AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

TRIBUNAL REF NO: CAT2024-005

UNDER SECTION 39 OF THE CHARITIES ACT 2009

Appeal Of An Chomhdháil Na Múinteoirí Le Rincí Gaelacha Cuideachta Faoi Theorainn

Appeal against Charities Regulator's Decision Of 8 August 2024, communicated by letter dated 22 August 2024 refusing the application to be registered in the Register of Charites

Determination of the Tribunal following the hearing held on 13 March 2025

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THE CHARITIES TRIBUNAL AND MEMBERSHIP

1. The Charity Appeals Tribunal ("the Tribunal") was established under Section 75 of the Charities Act 2009 ("the Act"). The Tribunal is a statutory body established with effect from 1 August 2016. The function of the Tribunal is to hear and adjudicate on appeals against certain decisions of the Charities Regulator, under Section 45 of the Charities Act 2009.

2. The members of the Tribunal at the time of the hearing of the Appeal were:

- Patrick O'Connor (Chairperson),
- Nuala Dockry BL,
- Karen Horgan.
- Carol Fawsitt,
- Bill Holohan SC.

THE APPLICANT CHARITY

3. The name and address of the Applicant Charity is An Chomhdháil na Múinteoirí Le Rincí Gaelacha Cuideachta Faoi Theorainn Ráthaíochta, ("the Applicant") having a registered office at Gabriel House 6, Cypress Park, Templeogue Village, Dublin, D6W AH61.

THE RESPONDENT AUTHORITY

4. The Respondent Authority ("the Authority") is the Charities Regulatory Authority established under section 13 of the Act.

BACKGROUND TO THE APPLICATION

5. Prior to the establishment of the Act and in particular its Part 3 (section 39) which came into operation on 16 October 2014, there was no requirement for any charitable organisation operating in the State to register with any government authority. Those who had, as of this October 2014 date, an entitlement to an exemption under section 207 or section 208 of the Taxes Consolidation Act 1997 and held a CHY number provided by the Revenue Commissioners, were deemed to be automatically registered in the Register of Charities

("the Register") established under section 39 of the Act. Such bodies were not obliged to apply for registration under the Authority's registration process.

6. The Applicant, whilst established in 1970, was incorporated on 15 October 2014 and did not have exemption from the Revenue Commissioners at any stage.

THE APPLICATION

7. An application was originally submitted by the Applicant by way of application dated 22 November 2020.

REVISED APPLICATIONS

8. Revised applications were submitted on:

- 23 April 2023
- 10 July 2023
- 18 July 2023, and
- 8 March 2024.

MAIN OBJECT

9. The Constitution of the Applicant company identified its main object as follows:

> *"3. The objects for which the Company is established are the charitable purpose of preserving, promoting and fostering the growth, education and development of the art and practice of Irish Dancing and the doing of all such other things as are incidental or conducive to the attainment of the above object."*

10. The Constitution of the Applicant company identified subsidiary objects as follows:

> *"Subsidiary Objects. The following objects set out hereafter are exclusively subsidiary and ancillary to the main objects set out above and these objects are to be used only for the attainment of that main objects and any income generated therefrom is to be applied for the main objects only.*

(a) *To establish relationships with teachers and adjudicators of the art and practice of Irish Dancing and to pursue the expansion and amelioration of their conditions of work;*

(b) *To subscribe to, become a member of, and co-operate with any other association recognised by the company whose objects are altogether or in part similar to those of the Company;*

(c) *To encourage pride in and appreciation of the art and practice of Irish Dancing, particularly among the young;*

(d) *To adopt rules, standard and norms for the preservation of the purity of the art and practice of Irish Dancing and, for this purpose, to devise and organise methods, programmes and events exemplifying competition and exhibition;*

(e) *To preserve the art and practice of Irish Dancing and to structure the day to day running of the Company, the executive committee, the panel of examiners and the branches, as well as the rules, organisation and procedures of Irish Dancing classes and competitions. Any rule book drafted is to be read in accordance with this memorandum and articles of association. From time to time the rule book may be amended. In the event of any conflict between the rule book and this memorandum and articles of association, at all times this memorandum and articles of association shall prevail."*

NOTIFICATION OF INTENTION TO RECOMMEND REFUSAL

11. Meagan Gill Head of Registration, of the Registration Unit of the Regulator issued a Recommend Refusal of an Application (the "Notice") dated 09 May 2024, from the Registration Unit of the Regulator which set out the Reasons the Registration Unit was of the view the Applicant's application for entry in the Register should be refused. The Notice stated the following:

"Notice of Intention to Recommend Refusal of an Application

1. The Registration Unit intends to recommend to the Charities Regulatory Authority (the "Authority") that the Authority refuse An Comhdhail Na Muinteoiri Le Rincí Gaelacha ctr's (the "Applicant") application to be registered in the Register of Charitable Organisations (the "Register").

2. *The Charities Act 2009 (the "Act") sets out the definition of a charitable organisation and the requirements an organisation must meet in order to be registered in the Register.*
3. *Section 2(1) of the Act defines a charitable organisation as one:*

that promotes a charitable purpose only,

(ii) that, under its constitution is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended —

(i) in the operation and maintenance of the body, including money's paid in remuneration and superannuation of members of the staff of the body... and

(iii) none of the property of which is payable to the members of the body other than in accordance with section 89,

4. *Section 3(2) of the Act states that a "purpose shall not be a charitable purpose unless it is of public benefit". Therefore, in order to be charitable, an organisation must only promote a charitable purpose for the public benefit, all of its property must be applied in furtherance of its charitable purpose and none of its property can be payable to its members.*
5. *It is the view of the Registration Unit that the Applicant does not apply all of its property in furtherance of its charitable purpose, some of its property is payable to its members and there is a private benefit to the Applicant's members which is not reasonable in all of the circumstances, ancillary to and necessary for the public benefit.*

<u>Apply all property towards its charitable purpose and payments to members.</u>

6. *The Applicant's selected charitable purpose is the advancement of arts, culture, heritage or sciences. The Applicant's constitution provides that its main object is the:*

"charitable purpose of preserving, promoting and fostering the growth, education and development of the art and practise of Irish Dancing, and the doing of all such other things as are incidental or conducive to the attainment of the above object."

7. *The Applicant provides in the Application Form in the summary of its activities that it and its members "promote Irish Dancing by weekly class structure" and*

the Applicant "is responsible for organising a premier event each year which showcases every child's talent on stage".

8. *The Applicant states that its members "must be Irish Dance teachers affiliated to the organisation for the purpose of the promotion and advancement of Irish Dancing".*
9. *The Applicant's governing document states that its members shall be "such persons as the branches and the executive committee shall admit to membership... once they comply with Regulation 5 and apply in writing to the secretary". Regulation 5 stipulates that each member must be a teacher and/or adjudicator and the holder of a required Irish Dancing qualification. Each member must also pay the membership fee. The Applicant also has honorary members.*
10. *It appears that the Applicant expends its property in making payments to its members for their roles as examiners in Irish Dancing examinations and as adjudicators in competitions. The Applicant also expends property on paying musicians at a world championship Irish Dancing competition.*
11. *In correspondence the Registration Unit queried some of the Applicant's expenditure, specifically adjudicator costs, teacher and examiner costs. The Applicant stated that adjudicators at the World Championships were paid a daily rate of €350.00 and that the adjudicators are "members of the [Applicant]".*
12. *The Applicant also stated that fees were paid to the "Board of Examiners" who officiate at Teastais from Coimisium na Rincí Gaelach ("TCRG") and Ard Diploma from Coimisium na Rincí Gaelach ("ADCRG") examinations The examiners are paid a daily rate of €350, and all examiners are "members of the [Applicant)".*
13. *In the same correspondence the Applicant stated that its officers are paid expenses such as postage, telephone, travel and general administrative expenses. The Chairperson, secretary and treasurer receive a gratuity on completing each year of service with the Applicant.*
14. *With regard to the World Championships, the Applicant stated that all adjudicators, musician officers, and results team have their accommodation costs paid while officiating at the World Championships. Some of the musicians are members of the Applicant. The Applicant also pays gratuities, which are tips, to the staff at the venue where the World Championships take place.*

15. *It appears from the above information that the Applicant is not expending all its property in furtherance of its charitable purpose and that some of the Applicant's property is payable to its members. Specifically, the Applicant's members includes adjudicators and examiners who are paid by the Applicant for adjudicating certain competitions and examining for different grades. The Applicant also pays a gratuity to its Chairperson, secretary and treasurer who are all members. As the Applicant is making these payments to its members it does not meet the definition of charitable organisation as defined in section 2(1) of the Act.*
16. *In addition to the payments to its members, the Applicant pays gratuities / tips, to staff where it holds the Irish Dancing World Championships. These payments are not required or necessary to be paid. The payment of a gratuity / tip demonstrates that the Applicant is not applying all of its income towards its charitable purpose. As such the Registration Unit is not satisfied that the Applicant is applying all of its property in furtherance of its charitable purpose and does not meet the definition of a charitable organisation as defined in section 2(1) of the Act.*

<u>Public Benefit Assessment</u>

17. *Section 3(2) of the Act provides that "a purpose shall not be charitable unless it is of public benefit". Therefore, while an activity or a purpose may appear charitable, a public benefit assessment must be undertaken to ensure that the Activities and purpose are in fact charitable.*
18. *Section 3(3) states:*

Subject to subsection (4), a gift shall not be of public benefit unless—

(a) it is intended to benefit the public or a section of the public, and

(b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

19. *The Applicant's members are Irish Dancing teachers. Each teacher may charge fees to students it teaches, and each teacher must offer the facility to sit graded examinations. Examiners who adjudicate gradings and adjudicators who adjudicate at competitions are also the Applicant members. Teachers,*

examiners and adjudicators all receive a benefit from their position as members of the Applicant. Teachers receive fee income from students they teach. Adjudicators and examiners receive payment for their role as an adjudicator or examiner.

20. *Each of these give rise to a benefit to the teacher, examiner and adjudicator other than in their capacity as a member of the public. They benefit from their position as the Applicant's members. Such benefit must be reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.*
21. *The Registration Unit is not satisfied that the Applicant has demonstrated that the benefit accruing to the teachers, examiners and adjudicators is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit. As such the Registration Unit is not satisfied that the Applicant is promoting a charitable purpose for the public benefit.*
22. *For the reasons outlined above the Registration Unit is not satisfied that the Applicant is a charitable organisation within the meaning of the Act.*

YOU ARE HEREBY NOTIFIED that it is intended to recommend to the Authority that the application under section 39 made on behalf of An Comhdhail Na Muinteoiri Le Rincí Gaelacha ctr, be refused.

Please note that this Notice is based on the information provided to date by the Applicant and is not an invitation for an Applicant to provide further information or different information and supplemental documentation cannot be accepted.

However, please be aware that prior to making our recommendation to the Authority, if you are of the opinion that this letter contains an error of law, factual inaccuracies or has misrepresented any of the facts of your application, you are invited to provide further information supporting your application and / or correcting the error of law, factual inaccuracies or misrepresentation by the 07 June 2024.

Should An Comhdhail Na Muinteoiri Le Rincí Gaelacha ctr or its nominated representative choose not to provide any further information by the date

referred to above, we will proceed to recommend to the Authority that the application for registration be refused.

Yours sincerely,
Meagan Gill Head of Registration"

12. The Applicant was provided with the opportunity to respond to the Notice if it was of the opinion that there had been an error of law, a factual inaccuracy or if the Notice had misrepresented any of the facts of the application.

13. The Applicant responded to the Notice on the 06 June 2024 (the "First Submission"), which was duly considered by the Board in arriving at its decision on 8 August 2024. Matthew Donohoe Leas Cathaoirlach of the Applicant responded stating:

"Dear Ms. Gill

I refer to your correspondence received to our registered office regarding our application for Charitable Status. I respond accordingly.

In your Notice of Intention to Recommend Refusal under points 2 - 5 you state that the Applicant does not apply all of its property in the furtherance of its charitable purpose, some of its property is payable to its members and there is private benefit to the Applicant's members which is not reasonable in all of the circumstances, ancillary to and necessary for the public benefit.

In our opinion this is a misinterpretation of our Memorandum and Articles of Association. I refer you to Section 6 of our Memorandum (Income and Property) which clearly states, The Income and Property of the Company shall be applied solely towards the promotion of the main object(s) a set forth in this constitution. No portion of the Company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the company. Our organisation does not own any physical property.

Article 47 of our Articles of Association (Directors) states, there shall be no remuneration of directors of the Company. The directors may however be reimbursed travelling, hotel and other expenses properly incurred by them and vouched for in attending and returning from meetings of the directors or any committee of the directors or general meetings of the Company or in connection with the business of the Company.

This is standard practice in most organisations constituted as ourselves and indeed we would be grateful if you could reconsider your assessment. There is no private

benefit to our members other than properly vouched reimbursement of expenses necessarily incurred.

Points 6 - 16 of your correspondence refers to monies paid to various service providers, gratuities, and references to our Board of Examiners. We reply as follows:

Irish Dancing is a unique art form, the perfection of which takes hours of practice and tuition. Our Major Event, The World Championships is the Irish Dancing equivalent of the Olympic Games. Such an Event demands the highest standard of music and adjudication which is type specific.

At our recent World Championships our musicians panel consisted of two members out of a panel of eight. Music for Irish Dancing requires more than musicians but specific tunes are required and as such the choice of musicians is restricted.

