

**THE CHARITIES ACT (NORTHERN IRELAND) 2008  
THE CHARITIES ACT (NORTHERN IRELAND) 2013  
THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

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**IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

**IN THE MATTER OF A REFERENCE PURSUANT TO SCHEDULE 4 OF THE  
CHARITIES ACT (NORTHERN IRELAND) 2008**

**NOTICE**

1. A Reference pursuant to paragraph 2(b) to Schedule 4 of the Charities Act (Northern Ireland) 2008 ('the Act') was made to the Charity Tribunal for Northern Ireland ('the Tribunal') by the Attorney-General for Northern Ireland ('the Attorney-General') on 01/12/2021.
2. A copy of the Reference is attached hereto.
3. The Reference sets out a statement of the question being referred; the reason for the Reference; a statement of what is stated by the Attorney-General to be the relevant law and a list of other parties whom the Attorney-General thinks may be affected by the Reference and why they may be affected.
4. The making of the Reference is hereby published pursuant to the imperative set down in Rule 38(5) of the Charity Tribunal Rules (Northern Ireland) Rules 2010 ('the Rules').
5. The Attorney-General, pursuant to paragraph 2(2) to Schedule 4 of the Act is a party to the determination of the Reference by the Tribunal.
6. The Charity Commission for Northern Ireland ('the Commission') is specifically notified of the making of the Reference pursuant to Rule 38(5)(c) of the Rules
7. The Commission shall inform the Tribunal within 28 days of the date of this Notice whether it intends to be a party to the determination of the Reference by the Tribunal, pursuant to the said Rule 38(5)(c).
8. Initial Directions shall be issued, by way of publication in the same manner as publication of this Notice, at the expiry of one month from the date of this Notice inviting applications in writing from any person who falls within the categories of

persons set out in paragraph 2(3)(b)(i)-(iii) to Schedule 4 to the Act to be joined as a party by a date to be specified, together with other Directions to the Attorney-General.

Signed

A handwritten signature in black ink, consisting of a series of connected loops and curves, positioned below the word "Signed".

**Damien J. McMahon**  
**President**

Date: 7 March 2022

## **IN THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

Charities Act (Northern Ireland) 2008 Schedule 4, paragraph 2 (b)

### **REFERENCE BY THE ATTORNEY GENERAL FOR NORTHERN IRELAND**

#### **Question on the application of charity law to a particular state of affairs**

1. The following question is referred to the Charity Tribunal:

“Following Appeal 9/15(2) in which the Charity Commission agreed that the decision to institute a Statutory Inquiry in respect of Lough Neagh Rescue Ltd was not lawful, was the direction to produce documents issued on 3 May 2013 by Neil Henry (Enquiries Manager at the Charity Commission) to Mr Trevor McKee, 43 Banbridge Road, Lurgan BT66 7HG a lawful direction under section 22(3) of the Charities Act (Northern Ireland) 2008 with which Mr McKee was required to comply?”

#### **Those affected by the reference**

2. Those who may be affected by the reference include the Charity Commission for Northern Ireland, Lough Neagh Rescue Ltd as the charity whose documents were to be produced under the direction and Mr Trevor McKee as the recipient of the direction.

#### **Background and reason for the reference**

3. In Appeal 6/19 Mr Trevor McKee has asked the Charity Tribunal to make a finding that the direction issued to him was unlawful because the underlying inquiry into the charity was not lawfully instituted. There is no right of appeal to the Charity Tribunal against a direction given under section 22(3) of the Charities Act (Northern Ireland) 2008 (‘the 2008 Act’).
4. The Charity Tribunal directed that the Attorney General be asked to argue a question relating to its jurisdiction to make such a finding in these circumstances.

5. The Attorney General does not consider that the Tribunal has jurisdiction to make the requested finding in the context of appeal 6/19. However, the Attorney General considers that, in the particular circumstances of this case, a pragmatic approach would be for the question Mr McKee asks to be answered by way of a reference.

### **Statement of relevant law – the statutory context**

6. The answer to the question begins with straightforward statutory construction. The relevant part of section 22 of the 2008 Act is as follows:

#### **General power to institute inquiries**

22—(1) The Commission may institute inquiries with regard to charities or a particular charity or class of charities, either generally or for particular purposes.

(2) The Commission may either conduct such an inquiry or appoint a person to conduct it and make a report to the Commission.

(3) For the purposes of any such inquiry the Commission, or a person appointed by the Commission to conduct it, may (subject to the provisions of this section) direct any person (P)—

(a) to provide accounts and statements in writing with respect to any matter in question at the inquiry, being a matter on which P has or can reasonably obtain information, or to return answers in writing to any questions or inquiries addressed to P on any such matter, and to verify any such accounts, statements or answers by statutory declaration;

(b) to provide copies of documents in P's custody or under P's control which relate to any matter in question at the inquiry, and to verify any such copies by statutory declaration;

(c) to attend at a specified time and place and give evidence or produce any such documents.

7. A direction can only be issued 'for the purposes of any such inquiry'. No inquiry under the 2008 Act had been initiated at the time of the direction. Therefore the direction issued to Mr McKee was not for the purpose of a relevant inquiry and is in this regard *ultra vires*. The direction given to Mr McKee was not a lawful

direction under section 22(3) of the 2008 Act with which he was required to comply.

8. The Attorney notes that the answer to the question referred will not address any further questions which may arise as to the legal effect of the direction, for example, as regards reliance on the direction when disclosing information. Those can be answered, if necessary, in fact based proceedings. *R (on the application of Majera (formerly SM (Rwanda)) (Appellant) v Secretary of State for the Home Department (Respondent)* [2021] UKSC 46 at [31] is relevant in that regard.

Ian Wimpres, Solicitor to the Attorney General,  
Linum Chambers, 2 Bedford Square, Belfast.

1 December 2021