AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

APPLICATION CAT 2023 – 003

UNDER SECTION 39 OF THE Charities ACT 2009

Appeal of the Irish Soup Kitchen Centres CLG against a decision of the Regulator, refusing its application to be registered in the Register of Charities

Hearing date, 27th March 2024.

Table of Contents

THE CHARITIES TRIBUNAL AND MEMBERSHIP 3
THE APPELLANT CHARITY 3
THE RESPONDENT AUTHORITY 3
BACKGROUND TO THE APPEAL 3
THE APPEAL HEARING BEFORE THE TRIBUNAL 14
REPRESENATION AT THE APPEAL HEARING 14
SUBMISSIONS ON BEHALF OF THE AUTHORITY 15
QUESTIONS FROM THE TRIBUNAL MEMBERS 19
DETERMINATION OF THE APPEAL 25
REASONS FOR DETERMINATION 26

THE CHARITIES TRIBUNAL AND MEMBERSHIP

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

2. The members of the Tribunal at the time of the hearing of the Appeal were: Nuala Dockry, Carol Fawsitt, Bill Holohan SC, Karen Horgan and Patrick O'Connor (Chairperson).

THE APPELLANT CHARITY

3. The Appellant Charity is The Irish Soup Kitchen Centres CLG hereinafter referred to as ("the Appellant"). It was registered with the Companies Registration Office on 13 October 2013, under company number 534140.

THE RESPONDENT AUTHORITY

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

BACKGROUND TO THE APPEAL

5. Prior to the establishment of the Act and in particular its Part 3 (section 39) which came into operation on the 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 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 Appellant commenced its charitable activities in 2013 and did not have exemption from the Revenue Commissioners. It commenced its engagement with the Authority in October 2015 by lodging an application to achieve registration on the Register. It was informed by the

Authority on 12 February 2016 that the Authority had commenced the processing of applications for charitable status under section 39 of the Act and that organisations that were established before 16 October 2014 and who had submitted their application for charitable status to the CRA can continue to operate as a charity while their application is being processed. The application process and engagement between the Appellant and the Authority continued from 2015 until the Authority issued its decision to refuse registration by letter dated the 1 August 2023, the subject matter of this Appeal. The Appellant's appeal is dated the 18 August 2023.

7. Clause 2 of the Appellant's Constitution as of 2015 provides -:

> *"The objects for which the Company is established are: - To promote, protect and assist in the opening of a soup kitchen to help the needy and any other related activities thereto."*

A later copy of the Constitution headed COMPANYLIMITED BY GUARANTEE NOT HAVING A SHARE CAPITAL submitted by the Appellant to the Authority in January 2019 stated that the Main Object for which the company was established is -:

> *"The prevention or relief of economic hardship by the redistribution of surplus food from suppliers to all in need by means of Food Hampers delivered by volunteers or the provision of FREE meals cooked by volunteers and provided through The Irish Soup Kitchen Centres".*

8. From documentation made available to the Tribunal by the Authority in advance of the hearing for the purpose of the Appeal, the Appellant claimed to have opened Soup Kitchens in various parts of Ireland, were providing thousands of hot meals daily, and had purchased vans to assist with collections and deliveries of food from companies who had donated food to them. The Appellant's source of income was through fundraising. Its main source of income came from public collections.

9. For the sake of clarity and as the Appellant did not attend the hearing of the Appeal, the Tribunal has been given access to the following:

- email communications between the Authority and the Appellant,
- online incomplete and completed application forms, including documentation submitted and attachments,
- financial accounts submitted for years ending 31 December 2014, 2015, 2016, 2017, 2019, 2020 and 2021,
- lease documentation,
- various copies of cashbooks,
- ticket sales,
- safeguarding material,
- volunteer guidelines,
- conflict policies,
- Bank Statement Explanations,
- Volunteer Guidelines,
- Financial Projections,
- Trustee Declarations and such like.

Not every item of correspondence or document will be referred to in this Determination, given the extensive nature.

10. In correspondence from the Authority to the Appellant dated 23 February 2017, following a meeting with the latter, a comprehensive list of action points, amendments and recommendations were set out to enable the Appellant to progress its application. In particular, attention was drawn to the nature of the fundraising activities, the need for documented procedures and policies to be put in place as a matter of urgency, including, but not limited to, cash collections/cash handling, purchase authorisation limits, payment of collectors etc.

11. As regards the Financial Statements submitted by the Appellant in the course of processing its application, the accounts for year ending 31 December 2016 noted for the first time in its Notes to the Financial Statements, that the company "*is dependant for the major part of its income on the generosity of the public through voluntary donations-mainly by way of bucket collections and ongoing holiday and prize draws for its supporters. The company also receives a*

large element of its food supplies free of charge from partner companies who donate any production overruns or dated stock to the company."

12. In correspondence from the Authority to the Appellant dated 2 August 2018, issues in relation to cash collections, other fundraising activities and its collection/cash handling policy were again raised together with operational issues and queries on the management of the organisation. The Appellant's attention was drawn to the guides available on the Authority's website including its Internal Financial Controls Guidelines for Charities. The Appellant purported to respond to the Authority's queries on 18 and 27 September 2018. Whilst reference was made in a spreadsheet to a Financial Policy it does not appear to have been provided. The Authority responded on the 4 October 2018 that there were still items outstanding that prevented registration. The Authority recommended urgent action on a range of outstanding matters including the cash handling policy, rental income derived from apartments, governance issues, risk assessments, the main object of the organisation, and again referred the Appellant to third party organisations that assist charitable organisations. There was further engagement between the Authority and the Appellant in October, November and December 2018, and again in January 2019 but items still remained outstanding as of the Authority's letter of 27 January 2019.