All adjudicators are qualified professionals who officiate at our major Events and must be remunerated for the service they provide. It is nothing more but a cost necessarily incurred. Like sporting bodies, officials, for example referees, they are employed by their respective organisations as they are suitably qualified.

Our Officer Board are Volunteers who give their time free without remuneration. We have a worldwide membership of almost 650 members. The administration of our organisation takes hours of volunteered time. It is not unreasonable to bestow a gratuity to our three main officers for the time they have given to the administration of our organisation. We have a volunteer structure which our members our proud of and wish to maintain. We don't have any paid staff or administrators unlike similar organisations which currently hold Charitable Status.

The above is necessary expenditure for the day to day running of our organisation and as such clarifies points (ii) and (iii) Section 2 of the Act which you quote.

In paragraph 12 you reference an alternate Irish Dancing Organisation, Coimisiun Na Rincí Gaelacha (CLRG) which has already been granted Charitable Status in Ireland.

Our organisation is " An Chomhdháil na Múinteoirí Le Rincí Gaelacha Cuideachta Faoi Theorainn Ráthaíochta". We are not CLRG and are in no way associated with CLRG.

You reference in point 16 regarding tips to staff, has been interpreted out of context. "Tips" as they are referred to, are a basic element of the hospitality sector and to apply it under "Apply all property towards its charitable purpose and payments to members", is unfair and unreasonable. The amount in question is insignificant. This is standard practice within the Irish Dancing sector and similar actions are taken by other Charitable Status organisations such as the previously mentioned CLRG.

We have our Board of Examiners and our own robust qualification process. Our examiners volunteer their time free to coordinate the exam process and are only remunerated for officiating at the practical exams. This is reasonable given the

importance of our exam process and is necessary in the promotion, growth, education and development of Irish Dancing.

We have over 126 Feisenna events held annually, all of their net proceeds are donated to various Charities in Ireland and the UK. We have a rigorous Feis registration process in place to ensure they are organised to the highest standards.

We will conduct an audit to place a value on the amount we have contributed to the various Charites in Ireland and the UK. These Charities would not have benefited, only for the Events that were hosted for them. The Feis Events take place because we licence them. This appears to have been disregarded in your letter.

I respectfully request that our application is reassessed given the clarifications provided above. In particular, you reference our organisation as CLRG, a completely separate entity which already holds Charitable Status. We require assurance that the correct organisation is being assessed.

We would be happy to provide any additional information required and would indeed welcome a face to face or online meeting to assist our application further.

Yours sincerely

Matthew Donohoe
Leas Cathaoirlach"

DECISION TO REFUSE APPLICATION

14. By letter dated 22 August 2024 from the Regulator to the Applicant, the letter confirmed that on 8 August 2024 the Board of the Charities Regulatory Authority ("the Board") refused its application to be registered in the Register of Charitable Organisations and attached its Decision to Refuse document which outlined the Board's Reasons.

15. The Decision to Refuse set out the following information:

"Decision to Refuse

1. *The Charities Act 2009 (the **"Act")** sets out the definition of a charitable organisation and the requirements an organisation must meet in order to be registered in the Register of Charitable Organisations (the **"Register").***

2. *Section 2(1) of the Act defines a charitable organisation as one:*

   (i) that promotes a charitable purpose only,
   (ii) that, under its constitution is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended —

(i) *in the operation and maintenance of the body, including money's paid in remuneration and superannuation of members of the staff of the body*

…

and

(iii) none of the property of which is payable to the members of the body other than in accordance with section 89,

3. *Section 3(2) of the Act states that a "purpose shall not be a charitable purpose unless it is of public benefit". Therefore, in order to be charitable, an organisation must only promote a charitable purpose for the public benefit, all of its property must be applied in furtherance of its charitable purpose and none of its property can be payable to its members.*

4. *The Board of the Charities Regulatory Authority (the **"Board")** is of the view that An Comhdhail Na Muinteoiri Le Rincí Gaelacha ctr (the **"Applicant")** does not apply all of its property in furtherance of its charitable purpose, some of its property is payable to its members and there is a private benefit to the Applicant's members which is not reasonable in all of the circumstances, ancillary to and necessary for the public benefit.*

Background to the Application

5. *The Applicant was issued a Notice of Intention to Recommend Refusal (the "Notice") dated 09 May 2024 by the Registration Unit which set out the reasons the Registration Unit was of the view the Applicant's application for entry in the Register should be refused. The Applicant was provided with the opportunity to respond to the Notice if it was of the opinion that there had been an error of law, a factual inaccuracy or if the Notice had misrepresented any of the facts of the application. The Applicant responded to the Notice on the 06 June 2024 (the "First Submission").*

6. *The Board's decision to refuse is based on the application form and supporting documentation uploaded on the online portal. The First Submission was also considered by the Board.*

Apply all property towards its charitable purpose and payments to members.

7 *The Applicant's selected charitable purpose is the advancement of arts, culture, heritage or sciences. The Applicant's constitution provides that its main object is the:*

> *"charitable purpose of preserving, promoting and fostering the growth, education and development of the art and practise of Irish Dancing, and the doing of all such other things as are incidental or conducive to the attainment of the above object".*

8. *The Applicant and its members "promote Irish Dancing by weekly class structure" and the Applicant "is responsible for organising a premier event each year which showcases every child's talent on stage."' The Applicant provides that its members "must be Irish Dance teachers affiliated to the organisation for the purpose of the promotion and advancement of Irish Dancing."*

9. *The Applicant's governing document states that its members shall be "such persons as the branches and the executive committee shall admit to membership... once they comply with Regulation 5 and apply in writing to the secretary." Regulation 5 stipulates that each member must be a teacher and/or adjudicator and the holder of a required Irish Dancing*

qualification. Each member must also pay the membership fee. The Applicant also has honorary members.

10. *The Applicant's constitution contains the required clauses regarding the use of its property, however, it appears that monies may be paid to the Applicant's members in breach of the obligation under the Act that none of the property be payable to members.*

11. *It appears that the Applicant expends its property in making payments to its members for their roles as examiners in Irish Dancing examinations and as adjudicators in competitions. The Applicant also expends property on paying musicians at a world championship Irish Dancing competition.*

12. *In correspondence the Applicant stated that adjudicators at the World Championships were paid a daily rate of €350.00 and that the adjudicators are "members of the [Applicantl."3 The Applicant also provided that fees were paid to "the Board of Examiners who officiate at our TCRG and ADCRG Exams." The examiners are paid a daily rate of €350, all examiners are "members of the [Applicant]."*

13. *In the same correspondence the Applicant stated that its officers are paid expenses such as postage, telephone, travel and general administrative expenses. The Chairperson, secretary and treasurer receive a gratuity on completing each year of service with the Applicant.*

14. *With regard to the World Championships, the Applicant stated that all "Adjudicators, Musicians' Officers and Results Team have their Accommodation costs paid while officiating at the World Championships." Some of the musicians are members of the Applicant. The Applicant also pays gratuities, which are tips, to the staff at the venue where the World Championships take place.*

15. *It appears from the above information that the Applicant is not expending all its property in furtherance of its charitable purpose and that some of the Applicant's property is payable to its members. Specifically, the Applicant's members includes adjudicators and examiners who are paid by the Applicant for adjudicating certain competitions and examining for different grades The Applicant also pays a gratuity to its Chairperson, secretary and treasurer who are all members. As the Applicant is making these payments to its members it does not meet the definition of charitable organisation as defined in section 2(1) of the Act.*

16. *The Applicant pays gratuities/tips to staff where it holds the Irish Dancing World Championships. The payment of gratuities, together with the payments to its members, supports the position that the Applicant does not apply all of its income towards its charitable purpose. As such the Board is not satisfied that the Applicant is applying all of its property in furtherance of its charitable purpose and does not meet the definition of a charitable organisation as defined in section 2(1) of the Act.*

Public Benefit Assessment

17. *Section 3(2) of the Act provides that "a purpose shall not be charitable unless it is of public benefit". Therefore, while an activity or a purpose may appear charitable, a public benefit assessment must be undertaken to ensure that the activities and purpose are in fact charitable.*

18. *Section 3(3) states:*

Subject to subsection (4), a gift shall not be of public benefit unless—

(a) it is intended to benefit the public or a section of the public. and

(b) in a case where it confers o benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

19. The Applicant's members are Irish Dancing teachers. Each teacher may charge fees to students they teach and each teacher must offer the facility to sit graded examinations. Examiners who adjudicate gradings and adjudicators who adjudicate at competitions are also the Applicant members. Teachers, examiners and adjudicators all receive a benefit from their position as members of the Applicant. Teachers receive fee income from students they teach. Adjudicators and examiners receive payment for their role as an adjudicator or examiner.

20. Each of these give rise to a benefit to the teacher, examiner and adjudicator other than in their capacity as a member of the public. They benefit from their position as the Applicant's members. Such benefit must be reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

21. The Board is not satisfied that the Applicant has demonstrated that the benefit accruing to the teachers, examiners and adjudicators is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit. As such the Board is not satisfied that the Applicant is promoting a charitable purpose for the public benefit.

22. For the reasons outlined above the Board is not satisfied that the Applicant is a charitable organisation within the meaning of the Act."

APPEAL

16. The letter from the Regulator dated the 22 August 2024 was received by the Appellant on the 27 August 2024. Having made a successful application to extend the time for late entry of an Appeal, the Appellant entered an Appeal dated the 4 November 2024 against the Decision of the Charities Regulatory Authority.

17. In the Appeal, the Applicant submitted the following further additional information by way of Reasons, grounding the Appeal:

"Reason 1

The reasons set out by the Regulator are defined in the decision letter which State that the organisation does not apply all of its property in the furtherance of its charitable purpose. It also states that some of its property is payable to its members and there is private benefit to the Applicants' members. This is

not a reasonable assessment of our organisation and how we manage our finances.

In our opinion this is a misinterpretation of our Memorandum and Articles of Association. I refer you to Section 6 of our Memorandum (Income and Property) which clearly states, The Income and Property of the Company shall be applied solely towards the promotion of the main object(s) a set forth in this constitution. No portion of the Company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to members of the company. Our organisation does not own any physical property.

Reason 2

Article 47 of our Articles of Association (Directors) states, there shall be no remuneration of directors of the Company. The directors may however be reimbursed travelling, hotel and other expenses properly incurred by them and vouched for in attending and returning from meetings of the directors or any committee of the directors or general meetings of the Company or in connection with the business of the Company.

This is standard practice in most organisations constituted as ourselves and indeed we would be grateful if you could reconsider your assessment. There is no private benefit to our members other than properly vouched reimbursement of expenses necessarily incurred.

Reason 3

Points 6 — 16 of the decision letter refers to monies paid to various service providers, gratuities, and references to our Board of Examiners. This is a complete inaccurate account of how finance is managed.

Irish Dancing is a unique art form. the perfection of which takes hours of practice and tuition. Our Major Event, The World Championships is the Irish Dancing equivalent of the Olympic Games. Such an Event demands the highest standard of music and adjudication which is type specific.

Music for Irish Dancing requires more than musicians but specific tunes are required and as such the choice of musicians is restricted.

Reason 4

The Regulator refers to the monies paid to adjudicators. All adjudicators are qualified professionals who officiate at our major Events and must be remunerated for the service they provide. It is nothing more but a cost necessarily incurred. Like sporting bodies, officials, for example referees, they are employed by their respective organisations as they are suitably qualified. This was disregarded by the Regulator.

Reason 5

The Regulator refers to gratuities paid to Our Officer Board. Our Officer Board are Volunteers who give their time free without remuneration. We have a worldwide membership of almost 650 members. The administration of our organisation takes hours of volunteered time. It is not unreasonable to bestow a gratuity to our three main officers for the time they have given to the administration of our organisation. We have a volunteer structure which our members our proud of and wish to maintain. We don't have any paid staff or administrators unlike similar organisations which currently hold Charitable Status. We clarified this as necessary expenditure under points (ii) and (iii) Section 2 of the Act which was quoted to us. This was ignored in the decision making process

Reason 6

In paragraph 12 of the decision letter the Regulator reference an alternate Irish Dancing Organisation, Coimisiun Na Rincí Gaelacha (CLRG) which has already been granted Charitable Status in Ireland. Our organisation is " An Chomhdháil na Múinteoirí Le Rincí Gaelacha Cuideachta Faoi Theorainn Ráthaíochta". We are not CLRG and are in no way associated with CLRG. This in itself is grounds for an appeal as the Regulator was referencing a completely different organisation. This was most disappointing as this organisation has brought itself into disrepute. When this serious error was brought to the Regulator attention it was also ignored. We were not assured that the correct organisation was being assessed.

Reason 7

I refer to point 16 regarding tips to staff. This has been misinterpreted and has been taken completely out of context. "Tips" as they are referred to, are a basic element of the hospitality sector and to apply it under "Apply all property towards its charitable purpose and payments to members", is unfair and unreasonable. The amount in question is insignificant. This is standard practice within the Irish Dancing sector and similar actions are taken by other Charitable Status organisations such as the previously mentioned CLRG.

Reason 8

We referenced the 126 Feisenna events held annually, all of their net proceeds are donated to various Charities in Ireland and the UK. We have a rigorous Feis registration process in place to ensure they are organised to the highest standards. We advised of our intention to conduct an audit to place a value on the amount we contribute to various charities in Ireland and the UK. These charities would not have benefited, only for the Events hosted for them. The Feis Events take place because we licence them. This was not taken in consideration".

