AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

TRIBUNAL REF NO: CAT2023-004

UNDER SECTION 39 OF THE CHARITIES ACT 2009

Appeal of Cumann Barra Na Gaeilge against the decision of the regulator, refusing the application to be registered in the Register of Charities

Hearing date, 15th and 16th of May 2024.

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THE CHARITIES TRIBUNAL AND MEMBERSHIP

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

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

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

THE APPELLANT CHARITY

3. The name and address of the Appellant Charity is Cumann Barra na Gaeilge, An Drioglann, 145-151 Sráid an Teampaill, Baile Átha Cliath 7, D07WDX8.

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 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 activities on 4 March 2021 and did not have exemption from the Revenue Commissioners.

7. The Constitution and Rules of Membership of the Appellant included the following:

> *"Article 3 – Aims and Objectives*
>
> *3.1 The aims and objectives of the Cumann are to:*
>
> *(a) Provide a forum for legal practitioners, both barristers and solicitors practising law through the medium of Irish or who are interested in developing expertise in the practice of law through Irish or expertise in legal issues and the Irish language.*
>
> *(b) Promote the welfare of members of the Cumann, specifically:*
>
> > *i. promote an awareness of the skills and experience of its members with regard to the practice of law through Irish and legal and language issues.*
> > *ii. promote good relations with professional associations or other organisations involved in the practice of law through Irish or in legal and linguistic matters, including solicitors' association abroad who deal with legal and language issues on behalf of lesser-used language communities.*
>
> *(c) To provide continuous education and training for members and others in relation to practicing law through Irish and regarding legal and linguistic matters, particularly:*
>
> > *i. to organise regular seminars, meetings, discussion groups or conferences.*
> > *ii. to organise lectures at those meetings.*
> > *iii. consult with the Bar Council and the Law Society on the recognition of those proceedings in relation to Continuing Professional Development (CPD).*
> > *iv. To promote participation of all members of the Cumann in those seminars, meetings, discussion groups and conferences regardless of seniority or the location of their practice.*
>
> *(d) Consult with and co-operate with the Bar Council to ensure appropriate access to the Council's resources in order to ensure that these aims and objectives are met.*
>
> *(e) Promote and develop scholarship in relation to the practice of law through Irish, law and the Irish language and legal and language matters and gather and disseminate information to meet the needs of the members of the Cumann.*
>
> *(f) Actively participate as a Cumann in public discussion and promote amendments to laws and practices in relation to language matters, as deemed as necessary by the Cumann.*

(g) The Executive Committee may join Conradh na Gaeilge on behalf of the Cumann.

(h) Do whatever else is corollary or constructive towards achieving the aims and objectives of the Cumann."

THE APPLICATION

8. The Appellant commenced its engagement with the Authority on 21 May 2021 by lodging an application (Application number SR 46308) to achieve registration on the Register. As to its main objective, the Appellant, in the Application, stated as follows:

"The aims and objectives of the Society are to:

(a) provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in the practice of law through Irish or expertise in legal matters and the Irish language.

(b) promote the welfare of members of the Society in particular:

i. to promote awareness of members' skills and experience in practising law through Irish and legal and language issues.
ii. promote good relations with professional associations or other organisations involved in the practice of law through Irish or with legal and language issues, including lawyers' association abroad who deal with legal and language issues for lesser-used language communities.

(c) provide ongoing education and training for members and others in relation to the practice of law through Irish and legal and language issues, specifically:

i. holding seminars, meetings, group discussion or conference on a regular basis.
ii. Organise lectures at these meetings.
iii. consult with the Bar Council and the Law Society on the recognition of these Continuing Professional Development (CPD) proceedings.
iv. encourage all society members to participate in these seminars, meetings, discussion groups and conferences, regardless of seniority or where they are practising.

(d) Consult with and co-operate with the Bar Council to ensure appropriate access to the Council's resources to achieve these aims and objectives.

(e) Promote and develop scholarship in relation to law-practice through Irish, law and the Irish language and legal and language matters and gather and disseminate information to meet the needs of members of the members.

(f) Actively participate as a Society in public discussion and promote amendments to laws and practices in relation to language matters as deemed necessary by the society.

(g) The Executive Committee may join Conradh na Gaeilge on behalf of the Society."

(h) To do such other lawful deeds as are corollary or constructive in achieving the aims and objectives of the Society, or any of them."

9. During the course of the Application, the Constitution was amended on the suggestion of the Regulator.

10. In response to the question in the Application as to charitable objective the Appellant recorded:

"Vocational or technical training
Academic research"

11. In response to the question in the Application as to other objectives the benefit of the community, under the heading of "*Promoting the arts, culture heritage sciences*" the Appellant recorded:

"Preservation of historical or cultural traditions
Provision or support of a learned society.
An Ghaeilge a chur chun cinn".

12. In response to the question in the Application as to how the organisation achieved its objectives, the Appellant recorded:

"By acting as a specialist Law Society".

13. In response to the question in the Application as to public benefit and the purpose for which the organisation was set up the Appellant recorded:

"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."

14. In response to the question in the Application as to how the Appellant to achieve its aims the Appellant recorded:

"Providing direct services.

Conducting original research
Acting as a specialised law society".

15. In response to a question in the Application as to a summary of activities/planned activities the Appellant recorded:

> *"Seminar, Conference, Publication, Internet site, Research, Lobbying, Research Facilities".*

16. In response to the questions in the Application as to who would benefit from the Appellant's work, identifying a defined part of the community, the Appellant recorded:

> *"The Irish-speaking & Gaeltacht community who love our national language".*

17. In response to the questions in the Application as to criteria for membership the Appellant recorded:

> "*Membership of the Cumann will be open to:*
>
> *(a) Barristers who are members of the Law Library.*
> *(b) Barristers who are members of the Northern Ireland Bar.*
> *(c) Solicitors registered with the Law Society.*
> *(d) Solicitors registered with the Law Society of Northern Ireland.*
> *(e) Any other person who satisfies the Cumann's Executive Committee that they are closely involved in legal matters and the Irish language.*
> *(f) Any other person elected by the Cumann's Executive Committee as honorary members of the Cumann."*

18. In response to questions in the Application as to the Appellant's policy on selecting beneficiaries the Appellant recorded:

> *"There have been functional gaps for a long time in relation to the promotion of Irish as a functional language in legal proceedings. The Cumann aims to develop the appropriate skills and to encourage the public to provide a full legal service in Irish to the public."*

19. In response to questions in the Application as to the Appellant's principal address the Appellant recorded:

> *"145-151 Church Street, Dublin 7, Dublin, Republic of Ireland, D07 WDX8",* which is in fact the premises of the Bar Council of Ireland who afford an accommodation address and meeting room facilities to the Appellant.

20. In response to a question in the Application as to the Appellant's website, the Appellant recorded:

"http://www.cumannbarra.ie/"

21. In response to questions in the Application as to how the Appellant was funded the Appellant recorded:

> *"Membership fees*
> *Fees for services*
> *Government, public body or local authority"*

22. In response to the question in the Application as to whether the Appellant owned land or property the Appellant recorded:

> *"No".*

22. Revised/updated applications were filed / uploaded on:

- 21 May 2021,
- 8 September 2021,
- 2 December 2021,
- 31 January 2022,
- 9 February 2022,
- 11 April 2022, and
- 11 September 2022,

and Documents submitted over the course of the Application included:

- the Constitution and Membership Rules (as originally formulated),
- the Constitution and Membership Rules (as amended during the course of the application),
- the Conflict-of-Interest Policy,
- programmes of CPD events,
- Budget – Annual 2021 – 2023,
- Development Plan 2021 – 2022,

- Financial Plan 2022 – 2024,
- Strategic Plan 2022 – 2024,
- Business Plan,
- Chair's Report for the Period to 30 September 2022,
- Treasurer's report for the period ending 30 September 2022 and
- The Government of Ireland 20-year Strategy for the Irish Language 2010 – 2030.

COMMUNICATIONS WITH THE REGULATOR

23. There were further communications in writing with the Authority on a number of occasions. In its Notice of Appeal, the Appellant submitted that the Appellant sought clarification from the Regulator on 28 May 2021, 16 June 2021, 7 July 2021, 22 July 2021 and 23 July 2021, as to the length of time it would take to process the application.

24. In response to the Application submitted, the Authority responded by email on 26 August 2021, 15:29 hours, and returned the Submission stating:

> *"Dear Chairperson / Trustee,*
>
> *Your submission on behalf of Cumann Barra na Gaeilge has been returned to you for the following reasons:*
>
> *Objectives Page - Principal Objective and Governing Document*
>
> *Your application for charitable status cannot be processed until you do the following at a minimum: amend your constitution to include the three standard clauses which we have applied in all cases.*
>
> *It is noted also that the constitution you submitted does not include information about the Powers which enable the organisation to open a bank account, collect money and insure Executive Members against any personal liability incurred during the performance of their duties as Charity Trustees. These are only some of the powers necessary for a Charity to operate. For the sake of practical administration, you must agree these powers with the Regulator at this stage.*
>
> *If it is intended to apply to the Revenue Commissioners for Charitable Tax Exemption (Charity Number), you are required to include clause 4.6 and clause 4.9 in your constitution.*

Furthermore, the constitution does not contain information about the roles of the charity trustees, about the method of their removal from office, about the method of their disqualification under article 55 of the Charities Act 2009, and about their general rotation.

I draw your attention to articles 13 to 15 of the exemplary constitution for unincorporated bodies.

The Charities Regulator developed an Exemplary Constitution for Unincorporated Bodies and Unincorporated Associations which is available on our Website and at the link below. The Charities Regulator outlined this Exemplary Document with the aim of improving the drafting of constitutions.
https://www.charitiesregulator.ie/ga/faisn%C3%A9is-do-charthanais/treoir-do-charthanais

As soon as you amend your constitution to include the requested clauses for non-incorporated bodies, as in the enclosure, upload a draft of the revised document and resubmit your application for charitable status along with that draft. You will not be required to agree the revised constitution until the Charities Regulator has given you notice to do so.

Trustees' Page – Declaration

Submit a signed declaration from Ms Clíona Kimber.

Trustees' Page – List of Trustees

You are required under Section 39(5)(d) of the Charities Act 2009 to provide the full residential address of each trustee. Residential addresses will not be publicly available on the Register and this information is collected for internal use only. Please review the trustees' page and ensure you have provided the residential address of each trustee.

Further Information – Eligibility of Trustees

As some time has passed since the trustees signed their individual declarations, I request confirmation from you at this stage that all trustees listed in your application remain eligible to hold the role of a charity trustee under Section 55 of the Charities Act 2009. The relevant text from Section 55 is quoted below for your convenience.

55.—(1) Subject to subsection (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—
(a)is adjudicated bankrupt,
(b)makes a composition or arrangement with creditors,

(c)is a company that is in the course of being wound up,
(d)is convicted on indictment of an offence,
(e)is sentenced to a term of imprisonment by a court of competent jurisdiction,
(f)is the subject of an order under section 160 of the Companies Act 1990 or isprohibited, removed or suspended from being a trustee of a scheme under thePensions Acts 1990 to 2008,
(g)has been removed from the position of charity trustee of a charitable organisation by an order of the High Court under section 74.

Attach a document (appropriately signed and dated) to the 'Further Information' section of the application to confirm that all trustees listed in your application are currently eligible. You should also include the name of the organisation as listed in your application.

In the case that the trustees have ceased to be eligible under Section 55, please notify me of this fact. Such a situation may impact on your application under Section 39(13) of the Charities Act 2009."

25. On 16 June 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded in writing to the Regulator stating:

"We need this Registration in order to be assigned a CHY number so as to draw down a grant approved by Foras na Gaeilge.

We would be very appreciative if the application could be dealt with soon.

If there are any questions, this is my phone number..."

26. On 22 July 2021, contact was made by Mr Cormac Ó Dúlacháin SC with the office of the Authority by telephone.

27. On 23 July 2021, telephone contact was made by the Authority with the Appellant by telephone. A request was made for certain amendments to the constitution of the Appellant.

28. On 27 July 2021 an amended constitution was submitted.

29. On 24 August 2021, at 16:06 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant wrote to the Regulator stating:

"We are concerned that the Office is not willing to deal with our application because the correspondence is in Irish.

I would be grateful to receive a call on [number] explaining the reason for the delay."

30. This correspondence appeared to evidence a number of assumptions by the Appellant, including an entitlement to registration, an assumption as to the attitude of the Regulator towards the Appellant's application due to it having being made in the Irish language and an assumption that the application was a routine matter that should be processed routinely and promptly by the Regulator.

31. As to the first and third assumptions, an applicant should not assume an entitlement to registration. The Regulator has a statutory obligation to assess any particular application in accordance with the governing legislation and to process same in a prescribed manner.

32. As to the second assumption, while it is unfortunate that there did appear to have been a lack of engagement with the offer from the Appellant to meet with representatives of the Regulator, the assumption is speculative.

33. On 30 August 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant, responded by email at 10.01 hours to the Regulator stating:

> *Regarding Cumann Barra na Gaeilge.*
>
> *I received a reply yesterday which completely disregards the amended constitution forwarded by us on the 27th July.*
>
> *Is anyone available to discuss this matter with me?"*

34. On 30 August 2021, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email at 10.28 hours stating:

> *"Thank you for contacting the Charities Regulator.*
>
> *I refer to recent correspondence from you regarding the application of Cumann Barra na Gaeilge for charitable status and regarding the organisation's constitution, forwarded by email to us on the 27th of July 2021.*
>
> *Unfortunately, we cannot review a constitution separately from the full application for charitable status. We are prevented from doing so as we are required to form an overview of your organisation and the activities of your organisation in order to ensure these are represented in the constitution – especially your principal objectives and other objectives. Supporting information regarding the organisation, such as bank account details, should be provided in your application also. It should be noted that we are unable to amend the application on your behalf.*
> *I accept that you should have been informed of this when you forwarded the constitution by email. This is not the level of service you should expect from the Charities Regulator, and I apologise for this.*

You should ensure that your constitution contains 'the three standard clauses we put into effect' and that, if necessary, appropriate mention is made in it to the 'Income and Property' as it is required that such is the case regarding the governing documents of all organisations registering with the Charities Regulator.

Please resubmit the application for registration as a charity and this office will reply in due course.

Accessing the Application Returned to you

1.Log in to 'My Account', the portal for customers, at the following link :https://portal.charitiesregulator.ie/login

2.Click on My Filings on the blue strip on the left-hand side of the screen.

3.Select the tab entitled Returned.

4.Click on Open next to the submission returned (SR46308) to make the amendments.

5.Complete the form and Submit it.."

35. On 30 August 2021, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email at (unspecified) hours stating:

"Thank you for your email.

I gratefully acknowledge receipt of your recent application and correspondence. I will review the application and the information provided and will contact you if I require further information."

36. On 8 September 2021, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email at 09.13 hours.

37. On 8 September 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email at 10.14 hours.

38. On 8 September 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email at 11:52 hours stating:

"The amended Application was submitted this morning.

The Constitution has been amended.

The bank account number has been added.

The New Declaration from the Trustees is up to date.

There are two new Trustees since the application was first submitted."

39. On 8 September 2021, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email at 12.11 hours stating:

"Thank you for your email message.

I gratefully acknowledge receipt of the application and recent correspondence from you. I will review the application and the information furnished and I will contact you if any further information is required."

40. On 8 September 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email at 16.45 hours stating:

"In regard to amendments to the Constitution, those can be found at 3.2, 11.2, 19.1 and 20.2."

41. On 8 September 2021, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email at 17.08 hours.

42. On 16 September 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email at 09.13 hours stating:

"We are under pressure from Foras na Gaeilge to confirm that we have been registered so that they can release a grant to us.

Has there been any progress regarding reviewing our application?"

43. On 16 September 2021, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email at 11:52 hours.

44. On 17 September 2021 at 12.42 hours and again on 23 September 2021 at 10.42 hours, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email hours stating:

"Dear Chairperson and Trustees,

The application for charitable status will now proceed to the next stage of the registration process. The application will be assigned to a Case Officer who will then make a recommendation.

The Case Officer will perform a minute examination of your application, to include the objectives clause, and will then contact you should it be necessary to further amend the application or to supply further specific information in relation to it.

As the processing time will depend on the number and quality of applications received, it is not possible to confirm the processing time for this stage of the process.

We will endeavour to complete the process as quickly as possible. It is to your own advantage to cooperate with this office and comply with the time periods connected with any request."

45. On 4 October 2021 at 17.23 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email asking:

"Has a decision about this application been made yet?"

46. On 12 October 2021 at 11.54 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email stating:

"Is there any news yet?

It is difficult to suppose that this application is not being neglected due to its being made in Irish."

This correspondence again indicates a speculative assumption by the Appellant.

47. On 13 October 2021 at 09.46 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email stating:

"I apologise for writing to you directly but we have not received any reply to our application and it appears the Regulator is not willing to deal with an application in Irish.

Should it not be possible to make progress this week, the Cumann intends to forward the matter to the Cumann's solicitors, that being Prospect Law..

I would be grateful to receive a phone call on [Number] *to discuss the matter."*

48. On 14 October 2021, at 12.24 hours, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email stating:

"Thank you for your email message below.

I have forwarded your email message to the Registration team, which is processing your application. A member of that team will contact you in due course.

Do not hesitate to inform me of any other help I could give you..”

49. On 19 October 2021 at 10.49 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email stating:

“I have heard nothing further.

We are coming under pressure from Foras na Gaeilge to bring a major project to a close before the 3rd of December, failing which we will lose the grant allocated. The grant cannot be paid without a CHY number, such number cannot be assigned without registering with the Regulator. Five events are planned around the country during November, in Dublin, Belfast, Letterkenny, Galway and Cork. If we cannot be certain of receiving the grant, we will have to cancel those events next week.

We do not understand what difficulty could exist in dealing with our application for registration. We have fulfilled all demands. Our understanding is that only a very small amount of administrative work is involved on the part of the Regulator.

That is our understanding!”

50. On 19 October 2021, at 14.22 hours the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email enclosing letter stating:

“Thank you for contacting the Charities Regulator.

I refer to your correspondence and to the application from Cumann Barra na Gaeilge (Ref.: SR46308).

I note you mention in your email message of 7 July 2021 that it should not take longer than 6 weeks to review the application. It should be noted that the time required for the registration of a charity depends on a number of factors, including the number of applications received, whether or not the required documentation is included at the time of application, and the type and size of the charity. A period of around four months, following confirmation that the application includes all necessary documentation, is currently required to bring the application process to completion. A period longer or shorter than that may eventuate, however, depending on the type of application and on the applicant's swiftness in replying to any issues which might require clarification. Only information relevant to the determination of whether or not the application satisfies the charity test will be requested. We are able, and willing, at all stages of the process, to offer direction.