13. In the Financial Statements for the year ending 31 December 2017, submitted to the Authority on the 25 January 2019, the Auditor's Report on the audit of the financial statements indicated, for the first time, that they were giving a qualified opinion. They went on to express –

> *"In our opinion, except for the possible effects of the matter described in the Basis for qualified opinion paragraph, the financial statements:*
> *- give a true and fair view of the assets, liabilities, and financial position of the company as at 31 December 2017 and of its deficit for the year then ended;*
> *-have been properly prepared in accordance with FRS 105 "The Financial Reporting Standard applicable to the Micro-Entities Regime"; and*
> *Have been properly prepared in accordance with the requirements of the Companies Act 2014".*

This was followed by the paragraph entitled -

"Basis for qualified opinion

We conducted our audit in accordance with International Standards on Auditing (Ireland) (ISAs Ireland) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of the financial statements section of our report. We are independent of the company in accordance with ethical requirements that are relevant to our audit of financial statements in Ireland, including the Ethical Standard for Auditors (Ireland) issued by the Irish Auditing Supervisory Authority (IAASA), and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Due to the nature of the company's main source of income - distributing pens to the general public for a fixed donation, over which there was no system of internal control on which we could rely for the purpose of our audit. There were no satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatements. "

14. Financial Statements for y/e 31 December 2017 were furnished along with the minutes of the Appellant's Board meeting of 13 December 2018, when the accounts were signed off by the Appellant. The Board minutes significantly showed no record of any discussion taking place in relation to the Auditor's qualified opinion, or its implications. Nor was any issue taken by the Authority with the Appellant regarding its Auditor's qualification at that time.

15. On 12 March 2019 the Authority informed that Appellant that the information provided was under assessment, that the assessment was in two stages with the Case Officer's assessment being followed by one by upper management and that the application was moving to the next stage but that further queries could be made. Confirmation was also sought from the Appellant that the trustees listed on the application were still qualified to hold the position of a charity trustee. The Appellant was also informed that the application was "*at the last stage*". The Appellant sought updates as to its application in May and September 2019, April and September 2020 and whilst initially informed that the application was with Upper Management, the Appellant received no response. Meanwhile, the Appellant continued to operate its activities. It appears from the documentation received by the Tribunal from the

Authority and the Appeal Notice that the Appellant had complained about the delay and had contacted the Ombudsman for assistance.

16. On 26 April 2021 the Authority wrote to the Appellant apologising "*for the delay in reverting to you in relation to the progression of your application for charitable status. I confirm that the Authority had intended to communicate with you in July 2020 in relation to an issue identified with your application and unfortunately, due to human error, this communication was not issued to you. This is not the level of service you should expect from the Authority*."

17. The Authority went on to state that it had come to their attention that "*one of the charity trustees has entered into a Personal Insolvency Arrangement (PIA), effective from the 9 July 2020*". In addition, the Authority stated-:

> *"Section 55(1)(b) of the Act provides that, subject to section 55(3), a person shall cease to be qualified for, and shall cease to hold, the position of charity trustee of a charitable organisation if that person makes a composition or arrangement with creditors. This means that the trustee ceases to be qualified to hold the position of charity trustee in accordance with section 55(1)(b).*

18. Section 39 (13) of the Act provides as follows:

> *"If, after the making of an application under this section in relation to a charitable organisation, but before the making of a decision by the Authority in respect of the application, a charity trustee of that charitable organisation ceases to be qualified for the position of charity trustee by virtue of section 55 (emphasis added),the charitable organisation shall not be eligible to be registered for the purpose s of this section before the expiration of one year, or such shorter period as the Minister may determine, from the date of the charity trustee so ceasing to be qualified, and the Authority shall not , before such expiration, perform any functions in relation to that organisation under this section."*

The Appellant was therefore ineligible "*to be registered for a period of one year from the date on which the trustee ceased to be qualified to hold the position of charity trustee (i.e. 9 July 2020)"*.

19. The Authority drew the Appellant's attention to the provisions of sections 56 (1) and 57 (1) of the Act as regards the offences arising for any breach and that the Authority may progress the application after 9 July 2021. The Appellant acknowledged receipt of this communication on 26 of April 2020, accepting the apology, indicating it would review the data required for compliance as per the Authority's website and that it looked forward to hearing from the Authority with a view to progressing the application.

20. On 22 July 2021 the Authority wrote to the Appellant drawing attention to the fact that the trustee who had entered into the PIA was still listed as a trustee of the Appellant and further, that according to the Irish Insolvency Service, the PIA was in place until 2026. The Appellant's revised application was returned to the Authority on the 13 August 2021.

21. On 5 October 2021 the Authority informed the Appellant that the application had been assigned to a Registration Case Officer. On 3 November 2021 the Authority wrote to the Appellant outlining further queries arising from the application. The Appellant was given extensions of time to respond to the queries raised. The Appellant was notified by the Authority on 25 February 2022 and 8 April 2022 that their resubmission (with responses to the queries raised in November 2021) was overdue and reminded that it was a criminal offence under section 41 of the Act for an unregistered charity to carry on activities in the State.