THE APPEAL HEARING BEFORE THE TRIBUNAL

18. The appeal hearing took place at the offices of the Residential Tenancies Tribunal at O'Connell Bridge House, Dublin 2, on 13 March 2025.

REPRESENTATION AT THE HEARING

19. The following parties appeared at the hearing.

On behalf of Applicant:	Matthew Donohoe, Ciara Duggan, Carol Fitzpatrick.	
	Thea Kennedy BL,	(Counsel for the Applicant)
	Hollie Clarke, Solicitor	(Solicitor for the Applicant).
	Griffin Solicitors.	
On behalf of Respondent:	Mark Tottenham BL	(Counsel for the Authority)
	Mr. Alan Fitzgerald	(Charities Regulator)

TRIBUNAL MEMBERS

20. The following sat as members of the Tribunal.

Patrick O'Connor, Chair
Nuala Dockry BL
Carol Fawsitt
Karen Horgan
Bill Holohan SC

INTRODUCTIONS

21. At the opening of the hearing, the Chair and the members of the Tribunal introduced themselves and the Chair invited the respective Counsel on behalf of the parties to introduce those present and they duly did so.

SUBMISSION FROM THE APPLICANT

22. Ms. Kennedy BL indicated that she had prepared some short Submissions that she could hand out to everyone and the Counsel for the parties had exchanged the Submissions. The Chair indicated that that was acceptable but confirmed that one thing he should clarify is that the only documents (apart from legal submissions) that the Tribunal could consider and will consider were the documents considered by the Regulator. He indicated that anything that was created subsequent to that or otherwise is not a document that the members of the Tribunal could use or deal with.

23. Mr. Tottenham BL indicated that he and Ms. Kennedy had exchanged written Submissions, so he had some written Submissions to hand in as well.

24. The Chair indicated that the Tribunal would hear Ms. Kennedy's Submissions first and then Mr. Tottenham BL's Submissions.

25. Ms. Kennedy BL indicated that the Applicant was formed in 1970, and it was the congress of Irish Dancing teachers as set out in the Memorandum of Association at paragraph 3. She indicated that the objects for which the company was established were of a charitable purpose of preserving, promoting and fostering the growth, education and development of the art and practice of Irish Dancing and for doing all such other things as are incidental or conducive to the attainment of the above object. She indicated that the Applicant trained its members to be Irish Dancing teachers and adjudicators, and the Applicant hosts the World Championships of Irish Dancing which they say is akin to the Olympics for Irish Dancing. The Applicant's members can train individuals to then compete in the World Championships and some of its members act as adjudicators and musicians at the World Championships and approximately 3,500 dancers compete and approximately 10,000 people attend the world championship which is typically held in Killarney and they say this has created public benefit to Killarney or the location in which it's hosted, as it occurs for a period of eight days. There is a large revenue and tourist increase and public benefit in the area that this has occurred. She indicated that the Applicant has implemented a number of regulations to govern the organisation that she believed had been submitted as well, such as their anti-bullying policy, their childcare and protection policies and GDPR and so forth.

26. Ms. Kennedy BL indicated that as set out in the appeal, the preferred outcome is success against the refusal. She referenced that the Chair, Mr. O'Connor, in his opening remarks had previously set out a bit of the background about the refusal, namely that the refusal was based on the belief that the organisation is not in line with the definition of charitable organisation as per the 2009 Act and she indicated that the Applicant did not believe it was read in the whole spirit and understanding of the Act. She indicated that there was a number of Reasons for the refusal, namely that, that it was submitted that the Applicant does not apply all of its property in furtherance of its charitable purpose as some of its property is payable to its members and they thought there was a private benefit for the members, and it was deemed unreasonable in the circumstances.

27. Ms. Kennedy submitted that the Applicant does not expend money to its members for teaching classes. She indicated that the Applicant trains its members to become teachers who can then act in their own as teachers. If a teacher would like to host a feis as being a member of the Applicant, it has to be for charitable purposes. So, if a member wants to host a feis, it has to be for a charitable purpose. It is organised by the Applicant and all proceeds are donated to a charity of their choice. The Applicant does not expend money to its members for working as examiners. It, again, trains its members to become examiners. And the Applicant does expend its money to its adjudicators and musicians at the World Championships in the operation and maintenance of the body and furtherance of its charitable purpose. The Applicant also expends money to have their accommodation, food and travel costs covered whilst officiating at the World Championships and the Applicant does not directly expend money to its members acting as the results team of the World Championships, but it does expend money in covering their accommodation, food and travel and the Applicant has expended money previously through gratuities and/or tips of staff at the venue in which the World Championships occurs. The Applicant expends money to the Chairperson, secretary and treasurer on completing each year of service and it expends money for reimbursing its officers for expenses such as postage, telephone, travel and general administrative expenses. On foot of this, the Charities Regulator Registration Unit did not believe that the Applicant was applying all of its property in furtherance of its charitable purpose and did not meet the definition. Particularly, she maintained, as they believed that there was a private benefit for teachers and examiners and adjudicators from their position as members.

28. Ms. Kennedy BL pointed out that the Applicant had written back after the recommendation to refuse to clarify some issues, in that mainly there was no private benefit to its members. She submitted that all money is expended in the operation and maintenance of the body to the services that are provided directly to the organisation in furthering its charitable purpose and public benefit. She submitted that there was also a slight error in the original letter recommending refusal that had referenced another Irish Dancing charity, and the Applicant just wanted to confirm that they were only being examined, and no reference was made in the actual refusal letter to the other organisation, the CLRG.

29. Ms. Kennedy BL continued and said that, as set out in the Appeal form, there was eight Reasons set out for the refusal. So, under reason 1, the Applicant contends with the determination of the Respondent Regulator that it does not apply all of its property in furtherance of its charitable purpose and there is no private benefit for its members. She submitted that it is the Applicant's position that all of its property is used in furtherance of its charitable purpose of promoting education. The money that it expends is solely done in the operation and maintenance of the body. These, she submitted, are necessary to ensure that they can work as, as for its charitable purpose and for the public benefit.

30. Ms. Kennedy BL submitted that Reason 2 is the refusal based on the remuneration to its officers for their role as results Teams at the world championship. The Applicant's position was that this is a practice which is in line with the definition as per the 2009 Act, section 1(b)(2.1) Charitable organisation means a body, corporate or unincorporate body of persons that under its constitution is required to apply all of its property (both real and personal) in furtherance of that purpose except where monies expended in the operation and maintenance of the body, including monies paid in remuneration, superannuation of members of the staff of the body. Ms. Kennedy BL submitted that it was the Applicant's position that this is a necessary expense in the operation and maintenance of the body. If the Applicant did not expend its money in covering accommodation, food and travel costs for its results team who organise and run the World Championships, it would not be able to operate and carry out its charitable purpose. The results team, she submitted, is essential for the succinct running of the World Championships. Without them, the World Championships would not be able to occur. Ms. Kennedy BL submitted that there are typically six members working as part of the results team at the World Championships who work up to 13 and a half hours per day. The World Championships, she said, is fundamental

to the Applicant's charitable purpose of promoting education, as it encourages the public to learn the skill of Irish Dancing, it provides a means to inspire individuals to excel at their craft as it creates an excitement for performing and competing. Therefore, the service provided by the results team is necessary for the operation of the body.

31. Ms. Kennedy BL indicated that additionally, the Applicant expends money to its officers for their reasonable expenses incurred by them in the administration and management of the organisation. This includes postage, telephone travel and general expenses. These, Ms. Kennedy BL said, are natural expenses that every organisation has, and every organisation incurs. The Applicant would be unable to function and would simply not operate without these outlays being discharged. The Applicant therefore would be incapable of carrying out its charitable purpose.

32. Reason 3 is the refusal based on the remuneration in cash and in kind of service providers at the World Championships. Ms. Kennedy BL said it was the Applicant's Submission that this is necessary in the operation and maintenance of the body in furtherance of its charitable purpose. The Applicant spends €350.00 per day on each of its adjudicators and musicians who are on duty from 8.30 am to 9 pm on average. The Applicant also expends money on their accommodation, food and travel. The services that they provide are a necessary expense in the operation and maintenance of the body. Otherwise, the World Championships would not be able to occur and would deprive thousands of individuals with a charitable purpose and public benefit being provided by the Applicant. Ms. Kennedy BL submitted that it is essential to have adjudicators and musicians working at the World Championships. It would simply be unable to occur, and the Applicant would not be able to promote the education of Irish Dancing on the scale on which it does. The World Championships, she said, is vital in encouraging the public to be involved in the Irish Dancing community that the Applicant has created. The Applicant has previously struggled to source adjudicators to provide their services at the World Championships as they cannot work as teachers and have students compete at the World Championships if they are acting as adjudicators. They also cannot work as adjudicators for eight weeks prior to the World Championships. As a result of this, the adjudicators who applied to provide their service at the World Championships are entered into a random draw and then shortlisted into eligible adjudicators. Eligible adjudicators must be three years qualified as adjudicators, and they cannot have officiated at the previous three World Championships. This, Ms. Kennedy BL

said, is an unavoidable expense for the Applicant in promoting its charitable purpose and the Applicant contests that there is a private benefit for them.

33. Reason 3 also seeks to appeal on the basis of the response by way of denial on foot of gratuities being paid to any staff working at the World Championships, which Ms. Kennedy BL said she would engage with when dealing with reason 7. Ms. Kennedy BL said that, additionally, under reason 3, the Applicant seeks to appeal as the Respondent Regulator referred to the alleged payment of examiners. The Applicant, she submitted, does not expend money on examiners – the Applicant trains members to become examiners. This again, she said, encourages the charitable purpose of promoting and education as members train and study to become Irish Dancing examiners and there is a clear public benefit of having more qualified Irish Dancing examiners.

34. Turning to Reason 4, Ms. Kennedy BL said that the Applicant seeks to appeal the Respondent's refusal for the expense of adjudicators in their role at the World Championships, which she had previously outlined is a necessary expense in furthering the Applicant's charitable purpose as adjudicators' services are required to promote the education of Irish Dancing. She said that they provide excitement and determination for the public to obtain a certain level of education in Irish Dancing.

35. In respect of Reason 5, Ms. Kennedy BL indicated that the Applicant seeks to appeal the Respondent's refusal based on the money expended to its three main officers in the operation and maintenance of the body. She submitted that it is the Applicant's position that this is in line with the 2009 Act. The Applicant, she said, expends money to its core three officers to ensure the organisation operates efficiently, which she identified as its Chairperson, Secretary and Treasurer. These three officers, Ms. Kennedy BL said, are paid €1,500 per annum. She said that it was an intrinsic cost of running an organisation. Without these three officers who, she said, go above and beyond for the body, the Applicant would cease to operate and be entirely unable to pursue its charitable purpose. This, she submitted, is also in line with the Applicant's Memorandum of Association.

36. Turning to Reason 6, Ms. Kennedy BL indicated that the Applicant seeks to appeal based on the reference to CLRG, which is a separate Irish Dancing charity in the recommendation to

refuse letter. The Applicant, she said, sought to confirm that it was the only body being assessed, while, however, it is confirmed that CLRG are not referred to in the decision letter.

37. In respect of Reason 7, Ms. Kennedy BL indicated that the Applicant seeks to appeal the Respondent's refusal based on gratuities/tips being paid to venue staff working at the World Championships. She indicated that it was respectfully submitted that this is an unduly stringent decision, as this is a standard practice in the hospitality sector, however this is not a necessity under the Applicant's Memorandum of Association, rather a cultural practice within the Applicant's organisation that was believed to be in line with cultural, social and charitable norms as a necessity within the Applicant's organisation and it was not compelled to continue carrying out this practice, which it put was in line with values.

38. Turning to Reason 8, Ms. Kennedy BL submitted that it was the Applicant's respectful Submission that its public benefit was not considered highly enough, particularly its contribution to other charities. Ms. Kennedy BL referenced that the Applicant has donated, could be seen in the Submissions, large sums of money to a variety of charities in Ireland and the UK such as thousands of euros to the Friends of Cancer Society, Spina Bifida Charity, Irish Guide Dogs, St Francis Hospital Raheny and so on. The Applicant had also contributed when natural disasters have occurred in other countries, like the earthquake in Haiti, and when there was the tsunami in Thailand. They carried out specific events and donated their money to these. Therefore, the Applicants assist a wide range of communities and individuals through its donations and incurs a large benefit to the public.

39. Ms. Kennedy BL then addressed the proposed intersection of part 6(a) and section 89 of the Act. She submitted that Part 6(a) proposes to insert provisions for reasonable and proportionate remuneration to members and trustees for services provided to a charity in line with an agreement. As to section 89 which similarly proposed to insert provisions for remuneration of members and trustees on foot of agreements and services, she indicated that the Applicant submits that these proposed sections are in line with the current Act. These sections, she said do not seek to contravene the definition of charitable purpose and this reinforces the Applicant's belief that the body is acting within the parameters currently defined by the Act.