Along with the benefits deriving to an organisation from being a registered charity, go duties and obligations laid upon the trustees and voluntary workers of the charity and upon any members of staff.

This much is clearly illustrated by the registration process. Applicants should be aware that the process will require some time and we advise that no major decisions are taken by them, nor major activities undertaken, which are dependent on having a registered charity number assigned to them, until such time as registration of the organisation is complete.

I will turn now to our process. Two distinct stages are involved and a waiting period precedes each stage before an application is assigned to a case officer. In order to ensure fairness, applications are assigned on a chronological basis. Please note that a policy is in force regarding the 'Prioritising of Applications for Registration under Section 39 of the Charities Act 2009'. A copy of that policy is enclosed. While your application did not comply with the requirements of that policy, priority was given to the application on the grounds that you had at that time applied for a grant. As a result, and despite other applications being ahead of it in the queue, the full waiting period before assignment for Stage 1 was avoided in the case of your application.

Stage 1 regarding your application was completed on 17 September 2021. During Stage 1, the information provided is examined in order to ensure that all necessary documents have been made available and that the application is complete and that it is appropriate to proceed to the next stage. At this point, the application may be returned by us to the charity so that clarification may be given, amendments made or documents provided which have been missing until then. The purpose of the initial check is to compile the necessary information. It is not an assessment of the fitness of the organisation for registration as a charity.

Your application was placed in the queue at that stage to be assigned for stage 2. At the moment, between 4 and 6 weeks pass before the assignment of applications. During stage 2, the charities testing team assess the contents of the application to determine whether your organisation satisfies the requirements for registration in accordance with the Charities Act 2009. While we attempted to give your application priority at stage 2, nevertheless, we did not succeed in that attempt because of the number of applications already assigned and the number of applications in the queue to be assigned. We should have informed you of this at the time and I apologise for the failure to do so. That is not the level of service you should expect.

I assure you that your application was progressed in accordance with our current timelines. The registration process needs to be a rigid one and this means it can last longer than one might desire. I accept that this can be a matter of frustration but it is crucially important in relation to a charities sector which is vibrant, trusted and respected and to ensure the public benefit it provides.

In view of the circumstances outlined in your correspondence on 19 October 2021, the application from Cumann Barra na Gaeilge was assigned to a case officer for charities testing, which is stage 2 of the process. The case officer will contact you directly after reviewing the application.

As to your statement that it appears the Regulator is not willing to deal with an application in Irish, please note that the Charities Regulator is committed to complying with Part 3 of the Official Languages Act 2003. We replied to you in your chosen language in every case. Although we depended, because of the technical nature of the material, on a third party translation service, I can assure you that the third party supplier returned any communication to be translated on the same day or on the next working day. Therefore, it would be inaccurate to state that this impacted on the overall progression of your application.

I hope the above information explains the position."

Also enclosed with the letter was a copy of the Policy for the Prioritisation of Applications for Registration made under Section 39 of the Charities Act 2009, effective from 5 May 2017 as revised on 24 April 2020.

51. There was further correspondence from the Authority on 16 November 2021, which asked a number of questions and suggested further amendments as follows:

"Dear Chairman / Trustee,
Your submission on behalf of Cumann Barra na Gaeilge was returned to you for the following reasons:

1 In your application under the question 'What are the criteria for membership of your organisation?' you refer to:
(b)Barristers who are members of the Northern Ireland Bar
Therefore, reassess in the public benefit section of your application in relation to whether or not the organisation operates outside the Republic of Ireland, and if it operates outside the Republic of Ireland, update the application.

2 Do you have a rent/lease agreement or memorandum of understanding in place for the property you are working out of? You can upload this information under the section Further Information.

3 Update the queries relating to property in the finance section of the application to demonstrate that you have access to land or property due to your main address.

4 Your strategic plan is insufficient. Review it. A strategic plan is a high-level document which sets out the organisation's vision and mission, its core values, its long-term goals and how it will determine whether it has been successful or not. I

draw your attention to the user guide (page 20) for instructions on what should be included in that document. Upload the document.
https://www.charitiesregulator.ie/media/1397/charity-registration-application-form-user-guide.pdf

5 Your business plan is insufficient. Review it. I draw your attention to the user guide (page 23) for instructions on what should be included in that document.
https://www.charitiesregulator.ie/media/1397/charity-registration-application-form-user-guide.pdf

6 There is no signature or date on your conflict of interest policy. Sign and date the document and upload again.

7 I refer to the termination article in your constitution. The text currently refers to clause 5. However, reference should be made to the income and property article, which is article 18. Amend document and upload again.

8 Your constitution does not refer to the minimum number of trustees that the organisation may have. Your application states that the minimum number of trustees is five. Amend your constitution to reflect this number.

Make the necessary amendments outlined above. You do not need to file a new form. Login to My Account and click on 'My Filings' and select the tab with the heading 'returned'. Then open the submission to make the amendments.

Resubmit the form within 21 days of the date of this message.

Applicants who are unable to respond to our queries within the normal 21-day period due to the current public health emergency, should request an extension by replying via the 'My Account' messaging system."

52. The Appellant responded to the Authority on 2 December 2021 stating:

"Please find below our responses to the issues raised in the Regulator's letter of 16 November 2021.

We can be contacted on [Number] *if you have any questions. It is unfortunate that this has not already been addressed. Likewise, if a meeting is required, we would be very happy to visit your office. It would be nice to meet or speak to someone in person.*

After the very long delay, we would be grateful if you could register us as soon as possible.

1. The Association is established and based in the State. Membership is open to legal practitioners with an interest in the Irish language, regardless of the country

in which they are based or practising. Full membership is available to barristers and solicitors in Ireland, both north and south. We hope to organise events in the six counties and then in Brussels and Luxembourg, being the primary locations of the European Union. The United Kingdom, Brussels and Luxembourg are now designated as areas of operation in our Application. (The Republic of Ireland is stated to be the name of the State on the Regulator's website. As this is not the State's official name, it would be best to correct it.)

2. We do not possess a lease on any buildings. The building is owned by the Bar Council and with their permission, we are able to use the building's facilities from time to time in conjunction with the other specialist law associations. Please see https://www.lawlibrary.ie/legal-services/specialist-barassociations/. We are allowed to use the address and services of the mailroom, from which our website is also managed. We have access to rooms and halls for meetings, when required. Some members of the committee have personal offices in the same building.

3. Based on the information above, it does not appear that any amendments are required as we, as an Association, do not possess any land or land rights.

4. Strategic Plan. - No issue was raised in relation to this in the discussions at the end of July and in September. For a new organisation, the plan, as registered, is simple, clear and understandable. While the Regulator has a sample template in place, we are not obliged to adhere faithfully to this version. If the Regulator demands the use of this template, the plan will not be ready until January.

5. Financial Plan. No issue was raised in relation to this in the discussions at the end of July and in September. For a new organisation, the plan, as registered, is simple, clear and understandable. While the Regulator has a sample template in place, we are not obliged to adhere faithfully to this version. If the Regulator demands the use of this template, the plan will not be ready until January.

6. Signature. This has now been done, with the Signed Conflict of Interest Policy uploaded. There was no mention of the requirement to sign this policy. This issue had never been raised before.

7. The amendment has been made. Please see section 20.2 of the amended Constitution, as uploaded.

8. The amendment has been made. Please see section 11.1 of the amended Constitution, as uploaded."

53. Further correspondence and queries was received by email from the Authority on 13 January 2022 at 15.27 hours stating:

"1 Update the property queries in the finance section of the application to demonstrate that you have access to land or property due to your main address.

In relation to the above: In the Finance Section of the application, you replied 'No' to the question 'Does your organisation have access to land or property?' Based on the information you have given us, it appears that 'Yes' should be the answer to that question, due to the fact that the organisation uses a building owned by the Bar Council. Amend that answer and reply to the following question in the same place on the application form: 'What is the land or property used for?'

2 Your strategic plan is inadequate. Review it. A strategic plan is a high-level document which sets out the organisation's vision and mission, its core values, its long-term goals and how it will decide whether it has been successful or not. I draw your attention to the user guide (page 20) for instructions on what should be included in that document. Upload the document.
https://www.charitiesregulator.ie/media/1397/charity-registration-application-form-userguide.Pdf

The strategic plan is assessed at this stage of the process. Therefore, provide a revised/new strategic plan, as requested.

3 Your business plan is insufficient. Review it. I draw your attention to the user guide (page 23) for instructions on what should be included in that document.
https://www.charitiesregulator.ie/media/1397/charity-registration-application-form-userguide.pdf

The business plan is assessed at this stage of the process. Therefore, provide a revised/new business plan, as requested."

54. On 31 January 2022 at 21.26 hours, Mr Cormac Ó Dúlacháin SC, on behalf of the Appellant responded by email stating:

"Strategic and Financial Plans have been submitted today - 31 January 2022

If you have any questions, please call me on [Number].

In relation to property, we have no land in our possession.

The Bar Council permits us to use a room for events from time to time.

That permission is provided to us on a discretionary basis, rather than on a rights basis.

It only involves a maximum of twelve hours a year."

55. On 7 February 2022, at 10.41 hours, the Authority responded to Mr Cormac Ó Dúlacháin SC by email stating:

"I acknowledge receipt of the email from you on 31/1/2022 and will deal with its content.

I will contact you again regarding the issues that need to be addressed, once I have reviewed the application.."

56. On 8 February 2022, at 10.37 hours, the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC by email stating:

"Your submission on behalf of Cumann Barra na Gaeilge was returned to you for the following reasons:

1 Please update the questions relating to property in the finance section of the application to indicate that you have access to land or property due to your main address.

In Relation to the above: In the Finance Section of the application, you answered 'No' to the question 'Does your organisation have access to land or property?' Based on the information you have provided, it appears that you should have answered 'Yes' to that question due to the fact that the organisation uses a building owned by the Bar Council. Amend that answer and answer the following question in the same place on the application: 'What is the land or property used for?

2 Confirm Trustees - As it has been some time since the trustees signed their individual declarations, we now request confirmation that each of the trustees listed on your application is still qualified to hold the role of a charity trustee under section 55 of the Charities Act 2009

Upload a PDF certificate (signed and dated) confirming that all the trustees listed on your application are still qualified to hold the role of charity trustee under section 55. Please note that new declarations from the trustees are not required.

If any of your trustees have ceased to qualify under section 55, please notify us of this. Please note that this will affect your application under section 39(13) of the Charities Act 2009.

Make the necessary amendments as outlined above. You do not need to file a new form. Login to 'My Account' and click on 'My Filings' and select the tab bearing the heading 'returned'. Then open the submission to make the amendments.

Resubmit the form within 21 days of the date of this message.

Applicants who are unable to respond to our queries within the normal 21-day period due to the current public health emergency, should request an extension by replying via the 'My Account' messaging system.t'."

57. The Appellant responded on 9 February 2022.

58. On 28 March 2022, 12:04 hours the Authority responded to Mr Cormac Ó Dúlacháin SC by email enclosing a letter stating:

> *"I am writing to you in relation to the above application for charitable status. Having discussed the application with senior management, it was agreed that the organisation needs to provide further details on the public benefit aspect, concerning the groups which are identified in the public benefit section of the application form. Please note that you have selected 'The general public' as a response under the heading 'Who will benefit?' and that you selected 'The Irish language & Gaeltacht community who loved our national language' under the subheading 'Defined part of the community'.*
>
> *In order to consider the application, it is worth noting that these are two discrete aspects of public benefit, even though they are also interrelated. The benefit relates to the value provided by the charitable activities and the public aspect is concerned with who is going to benefit. Both elements must be met and are considered together. As your organisation has more than one charitable purpose, the benefit which related to each objective should be identifiable.*
>
> *In light of this, please upload a PDF file addressing the above under the heading 'further information'."*

59. On 11 April 2022, Mr Cormac Ó Dúlacháin SC of the Appellant responded by letter to the Authority. In his reply, Mr Cormac Ó Dúlacháin SC stated:

> *"With regard to public benefit, Irish is recognised under the Constitution as the national language and it is the first official language. The language itself and the community as a whole benefits when the Irish language is available and is being developed in law-making, among legal practitioners, in the legal system and when resources are made available to support and promote the national objective of the Irish language as an official language..*
>
> *I refer in particular to the 20-Year Strategy for the Irish Language https://www.gov.ie/ga/eolas- polasaithe/an-straiteis-20-bliain-don-ghaeilge-2010-2030/.*
>
> *Please note that the strategy has received cross party support in the Houses of the Oireachtas.*
>
> *I also refer to the wide range of public bodies which come under the aegis and obligations of the Official Languages Act 2003-2021, see list on The Commissioner's website https://www.coimisineir.ie/userfiles/files/Liosta_na_gComhlachta%C3%AD_Poibl*

%C3%AD_2020_(q).pdf and which will be dependent on services being available in Irish".

60. On 31 May 2022, the Appellant enquired as to the progress of the application.

61. Again, on 30 June 2022, the Appellant enquired as to the progress of the application.

62. On 4 July 2022, 18.01 hours the Office of the Regulator responded to Mr Cormac Ó Dúlacháin SC stating:

> *"Thank you for contacting the Charities Regulator.*
>
> *I refer to your recent correspondence and to the application from Cumann Barra na Gaeilge (Ref.: SR46308). We are currently reviewing the application. Please note that Mr. Séamus McGovern, the case officer previously assigned to your application, is no longer working in the Charities Regulator's office.*
>
> *Unfortunately, this will delay the processing of applications for charitable status. We will do our utmost to prevent any further unnecessary delays.*
>
> *Thank you for your patience and understanding in relation to this matter. We hope to be in contact with you soon."*

63. On 19 August 2022 the Appellant received correspondence from the Authority stating as follows:

> *"I confirm receipt of your letter dated 11 April 2022. The contents of the letter were noted.*
>
> *Thank you for your patience while we review your application. Please note that the case officer assigned to your application has since left the organisation and that this has led to a delay in processing your application.*
> *Having considered your application form and the supporting documents, I must highlight a number of outstanding items in relation to your application. Please note that in submitting the required information, each applicant must demonstrate that the organisation has a charitable purpose(s) and has explicit plans in place in relation to the activities it intends to pursue in order to advance the objective(s).*
>
> *The following is said about the main objective is: Your main object states that*
>
> *""The aims and objectives of the Cumann are as follows*
>
> *(a)To provide a forum for legal practitioners, both barristers and solicitors practising law through the medium of Irish or those interested in developing*

expertise in practising law through Irish or developing expertise on legal issues and the Irish language.

(b)To promote the welfare of the Cumann members, in particular:

i. promote awareness of members' skills and experience in practising law through Irish as well as legal and linguistic matters;
ii. promote good relations with professional associations or other organisations involved in the practice of law through Irish or legal and linguistic matters, including associations of lawyers from abroad who deal with legal and language matters on behalf of lesser-used language communities.

(c)Provide ongoing education and training for members and for others with regard to the practice of law through Irish and legal and language issues, in particular:
i.organising seminars, meetings, discussion or conference groups on a regular basis;
ii.organising lectures at these meetings;
iii.consulting with the Bar Council and the Law Society regarding the recognition of these events for Continuous Professional Development(CPD);
iv.encouraging all Cumann members to participate in these seminars, meetings, discussion groups and conferences, regardless of seniority or where they are practising.

(d)Consult with and co-operate with the Bar Council in order to ensure appropriate access to The Council's resources so that these aims and objectives can be achieved.

(e)Promote and develop scholarship on legal practice through Irish, on the law and the Irish language and on legal and language concerns and gather and disseminate information to meet the needs of the Cumann's members.

(f)Actively participate as a Society in public discussion and promote amendments to laws and practices in relation to language matters, when deemed necessary by the Cumann.

(g)The Business Committee may become members of Conradh na Gaeilge on behalf of the Cumann.

(h)Do whatever else is lawful and correlated or constructive to achieve any or all of the aims and objectives of the Cumann."

I note that this is primarily a membership organisation and that you set out the membership criteria as follows on the application form:

"Membership of the Cumann will be open to the following:

(a)Barristers who are members of the Legal Library;;
(b)Barristers who are members of the Northern Ireland Bar;
(c)Solicitors who are registered with the Law Society;
(d)Solicitors who are registered with the Law Society of Northern Ireland;
(e)Any other person who satisfies the Business Committee of the Cumann that they are highly involved in legal affairs and Irish language affairs;
(f)Any other person elected by the Executive Committee of the Cumann as an honorary member of the Cumann.

The charitable objectives you have chosen are education and the promotion of the arts, culture, heritage or sciences.

Based on your 'development plan 2021-2022', it appears that you are planning the following activities in order to advance the two charitable objectives you have chosen:

- *Affiliation with External Organisations*
- *Establishment of Sub-Committees*
- *Belfast Event*
- *Letterkenny Event*
- *Galway Event*
- *Cork Event*
- *Dublin – 6 Events*

You also state on your application form that you will advance your objectives by: "Seminar, Conference, Publications, Websites, Research, Lobbying, Research Facilities".

As set out above, other activities that will advance your charitable objective are also listed under your main objective.

However, having regard to the information provided on the application form and the supporting documents, it is unclear how you will pursue your chosen charitable objective of promoting education. Concerning this you did not submit any details on how the seminars, meetings and conferences will be delivered, the content to be covered, the type of seminars and conferences that will be made available and their structure, who would launch the seminars and conferences or how you will attract the attention of your target audience. Nor has any information been provided in relation to the events mentioned in your development plan. Based on the information submitted, it is not possible to establish how these proposed actions will contribute to the advancement of education or how they will provide public benefit.

In relation to the fostering of the arts, culture, heritage or sciences, the events mentioned in the development plan appear to be the main means by which you

intend to advance that objective. However, similar to the promotion of education, you have not submitted any details regarding these events. If these details were made available to the Charities Regulator he would be in a position to assess whether or not your activities in this regard would achieve your charitable objective of fostering the arts, culture, heritage or sciences or provide a public benefit.
Based on you application it appears that you are going to apply to Scéim Fhoras na Gaeilge and to Scéim Cholmcille for funding. Could you provide details regarding how you plan to use this funding?

I would ask that you consider all of the above and give a detailed reply by downloading a document titled 'promoting charitable objectives' so we can identify the document."

64. On 12 September 2022 Cormac Ó Dúlacháin SC responded on behalf of the Appellant stating:

"I refer to your letter dated 19 August 2022.

