AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

APPLICATION CAT 2023 – 001

UNDER SECTION 77 OF THE CHARITIES ACT 2009, ("THE ACT").

Appeal of National Parents Council – Primary against a decision of the Regulator, refusing consent to change of name to National Parents Council.

Hearing date, 12 July 2023.

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THE CHARITY APPEALS TRIBUNAL AND MEMBERSHIP

1. The Charity Appeals Tribunal ("the Tribunal") was established under section 75 of the Charities Act 2009.

2. The Members of the Tribunal[1] at the time of hearing of the Appeal were:

   Nuala Dockry,
   Carol Fawsitt,
   Bill Holohan,
   Karen Horgan,
   Mr. Patrick O'Connor, Chairperson

THE APPELLANT CHARITY.

3. The Appellant charity is the "National Parents Council – Primary", ("the Appellant") a company limited by guarantee (Licensed Company), which was incorporated on Wednesday 11 December 1996, under company number 258148. The Appellant is registered on the Register of Charities established and maintained under section 39 of the 2009 Act. Its Registered Charity Number ("RCN") is 20027032.

THE RESPONDENT AUTHORITY.

4. The Respondent Authority ("the Authority") is the Charities Regulatory Authority established under section 13 of the 2009 Act.

BACKGROUND TO THE APPEAL TO THE TRIBUNAL.

[1] Section 75 (2) of the Act requires that the Tribunal consist of five members of whom at least two are holders of or who previously held judicial office in the Superior courts or are barristers or solicitors of not less than 10 years standing and two persons who have experience in areas of expertise related to charities.

- **Registration of Pre-Existing Charitable bodies.**

5. Pursuant to the provisions of section 40 (1) of the 2009 Act, charitable bodies which were in existence in October 2014 and had at that time 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 charitable bodies established under section 39 of the 2009 Act. Consequently, such bodies were not obliged to nor was it necessary for such bodies to apply for registration under the registration process prescribed under the Act.

As a further consequence of the deemed registration of such pre-existing and recognised charitable bodies, many charitable bodies with similar sounding names were deemed to be registered.[2]

- **The Issue of Naming of Charitable bodies.**

7. Section 42 (1) of the 2009 Act stipulates that the Authority shall not register a charitable body if:

   (a) the name of the charitable body is

   (i) the same as, or

   (ii) in the opinion of the Authority, so similar to the name of another charitable body as to be likely to cause members of the public to be unable to distinguish it from that other charitable body.

8. Similar provisions apply in circumstances where a charity seeks to change its name.[3] Section 42 (2) of the 2009 Act provides that the name of a registered charitable body

[2] While not relevant to the particular case, an example would be charities which incorporated the title "National Primary School" into their name.
[3] While not relevant to the particular case, an example would be charities which incorporated the title "National Primary School" into their name.

shall not be changed without the consent of the Authority and the Authority shall not give such consent if:

(a) the name of the charitable body is

(i) the same as, or

(ii) in the opinion of the Authority, so similar to the name of another charitable body as to be likely to cause members of the public to be unable to distinguish it from that other charitable body.[4]

The Act clearly provides that should the Authority form the opinion that there is likely to be a situation where members of the public would be unable to distinguish an applicant from a charitable body with a similar name, the Authority has no discretion in relation to the matter at that point and is obliged to refuse the application for change of name.

- **Application for Consent to Change of Name of the Appellant -**

9. In March 2023, the Appellant submitted a request to the Authority seeking to change its name. The Appellant was seeking to change its name from "*National Parents Council – Primary*" to "*National Parents Council*". At the time of application, there was another registered charitable body on the Register entitled National Parents Council – Post Primary Company Limited by Guarantee ("NPC-PP"). Similar to the Appellant, this was also a charitable body deemed to be registered pursuant to section 40 (1) and its RCN was 20038298. Both organisations (the Appellant and the NPC-PP), were recognised as national parent associations in section 2 of the Education Act 1998 as bodies for the time being recognised by the Minister of Education, for the purposes of the 1998 Act.

[4] In the course of submissions made to the Tribunal for the purposes of the Appeal, the Authority submitted that the only relevant factor is the degree of similarity and whether, in the opinion of the Authority, it is likely to cause members of the public to be unable to distinguish it from the charitable organisation with the similar name, and that this was the criteria considered by the Authority in assessing the Appellant's application for change of name.

10. The application for change of name by the Appellant was submitted to the Authority through the Authority's online portal. As helpfully pointed out by Madeline Delaney on behalf of the Authority, there is a "*check name*" tab provided to assist applicants and to advise them of the fact that the proposed new name may (in accordance with the relevant legislation) be rejected if in the opinion of the Authority, it would be the same as or too similar to any existing charity names.

11. Following the assessment procedures conducted by the Authority, the matter was referred to the Chief Executive Officer of the Authority ("the CEO") for the purpose of deciding whether to approve or reject the request for change of name. The CEO rejected the request to change the name for stated reasons and a letter notifying the decision was issued to the Appellant on 23 March 2023.

12. Responding to the refusal, the Appellant sent a letter setting out the circumstances which prompted it to seek the change of name and included with its response a copy of a letter of support from the Department of Education. The Authority was asked to reconsider the decision.

13. Having received communication from the Appellant, and having considered same, the Authority issued a response informing the Appellant that there was no mechanism for reviewing the decision other than an appeal to the Tribunal.

THE APPEAL HEARING BEFORE THE TRIBUNAL.

14. The hearing of the Appeal took place at PSI House, 15 – 19 Fenian St, Dublin 2 on Wednesday 12 July 2023.[5]

[5] Despite the fact that the interests of the National Parents Council – Post Primary Ltd ("NPC-PP") were likely to be affected, the NPC-PP was not on notice of and did not participate in any way in the hearing. It was accepted by the parties to the Appeal as a matter of fact, that the NPC-PP had to a certain extent ceased to function, in circumstances where the Department of Education had withdrawn funding to the NPC-PP, and has transferred the benefit of that funding to the Appellant while at the same time asking the Appellant to undertake the work previously undertaken by the NPC-PP, it being explained by the Appellant that this was why the Department supported the application for the change of name by the Appellant, and had provided a letter of support.

REPRESENTATION AT THE APPEAL HEARING.

15. Appearing on behalf of the Charities Regulator ("the Authority") were:

- Madeline Delaney, Solicitor, Director of Legal Affairs & Registration
- Meagan Gill, Head of Registration.

Appearing on behalf of the Appellant, the National Parents Council – Primary were:

- Áine Lynch – CEO
- David Mullins, Solicitor/Director.

The Tribunal would like to record its appreciation for the collaborative, rather than the adversarial approach taken by the representatives of the parties before the Tribunal. While the 2009 Act and the Rules governing procedures of the Tribunal provides for an adversarial form of hearing including the right to cross examination, the Tribunal welcomed the collaborative approach taken by the representatives of the parties in exploring the issues to be considered by the Tribunal and in particular the assistance provided by Madeline Delaney, Solicitor for the Authority, in drawing attention to relevant case law from the UK.

PRELIMINARY MATTERS AT THE HEARING.

