

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

The Charity Tribunal for Northern Ireland

Reference: 5/18

Sitting in Chambers

before

Colin G Hanna, Legal Chairman

between

MARIE McCUE

Appellant

-and-

THE CHARITY COMMISSION FOR NORTHERN IRELAND

Respondent

DECISION ON PRELIMINARY MATTERS

The background facts.

1. The Appellant is the widow of a former Police officer whose personal details, along with other former or serving Police officers, came into the possession of The Charity Commission for Northern Ireland hereafter "*the Respondent*".

2 *The Respondent*, pursuant to Section 23 of the Charities Act (Northern Ireland) (2008) "*The Act*" (as amended), issued an Order dated 13th August 2014 on the Disabled Police Officers Association for Northern Ireland hereafter "*the Charity*".

Section 23 provides as follows;

Power to call for documents and search records

23—(1) *The Commission may by order—*

(a) require any person who has possession of any information which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian to [F1provide] that information to the Commission;

(b) require any person who has custody or control of any document which relates to any charity and is relevant to the discharge of the Commission's functions or of the functions of the official custodian—

*(i) to **[F2 provide]** the Commission with a copy of or extract from the document, or*

(ii) (unless the document forms part of the records or other documents of a court or of a public or local authority) to transmit the document itself to the Commission for its inspection.

(2) Any member of staff of the Commission, if so authorised by it, shall be entitled without payment to inspect and take copies of or extracts from the records or other documents of any court, or of any public registry or office of records, for any purpose connected with the discharge of the functions of the Commission or of the official custodian.

*(3) The Commission shall be entitled without payment to keep any copy or extract **[F3 provided]** to it under subsection (1), and where a document transmitted to the Commission under that subsection for it to inspect relates only to one or more charities and is not held by any person entitled as trustee or otherwise to the custody of it, the Commission may keep it or may deliver it to the charity trustees or to any other person who may be so entitled.*

(4) The rights conferred by subsection (2) shall, in relation to information recorded otherwise than in legible form, include the right to require the information to be made available in legible form for inspection or for a copy or extract to be made of or from it.

(5) In subsection (2) the reference to a member of the staff of the Commission includes the official custodian even if the official custodian is not a member of the staff of the Commission.

3. The Order directed two newly appointed trustees of the Charity to allow commission staff to “inspect and recover originals and/or copies of documents found on the occasion of trustees resuming control of the Charity premises”. The Order then cited seven documents and related matter. The documents principally pertained to a named individual who would appear to have been both an employee and trustee of the named Charity. It is to be noted that the appellant to these proceedings was not that named individual.

The parties arguments

4. The Appellant lodged a notice of appeal to the Respondent dated 10th July 2018, which, it would appear, was accompanied, by a form of authority to her representative dated 25th June 2018. The Appellant’s Grounds of Appeal within same were principally under three headings, first that the power in Section 23 of the 2008 Act may not be exercised by the staff of the Commission but only by the Commission itself as defined in Section 6 of the 2008 Act. The Appellant asserted that the decision to make a Section 23 Order in respect of the Charity was not taken

by the Commission and was therefore unlawful. In support of her appeal the Applicant asserted a reliance on, inter alia, the Tribunal's decision in *Caughey v Charity Commission* dated 3rd November 2017. Secondly, the Applicant asserted that she had recently learned that the Commission's Internal Guidance require that a decision to exercise the Commission's Powers of entry should be taken by the Commission and not by the staff of the Commission. Thirdly, the Applicant further submitted that the power in Section 23 did not, in any event, provide a power of entry into the premises but only permitted the Commission to require the production of documents listed in the Order. In subsequent submissions the Appellant drew the Tribunal's attention to Section 52 of the 2008 Act.

Section 52 is set out as follows;

Power to enter premises

52—(1) A lay magistrate may issue a warrant under this section if satisfied, on a complaint by a member of the Commission's staff, that there are reasonable grounds for believing that each of the conditions in subsection (2) is satisfied.

(2) The conditions are—

(a) that an inquiry has been instituted under section 22;

*(b) that there is on the premises to be specified in the warrant any document or information relevant to that inquiry which the Commission could require to be produced or **[F1provided]** under section 23(1); and*

*(c) that, if the Commission were to make an order requiring the document or information to be so produced or **[F2provided]**—*

(i) the order would not be complied with, or

(ii) the document or information would be removed, tampered with, concealed or destroyed.