It is worth noting that over the past year each time we have answered questions that have been raised, after a long delay, we are asked a further question.

It confounds us that you have not accepted our invitation to call us or meet with us to discuss any queries you may have had.

We feel that the goal is to block and delay our application, one that is quite simple, in every possible way. This seems to be due to the fact that we applied in Irish in the first place and you were unable to deal with that.

We are not convinced that the same kind of rigorous scrutiny and audit are carried out in other instances or that it is necessary under the Act.

In relation to education find enclosed the programme pertaining to the educational events we have held since our inception.

We also joined Gael-Linn in the running of Bréagchúirt Uí Dhálaigh, a competition for third level law students and in running the Bonn an Phiarsaigh Competition in King's Inn.

We are currently working on a programme for the 2022/23 legal year and arrangements are in place for an international conference due to be held in Coláiste na nGael, Leuven, Belgium on 1/2 June 2023 on the theme of Ireland - 50 Years of European Law.

In terms of the promotion of culture one would assume that the close link between our work and the promotion of the Irish language is quite clear.

In relation to social occasions, we took part in Dinnéar na nGael in King's Inn in March and organised a Pop Up Gaeltacht for the Legal professions in July. In February we were present, as an organisation, at Comhdháil Chonradh na Gaeilge, an event attended by the President Michael D Higgins.

We are in ongoing discussions with the Translation Section in the Houses of the Oireachtas about the publication of Bills and Acts in Irish.

We are in discussions with the Bar Council regarding the provision of an Internship in Irish for barristers who are beginning to develop their practice.

Regarding support from Foras na Gaeilge we will be making applications from time to time under the Project Fund: https://www.forasnagaeilge.ie/funding-schemes/an-ciste-tionscadal-2022. A grant can only be availed of every three years and due to the Regulator's delay we were unable to secure the full grant awarded us last year. Foras na Gaeilge had no difficulty recognising the importance of our work in promoting the Irish language.

The Colmcille Grant scheme is designed to foster relationships between Scottish Gaelic communities and Irish language communities. We hope to develop an association with members of the legal profession in Scotland who are interested in the Irish languagehttps://www.forasnagaeilge.ie/funding-schemes/sceimmiondeontas-cholmcille-2022.

We hope this information is sufficient, yet again if you have any other queries we will gladly walk down to George's Dock to discuss these issues."

65. On 19 November 2022 at 13.36 hours Cormac Ó Dúlacháin SC responded on behalf of the Appellant by email stating:

"The Programme of Events for 2022/2023 is now available on our website at https://www.cumannbarra.ie/"

66. On 1 December 2022 at 17:50 hours Cormac Ó Dúlacháin SC responded on behalf of the Appellant by email enclosing a Chair's Report for the Period to 30 September 2022 and Financial Accounts, stating:

"This is the First Annual Report 2021/2022, to appraise you of our activities."

NOTICE OF RECOMMENDATION TO REFUSE REGISTRATION

67. On 28 March 2023, the Appellant was issued with a Notice of Intention to Recommend Refusal of Application under section 39 of the Charities Act 2009 to be registered in the Register of Charities (the "Notice") which notified the Appellant of the Authority's intention to refuse the application and setting out reasons in the following terms:

> *"I am writing to you regarding the application by Cumann Barra na Gaeilge (the "Applicant") pursuant to section 39 of the Charities Act 2009 (the "Act") for registration in the Register of Charitable Organisations (the "Register").*
>
> *Having considered your application, I wish to inform you that the Registration Unit intends to recommend to the Charities Regulatory Authority (the "Authority") that the Authority refuse the applicant's request.*
>
> *The grounds for recommending that the application be refused are that the Registration Unit is not satisfied that the Applicant complies with the requirements for registration as a charitable organisation provided for in sections 2, 3 and 39 of the Act.*
>
> *The Act sets out the requirements that an organisation must meet in order to be deemed to be a charitable organisation. We call this the 'charity test'. This test is summarised in the bullet points below:*
>
> - *The organisation should not be an excluded body, as defined in section 2(1) of the Act, and must operate in the State.*
> - *The organisation must have a charitable objective(s) and must pursue the charitable objective(s), and that alone.*
> - *The charitable objective being pursued must be in the public interest.*
> - *The constitution of the organisation must have a requirement that the organisation will use all its property (real and personal) to further its charitable objective(s).*
>
> *An organisation must comply with all of the above requirements for inclusion on the Register.*
>
> *The organisation should not be an excluded body and must operate within the State.*
>
> *The Registration Unit is satisfied that the Applicant is not an excluded body and operates in the State.*
>
> *The organisation must have a charitable purpose(s) and must pursue only the charitable purpose(s)*

In its application, the Applicant identified the following charitable objectives:
• The promotion of education; and
• The promotion of the arts, culture, heritage or sciences.

As two charitable purposes have been chosen, the Applicant must demonstrate how it will promote each of these charitable objectives and how each of them will benefit the public.

Promoting education
The Applicant's constitution contains a number of objectives which could in principle be said to promote education, in particular article 3.1(a), (c) and (e), which states that:

(a) To provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in practicing law through Irish or expertise in legal matters and the development of the Irish language…

(c) To provide ongoing education and training for members and others in relation to legal practice through Irish and legal and linguistic matters, specifically:
i. holding seminars, meetings, discussion or conference groups on a regular basis;

ii. organise lectures at those meetings;

iii. consulting with the Bar Council and the Law Society in relation to the recognition of these events for Continuing Professional Development (CPD) purposes;

iv. encouraging members and associate members of the Association to participate in these seminars, meetings, discussion groups and conferences regardless of seniority or where they are practising...

(e) Promoting and developing scholarship in relation to legal practice through Irish, law and the Irish language and law and linguistic issues and gathering and disseminating information to meet the needs of the Cumann's members.

The Applicant's application form stated that the activities carried out to promote education include seminars, lectures and other educational events. During the registration process, the Applicant provided programmes for the educational events that have been organised since it was founded. The Applicant provided a document entitled "Continuing Professional Development"('CPD') dated 12 March 2022, an event which had five speakers. Each of these speakers discussed one of the following topics:

Mental Disturbance & Court of Appeal
Ethics Lessons

Legal Costs
Sentencing Guidelines
Statute of Limitations
Workers - Working from Home

While this CPD event could be considered educational, there was lack of detail provided in the documentation to show how that event progressed education. Indeed, its title as a CPD event suggests that the members attending the event were benefiting from it in their professional capacity as legal advisers. This issue will be considered further in assessing whether or not the Applicant is furthering a charitable objective and that alone.

Other information provided by the Applicant to support his application includes the programme for an event held on 22 June 2021 and the programme for a conference on Irish Law held on 23 November 2021. The event on 22 June 2021 does not appear to have been for the purpose of furthering education. Instead, it appears to have been a book launch. In relation to the conference on Irish Law held on 23 November 2021, the programme included the following information:

This Conference will bring together legal practitioners who are practising in Irish and who are interested in the promotion of the Irish language. Therefore, in addition to having speakers giving an insight into legal practice in Irish, the event will give practitioners the opportunity to meet and build relationships with Irish-speaking practitioners at the bar.

The aim of the conference appears to have been to give members an insight into the practice of law in Irish and to provide an opportunity to foster relationships between Irish speakers at the bar. Little information was provided in relation to how that event furthered education.

While the Applicant in its Strategic Plan described a number of events across the country no specific information was given in relation to them. While the CPD event may be seen as having furthered education, the Applicant has provided little information about the format and content of events already held or events to be held in the future. Against this backdrop, the Registration Unit is of the opinion that the Applicant has not demonstrated how its activities would further education.

Promoting the arts, culture, heritage or sciences

Regarding the advancement of the arts, culture, heritage or sciences, the following are listed under the title "Aims and Objectives" in the Applicant's constitution:

- *To actively participate as a Society in public discussion and to promote reforms in relation to laws and practices regarding language issues, as deemed necessary by our Cumann.*
- *The Executive Committee may join Conradh na Gaeilge on behalf of the Cumann*

In its application form, the Applicant identified "Preserving historical or cultural traditions" and "Providing or supporting a learning society" as areas where it provides benefits. The Applicant stated in a letter dated 11 April 2022 to the Regulator:

In terms of public benefit, Irish is recognised under the Constitution as the national language and it is the first official language. It benefits the language itself and the community as a whole when the Irish language is accessible and developed in law-making, and among practitioners in the legal system and that resources would be available to support and build on the national objective of the Irish language as an official language.

The Applicant stated as follows in a letter dated 12 September 2022:

In terms of the promotion of culture one would imagine that the close link between our work and the promotion of the Irish language is quite clear.
The Applicant provided little information on which of its activities would advance the charitable objective of promoting the arts, culture, heritage or sciences and how those activities would further that charitable objective. In light of this, the Registration Unit is of the opinion that the Applicant has not demonstrated how its activities would advance the arts, culture, heritage or sciences.

The organisation promotes a charitable objective, and a charitable objective alone

As set out above, the Registration Unit is not satisfied that the Applicant has demonstrated that it furthers its charitable objective. However, in the interests of fullness and based on the understanding that the Applicant has been successful in demonstrating that it advances its stated charitable objective, the Registration Unit has assessed whether or not the Applicant advances these charitable objectives, and these charitable objectives alone.

The Applicant's main objectives focus on furthering the interests of its members, particularly as follows:

(a) Providing a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in law practice through Irish or expertise in legal matters and the Irish language.

(b) Promoting the welfare of the Cumann members...

(c) Providing ongoing education and training for members and others in relation to the practice of law through Irish and legal and language issues …

(d) Develop and promote scholarship in relation to practicing law through Irish, law and the Irish language and law and linguistic issues and to gather and disseminate information to meet the needs of the Cumann's members. [emphasised]

Having assessed the above, the specific activities previously outlined and the documentation provided during the registration process, the Applicant appears to be, in general, a membership organisation comprising legal professionals with competence in Irish, which promotes its members as Irish-speaking legal professionals. The organisation is a membership organisation with access limited to, mainly, those with legal qualifications (or others deemed by the organisation to be closely involved in legal and Irish language matters). The Applicant's aim appears to be that by joining the organisation, members would develop further expertise and skills which would benefit them in their professional capacity and they are given the opportunity of developing a working relationship with other legal practitioners.

The Registration Unit is of the opinion that the Applicant has not demonstrated that it promotes a charitable objective, and that alone, because it believes that the Applicant provides a professional network for its members, promoting its members as legal professionals with competence in Irish.

The charitable objective being promoted must be in the public interest.

In the interests of fullness, and based on the understanding that the Applicant furthers its stated charitable objective and that alone, the Unit evaluated whether or not those charitable purposes are in the public interest.

In accordance with section 3(2) of the Act, "An objective is not a charitable objective unless it is in the public interest". Section 3(3) states that:

Subject to subsection (4), a gift shall not, for the purposes of this Act, be in the public interest—
(a) If it is not intended to benefit the public or a section of the public and

(b) where it benefits a person other than in his or her capacity as a member of the public or a section of the public, if any such benefit is reasonable in all the circumstances and is not ancillary and necessary in promoting the public interest

In evaluating how the public benefits from the activities of any organisation, consideration is given to two things: the value created by the activity or activities; and who benefits from those activities and that value.

The Applicant provided very little detail on how its activities relating to its chosen charitable purposes are in the public interest. As outlined above, the Applicant stated in his correspondence of 11 April 2022 that: "It benefits the language itself and the community as a whole when the Irish language is accessible and developed in law-making and among practitioners in the legal system and that resources would be available to support and build on the national objective of the Irish language as an official language.'' In its application form, the Applicant indicated that the people who would benefit from its charitable activities were a defined part of the community that includes "An Pobal Gaeilge & Gaeltachta who loved our national language".

In assessing the public benefit, the Act also requires us to consider any private benefit or public benefit to any person other than in his or her capacity as a member of the public and whether such benefit is reasonable in all the circumstances and ancillary and necessary to the promotion of the public interest.

The Registration Unit is of the opinion that the Applicant's members benefit in private capacity. This opinion is consistent with the objectives of the Applicant's constitution, in particular article 3.1(a), (b), (c) and (e), which indicate that the Applicant's activities are focused on its members.

Members are likely to benefit privately from being members by developing further expertise and skills which will benefit them in their professional capacity, and through being given more opportunity to develop a working relationship with other legal practitioners.

For a private benefit to be allowed, it must be "reasonable in all circumstances and...ancillary and necessary to promote the public interest" In view of the lack of information provided by the Applicant in relation to how its activities provide a public benefit, the private benefit gained by its members cannot be said to be reasonable in all circumstances and ancillary and necessary to promote the public interest.

For the reasons outlined above, the Registration Unit is not satisfied that the Applicant is a charitable organisation.

NOTICE IS HEREBY GIVEN that it is the intention to recommend to the Authority that the application under section 39 made on behalf of Cumann Barra na Gaeilge be refused.

Before we make our recommendation to the Authority, if you are of the opinion that there is any legal error in the Notice or that it misrepresents any of the facts contained in your request, you may provide any further information supporting your application and/or correcting the error of law or misrepresentation by 5 p.m. on 26 April 2023.

Where Cumann Barra na Gaeilge, or its designated representative, opts not to provide any further information by the date referred to above, we will proceed with our recommendation to the Authority that the application for registration be refused.

68. Cormac Ó Dúlacháin SC responded to the Authority on behalf of the Appellant on 26 April 2023 as follows:

"I refer to your letter dated 28 March 2023.

We wish to make the following submissions in relation to your recommendation to the Authority that our application under Section 39 should be rejected.
I might point out first of all that we have repeatedly offered to go over to you and discuss any questions you may have had and give any clarifications required, but notwithstanding this you did not avail of the opportunity.

Your recommendation is based on the following points;
(a)That insufficient detail is provided to prove that we are promoting education.

(b)That insufficient detail is provided to demonstrate that our activities will contribute to charitable purposes in the arts, culture, heritage or science.

(c)That not enough detail is provided in relation to how these activities of ours which relate to the selected charitable objectives serve the public interest.

(d)That the members of An Cumann benefit in a private capacity in a way which is not rational in all circumstances or necessarily in the public interest.

We are surprised at the level of proof being sought in relation to the application, especially in view of the fact that no additional details were requested and that we submitted our first Annual Report and our Programme of Events for 2022-2023 to you.

Education:
In terms of our education activities details of the lectures that have taken place since October 2022 and a Conference we are holding on 1 & 2 June in Belgium are attached.

We are quite certain that there are many with an understanding of law and qualifications in law on The Regulator's team who could easily recognise the substance of the materials and their importance from their titles.

There are many institutions, involved in promoting professional education, registered with the Regulator, including;

- *Honorable Society of Kings Inns*

- *The Royal Institute of Architects in Ireland*
- *Society of Chartered Surveyors in Ireland*

Again if there is any lack of understanding or if further information is required we will gladly attend a meeting and give clarification.

Culture & Heritage
It is hard to believe that the Registration Unit is so far removed from the life and history of the State and the Nation that they fail to understand how central the Irish language is to the culture and heritage of the country.

Please find enclosed in this letter a copy of an essay by Fr. Tomás Ó Fiaich, The Language and Political History, published by the State in the book A View of The Irish Langauge, Ó Cuiv, 1969.

The Public Interest
The Unit appears to have completely ignored our reference to the State's 20 Year Strategy.
https://www.gov.ie/ga/eolas-polasaithe/an-straiteis-20-bliain-don-ghaeilge-2010-2030/

Our work is fully in line with and in support of the proposed aims, objectives and actions of the Strategy. The Charities Regulator has a duty to act in a way that recognises and supports the Strategy.

In addition, there are extensive obligations on many public bodies under the Official Languages Act 2003-2021, where language rights have been prescribed.
https://revisedacts.lawreform.ie/eli/2003/act/32/front/revised/en/html

It is impossible to indemnify these rights or to carry out these obligations if qualified lawyers, who can speak Irish, are not available.

In the case of the legal profession, it is vital that practitioners develop the skill, ability and competence required to provide a comprehensive legal service in Irish to the public, the State, the institutions of the State and the Courts.

From the first time the Irish language was suppressed it was achieved by removing the language from public life and from the legal scene. If the Irish language is to survive as a living language it is essential that the legal community has competence in Irish, so that it can provide all the relevant services.

The Cumann's work and vision is of paramount importance and it is consistent with state policy on the constitutional position of the language as set out in Article 8.

Personal Interest
The Unit relies on its analysis that we are not acting in the public interest in order to come to the conclusion that private benefit is not allowed. The decision in relation to the public interest issue is an error of law and a factual error.

The be-all and end-all of any educational activity is that it should benefit the individual who receives that education and that the public profits from having qualified people in its midst.

Finally

We regret that we've had such a difficult journey with The Regulator since we made the application almost two years ago, delays, indifference, lack of communication, constant reversion, failing to talk to us or organise a meeting with us, all of which suggests that we have been mistreated as a result of our application being in Irish.

In order to rectify the situation, we are willing to meet with the Unit and if the Unit's response does not change in our favour, we would like to be given the opportunity of presenting a live submission at a meeting of the Authority which will be dealing with any proposal."

69. The Authority acknowledged receipt of the communication by email on 27 April 2023, 10.17 hours.

NOTICE OF INTENTION TO RECOMMEND REFUSAL OF APPLICATION

70. On 18 May 2023 the Authority by means of Notice of Intention to Recommend Refusal of Application under section 39 of the Charities Act 2009 to be registered in the Register of Charities (the "Notice"), advised the Appellant that the Registration Unit intended to recommend to the Charities Regulatory Authority (the "Authority") that the Authority refuse Cumann Barra na Gaeilge's application for registration in the Register of Charites (the "Register") stating as follows:

"I am writing to you about your letter of 26 April 2023 (the "Reply") in response to the Notice of Intention to Refuse Your Application (the "Notice"), whereby you were informed that the Registration Unit intends to recommend to the Regulatory Authority (the "Authority") that the Authority reject the application made by Cumann Barra na Gaeilge for registration in the Register of Charities (the "Register").

Allegation of unfair treatment
In the letters dated 12 October 2021 and 19 August 2022 and in the Notice, it is alleged that the application from Cumann Barra na Gaeilge was ignored, that there have been delays, that there was a lack of communication and a refusal to meet in person and that all of this occurred because the application was

submitted in Irish. The Charities Regulator does not agree that the application was ignored or that there was a lack of communication with Cumann Barra na Gaeilge.

The detailed communication between the parties is evidence of this. While the Charities Regulator accepts that there have been delays in processing the application, these delays were not as a result of the application being in Irish. They were caused by resource issues in 2022, issues which affected all applicants and applications.