40. In conclusion, Ms. Kennedy BL indicated that the Applicant submits that it falls within the definition of a charitable organisation as per the definition of section 2.1 of the 2009 Act as the Applicant promotes a charitable purpose only. It's Memorandum of Association requires it to apply all of it's property, both real and personal, in furtherance of that purpose, except for monies expended in the organisation and management of the body and none of the property is payable to the members of the body other than in accordance with the Act as previously outlined. The Applicant submits that the Applicant's charitable purpose is that it advances education as per the documentation submitted to the Charities Regulator in support of its application. The Applicant's work supports education by teaching and examining the Irish language, mathematics and Irish Dancing, and facilitating individuals to make a career out of Irish Dancing. By teaching and adjudicating outside of the organisation, the Applicant also provides a competitive environment for Irish dancers to compete at a high level at the World Championships and promotes the Irish culture. The Applicant submits that the Applicant's organisation is of a public benefit due to its advancement of arts and culture as per the documentation submitted to the charity Regulator in support of its application. The public benefit provided by the Applicant benefits the community by the promotion and fostering of Irish culture and dancing, primarily to children and young adults. Additionally, as outlined previously, the Applicant donates large sums of money to charities which creates a great public benefit for communities and struggling individuals.

41. Those, Ms. Kennedy BL indicated were her Submissions on behalf of the Applicant and the Applicant seeks a successful outcome of the appeal.

42. The Chair, Mr. O'Connor, indicated that Ms. Kennedy BL had referred to Appendix 8 and Appendix 9 in her Submissions and he asked her to clarify the nature of those appendices.

43. Ms. Kennedy BL responded and indicated that they were the thank you letters and donation receipts at Appendix 8 which were not before the Charities Regulator. They, she said, were letters that she was shown from various charities thanking the Applicant for its donations, but she acknowledged that they were not submitted to the Regulator. Appendix 9 were catch all documents of all that was before the Tribunal.

44. The Chair asked her to confirm that confirm that documents in Appendix 8 were not then to be considered by the Tribunal as they had not been considered by the Regulator. Ms. Kennedy BL confirmed that that was correct.

45. The Chair enquired of Ms. Kennedy BL if she was going to have any witnesses give viva voce evidence or whether she was going to rely upon Submissions?

46. Ms. Kennedy BL indicated that she was just going to rely on the Submissions unless anything arose that she thought was necessary. She indicated that Ms Carol Fitzpatrick, who present at the hearing, was prepared to give evidence as one of the founders.

QUESTIONS

47. The Chair then invited the members of the Tribunal to address any questions they might have.

48. Tribunal member Karen Horgan indicated that she had a number of questions in relation to the gratuities. In relation to the gratuities to the venue staff in the World Championships, she asked Ms. Kennedy BL if she could tell how they are actually paid? Ms. Horgan asked if it was by cash or was it a percentage added on to a receipt and is it receipted or what way does that work?

49. Ms. Kennedy BL indicated that they have it receipted. She confirmed that it is paid in cash, and they do not exceed €200.00 for the entire venue staff. So, the World Championships last eight days and the tips are provided in cash, and the total is less than €200.00, but that it was all documented in their financial reports.

50. Ms. Horgan then referred to the gratuities paid to the three officers, each in the sum of €1,500.00 and asked in what way is that paid?

51. Ms. Kennedy BL responded indicating that she understood it was by cheque or by bank transfer. She indicated that the quantum of the payment is determined at the AGM of that year, so then it was paid by bank transfer or by cheque. So, it was all documented.

52. Ms. Horgan indicated that her final question then was in relation to the charities who would benefit from the Applicant. She asked how are they selected. Ms. Horgan indicated that she had noted that Ms. Kennedy BL had mentioned particular organisers and that they generally pick a charity of their choosing. Ms. Horgan asked was that the norm?

53. Ms. Kennedy BL indicated that her understanding was that they fill out a registration form, they present a charity that they would like to work with and then it depends if they have a personal connection. Ms. Kennedy BL indicated that she did know Ms. Duggan was present has donated lots of money all to Spina Bifida, as that was her charity of choice. So, she said it depends on the organiser's decision, so they do a wide variety. If someone wants to host one, they can come and apply with their registration form and say, "*I have a particular want or a connection with this charity that I'd like to donate to*".

54. Tribunal member Carol Fawsitt asked Ms Kennedy BL if she could take her to the Appellant's Memorandum of Association, their constitution, at item 5 in the Core Pack of Documents before the Tribunal.

55. Ms. Fawsitt referred to clause 4(a) which says, "*To establish relationships with teachers and adjudicators of the art and practice of Irish Dancing and to pursue the expansion and amelioration of their conditions of work"*. She asked Ms. Kennedy BL, if she could explain what that meant, i.e. what was the intention behind that.

56. Ms. Kennedy BL indicated that she thought that it was originally to foster the promotion of Irish Dancing. She indicated that Ms. Carrol Fitzpatrick, who was present, was one of the founders who had created this, and she believed the intention was to give people a voice and to be able to go and spread the culture of Irish Dancing.

57. Ms. Fawsitt queried the specific reference to "*amelioration of their conditions of work*".

58. Ms. Kennedy BL indicated that she thought that previously they had been involved with another organisation, and they thought this would allow people to work in a positive environment from where they previously maybe were not valued as much.

59. Tribunal Member Bill Holohan indicated that Ms. Kennedy BL should feel free to invite one of her clients to comment if they so wished. Ms. Fitzpatrick joined Ms. Kennedy BL at the table in anticipation of contributing.

60. Ms. Fawsitt asked for confirmation that organisation was formed in 1970, and that was confirmed. Ms. Fawsitt asked for confirmation that it was decided then to form a company limited by guarantee in 2014 and it was confirmed that this was correct. Ms. Fawsitt asked for confirmation that the constitution was framed in 2014, and it was confirmed that this was correct.

61. Ms. Fitzpatrick responded indicating that the articles are more or less similar to the original constitution. She said that most of it is as the same content, but as far as working conditions were concerned, it was that all of the Applicant's members who are teaching would be teaching in maybe school halls or community halls or wherever. They would rent out those, so that if there were problems with conditions, whatever contacts they would engage in with whoever owned the premises, for if needs be to negotiate with those people on behalf of members should problems arise or maybe sometimes if they are organising a feis in a hotel or in whatever building. Ms. Fitzpatrick indicated that there was to be there as a backup and a support for people if needs be, if conditions or if it turned out that they needed someone to intervene on their behalf and to ensure general fair play and justice.

62. Ms. Fawsitt indicated that it was to be there she was going to focus on the members' aspect because it seems to have figured largely on the Regulator's side. She referred to the first reference in the 2014 Constitution and then in the paragraph 6, the income and property, it says:

> *"The income and property of the company shall be applied solely towards the promotion of its main objects as set forth in the memorandum of association. No portion of the company's income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the company. No director or member shall be appointed to any office of the company paid by salary or, or fees or receive any remuneration or other benefit in money or monies worth from the company. However, nothing shall prevent the*

payment in good faith by the company of reasonable and proper remuneration to any member or servant of the company, not being director".

63. Ms. Fawsitt commented that there was quite a serious connection between the governance of the company and the members in terms of making provision and paying them stipends or the €350.00 per, per session.

64. Ms. Fitzpatrick said that this was for their professional services. She indicated that they could not get people to simply come and adjudicate. That, she said, is the way the other groups operates. She said that one could not get somebody to come in from the street to adjudicate at some of the Feis Ceoil competitions. She said that they would have to be people who are professional in and qualified in their field. So, she said, they are naturally going to be members of the Applicant. That, she said, is the way the other dancing organisation that has charitable status also operate.

65. Ms. Fawsitt asked if, when the online Zoom meeting was held with the Charities Regulator, that issue arose.

66. Ms. Fitzpatrick indicated that there were three people present at that online meeting. There was herself, there was the Chairperson of the day and there was Mr. Matthew O'Donohoe ADCRG SG who is the current Chairperson and two people from the Regulator's office, a lady and a gentleman. Ms. Fitzpatrick said that on that particular day, the Regulator's staff questioned Ms. Fitzpatrick and her colleagues about a variety of things, but did not appear to have any great knowledge of the background apropos the application. Ms. Fitzpatrick indicated that the Regulator's staff did not really seem to realise that they were a dancing organisation and what they did and why they did it. Ms. Fitzpatrick said that the Regulator's staff asked her and her colleagues what they thought was relevant and Ms. Fitzpatrick and her colleagues answered to the best of their ability, but that issue was not really mentioned at all.

67. Ms. Fawsitt then referred to the first application which had been lodged in 2020 and the queries which were raised by the Charities regulator on 6 January 2021, item 33 in the auxiliary book of papers before the Tribunal. Ms. Fawsitt indicated that she would refresh Ms. Fitzpatrick's memory and read out the relevant section of this letter from the Regulator.

This item was dealing with the Main Object and the governing document and the Regulator stated that the application for charitable status could not be processed until the applicant had, at minimum, amended its constitution to include the three standard clauses. The letter stated- :

> *" Your current constitution contains a version of these clauses - Winding up, Income and Property and Additions, Alterations or Amendments- however the wording on them is incorrect or an old version of these clauses."*

This letter went on to state-

> *"To find the required wording for these clauses please follow the link below. Under the heading guidance documents you will find a file called 'standard clauses' - CLG ' which contains the wording. "*

She asked Ms Fitzpatrick had the constitution been changed arising from that letter?

68. Ms. Fitzpatrick confirmed that it was not. She indicated that the Regulator said if they did not get charitable status, they would have to change it. She said that because the matter had been ongoing ever since, the Constitution had not been changed. She said that if it turns out that the Applicant was not granted charitable status, naturally the constitution would be changed.

69. Ms. Fawsitt indicated that to her this remained an issue because the reference to members being paid had not been clarified in the constitution at any stage. She observed that this remained the constitution from the beginning of incorporation and Miss Fitzpatrick confirmed that this was correct. Ms Fawsitt queried whether the issue had been raised in the course of the Zoom meeting with the Regulator.

70. Ms. Fitzpatrick indicated that it had not, to any great extent that she could recall. She said that she had no recollection of it now.

71. Ms. Fawsitt indicated that she raised the question because on the 18 July 2023 the Appellant was informed by email that it had passed the first stage of the process and would move to the formal stage -

> *"Thank you for the additional information you provided in relation to your application. We now have the basic information required for the formal consideration".*

She noted that as there was no reference subsequently to the Income and Property section of the Memorandum and wondered had it been raised on the Zoom call.

72. Ms. Fawsitt observed that the next significant piece of correspondence was an email dated 1 February 2024 from the Charities Regulator to the Appellant which followed the zoom call of the 24 January 2024 with the Appellant. She noted that Ms. Fitzpatrick said that that issue was not raised, but there were a lot of questions by the Regulator about expenditure and adjudicator costs, officer expenses, accommodation expenses, et cetera.

73. Ms. Fitzpatrick indicated that they were all answered as part of the June email that went in subsequently.

74. Ms. Fawsitt pointed out that it said in that email, *"Please note that we will require some updates to your governing document. This will be addressed in future correspondence if required",* but nothing arose consequential to that clause before the Notice of Intention to recommend a refusal issued. So, at no stage did the Applicant get an opportunity to explain the importance of paying the stipends to the members and why that was critical. In reference to item, 84 which was the last application that was lodged on 8 March 2024, there was a detailed explanation given for everything, i.e. for all of the costs and the expenditure. Ms. Fawsitt asked if it had ever been considered whether the members, because of the reference in the constitution in terms of payment which seemed to be problematic, considered the teachers and the examiners being treated as employees, as they would not have had the issue as raised by the Charities Regulator.

75. Ms. Fitzpatrick indicated that employees would be those employed on a regular basis. She indicated that they were dealing with people when examinations are on twice a year. She

indicated that if one were adjudicating at the World Championships, it would be once every three years if one were going to be doing it. She indicated that one might not do it for many, many years and that it could be a one off. She indicated that it was very seldom that it was a series. She confirmed that the last time she had done it was in 2015.

76. Ms. Fawsitt indicated that she was trying to see whether there was some way of getting around the difficulty with the reference to the members in the Constitution and the payment to members.

77. Ms. Fitzpatrick indicated that it certainly would not be full-time and that one could hardly even call it part-time as it would be just occasional things. She asked how you would regulate or legislate for all that.

78. Ms. Fawsitt observed whether it could have been moved out of the governance document, in terms of payment to members.

79. Ms. Fitzpatrick indicated that the Regulator may be able to advise them on that as to how CLRG manage all that, because they operate under the same conditions and same way as the Applicant. She indicated that maybe how they got around all that – that information – might be able to be passed on to the Applicant and that would assist the Applicant in their application, as the Applicant does.

80. Ms. Fawsitt noted that they had formed this company in 2014, but did not make application for charitable status till 2020.

81. Ms. Fitzpatrick indicated that they did not think that it was necessary until the Regulator stopped contacting her.

82. Ms. Fawsitt indicated that there are certain regulations that are applied by the Charities Regulator that impinge on whether the Applicant would succeed in securing charitable status.

83. Ms. Fitzpatrick referenced that there are various dancing organisations, and she did not know whether they have charity status or not. She said that she did not know anything

about them, but that they would all operate as with teachers, adjudicators, when they officiate, who are paid. She indicated that when examiners officiate, they are paid because it keeps an organisation evolving and developing, because if they did not do that, children who learn to dance, they must have an outlet. She said that a lot of them do it only for enjoyment and just from a social aspect and to be part of the culture. But if they want to progress further, as with Riverdance and Lord of the Dance and all these kind of things, dancers have to be able to make a career out of all of that. She indicated that without those stepping stones of teachers being able to qualify as adjudicators, that simply could not continue. She indicated that their work was to make the organisation endure for the future times.