22. The Financial Statements for y/e 31 December 2019 were submitted by the Appellant to the Authority on 31 August 2022, having been signed off on 10 August 2022. These Financial Statements carried the same qualification as in the 2017 Statements. In the paragraph outlining the Basis for qualified opinion the Auditors noted the following: -

> *"Due to the nature of the company's main source of income- distributing pens and selling scratch cards to the general public for a fixed donation, over which there was no system of internal control at which we could rely for the purpose of our audit. There were no other satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatements".*

23. Between August 2022 and February 2023 there were a few exchanges between the Authority and the Appellant regarding contact information for the trustees and the eligibility of one in particular.

24. On the 21 March 2023 the Authority wrote to the Appellant outlining the "charity test" summarised as follows-

> -The organisation must not be an excluded body, as defined in section 2(1) of the Act.
> -The organisation must operate in the State.
> -The organisation must have a charitable purpose(s) and must promote the charitable purpose(s) only.
> -The constitution of the organisation must require the organisation to apply all its property (both real and personal) in furtherance of its charitable purpose(s).
> -The charitable purpose being promoted must be of public benefit.

This letter also required the Appellant, in order to progress the application, to submit "*the unabridged financial accounts for 2019, 2020, and 2021 by 4 April 2023*". The Authority noted receiving "*on the 31 August 2022 …. unabridged financial statements for the financial year ending on 31 December 2019 which was signed off on the 10 August 2022*."

25. The Financial Statements for y/e 31 December 2020 were submitted in May 2023 (actual date unclear). The Financial Statements were again qualified by the Appellant's Auditors although they confirmed that the directors' use of the going concern are described as appropriate. The Basis for qualified opinion stated: -

> *"Due to the nature of the company's main source of income - distribution of and sale of scratch cards to the general public for a fixed donation, over which there was no system of internal control on which we could rely for the purpose of our audit. There were no other satisfactory procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatements".*

No accounts for 2020 and 2021 were however submitted and the Appellant was given an extension to 2 May 2023.

26. On 12 May 2023 the Authority issued a Notice of Intention to Recommend Refusal of Application under section 39 of the Act to be registered in the Register of Charities. The grounds for recommending refusal were that the Registration Unit "*is not satisfied that the Applicant meets the requirements for registration as a charitable organisation, as provided for in sections 2, 3 and 39 of the Act*". The Decision referred to sections 2 and 39 of the Act and set out the reasons why the application should be refused. The Appellant was afforded an opportunity to respond if there was an error of law in the Notice or the Notice had misrepresented the facts of the situation. The Appellant responded by letters on the 15 May, 6 June and 16 June 2023.

27. The Annual Report and Financial Statements for y/e 31 December 2021 were submitted with the Appellant's letter of the 6 June 2023. These Financial Statements also contained a qualification. The Basis for qualified opinion stated-

> *"Due to the nature of the company's main source of income-public bucket collections, over which there was no system of internal control on which we could rely for the purpose of our audit. There were no other satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free of material misstatements and in this regard our opinion is qualified".*

28. The Appellant's letter to the Authority of 16 June 2023 sought clarification on their understanding that they had forwarded the outstanding accounts and provided any information requested by the Authority's Registration Team. There was no reply to this letter apparently.

29. By letter dated 1 August 2023 the Authority issued its Decision (hereinafter referred to as "*the Decision*") under section 39 of the Act informing the Appellant that it had refused its application to be registered in the Register. The grounds for refusal were that it was not satisfied that the Appellant "*meets the requirements for registration as a charitable organisation, as provided for in sections 2, 3, and 39 of the Act*".

30. The Decision outlined 10 reasons for the refusal-:

1. Section 39 of the Act provides that an application under the section shall, among other things, be accompanied by a copy of the written constitution of the Applicant, as well as details of moneys raised during the 12 months immediately preceding the application and copies of all financial accounts for that period.
2. While the Applicant's governing document contains the wording to meet the above requirement, during the registration audited accounts for the years were 2014-2017 and 2019-2022 (sic) were submitted. The audited accounts for the years were 2017, 2019, 2022(sic)and 2021 were qualified accounts.
3. The accounts were all qualified for the same reason, which was in relation to the lack of control over the Applicant's main source of income. For the years 2017, 2019, 2022 (sic), and 2021, while the source of the Applicant' s income changed slightly, the auditors' qualification remained the same, that there "*was no system of internal control on which (the auditors) could rely for the purpose of our audit"* and *"there were no other satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatements*".
4. In 2017 the main source of income was distributing pens to the general public for a fixed donation, over which there was no system of internal control which the auditors could rely upon. In 2019 the main source of income was distributing pens and selling scratch cards to the general public for a fixed donation, over which there was no system of internal control which the auditors could rely upon. In 2020 the main source of income was the distribution and sale of scratch cards to the general public for a fixed donation, over which there was no system of internal control which the auditors could rely upon. In 2021 the main source of income was public bucket collections over which there was no system of internal control.
5. Section 39(5)(i) of the Act requires the Applicant to specify the amount of any monies raised by the charitable organisation-
    (i) during the twelve months immediately preceding such application, or
    (ii) where the charitable organisation was formed or the charitable trust was established after the commencement of that period, in respect of the period since the organisation's

formation or the trust's establishment, as may be appropriate,

6. Section 39(5)(m) of the Act requires an Applicant to specify the gross income of the charitable organisation during the financial year ending immediately before the making of the application for registration.
7. Both sections above reference the period 12months immediately preceding an application. However, since more than 7 years have passed since the application was initially lodged, the accounts from 2017-2021 were requested and considered by the Authority. The lack of internal controls surrounding the Applicant's main source of income has been ongoing since 2017 and it does not appear that the Applicant has put in place any internal controls to satisfy its external auditors.
8. From the nature of the Applicant's income and the qualified nature of the Applicant's accounts, the Authority is not satisfied that it is possible for the Applicant to specify either the amount of money the Applicant has raised or the Applicant's gross income since 2017.
9. In addition to the above, section 2 of the Act stipulates that a charitable organisation "*under its constitution, is required to apply all of its property (both real and personal) in furtherance of its charitable purpose*", except for money expended in the maintenance and operation of the body and none of the property is payable to the members of the body. While the Applicant's governing document does contain the required clauses regarding use of its property however, in light of the qualified nature of the audited accounts from 2017, the Authority is not satisfied that the Applicant has been able to demonstrate that all of its property is applied in furtherance of its charitable purpose.
10. For the reasons outlined the Authority is not satisfied that the Applicant is a charitable organisation within the meaning of the Act and that the Applicant has failed to provide the information required to be provided under section 39(5) of the Act.