In relation to your offers that you would meet with the Charities Regulator to discuss your application, the application process for registration is a written procedure, the resources available to the Charities Regulator are limited and the Charities Regulator uses these resources in the most efficient way possible. The Charities Regulator meets with applicants in limited circumstances from time to time, for example where an applicant has a particular disability. Cumann Barra na Gaeilge was not treated differently in any way because the application was in Irish.

The Response

The Response states as follows:

We are amazed at the level of proof sought in relation to the application, particularly as no further details were sought and that we submitted Our First Annual Report and a Programme of Events for 2022-23 to you.

The information and details sought from Cumann Barra na Gaeilge during the registration process were required to determine whether Cumann Barra na Gaeilge could be entered in the Register. The level of detail sought was the same as those sought from all other applicants. It is expected that applicants will be able to demonstrate that they meet the requirements of the Act through the documentation and information submitted during the application process. In relation to the claim that we have not sought any further details since the submission of the Annual Report and Programme of Events 2022-23, it is important to note that these documents were provided on 1 December 2022 and 19 November 2022 respectively. No further information was sought as Cumann Barra na Gaeilge had already been given sufficient opportunities to provide relevant information to support its application and the Registration Unit did not require any clarification on the Annual Report and the Programme of Events for 2022-23.

Regarding the substantive grounds contained in the Notice, the Response gave no factual or legal basis for deviating from the proposed course of action. Therefore, the matter will proceed as indicated in the Notice."

THE DECISION

71. On 1 August 2023 the Authority confirmed the decision ("the Decision") by the Registrar of Charities to refuse recognition to the Appellant under section 39 of the Charities Act for inclusion in the Register of Charities. The grounds for refusing the application were that the Authority was not satisfied that the requirements for registration as an organisation as laid down in sections 2, 3 and 39 of the Act were being met. The letter stated as follows:

> *" Dear Chairperson / Director,*
>
> *I am writing to you in relation to the application from Cumann Barra na Gaeilge (the **"Applicant")** for registration in the Register of Charities (the **"Register")** pursuant to section 39 of the Charities Act 2009 (the **"Act")***
>
> *Having reviewed the applicant's request and all correspondence relating to it I wish to inform you that the Charities Regulatory Authority **(the "Authority**") has rejected the applicant's request for registration in the Register.*
>
> *The grounds for refusing the application are that the Authority is not satisfied that the requirements for registration as an organisation as laid down in sections 2, 3 and 39 of the Act are being met.*
>
> *In order to allow an organisation to be registered, the charity test and the requirements of the Act must be complied with, and the applicant must provide evidence showing that:*
>
> - *The organisation is not an excluded body, as defined in section 2(1) of the Act.*
> - *The organisation operates in the State.*
> - *The organisation has a charitable objective(s) and that it promotes that charitable purpose(s)and that only.*
> - *The charitable objective is in the public interest.*
> - *The organisation must state in its constitution that it is required to use all its property (realand personal) to promote its charitable purpose(s).*
>
> *The Authority Registration Unit issued a Notice of Intention to Refuse Your Application (the "**Notice**") to the Applicant dated 28 March 2023, which set out the reason why the Registration Unit was of the opinion that the applicant's application for entry to the Register should be refused.*
>
> *The Applicant was given an opportunity to respond to the Notice if it felt that there was an error of law in the Notice or that the Notice misrepresented any of the facts contained in the application. The Applicant responded to the Notice by*

*making a submission (the "**Submission**") on 26 April 2023. The Registration Unit responded to the Submission by letter dated 18 May 2023 (the "**Reply**").*

Please note that the decision by the Authority to refuse the Application is based on the application form, supporting documentation uploaded to our online portal, and the information widely available. The Authority considered the Notice, the Submission and the Response, in conjunction with the above information.

The organisation should not be an excluded body, as defined in section 2(1) of the Act

1. The Applicant is not an excluded body.

The organisation must operate in the State

2. The Applicant is established in the State and carries out activities in the State.

The organisation must have a charitable objective(s) and must promote that charitable objective(s)only

3. The Applicant has chosen the following charitable objectives:

- *The promotion of education; and*
- *The promotion of the arts, culture, heritage or sciences.*

4. As two charitable objectives have been chosen, the Applicant must demonstrate how it will promote each of these charitable objectives and how each of them will be in the public interest.

<u>Promoting education</u>

5. The Applicant's constitution contains a number of objectives which could in principle be said to promote education, in particular article 3.1(a), (c) and (e), which state as follows:

(a) To provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in practicing law through Irish or expertise in legal matters and the Irish language...

(c) To provide ongoing education and training for members and others in relation to the practice of law through Irish and legal and language issues specifically:

i. holding regular seminars, meetings, discussion or conference groups;
ii. organising lectures at these meetings;
iii. consulting with the Bar Council and the Law Society on the recognition of these for Continuing Professional Development (CPD) purposes;
iv. encouraging members and associated members to participate in these seminars, meetings, discussion groups and conferences regardless of seniority or where they are practising...

(e) Promote and develop a scholarship on the practice of law through Irish, the law and the Irish language and legal and language issues and gather and disseminate information to meet the needs of the Cumann's members.

6. The Applicant's application form stated that the activities carried out to promote education include seminars, lectures and other educational events. During the registration process, the Applicant was asked to provide information on how it would promote this charitable objective. In response, the Applicant provided the programme for the educational events it had organised since its foundation. The Applicant provided a document titled "Continuing Professional Development" ("CPD") dated 12 March 2022, an event which had five speakers. Each of these speakers discussed one of the following topics:

Nervous Disturbance & the Court of Appeal
Ethics Lessons
Legal Costs
Sentencing Guidelines
Statute of Limitations
Workers - Working from Home

7. While this CPD event could be considered educational, the documentation provided by the Applicant provides little detail. Indeed, its title as a CPD event suggests that members attending the event were benefiting from it in their professional capacity as legal advisers. This issue will be considered further in assessing whether the Applicant advances a charitable objective, and that alone.

8. Other information provided by the Applicant to support his application includes a programme for an event held on 22 June 2021 and a programme for a conference on Irish Law held on 23 November 2021. The event on 22 June 2021 does not appear to have been for the purpose of promoting education. Instead, it appears to have been a book launch. In relation to the Irish legal conference held on 23 November 2021, the programme included the following information:

This Conference will bring together legal practitioners who are practising in Irish and who are interested in the promotion of the Irish language. Therefore, as well as speakers giving an insight into the practice of law through Irish, the event will provide an opportunity for practitioners to meet and build relationships with Irish-speaking practitioners at the bar.

9. The purpose of the conference appears to have been to give members an insight into the practice of law through Irish and give members the opportunity to build relationships with Irish speakers at the bar.

10. While the Applicant, in its Strategic Plan, referred to a number of events around the country, no specific information was provided about them. While the CPD event may be considered to have advanced education, the Applicant provided

little information on the format and content of the events he has already held or will hold in the future.

11. The Submission is also lacking in information in relation to how the Applicant's events promote education. The submission cited:

"In terms of our educational activities, information in relation to the lectures that have taken place since October 2022 and a Conference we are holding on 1 & 2 June in Belgium are attached... if there is any lack of understanding or information, we will gladly attend a meeting and give clarification

12. Having considered the above information, the Authority is of the opinion that the Applicant has not demonstrated how its activities promote education in the public interest.

<u>Promoting the arts, culture, heritage or sciences</u>
13. Concerning the advancement of the arts, culture, heritage or sciences, the following are listed under the title "Aims and Objectives" in the Applicant's constitution:

(e) to participate actively as a Society in public discussion and put forward amendments to laws and practices in relation to language issues, as deemed necessary by the Cumann.

(f) The Executive Committee may join Conradh na Gaeilge on behalf of the Cumann.

14. In the application form, the Applicant identified "Preserving historical or cultural traditions" and "Providing or supporting a learning society" as areas where it provides benefits. The Applicant stated in the letter dated 11 April 2022 to the Regulator that:

With regard to public benefit, Irish is recognised under the Constitution as the national language and it is the first official language. It is in the interest of the language itself and the community as a whole that Irish would be available and developed in lawmaking, amongst practitioners in the legal system and that resources would be available to support and build on the national objective of the Irish as an official language.

15. The Applicant stated in a letter dated 12 September 2022 that:
In terms of the promotion of culture you would imagine that the close link between our work and the promotion of the Irish language would be quite clear.

16. The Applicant provided little information on which of its activities would advance the charitable objective of promoting the arts, culture, heritage or sciences and how those activities would further that charitable objective. In light

of this, the Applicant was informed in the Notice that the Registration Unit was of the opinion that the Applicant had not demonstrated how his activities would promote the arts, culture or the sciences.

17. The Submission did not provide any further details on how the Applicant would advance this charitable objective. Instead, it stated that: "It is hard to believe that the Registration Unit is so separate from the life and history of the State and Nation that they do not understand how central the Irish language is to the Culture and heritage of the country." A copy of an essay entitled "The Language and Political History" by Father Tomás Ó Fiaich was also provided.

18. The Applicant provided little information on which of its activities would advance the charitable objective of promoting the arts, culture, heritage or sciences and how those activities would advance that charitable objective. In light of this, the Authority is of the opinion that the Applicant has not demonstrated how its activities would promote the arts, culture, heritage or the sciences.

The organisation promotes a charitable objective, and that alone

19. The Authority is not satisfied that the Applicant has demonstrated that it advances its chosen charitable objectives. However, in the interests of fullness and based on the understanding that the Applicant has been successful in demonstrating that it promotes its charitable purposes, the Authority has assessed whether the Applicant promotes those charitable objectives only. In the Applicant's main objectives the promotion of the interests of its members is emphasised, in particular as follows:

(a) To provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in practicing law through Irish or expertise in legal issues and the Irish language.

(b) Promote the welfare of the Cumann's members…

(c) Provide ongoing education and training for members and others in relation to the practise of law through Irish and legal and language issues…

(e) Promote and develop scholarship in relation to the practice of law through Irish, law and Irish language and legal and language issues and gather and disseminate information to meet the needs of Cumann's members. [emphasised]

20. Following an assessment of the above, the specific actions previously outlined and the documentation provided during the registration process, the Applicant, in general, appears to be a membership organisation that is comprised of legal professionals with a competence in Irish, which promotes its members as legal professionals with Irish. The organisation is a membership organisation with

access largely limited to persons with legal qualifications (or to such other persons as the organisation deem to be closely concerned with legal and Irish language issues). The applicant's aim appears to be that by becoming members of the organisation, people develop more expertise and skills that will benefit them in their professional capacity and that they are given the opportunity of developing a working relationship with other legal practitioners.

21. The Authority is of the opinion that the Applicant has not demonstrated that it advances a charitable objective, and that alone, because the Applicant provides a professional network for its members, a network which promotes its members as legal professionals who have a knowledge of Irish.

<u>Public Benefit</u>
22. In the interests of fullness, and based on the understanding that the Applicant advances its stated charitable objectives, the Authority has assessed whether those charitable purposes are in the public interest or not. In accordance with section 3(2) of the Act, "An objective is not charitable unless it is in the public interest". Section 3(3) states that:

Subject to subsection (4), a gift shall not, for the purposes of this Act, be in the public interest—

(a) unless it is intended to benefit the public or a section of the public, and
(b) where it benefits a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all the circumstances and is ancillary and necessary in furthering the public interest.

23. In evaluating the public benefit of the activities of any organisation, consideration is given to two things: the value created by the activity or activities; and who benefits from these activities and that value.

24. The Applicant provided very little detail on how its activities relating to its chosen charitable objectives are in the public interest. As outlined above, the Applicant stated as follows in the correspondence dated 11 April 2022 : "It is in the interest of the language itself and the community as a whole that the Irish language would be available and developed in lawmaking, amongst practitioners in the legal system and that resources be available to support and build on the national objective of the Irish language as an official language". In his application form, the Applicant indicated that the persons who would benefit from its charitable activities were a defined part of the community comprising "The Irish language and & Gaeltacht community who love our native language".

25. In his Submission, the Applicant stated that: "The [Registrations] Unit appears to have completely ignored our reference to the 20 Year Strategy of the State". He also noted that: "The Charities Regulator is obliged to act in a manner that recognises and supports the Strategy". The Submission also provides a link to the Official Languages Act 2003. In addition, the Submission states that:

In the case of the legal profession, it is vital that the skill, ability and competence of practitioners is developed in order to provide a comprehensive law service in Irish to the public, the State, the institutions of the State and the Courts.

26. The Regulator disagrees with the applicant's position that the Official Languages Act 2003 and the 20 Year Strategy are relevant to the assessment of public interest and that they place a duty on the Authority in relation to its function in assessing whether or not an applicant is a charitable organisation under the Act. While these two documents are relevant to the Irish language, they do not apply in relation to the functions of the Charities Regulator in assessing whether or not an applicant complies with the requirements of the Act for entry to the Register. In order to meet the definition of a charitable organisation, the charitable objective must be in the public interest. An applicant must demonstrate that its activities will benefit the public, that is to say: demonstrate what the benefit is and who benefits from the activities. It is not enough to argue in general terms that the actions will bring public benefit. The Authority is not satisfied that the Applicant has demonstrated that its activities will benefit the public.

27. In assessing the public benefit, the Act also requires us to consider any private or public benefit that arises for any person other than in his or her capacity as a member of the public and whether or not that benefit is reasonable in all the circumstances and ancillary and necessary to promote the public interest.

28. With regard to private benefit, the Submission cited as follows:
The [Registrations] Unit relies on its analysis that we are not acting in the public interest in coming to the conclusion that private benefit is not permitted. The decision in relation to the public interest is an error of law and fact.
The be-all and end-all of all educational activity is that it benefits the individual receiving the education and that the public benefits from having qualified people in their midst.

29. The Authority disagrees with the above assumption. The assessment of private benefit is carried out separately from the assessment of whether there is a public benefit. This is provided for in section 3(3) of the Act, where it states:

Subject to subsection (4), a gift shall not be in the public interest if—

(a)unless it is intended to benefit the public or a section of the public, and
(b) where it benefits a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all the circumstances and is ancillary and necessary in furthering the public interest.

30. There may be a prima facie public benefit, which is not accepted because of the amount of private benefit gained. Likewise, there may be no prima facie public benefit nor can a person gain any private benefit other than in his or her capacity as a member of the public. While all educational activity may benefit the person receiving such an education and thus benefit the public in general, the type

of educational activities which apply in theapplicant's case are primarily aimed at a limited number of members who holdprofessional qualifications and are already working as legal practitioners.

31. The Regulator is of the opinion that the applicant's members benefit privately and that this benefit is not limited to members benefiting immediately from education, as indicated in the Submission. This opinion is consistent with the objectives contained in the Applicant's constitution, in particular Article 3.1(a), (b), (c) and (e), which indicate that all of the applicant's activities are directed towards the members in their professional capacity. Members are likely to benefit privately from membership by developing further expertise and skills that will benefit them in their profession, and from being given more opportunity of developing working relationships with other legal practitioners.

32. For a private benefit to be allowed, it must be "reasonable in all the circumstances and... ancillary and necessary in furthering the public interest." Given the lack of information provided by the Applicant on how his activities would bring public benefit, it cannot be said that the private benefit enjoyed by its members is reasonable in all the circumstances and ancillary and necessary in furthering the public interest.

33. For the reasons set out, the Authority is not satisfied that the organisation is a charitable organisation within the meaning of the Act.

YOU ARE HEREBY NOTIFIED that the Authority is refusing the application made by Cumann Barra na Gaeilge for the reasons set out above pursuant to section 39(8) of the Act.

Please note that under section 45(1) of the Charities Act 2009, Cumann Barra na Gaeilge is entitled to appeal to the Charities Appeals Tribunal against the decision of the Authority to refuse its application. The Charity Appeals Tribunal must receive an appeal not later than 21 days of this Refusal Decision being served, or such longer period as the Charities Appeals Tribunal may determine. Please note that the Charities Appeals Tribunal is separate from the Charities Regulator and is independent of the Charities Regulator.

To submit an appeal to the Charities Appeals Tribunal, you must download the required form from the Charity Appeals Tribunal website at the following link: https://www.gov.ie/en/organisation-information/672545-charity-appeals-tribunal/ . Once the form is completed, you must send it by email to catsecretariat@drcd.gov.ie or by return of post to the following address: Secretariat of the Charities Appeals Tribunal, Trinity Point, 10/11 Leinster Street South, Dublin 2, D02EF85.

Details of the statutory appeals process, including a link to the Charities Appeals Tribunal (Charities Act 2009) Rules 2018 – Statutory Instrument No. 209 of 2018 – can be found on the homepage of the Charities Appeals Tribunal, which is

available at https://www.gov.ie/en/organisation-information/672545-charity-appeals-tribunal/ ."

72. In the Decision reference is made to the Appellant having chosen the following Charitable objectives:

- The promotion of education; and
- The promotion of the arts, culture, heritage or sciences

and the requirement that the Appellant demonstrate how it would promote each of the charitable objectives and how each of them would be in the public interest.

73. Promoting education - The Decision noted that the Applicant's constitution contained a number of objectives which could in principle be said to promote education, in particular article 3.1(a), (c) and (e), which state as follows:

> *"(a) To provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in practicing law through Irish or expertise in legal matters and the Irish language...*
> *(c) To provide ongoing education and training for members and others in relation to the practice of law through Irish and legal and language issues specifically:*
>
> > *i. holding regular seminars, meetings, discussion or conference groups;*
> > *ii. organising lectures at these meetings;*
> > *iii. consulting with the Bar Council and the Law Society on the recognition of these for Continuing Professional Development (CPD) purposes;*
> > *iv. encouraging members and associated members to participate in these seminars, meetings, discussion groups and conferences regardless of seniority or where they are practising...*
>
> *(e) Promote and develop a scholarship on the practice of law through Irish, the law and the Irish language and legal and language issues and gather and disseminate information to meet the needs of the Cumann's members."*

74. The Decision recorded that the Applicant's application form stated that the activities were carried out to promote education include seminars, lectures and other educational events. The Decision recorded that during the registration process, the Appellant was asked to provide information on how it would promote this charitable objective and that in response, the Appellant provided the programme for the educational events it had organised since its foundation. The Decision further recorded that the Appellant provided a document titled "Continuing Professional Development" ("CPD") dated 12 March 2022, an event which had five speakers, and detailed the topics discussed.

75. The Decision Recorded that while this CPD event could be considered educational, the documentation provided by the Appellant, in the view of the Authority, provided little detail and suggested that its title as a CPD event suggested that members attending the event were benefiting from it in their professional capacity as legal advisers. The Decision recorded that this issue would be considered further in assessing whether the Applicant advanced a charitable objective, and that alone.