84. Ms. Fawsitt acknowledged that the Applicant was unique and that it had been very successful.

85. Ms. Fitzpatrick pointed out that it was not greatly comparable with anything else.

86. Ms. Fawsitt indicated that was why she had queried whether the issue had been raised in the Zoom call zoom call of 24 January 2024 to enable the applicant to amend the Constitution if necessary.

87. Ms. Fitzpatrick indicated that they would have an opportunity to amend the Constitution every year at the AGM, which is held in August.

88. Ms. Fawsitt indicated that the other question she had was in respect of the amount of administration expenses which seem to be considerable. She indicated that in terms of the Tribunal's experience of looking at charities and, the Applicant had enormous administration expenses, and pointed out that the Applicant did give money to various groups and because they paid the €350.00 to the examiners and adjudicators, et cetera.

89. Tribunal member Bill Holohan indicated that the responses given were very comprehensive and had addressed most of the questions that he had had in mind. Referencing Paragraph 1.5. he noted that the association as distinct from the Applicant was formed in 1970, and it was confirmed that this was correct. He noted that the Applicant, the company, was formed in 2014.

90. Ms. Fitzpatrick confirmed that the organisation was formed in 1970. She indicated that originally, there was only one dancing organisation, which was a commission of Realt na Gaeilge, which had been formed in the 1920's under the auspices of the Gaelic League and it was the Gaelic League that ran that. She said that she had qualified with that organisation, you know, as a young person and the dancers did not have any say. They did not have any vote, they did not have any voice and they were being told as dance teachers by people who were not dancers what they should do and what they should not do and so forth and all and frustration crept in and that teachers then, because they had rules there where people were not keeping them and there were no consequences for not keeping the rules, so a number of teachers, about 60 or whatever, decided that they would go their own way and take their chances and the teachers would be members of the organisation and have a voice and a vote. And that, she said, was how it came to be now all these many years later with about 60 or 70 members at that stage, but now up to nearly 700, so that was why all the hard work of people who let everyone else come up the steps and stairs and come up to have their various qualifications.

91. Mr. Holohan pointed out that, very helpfully, the last item in the papers provided to the Tribunal Members is a list of members which is completely redacted so it did not convey any information.

92. Ms. Fitzpatrick confirmed that not all members were in the south of Ireland.

93. Mr. Holohan indicated that there was a question that was in his mind in terms of members and a feature which puzzled him was that the original Memorandum of Association showed that all of the subscribers to the Memorandum were members of staff of the firm of Flynn O'Driscoll solicitors, but that he would presume that was a matter of convenience in terms of the incorporation of the company.

94. Ms. Fitzpatrick confirmed that that was the case.

95. Mr. Holohan also pointed out that at Paragraph 5 of the Notice Of Appeal as well, there is a statement in bold capitals:

"We believe that our application has not contributed to any comparison to any organisations with charitable status and a similar status".

96. Mr. Holohan commented that one of the factors which is a repeated feature of appeals before the Tribunal is a reference to other groups who might have registration. Mr. Holohan pointed out that there was what was referred to as a "*grandfather*" provision in the legislation and that applied where there was a pre-existing group who had charitable status recognised by the Revenue Commissioners at the time the legislation came into force, as a result of which the bodies previously recognised by the Revenue Commissioners were "*grandfathered in*" and given charitable status. So, simply because a previously recognised charitable organisation similar to any particular applicant was registered as a charity did not mean that it could be used as a direct comparator.

97. So, he said, when it comes to the position of the Tribunal and the Regulator's position, it is a question of assessing the application in accordance with the relevant legislation and the issue of benefit to members is a serious consideration and it has proved to be in other cases as well because if it is merely incidental then there is the possibility an applicant may be registered. Mr. Holohan pointed out that if there is a significant material benefit or a dispersal of the income or property of a charity, or a body describing itself as a charity or seeking to be regulated as a charity, then that could be a valid concern on the part of the Regulator. Mr. Holohan indicated he was clarifying this just to put that in context for Ms. Fitzpatrick and her colleagues.

98. In terms of the various bodies to whom donations have been made by the Applicant, Mr. Holohan indicated that whether or not the beneficiaries of such donations are charities was another legally irrelevant consideration. Mr. Holohan enquired if the Applicant and its legal representatives were aware that the Tribunal recently had an application by a body, Horses of Hope, who were gathering funds for the purpose of expenditure in relation to objectives that might be described as charitable, but the funds were being dispersed to a commercial entity which was not capable of being registered as a charity to be used to provide services to the Irish Prison Service, which was not capable of being registered as a charity, in pursuit of the delivery of services which might be described as charitable purposes, but that the Tribunal declined to allow the appeal of the Regulator refusing registration, as the funds

were not dispersed by the charity itself for the purposes of Horses of Hope. Mr. Holohan pointed out that there were very strict criteria which have to be met.

99. Ms. Fitzpatrick said she would accept that and well understand that and that she took the point being made and thanked Mr. Holohan for that information. She acknowledged that the Regulator was understaffed and under resourced, a matter she would take on board it did not seem fair or equitable to her that other bodies might be grandfathered in, and the Applicant refused. She likened it to giving something to Fianna Fail but not giving it to Fine Gael or vice versa. She said that it was like two political parties, two dancing organisations.

100. Mr. Holohan indicated that he could understand her perception.

101. Adopting the analogy of/reference to political parties, the Chair pointed out that there are other political parties as well, but that the devil is always in the detail.

101. Ms. Fitzpatrick said that as a dancing person, that was the way she would look at it, but the big picture was all different.

102. Mr. Holohan pointed out that perceptions are not a relevant consideration.

103. Ms. Fitzpatrick acknowledged this.

104. Mr. Holohan pointed out that as Ms. Fawsitt had ably demonstrated, the devil is in the detail, and it may be, at times, that there is a subtle distinction.

105. Ms. Fitzpatrick acknowledged this but said that the public perception was such that if they were to go along, as they had been for 55 years, running all these feis and all and supporting all these charities, a lot of whom would be small enough charities and that if they then do not get the usual support, the Applicant could then decide that their teachers can all go on all these things for themselves and the Applicant could just notify all of these charities that the charity was not going to be getting any more money, the dancers society, the Spina Bifida, the guide dog body and all the other bodies, basically saying that the Applicant was going to keep it all for themselves, then that would not be right or equitable and that would

make for very poor media coverage, she would think in her capacity as a promoter of Irish culture.

106. The Chair thanked Ms. Fitzpatrick saying that her comments had been very helpful. The Chair indicated that he had a few questions. He said that there was reference to CLRG just to be clear and asked if it was the case that that organisation was formed in 1957.

107. Ms. Fitzpatrick responded that that was correct and that that organisation that would be what she described as "*our main opposition*".

108. The Chair asked if CLRG did have charity status under the grandfathered system?

109. Ms. Fitzpatrick indicated that as far as she was aware that was correct.

110. The Chair pointed out that had that been the case, none of those would even apply under the Act. He asked if Ms. Fitzpatrick now understood the difference between those who were charities at the time the Charities Act came into existence and had Revenue Commissioners' recognition of charitable status and those now applying.

111. Ms. Fitzpatrick indicated that she now had "*a fair good idea of it*."

112. The Chair indicated that he wanted to clarify that any body or organisation that had charitable status prior to the coming into effect of the Charities Act automatically got charitable status when the Act came into force, but that that did not mean they hold it ad infinitum, as they can still be reviewed but unless and until that happened they have it, whereas bodies or organisations who did not have it have to apply under the Act.

113. The Chair referenced that the dance organisation was formed in 1970, and it was incorporated in 2014. He asked if it was correct that there was no application made at any stage since 1970 until 2020 to become a charity.

114. Ms. Fitzpatrick confirmed that that was the case.

115. The Chair asked why the Applicant was seeking charitable status?

116. Ms. Fitzpatrick indicated that it would regulate things as far as all the charitable work that was undertaken by the Applicant and it certainly would save the Applicant if the Applicant did have any profits, from having to be paying tax on it.

117. The Chair enquired if the Applicant did have any profits.

118. Ms. Fitzpatrick confirmed that if there was any profit, it would be very little, but occasionally they would have a profit.

119. While noting what he described as the very good work that Applicant clearly did and also the number of charities that the Applicant actually benefit by giving funding to charities, the Chair indicated that he was still not clear why the Applicant wanted to have charitable status.

120. Ms. Fitzpatrick indicated that the Charities Regulator had phoned her in 2020 and said that because the Applicant's Memorandum of Association said that the Applicant was a charitable organisation, the Applicant purporting to operate as a charity when the Applicant was not registered as such, was unlawful. So, she said, the Applicant then started on the process of application. She said that she was open to be informed in relation to what better benefits registration would bring other than what she had just said. Ms. Fitzpatrick also indicated that the current Chairman might be more au fait with better reasons than she had articulated.

121. The Chair indicated that the next question he wanted to ask was whether she did understand that a charity, if it is a charity, is not entitled in law to collect money for other charities. In other words, it cannot be a conduit for providing funds to other charities. He said that there was reference made to another entity that tried to establish itself as a charity.

122. Ms. Fitzpatrick indicated that the Applicant would not have been aware of that.

123. The Chair asked if she did understand that now?

124. Ms. Fitzpatrick indicated that she did now understand.

125. The Chair asked if the Applicant was registered with the Revenue Commissioners. Ms. Fitzpatrick responded in the affirmative.

126. The Chair enquired if the stipends that are paid to the officers of the Applicant that were referred to, were disclosed to the Revenue Commissioners. Ms. Fitzpatrick confirmed that the Applicant's accounts are all filed, and the Applicant's accountant files the accounts.

127. The Chair indicated that he was asking if anybody is paid money and they earn money, whether it is a once off basis or on a regular basis or if they are paid an annual sum, whether it is a stipend or otherwise, as he understood Revenue law, there is an obligation on that person to disclose the income or the organisation that makes that payment disclose the payment. He asked if the Applicant did disclose to the Revenue Commissioners the payments that are made on a yearly basis to those who get the stipends and those who get paid. Ms. Fitzpatrick responded in the negative.

128. The Chair indicated that the reality is that people are earning money. He said that, whether they are entitled to do so or not, they are earning money. He pointed out that earnings are taxable and there is an obligation on (a), the employer or the provider of those funds or (b), the actual employee themselves, to make a return to the Revenue Commissioners.

129. Ms. Fitzpatrick indicated that she would have presumed that it was the person who was receiving the money that would be making their tax returns.

130. The Chair pointed out that that was not quite the law, and that he would not advise the Applicant as to the law but confirmed that that was not the law.

131. The Chair also indicated that he wanted to come back to the accounts that were provided at item number 4, the business plan for the years 2023/2024. He said that, unusually, they seem to be referring to accounts and he presumed that some of them are projections.

132. Ms. Fitzpatrick indicated that she was not an officer at the time, but that Mr. Matthew Donohoe ADCRG SG was. She said that she did not know anything about those accounts.

133. Mr. Donohoe ADCRG SG then responded to questions. He confirmed that he was the Chair of the Applicant.

134. The Tribunal Chair indicated that he had a query to an entry at page 4 of 4, at item number 5 for identification purposes. He said that he was not going to talk about venue hire and various items. He said that he wanted to refer to gratuities and in 2022 there is an item for gratuities of €2,100.00 and then it's scaling to '23, '24, '25 and for, he presumed, projection for '26 is €4,260.00. He asked what those gratuities were for?

135. Mr. Donohoe said that general gratuities that were referenced there in expenditure would have been associated with the World Championships and also a number of events that the Applicant would have held over the year. He said that the Applicant would have the TCRG examinations and the ATCRG examinations They were, he said, normally held in a hospitality setting as regard like a hotel. Staff that would be assisting over the weekend of those examinations would have been given a gratuity because based on the service that would have been provided which is normal in hospitality settings.

136. The Chair asked if he was saying that these were payments that are made to a hotel? Mr. Donohoe responded in the affirmative.

137. The Chair, then turned to the question of adjudicator costs, indicating that the Tribunal had heard the adjudicators are all members of the organisation, and he asked if that was correct and if they had to be members? Mr. Donohoe responded in the affirmative.

138. The Chair indicated that there was an entry for adjudicator's cost in 2022 of €77,651.00 and then it's scaling down for '23, '24, '25, it's estimated at €42,805.00. He asked if it was the case that these were payments that are made to adjudicators.

139. Mr. Donohoe indicated that it was his understanding that they were associated with the costs incurred at the World Championships.

140. The Chair enquired if it was the case that these were payments that are made to members of the organisation, and Mr. Donohoe confirmed that they were.

141. The Chair enquired of Mr. Donohoe if he knew that that was not permitted within a charity.

142. Mr. Donohoe indicated that they are providing a service.

143. The Chair pointed out to Mr. Donohoe that it did not make any difference whether they are or not.

144. Mr. Donohoe indicated that in order for the Applicant to host the World Championships, they have to pay the service providers to adjudicate competitions.

145. The Chair indicated that he could well appreciate that, but that the Tribunal had heard from the previous witness that the Applicant did not make any returns to the Revenue Commissioners in relation to the payments that are made.