(3) A warrant under this section is a warrant authorising the member of the Commission's staff (A) who is named in it—

(a) to enter and search the premises specified in it;

(b) to take on to the premises such other persons as the Commission considers are needed to assist A in doing anything that A is authorised to do under the warrant;

(c) to take possession of any documents which appear to fall within subsection (2)(b), or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such documents;

(d) to take possession of any computer disk or other electronic storage device which appears to contain information falling within subsection (2)(b), or information contained

in a document so falling, or to take any other steps which appear to be necessary for preserving, or preventing interference with, any such information;

(e) to take copies of, or extracts from, any documents or information falling within paragraph (c) or (d);

(f) to require any person on the premises to provide an explanation of any such document or information or to state where any such documents or information may be found;

(g) to require any such person to give A such assistance as A may reasonably require for the taking of copies or extracts as mentioned in paragraph (e).

(4) Entry and search under such a warrant must be at a reasonable hour and within one month of the date of its issue.

(5) A must, if required to do so, produce—

(a) the warrant, and

(b) documentary evidence that A is a member of the Commission's staff,

for inspection by the occupier of the premises or anyone acting on the occupier's behalf.

(6) A must make a written record of—

(a) the date and time of entering the premises;

(b) the number of persons (if any) who accompanied A onto the premises;

(c) the period for which A (and any such persons) remained on the premises;

(d) what A (and any such persons) did while on the premises; and

(e) any document or device of which A took possession while there.

(7) If required to do so, A must give a copy of the record to the occupier of the premises or someone acting on the occupier's behalf.

(8) Unless it is not reasonably practicable to do so, A must comply with the following requirements before leaving the premises, namely—

(a) the requirements of subsection (6), and

(b) any requirement made under subsection (7) before A leaves the premises.

(9) Where possession of any document or device is taken under this section—

(a) the document may be retained for so long as the Commission considers that it is necessary to retain it (rather than a copy of it) for the purposes of the relevant inquiry under section 22, or

(b) the device may be retained for so long as the Commission considers that it is necessary to retain it for the purposes of that inquiry, as the case may be.

(10) Once it appears to the Commission that the retention of any document or device has ceased to be so necessary, it shall arrange for the document or device to be returned as soon as is reasonably practicable—

(a) to the person from whose possession it was taken, or

(b) to any of the charity trustees of the charity to which it belonged or related.

(11) A person who intentionally obstructs the exercise of any rights conferred by a warrant under this section is guilty of an offence and liable on summary conviction—

(a) to imprisonment for a term not exceeding 6 months, or

(b) to a fine not exceeding level 5 on the standard scale,

or to both.

Within the Applicant's appeal, she also applied for an extension of time pursuant to Rule 4 of the Charity Tribunal Rules (NI) 2008 which provides as follows

Application for permission to make a late appeal or application

4. Where an appellant has made a request under rule 17(8) to the Tribunal for a direction under rule 3 to allow an appeal or application to be made after the time limit for doing so has expired, the Tribunal must consider—

(a) what steps (if any) the Commission has taken to notify or publicise its final decision;

(b) when the appellant became aware of the Commission's final decision; and

(c) when the appellant became aware of the right to make the appeal or application and of the time limit for making the appeal or application

5. Indeed at paragraph 8 of the Appellant's addendum submission appended to her Notice of Appeal she asserts that "*personal details of serving and former police officers had been taken by the staff of the Commission. This caused considerable distress and worry to those officers and their families. In the case of Mrs McCue she believes that this hastened the death of her husband*". That particular addendum further details the allegations of the Respondent's entry onto the premises and, in the absence of any apparent contradiction by the Respondent in the papers before the Tribunal, it can only be assumed that this aspect is accepted. In correspondence directed to the Charity Tribunal dated 23rd July 2018 the Respondent confirmed that they had reviewed the Appellant's Application for Appeal and were of the view that the Appellant does not have standing to bring such an appeal. The Respondent drew the

Tribunal's attention to Section 1(2)(b) of the Schedule 3 of the Charities Act (NI) 2008 in that an appeal may be brought to the Tribunal against an Order made by the Commission under Section 23 of the Charities Act (NI) 2008 stating that such requires a person to supply information or a document by "*any person specified in the corresponding entry in the Column 2 of the Table*" that corresponding entry in Column 2 of the Table states, "*the persons or any persons who is required to supply the information or document*" The Respondent noted that the Appellant is not the person who is required to supply the information or document. The Respondent further noted that the Appeal was significantly out of time requesting a direction under Rule 17(8) of the Charity Tribunal Rules (NI) 2010 for an extension of time to allow the Appeal and under rule 17(11) where a request has been made under Rule 17(8) the Tribunal must take no further action in relation to the Appeal Notice until such a request has been determined.