76. The Decision also recorded that further information provided by the Appellant to support the application included a programme for an event held on 22 June 2021 and a programme for a conference on Irish Law held on 23 November 2021. The Decision recorded that in the opinion of the Authority the event on 22 June 2021 did not appear to have been for the purpose of promoting education and that instead, it appeared to have been a book launch. In relation to the Irish legal conference held on 23 November 2021, the Decision recorded that the conference programme included the following information:

> *"This Conference will bring together legal practitioners who are practising in Irish and who are interested in the promotion of the Irish language. Therefore, as well as speakers giving an insight into the practice of law through Irish, the event will provide an opportunity for practitioners to meet and build relationships with Irish-speaking practitioners at the bar."*

The Decision recorded that the purpose of the conference appeared to have been to give members an insight into the practice of law through Irish and give members the opportunity to build relationships with Irish speakers at the bar.

77. The Decision recorded that while the Applicant, in its Strategic Plan, referred to a number of events around the country, no specific information was provided about them and that while the CPD event may be considered to have advanced education, the Appellant provided little information on the format and content of the events he has already held or would hold in the future.

78. The Decision also recorded that in the view of the Authority the Submission was also lacking in information in relation to how the Appellant's events promoted education. The submission cited:

> *"In terms of our educational activities, information in relation to the lectures that have taken place since October 2022 and a Conference we are holding on 1 & 2 June in Belgium are attached... if there is any lack of understanding or information, we will gladly attend a meeting and give clarification."*

The Authority, most unfortunately, never responded to the offer of the Appellant to meet to discuss the application.

79. The Decision recorded that having considered the above information, the Authority formed the opinion that the Appellant had not demonstrated how its activities

promoted education in the public interest. The Tribunal would not be of the same opinion as the Authority.

80. Promoting the arts, culture, heritage or sciences - Concerning the advancement of the arts, culture, heritage or sciences, the Decision recorded that the following were listed under the title "Aims and Objectives" in the Applicant's constitution:

> *"(e) to participate actively as a Society in public discussion and put forward amendments to laws and practices in relation to language issues, as deemed necessary by the Cumann.*
>
> *(f) The Executive Committee may join Conradh na Gaeilge on behalf of the Cumann."*

81. The Decision recorded that in the application form, the Appellant identified "*Preserving historical or cultural traditions*" and *"Providing or supporting a learning society"* as areas where it provided benefits. The Decision recorded that the Appellant stated in the letter dated 11 April 2022 to the Regulator that:

> *With regard to public benefit, Irish is recognised under the Constitution as the national language and it is the first official language. The language itself and the community as a whole benefits when the Irish language is available and is being developed in law-making, among legal practitioners, in the legal system and when resources are made available to support and promote the national objective of the Irish language as an official language."*

82. The Decision recorded that the Appellant stated in a letter dated 12 September 2022 that:

> *" In terms of the promotion of culture one would assume that the close link between our work and the promotion of the Irish language is quite clear."*

The Decision recorded that in view the Authority the Appellant had provided little information on which of its activities would advance the charitable objective of promoting the arts, culture, heritage or sciences and how those activities would further that charitable objective. The Decision recorded that in light of this, the Appellant was informed in the Notice that the Registration Unit was of the opinion that the Applicant had not demonstrated how his activities would promote the arts, culture or the sciences. The Tribunal would not be of the same opinion as the Authority.

83. The Decision recorded that the Submission did not provide any further details on how the Applicant would advance this charitable objective. The Decision recorded that instead, the Appellant stated that:

"It is hard to believe that the Registration Unit is so separate from the life and history of the State and Nation that they do not understand how central the Irish language is to the Culture and heritage of the country."

The Decision recorded that a copy of an essay entitled "The Language and Political History" by Father Tomás Ó Fiaich was also provided.

84. The Decision recorded that in the view of the Authority the Appellant provided little information on which of its activities would advance the charitable objective of promoting the arts, culture, heritage or sciences and how those activities would advance that charitable objective. The decision recorded that in light of this, the Authority formed the opinion that the Applicant has not demonstrated how its activities would promote the arts, culture, heritage or the sciences. The Tribunal would not be at the same opinion as the Authority.

85. The Decision recorded that the Authority was not satisfied that the Appellant has demonstrated that it advances its chosen charitable objectives. The Decision recorded that in the interests of fullness and based on the understanding that the Applicant has been successful in demonstrating that it promotes its charitable purposes, the Authority had assessed whether the Applicant promotes those charitable objectives only. The Decision recorded that in the Applicant's main objectives the promotion of the interests of its members was emphasised, in particular as follows:

"(a) To provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in practicing law through Irish or expertise in legal issues and the Irish language.

(b) Promote the welfare of the Cumann's members…

(c) Provide ongoing education and training for members and others in relation to the practise of law through Irish and legal and language issues…

(e) Promote and develop scholarship in relation to the practice of law through Irish, law and Irish language and legal and language issues and gather and disseminate information to meet the needs of Cumann's members."

86. The Decision recorded that following an assessment of the above, the specific actions previously outlined and the documentation provided during the registration process, the Authority formed the view that the Appellant, in general, appeared to be a membership organisation that is comprised of legal professionals with a competence in Irish, which promotes its members as legal professionals with Irish. The Decision recorded that in the view of the Authority the organisation was a membership organisation with access largely limited to persons with legal qualifications (or to such other persons as the organisation deem to be closely concerned with legal and Irish language issues).

87. The Decision recorded that the Appellant's aim appeared to be that by becoming members of the organisation, people develop more expertise and skills that will benefit them in their professional capacity and that they are given the opportunity of developing a working relationship with other legal practitioners.

88. The Decision recorded that the Authority had formed the opinion that the Applicant has not demonstrated that it advanced a charitable objective, and that alone, because the Applicant provides a professional network for its members, a network which promotes its members as legal professionals who have a knowledge of Irish. The Tribunal would not be of the same opinion as the Authority.

89. Public Benefit - The Decision recorded that in the interests of fullness, and based on the understanding that the Appellant advanced its stated charitable objectives, the Authority had assessed whether those charitable purposes were in the public interest or not. In accordance with section 3(2) of the Act,

> *"An objective is not charitable unless it is in the public interest".*

90. The Decision recorded that Section 3(3) states that:

> *"Subject to subsection (4), a gift shall not, for the purposes of this Act, be in the public interest—*
> *(a) unless it is intended to benefit the public or a section of the public, and*
> *(b) where it benefits a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all the circumstances and is ancillary and necessary in furthering the public interest."*

91. The Decision recorded that in evaluating the public benefit of the activities of any organisation, consideration is given to two things: the value created by the activity or activities; and who benefits from these activities and that value. The Decision recorded that in the view of the Authority, the Appellant had provided very little detail on how its activities relating to its chosen charitable objectives were in the public interest. The Decision recorded that the Appellant had stated as follows in the correspondence dated 11 April 2022:

> *"The language itself and the community as a whole benefits when the Irish language is available and is being developed in law-making, among legal practitioners, in the legal system and when resources are made available to support and promote the national objective of the Irish language as an official language."*

92. The Decision recorded that in the Appellant's application form, the Appellant indicated that the persons who would benefit from its charitable activities were a defined part of the community comprising:

> *"The Irish language and & Gaeltacht community who love our native language".*

93. The Decision recorded that in its Submission the Appellant stated that:

> *"The [Registrations] Unit appears to have completely ignored our reference to the 20 Year Strategy of the State"*

and that:

> *"The Charities Regulator is obliged to act in a manner that recognises and supports the Strategy"*

and that the Submission also provided a link to the Official Languages Act 2003.

94. The Decision also recorded that in addition, the Submission stated that:

> *"In the case of the legal profession, it is vital that the skill, ability and competence of practitioners is developed in order to provide a comprehensive law service in Irish to the public, the State, the institutions of the State and the Courts."*

95. The Decision recorded that the Regulator disagreed with the Appellant's position that the Official Languages Act 2003 and the 20 Year Strategy were relevant to the assessment of public interest and that they placed a duty on the Authority in relation to its function in assessing whether or not an applicant is a charitable organisation under the Act. The Decision recorded the view of the Authority that while these two documents are relevant to the Irish language, they do not apply in relation to the functions of the Charities Regulator in assessing whether or not an applicant complies with the requirements of the Act for entry to the Register.

96. The Decision recorded that in order to meet the definition of a charitable organisation, the charitable objective must be in the public interest and that an applicant must demonstrate that its activities will benefit the public, that is to say: demonstrate what the benefit is and who benefits from the activities. The Decision recorded that it was not enough to argue in general terms that the actions will bring public benefit. The Decision recorded that the Authority was not satisfied that the Appellant had demonstrated that its activities would benefit the public. The Decision recorded that in assessing the public benefit, the Act also requires the Authority to consider any private or public benefit that arises for any person other than in his or her capacity as a member of the public and whether or not that benefit is reasonable in all the circumstances and ancillary and necessary to promote the public interest.

97. The Decision recorded that with regard to private benefit, the Submission cited as follows:

> *"The [Registrations] Unit relies on its analysis that we are not acting in the public interest in coming to the conclusion that private benefit is not permitted. The decision in relation to the public interest is an error of law and fact.*

The be-all and end-all of all educational activity is that it benefits the individual receiving the education and that the public benefits from having qualified people in their midst."

The decision recorded that the Authority disagreed with the above assumption on the basis that the assessment of private benefit is carried out separately from the assessment of whether there is a public benefit, this being provided for in section 3(3) of the Act, where it states:

"Subject to subsection (4), a gift shall not be in the public interest if—
(a) unless it is intended to benefit the public or a section of the public, and
(b) where it benefits a person other than in his or her capacity as a member of the public or a section of the public, any such benefit is reasonable in all the circumstances and is ancillary and necessary in furthering the public interest."

98. The Decision recorded that there may be a prima facie public benefit, which was not accepted because of the amount of private benefit gained. The Decision recorded that likewise, there may be no prima facie public benefit, nor can a person gain any private benefit other than in his or her capacity as a member of the public. The Decision recorded that while all educational activity may benefit the person receiving such an education and thus benefit the public in general, the type of educational activities which apply in the Appellant's case are primarily aimed at a limited number of members who hold professional qualifications and are already working as legal practitioners.

99. The Decision recorded that the Regulator was of the opinion that the Appellant's members benefit privately and that this benefit was not limited to members benefiting immediately from education, as indicated in the Submission. The Decision recorded that this opinion was consistent with the objectives contained in the Appellant's constitution, in particular Article 3.1(a), (b), (c) and (e), which indicated that all of the applicant's activities are directed towards the members in their professional capacity. The Decision recorded that members were likely to benefit privately from membership by developing further expertise and skills that will benefit them in their profession, and from being given more opportunity of developing working relationships with other legal practitioners.

100. The Decision recorded that for a private benefit to be allowed, it must be "*reasonable in all the circumstances and... ancillary and necessary in furthering the public interest*." The Decision recorded that given the lack of information provided by the Appellant on how it's activities would bring public benefit, it cannot be said that the private benefit enjoyed by its members was reasonable in all the circumstances and ancillary and necessary in furthering the public interest.

101. The Decision recorded that for the reasons set out, the Authority was not satisfied that the organisation was a charitable organisation within the meaning of the Act.

102. The Decision notified the Appellant that the Authority was refusing the application made by the Appellant, (Cumann Barra na Gaeilge) for the reasons set out above pursuant to section 39(8) of the Act.

103. The Authority requested the Appellant to note that under section 45(1) of the Charities Act 2009, Cumann Barra na Gaeilge was entitled to appeal to the Charities Appeals Tribunal against the decision of the Authority to refuse its application and that the Charity Appeals Tribunal must receive an appeal not later than 21 days of the Refusal Decision being served, or such longer period as the Charities Appeals Tribunal may determine.

THE APPELLANT'S APPEAL

104. The Appellant filed a Notice of Appeal to the Tribunal on 21 August 2023. The Notice of Appeal give contact details for Cormac Ó Dúlacháin SC (Chair) and Proinsias Ó Maolchalain BL (Secretary). The Form identified Ruadhán Mac Aodháin of Prospect Law 10 Prospect Road, Dublin, D09 HR88 as the Representative of the Appellant.

105. The Appellant identified the Grounds of Appeal as follows:

> *"We submitted the first registration application on the 21st of May 2021 and we then sought clarification on the 28th of May, 16th of June, 7th of July and on the 22 and 23 of July 2021, as to the length of time it would take to process the application.*
>
> *As our application was not acknowledged, we rang the Office of the Regulator on the 22nd of July 2021, there was no one available to discuss the issue through the medium of Irish. We received a telephone call from Sara Hanna on the 23rd of July to apologise and Sara requested us to amend the Constitution. We received a letter from Peter McDermott on the 26th of August 2021 in which he recommended that clause 4.6, 4.9 and articles 13-15 of the Constitution be amended and to bring the list of trustees up to date, together with their signatures and postal address. We discussed the matter on the 9th of September 2021.*
>
> *We inquired whether a decision had been reached on the 4th of October 2021 and we received a letter from the Regulator on the 19th of October 2021, which confirmed that the Application had progressed to phase 2, it was estimated that this process would take 4-6 weeks.*
>
> *We received correspondence from the Regulator on the 16th of November 2021 which included 8 questions, did we operate outside of the State as we welcomed membership from solicitors from the Bar of Northern Ireland, it also included questions about property/land, further information about the strategic plan when seeking business, lack of signature on the Conflict-of-Interest Policy, to amend the reference to Article 18 of the Constitution and to confirm the number of trustees.*

We discussed those questions and we sent on our submission on the 2nd of December 2021.

We received correspondence from the Regulator on the 13th of January 2022 which requested details whether we had land or property due to having an address and further information was also requested regarding the strategic plan and the business plan.

We submitted copies of our Strategic Plan and of our Financial Plan on the 31st of January 2022 and we dealt with the question of property, explaining that we had neither land nor property but permission to use the address of the Law Library and the use of a room from time to time on a discretionary basis.

We received a letter from the Regulator on the 8th of February 2022, in which we were requested to put "Yes" as an answer to the question whether we had property (that is the post address!) and due to the passage of time, we were requested to update the Trustees details. We did so the following day, the 9th of February 2022.

We received a letter from the Regulator on the 22nd of March 2022 which questioned the public benefit of the Association's business. We submitted our answer on the 11th of April 2022. We queried the delay in progressing the Application on the 31st of May 2022 and on the 30th of June 2022.

We received a letter on the 19th of August 2022 which queried in detail how the education activities were to be progressed. We submitted our answer on the 11th of September 2022.

We forwarded additional information to the Regulator on the 19th of November regarding the 2022/2023 programme of activities together with a copy of the Association's first Annual Report on the 1st of December 2022.

On the 28th of March 2023, 22 months after submitting the first application, we received a letter which stated the intention to refuse the application and the reasons for the refusal were outlined in the letter. We forwarded our answer to that letter on the 26th of April 2023 and we received confirmation on the 18th of May 2023 that the Regulator agreed with the recommendation to refuse permission.

The Association advised the Regulator on several occasions that it was willing to meet with the Office of the Regulator to discuss and clarify any cause for concern or misunderstanding.
The Office of the Regulator did not accept any of those invitations.

Four specific questions are referred to in the appealed decision, the two charity objectives and does it entail one charity objective and the public benefit.

The Association's charity objectives of education, heritage and culture are bound together and of the same characteristic as the public benefit.

Re: Promoting Education – Paragraph 5-12 of the letter dated the 1st of August 2023

Sufficient details were given about the educational activities to determine the quality of the educational attributes and merits and to establish the Association's educational approach. Full description was given about the subject, the speakers, and the chairpersons.

Such evidence speaks for itself and to anyone with the slightest understanding of educational matters and of life in general. It is very clear that the Association has and is promoting education.

Lecture Programme	
23 November 2021	*The Distillery,* *Conference - "Irish and the Legal Practice"* *Programme attached*
12 March 2022	*Ráth Chairn, County Meath* *Aoife McNickle BL - "Lessons in Ethics"* *Cormac Breatnach - "Legal Costs"* *Siobhán Ní Chúlacháin BL - "Guidelines for Imposing* *Sentences"* *Martin Canny BL - "Statute of Limitations"* *Clíona Kimber SC - "Workers working from Home"*
1 July 2022	*The Distillery, Dublin 7* *Chairperson - Judge Conor Dignam* *Micheál Ó Scannail SC & Catherine Dunne BL* *"Nervous Shock - Update after Sheehan."*
28 September 2022	*The Distillery, Dublin 7* *Chairperson - Judge Margeurite Bolger* *Clíona Kimber SC - "Negotiation"* *Proinsias Ó Maolchalann BL - "The Duty to Provide Reasons"* *Aoife McNickle - "Discussion of 4 Terms from the EY Report - The Bar Council".*
29 November 2022	*The Distillery, Dublin 7*

	Chairperson - Judge Cian Ferriter *Stephen Brittain BL - "The Case of the European Super League v UEFA"*
11 March 2023	*Ráth Chairn, County Meath* *John Freeman BL - "Rule of the Cab Rank during the French Revolution"* *Fionnuala Ní Dhúgáin BL - "The Law of Bees in the Middle Ages"* *Eamon Galligan SC - "The Planning and Development Bill* *2022" Elizabeth Kirwan BL - "The Accent and the Law"* *Feidhmil Mac Róibín, Solicitor - "The only Cure for Love is Cohabitation"*
1/2 June 2023	*Leuven, Belgium* *(Two Day Programme Attached)*
30 June 2023	*The Distillery, Dublin 7* *Dáithí Mac Cárthaigh BL - "The Irish Language in Law 1998-2023 - 25 Years in Development"*

The activities which took place in the (sic) *The Distillery were also broadcasted on line.*

Clarification is given in 3.1.(c) of the Constitution that it is the objective of the Association to provide education and training to other people apart from members of the Association.

Four members of the Committee attended a half day podcast with Raidió Cois Life on the 15th of June 2023 and it is intended to provide podcasts for the public in the future and to rebroadcast the Association's lectures on Raidió Cois Life.

On foot of an invitation from Rannóg an Aistriúcháin, two members of the Association gave lectures in the Houses of the Oireachtas in March and in June 2023 and the lectures are to repeated on the Oireachtas Channel.

The Association works hand in hand with Gael-Linn and King's Inns to organise mock trials and oration competitions for law students.

The letter dated the 1st of August, Paragraph 8 refers to a book launch on the 22nd of June 2021. In fact, it was the official launch of the Association, which involved several speakers and the book launch was part of that. It is absurd that the letter writer places so little importance on the educational aspect of publishing legal

texts and in this case it was a specific academic text - The Irish Language in Law, Dáithí Mac Cárthaigh BL, Leabhar Breac.