31. The Authority's Decision was communicated and received by the Appellant on 2 August 2023 by email. The Appellant appealed and completed the Appeal Form to the Charity Appeals Tribunal on 18 August 2023.

THE APPEAL HEARING BEFORE THE TRIBUNAL

32. The hearing of the Appeal took place at O'Connell House, D'Olier Street, Dublin 1 on the 27 March 2024.

REPRESENATION AT THE APPEAL HEARING

33. Appearing on behalf of the Authority were:

- Madeleine Delaney, Solicitor, Director of Legal Affairs and Registration,
  and
- Alan Fitzgerald, Legal Advisor.

Also, in attendance were:

- Meagan Gill, Head of Registration,
  and
- Sarah Hanna.

34. A notice was emailed and received by the Secretariat to the Tribunal from the Appellant on the 25 March 2024 notifying that it would not have any representatives in attendance at the hearing of the Appeal. The notice stated that a decision had -:

> *"been made to close down completely by 30 June 2024.*
> *We met with our auditor, and he will complete the accounts for 2023 and up to June 2024.*
> *We have closed our "eat in" service and are informing those who receive food hampers from us of the other options avail(sic) to them.*
> *We will register the accounts with the CRO for 2023 and 2024. We would like to thank the Secretariat and the Ombudsman's Office for their support. "*

35. The Tribunal Chair noted that there had been no withdrawal of the Appeal. Ms. Delaney indicated that whilst the matter had been going on for a very long time and if the Tribunal wished to consider it and bring the matter to a conclusion, the Authority had no objection. It did seem to her however in light of the contents of the notice received from the Appellant that the Appeal had been withdrawn and that there was no intention of the organisation to proceed to seek registration with the Authority. The Tribunal Chair indicated that having considered the notice, and mindful of the Appellant's intention to continue its current operations albeit for several months, it should proceed to hear the appeal and decide. On that basis the Appeal hearing would proceed, and the Authority was invited to address the Appeal and make submissions.

SUBMISSIONS ON BEHALF OF THE AUTHORITY

36. Ms. Delaney indicated that she would summarise the sequence of events and process that was undertaken and deal with some of the submissions in the grounds of appeal. In this regard, she referred to the establishment of the Act and that the Authority is responsible for establishing and maintaining a Register of charitable organisations. Those organisations who held a CHY number from the Revenue Commissioners, meaning they had a chargeable tax exemption, on the date of establishment (16 October 2014) were automatically entered in the Register by operation of section 40(1) of the Act and they were allocated a Registered Charity Number, which is the number that the Authority gives an organisation when it is entered on the Register. All other organisations have to apply to the Authority pursuant to section 39(3) of the Act:

> *"A charitable organisation that intends to operate or carry on activities in the State shall, in accordance with this section, apply to the Authority to be registered in the Register".*

Ms. Delaney noted that the Appellant was incorporated as a company limited by guarantee on 13 October 2013, and it did not hold a CHY number in October 2014. Therefore, it had to apply under section 39 of the Act to be entered on the Register as a charitable organisation.

37. Ms. Delaney also addressed the reference by the Appellant to obtaining a CHY number. She submitted that entry onto that Register and obtaining an RCN number "*doesn't automatically*

entitle you to get a charitable tax exemption from the Revenue Commissioners, you still have to make a separate application to them, although the process they now operate is that you have to be on our Register before they will consider an application from you. So, it is possible to be on our Register and not have a CHY number. "

38. Ms. Delaney also submitted that an organisation must continue to meet the definition of a charitable organisation under section 2(1) of the Act to remain on the Register. It is not a once-off check. The charitable organisation is checked at entry point and may be reviewed at a later stage, for one reason or another. If they start to fall outside the definition, another process can be engaged. And further, the Authority can ultimately form the opinion that an organisation is not a charitable organisation having regard to that definition and seek to have it removed from the Register.

39. Ms. Delaney cited the definition of "*charitable status*" contained section 2 (1) of the Act as follows: -

> *"The trustees of a charitable trust, or a body corporate, or an incorporated body of persons", which in this case is the body corporate, "that promotes a charitable purpose only and that under its constitution is required to apply all of its property, both real and personal, in furtherance of that purpose except for monies expended in the operation and maintenance of the body including monies paid in remuneration and superannuation of members of staff of the body".*

40. Ms. Delaney stated that there are fundamental parameters around what a charitable organisation is. Whilst the Act provides for a series of purposes, she highlighted the provision that "*A purpose will not be charitable unless it is of public benefit*". She referred to this as the defining feature of charitable organisations. It is what makes them different from just not-for profit organisations, it's one of the distinguishing features. She referred to the guidance provided in the Act on what "*public benefit*" means.