16. The Tribunal Chair Mr. O'Connor, noted that the Appeal was the first occasion on which the Tribunal had sat to hear an appeal under section 77 of the 2009 Act. The Tribunal Chair also pointed out that a previous hearing of the Tribunal had been held, virtually, to accede to the request of the Appellant to admit the appeal as a late appeal.

17. The Tribunal Chair also pointed out the appellant named on the Appeal Notice was Áine Lynch, whereas it should be the National Parents Council – Primary. This was confirmed by Áine Lynch as being correct. The Tribunal Chair enquired if there was any objection to that being amended to identify the Appellant as the National Parents Council – Primary and Madeline Delaney on behalf of the Authority confirmed that there was no objection. The amendment was duly made.

18. The Tribunal Chair asked Áine Lynch if she could clarify/confirm the legal status of the Appellant, i.e., whether it was an unincorporated entity or an incorporated entity and if it was an incorporated entity, its registration number, details as to the number of directors and of the secretariat.

19. Áine Lynch confirmed that the Appellant was a company limited by guarantee and was a registered charity. She confirmed that there were ten directors, and that she was the Company Secretary and CEO.

20. Madeline Delaney assisted by confirming that the Appellant charity was established around 1985 and was incorporated in 1996 as a limited liability company, later becoming a CLG sometime after 2014 and that the Appellant had also applied for and was granted a licence by the Minister authorising it to dispense with the use of the term CLG in its name.[6] It is recognised in the Education Act 1998.

21. Tribunal Member Karen Horgan asked for confirmation that the directors were trustees, and this was confirmed by Áine Lynch.

SUBMISSIONS AND EVIDENCE FROM/ON BEHALF OF THE APPELLANT.

[6] National Parents Council - Primary was set up on Wednesday the 11th of December 1996. Their current address as registered with the Companies Registration Office is 12 Marlborough Court, Marlborough Street, Dublin 1, Dublin, and the company status is recorded in the CRO as "Normal". The company has ten directors. The registered company number is 258148. The company also holds a licence from the Minister authorising to dispense with the use of the words "Company limited by guarantee" in its name.

22. Áine Lynch on behalf of the Appellant submitted that the name National Parents Council was not the same as the National Parents Council Post Primary Company Limited by Guarantee, nor was it in the view of the Appellant so similar as to be likely to cause the public to be unable to distinguish it from the latter company or any existing company, and that the reference to "*Post Primary*" would distinguish it from the Appellant's proposed name.

23. Further, Áine Lynch submitted that the Appellant was a representative organisation which did not fundraise, nor did they intend to engage in public fundraising, and that as a consequence, even if there was any confusion (which the Appellant did not believe would be the case) it would be confusion without consequence.

24. Áine Lynch submitted that at the present time there was really only one particular word in the difference between the name of the Appellant (National Parents Council – Primary) and the National Parents Council Post Primary Company Limited by Guarantee, that being the difference between "*Primary*" and "*Post Primary*" but that the deletion of the word "*Primary*" from the name of the Appellant would further distinguish the two names and provide less potential for confusion. She also submitted that National Parents Council would be instantly distinguishable from National Parents Council Post Primary Company Limited by Guarantee, and there would be no confusion as result.

25. Áine Lynch further submitted that the Appellant had carried out "*a name comparison tool search*" as result of which it had a 93.5% comparison for the existing names, whereas under the proposed name there was only an 84% comparison. Consequently, they would submit that there will be less confusion as a result of the name change.

26. In addition, Áine Lynch submitted that the Appellant would believe that the intended new name would not mislead the public as to their purposes and would more accurately reflect the extended remit which the Appellant had been asked to take on

by the Department of Education in terms of the role of representing and supporting parents in secondary education as well as parents in primary education. She also referred to the fact that the Department of Education had asked the Appellant to extend their early years and primary education services to parents in post primary education. However, they had found that the existing name referring to "*Primary*" was causing an element of confusion with post primary parents who wanted to know why National Parents Council – Primary would be contacting them (regardless of whether such parents were aware of the existence of the NPC-PP or not), and this was causing difficulties in logistical and operational terms of moving things forward and progressing the work of the Appellant and the aims of the Department.

27. Dealing with other possible grounds for rejection (which were not relevant or applicable in this case) as to a possible connection "*with the government, local authority or any other person or body of persons with whom it has no connection*", Áine Lynch said the Appellant did not think that there was any likelihood of confusion in that regard, nor did they think that the proposed name would be considered offensive.

28. Áine Lynch submitted that due cognizance had to be given to the fact that the Appellant was named under the Education Act 1998 and had commonly been known for a long time as simply "*National Parents Council*" and that the proposed name change simply reflected this common perception.

29. David Mullins, in his capacity as a director of the Appellant, he also being a solicitor, also referred to the letter of support received from Deirdre Shanley, Assistant Secretary of the Department of Education. He read the letter. This letter documented the Department's support for the Appellant, and the importance of the work of the Appellant, and that the Application had been made at the request of the Department, and was considered "*desirable*" by the Department because it:

"*more accurately describes its extended remit and provides parents and parent associations with a clearer pathway to the organisation that is the only national parents association which is currently recognised by the Department and in receipt of public funding.*"[7]

30. David Mullins also referenced the fact that a change of name application was also being submitted to the Companies Office, in order that the name and licence could also be amended.

QUESTIONING FROM THE TRIBUNAL MEMBERS.

31. In response to questions from Tribunal Member Carol Fawsitt, Áine Lynch confirmed that while the Appellant did not commonly use the name "*National Parents Council*",[8] it was known as that for upwards of 20 years and in common parlance people would shorten the name of the Appellant to "*National Parents Council*" and this shortened name was used colloquially. Áine Lynch also confirmed in response to questions from Carol Fawsitt that there was no connection between the two named charities, (the Appellant and NPC-PP), no common directors, no common members, they were operating from separate business locations et cetera.

32. In response to questions from Tribunal Member Bill Holohan, in relation to the matrix or algorithm for name recognition referenced by the Appellant, Áine Lynch was asked

[7] Extract from the letter from Deirdre Shanley, Assistant Secretary of the Department of Education.

[8] It was noted that the website of the Appellant www.npc.ie does not prominently display the full name of the Appellant as National Parents Council – Primary. In the General Information page, the appellant is identified as "National Parents Council Primary (NPC)" and similar nomenclature is adopted on the Governance page. The homepage identifies the copyright owner at the bottom of the homepage as "(c) National Parents Council – Primary 2023" and it would appear that the only place on the website where the full and correct title of the Appellant "National Parents Council – Primary (Company Limited by Guarantee – Without Share Capital)" appears is on copies of the Audited Accounts of the Appellant accessible through a link to the Audited Accounts on the About section on the homepage.
Every limited liability company in the State which has a website is required by the provisions of the Companies Acts to display either on its homepage or to be identified on its homepage, a readily accessible webpage on which the following appear:
- the name and legal form of the company,
- the place of registration of the company and the number with which it is registered,
- the address of the registered office of the company,
- in the case of a company exempt from the obligation to use the company type (Companies Limited by Guarantee/Designated Activity Companies) as part of its name, the fact that it is such a company,
- in the case of a company which is being wound up, the fact that it is being wound up,
- if the share capital of a company is mentioned on the website, the reference must be to the paid-up share capital.
These do not appear to be provided on the Appellant's website. Any such failures on the part of the Appellant were not relevant to the Tribunal's considerations and deliberations and ultimate decision.

would she accept that without the benefit of any information being supplied to the Tribunal as to the nature of the algorithm or the matrix in the name comparison application, it would be impossible to assess the validity of that data referenced by her in her submissions, as the output would very much depend on what had been inputted in terms of the computer programme, and that consequently, in evidential terms, it was of no value to the Tribunal. This was accepted by Áine Lynch.