Rule 17 provides as follows;

Appeal notice

17.—(1) An appeal or application must be made by way of an appeal notice signed, dated and filed by an appellant.

(2) An appeal notice under paragraph (1) must be filed:—

(a) if the appellant was the subject of the decision to which proceedings relate, within 42 days of the date on which notice of the Commission's decision was sent to the appellant; or

(b) if the appellant was not the subject of the decision to which the proceedings relate, within 42 days of the date on which the Commission's decision was published.

(3) The appeal notice must state—

(a) the name and address of that appellant;

(b) the name and address of that appellant's representative (if any);

(c) an address for service and an individual contact at that address;

(d) that the appeal notice concerns either—

(i) the bringing of an appeal, or

(ii) the bringing of an application;

(e) the section of the Act under which the Commission's decision was made;

(f) the category in column 2 of the Table in Schedule 3 to the Act that that appellant falls into;

(g) the reasons that appellant considers they are or may be affected by the Commission's final decision;

(h) the grounds on which that appellant relies in the appeal or the application to challenge the Commission's final decision; and

(i) details of the Commission's final decision including—

(i) the name of the person that the decision concerns,

(ii) any reference number,

(iii) the date that the final decision was notified to that appellant under paragraph (2), and

(iv) whether that appellant was notified under paragraph (2)(a) or (2)(b) of this rule.

(4) In paragraph (3)(a), “address” in respect of a corporation means the address of the registered or principal office.

(5) Where a representative, other than a legal representative, is named in paragraph (3)(b) and the appeal notice is signed by that representative on behalf of an appellant, a statement that the representative is authorised to act on that appellant’s behalf, must be—

(a) filed with the appeal notice; and

(b) signed by that appellant; or

(c) signed, where that appellant is not an individual, by an individual authorised by that appellant.

(6) Except when there is a good reason why it is not possible, a copy of the Commission’s final decision relating to the appeal or application must be filed with the appeal notice in paragraph (2).

(7) An appellant may make a request for directions under rule 3 when filing the appeal notice.

(8) Where the time limit for making an appeal or application under paragraph (2) has expired, an appellant must include with the appeal notice a request for a direction under rule 3 to allow the appeal or application to be made after the time limit for doing so has expired.

(9) A request for a direction to extend time under paragraph (8) must include—

(a) a statement of the reasons for the delay in making the appeal or application; and

(b) any information that will assist the Tribunal when it considers the matters set out in rule 4.

(10) At the same time as filing the appeal notice, an appellant must send a copy of that notice (and of any request in accordance with paragraphs (7) and (8)) to the Commission and to any other party.

(11) Where a request is made under paragraph (8) the Tribunal must take no further action in relation to the appeal notice until such a request has been determined.

(12) Except where a request has been made in accordance with paragraph (8), the Tribunal must—

(a) enter particulars of the appeal or the application in the register;

(b) inform the parties in writing of the date when the Tribunal received the appeal notice; and

(c) specify the date on which the document under paragraph (b) is sent.

(13) When a request has been determined in accordance with paragraph (11) the Tribunal must—

(a) take the steps in paragraphs (12) in relation to the appeal or the application; and

(b) inform the parties of the Tribunal’s decision relating to the request for directions under paragraph (8).