41. Ms. Delaney referred to Section 39 of the Act which she submitted mandates certain things that must be provided as part of an application. The application shall-

- be in writing.

- specify the manner in which the charitable organisation has or proposes to raise monies.
- specify the amount of any monies raised by the charitable organisation during the 12 months immediately preceding such application.
- specify the gross income of the charitable organisation during the financial year ending immediately before the making of the application for registration.
- be accompanied by copies of all financial accounts of the charitable organisation, or relating to the charitable trust, in respect of the 12 months immediately preceding such application.

This is the legal framework under which applications are assessed.

42. Ms. Delaney stated that the first time the Appellant submitted an application to the Authority was on 10 October 2015. She noted the Appellant's contention in their appeal document that it was in April 2015. Whilst not a major detail, that was the date on which they made contact, looked for details of how to get an online account and all of that information. She accepted that the application had taken a very long time. But that, unfortunately, this was not unique as there were a small number that had followed a similar course. She added that at the time the application was received, and in 2016, a bulk of applications were received at the one time following its commencement. At the time there was no bespoke IT system for dealing with applications. There was a very high staff turnover. The Authority was staffed with civil servants who could move around, hence a lot of coming and going. Since 2021 the Authority has employed its own staff directly as public servants, providing more stability. In addition, whilst not unusual there was delay due to the quality of the application and being a two-way process there is significant engagement with applicants to get them to the point where a substantive decision can be made. There was also the fact that on two occasions the application had to be paused due to section 39(13), as referred to in the Background section outlined above.

43. Ms. Delaney confirmed that when the section 39(13) issue arose in July 2020, this was one of the significant lapses in communication by the Authority in that the Appellant was not notified that this had occurred, and that their application would be stalled for this reason. This was only discovered when the new Head of Registrations, who took over the application personally, that this was realised, and the Appellant informed. On the second occasion involving section 39(13), and a different trustee, which occurred in 2023, Ms. Delaney stated that because of the

sensitivity of it and because of data protection, and all of that "*you don't tell the person who is filing the document, that this person is disqualified".* This development led to engagement with another party and Ms. Delaney accepted that there was poor communication from the Authority in these areas. She added that it was apologised for, and that the application was personally handled by the Head of Registrations, who brought it to decision making.

44. Ms. Delaney submitted that the decision to refuse the application was made on the basis that the Authority was not satisfied that the applicant had demonstrated that it was a charitable organisation within the meaning of the Act, specifically the applicant had not been able to specify the amount of monies raised and the gross income of the organisation in the preceding 12 months as required under section 39, the figures provided having been qualified by the auditor. The importance of this information, she stated, is that it forms part of the assessment of the purposes and activities of the organisation, the use of its funds, and whether or not it meets the public benefit test. There is an assessment see that money is coming in, what that money is being used for, is it being used for the charitable purpose? And are there other purposes that it is used for that are permissible so that they are necessary, ancillary and reasonable in all the circumstances? So that assessment is made based on the visibility of the financial information that's made available to us. Accordingly, the Authority took the view that it could not satisfied that the applicant is a charitable organisation.

45. In addition, Ms. Delaney submitted, it was also the case that this applicant was up and running for a considerable period of time and the Authority would have expected them to be able to provide the information that was required quite readily without too much difficulty, as would others in similar circumstances. She stated that there was significant engagement with the applicant over the years including a meeting. She stated that sometimes it is unhelpful to an applicant when back and forth in writing, and so a meeting is warranted to try and explain, where the Authority is "*coming from, why you are looking for this, what are you looking to see. So, a meeting like that would not be unusual, either very early if it's clear that it's not a charitable purpose, or it's an excluded purpose, or at a later stage of the engagement where it seems to be kind of going round in circles and you want to try and move it on for the sake of the applicant. So those are the contexts in which meetings take place*".

46. Ms. Delaney stated that the Financial Statements were sought so that the matter could be brought to decision-making stage. She noted that previous ones had been received in 2018 and

that up-to-date ones were not available for the years 2019, 2020 and 2021, "*even though it is a company, and the accounts should have been prepared and filed with the CRO*". The Notice of Intention to Recommend Refusal was issued to give the Applicant (as it then was) an opportunity to understand where they were going and to respond. She submitted that all of the Financial Statements since 2017 were qualified in respect of the figure for the cash collections, and therefore the Appellant had ample opportunity to put these in place so that they could get the kind of accounts they were looking to produce.

47. Ms. Delaney then addressed two matters in the Appellant's Appeal document. She referred to the Appellant's understanding that the qualification is the standard statement by the auditor for charities because unless "*they are in the charity when the money is collected and opened up, they can't stand over it.*" She said this is not the case and that there are well recognised procedures that charities put in place for cash collections, which will satisfy an auditor. Therefore, the qualification is that they could not say that the figures for the fundraising was without material misstatement. The second matter dealt with the Appellant's issue that they were treated differently to others. Ms. Delaney reiterated that the process of engagement, the queries and requests for information made of the applicant and the application of the test under the Act, were the same for this applicant as for all applicants. She denied that the Appellant was treated differently in any respect.

QUESTIONS FROM THE TRIBUNAL MEMBERS

48. The Tribunal Chair sought clarification on the dates of:

- the actual decision of the Authority, rather than the date of the actual letter communicating the decision.
- the date of communication to the applicant and date of delivery.

Whilst not particularly relevant to the current appeal it should be considered and would be helpful for clarity. There needs to be a defining line between all dates going forward.