It is self-explanatory that this is of benefit to the public and that a vast range of lectures will be provided to legal practitioners through the medium of Irish to enable them to provide legal services through the medium of Irish.

To promote Art, Culture and Heritage Objectives – Paragraphs 13-18

Promoting Irish through heritage and culture is the objective of the State.

It is the key objective of the Association 3.1.(a), to develop the Irish language through the medium of activities in the areas of law and the legal profession. It is to that purpose that other objectives are discussed in 3.1.(b)-(e). Objective 3. (1)(f) refers to actively participating as an Association in public discussions and to promote amendments to the law and practice around the language, in other words the development and the promotion of the Irish language. In Objective 3. (1)(g), emphasis is placed again on Irish activities through participation in the activities of Conradh na Gaeilge, an organization that is registered with the Regulator under RCN20003869.

It is evident from the range of educational activities set out above that they run in tandem
with the promotion of the Irish Language.

On top of that, the Joint Committee on the Irish Language, the Houses of the Oireachtas, asked the Association to make a submission about amendments concerning Údarás na Gaeltachta legislation, which we did.

The Association deals with the Translation Section (Rannóg an Aistriúcháin) in the Houses of the Oireachtas on a regular basis about the translation of certain Acts with wide ranging importance and a decision has been reached to prepare a concise dictionary for legal practitioners which is already provided to TDs and senators.

The Association is participating in discussions with Conradh na Gaeilge and with FLAC concerning the development of a unit which provides legal advice free of charge through the medium of Irish.

The Association is working with Conradh na Gaeilge to launch a campaign "Déan d'Uacht i nGaeilge" (Make your Will in Irish), this initiative was postponed in 2023 and will now be launched in 2024.

A delegation from the Association visited the offices of the Irish Language Unit (Aonad na Gaeilge), Directorate-General for Multilingualism, the Court of Justice of the European Union in Luxembourg on the 22nd of March.

The importance of the 20 Year Strategy for the Irish Language 2010-230 – Government of Ireland and the Official Languages Act 2003 was brought to the attention of Office of the Regulator and the number of public bodies that come under the auspices of the Act was also pointed out and a copy of an essay by Father Tomás Ó Fiach, former Professor of Irish from Maynooth University and a Former Cardinal – 'The Language and Political History", was also sent.

It is abundantly clear yet again that the development of the Irish language amongst the legal profession and institutions, e.g., the Courts, and the ability to work through the medium of Irish in these areas reflects the country's cultural and heritage objective.

As much as the Office of Regulator is of the opinion that insufficient details were provided highlights the Office of the Regulator's lack of understanding rather than lack of clarification. We are not dealing with a foreign government body!

Re: The promotion of one charity objective - Paragraph 19-21

The Association complies with the regulation that charitable benefit only is involved as far as no personal benefit is gained which can be construed as inferior or secondary to the objective involved, as highlighted in the case of the Royal College of Surgeons of England [1952] AC 631.

It must be recognised that vast number of people are qualified for membership of the Association, solicitors both north and south and it involves approximately 3,5000 (sic) *solicitors and around 8,000 solicitors from company membership both north and south. Furthermore, legal practitioners, legal lecturers, and legal students from overseas are accepted as members of the Association.*

Membership costs €25 and is free to barristers in years 1-3 and to students.

The Association cannot be compared to a professional institution that is involved itself in the protection or regulation of its members. Membership does not grant certain rights, privileges nor benefits. Membership of the Association is not necessary for either occupational or promotional gain.

Neither education or informed practice can be made available without them being in some way beneficial to the member, but having said that, the benefit comes second to promoting the main objective of Association. The opportunity to promote education is unavoidable, and education is based on charity in this case, the preservation and the promotion of the Irish Language as the living language of the country.

Re: Public Benefit – Paragraph 22-32

There is a basic error in the Regulator's analysis. It is evident that they are not aware of the educational or heritage objective and that it fails to recognise the benefit to the public in promoting the Irish Language through the work of the Association. It is our opinion that the analysis in Paragraph 30-31 is totally confusing and does not convey any understanding as to the status of the Irish Language when the activities go hand in hand in strengthening that language. Over-emphasis is placed on what is perceived to be a private benefit when what it really means is providing legal practitioners with the necessary tools and information to bring the Irish Language into the public domain after centuries of being disqualified and excluded from public life."

THE APPEAL HEARING BEFORE THE TRIBUNAL

106. The hearing of the Appeal took place at O'Connell House, D'Olier Street, Dublin 1 on 15 May and 16 May 2024.

REPRESENATION AT THE APPEAL HEARING

107. Appearing on behalf of the Appellant were:

Ruadhan Mac Aodhain	(Solicitor - Prospect Law)
Cormac Ó Dúlacháin SC	(Chairperson - Cumann Barra na Gaeilge)
Proinsias Ó Maolchalain BL	(Secretary - Cumann Barra na Gaeilge)
Daithi Mac Carthaigh BL	(Treasurer - Cumann Barra na Gaeilge)

108. Appearing behalf of the Authority were:

Alan Fitzgerald	(Legal Advisor, Charities Regulator)
Brian Gageby BL	(Counsel for the Authority)
Barry Donovan BL	(Devil to Mr Gageby BL)

109. The hearing proceeded with the proceedings being conducted in both Irish and English, with simultaneous translation from Irish to English.

SUBMISSIONS ON BEHALF OF THE APPELLANT

110. Cormac Ó Dúlacháin SC outlined that it was the understanding of the Appellant the provisions in question were the provisions of section 3 (1), and the requirement that charity objectives would benefit the community. He referred to subsection 11 which gave examples. He said that the things emphasised by the Appellant in their application were education and the advancement of heritage/culture. He submitted that the promotion of Irish would be of benefit to the community, that coming from the language in the Irish Constitution, the status of the language in the Irish Constitution,

the likelihood that in any country the advancement of language would be the benefit of the community. He suggested that it would be odd if Académie Française had a different opinion.

111. He said that the understanding of the Appellant, according to the Appellant's constitution, was did they benefit the community and also benefit private members. He submitted that he did not think that there would be any doubt but that the Appellant was fulfilling educational requirements. He also submitted he did not think that there was an issue about Irish being promoted as beneficial to the community. He said an issue was that when one went to the Aims of the Appellant where they directed to the benefit of the community or the benefit of the membership. He referred to the constitution of the Appellant. He submitted that every organisation had membership but there was a difference between an organisation which existed to serve the requirements of the membership and an organisation that had "*broader efforts*". He submitted there was nothing in the Appellant's constitution that said they were established solely to benefit members.

112. He submitted that they were not there to make representations on behalf the membership/advance their interests. In that sense they were not a professional organisation, unlike the Bar Council, CPA or similar organisations. He said that what was an issue was that the organisation was there to give opportunities to the membership, and provide services to members to fulfil those aims. They had no function in presenting awards to members. The Appellant had no function in legislation. He indicated that the first aim was to provide a forum for barristers and solicitors who had a particular interest in the Irish language and in the development of the language.

113. He referred to the increase in the number of Irish speaking judges in the Irish over the years and in the European Court of Human Rights. He referred to connections with the translation service and translators in the houses of the Oireachtas, the European Commission and the European Court of Justice. He identified the reason for people coming together as to develop the linkage between Irish and the Law and develop it, suggesting that there was nothing in that aim or objective that was not of benefit to the community. He referred to historical difficulty in advancing legislation through Irish, the dearth of publications in Irish, notwithstanding what he described as an explosion in the number of statutory instruments. He said that anything which required the law to be advanced using Irish was very difficult. He said one of the aims of the Appellant was to make the challenge easier, and to give people an opportunity to discuss all aspects of law in Irish.

114. He gave an example of a recent seminar with Conradh na Gaeilge in relation to making wills in Irish. He referred to the difficulty of a lack of available precedents for making wills in Irish. He referred to the service of a solicitor preparing a will as being a service provided to the client and society/the community. He pointed out that if there was no service available, the community could not prepare a will. He referenced the work in this area.

115. He referred to the fact that one could not make an application to the Workplace Relations Commission in Irish. He pointed out that everything was in English including the digital access. One could submit a letter and email, self drafted, in Irish, but not officially. He referenced problems with the Mental Health Commission and the support service and the Assisted Decision Making Service, pointing out that in the new system is not possible to do the power of attorney in Irish. The foregoing he said, listed some of the type of problems, practical problems, associated with the use of Irish as an official language. He said the aim of the Appellant was to develop skills and experience through the use of Irish and in legal and linguistic matters, with a view to a service in Irish being provided. He also referred to other lesser used languages and recognition from the European Commission, the Council of Europe and the European Union.

116. He submitted that while the membership of the Appellant consisted of lawyers, attendance at events organised by the Appellant alone or with others, was open to anyone with an interest in the law and Irish. He referenced the example of invitations sent to court registrars. He submitted that there was no element of training or education that was not serving the community. He referenced a wide variety of topics addressed at events organised by the Appellant. He referenced the development of a new site, achtanna.ie, that the houses of the Oireachtas launched a few weeks previously, which he said was better than the Irish statute book System. He referred to moot courts and competitions for students. He referred to an active connection with Conradh na Gaeilge in relation to the provision of a free legal aid unit to supply assistance and advice in Irish, and to contacts with the Free Legal Aid Society. He submitted that although there were professional organisations that were directed towards the benefits for their own members, the Appellant's efforts were for the benefit of the community. He submitted that while members might derive a personal benefit that was an axillary that would happen with any organisation working in the education sector.

QUESTIONS FROM THE TRIBUNAL MEMBERS.

117. Tribunal Member Miss Carol Fawsitt referred to 7 iterations of the application form and the consistency throughout as to the statement of the aim of the Appellant, in relation to public benefit:

> "*to increase the use of Irish and all aspects of the legal world and facilitate the use of Irish official business and personal matters*".

She said that taking that and looking at the Appellant's constitution and the aims and objectives of the constitution she had a difficulty and asked if the Appellant could have put into the constitution what had been stated as the aim of the organisation, the advancement of the use of the language, the Irish language, as the principal object.

118. Mr Ó Dúlacháin SC responded saying that the constitution had not been drafted with a view to making an application for charitable status. He confirmed that the Appellant had no difficulty in amending the constitution to put in a basic aim as outlined and

agreed that it would be "*clearer and better if it was there, as bare as that and as clear is that*".

119. Miss Fawsitt pointed out that that was the consistent public benefit iterated throughout the application in terms of what the Appellant was aiming to achieve and trying to do.

120. Mr Ó Dúlacháin SC said that that was the theme when the Appellant was founded. He referred to 500/600 public bodies now required to give Irish language accommodation and pointed out that while it was easy to put such a requirement into an act, if such organisations do not have the ability and if there were no people available to fulfil the obligation, it was "*just raising the flag rather than acting*". He said the aim of the Appellant was to strengthen the ability of the legal community to provide appropriate services.

121. In response to a further question from Miss Fawsitt as to whether the Appellant had ever spoken to anybody in the Regulator's office, Mr Ó Dúlacháin SC said that they had had "*a game of ping-pong for a couple of years*". He referred to correspondence from the Appellant to the Regulator making an offer to "*walk down the Liffey side, walk into the office and discuss the matter*", but said that that opportunity "*didn't present itself*". He confirmed they had never met with anybody from the Regulator's office.

122. Miss Fawsitt enquired what benefit the Appellant would receive as a result of the grant of charitable status and Mr Ó Dúlacháin SC confirmed it would enable the Appellant to receive grants in excess of €10,000.00. He said that in order to receive grants from bodies such as Foras na Gaeilge, Údaras na Gaeilge and other such agencies, effectively, one had to have charitable status. They had received one grant of €7,500.00 but without charitable status would be precluded from making further application for a period of three years.

123. Tribunal member Miss Karen Horgan enquired as to the Appellant's view as to the preferred outcome to the appeal and Mr Ó Dúlacháin SC confirmed the preferred outcome would be a successful appeal against the refusal.

124. Tribunal member Mr Bill Holohan SC referred to the lack of any reference by the Appellant to Article 25 (4) (6) of Bunreacht na hÉireann (The Irish Constitution) and the provision that the Irish version was to prevail over the English version. Proinsias Ó Maolchalain BL said that he proposed to respond to that issue.

125. Tribunal Chair, Mr Patrick O'Connor, enquired if the Appellant had anything to say in relation to the reasons given by the Regulator for refusal of registration, apart from the submissions already made.

126. Mr Ó Dúlacháin SC said he did not know if Mr Gageby BL was taking issue with the educational aspect. He suggested that it was not for the Regulator to investigate the curriculum syllabus being used, as long as it was clear that it had an academic or educational topic. He suggested that there was an educational aspect whenever people came together to discuss matters. He said this is clear from the information provided.

Referencing the book launch referred to by the Regulator, he described this as part of the academic life of the country and every organisation or University, to write and publish on the topic of law and to advance and promote it. He said the central part of development of education was books and magazines and the provision of information on websites, so the Appellant did not fully understand the analysis which had been done.

127. Referring to the question of a strategic plan, he referenced the size and resources of the Appellant saying there was a difference between a society that began at a low-level and for example "*the wealthy Law Society of 200 years*". He said the basic question was whether the plan showed work that had to be done.

128. He referenced the conference which was held in Louvain in Belgium and the conference programme which showed that there was a broad spectrum of speakers and topics over a day and a half in the Irish College in Louvain. He said the Appellant did not understand why the Regulator's analysis was so negative.

129. As to the question of heritage and culture, he submitted that things were "*self recognisable*". He said the Appellant did not think that it would be necessary to lay that out to a public organisation in Ireland, and that the Regulator would have that understanding. He said the Appellant would disagree with the view of the Regulator that there was only a private benefit (to members). He said that the Appellant did not offer any status or right to the members. He pointed out that the Appellant had no attachment to business and did not make submissions in relation to matters that do not pertain to the Appellant.

130. Mr Connor, Chair, enquired if there are any other Irish language organisations providing a similar type of service to the public, for example the translation of laws or the presentation of seminars for lawyers or preparation of documents.

131. Mr Ó Dúlacháin SC said there had been some previous attempts, which had not stood the test of time and referred in particular to the efforts of a Cork solicitor Leachlain Ó Catháin. He referred to the fact that the Bar Council was willing to provide facilities and support to the Appellant, in terms of meeting rooms, printing of documentation, arranging events, arranging media coverage et cetera through a specialist unit of the Bar Council. This he said was a key element of establishing a sustainable model and support system. He confirmed that there was also connection with the Law Society of Ireland who circulated information to their Clár na Gaeilge. He also referred to connection with and support from the Kings Inns and the Law Society School of Law. He referred to a forthcoming conference to take place in Gweedore County Donegal in September 2024, when 2 District Court Judges and other legal practitioners would present. He referred to a seminar planned for the Irish College in Paris France in May 2025. All proceedings will be conducted in Irish.

132. Tribunal Chair Mr Patrick O'Connor referred to historical professional examinations in Irish that had to be completed by legal practitioners before qualification.

133. Mr Daithi Mac Carthaigh BL indicated that he would speak to that. He said that he was somewhat of a rarity in that one third to one quarter of his work was done through the medium of Irish. In the Kings Inns he was working as a coordinator in academic legal law, the Kings Inns providing three higher diplomas, one in linguistic law and in legal translation, to address and meet the demands of the European Union. He also said that there was a comprehensive course in relation to the practice of law through Irish. Practitioners are trained in how to present a case in Irish. He also referenced a similar course in the Law Society. He referred to elective modules and training for trainee solicitors and barristers in the Law Society and in the Kings Inns. He said students were eligible for membership of the Appellant. He said the current members of the Appellant had a view to expanding membership and younger members who would carry on over the years.

134. He referred also to the fact that there are a number of people in legal practice who would have very good Irish but who were not comfortable discussing legal matters in Irish. The aim was to enable them to feel comfortable in doing so. He referred to the attendance of the Language Commissioner and students at courses and events. He suggested that far from the members of the Appellant seeking personal benefit, they were seeking to enable as many people as possible to conduct legal business in Irish, that being to the benefit of the community. He referenced the drafting of legislation in both Irish and English as being a rarity, pointing out that dual drafting would be of benefit to the community and the public at large.

135. He also referenced members of the public who would like to come into the Irish language community in order to improve their Irish and might also have an interest in law and politics and then these people are also welcome to events.

136. In response to a question from the Tribunal Chair Mr Connor, as to funding, Mr Ó Dúlacháin SC confirmed membership fees stood at €25.00, with current funds being made up the membership fees which was quite limited. He said that events, conferences and seminars were run at €25.00 or a little more if refreshments were provided but were generally on a cost neutral basis. He said the Bar Council provided a post box, email infrastructure, meeting rooms et cetera so there was no expenditure in that sense. He said one grant had been received from Foras Na Gaeilge in the sum of €7,500.00 which had been used to host and promote a number of events.

137. In response to a question from the Tribunal Chair Mr Connor as to the benefit of registration as a charity, Mr Ó Dúlacháin SC said it would open the door to further funding from Foras Na Gaeilge under the Colmcille Fund for linkages between organisations, bodies, communities between Ireland and Scotland. He said they also had had contact with the Language Commissioner in Wales and that they intended to build on those connections. He said funding from Foras Na Gaeilge might also enable them to employ the services of a part-time administrator and further connections with the Law Society, the Judicial Council and a new post of Irish Language Services recently established in the Courts Service.

138. In response to a question from Tribunal Member Miss Carol Fawsitt as to whether the Appellant would be prepared to amend its constitution to provide for the aims as set out in the Appellant's Application i.e. if the Appellant's objective was expressed as the advancement and promotion of the use of Irish and legal affairs, academic, business et cetera, Mr Ó Dúlacháin SC said that the main objective had never been stated as such as it was taken as a given, but he anticipated the Appellant would have no difficulty in promoting an amendment to clearly and unequivocally reflect the essence of what was the purpose of and what were the aims of the Appellant.

RESUMED HEARING FOLLOWING LUNCH

139. Following a lunch break, the hearing resumed, and the Tribunal Chair Mr O'Connor enquired of the Appellant if there is anything further to be said. Mr Ó Dúlacháin SC said that there were a few points of law. Proinsias Ó Maolchalain BL said that they had certain books of authorities and copies were circulated. He referred to the fact that the if one wished to conduct a case in Irish, one of the problems that a person would face would be that the registrar or the judge might not have fluent Irish. He referred to the fact that in the Superior Courts, one is not entitled to have an Irish language jury, fluent in Irish. He pointed out the Rules Of Court might not be available through the medium of Irish. He pointed out that not all Acts were available in Irish. He pointed out that statutory instruments were not available in Irish. He said that as a result it was no surprise that even people fluent in Irish might then conduct their legal business in English and this asymmetry was compromising the constitutional status of the language.