146. Mr. Donohoe indicated that that was on the advice of their financial adviser.

147. The Chair asked if he was saying that they had been advised that they did not have to notify such a payment?

148. Mr. Donohoe indicated that they were advised that they did not reach the threshold.

149. The Chair enquired as to the level of the threshold.

150. Mr. Donohoe indicated that it was his understanding that there was a threshold associated with making a tax return to the Revenue Commissioners.

151. The Chair asked whether he was referring to the tax return for the individual taxpayer.

152. Mr. Donohoe asked if the Chair was talking about the members or was talking about the organisation?

153. The Chair indicated that he was talking about the organisation making payments to the members. He said that any payment that is made by the organisation, in the context of

either remuneration or gratuity or stipend or otherwise is, in his view, an item that is remuneration that is disclosable to the Revenue Commissioners.

154. Mr. Donohoe indicated that it was the Applicant's accountants who advise the Applicant regarding that, and the Applicant would also advise members that if they are in receipt of remuneration, it was their own responsibility to make a tax return. He said that it was not the responsibility of the Applicant.

155. The Chair asked if Mr. Donohoe was saying that the Applicant did not make any returns to the Revenue Commissioners.

156. Mr. Donohoe confirmed that they did not.

157. Mr. Holohan indicated that he understood that the point being made was that there is a de minimis level below which there is not an obligation on the payer to report it to the Revenue Commissioners, but it may be that the cumulative total is substantial and requires reporting, but that the individual payments fall below the level per individual.

158. The Chair indicated that he wanted to know did the Applicant understand that. In relation to the musicians' costs, the Chair asked Mr. Donohoe if any of those musicians were members of the organisation?

159. Mr. Donohoe confirmed that some of the musicians are members. He said that this year they had six employed to officiate in April at the World Championships. He said that only one of those six is actually a member.

160. Ms Fawsitt enquired if PRSI was paid in respect of those musicians? Mr. Donohoe responded that some of the musicians were self-employed. Ms Fawsitt pointed out that there is a new code agreed by the Revenue Commissioners, Department of Social Protection and the Workplace Relations Commission and that there is a test as to whether somebody should be treated as an employee and not as an independent contractor and there are PAYE deductions that would have to come into play if somebody is treated as an employee, even when it could be a one-off or it could be a series of engagements. She indicated that it could be an artist, or it could be a stagehand. It could be anything like that and making payments

to the examiners or the teachers or the adjudicators could also have consequences from a budgetary perspective. She suggested that Mr. Donohoe check it out. Mr. Donohoe confirmed that he would do so.

161. The Chair indicated that the members of the Tribunal were not giving advice but making suggestions and that it was a matter for the Applicant to get advice in relation to what should be done. He indicated that in respect of the accounts, and the next heading, "*Teacher, Adjudicator, Examiners*", the same questions arise there. The Chair indicated that as he understood it, and he invited Mr. Donohoe to correct him if he was wrong, most of them are members of the organisation and they are being paid by the organisation. He pointed out that there was a figure for 2022, €37,600.00, for 2023 it was €39,000.00, for 2024 it was €41,500.00 and this year it was projected to be €43,500.00. So, in other words, teachers and adjudicators, who may or may not be members of the organisation, are being paid.

162. Mr. Donohoe disputed this and said that figures was the cost associated with examinations, for which the Applicant had examiners who are paid to officiate as examiners.

163. The Chair pointed out that the accounts were referred to "*teachers*", but Mr. Donohoe indicated that he did not know why that reference was included. The Chair asked were examiners members of the organisation and Mr. Donohoe confirmed that they were. The Chair said that that was the same point. He said that he took it that the reference to Officers' gratuities, was the €1,500.00 that he understood was referred to by Ms. Kennedy BL in her very able submission and that that was also paid every year to the officers. Mr. Donohoe confirmed that this was only paid to the three main officers and confirmed that they were members of the organisation.

164. The Chair indicated that there were other items of expenditure, which he did not intend to go into detail, but he referred to the fact that the legal costs seem to be high, and he was wondering how they got that high. He said that the central point he wished to record was that members of the organisation are being paid, whether it is small amounts or large amounts and, as such, they are clearly not entitled to, because they are a registered charity. Mr. Donohoe responded that it was his understanding that the only members that are being paid are members who are providing some level of service for the Applicant to function, and

that the Applicant was not actually paying teachers to teach. He said that they were paying people, like adjudicators, which he said were an essential part of the organisation. He said that if they did not have adjudicators, they would not have a competition. He said that he was actually disputing the interpretation as enunciated by the Chair, because he believed that the Applicant was not effectively paying members. He said that there were only paying members who are providing a service, which is a function of the organisation.

165. The Chair enquired what service the three officers were giving in a voluntary organisation. He asked what service the teachers were giving. Mr. Donohoe responded that they were volunteers. The Chair enquired if those volunteers were paid. Mr. Donohoe said that it was a point of recognition for the work for the voluntary work that they do. The Chair indicated that he would note Mr. Donohoe's point in relation to somebody providing a service, but in respect of a volunteer in an organisation, he queried whether it is appropriate that they should be paid a stipend for the volunteer work that they are doing. Mr. Donohoe responded saying that given the hours that they volunteer their services for, he believed that it was actually very reasonable what they were actually paid. The Chair pointed out that that did not answer the question he had asked. He again asked whether it was appropriate for officers in a voluntary organisation, the purpose being a charity, to be paid money. Mr. Donohoe indicated that in the context of the Applicant, he believed so.

166. The Chair indicated to Mr. Donohoe that there was a very clear definition of what constituted a charity and that he was sure Ms. Kennedy BL and Ms. Griffin will have explained it to Mr. Donohoe. The Chair indicated that he was not entirely clear in his own mind, even if his colleagues were clear in their minds, as to why, having been in existence for 55 years, the Applicant now want to have charitable status, when for 55 years the Applicant had existed doing what the Chair described as great work, without having charitable status. Mr. Donohoe indicated that as Ms. Fitzpatrick has already intimated, it was actually the Regulator that contacted An Chomhdháil back in 2020 regarding the description of the Applicant as a charity. He said it was their position as an organisation that looks to have charitable status, and it did not. He said that that was what actually commenced the whole process.

167. The Chair indicated that the question was the Applicant was using the word "charity", whereas in fact it was not a charity. Mr. Donohoe accepted that it was not. The Chair, put it

to Mr. Donohoe that not only were they not a charity, but that they had not been a charity for the last 55 years, even though the work the Applicant was doing is of course of voluntary nature and of course much appreciated worldwide as charitable in its objective, but that the Applicant was not a charity. The Chair pointed out that the Regulator has an obligation to identify where an organisation has identified itself as a charity and is not a charity and inviting, as it did in the case of the Applicant, to become registered as a charity. He asked Mr. Donohoe if that was not the case and Mr. Donohoe accepted that was correct.

168. Tribunal member Bill Holohan indicated that there was an expression to the effect that there is more than one way to skin a cat, which came to mind. He said that the point being made by the Chair is that the charity legislation is such that the Applicant's current structure does not appear to comply in that there is a benefit flowing from the organisation, a company, to members of the company, albeit in recognition for what may be very valuable services. He said that if it were the case, and that he knew of another organisation where such a structure operates, if it were the case that money was paid to a third party, a legal entity, contracted to provide such services to the first company, and it so happened that that third party service provider engaged the services of people who happened to be members of the first company, that does not mean that the money is flowing from the original company to its members. Mr. Holohan said it was not the Tribunal's function to advise the Applicant but suggested that there is a solution to the situation in which the Applicant found itself. He said that he could not say to Mr. Donohoe more than that, and repeated that it was not the function of the Tribunal to advise.

169. The Chair indicated that Ms. Kennedy BL or Ms. Griffin would refer Mr. Donohoe to section 89 of the Charities Act which makes it clear in relation to what can and cannot be done. He said that what Mr. Holohan was saying to Mr. Donohoe in the nicest possible way was that the way the Applicant is doing it did not comply with the law, but there may be a way for the Applicant to do it.

170. Ms. Fawsitt commented that it was the current structure which posed the difficulty.

QUESTIONS

171. The Chair asked Mr. Tottenham BL if he had any questions that he wished to ask and Mr. Tottenham BL responded that he would go to Submissions, unless the Tribunal wanted to take a short break.

172. The Chair enquired if any Tribunal members had any questions, and Tribunal Member Karen Horgan referred to item 51 in the papers before the Tribunal, which was the financial statements for 2022 and just referencing also back to item 4, pointed out that what the Chair had focused on there in relation to the projected income and expenditure. She said that it appears that the reserves that the organisation had at the end of 2022 was €471,000.00, which she said was arguably quite substantial for an organisation of its size. And looking at the projected income and expenditure, there was a surplus every year projected from 2022 up to 2026, from 2023 onwards of approximately €80,000.00, which would bring the reserves up to about €700,000.00 by the end of this year, if all were going to plan. Ms. Horgan indicated that she was just curious does the organisation have a reserves policy in place.

173. Mr. Donohoe indicated that they did have a fixed term deposit, which they hold as part of their financial structure and importantly were basically able to operate on a day-to-day basis, depending on the level of cash that they had, they would lodge into the fixed term deposit periodically, on a three or six-month rollover. So, that he said was their reserve and that they do contribute to it, depending on their financial results at the end of each year. Ms. Horgan asked if it was then the case that there was no actual reserves policy in place and that it was just on a cashflow. Mr. Donohoe responded in the affirmative.

174. The Chair invited the remaining members of the Tribunal to ask any questions they might have, and Tribunal Member Nuala Dockry indicated that she had been holding back on a question which had already been asked and answered, i.e. as to why they want to be registered as a charity.

RESPONSE FROM THE REGULATOR

175. Mr. Fitzgerald handed in written submissions prepared by Mr. Mark Tottenham BL. Mr. Tottenham BL indicated that at the outset, before going into the Submissions, while he thought that the point has already been made, he wanted to say that the Regulator was not disputing the nature of what he described as the good work that was being done by the organisation, which had been operating as a non-profit for several years. The issue, he said, was the strict application of the Charities Act and that was something that needed to be gone through, and, in his submission, it simply was not within the discretion of the Regulator to register this organisation in its current form. He said that essentially there were two grounds, and one would see in the introduction, the first is that the constitution and procedures, which provide that some of its property is payable to members and, secondly, provide a benefit on a person other than in his or her capacity as a member of the public and that benefit is not ancillary and necessary for the furtherance of the public benefit. He indicated that, obviously, the first point is the key one, i.e. the payment of property to its members. He said that he was just going to go through the relevant section of the Act, and the definition of charitable organisation is the important one. It has been referred to already.

176. The Chair indicated that before going into that, there might be some confusion in relation to the definition of property as property sometimes is understood to be just real property, as in land when it was not, property, constituting both real property and personal property, and personal property could be money or money's worth. Mr. Tottenham BL responded indicating that he thought that the important point here was that it says property is payable and that once one is talking about payment of property, he thought that one would have to be talking about personal property in addition to real property. The Chair agreed.

177. Mr. Tottenham BL continued indicating that, essentially, (as defined in section 2 of the 2009 Act), a charitable organisation is a body corporate or an unincorporated body of persons, first of all, that promotes a charitable purpose. Secondly, that under its constitution it is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended first of all in the operation and maintenance of the body, including monies paid in remuneration and superannuation of members of the staff of the body, and, then the next did not apply, because it concerns a religious organisation. And at

(iii) it says none of the property of which is payable to the members of the body other than in accordance with Part 6A, which shall not include an excluded body and an excluded body which he said does not apply here.

178. Mr. Tottenham BL then referred to section 89. He pointed out that section 89 was repealed by the Charities (Amendment) Act 2024, which repeal had not yet been commenced. He made the point that there was, up to the point of the 2024 Act was enacted, the bit "*other than in accordance with*" simply did not apply. The provision, he said, is, "*None of the property of which is payable to the members of the body*." Full stop. He said that although the 2024 Act introduced a new Part 6A, which provided for an exception, Part 6A has still not been commenced. So, until such time as the Minister for Rural and Community Affairs commences section 6A, there is no exception to the line, "*None of the property of which is payable to the member of the body*." That, he said, effectively ends in a full stop and it is simply not within the discretion of the Charities Regulator to register a body that pays any of its property to its members. He said that he thought that the point that is important to make is that this is not just a prohibition on payment of money to its members, it was a prohibition on a body, being a charitable body, if money is payable to its members. So, if there is any provision whereby money might be paid to its members, it cannot be a charitable organisation. He said that while it might be commented that is a very strict rule, that is the rule under which the Charities Regulator has to operate, and so, in those circumstances, any money that is payable to a member means that it cannot be a charitable organisation.

179. Mr. Tottenham BL said that if he were then to move on to section 3, this concerns the charitable purpose, and it goes into the definition of a charitable purpose. He said that if you go over the page it says*, "A purpose shall not be a charitable purpose unless it is of public benefit."* It then it says, "*Subject to section 4, a gift shall not be a public benefit unless it is to benefit the public or a section of the public*." And it goes on to say, "*In a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances and is ancillary to and is necessary for the furtherance of the public benefit."* He said that he would come back to that later on, because he thought that the important point in this case is the payment of property to members.