49. In response to Tribunal Member Bill Holohan SC asking Ms. Delaney, in the context of section 39 (5)n of the Act, and the requirement of an applicant to submit "*All financial accounts of the charitable organisation*", where, or could she point to where in the Act it says such accounts, or

Financial Statements, must be unqualified, i.e. not containing the reservation included by the auditors. Ms. Delaney said the Act does not so provide.

50. In answer to a further question as to whether the Authority had assumed it had the authority, absent a statute, to refuse Financial Statements which contain a qualification by auditors in relation to sources of income, Ms. Delaney indicated that the Authority had not refused the Financial Statements. They were taken in as they were. She stated that in reading them in terms of assessing what money was coming in so that the Authority could know what money was being used for the charitable purposes and whether it meant the public benefit requirement was met, it was the view of the Authority that because the auditor was saying they couldn't say that this figure was without material misstatement, that that could not be assessed, or demonstrated to the Authority.

51. Mr. Holohan then put to Ms. Delaney that where the applicant has represented, or presented these accounts as representing a true and accurate account as per the Directors' Statement of Accounts filed with the CRO as being a true representation of the income, notwithstanding the reservation expressed by the auditors because of lack of insight into the control mechanisms over the sourcing and funding and the payments, the tickets, etc, where is the statutory authority or basis for the Authority deciding that those accounts do not meet the statutory requirement in section 39 (5).

52. Ms. Delaney responded that the Authority is not saying that the statutory accounts do not meet the requirements. The Authority is looking at a figure that is given to specify their income, to specify their fundraising and because an independent person has said that they can't be satisfied that that is the actual figure, then the Authority takes the view, absent any other information and they have been asked for lots of information and queries had been raised, specific queries, which were never answered in relation to monies going out of the account back in 2017, the Authority parked that and looked at the Financial Statements. It took the view that in relation to those amounts it could not be satisfied that that it could rely on those statements to make the judgment that the charity test was being met in terms of the monies being expended on the charitable purpose and that the public benefit requirement was being met.

53. Mr. Holohan expressed the view that there was no specific statutory basis for the Authority to take that view.

54. Ms. Delaney responded that the Authority, if it is not satisfied that they are a charitable organisation shall refuse and the Authority could not be satisfied, based on the test that it applies and the information that it was given, that this organisation was a charitable organisation. This is the statutory regime that it followed.

55. Mr. Holohan raised the issue in relation to the question of judgments against trustees/trustees being bankrupts, and sought an explanation as to the rationale, or the legal basis for a refusal to identify the person who it is alleged did not qualify to be a trustee. He referred to the Register of Bankrupts which provides information on who or who is not a bankrupt, who or who is not involved in a solvency arrangement, a personal solvency arrangement, or a debt settlement agreement. This information is publicly accessible through the website of the Insolvency Service of Ireland. Given that this information is publicly accessible, it particularly affects the applicant, and you have the applicant saying no, we have asked, and the question has been answered by every Director of the applicant company that they are not a bankrupt, can you please tell us who you think is a bankrupt. In those circumstances, Mr. Holohan asked, why not identify the source of your information to the effect that somebody is a bankrupt.

56. Ms. Delaney replied that the section has more than just bankruptcy in it and not all is publicly available. She said that the Authority contacts the individual in question for them to address it, as the Authority does not have a unique identifier in relation to these trustees. Best practice is to respect the privacy of the individual, who is a trustee of the organisation and assume they are open and frank with their fellow trustees or perhaps it's not them. Ms. Delaney said that this had absolutely no bearing on the decision of the Authority. Further, she confirmed that it is not a basis to refuse an applicant. It simply caused the delay.

57. Mr. Holohan asked what the outcome of this issue was in this particular case and whether there was an ongoing impediment. Ms. Delaney stated that there was no longer an impediment to processing the application. Mr. Holohan asked if there was a repeat situation in a fresh application would the Authority still refuse to identify the individual. Ms. Delaney indicated that the Authority did not refuse per se. The individuals were contacted. She said that the Authority always reviews its procedures and Mr. Holohan's question would be taken

on board. In addition, she stated that this matter has absolutely no bearing on a decision. It is the obligation of all the trustees, while one person might do it on their behalf, that they will respond fully, frankly and quickly to a question raised about their eligibility under the provisions of the Act. Ms. Delaney concluded by citing section 39(3) of the Act-

> *"It shall be the duty of the charity trustees of the charitable organisation concerned to make the application on behalf of the charitable organisation".*

58. Tribunal Member Carol Fawsitt asked given that the Authority has known the methods of collection and fundraising adopted by the Appellant since October 2015 and given that the Authority was in receipt of the audited accounts to year ending 2017 in January 2019, why did it take the Authority so long to raise the issue of the qualified opinion until 2023? Ms. Delaney said she couldn't answer that and didn't know why the staff working on it didn't pick this up as an issue at that point. There was engagement and there was a meeting in 2017. Lists of information were requested, some of it financial to see where the money was going. Should it have been raised then? - she answered in the affirmative.

59. Ms. Fawsitt noted that the charity was still operating in the same way as it had been in 2013, albeit not registered, and it was surprising that the Authority had not brought it to their attention. The first mention of the qualified opinion in the accounts was in the Notice of Intention to Recommend Refusing on the 12 May 2023. No question, even with the different Case Workers was ever raised to put the charity on notice - well this needs to be addressed, this is a problem, until the final year when the decision was made. Ms. Delaney accepted that for whatever reason it was not highlighted at an earlier stage. Whilst she contended it was only one aspect of all of the information that is sought Ms. Fawsitt pointed out that the Authority had relied on this issue in the decision of the 1 August 2023 to not register the charity and had sat on that information since 25 January 2019. The qualification was starkly referred to and, in the context, Ms. Fawsitt said, where the Authority had the accounts for 2014, 2015 and 2016 with no qualification. The Authority knew that basis of fundraising for this charity was bucket collections, scratch cards, pens, etc. The Authority had known from the very beginning of the methods of fundraising for the income to run the charity, and it waited until it got the 2019/2020 accounts to actually move in 2023. Ms. Delaney accepted that it was not something that was specifically picked up on and was part of the ongoing engagement. It was only from 2021 onwards when it was being looked at that all these things were being considered.