33. In relation to the question of the perception of the Appellant in relation to possible confusion, Áine Lynch was asked by Bill Holohan to confirm if it was accepted that the perception of the Appellant was not the relevant perception, and what was the relevant perception was the question of the perception of the Authority which was given statutory recognition in section 42. In accepting this, Áine Lynch indicated that for parents and parents' associations in schools there would be no confusion and that was the group with whom the Appellant dealt on a regular basis, rather than *"the broader public*", the Appellant's services or advocacy not being provided (directly) to or for the benefit of "*the broader public*". Áine Lynch indicated that she did not think that there would be any confusion among "*the broader public*" because "*the broader public*" did not engage with the Appellant, consequently there would be no relevant confusion. In response to further query, Áine Lynch confirmed she accepted that the Act provided that it was the opinion of the Authority which was the relevant criterion for decision.

34. In response to questions from Tribunal Member Karen Horgan, Áine Lynch confirmed that only a small number of post primary parents had engaged with the Appellant, in part due to the issue of such parents querying why the Appellant (National Parents Council – Primary) would be making contact with post primary parents. She also confirmed that notwithstanding explaining to post primary parents and schools the invitation and request from the Department to engage with the post primary sector, difficulties were still arising/continuing.

35. In response to a further query from Tribunal Member Karen Horgan, Áine Lynch also confirmed that the Appellant had submitted an application for change of name (and licence) to the Companies Registration Office.

36. In response to questions from Tribunal Member Nuala Dockry, Áine Lynch confirmed that it was in December 2022 that the Department had asked the Appellant to take on the function previously undertaken by NPC-PP.

37. In response to questions from the Tribunal Chair, Áine Lynch confirmed that it was her understanding that the NPC-PP was still in existence as a registered company, was still in existence as a registered charity, but was no longer recognised by or funded by the Department of Education. She again confirmed, in response to a further question, that the only "National Parents Council" recognised and funded by the Department of Education was the Appellant. Áine Lynch also confirmed that the Appellant provided service to primary, post primary and early years education sectors, and that as stated by the Department in their letter of support, the Department now consider the Appellant to be the only national parent body. She again confirmed that the Appellant was representing pre-school enterprises, many primary schools and two post primary schools, with approximately 20,000 parents on their database, represented individually as well as through membership of parent associations.

38. Áine Lynch also indicated that notwithstanding the letter of support from the Department, the Department had made no official announcement yet in relation to the changed circumstances relating to the NPC-PP and or the Appellant, and that there was an element of confusion in the absence of this clarification.[9] She again confirmed that all funding previously provided by the Department to the NPC-PP, had now been allocated to the Appellant. She also spoke about the desire of the

[9] Following a governance review initiated by the Department, a document National Parents Council – Post Primary Governance and Financial Review, March 2023 was published by the Department in March 2023.

Appellant to broaden its talent/skills base in terms of corporate governance/directors to include the post primary sector.

39. In response to questions from the Tribunal Chair in relation to funding sources, Áine Lynch confirmed that the Appellant did receive some European funding for Internet safety work, some money from Virgin Media for internet safety work, some money from St Patrick's Mental Health Services for work supporting children's mental health programmes, some money from the HSE in relation to work related to crisis pregnancy and relationship sexuality education, in addition to membership money.

40. In response to further questions from Tribunal Members Nuala Dockry and Carol Fawsitt in relation to funding, Áine Lynch and David Mullins confirmed that the Department had requested the Appellant in December 2022 to expand its services to include the post primary sector and had later asked the Appellant to provide a business plan in relation to the use of increased funding, (i.e., the funding previously provided to the NPC-PP).

41. In response to a further question from Tribunal Member Karen Horgan, David Mullins confirmed that he was unaware of whether any appeal against the withdrawal of funding to the NPC–PP had been lodged with the Department by the NPC-PP.

42. Tribunal Member Karen Horgan also asked if there had been any representatives from the post primary sector elected to the board of the Appellant, and it was clarified that the change of directors will not happen until September 2023, nominations having been invited in May 2023, but it was hoped to have board representatives from the post primary sector on the board of the Appellant from September 2023 onwards.

CROSS-EXAMINATION.

43. The Tribunal Chair enquired if the Authority wished to cross-examine the witnesses for the Appellant, but Madeline Delaney confirmed that this was not required, so no cross-examination of the witnesses for the Appellant took place.

SUBMISSIONS/EVIDENCE FROM/ON BEHALF OF THE AUTHORITY.

44. Madeline Delaney opened the submission on behalf of the Authority indicating that she had prepared a booklet of documentation, which incorporated documentation previously submitted to the Tribunal, with some additional items. Copies of the booklet were circulated.

45. Madeline Delaney confirmed that the Authority was not aware of any communications between the Department and the NPC-PP and was unaware of the detail relating to any "official paperwork" around the recognition status, withdrawing recognition, implications of that et cetera, and consequently there was a certain information deficit.[10]

46. Madeline Delaney referenced the legislation outlined above and the statutory duty of the Authority in assessing and determining applications for registration as a charitable body, and any application for change of name. She described the process as a "*robust process*" and as a "*legal technical process*". She again referenced the fact that the Authority inherited, (so to speak), the pre-existing charitable bodies previously registered with the Revenue Commissioners, those charitable bodies not having to undergo a process of registration or assessment prior to registration and being deemed to be registered. She confirmed that approximately 8,000 charitable bodies were entered into the Register at the time and there are now practically 6,500 of those deemed registered charities.

[10] Following a governance review initiated by the Department, a document National Parents Council – Post Primary Governance and Financial Review, March 2023 was published by the Department in March 2023.

47. Madeline Delaney outlined the process for registration and/or change of name, and how an initial assessment was conducted by an assessment officer. She referred to the relevant documentation in the booklet which had been handed in in order to illustrate the process, and she outlined how the similarity in names was identified by the Authority's computer systems which would identify and flag up for the benefit of the Case Officer any potential conflicts/similarities. The Case Officer would then make a recommendation which would go forward to the CEO, who would then be the decision-maker in relation to any application. In doing so, the CEO would have the benefit of all documentation and information available to the Authority.

48. The CEO, on behalf of the Authority, having considered the matter, made a decision which was communicated by letter dated 23 March 2023 to the Appellant to which the Appellant then responded with a further letter setting out further information and detail for consideration and also including the letter of support from the Department.

49. Meagan Gill then responded in writing to the Appellant pointing out that there was no mechanism to reconsider a decision already concluded and that it was open to the Appellant to appeal to the Tribunal.

50. Madeline Delaney referred to the mandatory provisions of section 42 and that the decision-maker having formed the opinion that the proposed name was so similar to that of an already registered body as to be likely to cause a member of the public to be unable to distinguish, that the application should be refused.