140. Mr Ó Maolchalain BL referred to a judgement of Supreme Court Justice Kennedy in 1934 when he stated that under Article 4:

> "*None of the organs of the State, legislative or executive or judicial, may derogate from the pre-eminent status of the Irish language as the national language of the State without offending against the constitutional provision of Article 4*".

He referred to the judgement of Supreme Court justice Hardiman in Cole v Fahy (2001) when he said the State had a duty to issue laws in both official languages in keeping with Article 8.

141. Tribunal Chair Mr Patrick Connor pointed out that it could be taken as read that the members of the Tribunal were familiar with the law and the Constitution.

142. Mr Ó Maolchalain BL said the final thing that he would say on the subject of difficulties regarding laws through the medium of Irish would be to refer to the words of Supreme Court Justice Hardiman when he said:

> *"Thinking of the status of the Irish language, I think those who wish to use the language are fully entitled to do so and for every facility that it is necessary to do it insofar as there are facilities available, for those who use the second official language, English ".*

This he said, illustrated the attitude of the courts to the status of Irish and more specifically in his opinion that there was a benefit to the community emanating from the events of the Appellant.

143. Referring to the question of the benefit of the community, and the examples given in subsection 11 of section 3, and the question of the advancement and promotion of the arts and culture, Mr Ó Maolchalain BL referred to encouraging people to be participants. He referred to the decision in Incorporated Council of Law Reporting of England and Wales v Attorney General. He said the company had been established for the purpose of preparation and publication, at a modest cost, of the reports and judicial decisions of the superior and appellate courts in England. He said everyone present would be familiar with what the Council did, particularly in era when there was no Internet access to judgements. At page 85 paragraph (e) of that judgement Judge Russell said:

> *"It cannot be doubted that dissemination by publication of accurate copies of statutory enactments is beneficial to that unity as a whole".*

144. He went on to quote extensively from the judgement of Judge Russell who also said that:

> *"The fact that to perhaps the majority of those who acquire and study a copy of, for example, a Finance Act, it costs you what might be described as a tool of trades or professions or avocations, in no way lessens the benefit to the community that results if accurate versions of that Finance Act are published and not kept like a cat in the bag to be let out haphazard".*

145. He went on to say that judge Russell also said the same

> *"is to be said of the other source of law, judicial decisions, and the reason, therefore especially in the light of our system of precedent. It is in my view just as beneficial to the community that reliable reports of judicial decisions of importance in the applicability of the law, the varying but probably recurring circumstances or demonstrating development of the law should be published and all the more so if the publication be supervised by those who by training are best qualified to present the essence of the decision correctly and to distinguish the… and significance".*

146. He further quoted judge Russell on page 87 (A):

> *"It seems to me that the publication of reliable reports and decisions of the courts is for the benefit of the community and in general utility in the charitable sense, it is an inevitable and, indeed, necessary step in the achievement of that benefit that the members of the legal profession are supplied with the tools of their trade. I do not see how the benefit of the public, assuming it is to be a charitable object, could otherwise be achieved".*

147. This he said made a distinction between the benefit of the community and ancillary but necessary features of the law. He referred to the judgement continuing on the following page (G):

> *"In a case, such as the present, the object cannot be thought otherwise than beneficial to the community and of general public utility".*

148. Continuing with the judgement of Judge Sacks at page 91 and the question of admission of intrinsic evidence as to the construction of charter or memorandum he said it was significant that the judgement stated:

> *"The courts look at the substance of what has been effected".*

and

> *"It is yet plain that the course adopted by the Courts in many cases that they are entitled to and do look at the circumstances in which the institution came into existence and at the sphere in which it operates to enable a conclusion to be reached on whether its purposes are charitable."*

149. The judgement, he said, went on to further discussion of the connection between law and education and on page 92 (G) read:

> *"Against that background I turn to the question whether the Council's purposes are educational. It would be odd indeed and contrary to the trend of judicial decisions if the institutional maintenance of the library for the study of a learn it subject or something rightly called a science did not at least fall within the phrase advancement of education, whatever be the age of those frequenting it".*

150. He said that judge Sacks accepted the promotion of education was part of it. He said that it is interesting to note what judge Sacks said on the same page 94 when he said:

> *"I reject the mentions that the user of law or force by the legal profession fees of itself results in the purpose of a council not being charitable and thus return to the question of whether they are charitable on the footing that their substantially exclusive purpose is to further the study of law in the way already discussed".*

151. He continued, referring to the judgement on page 95:

> *"The first question to be considered in relation to the wider test is whether the advancement of the administration of law in its broad sense, which would include the elucidation proper in application of that law is something beneficial to the community".*

152. He said looking at this, it was clear that was beneficial to the community. He submitted that a satisfactory administration of law practice depended on them having a proper system of law recording, it could be said that the whole community benefited from the purposes of the Council. Even if the benefits were confined to those making judicial decisions and members the legal profession advising clients and litigants, this was a sufficiently large section who derived benefit. He submitted that it was clear that there was a benefit to the community even when lawyers were getting a benefit at an ancillary level. He contrasted the work of other specialist legal bodies and societies, where there will be a particular focus of study in a particular area of law or legal practice, from the work of the Appellant, which is concerned with the practice of law, through Irish. This he submitted meant that members of the Appellant when participating in events were driving a relatively low professional benefit in comparison with other societies. This he said was a significant factor.

153. In response to a question from the Tribunal Chair Mr Patrick O'Connor it was confirmed that the Council of Law Reporting in Ireland was also registered as a charity and that the Kings Inns was a registered charity.

RESPONSE FROM THE REGULATOR

154. Having confirmed that there was nothing further to be heard from the Appellant, the Tribunal Chair Mr Patrick O'Connor enquired of Mr Gageby BL if he had any questions and Mr Gageby BL confirmed he did not, but he confirmed he did have legal submissions. He said he had three issues he wished to address. The first would be some comments on the Act. The second matter was some of the case law. He said that the reason that was important is that the case law sets out in a number of different cases the criteria to be applied to member organisations whether or not they are to be caught by the definition of a charity. That he said was important because clearly Cumann Barra is a membership organisation and the Courts have looked at what the relevant factors are to be looked at when one is analysing whether a member organisation is a charity or not. He said that he would take the Tribunal through those and the principles he would say are relevant to that case law. And then the third thing he wanted to do is just apply the law as set out in the Act and the principles set out in the case law to the facts of this case.

155. He said he accepted from the outset what Mr Ó Dúlacháin says when he says there probably would not be much contention on the issues of whether or not there was an educational purpose or a cultural or heritage purpose and he wanted to make that clear at the start because it is and was the decision of the Charities Regulatory Authority that those criteria were not met and he said that he wanted to be clear that was not something he was "pressing" and what he hoped to make clear at the end was that the point he wanted to press is that as a membership organisation designed and set up for the benefit of its members, it simply cannot be a charity as the case law and the legislation provides. So, he said he was not "*hanging* (his) *hat*" on the failure to convince the Charities Regulator that they were caught under the education banner or caught under the cultural and heritage banner.

156. He said that he would suggest to the Tribunal it need not spend an inordinate amount of time on those two primary issues.

157. In response to a question from the Tribunal Chair Mr Patrick O'Connor Mr Gageby BL confirmed he was not pressing the issue in relation to the cultural benefit.

158. He said he wished referred to the interpretation section of the Act, section two, which defined a charitable organisation:

> *"Charitable Organisation means a body corporate or an unincorporated body of persons that promotes charitable purpose only".*

He said that "only" was an important word there because if one had multiple purposes, commercial for example, you cannot be a charity. He submitted that if you are a company, a commercial company like Tesco or wherever else, and you have various philanthropic arms or various philanthropic parts to your business, maybe you provide food for schools or whatever it might be, you are clearly not caught by the definition because your main objective is commercial and the fact that you have other objectives, be they charitable, means you are not caught by the legislation. So, he said, that was the first thing to note. That it must be a charitable purpose only.

159. He said that one must then note that charitable purpose was to be construed in accordance with section 3 and similarly public benefit was to be construed in accordance with section 3. He referred to the various sub sections, one of which is education, one of which is public benefit and under sub section 3 it provided:

> *"A gift shall not be of public benefit unless it is intended to benefit the public or section of the public and in the case where it confirms benefit on a person other than in his or her capacity as a member of the public of a section of the public, any such benefit is reasonable in all the circumstances. And is ancillary to and necessary to the furtherance of the public benefit."*

160. He submitted that this was *"really important in this case"* because the question of benefits being ancillary was important. What that really meant, he said, was there are unseen benefits or undesigned benefits. They were not to be intended to benefit the members. He submitted that there may be some ancillary benefits that they may get from being involved in the organisation, maybe there was networking, maybe they meet people, maybe they pick up work as an ancillary benefit, but it's not the design, it's not the aim of the association. He said that the legislation tries to balance what are the primary purposes of a charity and whether or not it's for the benefit of members or whether that benefit is ancillary to its true purpose.

161. He submitted that when we use the word "benefit", that does not necessarily mean "pecuniary benefit", that it can mean other types of benefit as well. He said that obviously there was no suggestion here that in the case of the Appellant it's a pecuniary benefit but there was a clear suggestion in the terms of reference in the constitution

that there are benefits intended for the members and he said that he would go through those in more detail. So, he said that there were two main issues there, charitable purpose only. If it has a got a dual purpose and there are other benefits and there are benefits to members, they have to be ancillary.

162. He said that there were two core issues in this particular case. In relation to the case law, he said that he would try to do is summarise it as best he could rather than taking the Tribunal through it in any detail. He said there were a number of cases which deal with the question of membership organisations and whether or not they are caught by the definition of charity. He said that he could see that some of the language was the same and that he submitted was obviously because the Irish legislation derives ultimately from both case law and legislation in the UK. He said that one would not be surprised to hear that many of these cases arise because of the tax implications of charitable status.

163. He said that the first case to which he would refer was the Commissioner of Inland Revenue v. City of Glasgow Police Athletic Association where the court was looking at whether or not the charity should properly be considered a charity or not and subject to the benefit of certain income tax restrictions under the legislation in the UK. City of Glasgow Police Athletic Association involved what was effectively a sporting organisation that was related to the Glasgow Police force where members of the police force could join the association and with various sporting pursuits, rugby, football, fishing, badminton, mystery bus tours, whist drives - all those type of things. He said that the argument that was raised in the Court was whether or not this organisation was there for the benefit of its members purely or whether it had a more public benefit.

164. He said that one of the features of the cases when one went through them was that the Courts look to the rules and the constitution of the organisations, and they determine what their objects are and that was the first place they look. The court would look for a general purpose or a public purpose or whether they were there for the benefit of their members. This he said was the one thing one would see repeated in the cases as one went through them.

165. He said that in this particular case, the object of the association was to encourage and promote all forms of athletics sport and general pastimes and one would see on the front page at rule eight, ordinary membership was restricted to officers and ex-officers of the City of Glasgow Police Force. He said that then in the course of the judgment, and one would see that at page four of the judgment, that there was an element of consideration of the public benefit that such as the association would have and at the last paragraph on page four, the Court says,

> *"it would be unjust to respond to an association to represent it as having no purpose beyond the recreation and amusement of the individual subscribers constituting its membership".*

166. He said that there were various discussions about esprit de corps and all the rest in the police force, the importance of maintaining fitness and all the rest. He said that in order

to ascertain what the purposes of an association are, the Court is not limited to consideration of its rules or its constituent documents. He said that they are very important and it would be difficult for an association to say that something declared in its rules to be its object was not one of its purposes, he said that he would place some emphasis on that, but it was quite in order for the association to prove by parole evidence that it had other purposes other than set down in the rules. There was evidence before them which entitled them to find, that among its purposes, were the encouragement of recruiting, improvement of the efficiency of the force and the public advantage. This was a purpose which the special commissioners were entitled to hold in law to be a public, charitable purpose. But there remained the non-charitable purpose of providing recreation to the members. The question was whether this non-charitable purpose is incidental to the public charitable purpose. If not, it cannot be said that the association was a body established for a charitable purpose only. This was not a matter of the motive of the members of the association or of the high police officials who took part in furthering the association, though there was a natural probability that their motives agree with the purpose of the association.

167. The question, he said, was what are the purposes for which the association is established, as shown by the rules, it's activities and its relation to the police force and the public? And what the respondents had to show in the circumstances of the case was that solely and objectively the association was established for public purpose and that the private benefits to members were the unsought consequences of the pursuit of the public purpose and can therefore be disregarded as incidental. He said that he would place some emphasis on that.

168. "Unsought consequences" was what's meant by ancillary purposes there. The judge said:

> *"That is a view which I cannot take. The private benefits to members are essential. The recreation of the members is an end in itself, and without its attainment the public purpose would never come into view. If the result of establishing an association had been that the members had, instead of being interested, found themselves involved in wearisome and lifeless activities, their efficiency would have suffered. The membership would have fallen off and there would have been public detriment instead of public benefit. The primary disadvantage of members is a purpose for which the association is established and therefore cannot be said that this is an association established for a public charitable purpose only."*

169. He said that what the Court did there was it looked at the benefits, it said that there were clear benefits to the members, there was a public purpose and a public benefit, and they highlighted that. But, he submitted, they said the overall objective was clear and that was to benefit the members of the association. Ultimately the appeal was lost. He said that in that judgment, one would see that there was reference to another case called Yorkshire Agricultural Society's Case from 1928 and that dealt with some of the same principles. And again, he said, one would see that the Yorkshire Agricultural Society was a society formed in 1837 and its primary object was the object of the holding of an annual show, the exhibition of livestock, poultry, farm produce,

horticultural produce, also machinery, implements, tools, appliances, utensils, the improvement of livestock, poultry, implements, machinery and appliances in connection with agriculture. There were a number of other provisions in respect of agricultural education and promoting agriculture generally and those involved in agriculture.

170. He said that, importantly, in this case there were a number of privileges which attached to members of the association and what the court had to do was look at those privileges and determine whether they were incidental to the true purpose of the organisation or were they not. He said that on page 614, the Court sets out the privileges that attached to members. These were effectively that they would be provided with free access to the annual show, cheaper tickets in the stand, various reductions in terms of costs of manures and foodstuffs, a free copy of the Journal every year, free admission to the Hound Show, free admission to the Horticultural Exhibition. He said that what the Court did then, as can be seen on page 615 at the third paragraph,

> *"in pursuits of the objects of the society, the show has been held annually since its foundation for the exhibition of livestock, dairy produce, garden produce, implements, et cetera. Lectures and demonstrations on dairying subjects, bee-keeping and other matters of interest to the agricultural community were given at the show. Competitors were held in butter-making, poultry-trussing and horse-shoeing".*

171. He said that what the Crown argued was that the society was actually established for the benefit of its members and not for the benefit of agriculture generally. He said that the Court rejected that argument. The lead judgment is by Lord Justice Aiken, and he referred to page 631. He said that in this case the Court determined that the ancillary benefits were truly ancillary to the main purpose of the organisation, which was education and education around agriculture. Lord Justice Aiken said:

> *"First of all, it is said this society was in fact formed for the purpose of giving benefit to its members. It is nothing but a club for the mutual advantage of the members of the club. If that were so, I agree that the claim of the society would fail. But because it could not be said that the society was established for a charitable purpose and because it certainly could not be said that it was established for a charitable purpose only."*

172. Mr Gageby BL said the court was clear there that if the society was set up for the benefit of its members it could not be established as being for charitable purpose only.

> *"There can be no doubt that a society formed for the purposes merely of benefitting its own members, though it may be to the public advantage that its members should be benefitted by being educated or having their aesthetic tastes improved or whatever the object may be, it would not be for a charitable purpose. And if it were a substantial part of the object that it should benefit its members, I should think that it would not be established for a charitable purpose only. But, on the other hand, if the benefit given to its members is only given to them, they*

need to give encouragement in carrying out the main purpose which is a charitable purpose, then I think the mere fact that the members are benefitted in the course of promoting the charitable purpose would not prevent the society being established for charitable purposes only. That I imagine to be the case."

173. This, Mr Gageby BL said would give you an indication of the kind of case where the Courts have said, well, actually these are incidental, the object is clear and when one looks at the object clauses in these cases, so in this particular case, the Yorkshire Agricultural Society, it's absolutely clear from the objects, which he had set out in detail in the Act

"That for the advancement of education, holding of an annual show, improvement of livestock, the demonstration of method and processes connected with furthering the interests of agriculture, agricultural education, scientific research and experimental work, watching and revising legislation".

174. So, he said there was not a mention of membership, not a mention of advancing the interests of the members, nothing like that. It was purely about public education and for that reason when the Court looked at the objects clause, the Court said, they had analysed the objects clause, they knew there were some benefits to the members, but they were incidental because the main object of the organisation was public education.

175. The next case Mr Gageby BL referred to was the case of the Incorporated Council of Law Reporting of England and Wales v Attorney General that had been referred to previously. He said that he wanted to refer to certain other aspects of it which he would say were important. He said that the Tribunal had heard that this was a case about the Law Reporting Association in the UK which was effectively set up to provide law reports at a moderate price to be made publicly available. Ultimately, the Court had said that was a clear charitable purpose for that association.

176. Referring to page 75, he said that an analysis by the Court of the objects of the Association led them to determine from that, that its clear purpose was a public purpose. He said that at the bottom of page 75, the memorandum of association was set out and,

"that provides the preparation and publication in a convenient way form, at a moderate price and that the gratuitous professional control of reports of judicial decisions of the Superior and Appellate Courts in England. The issue periodically of any occasion of any -- or other publications relating to legal subjects to may be considered expedient combined with the publication of such reports, clearly the Statutes of the Realm or any part thereof if deemed expedient and the continuation of the series of reports called the Law Reports".

and

"the doing of all lawful things as are incidental or conducive to the attainment of the above objects".

177. He said that what the Court did in that case was that it looked at the objects of the association and it said they are clearly there for the public benefit, they are clearly of educational value, and again, when one looks at the objects again there was no reference to the members there. He said that he thought that in terms of any recoupments in that case, they were not to be distributed by way of profits or anything else. He submitted that the Crown argued in that case a number of fairly complicated arguments, but one of them was that effectively this was to the benefit of the lawyers, that it was a small group or community. He submitted that they also in fact argued that the Judges were expected to know all the law and therefore it did not need to be brought to their attention. He said that that was fairly swiftly rejected by the Court.