60. Ms. Delaney said, whilst not excusing what the Authority did, or should have picked up on and made it known to the charity at an earlier stage, but the applicant was aware of this, and it was incumbent on them in this very serious situation of having their main source of income being fundraising and being told by their auditor this is an issue, to ascertain what was needed to satisfy the auditor. She fully accepted that there is a question mark over the Authority, what it knew and what it picked up on. But equally, she said there is an onus on the charity, which is a company and is raising monies from the public, to be able to organise its affairs.

61. Noting from the papers that the first reference to the Authority's Guidelines on Internal Financial Controls was made to the charity in August 2018, and again in October 2018, and given the critical nature of having controls in place, Ms. Fawsitt said that it seemed to her that this point was not being picked up by the charity. Charity governance is all about documenting what you do, who does what, when, who signs off etc. Noting that the Authority moved immediately on the Director's disqualification and other issues, but on this point, she said it would have been helpful to both the Authority and the charity seeking registration, to have had a meeting just on the point of the internal financial controls given the nature and dependency on donations and cash bucket collections. The Authority, she noted, had held a meeting on other matters. The Guidelines she added, were very clear and this was a new body seeking to be registered since October 2015, a meeting would have helped to clarify precisely what was required.

62. Ms. Delaney expressed her confidence that this would have been covered in the meeting held in 2017, but there were no minutes to confirm this. It was accepted that the Authority had followed up with a three-page document to the charity listing what needed to be done. However, Ms. Fawsitt referred to the Authority's receiving the charity's minutes of its Board meeting on 13 December 2018, where the Financial Statements for year ending 2017 were signed. It seemed to her that the import of the auditor's qualification was not understood. There was no record of questions being asked at the Board meeting about the qualification. This would have given the Authority information that there was a blind spot, or there's potentially a blind spot here, this is what you need to do between the Guidelines and what your auditor is saying. This was known to the Authority from 2019. Ms. Delaney contested whether it was the Authority's responsibility to keep following up. Ms. Fawsitt contended that this was a specific point as the charity relied mainly on cash collections and donations in the

buckets, with prizes and events etc. She said this was a charity apparently to all intents and purposes, doing good work, very passionate about what they were doing but not good on the paperwork. It was in these circumstance s that a meeting would have been helpful.

63. Ms. Delaney said it was unfortunate that this case occurred in a period of time when there was a lot of staff turnover. The Authority had somebody else picking the case up cold and trying to see where it was going and that was a flaw in how this was dealt with. Ms. Fawsitt noted that what concerned one Case Worker was not always followed through by the next official. So, there was a misunderstanding perhaps that everything else was fine from the applicant charity's perspective. She said she was making this point because in terms of other charities and other issues this would have helped given the turnover of staff etc.

64. Tribunal Member Karen Horgan queried the Financial Statements and any correspondence the Authority had with the applicant around the time in relation to gross income from fundraising. She noted from the background documents provided by the Authority a reference to commission being paid to individuals and that it does not appear in any of the Financial Statements. She asked was there an assumption that the income is a net income in the Financial Statements in relation to fundraising. Ms. Delaney stated that this was something else that could not be definitively answered. From anything the Authority saw, and not all their books and records were looked at, it was just said that commission was being paid, but there were never any individuals identified, or the manner in which they were paid, or any agreement produced as to how this worked. The Authority never saw anything to say there was or there was not. It was just always, this is the plan, this is what we do. Ms. Delaney confirmed that there was no evidence of payments going out. The charity used volunteers and the Authority took it that the income was gross.

65. Tribunal Member Nuala Dockry BL said she found the delay quite extraordinary and baffling. She agreed with the questions raised by her fellow members and found them relevant and the answers relevant.

66. Ms. Delaney clarified that the Financial Statements are not the Authority's first port of call. The Authority seeks its information directly from applicants, including bank statements, policies, procedures, details of expenditure, financial plans in terms of the basic facts of what is going on. She stated that it was because the Authority could not get them in this case, despite

repeated requests, that they were relying on the Financial Statements and see what they were saying.

67. Ms. Delaney accepted that if she was there at the time and the people, who are there now were there at that time, she was sure that it would have been picked up, and the point made and saying to them, what have you done about this because it is a significant issue. If they were a registered charity, she said it would have been a huge issue. It is also something the Authority will be looking at.

68. In conclusion, Ms. Delaney stated that there was delay by the applicant as well. It is a two-way process. She made it clear however that she was not labouring the point as they are volunteers.

69. The Tribunal Chair noted that its common case that there was delay on both sides and that presumably the Authority has learnt from what this process was. He said that staff turnover should not be used as an excuse, but it is one, and is in all facets of business, particularly in that particular period of time.