51. Madeline Delaney also referred to the fact that the position was somewhat different in other jurisdictions where there would be a discretion available to the decision-maker under the domestic laws of those jurisdictions but that was not the position in Ireland and consequently, once the opinion as to potential confusion was formed, the application must then be refused. Madeline Delaney also confirmed that this was not a refusal to allow a change of name per se, just a refusal to change to the proposed

name in particular, the reasons having been set out, i.e., potential confusion based on the grounds of similar names, the other criteria set out in the section not being relevant.

52. Madeline Delaney also referred to the seriousness of the requirements regarding the name of any charity, it being a criminal offence for a charity to change name without obtaining consent and it also being open to have a charity removed from the Register for changing its name without consent.

53. Madeline Delaney also referred to the statutory recognition given in section 2 of the Education Act 1998 to the Appellant and the NPC-PP, already referenced above.

54. Madeline Delaney also referred to the statutory duties and responsibilities of the Authority as set out in section 14 of the 2009 Act highlighting the three most important functions of the Authority, the first of which was:

> "*to increase public trust and confidence in the management and administration of charitable trusts and charitable bodies, to establish and maintain a register of charitable bodies and to ensure and monitor compliance by charitable bodies*",

with the Act. She again referred to the registration process which again she again described as "*quite a robust process, a legal technical process*" which would take a number of months following which successful applicants would be entered into the Register and assigned a registered charity number ("RCN").

55. Madeline Delaney referred to section 42 (1) of the 2009 Act and referred to the fact that as a result of the Authority inheriting (so to speak) the very many charitable bodies previously recognised by the Revenue Commissioners, where there were charitable bodies with similar or perhaps even identical or almost identical names, no

issue could arise because of the statutory entitlement to registration whereas if they were applying de novo, Section 42 (1) would have been operative.

56. Madeline Delaney also confirmed that on receipt of the Application for change of name by the Appellant, the NPC-PP was not informed that the application had been made, was not put on notice of any kind in any way, no input or comment was sought from them, and consequently Madeline Delaney was not seeking to advocate on their behalf or speak for them in any way when making comments on the situation. She pointed out that the NPC-PP was still in existence, it was still a separate legal entity, it still had a Board of Trustees, it still had constituent members / a membership, even if Department of Education funding had been withdrawn.[11] This was notwithstanding that the letter from the Department of Education filed by the Appellant referred to the fact that as a result of the change in policy by the Department, the Appellant was now the only national association or body recognised by the Department and in receipt of State/public funding, as it was now the only body tasked by the Department with servicing the needs of the post primary sector.

57. Madeline Delaney indicated that the standard adopted by the Authority in considering the question of an application for change of name, and potential confusion, was "*what an ordinary member the public, not having any knowledge of the school sector and parent associations might think*". She indicated that the Authority was aware of the fact that both organisations' names included the words "*National Parents Council*", and the Appellant was proposing to drop the distinguishing word "*Primary*" from its name and retain the words "*National Parents Council*". The Authority was of the opinion that this could lead an ordinary member of the public to be unable to distinguish one organisation from the other on the basis of their names and consequently, the Authority having formed this opinion, the Authority was obliged to refuse to give consent to the proposed name.

[11] Following a governance review initiated by the Department, a document National Parents Council – Post Primary Governance and Financial Review, March 2023 was published by the Department.

58. In relation to the question of fundraising by the Appellant, Madeline Delaney submitted that this was not relevant to the decision, which was made, which was made having regard to the criteria outlined above. She outlined that from the perspective of the Authority, the public in this instance would include parents and parents who may or may not be a member of an association or was or was not affiliated with them.

59. In terms of any existing confusion between the relevant charitable bodies, Madeline Delaney submitted that this was not a basis to say that there would be no further confusion with the proposed change of name, while noting the submission by the Appellant that there could be less confusion in the event of the change of name. Madeline Delaney submitted that the proposed change would actually drop a distinguishing feature and that it potentially could cause even more confusion. She submitted that there was a clear distinguishing feature with one being described as "*Primary*" and the other being described as "*Post Primary*".

60. Madeline Delaney indicated while she understood the argument being made by the Appellant, this did not change the fact that in accordance with the legislation, the Authority had to consider the question of the similarity of names and the ability of members of the public to distinguish between them, the Authority having formed the opinion that while there might already be confusion, the name change was likely to lead to confusion even if confusion of a different level or nature.

61. Madeline Delaney also indicated that she wanted to make the point that whatever about the paperwork and recognition of the fact that both bodies existed long before the Education Act and whether they could still function outside of that domain, whether they were still entitled to use the existing names, whether the Department might be contemplating legislative changes, she did not know, but in any event this was irrelevant, and the relevant issues were as set out above, and only the relevant issues were taken into account in the making of the decision.

CROSS-EXAMINATION OF THE AUTHORITY.

62. On invitation from the Tribunal Chair enquiring if the Appellant wished to cross-examine Madeline Delaney, Áine Lynch indicated that she did not wish to cross-examine but did wish to make certain comments. The Tribunal Chair advised that she would be in a position to do so during closing remarks.

QUESTIONS FROM THE TRIBUNAL MEMBERS.

63. Tribunal Member Bill Holohan indicated he would like to ask Madeline Delaney certain questions in relation to two documents. He indicated that the first document was one of the documents submitted by Madeline Delaney being document at Tab 5 of the booklet handed in, which was a screen grab or printout of a document from the Authority's computer systems, identifying potential "*red flags*", (so to speak), even though the items flagged appeared in green. He pointed out that only one of these potential "*red flags*" was triggered / flagged by the Authority's computer system, that being the identifier – "*so similar to the name of another charitable body, as to be likely to cause members of the public to be unable to distinguish it from that other charitable body*" and to the right of that on the document there was a comment "*i.e. the risk of confusion*".

64. Tribunal Member Bill Holohan indicated the second document he would like to refer to was the Act, in particular section 77 of the 2009 Act itself which dealt with the question of the determination of appeals by the Tribunal. Bill Holohan indicated that if the Tribunal were to accept Madeline Delaney's submission that in effect and in law there was no alternative decision or option open to the Authority other than to take the decision which was taken in accordance with section 42, would she agree that there was no such limitation or obligation imposed by section 77 on the Tribunal in the event of an appeal under section 77, or indeed imposed under any other section of the Act. He asked Madeline Delaney to confirm if it was accepted that it was legally open to/possible for the Tribunal, having regard to the information which was

available to the Authority and which had been submitted to the Tribunal, to allow the name change even if, equal to the view taken by the Authority, the Tribunal recognised that there was a potential for confusion, as identified by the Authority.

65. Madeline Delaney confirmed that if she understood the question correctly, she accepted that while the Authority was constrained by the mandatory nature of its obligations once the relevant opinion as to confusion was formed, the Tribunal was not so constrained.

66. Bill Holohan asked if she accepted that the Tribunal could conclude that the Authority had no choice but to make the decision which it did make but decide that the Tribunal did have a choice. She accepted that that was the case.

67. Tribunal Member Carol Fawsitt enquired if the Authority, having heard the further submissions, had altered its view.

68. Madeline Delaney indicated that the Authority had not, because the provisions of section 42 were clear, i.e., mandatory. She indicated that the Appellant had set out clearly the position as to why it needed to try to achieve the change of name to facilitate the change in policy decided upon by the Department, and while the situation might be "*unsatisfactory*", the view of the Authority as to potential confusion remained unchanged and consequently the view as to the decision made remained unchanged.

