawing conclusions against Robert Crawford at [32] on the basis of withdrawals of appeals by other trustees.
>
> 4. The Tribunal erred in holding the appellant to a higher standard than that of trustee by reason of his role on the audit committee, and, in particular, imposing a duty 'to ensure that there was no mismanagement or misconduct in the affairs of the charity'.

> 5. The Tribunal erred in its conclusion that Robert Crawford's removal as a trustee is a proportionate exercise of the statutory power to remove and further offered no satisfactory basis or reasoning for its conclusion including no finding about what conduct amounted to relevant misconduct or mismanagement, or amounted to both misconduct and mismanagement.
>
> 6. The Tribunal erred in its interpretation of 'administration of the charity' in section 33(2) of the Charities Act (Northern Ireland) 2008 in impermissibly extending it to (1) interactions with the Charity Commission in the course of its investigation and to (2) behaviour as a witness in proceedings before the Charity Tribunal [38.6-38.8]."

[4] The Charity Commission has power under Section 33 after it has instituted an inquiry under Section 22 with respect to any charity (as here) to remove any trustee "who has been responsible for or privy to the misconduct and mis-management or whose conduct has contributed to or facilitated it".

[5] Thus under Section 33(2) before someone can be removed as a Trustee there has to be:

(a) an inquiry under Section 22 with respect to the charity;

(b) the Charity Commission must be satisfied that there has been misconduct or mis-management in the **administration** of the charity; and

(c) that it is necessary or desirable to act for the purpose of protecting the property of the charity.

[6] An appeal against the decision of the Charity Commission is to the Charity Tribunal. In the event that the Charity Tribunal dismisses the appeal, an appeal lies from the Charity Tribunal on a point of law only. The test as to whether or not leave should be granted is whether there is an arguable case disclosed and whether that case has a reasonable prospect of success.

DISCUSSION

[7] The Charity Commission, a respondent to this appeal, feel aggrieved that the AG, who was not involved in the hearing before the Tribunal, has now intervened to appeal the decision of the Tribunal. It has complained that at least some of the grounds of the appeal are appeals on the facts and are not on points of law. Furthermore, the AG has appealed, when he is largely ignorant of much of the evidence adduced before the Tribunal, and which frame the Tribunal's decision.

[8] It seems to me from having listened to the arguments that there are 3 main thrusts to the appeal being advanced by the AG. They are:

(i) Did the Tribunal err in concluding that "administration" as used in Section 33 should be defined widely so as to include RC's interaction with the Charity Commission during the course of the statutory inquiry under Section 22 and the Tribunal during the hearing? ("Ground 1")

(ii) Did the Tribunal err in failing to provide satisfactory reasoning for its decision to remove RC as a trustee? ("Ground 2")

(iii) Were the facts found by the Tribunal such that no Tribunal acting judicially and properly instructed as to the relevant law could have come to the decision that RC should be removed as a trustee? - see Lord Radcliffe in Edwards v Bairstow [1956] AC 14 at 36. ("Ground 3")

Ground 1

[9] The Charity Commission says that "administration" as used in Section 33 of the Act, should be given its normal meaning. It is a word which has a wide general meaning and would normally be expected to comprise dealings which would occur between a trustee and the regulator of DPOANI, that is the Charity Commission during the course of a statutory inquiry under Section 22 of the Act. It might also be expected to include the trustee's interaction with the Tribunal in any dispute as to whether or not there should have been a statutory inquiry. The AG contends that "administration" should be given a more restrictive, narrower meaning than it would normally have. He says that "administration" should not include dealings between the Charity Commission and trustees during the course of a statutory inquiry and/or any behaviour of a trustee before a Tribunal. He relies on Section 25 which imposes criminal sanctions upon a trustee who provides the Charity Commission with false material or information during an inquiry as limiting the scope and range of the meaning of "administration". It might be thought this is a surprising conclusion, given that a trustee on that interpretation could lie to the Charity Commission under a Section 22 inquiry (or to a Tribunal), end up with a conviction and a term of imprisonment for his pains, and yet that misconduct would have to be ignored in assessing whether that person should continue to act as a trustee for the Charity. However, I consider that the AG has overcome the relatively modest hurdle which faces him on this leave application and that there is an arguable point of statutory interpretation given the architecture of the Act. Accordingly, I am satisfied that leave should be granted on this ground.

Ground 2

[10] I have considered the decision of the Tribunal and in particular those passages which relate to both the suspension and removal of RC as a trustee. I have

looked carefully at the reasons offered by the Tribunal. I confess that some of the reasoning of the Tribunal might be best described as opaque. In my view, I consider that it is arguable that this fails the test set out in English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605. In that case Phillips LJ in his judgment approved the comments of Sachs LJ in Eagil Trust v Pigott-Brown [1985] 3 All ER 119 at 122 and went to say that the reasoning did not need to be set out extensively but that:

> "The essential requirement is that the terms of the judgment should enable the parties in the Appellate Tribunal readily to analyse the reasoning that was essential to the judge's decision."