180. Mr. Tottenham BL pointed out that on page 4 of the submissions he would run briefly through the Authority's decision to refuse, and that he had just highlighted the relevant portions of it. At paragraph 4 they say that the organisation does not apply all of its property in furtherance of its charitable purpose. Some of its property is payable to its members and there is a private benefit to the Applicant's members, which is not reasonable in all of the circumstances, ancillary to and necessary for the public benefit. On paragraph 8 to say that in order to be member of the Applicant you have to be an Irish dance teacher. He said that that was provided for in article 5 of the Articles of Association. So, he said, this is not an organisation of people who generally believe that Irish Dancing is a good thing and want to support it. This, specifically, he said, could be equivalent to a professional body. He said that it is a body that you can only join if you pass an exam to become an Irish teacher. You have to meet the relevant qualification, and you can only be a member of the organisation if you are an Irish dance teacher. So, it may not be exactly equivalent to a professional organisation, but it was similar to a professional organisation. He said he would also comment that the constitution makes provision for the removal of a member who brings the organisation into disrepute, but that there was no need to go into that'

181. Mr. Tottenham BL said that at paragraphs 11 to 12 of the Decision it said that the Applicant expends property in making payments to examiners, adjudicators and musicians. At Paragraph 12, it is stated that adjudicators are members of the Applicant and are paid a daily rate of €350.00 and that examiners are members of the Applicant and are also paid a daily rate of €350.00. And this was set out in the document entitled "*Answers to queries*", which is dated 8 March 2024, and it is item 84 in the ancillary documents. So, and if you look at item 84, on page 1, halfway down the page, it says, "*The Board of Examiners consists of members who have fulfilled the required criteria … association.*" Then over the page on page 2 under "*Adjudicator costs*" it says, "*The above cost is associated with adjudicators employed to adjudicate the World Championships 2022.*" They are employed over the course of the championship, which normally runs for eight days. They are paid a daily rate of €350.00 per day and they are on duty from 8.30 am to 9 pm on average each day. The payments are made to qualified adjudicators and are paid on conclusion of the championships. All adjudicators are members of the Applicant company and monies received by them were for officiating at the World Championships. So, very clear from their replies these are payments that are made to members. He said that, again, it was perfectly understandable why they are paid in the course of this particular event and in the context of

how this organisation runs. But, in his submission, this was outside the definition of a charity in the Act.

182. Mr. Tottenham BL referred to just further down the page, "*Teacher, adjudicator, examiners*", where it says: "*The payments referred to above are the fees paid to the Board of Examiners who officiated at TCRG and ADCRG examinations They are paid a daily rate of €350.00 per day. The examinations normally run over a weekend commencing on Friday and finishing on Sunday.*" And it says they are paid their fee on the conclusion of the examinations And just referring back to page 1, which he had already referred to, he said that these are people who are all members of the organisation.

183. Moving on to Paragraph 13 then, on page 5 of his Submissions, he referenced that paragraph 13 notes that the Chairperson, Secretary and Treasurer all receive a gratuity on completing each year of service for the Applicant and again this was set out in a document of 8 March 2024. At paragraph 14 the Authority notes that Applicant pays accommodation costs for adjudicators, musicians and officers as well as gratuities and tips to staff at the venue. And again, this was set out in the document entitled "*Answers to queries*". He said that this is not the central objection. He said that there are ways and means to get around the issue of accommodation and that obviously there are circumstances in which the procedures could be in place where accommodation might be payable in relation to members or officers, but certainly in the context of everything else, it comes under the heading of payment that might be considered outside the core purpose. He said that similarly the gratuities and tips to staff at the venue, again procedures could be put in place that would make such payments possible, but the statutory definition is clear in the sense that it does say that all of the property has to go to the benefit of the organisation and not tips to staff. He said that, obviously, there is nothing to stop an individual member of the organisation paying a tip to a staff out of their own pocket, but that once one is talking about the property of the organisation being used to tip staff, that there is obviously a difficulty in relation to that.

184. Turning finally to paragraph 19 in relation to the benefit to a person other than in their position as a member of the public, Mr. Tottenham BL said that it says each teacher may charge fees to students they teach, and each teacher must offer the facility to sit graded examinations. Examiners who adjudicate gradings and adjudicators who adjudicate at

competitions are also the Applicant's members. Teachers, examiners and adjudicators all receive a benefit from their position as members of the Applicant. Teachers receive fee income from the students they teach. Adjudicators and examiners receive payment from their role as adjudicator or examiner. Essentially the view taken by the adjudicator is that by virtue of the fact that they are, they have been accepted as members of the organisation. They are people who have passed an exam. They are recognised teachers. They are effectively able to use that as a means of marketing their position to members of the public to charge a fee income to students, and that is a benefit that is not necessary an ancillary to the core - the purpose of the organisation.

185. Mr. Tottenham BL said that if he could then run briefly through the Notice of Appeal, which was dated 4 November 2024, it says: *"Reason 1. No portion of the company's income or property shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to a member of the company."* That, he said, may be true in relation to those individual words, but the otherwise, in that he meant that it is quite clear that not only is money payable, but it is paid to members of the company. And again reason 2 then it says the directors of the Applicant are entitled to be reimbursed for travelling, hotel and other expenses and comments that this is not a private benefit to the Applicant's members, and it may not be a private benefit, but it is not necessarily necessary to the purpose of the organisation. He said that Reason 3 says that the description of monies paid to various service providers is an inaccurate account of how the Applicant's finances were managed, but it does not highlight any specific inaccuracies and certainly the evidence that the Tribunal had heard would suggest that money is payable to members and that it is not an inaccurate account, but obviously it was open to the organisation to dispute that.

186. Mr. Tottenham BL said that at reason 5 the Applicant said that the payments to officers of the Applicant were not unreasonable and comments that they are necessary expenditure. But, he said, they did not address how they can get around the very strict prohibition in section 2 on payment of property to members. At Reason 6, it says that there is an erroneous mention of another organisation at paragraph 12 of the Decision Letter. That, he said, actually was mentioned in the Notice Of Intention To Refuse. There was a brief mention of CLRG and it was pointed out to him by Mr. Fitzgerald that in fact there is a mention of CLRG in the document he had already referred to, at item 84, which says that the

qualification is that of being one of Teastas … le Rincí Gaelacha or an equivalent Teastas from Coimisiún Le Rincí Gaelacha, which he understood is the CLRG and that the Coimisiún is the rival organisation. He said that may be how that filtered into the matter, but in any event, there was no confusion as one was dealing with CMRG and not CLRG and to the extent that it looks as if there was any confusion, that may have been a typographical error.

187. Turning to Reason 7, the issue of payments to staff, Mr. Tottenham BL said that it says that it is a basic element of the hospitality sector, and the amount is insignificant. He said that if procedures are in place to cover the issue of gratuities, that was something that could probably be dealt with. He said that it was not a huge amount of money in the overall context, but obviously, it was something that procedures need to be in place to make sure that it is relevant to the purpose of the organisation. At Reason 8 the Applicant says that there are a number of other charitable organisations which have benefitted from the events organised by the Applicant and as had already been pointed out, nobody disputed that it is a good thing that money is paid by charities. Unfortunately, he said, section 2 of the Act does specifically say that all of the property has to be for the purpose of this particular organisation, and it is not open to the organisation to raise money for other charitable organisations as part of its core business, and that was something that he thinks, unfortunately, brings it outside section 2 of the Act.

188. In conclusion, Mr. Tottenham BL said that it appears that this organisation, while obviously operating a very laudable business and having done so for many years, was outside of the absolute prohibition in section 2 on the payment of property to members. And then in relation to a subsidiary issue, that the issue of whether the members of the organisation are getting a private benefit, it would appear that they are because of their membership of the organisation, able to market themselves to students and that is conferring a private benefit that isn't really necessary and ancillary to the purpose of the organisation. So, those, he said, were his brief submissions, but indicated that he was happy to answer any questions from the Tribunal.

QUESTIONS

189. The Chair thanked Mr. Tottenham BL for his Submissions and invited members of the Tribunal to address any questions they might have.

190. Tribunal Member Karen Horgan indicated that she was curious as to why the Regulator did not raise the issue of the organisation dispersing funds to other charities as part of the application process. In response, Mr. Tottenham BL said that he did not have instructions in relation to that, but that he could take instructions and perhaps come back on that, but it certainly did not appear to have been addressed in the main decision.

191. Tribunal Member Carol Fawsitt said that she was surprised, given the clarity and given the issues and that charities cannot make payments to members, why this was, not raised specifically by the Charities Regulator with the Applicant. In response, Mr. Tottenham BL said that unfortunately, he could not clarify in that he did seek minutes of the Zoom meeting and certainly Mr. Fitzgerald instructed him that there were not any minutes retained and that there were not any minutes available to the organisation. It appeared, he said, to be treated as a sort of an informal discussion rather than a formal meeting. So, that was all that he could say. He said that the issues were raised in the Notice of Intention to Refuse and was not addressed in replies to that. So, he could not put the matter any further than that.

192. Ms. Fawsitt indicated that she understood that but pointed out that it was raised at the very beginning on 6 January 2021, and that issue was not reverted to. It was left and it was not raised on the Zoom call. She suggested that it might have been of benefit to the Applicant to have done so as it was a structural issue. In response, Mr. Tottenham BL said that with respect to Ms. Fitzpatrick, they did not have minutes of the Zoom meeting, and he could not say what the Regulator's own staff would have said, or what would have said happened at the meeting. However, he did think that he could say that the Regulator does take on board the comments of the Tribunal in relation to any future dealings with applicant charities, so that these issues are dealt with as clearly as possible in the application process. Ms. Fawsitt indicated that that would be extremely helpful to applicants, a point which was acknowledged by Mr. Tottenham BL.

193. Tribunal Member Bill Holohan spoke on that point, pointing out that in other cases the Tribunal had issues in relation to lack of engagement. He said that in this particular case, there was a gap in terms of the paper trail, so to speak, due to the lack of minutes. He pointed out that it was not beyond the bounds of technology when there are features available for Zoom and for Teams, Zoom and other such platforms that there can be a

recording taken and a transcription service available as well. In other words, these services would then provide a written record of the engagement, which would be in ease of and of assistance both to the Regulator and any applicant.

FURTHER QUESTIONS

194. The Chair thanked Mr. Tottenham BL for his Submissions and asked Ms Fitzpatrick if she wanted to say anything or if she had anything to say, by way of reply to Mr. Tottenham BL, but indicated that she did not have to. In response, Ms. Fitzpatrick indicated that she would have one short reply. In relation to her reading of section 2 and the definition of a charitable purpose, which provides an exception for money being expended in the operation and maintenance of the body, but then section 3 says that none of the property of which is payable to its members, she would say this does not place an absolute prohibition as it merely elaborates on the exception previously outlined.

195. The Chair asked Mr. Tottenham BL if there was there anything he would want to say, by way of response to that. Mr. Tottenham BL said that he would respectfully disagree in the sense that subsection 2 (iii) clearly says none of the property is payable to members, and the exception in relation to the operation and maintenance of the body specifically refers to staff in the body and he thought it was reasonable to interpret that as saying staff cannot be members. He said that he could not put the matter any further than that to which Tribunal member Mr. Bill Holohan pointed out that it was a question of interpretation.

196. The Chair asked Ms. Kennedy BL if there was anything else that she wished to say or if members of the Applicant wished to say anything further. In response, Ms. Fitzpatrick said that on foot of the representations from the Charities Regulator if they were totally aware of all those things, it was quite obvious to her that they not a candidate for charity status at all, and that they should have been advised of that in the first place and not be wasting the time of the Tribunal and their time and our money, because their structures were not compatible at all with charity status and all they now need to do is remove from the Article of Association where it says were a charity. She said that that was all they would need to do and just then go about their business as they wished. She said that there certainly had been what she described as a very sad lack of proper communication from the Charities Regulator. She said that she knew that the Regulator was understaffed and "*all that kind of thing*" and was looking after a lot of things, but, said that it was not really acceptable in this

day and age and with all the technology from Zoom meetings, et cetera. She said that she had conducted a lot of Zoom meetings all during Covid and had had to record all those so that day would have minutes for members and know what has been said and what has not been said. She said that it seemed extraordinary that there were no minutes from that meeting and had they known that in advance of the meeting, they could have arranged to have minutes from it themselves. She accepted that those present were not there at the time. She said that it was quite obvious that the Applicant did not fulfil any of the criteria at all for this. She asked if she was correct. She said that was clear from everything that had been said that the Applicant did not come under any of that criteria whatsoever and their total structures would have to be completely changed. She said that they were in no position to get outside people to adjudicate or to get outside people to examine something they know nothing about. So, she said, logic tells one that, they did not fill any of this criteria.

197. Mr. Tottenham BL said that he was only the legal representative for the Regulator, but as he had already said to the Tribunal, comments like this are obviously of great use to the Regulator in terms of their future dealings with organisations and whatever decision is made by the Tribunal, those comments would certainly be taken on board and to the extent necessary the procedure will be reviewed. Ms. Fitzpatrick thanked him for that.

198. The Chair said he wished to reassure the Applicant that the Tribunal had in the past identified areas where the Tribunal thought the Regulator might have been perhaps a little bit more understanding and advisory in relation to applications and, in fairness to them, that the Regulator had taken it on board. The Chair said that he would like to make it clear that the Tribunal was not here making any qualitative judgment on the great work that the Applicant had done for 55 years, a point which was acknowledged by Ms. Fitzpatrick. The Chair pointed out that the Tribunal was a tribunal of law which had to interpret the law and in commenting on whether or not the Applicant had the necessary documentation and the manner in which the Applicant ran its affairs, there was no criticism whatsoever in relation to it. It was the function of the Tribunal to say whether that sat "*into the box of the law*" and that was the Tribunal's sole function. Ms. Fitzpatrick acknowledged this and said that she had heard everything that was said, and she did know exactly what her decision would be if she was making the decision. She thanked the Tribunal for its time and the opportunity to speak to the Tribunal.