RELEVANT CASE LAW (UK).

69. Madeline Delaney indicated that by way of assistance to the members of the Tribunal, she had that morning discovered a case from the UK relating to a similar application regarding a name change. The decision was the decision in The Charity Commission for UK & Wales, Appellant and (1) Cambridge Islamic College, First Respondent, (2 Cambridge Muslim College, Second Respondent, Appeal number

UTC/2017/0162 Upper Tribunal Tax and Chancery Chamber [2018] UKUT 351 (TCC), 2018 WL 05314900, a decision from October 2018. She very helpfully provided the Tribunal and the Appellant with copies of the decision.

70. Madeline Delaney indicated that she had only very briefly reviewed the decision that morning and described it as being "*not the clearest*" decision in the world and was indicating that she was not saying that the Authority was relying on it because the Tribunal might consider that it did not support the Authority's position, but she felt that in the interests of fairness and public interest, it should be brought to the attention of the Tribunal.

71. Madeline Delaney described the case before the UK court as being that of the Charity Commission for England and Wales against Cambridge Islamic College and Cambridge Muslim College, it being an appeal by the Commission from a decision of the appeals body which was the First-Tier Tribunal. Madeline Delaney pointed out that (quite obviously) the legislation in the UK was quite different to the Irish legislation. She pointed out that the relevant section in the UK's Charities Act 2011, was (somewhat unhelpfully) also in section 42 of the UK Act. This section, she said, was to do with the directing by the Commission of a change of name. She clarified that in the UK there was no equivalent provision providing for refusal on registration or on an application for registration in relation to confusion regarding names and that it was only where it was brought to the attention of the UK Commission or came to their attention that the name was the same as or in the opinion of the Commission was "*too alike*" to the name of an existing charitable body that the UK legislative provisions on directing a change of name take place then became relevant.

72. Tribunal Member Nuala Dockry enquired on behalf of the Tribunal on what basis Madeline Delaney felt that the decision might be in any way relevant to the matters to be considered by the Tribunal. In response, Madeline Delaney said that the similarity lay in the question of the assessment of the similarity of names and the decision of the UK Commission that the names were "*too alike*," the wording of the

Irish legislation being "*so similar*" whereas the standard in the UK was a different and broader standard.

73. Madeline Delaney pointed out that the decision of the UK Commission was that the name Cambridge Islamic College was too similar to an existing and other already registered charity, Cambridge Muslim College. That decision was appealed, and the charity was directed to change the name. That decision was in turn appealed to their appeals body which was the First Tier Tribunal, and the decision of the Commission was overturned by the First Tier Tribunal. The Commission in turn appealed that decision on the basis that the First Tier Tribunal had chosen a test which was too narrow because they looked at just the words "*Muslim*" and "*Islamic*", the words that were different in the names of the charitable bodies. This, she said, meant that the court then was concerned with the Commission's appeal of the Tribunal's decision and what the Commission held was that it is not correct to just look at the names that are different and one had to look at the whole name and looking at the whole name, came to the conclusion that because "*Cambridge*" and "*College*" individually were words which are commonly used by other registered charities, they appeared in the names individually and separately in lots of other charities, they were considered common words used, and that was not enough to make the names too alike when the words that distinguished them were visually and aurally and conceptually different. Madeline Delaney said that the decision then was that the UK Tribunal was correct in saying that the names were not *too alike* because "*Muslim*" and "*Islamic*" were sufficiently different and so one could make the necessary distinction on that basis.

74. The Tribunal Chair inquired if this was against the Authority's own case and Madeline Delaney accepted that it might be, but said she felt an obligation to bring to the attention of the Tribunal, a course of conduct which was highly commendable.

75. Madeline Delaney pointed out the main differences between the UK and Irish systems would be that the UK did not have a power on registration to refuse to

register which would be a significant difference. Equally, the UK authority does not have the penalising provisions in legislation in the event of use of an existing name or similar name, and it was only the power to direct a registered entity to change its name that applied in the UK.

76. Madeline Delaney also pointed out that one of the other differences was that the UK authorities had a discretion in relation to such matters which is obviously very important as well, whereas the Irish Authority did not, such that once the Irish Authority formed the opinion as to similarity leading to an inability to distinguish, as a consequence, it was obliged to refuse the application.

77. The Tribunal Chair pointed out to Madeline Delaney that there was more to it than that, in that, in addition to the distinction between the words "*Primary*" and "*Post primary*", the Appellant was a CLG trading without the use of the word limited because of holding a licence to do so from the Minister whereas NPC-PP did not and NPC-PP still use the word "Company Limited by Guarantee" in its name, which was a further distinguishing factor. This was accepted by Madeline Delaney.

78. The Tribunal Chair enquired if in Ireland the Authority had power to direct a charity to change its name (as was the case in the UK) and Madeline Delaney confirmed it did not. Reference was made to the multiplicity of charitable bodies with the words "*National School*" in its title, the Tribunal Chair citing an example of several such schools in his local area. Madeline Delaney confirmed there was no provision in the legislation for reviewing existing registered names and it would be a matter for legislative intervention and amendment.

RESPONSE BY THE APPELLANT.

79. Áine Lynch indicated that in response to the suggestion that by dropping "*Primary*" as a distinguishing feature because it would be confusing to the public as it was "*the distinguishing feature*" between the two charitable bodies, Áine Lynch indicated that

she would say that the fact that the word "*Primary*" was still in the name of the Appellant was the confusing issue for the public, in circumstances where the Appellant was now the sole funding body covering the whole education sector from early years to post-primary education, and would therefore submit that the inclusion of the word "*Primary*" was the confusing feature. She again made reference to the letter from the Department which described the name change as:

> "*desirable because it more accurately describes its extended remit and provides parents and parent's associations with a clearer pathway to the organisation that is the only National Parents Association which is currently recognised by the Department*".

80. In referring to possible legislative amendment, (in terms which evoked recall of a phrase involving the relative priority of positioning in respect of carts and horses), Áine Lynch pointed out that statutory instruments or legislation recognising the new and expanded role of the Appellant with a new title, could not be enacted until such time as the name was changed and she suggested that it was the appeal process before the Tribunal which was holding up further action by the Department and/or potential legislative changes.

FURTHER QUESTIONS FROM THE TRIBUNAL MEMBERS.

- **Possibility of complete change of name**

81. In response to a question from Tribunal Member Carol Fawsitt as to the possibility of a complete change of name of the Appellant, Áine Lynch confirmed that that was an option but that the Appellant was going through the appeal process with the support of the Department because it was felt that this was the optimum outcome, and because if there was a complete change of name it would lead to even greater confusion for the relevant public and the parents and parent associations of schools, Áine Lynch describing this prospect as "*quite seismic*" and that it would take "*an*

extraordinary amount of time" and considerable resources that could be more valuably used in trying to communicate the fact that the Appellant was theretofore the National Parents Council – Primary but due to extended remit was now called "*something completely different*". She said that a similar organisation in Scotland had undergone a name change a number of years ago but after five or six years of calling itself by the new name still found it necessary to continue to describe itself as "*formerly known as…*" because the new name had never "*caught on*". She also referenced the existing recognition for the body which was very well established since 1985.