[11] I am satisfied that an arguable case has been disclosed in respect of Ground 2, which is set out in paragraphs 1 and 5 of the amended Notice, because the reasoning essential to the Tribunal's decision is not set out with sufficient clarity, it can be argued, to enable the parties to understand the basis of the Tribunal's decision.

Ground 3

[12] The Charity Commission complained that the AG had sought to appeal factual findings of the Tribunal rather than confine his appeal, as he is obliged to do, to points of law. There can be no doubt that the findings of fact are not set out with great clarity. There is much to be said for insisting that in any judgment of any Tribunal the facts as found should be set out so that they can be clearly and easily understood. This does not require the Tribunal to set out the evidence. But it should be a straightforward matter when considering any judgment of a Tribunal to appreciate what the facts are which have been found and on which the Tribunal intends to base its decision. But the thrust of the AG's appeal on a number of different inter-related grounds, and which is met by objection from the Charity Commission that these are complaints about the facts rather than about a point of law, might perhaps be framed as a legal issue in the following manner:

> "The facts found are such that no Tribunal acting judicially and properly instructed in the relevant law could have reached the conclusion that RC should be removed as a Trustee."

[13] The parties may feel that this better encapsulates what the AG seeks to appeal at paragraph 5, for example, of the amended Notice.

[14] I am not satisfied that there is a point of law arising out of paragraph 4 of amended Notice, namely the complaint that a higher duty was placed upon RC as a member of the Audit Committee. His behaviour, namely his undeclared relationship with EH, the only employee of DPOANI, was held to be compounded because he was a trustee and chairman of the Audit Committee: see paragraphs 27 and 29 of the decision. Paragraph 37.8 does not place a heavier onus on RC, it

merely makes it clear, when read in context, that as a chairman of the Audit Committee and as a trustee there was a particularly heavy responsibility placed upon him. The comment at paragraph 38.5 of the decision relates to his responsibility and does not impose any higher standard upon him than is placed on the other trustees. I do not consider that leave should be granted for this ground of the appeal.

[15] Further, I am satisfied that it is clearly arguable at paragraph 3 of the amended Notice that the Tribunal was not entitled to take into account the making of orders which "corroborated the basis of the making of the orders against the appellant". The other appellants may not have proceeded with their appeals for all sorts of reasons, many of which will not reflect adversely on RC. The Tribunal does not give any reason why it was entitled in all the circumstances to draw an adverse inference against RC from the withdrawals of appeals by other trustees.

[16] At paragraph 2 of the amended Notice complaint is made about the Tribunal relying on a "cumulative impression of misconduct or mis-management" on the part of RC. Each of the complaints made against RC, if they are to be relied upon by the Tribunal, must be proved to the balance of probabilities. The Tribunal was, it is argued, not entitled to rely on an "impression", but only on what was proved. While it may be suggested the Tribunal used "impression" in paragraph 38.5 of the judgment to mean balance of probabilities as opposed to beyond reasonable doubt which the Tribunal has highlighted in the previous sentence, I consider that the issue raised does overcome the hurdle necessary for leave to appeal to be granted.

CONCLUSION

[17] Appeals from the Tribunal in Northern Ireland are very much in their infancy. This appeal raises various issues which may be of general importance in other appeals. It also raises issues as to how a decision should be recorded. In particular, the importance of:

(a) setting out in an unambiguous fashion the findings of facts;

(b) providing reasons which are intelligible and meet the substance of the arguments advanced and which the Tribunal was required to consider. Helpful guidance is provided by de Smith on Judicial Review (7th Edition) at 7-102 which states:

> "In short, the reasons must show that the decision-maker successfully came to grips with the main contentions advanced by the parties, and must tell the parties in broad terms why they lost or, as the case may be, won."

[18] There is a complaint that some of the amendments to the original Notice raise grounds that are out of time. I do not consider that they are out of time but insofar

as they may be, I give leave to extend time given that they raise points of general, and not merely particular, significance. I consider, for example, that it is important that answers are provided to issues such as the correct interpretation of "administration" in the Act on this appeal.

[19] Finally, the AG may or may not, wish to re-fashion his Notice in light of this judgment, the comments made and the leave which I have granted. I give him two weeks to submit an amended Notice, if he so wishes. The respondent shall lodge any objections in writing within a further two weeks. I now intend to set a date for the hearing of this appeal.