6. The Respondent concluded that they would await the Tribunal's further instruction on the validity of the Appeal and the Tribunal's determination on the request to extend time before submitting a response.
7. The Appellant lodged a response by submission dated 28th July 2018 where the original grounds of appeal were expanded and expounded. During subsequent communications the Attorney General's Office was alerted to this action and, it would appear, did not become involved in same.
8. The instant proceedings were held in abeyance pending the outcome of a consolidated series of appeals brought by the Respondent against decisions of the Tribunal to the High Court of Justice in Northern Ireland. The Orders of the High Court then being appealed by the Respondent to the Northern Ireland Court of Appeal. The Court of Appeal upheld the Orders of the High Court with the Respondent confirming it was not seeking permission to further appeal to the Supreme Court. The proceedings were then considered by the President to the Tribunal sitting in Chambers, resulting in the Direction Notice dated 22nd June 2020.
9. Further to the Direction Notice dated 22nd June 2020 and the further Direction Notice of March 2021 and noting that the Respondent subsequently adopted a "*neutral position*", the further Direction Notice directed that the Applicant lodge an additional submission on the time limitation point under Paragraph 6 of the said Direction Notice of March 2021. The Applicant duly lodged an additional submission dated 4th April 2021. This was received by the Tribunal Chair on 5th May 2021. The Tribunal is grateful for this additional submission, the contents of which have, by and large, been helpful.
10. The further submission of the Applicant, dated 4th April 2021, whilst principally addressing the issue of delay, also touches upon the Applicant's standing to bring this appeal.

The issues

11. The initial and principal Direction Notice, dated 22nd June 2020, helpfully set out the issues for determination on a preliminary basis, firstly whether the appeal is out of time and should not therefore be admitted for hearing. In accordance with Rule 17(11) of the Charity Tribunal Rules (NI) 2010 (*The Rules*) no further steps can be taken in respect of an appeal until that issue is determined.
The second issue before the Tribunal, and as submitted by the Respondent at that juncture, is whether the Applicant has *locus standi* to bring these proceedings as she was not the person to whom the Order was issued.
The third issue remaining for determination is whether the information or document referred to in the Order under challenge by the Applicant relates only to a Charity or is relevant only to the discharge of the functions of the Respondent and, if so, is therefore immune from challenge by the Appellant.

The Tribunal's considerations

12. Considering each of these matters in turn, the Appellant as has been noted above, asserts in her Notice of Appeal of 10th July 2018 she *“has recently learned that the Commission’s Internal Guidance required that a decision to exercise the Commission’s Powers of Entry should be taken by Commissioners, not by the staff of the Commission. The Commission has failed to follow its own procedures and cannot therefore claim that its Investigations Manual represents a valid authorisation of its staff to exercise the powers in Section 23”*. The Appellant further asserts that she became aware of her right to make an appeal and of the time limit in *“early 2018 following the Judgement in McKee v Charity Commission [2007] NICH 26”*. Moreover the decision of the Court of Appeal in *McKee & Others v The Charity Commission for Northern Ireland and the Department for Communities [2020] NICA13*, delivered on 19th February 2020 pertains.
13. In addition the Appellant, in the additional submissions of 4th April 2021, invites the Tribunal to *“take in account the unusual circumstances of this case, in particular the failure of the Respondent to publicise its decision as envisaged by Rule 72 of The Rules and the fact that the Respondent has already advised the Tribunal that it does intend to take an active role in proceedings”*. By way of an aside, the Tribunal concurs that there are certain aspects of this case which appear, on first reading, to derive from unusual circumstances and, on this basis, may be deemed as both unique and distinguishable to other matters that have hitherto appeared before the Tribunal.
14. Accordingly on balance the Tribunal is, in this instance, satisfied that the Appellant has established that her appeal has been brought within time, albeit strictly on the grounds pleaded and due to what is accepted to be the unique nature of aspects of this case and the position of the Respondent in the wider context and background authority of *McKee and Others* before the Court of Appeal.
15. The Tribunal then moves to consider the second issue, being the *locus standi* of the Appellant to bring these proceedings.
16. Again the Appellant’s Notice of Appeal, her response dated 28th July 2018, and additional submission, as copied to the Respondent, dated 4th April 2021, touches upon this aspect. In the Appellant’s additional submission of the 4th April 2021, at paragraph 9 of same, the Appellant accepts that she *“was not informed of her rights under Schedule 3 as she was not a person named in the Order”*.