82. Áine Lynch also referenced the situation as having been brought about as a result of the policy decision by the Department and the request from the Department for the expansion of the Appellant's role but again submitted that a complete change of name would lead to even greater confusion.

- **Possible use of a Business Name**

83. In response to a question from the Tribunal Chair, Áine Lynch confirmed that the Appellant had not considered the possibility of registering a business name. She indicated that in the event the appeal was not successful that might be something to consider. In response to a question from the Tribunal Chair as to whether an application had been made to the Companies Office to change the name, Áine Lynch confirmed that the application had been made but that they were awaiting a decision. In response to a further query in relation to that application, she confirmed that the application was made to the CRO in late April if she recalled correctly.

- **The meaning of "public" in section 42.**

84. Tribunal Member Bill Holohan raised the question of the nature of the public, indicating to Madeline Delaney that it appeared she was submitting that the public was the entirety of the public while putting it to Áine Lynch that she appeared to be

submitting that the relevant public (so to speak) was parents. Madeline Delaney and Áine Lynch confirmed that Bill Holohan's descriptions of their respective positions was correct.

85. Bill Holohan pointed out that the 2009 Act did not define "*public*" but that there was a reference to the public in section 3 (3) (a) of the 2009 Act which dealt with gifts for charitable purposes saying:

> "*A gift is not of public benefit unless it is intended to benefit the public or a section of the public*".

86. Bill Holohan indicated the Tribunal would invite submissions from both parties in relation to whether it is open to the Tribunal to consider the reference to the public in section 42 as being the public at large or a relevant public (so to speak) as identified by the Appellant, ("*a section of the public*"), there being no definition of a relevant public in section 42 or elsewhere in the Act.

87. In response, Áine Lynch of the Appellant submitted that the Appellant did have a relevant public and that the Appellant had never looked for "*brand recognition in the entirety of the public*" because the Appellant was only concerned with "*a relevant section of the public*". She submitted that the Appellant did not garner the whole public's view on certain sections of the Education Act or on matters relating to education policy, only garnering the views of parents. She confirmed that the Appellant's services were specifically provided to a particular section of the public, which was parents, so she would submit that the relevant public for the purpose of section 42 was indeed the section of the public with which the Appellant dealt.

88. In addition, David Mullins indicated that the question of delivery of funding to the Appellant was not reliant on the greater public in general and that while work conducted by the Appellant was for the public benefit it was more particularly for a particular section of the public.

89. Madeline Delaney on behalf of the Authority submitted that section 3 (3) refers to what she would call the charity test and one could not be a charity or something would not be for a charitable purpose unless it was for a public benefit, the public being the public at large or a section of the public at large such that for example somebody in a geographical area or people who share common characteristics, in some way or whatever, would be what was intended. She submitted that the view of the Authority was that the public referred to in section 42 (2) was the public in general, notwithstanding the view of the Appellant that the public or the relevant public was a particular section of the public with whom they had a relationship. She submitted that parents were members of the public and in addition to those parents, other members of the public might be looking at the Register for some reason or another, looking to access services, looking to donate, looking to volunteer or looking for available services and again it went to the question of whether or not there would be resulting confusion/inability to distinguish. She submitted that the relevant public might be the ones who are availing of the services once they know and understood and engage with that, but that there was a wider public, a wider number of parents, a wider number of schools, and a wider number of associations who might avail of either the Appellant's service or the service of the other charitable body or indeed other charitable bodies. She therefore submitted that the reference to public must be taken as the public in general.

90. Tribunal Member Nuala Dockry questioned Áine Lynch as to whether the Appellant was open to society in terms of parents, and Áine Lynch confirmed that that was the case even though they in reality did not deal with the public, only parents.

THE DECISION IN THE CHARITY COMMISSION FOR ENGLAND AND WALES V CAMBRIDGE ISLAMIC COLLEGE, CAMBRIDGE MUSLIM COLLEGE (UK).

91. The Tribunal noted the decision in The Charity Commission for UK & Wales, Appellant and (1) Cambridge Islamic College, First Respondent, (2 Cambridge Muslim College,

Second Respondent, Appeal number UTC/2017/0162 Upper Tribunal Tax and Chancery Chamber [2018] UKUT 351 (TCC), 2018 WL 05314900, a decision from the UK from October 2018, which was very helpfully drawn to the Tribunal's attention by Madeline Delaney.

92. The Appellant in that case, ("the Commission") appealed against the decision of the First-tier Tribunal (Charity) released on 29 August 2017 (appeal no. CA/2016/0008). The First-tier Tribunal ("FTT") (Principal Judge Alison McKenna, Carole Park and Stuart Reynolds) had quashed the direction made on 12 September 2016 by the Commission pursuant to section 42(1) of the UK's Charities Act 2011[12] which allow the Commission to direct a relevant charity to change its name. That direction issued by the Commission had required the First Respondent, Cambridge Islamic College, to change its name. Permission to appeal was given by the FTT in a decision on 4 October 2017.

93. Cambridge Islamic College was a registered charity and a company limited by guarantee. It was incorporated as a company in the UK in August 2013 and registered as a charity in the UK in September 2015. Cambridge Islamic College's objects were:

> "*For the public benefit, the advancement of education, in particular but not exclusively through the provision of higher education in Islamic Studies*".

[12] "*42. Power to Require Name to be Changed.*
(1) If this subsection applies to a charity, the Commission may give a direction requiring the name of the charity to be changed, within such period as is specified in the direction, to such other name as the charity trustees may determine with the approval of the Commission.
(2) Subsection (1) applies to a charity if —
(a) It is a registered charity and its name ("the registered name") —
(i) is the same as, or
(ii) is in the opinion of the Commission too like,
the name, at the time when the registered name was entered in the register in respect of the charity, of any other charity (whether registered or not),
(b) [the name of the charity is misleading as to its purposes or activities]
(c) [the name includes a prohibited word or expression which is likely to mislead as to status]
(d) the name of the charity is in the opinion of the Commission likely to give the impression that the charity is connected in some way with Her Majesty's Government or any local authority, or with any other body of persons or any individual, when it is not so connected, or
(e)
(3) Any direction given by virtue of subsection 2(a) must be given within 12 months of the time when the registered name was entered in the register in respect of the charity.
(4) In subsection (2) any reference to the name of a charity is, in relation to a registered charity, a reference to the name by which it is registered.
(5) Any direction given under this section with respect to a charity must be given to the charity trustees."

94. Section 43 of the UK Act sets out the duty of charity trustees to give effect to a direction under section 42 regardless of anything in the trusts of the charity.

95. It was accepted by the parties in that UK case that the test to be applied in the UK under section 42 of the UK Act has two limbs. The first limb was for the Commission to consider whether any of the subparagraphs of section 42(2) of the UK Act applied. If one or more of them did apply, the second limb was for the Commission to exercise its discretion whether to give a direction requiring the name of the charity to be changed. The direction in contention in the case stated that it was given because, in compliance with section 42(2)(a)(ii) of the UK Act, it was the opinion of the Commission that the name Cambridge Islamic College was too like that of a registered charity, namely Cambridge Muslim College and further that in accordance with section 42(2)(d) of the UK Act the name was likely to give the impression that the charity was connected in some way with Cambridge Muslim College when it is not so connected.