70. There were no final submissions and the Tribunal rose to deliberate its decision.

DETERMINATION OF THE APPEAL

71. Following consideration, the Tribunal Chair announced the Tribunal's decision. Mr. O'Connor stated as follows: -

> *"On a preliminary basis, the Tribunal does have a concern at the delay on both sides, both the Authority's side and on the Appellant's side in relation to the processing of the application in the first instance and I think that point was taken by the Authority's able legal advisor, and I am sure lessons have been learnt in relation to it.*
>
> *The Tribunal is also of the view that applicants for charitable status, bearing in mind that most of them are volunteers, should be, in so far as it is possible and within the limits of the resources available to the Authority, be assisted and helped in relation to their application as they are made and I am sure that those lessons are being made*

since as the various applications have been made since the establishment of the regime under the Act.

In relation to our decision, we have decided that we will affirm the decision of the Authority. Therefore, the Appellant, will not be recognised as a charity. We will give our written decision and reasons on or before the 31 May 2024. And will communicate that to the Appellant and the also to the Authority.

We have noted that the Applicant/Appellant intends to complete and cease operations, close down to use its own words, as of the 30 June 2024 and that it has reduced its involvement in the work that it was doing up to now.

In relation to the question raised by you, Ms. Delaney, regarding the date of the effectiveness of the decision, it is our view, and if you wish to make submissions on it, you can come back to us, it is our view that it becomes effective as of the date of the written decision having been communicated rather than of today's date. And the reasons being that, if there is to be a review, or an appeal, or otherwise, in relation to it, whoever wishes to do so needs to know what they are effectively reviewing or appealing".

72. The hearing concluded.

REASONS FOR DETERMINATION

73. In the absence of the Appellant's presence at the appeal hearing for the reasons notified and having heard all the submissions from the Authority, its responses to questions put forward by the Tribunal, reviewed all the documentation furnished by the Authority to the Secretariat and in turn to the Tribunal, including in particular the communications between both the Authority and the Appellant, the application and documentation provided by the Appellant to the Authority in the course of the registration process, the background outlined above, as well as the Decision of the Authority of 1 August 2023 and the Appeal Form dated 18 August 2023 furnished by the Appellant, the following are the reasons for the Tribunal's decision to affirm

the decision of the Authority and refuse to include the Appellant's entry on to the Register as a charitable organisation.

74. The process of registration to the Charities Register needs to be robust so Ireland has a trusted charity sector that is valued for the public benefit it provides.

75. The Appellant failed to provide a copy of its collection/cash handling policy as recommended by the Authority in correspondence dated 23 February 2017. And given the nature of its fundraising activities via bucket collections, donations, scratch cards from the public etc it was imperative that such a policy and the procedures around all cash handling should have been clearly set out in writing and provide to the Authority. It was somewhat significant that the Appellant in its own Bucket Collection Lodgement History Note for year June 2017 to July 2018, added a postscript – *"Please note these amounts are bucket collections only and will not correspond to Lodgements on Bank Statements- rents for example may also be lodged on that day in the same lodgement".*

76. The Appellant had access to the Authority's Guidelines to Internal Financial Controls and this would have enabled them to rectify the situation in relation to what documented controls, policies and procedures were essential for the type of fundraising conducted by it i.e. public bucket collections, cash collections and donations. The absence of any such controls in the Appellant's system led to the Financial Statements for year ending 2017 (and indeed for y/e 2019, 2020 and 2021) being qualified by the Appellant's auditors. In the Independent Auditor's Report for 2017 where they outlined their report on the audit of the financial statements, they stated that "*due to the nature of the company's main source of income - distributing pens to the general public for a fixed donation, over which there was no system of internal control on which we could rely for the purpose of our audit. There were no other satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatement*", they gave the Qualified opinion. Indeed, the Auditor's Report for y/e ending 2017 contains a statement in the Appendix that they "*communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audit and significant audit findings, including …. deficiencies in internal control that we identify during the audit*". No steps appear to have been taken by the Appellant to rectify the absence of a system of control/internal financial controls i.e. policies and procedures on cash / collections handling, following receipt of these Financial Statements.

77. The Authority's Head of Registrations, having put the Appellant on notice of the risk of refusal to admit the organisation to the Register by letter dated 12 May 2023, setting out the reasons for this proposed step, and providing the Appellant with notice as to what it needed to do by 9 June 2023 i.e. to provide unabridged financial accounts for years 2019, 2020 and 2021. If the Appellant failed to provide this information, it was put on notice that the Authority would proceed to refuse the application for registration. Being a company, the Authority referred to the Appellant's existing legal obligation to submit financial statements to the Companies Registration Office, so these accounts should have been readily available in their view.

78. Having been furnished with the outstanding Financial Statements in May and June 2023 the Authority noted the accounts remained qualified due to the absence of "*internal controls which the auditors could rely for the purpose of the audit*" and "*there were no other satisfactory audit procedures that we could adopt to satisfy ourselves that the recorded turnover was free from material misstatements*". In the circumstances, the Authority was not satisfied that it was possible for the applicant to specify either the amount of money the applicant has raised or the applicant's gross income since 2017.

79. Whilst the Appellant has not participated in the hearing, which is unfortunate, and has not, as far as the Tribunal is aware, furnished any evidence /information that the lack of internal financial controls issue has been addressed, the position remains unchanged.

80. Given the submissions made by the Authority and having regard to the answers given to the questions raised in the course of the hearing, and for the reasons set out in this Determination, the Tribunal affirmed. The decision of the Authority that the Appellant has failed to demonstrate compliance with section 2 of that Act which requires the organisation to "*apply all of its property (both real and personal) in furtherance of its charitable purpose*", and has failed to provide the information required to be provided under section 39 (5) of the Act.

Date of issue this 12th day of June 2024

Patrick O'Connor Chairperson

For and on behalf of the Tribunal