**THE CHARITIES ACT (NORTHERN IRELAND) 2008**

**THE CHARITY TRIBUNAL RULES (NORTHERN IRELAND) 2010**

**IN THE MATTER OF AN APPEAL OF A DECISION OF THE CHARITY COMMISSION FOR NORTHERN IRELAND TO THE CHARITY TRIBUNAL FOR NORTHERN IRELAND**

**Appeal No. 6/19**

**BETWEEN**

**TREVOR MCKEE**

**Appellant**

**and**

**THE CHARITY COMMISSION FOR NORTHERN IRELAND**

**Respondent**

**DECISION**

1. This Decision relates to one element of an appeal brought by the Appellant, Mr Trevor McKee, against the Respondent, the Charity Commission for Northern Ireland. There were, in total, three elements to the appeal. Two of those elements were disposed of by way of an order made by the Tribunal on 17 August 2021. That order was made on foot of a consensual resolution between the parties.
2. The third and remaining element of the appeal concerns a direction given by the Respondent to the Appellant on 3 May 2013, pursuant to Section 22(3)(a) and (b) of the Charities Act (Northern Ireland) 2008 (“the 2008 Act”, to deliver up certain documents. The Appellant first sought to challenge that direction by means of an appeal to the Tribunal on 8 May 2013. That appeal was determined by the Tribunal on 2 July 2013. In its decision, the Tribunal decided that, having regard to the terms of the 2008 Act, and, in particular, Schedule 3, the Tribunal did not have jurisdiction to entertain an appeal against such a direction.
3. In the Appellant’s submissions in this appeal, he does not contend that the Tribunal has jurisdiction to hear an appeal against the direction. However, he argues that the Tribunal should nonetheless make a “finding” that that the direction was unlawful, in the light of the Respondent’s concession in a related appeal, disposed of by way of order of the Tribunal dated 26 April 2021.
4. In that related appeal, the Respondent conceded that the inquiry – which immediately preceded the making of the direction and was the context in which the direction was made – had been unlawfully instituted and was void.
5. The Appellant thus argues that, as the inquiry was unlawfully instituted, the direction which was made within that inquiry was also unlawful, and the Tribunal should so find.
6. In support of his argument, the Appellant refers to the judgment of McBride J in McKee v The Charity Commission for Northern Ireland [2017] NICh 26 (14 November 2017), at [39]:

*“Given the dictum of Weatherup LJ, that disadvantage may accrue to a single trustee from the institution of a statutory inquiry, I am satisfied that the tribunal has power to grant a remedy to an appellant to meet that disadvantage. I therefore find that Schedule 3 to the 2008 Act merely sets out the powers the tribunal has to make orders. It does not prevent the tribunal from making findings. I am satisfied for example, that the tribunal would be at liberty to find that a statutory inquiry was unlawfully instituted. Such an outcome would clearly constitute a remedy for the appellant. I therefore find that the tribunal erred in law in finding that the appellant would have no remedy in the event he was successful in his appeal.”*

1. The Tribunal notes that the comments of McBride J were made in the context of a matter which was within the expressly granted jurisdiction of the Tribunal: the Tribunal was empowered by Schedule 3 of the 2008 Act to determine a review of a decision to institute an inquiry.
2. McBride J decided that, in such an appeal or application, the Tribunal could make a finding that the inquiry had been unlawfully instituted, even though it might not be able to exercise the power conferred by Schedule 3 of the 2008 Act to direct that the inquiry be ended – the inquiry having long since come to an end.
3. Having considered the matter, the Tribunal has concluded that what the Appellant is asking the Tribunal to do, in this instance, goes beyond the parameters identified by McBride J. The legislature did not confer any jurisdiction upon the Tribunal to determine a challenge to a direction under Section 22(3)(a) or (b). Not having been given such a jurisdiction, there is simply no appeal or application before the Tribunal within which the Tribunal might make the “finding” sought by the Appellant.
4. The Tribunal thus proposes to strike out the third and remaining element of the Appellant’s appeal notice, pursuant to Rule 5(1)(a) of the Rules, on the basis that it discloses no reasonable grounds for bringing an appeal. In accordance with Rule 5(2) of the Rules, before making any such order, the Tribunal must provide an opportunity to the Appellant to make representations against the making of the proposed order. The Appellant is therefore directed to make any such representations by Friday 27 August 2021.

Right of Appeal

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

Chairman

Date 17 August 2021