96. The reasons given by the Commission in the direction for considering that the test in section 42(2) of the UK Act was met were as follows:

> *"Any decision to make a S42 direction must be in accordance with the law and underpinned by the Commission's guidance and risk framework. Any direction will also need to be proportionate (as required under s16 (3) Charities Act 2011). The Commission's usual policy is that we will only formally intervene by directing a name change if it is essential that we do so in the public interest. We say in our published guidance that we will do so in exceptional circumstances and provided all the following factors (the S42 Test) apply (see B13.1 of the OG 330 guidance).*[13]

[13] The reference in the direction to OG 330 guidance was to the operational Guidance published by the Commission, OG 330 Names of Charities. The policy statement at the start of the Guidance says that the Commission takes a risk-based approach to applying the law. In section B7.1 the Guidance states:
"*In our opinion a main name is 'too like' another charity's main name if there is only a small difference between the two names. B7.3 Key ways in which main names are 'too like':*

It is our view that the s 42 Test has been met.

In the context of these two charities the word Muslim and the word Islamic are essentially interchangeable and accordingly Cambridge Islamic College is "too like" Cambridge Muslim College as established by the evidence."

97. The Commission listed the evidence and information that it had taken into consideration. The Commission went on to say:

"*Consideration was given to whether an ordinary member of the public might be confused by the names or might be confused between the Colleges. It was concluded that it is reasonable to accept, in addition to the evidence provided to us, that the public will be unable to differentiate between the two charities, despite their differing objects. This is because there are some significant overlaps, and they are operating in the same circles. Indeed, the confusion appears to go further as those who know the difference between Muslim and Islamic, as they are part of the Muslim community (or associated with it) are also demonstrating confusion. The solicitors representing Cambridge Muslim College (CMC) have identified this in its case and evidence and it is reasonable to assume that it is also happening without CMC being aware of it (or indeed Cambridge Islamic College (CIC) being aware.) It is likely that those who wish to use each charity as beneficiaries are confused as to which charity they should approach and there is evidence of this*."

98. An appeal against the UK Commission's direction under section 42(1) of the UK legislation was brought under section 319 of the UK Act.[14] Section 319(4)(a) provides

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Here are some key ways in which names are, in our opinion 'too like' - at a glance they look so similar that it would be easy for one name to be mistaken for another - they sound the same and at a glance look very similar, so that it would be easy for one name to be mistaken for another."

11. The guidance then gives examples including where the only difference between two names is that they use certain words or phrases which are commonly used in charity names such as 'association', 'foundation', 'society' or 'trust'.

[14] *"319 Appeals: general*

(1) Except in the case of a reviewable matter (see section 322) an appeal may be brought to the Tribunal against any decision, direction or order mentioned in column 1 of Schedule 6.

(2) Such an appeal may be brought by—

(a)the Attorney General, or

(b) any person specified in the corresponding entry in column 2 of Schedule 6.

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

that in determining such an appeal the UK tribunal must consider afresh the direction appealed against and may take into account evidence which was not available to the Commission. The UK tribunal has power to quash the direction and (if appropriate) remit the matter to the Commission or to substitute for the direction given by the Commission any other direction which could have been given by the Commission.

99. The FTT listed the twenty-five instances of confusion between the two charities relied upon by Cambridge Muslim College and summarised the parties' submissions. Its conclusions on the application of section 42(2)(a)(ii) were set out at [49] to [52] of the decision:

> *"49. We agree with CIC that the first-stage test of "too like" in s. 42(2)(a)(ii) is a simple visual or aural test. We note that the Commission's OG repeatedly refers to assessing the similarity of names "at a glance", which suggests that a similar approach was envisaged.*
>
> *50. We do not go so far as CMC in adopting a multi-factorial approach to stage one, or so far in the other direction as CIC in ruling out the consideration of evidence in stage one at all. We agree with the Commission that it should not be precluded from considering all the relevant circumstances of a case when it forms its opinion on this first-stage test. However, it seems to us that the only evidence that it would be appropriate for it to consider at the first stage would be evidence directed towards the question of the visual or aural similarity of the names at the time of registration. It does not seem to us that it would be reasonable for the Commission to take into account evidence of generalised confusion or other problems arising at a later date at this first stage.*

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(4) In determining such an appeal, the Tribunal—
(a)must consider afresh the decision, direction or order appealed against, and
(b) may take into account evidence which was not available to the Commission.
(5) The Tribunal may—
(a)dismiss the appeal, or
(b)if it allows the appeal, exercise any power specified in the corresponding entry in column 3 of Schedule 6".

51. In considering the matter afresh as we are required to do, we find we are not satisfied that the words "Muslim" and "Islamic" are "too like" each other when applying a visual or aural test. They are obviously different words, which look and sound different. We accept that some confusion between them as terms is possible if one takes a conceptual approach, but that is not in our judgement the test to be applied. It seems to us that the very specific time frame for making the stage one assessment, being "the time when the registered name was entered in the register," supports our interpretation of the test as a visual or aural one, as it seems unlikely that a view about conceptual confusion could reasonably be formed at that time.

52. We acknowledge that the charities' names in this case include two identical words, but there are many other organisations with the words "Cambridge" and "College" in their names and it has understandably not been suggested that the test is failed for this reason alone. In all the circumstances, we conclude that the first stage of the s. 42(2) (a) test is not met in the circumstances of this case."

100. The FTT went on to hold that the section 42(2)(d) test in the UK Act was not met either. There was no appeal against that aspect of the decision. At para [54] of the decision, the FTT noted that its conclusions were sufficient to dispose of the appeal in favour of Cambridge Islamic College. They did not therefore need to go on to consider the evidence of confusion or to decide whether to exercise the discretion to make a direction. The FTT quashed the direction.[15]

101. The first ground of appeal relied on in the court by the Commission was that the FTT applied an unduly narrow test when considering whether the name Cambridge Islamic College was "*too lik*e" the name Cambridge Muslim College. The Commission submitted that the FTT had made an error in limiting the test to visual and aural similarity without also allowing a consideration of the similarity in meaning of the

[15] The FTT concluded its decision by encouraging the parties to settle the dispute between them so that further expenditure of charitable funds on regulatory or legal costs could be avoided, amicable settlement always being something to be encouraged.

words or what Counsel appearing for the Commission, called "*conceptual similarity*". The Commission submitted that it was wrong to exclude other forms of likeness when assessing whether charity names are "*too like*".

102. In the judgment of the Court the FTT did apply too narrow a test by limiting the consideration of whether the names were "*too like*" for the purposes of section 42(2)(a)(ii).[16] The court held that there was no justification either in the wording of the statutory provision or from its context and aims for limiting the comparison between two charities' names to the two criteria of aural and visual similarity, the court agreeing with the submission of counsel that the words "*too like*" should be given their ordinary meaning; that is a broad and open-ended meaning rather than a meaning focusing entirely on visual or aural similarity.

103. The decision in the case was of some limited assistance to the Tribunal during its deliberations, before making its determination.

DETERMINATION.

104. Having heard all the evidence and the submissions, the Tribunal undertake the task of making a decision. The Tribunal considered the following during its deliberations before finalising its Determination.