However, the Appellant proceeds to make a brief allusion to the Respondent’s recognition of her rights under Article 8 of the European Convention of Human Rights. Moreover, at paragraph 10 of said additional submissions, the Appellant expands upon Rule 17(2)(b) on the Charity Tribunal Rules (NI) 2010. It is not the intention of the Tribunal to expand and regurgitate all of the issues argued under the Submission as a balance must be struck between identifiable issues for consideration on a preliminary point and what would form part of substantive arguments were a fully convened and public hearing before the Tribunal to be directed.

17. It is the view of this Tribunal that any argument pertaining to 17(2)(b) would have a clear correlation with the table under Schedule 3 to the Charities Act (NI) (2008) and with this entire appeal being premised on the propriety of an Order issued by the Respondent under Section 23 of the 2008 Act, one therefore sees under said table that the Tribunal can only grant an appeal to those persons quoted in Column 2 as *“the persons are any person who is required to supply the information or document”*.
18. By way of an aside the Tribunal notes with that paragraph 7.3 of the *“Explanatory Memorandum to the Charity Tribunal Rules (Northern Ireland) 2010”* refers to an *“individual directly affected”*. 7.3 of the Memorandum in its totality reads that, *“the act makes a number of changes to charity law which affect the sector that the Commission regulates and, as a consequence, the way in which the Commission can regulate”*. *The Charity Tribunal for Northern Ireland was established to enable charities to challenge the Commission’s decisions. Any individual or Organisation directly affected by a decision made by the Commission will have a right to make an appeal or for a review through the Tribunal within 42 days.* Whilst the totality of the Explanatory Memorandum to the 2010 Act is worthy of note, and whilst helpful and relevant, it is arguably apocryphal in one sense in that it is of course at best secondary to the principal legislation and whilst such may hinge on interpretative basis as to those individuals directly affected, the Tribunal accepts that the construction of the legislation, as outlined, provides sufficient clarity to determine that the Appellant does not have *locus standi*.
19. The final issue for determination being whether the information or document referred to in the Order 23 under challenge by the Appellant, relates only to a charity or is relevant only to the discharge of the functions of the Charity Commission Northern Ireland pertains directly to Schedule 3 to 3 of the Charity Act (NI) (2018). This has been alluded to in the foregoing, that is worthy to revisit in the context of the third issue under consideration. Paragraph 2.3 of Schedule 3 of the 2008 Act states that *“the Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within either head (a) or (b) of subparagraph 2 above”*. For clarity 2(2) (a) *“relates to a charity”* and (b) *is relevant to the discharge of the functions of the Commission or the official custodian”*.

It is set out in its entirety as follows;

Appeals: general

1—(1) *Except in the case of a reviewable matter (see paragraph 3) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of the Table.*

(2) *Such an appeal may be brought by—*

(a) *the Attorney General, or*

(b) *any person specified in the corresponding entry in column 2 of the Table.*

(3) *The Commission shall be the respondent to such an appeal.*

(4) *In determining such an appeal the Tribunal—*

(a) shall consider afresh the decision, direction or order appealed against, and

(b) may take into account evidence which was not available to the Commission.

(5) The Tribunal may—

(a) dismiss the appeal, or

(b) if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of the Table.

Appeals: orders under section 23

2—(1) Paragraph 1(4)(a) does not apply in relation to an appeal against an order made under section 23.

(2) On such an appeal the Tribunal shall consider whether the information or document in question—

(a) relates to a charity;

(b) is relevant to the discharge of the functions of the Commission or the official custodian.

(3) The Tribunal may allow such an appeal only if it is satisfied that the information or document in question does not fall within either head (a) or (b) of sub-paragraph (2).

On the construction of the legislation it would appear that matters for Appeal under Section 23 have a degree of immunity from challenge. This is a separate issue from the propriety of the use of an Order 23 as opposed to the argument made by the Appellant in the instant case of the use of the Respondent's powers under Section 52 of the 2008 Act, but in the context of this case and, particularly in the consideration of the Applicant's *locus standi*, the Tribunal is of the view that there is not a legislative vehicle for the Tribunal to consider such in the instant case.

The Tribunal's conclusion.

20. Accordingly, with the Tribunal finding against the Appellant on the second and third issues for determination, the Tribunal directs that the Appellant's appeal is dismissed.
21. Finally, pursuant to Rule 32(2)(The Rules) 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 from the date on which the Tribunal sent notification of this decision. Such applications 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.

**Signed: Colin G Hanna
Legal Chairman**

10th day of August 2021