199. The Chair pointed out that the Tribunal had not decided yet and asked was there anything else arising? Mr. Donohoe indicated that there were 2 issues. First of all, the Applicant's name is An Chomhdháil, and we would appreciate that that was what they were referenced as. The Chair pointed out that the name was An Chomhdháil na Múinteoirí Le Rincí Gaelacha Cuideachta Faoi Theorainn Ráthaíochta and Mr. Donohoe said that there are abbreviated name is An Chomhdháil. The Chair noted that. Mr. Donohoe said that there was one other matter that he thought had been raised about administrative costs. Mr. Donohoe said he thought that the Tribunal would need to be aware that the Applicant did not have a premises so, obviously, administration costs were going to be a lot higher for them, because meetings would have to be outsourced to various different venues, and they obviously would be trying to get the cheapest venue that they could, but that obviously involves a cost and a lot of hard work. He said that his work and other officers was conducted at their homes and that they would all work from home running this organisation. So, he said, there was going to be a cost associated with that. So, the administration in comparison with other organisations which may have a premises, there will be a huge differential. He said that he just wanted to bring that to the attention of the Tribunal.

200. Ms. Fawsitt indicated that the comment was not intended as a negative. Mr. Donohoe in response said that he just wanted to explain that there was a reason why it may look large and that was the actual reason.

201. The Chair noted that the Applicant had to rent rooms to have meetings as they did not own a building and that that was perfectly understandable. He said that that was not the point being made. Mr. Donohoe indicated that he just wanted to clarify that.

BREAK

202. Before rising to consider the matter, the Chair explained that what the Tribunal would normally do is to give a decision on the day of hearing but then at a later stage, there would be a formal written determination which sets out the Reasons for that decision. So, rather an Applicant having to away and be waiting for a few weeks and months for a decision, the Tribunal's policy is to give the decision on the day and then at a later stage to set out the written basis for the determination.

RESUMED HEARING

203. On resumption of the hearing, the Chair indicated that he did want to thank all of those involved in the process, but also leading to the process, those in the Secretariat who prepared the papers which were quite copious, that needed to be identified, and he commented that without the Secretariat the Tribunal would not be in a position to actually have a sitting at all. He also said that he wanted to take the opportunity to thank the stenographer and said that the members of the Tribunal would look forward to seeing the transcript of the proceedings. He said it was also important that he would thank the Applicant, An Chomhdháil, and the persons who arrived here with Mr. Donohoe, Ms. Duggan and Ms. Fitzpatrick. He said that most importantly, he would like to thank Ms. Kennedy BL and Ms. Clarke, who are the barrister and solicitor involved on behalf of the Applicant and Mr. Tottenham BL and Mr. Fitzgerald on behalf of the Regulator.

204. The Chair commented that this was an interesting case and, in the first instance, he just wanted to say that the Tribunal has the greatest of admiration for the work that has been done for the last 55 years by An Chomhdháil and that the members of the Tribunal recognise the importance for many reasons of the actual work, and without going into it in detail noted that it has been in existence since 1970 and they incorporated in 2014. An application was made by An Chomhdháil to become a registered charity. It had been in effect doing the work of a charity but did not have the legal entitlement to do that (because of the structure and systems it had adopted) and to regularise that position it sought to get the registration from the Charities Regulator, under the 2009 Act. He said that while the Tribunal noted that there were a number of applications made over the years, there was a final application, which was submitted on 8 March 2024. The papers that were submitted by An Chomhdháil, the Applicant, to the Regulator were the subject of correspondence between the Regulator and representatives. He said that it was regrettable that there was not a minute of the Zoom meeting that did take place between the two representatives of the Regulator and three representatives of An Chomhdháil but said that the members of the Tribunal did not feel that that would have affected the substance of what the actual requirements are, and that there was no doubt, as Mr. Tottenham BL had said and indeed Mr. Fitzgerald has been here before, that type of lacuna that was created as a result of not having minutes probably will not happen again. He said that at the same time, that did not go to the core of the issues and to the substance of what the Tribunal had to decide.

205. The Chair said that the Tribunal had heard and considered the various learned submissions from both learned counsel on behalf of the parties and had the benefit of the oral submissions that were made by An Chomhdháil representatives. He said that the Tribunal was a tribunal of law, and the Tribunal had to interpret what the law is and consider whether or not a decision made by the Regulator, in this case refusing an application to register An Chomhdháil as a charity, was correct and, in those circumstances, whether to allow that appeal or to affirm the decision of the Regulator. He said that that had to be done in a cold, calculated, sort of analysis of what the law is and what the requirements of the law are. Any decision that the Tribunal would make was not to be seen as and was not meant to be a reflection on the very good work that the Applicant does and has been doing, over the last 55 years.

206. The Chair said that the Tribunal, having taken everything into account and considered the Submissions on behalf of the Applicant and the Respondent and the very helpful interaction and discussions that the Tribunal members had had with the parties, the Tribunal have decided that they would affirm the decision of the Regulator and dismiss the appeal insofar as the Applicant will not be registered as a charity. The Reasons for that, in a written determination, would be made available to all of the parties. That, he said would take some time, because the Tribunal members have to wait for the transcript of the evidence. He said that the Tribunal also want to be very careful in presenting the Determination, because ultimately, the Tribunal has to give Reasons for the actual decision itself.

207. The Chair said that he again wanted to reiterate thanks for the cooperation of the parties and for the amicable manner in which the actual appeal was dealt with and the manner in which the parties to the appeal, particularly the legal representatives addressed the Tribunal and the decorum that was accepted and adopted right by them all during the actual course of it.

DETERMINATION

208. Section 2(1) of the 2009 Act defines a number of terms, including the following relevant highlighted extracts:

> **"charitable gift"** ***means a gift for charitable purposes;***

"charitable organisation" ***means—***

(a) …

(b) a body corporate or an unincorporated body of persons—

(i) that promotes a charitable purpose only,

(ii) that, under its constitution, is required to apply all of its property (both real and personal) in furtherance of that purpose, except for moneys expended—

(I) in the operation and maintenance of the body, including moneys paid in remuneration and superannuation of members of the staff of the body, and

(II) …,

and

(iii) none of the property of which is payable to the members of the body other than in accordance with section 89,

…;

"charitable purpose" ***shall be construed in accordance with section 3*****;"**

209. Section 3 of the 2009 Act, inter alia, provides a definition of charitable purposes, including the following highlighted purposes:

"3.— (1) For the purposes of this Act each of the following shall, subject to subsection (2), be a charitable purpose:

(a) …;

(b) the advancement of education;

(c) …;

(d) any other purpose that is of benefit to the community.

(2) A purpose shall not be a charitable purpose unless it is of public benefit.

(3) Subject to subsection (4), a gift shall not be of public benefit unless—

(a) it is intended to benefit the public or a section of the public, and

(b) in a case where it confers a benefit on a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit.

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(11) In this section " purpose that is of benefit to the community " includes—

(a) **the advancement of community welfare** …,

(b) **the advancement of community development,** …

(c) …,

(d) the promotion of health, …,

(e) …,

(f) …,

(g) …,
~~~

(h) …,

(i) the advancement of the efficient and effective use of the property of charitable organisations,

(j) .,

(k) the advancement of the arts, culture, heritage or sciences, and

(l) ...

210. It is acknowledged and accepted by the members of the Tribunal that the activities of the Applicant to constitute "*the advancement of education*" are a "*purpose that is of benefit to the community*," through "*the advancement of the arts, culture, heritage*," or sciences.

211. It was acknowledged by the officers of the Applicant who gave evidence to the Tribunal that:

(a) Among the subsidiary objects of the Applicant is the object to establish relationships with teachers and adjudicators of the art and practice of Irish Dancing and to pursue the expansion and amelioration of their conditions of work;
(b) The members of the Applicant "*must be Irish Dance teachers affiliated to the organisation for the purpose of the promotion and advancement of Irish Dancing*".
(c) Regulation 5 stipulates that each member must be a teacher and/or adjudicator and the holder of a required Irish Dancing qualification.
(d) Each teacher may charge fees to students it teaches, and each teacher must offer the facility to sit graded examinations.
(e) Examiners who adjudicate gradings and adjudicators who adjudicate at competitions are also the Applicant members.
(f) Adjudicators and examiners receive payment for their role as an adjudicator or examiner.
(g) Adjudicators at the World Championships were paid a daily rate of €350.
(h) Teachers, examiners and adjudicators all receive a benefit from their position as members of the Applicant.

(i) Teachers receive fee income from students they teach.

(j) Adjudicators and examiners receive payment for their role as an adjudicator or examiner.

(k) The officers are paid the sum of €1,500.00 per annum in consideration of the services they provide as officers.

212. Each of these give rise to a benefit to the teacher, examiner and adjudicator other than in their capacity as a member of the public. They benefit from their position as the Applicant's members. Such benefit must be reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit. The Regulator formed the view that each of the aforementioned payments gives rise to a benefit to the teacher, examiner and adjudicator other than in their capacity as a member of the public. The Regulator formed the view that the members of the Applicant therefore benefit from their position as the Applicant's members. The Regulator submitted that the legislation requires that the benefit must be reasonable in all of the circumstances, and is ancillary to, and necessary, for the furtherance of the public benefit. For the Reasons outlined above the Registration Unit was not satisfied that the Applicant was a charitable organisation, within the meaning of the legislation. The Tribunal agrees with that submission.

213. The Registration Unit of the Regulator was not satisfied that the Applicant had demonstrated that the benefit accruing to the teachers, examiners and adjudicators was reasonable in all of the circumstances, and was ancillary to, and necessary, for the furtherance of the public benefit. As such the Registration Unit was not satisfied that the Applicant was promoting a charitable purpose for the public benefit, in accordance with the requirements of the legislation. The Tribunal agrees with that submission.

214. In the Decision, it was stated that the Board of the Regulator was not satisfied that the Applicant had demonstrated that the benefit accruing to the teachers, examiners and adjudicators was reasonable in all of the circumstances, and was ancillary to, and necessary, for the furtherance of the public benefit. Having regard to the level of expenditure involved, which went beyond mere reimbursement of expenses and amounted to payment for services, the Tribunal is satisfied that the decision of the Board was appropriate, particularly having regard to the clear distinction drawn between payments to members of a charitable organisation and payments to staff of a charitable organisation, the definition of "*Charitable*

Organisation" in section 2 (b) (ii), which requires that under its constitution, a charitable body be required to "*apply all of its property (both real and personal) in furtherance of that* [charitable] *purpose, except for monies expended - (I) in the operation and maintenance of the body, including monies paid in remuneration and superannuation of members of the staff of the body.*" In short, while payments to individuals at the rate of €350.00 per day might be reasonable and legally permissible in the case of persons who were employed by the Applicant, while not being members of the Applicant, the legislation clearly prohibits such payments to persons who are members.

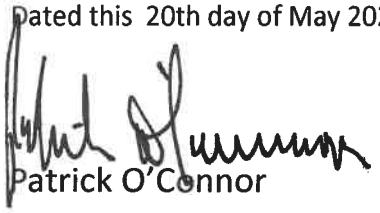
215. Ms. Kennedy BL in addressing the Tribunal on behalf of the Applicant addressed the proposed intersection of part 6(a) and section 89 of the Act. She submitted that Part 6(a) proposes to insert provisions for reasonable and proportionate remuneration to members and trustees for services provided to a charity in line with an agreement. As to section 89 which similarly proposed to insert provisions for remuneration of members and trustees on foot of agreements and services, she indicated that the Applicant submits that these proposed sections are in line with the current Act. These sections, she said do not seek to contravene the definition of charitable purpose and this reinforces the Applicant's belief that the body is acting within the parameters currently defined by the Act. The Tribunal does not accept this submission. While, following the commencement of the amendments under the 2024 Act, payments made to officers, at the level at which payments have historically been made by the Applicant, maybe permissible and in accordance with the law, the Tribunal is not satisfied that that is the historical and current position, in law.

216. While the Regulator and the members of the Tribunal were satisfied that the Applicant was well-intentioned and bona fide seeking to promote a charitable purpose, that charitable purpose being the objective of preserving, promoting and fostering the growth, education and development of the art and practice of Irish Dancing for the public benefit, by reason of the foregoing, the Applicant was not doing so in accordance with the requirements of the legislation. During the course of the hearing, it was referenced that the objectives of the Applicant who seeks to ensure that those members of the Applicant who provide what was universally acknowledged as very valuable and culturally beneficial and enriching services by acting as teachers and examiners and adjudicators might be fulfilled, were those services engaged by and paid for (on a tax compliant basis) by a third party, even one engaged by the

Applicant to do so, and in accordance with criteria and regulations established by the Applicant, that is not the methodology currently adopted by the Applicant.

217. By reason of the foregoing, the Tribunal upholds the decision of the Regulator and dismisses the Appeal of the Applicant.

Dated this 20th day of May 2025



Patrick O'Connor

Chairperson