- **The Statutory Test as to similarity.**

105. In Ireland, the relevant criteria under section 42 are whether the names are

> *"(i) the same as, or (ii) in the opinion of the Authority, so similar … as to be likely to cause members of the public to be unable to distinguish"*

[16] Under the UK Charities Act 2011 there is no power in the Commission to refuse to register a charity even if its name is the same as another charity on the register; the only power to control the use of names is the post-registration power in section 42 of the UK Act. That power was first introduced in section 4(2) (a) of the Charities Act 1992.

between the named bodies. While not relevant in the case under consideration by this Tribunal, it is to be anticipated that no difficulty would arise in the event an application were made for the use of a name which is the same as the name of an existing registered charitable body.

- **The role of the Authority under section 42.**

106. The Tribunal is of the view that the legislature vested in the Authority a statutory right to form an opinion as to whether a proposed name would be "*so similar … as to be likely to cause members of the public to be unable to distinguish*" between the named bodies, and the Tribunal has no role in terms of assessing or reviewing that decision. The role of the Tribunal is to determine the matter de novo.

- **The powers of the Tribunal when dealing with an appeal under section 77.**

107. The process of determination of appeals is set out in section 77 of the Charities Act 2009, which provides for a hearing de novo and which does not in any way provide for

    - any comment by the Tribunal upon the decision-making processes of the Authority,
    - any comment by the Tribunal upon the reasonableness of any methodology adopted by the Authority in arriving at any decision,
    - any comment by the Tribunal upon the reasonableness of any decision taken by the Authority or
    - otherwise.

108. That said, the Tribunal is of the view that once the Authority has formed an opinion that the proposed name of a charity is

"*so similar … as to be likely to cause members of the public to be unable to distinguish"*

between the named bodies, (and the Authority did so conclude in the case before the Tribunal), the Authority is then under a statutory obligation to refuse the application. However, the Tribunal is of the view that the assessment process must be a two-stage process, the first stage being consideration of whether the names are "*similar*", and the second stage being consideration of the question of whether similarity, if found, is "*so similar … as to be likely to cause members of the public to be unable to distinguish"* between the two bodies named.

109. As discussed during the course the hearing, the Tribunal is satisfied that there is no obligation in law, even if the Tribunal were to arrive at the same opinion as the Authority, that the proposed name would "*be likely to cause members of the public to be unable to distinguish"* between the named bodies, to refuse to allow the application and this Tribunal is satisfied that in the absence of such an obligation, it is open to this Tribunal to allow the application, even if arriving at the same conclusion as the Authority.

110. While noting the statutory obligation of the Authority as set out in section 14 of the 2009 Act to "*increase public trust and confidence in the management and administration of charitable trusts and charitable organisations*", this Tribunal does not consider that a decision to allow the name change would in any way interfere with or undermine the work of the Authority in that regard.

- **The similarity of the names of the Appellant and the party affected.**

111. The Appellant holds a licence from the Minister[17] authorising it to dispense with the words:

[17] The Minister for Enterprise, Trade and Employment.

"*Company limited by guarantee and not having a share capital*"

after its name, such that were the name change allowed by this Tribunal (and by the Company Registration Office and the Minister), the name would then appear as:

"*National Parents Council*,"

whereas the full name of the NPC-PP would continue to appear as:

"*The National Parents Council (Post Primary) Company Limited By Guarantee and not having a share capital*."

Visually, when set side-by-side, the names would appear as follows:

APPELLANT	**NPC-PP**
National Parents Council	The National Parents Council (Post Primary) Company Limited By Guarantee and not having a share capital.

112. The Tribunal considered the matter as a two-stage process as outlined above. As outlined above, the first stage is to consider whether the names are "*similar*." The second stage, if similarity is found, is to consider whether the names are then "*so similar … as to be likely to cause members of the public to be unable to distinguish"* between the two bodies.

"*In language there are only differences*".[18]

[18] "In language there are only differences" – Ferdinand de Saussure – Course in General Linguistics (1916)

113. While the word "*similar*" appears in five separate places within the 2009 Act, there is no definition of the word "*similar*" in the Act. The Interpretation Act 2005 does not define the word "*similar*" yet uses the word "*similar*" in referring to a "*meaning assigned by this Act to the same or a similar word or expression*". The Oxford English Dictionary defines "similar" as an adjective meaning "*having a resemblance in appearance, character or quantity, without being identical*". When the two names of the two charitable bodies are considered in light of this definition, the Tribunal is satisfied that they do have some "*resemblance and appearance, character or quantity, without being identical*". The Tribunal is therefore satisfied that the test as to similarity is satisfied and that the second consideration then falls to be addressed. This then begs the question as to whether the names are "*so similar … as to be likely to cause members of the public to be unable to distinguish"* between the two bodies.

114. The Tribunal is satisfied that while the two names of the two charitable bodies are similar and contain common elements consisting of the words "*National Parents Council*", (which if allowed would be the entirety of the name of the Appellant), the Tribunal is also satisfied that by virtue of the additional words appearing in the name of NPC-PP, the names are substantially different to the extent that the Tribunal is satisfied that there is sufficient visual, aural, contextual, and conceptual distinction and difference between the names of the relevant bodies such that the names are not "*so similar … as to be likely to cause members of the public to be unable to distinguish"* between the two bodies.

115. While it may be true that the common elements of the names ("National Parents Council") might possibly give rise to some element of confusion or cause for enquiry in the minds of a member of the public, such potential confusion or cause for enquiry is not, in the view the Tribunal, *"to be likely to cause members of the public to be unable to distinguish"* between the two bodies. In fact, the Tribunal is of the view that the names are sufficiently different such as would lead a member of the public to wonder about and/or enquire about to the distinction or difference between the role and/or function of the two bodies, i.e., would be such as it would be likely to

cause members of the public to positively distinguish between the two bodies, not, "*so similar … as to be likely to cause members of the public to be unable to distinguish"* between the two bodies.

116. The Tribunal considers that while it is certainly possible that some slight element of confusion could result and that while the common element of "*National Parents Council*" in the names might possibly (though in the view of the Tribunal not probably) give rise to some element or level of confusion or enquiry in the minds of the public as to the relationship between the two bodies, such confusion, even if unlikely to arise, would be minimal and would not render any member of the public unable to distinguish between the two bodies and on the contrary would cause them to recognise and positively question the distinction or difference between the two. A member of the public might be confused as to the role or the function of each body, but in the view of the Tribunal the names would be sufficiently different to enable any member of the public to distinguish between the two separate bodies and recognise the two as separate and distinct bodies.

- **What is the public for the purposes of section 42?**

117. As to the question of what constitutes the public the purposes of section 42, the Tribunal is of the view that given the reference in section 3 (3) to the public or a section of the public, the reference to public in section 42 must be taken as meaning the public at large and not a "*relevant*" section of the public as advocated for by the Appellant.

Conclusion and Determination.

118. In those circumstances, for the reasons set out in this determination, following the hearing on 12 July 2023, this Tribunal allowed and determined the appeal by allowing the Appeal and the Tribunal approved the change of name to National Parents Council.

Dated issued this 8th day of September 2023.

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Patrick O'Connor, Chair,

for and on behalf of the Tribunal.