178. Mr Gageby BL said that if one just looks at the relevant part of the judgment, and he acknowledged that counsel for the Appellant had referred to this, but he wanted to place a somewhat different emphasis on it and goes to page 94 of the judgment, at the second paragraph, Lord Justice Saxon in a majority judgment to Lord Russell, said,

"For these reasons I reject the contentions that the user of the Law Reports by the legal profession for earning fees of itself results in the purposes of the council not being charitable and must return to the question of whether they are charitable on the footing that their substantially exclusive purpose is to further the study of the law in the way already discussed".

179. Mr Gageby BL said that one had to look at what the Court was doing. He said it was looking at the objects of the association and asking what its exclusive purpose is. He said that its exclusive purpose was that it was there to provide moderately priced law reports which were available to the public, effectively. And so, they could say, "*well actually that's really what it's about*". It was not about enriching lawyers or anybody else. When one looked at the purpose of the organisation, one can decide quite clearly that it's only and exclusive purpose was charitable. And again, that he said, brings us back to the Act in this case which is charitable purpose only.

180. Mr Gageby BL said that the last case to which he would refer to was a New Zealand case from the New Zealand equivalent of the Tribunal. This he said was the case of the New Zealand Credit and Finance Institute Incorporated and that related to an association which had its general purposes as establishing an organisation for those persons engaged in the field of credit and finance and to promote professional unity in the education and professional advancement of persons working in the field of credit and finance. The decision of the New Zealand Regulator at the time was that,

"while the rules do contain charitable purpose in advancing education, they also contain non-charitable purposes. That when put alongside the actual activities of the society can be considered to be something more than just ancillary or incidental to the charitable purpose".

181. Mr Gageby BL said that what one has in all these cases was, putting the best foot forward in this case, Cumann Barra, had, he thought, to identify a dual purpose. He said that if you look at these cases and you look at Cumann Barra you would probably say that there was clearly an education element to it. There may, he said, clearly be a cultural and heritage element to it because of the promotion of Irish, which is a language which has obviously struggled and needs support and protection "*and all the rest*". But, he said, there are other purposes involved and the Tribunal would have to decide whether or not those benefits that accrue to the individuals are ancillary or not under the legislation.

182. Mr Gageby BL said that one could see then in this case that the issue that the Tribunal had to consider, was whether the applicant was established and maintained exclusively for charitable purposes, and that was the wording of their legislation, as required by the New Zealand legislation. He said that one would see that in that case, under section five of the Charities Act, to be established and maintained exclusively for charitable purposes, all of the applicant's purposes must be charitable in nature where the non-charitable purposes must be ancillary to the charitable purpose. This he said was *"not terribly dissimilar" to* our domestic legislation. He said that one could see in the New Zealand Commission's Analysis at 3.1, they set out the objects:

> *"To provide and maintain an organisation of those persons engaged in the field of credit and finance and to promote professional unity in those such persons engaged in the field of credit and finance and to promote cooperation and mutual assistance between them".*

and 3.3;

> *"To promote the education, whether general or specific and professional advancement of persons with a view to assisting them in becoming proficient in the field of credit and finance".*

This he said was "*not terribly dissimilar to this case that you have before you today*".

183. Mr Gageby BL said that at object 3.1, the Analysis provides that the intent of object 3.1 - that's the providing and maintaining the organisation through relevant persons -

> *"would establish and maintain a professional body for persons working in the field of credit and finance. This purpose relates to the members of the applicant. The applicant is to be established to confer benefits on its members. And again, obviously, we are not talking about pecuniary benefits here either. The commission considered whether the activities conferring these benefits could also be considered to confer public benefits by encouraging appropriate standards of practice and knowledge among members of the credit and finance profession. The commission is of the view that any benefits flowing from the establishment of the applicant will necessarily and largely be for the private benefit of the applicants' members.*

Conferring a private benefit is only consistent with charitable purpose where any private benefits are necessarily incidental to a public benefit. The Courts have held that an organisation that exists primarily to advance the interests of its members cannot be said to be charitable. Because it confers private benefit even where the carrying out of its objects also result in benefit to the community",

and again, they refer to the Inland Revenue Commissioners v Yorkshire Agricultural Society. He said that similar findings were made in respect of the other provisions.

184. Mr Gageby BL submitted that what emerges when one goes through these cases is that there are a number of principles that emerge. He said that he would say that there were four principles that emerge from the case law. The first is, when you are looking at these cases, you have to look at them on a case-by-case basis. There were no hard and fast rules as to whether or not the legislation is met. The Tribunal must look the facts of this case, look at all the documentation and make a decision based on the facts of this particular case.

185. The second issue that he would say that emerges from the case law, is that the foundational documents of the organisation are, by any stretch, important. They are not the only things, and the Tribunal can consider other evidence, but they are important documents because that is the association setting out its objectives in its own words. He said that Mr Ó Dúlacháin said something which he thought was very indicative of that where he said, well we didn't write the constitution with a view to apply to become a charity. And that he said was absolutely fair enough, they didn't, of course. But in his respectful submission, where they have set out their own aims and objectives, some weight should be placed on what they are. He said that he would come back to that.

186. The third principle that emerges from the case law, he said, is that if the organisation is set up for the benefit of its members it cannot be a charity. He said that that was absolutely straightforward in the case law and must be straightforward because it can only be there for a charitable purpose. He said that in looking at that question, again, you have to look at the question which was whether or not the benefits are purely incidental. He said that when we come back to this case, the fourth principle or issue is that when you are looking at a dual purpose – you have to ask the question whether or not the benefits are incidental to membership, or in fact whether they are the objective of the organisation. He said that if they are the objective of the organisation, they are not incidental. He said that he would refer the Tribunal back to the first case that he opened, which was that when they talked about ancillary benefits, what they really mean and what the Courts have found it to mean is that it is unsought benefits. It is not the intended benefits, it is not the prepared for benefits; it is effectively unsought benefits and that is what they mean by the word "ancillary", and he said that he would come back to that in a moment as he goes through the documentation.

187. That, he said, was the legislation and that he said was the case law in sort of a potted summary of the principles which apply and what he would like to do was to come back

to the constitution of the Cumann Barra na Gaeilge and to highlight certain aspects of it. He said that he did not think the Article 3 aims and objectives changed from version to version. He said that under Article 3 the aims and the objectives are set out. He said that obviously, Cumann Barra na Gaeilge place different emphases on their activities than he perhaps might, arising out of their documents. He said that it was clear from any analysis of this case that there was a dual purpose involved. He said that there was no doubt that Cumann Barra na Gaeilge have clearly very laudable interests and he did not wish anything that he might say to be any way seen as to denigrate them at all, but clearly, he was looking at it through the prism of the Charities Act. He said one could see Article 3, Aims And Objectives.

> *"The aims and objectives of the Cumann are to provide a forum for legal practitioners, both barristers and solicitors, practicing law through the medium of Irish, or who are interested in developing expertise in the practise of law through Irish or expertise in legal issues and the Irish language".*

188. That he said was the first aim, i.e. to provide a forum for members, those who speak Irish or who are looking to improve their knowledge of Irish. He said that that was entirely understandable, given what they are about. But, he said, it was there for the members. It was there to provide a group forum for people to discuss and promote the issues of the Irish language. Secondly, "*promote the welfare of members of the Cumann*". That he submitted was "*a very telling phrase*" because that was clearly, on its face of it, something which was inconsistent with a charitable purpose. He said that if you set up an organisation to promote the welfare of members of the organisation, it simply cannot be a charitable purpose, in his submission. He said that Mr Ó Dúlacháin says, well when you look at the words specifically or in particular, whichever way its translated, that limits it to one and two below, but he said that he was not so sure it does necessarily. But, he said, in any event, if one looks at them, one and two below it says,

> *"promote an awareness of the skills and experience of its members".*

189. So, he said what the Appellant was doing there, was promoting the skill and experience of its members, education for its own members with regard to the practice of law through Irish and legal language issues, to promote good relations with professional associations or other organisations involved in the practise of law through Irish or in legal and linguistic matters, including solicitors' associations abroad to deal with legal and language issues on behalf of lesser used language communities. He said that there was no difficulty that there would be multi-purposes, different purposes going on and anyone who has been involved in a bar association or professional organisation, a professional association such as this, knows that when they go along to a meeting, they probably go for different reasons. Maybe some people go because they see a lecture title in which they are interested, and they want to learn a little more about that area. Maybe people go because they think they might meet solicitors who work in their area and say, "*I might make a little bit of a connection here*" and there is networking goes on and there is nothing wrong with that and it is a perfectly legitimate activity. But, he said, it is clearly one of the issues that arises as one goes through the aims and objectives in

terms of promoting good relations and professional associations and in particular solicitors' firms who works abroad. There is, he submitted, a reason they want to do that, and it is because they want to build up relationships with other bodies and he was not saying there was anything wrong at all with that but one of those is professional networking which he said was absolutely fine and maybe there were others as well through education. But again, he would submit that there are clearly different interests and different issues at play.

190. Mr Gageby BL said that at (c), to provide continuous education and training for members again and others in relation to practising law through Irish and regarding legal and logistic matters, particularly organising seminars, meetings to such groups or conferences and that the Tribunal had heard a lot about that and he did not take issue with that.

191. *"To organise lectures for those meetings, talk to the Bar Council and the Law Society around the recognition of those proceedings in relation to continuing professional development; to promote participation of all members of the Cumann na Gael at those seminars and meetings, discussion groups and conferences regardless of their seniority or location of their practice".*

This again, he said was member based, it was about improving, getting people to come to the conferences, getting them to improve their education and skillset and all the rest.

192. *"Consult with and co-operate with the Bar Council to ensure appropriate access to the Council's resources in order to ensure these aims and objectives are met".*

He said that he did not think there is anything relevant about that.

193. Referring to (e),

"promote and develop scholarship in relation to the practise of law through Irish Law and the Irish Language, a legal and language matters and gather and disseminate information to meet the needs of the members of the Cumann".

He said that there was a repeated use of the language here, meet the needs of the members, support welfare of the members, promote the awareness of the members of the skills and expertise and all these things. And, again, he said there was nothing wrong with any of that. He said it was all about educating the members, meeting other people, networking, about bringing business relations and all the rest. He said that as clearly as Mr Ó Dúlacháin has said, there were a number of other things they seek to do as well. They seek to advocate on behalf of people who maybe could not access legal services in Irish, could not access legal services through their first language and he spoke about things such as maybe providing wills to people, accessing the WRC, the Mental Health Commission, the difficulties with enduring power of attorney. He said that all those things were very laudable and clearly very important. He said that one might argue that they clearly have a public benefit.

194. He said that he thought that was why Mr Ó Dúlacháin emphasises them, because those aspects were easy to understand, if you say there's someone in the Gaeltacht who speaks Irish, it is their first language, they want to get their will in Irish, they want to get their enduring power of attorney done in Irish. They should have an entitlement to access those rights. He said that clearly, if Cumann Barra are advocating for that, that was a very laudable approach to take to those issues, because they are fighting for people who, naturally, "*are fighting against the system, for want of a better word*" (as he put it). But, he said, there were clearly multiple purposes going on, and it was absolutely clear that was the case from the aims and objectives of the association, because they were setting them out in absolute clear terms. It was to provide a forum for the members, to promote the welfare of the members, to provide education to its members, the role of participation of members and to meet the needs of the members. That he said, was the repeated language throughout the recital of the objectives.

195. He said that there had been somewhat of a submission made that actually the Appellant were really doing something else, that is not what was originally intended, the Appellant was, in fact, doing something else which is much more philanthropic. And he said that that may be the case, i.e. that they are doing multiple things, and, he would say that was all very admirable. However, he said that they set out in clear terms, in their own documents, what they say that they are about. He said that he would suggest to the Tribunal that there was nothing unusual about that, that every bar association that sets up, sets up for fairly similar reasons: education, providing a forum, networking, building business relations, meeting people who hopefully might give one work into the future, and that that was "*something we all do*" and it is not a problem in any way at all. But those, he said, were the aims and objectives of the association.

196. He said that if one applies the legal test set out in the legislation, is this an organisation which is set up for a charitable purpose only? The answer, he said, is no, because it has got other purposes which are to benefit its members. He said that the case law sets out that if you are setting up an organisation to benefit the members, it cannot be a charity, that just by definition it cannot be. But are they ancillary to the main goal of the organisation? And that, he said was the real crux of this case, is the organisation set up with a public purpose for advancing the promotion of Irish and any benefits they get, which might be networking, business relations, or the like, ancillary. He said that that might be the case in a different organisation, and he pointed out that Tribunal Member Ms Fawsitt asked the question, you know, if the Constitution was different would the other situation be different? He said that the answer is that it would. Because, he said that obviously, the Charities Regulatory Authority and the Tribunal could only deal with the application that was before it, the paperwork that was before it, the documents, the founding documents that were before it, and all of those things.

197. Mr Gageby BL submitted that assessment has been made on the basis of those documents that this particular application for this organisation, at this time, does not meet the definition under the Act. He said that of course, if the articles of association were different, if the aim of the association was different, no doubt the answer was, of course, the outcome may be different and a different determination may, or have been made, or may be made into the future.

198. He said that finally, he wished to address one other matter. He said that he thought that ultimately the critical issue in terms of the Tribunal's consideration, and he acknowledged that there had been a lot of law opened to the Tribunal and he knew that the procedures did provide, in the event that the Tribunal wished to it, for written submissions to be provided, and he said that there would be no difficulty if that was the desire of the Tribunal. That said, he submitted that the ultimate question is, even if the Tribunal accept that education threshold is met, even if the Tribunal accept that the culture and heritage threshold is met, one was still down to the question of this: is it set up for a charitable purpose only, and are the benefits truly ancillary?

199. He said that if one were to go back to the case law, one could see – what does ancillary mean? And it was clearly not designed to capture sought-for benefits. He submitted that what was clear from the constitution was there are certain benefits that are set out to be obtained for its members, and again, he said, there was nothing wrong with any of that. But, he submitted, that it was the antithesis of a charitable organisation, because one was setting it up for the benefit of its members, not for the public or a section of the public. And the difficulty, he thought, for this application under consideration was that they clearly had a dual purpose and good purposes, and there was no doubt about any of that. But, he submitted, that when you actually "*bring it down to brass tacks*", some of the purposes were for the benefit of the members of the association. He submitted that to ask the Tribunal, effectively, to ignore all of their objectives, which the Appellant would say are for the benefit of their members, and he said that everyone knew why that was the case i.e. because they never wrote the Constitution with a view to achieving charitable status.

200. Mr Gageby BL submitted that asking the Tribunal to ignore all that was "*a stretch too far*", in his respectful submission. He said that the case law makes it clear that when you are analysing any application, you look at the founding documents and you say, why are they set up? So, he said that if we look at the Law Reporting case, what is its object? – To provide this thing to the public. He said that if you look at the other cases, the agriculture case, why is it there? To promote education and agriculture, nothing about its members. And the reason he would say that there was nothing about the members was because they have a clear public purpose. And so, he submitted that when you come down to brass tacks and you come down to the legislation itself, you have to make the analysis, is it a charitable purpose only? And he would suggest the answer to that is no. And secondly, are the benefits ancillary? And again, he would suggest to the Tribunal that they are not. They are not ancillary because they are set out in the objectives in very clear terms.

201. So, he submitted, for those reasons, he would suggest, that the reasoning of the Charities Regulator, particularly in respect of the membership organisation, and, he said he would "*somewhat draw in his horns*" on the issue of education and heritage, that the reasoning in respect of that matter was absolutely correct. He submitted that it was entirely consistent with the case law and the legislation.

202. He submitted that in the event that a decision was made by the Tribunal to register the Appellant, the Tribunal obviously have two possible outcomes in terms of decision-making functions. He said that the Tribunal can decide to register the Appellant or not. He said that the application had been made under two different grounds: education, and heritage and culture, et cetera. He said that he would ask the Tribunal, in making any decision, to make the decision under either both or either or neither of the grounds, because in the event that the Appellant was to be registered, the Regulator would wish to know under which subsection, effectively, it was being registered.

203. In response to a question from Tribunal Chair Mr Patrick O'Connor as to whether it would be registration under the heading of education or heritage, or education and heritage, Mr Gageby BL said it would be both. He said he thought that the options open to the Tribunal were as follows:

- The Tribunal decides the Appellant does not meet the definition of a charity, so the Tribunal decides not to allow the registration at all.

- The Tribunal decides that the Appellant should be registered under education only.

- The tribunal decides that the Appellant should be registered under heritage only,

- The Tribunal decides that the Appellant should be registered under both education and heritage.

He said that the Regulator would request that if the Tribunal were to decide in favour of the Appellant, the decision should be clear as to the basis on which registration was to be allowed because when the Regulator is registering, they want to know the subcategory, effectively, under which the charity is to be registered, if that is the position.

204. In response to a comment from the Tribunal Chair Mr Patrick O'Connor as to the authorities cited, Mr Gageby BL also referred to a decision of Mr Justice Charleton, where he reviewed some of the authorities. He said it was a case involving Killarney Golf Club. He did not have a copy of the decision, but he said the judge rehearsed the Yorkshire case, certainly, without demur. Mr Gageby BL said he could not remember if the court dealt with the Glasgow Police Force case but that was a case where the court was dealing with whether or not the Killarney Golf Club, which had a charitable trust for the benefit of its members, could be considered a charity, and, for obvious reasons, Mr Justice Charleton felt that it could not, and he referred to certain of those cases. So, he said, the authorities have been referred to in multiple jurisdictions more recently, without demurs. He did not know of it having been overturned, if that was the question being asked.

205. Tribunal Chair Mr Patrick O' Connor pointed out that the New Zealand decision was not from a court and was from their charities commission.

206. Commenting on the decision of the Regulator, Tribunal Member Miss Carol Fawsitt pointed out that on page 2 of the decision it stated:

> *"Please note the decision by the authority to refuse the application is based on the application form, supporting documentation, uploaded to our online portal and the information widely available."*

She pointed out the Regulator considered the notice, the submission, and the response, in conjunction with the above information. But also, throughout the opinion, or the decision, of the Charities Regulator the Charities Regulator seemed to be considering, if you look at promoting education, the Appellant's constitution, where it names a number of objectives which could, in principle, be said to promote education, in particular, Article 3.1 (a), (c) and (d) of the applicant's constitution. Miss Fawsitt said she was therefore a little confused, because the Charities Regulator goes so far and then makes a particular decision and at no stage did the Charities Regulator take issue with the objectives of the Appellant, despite, in September 2021, Peter McDermott, who was then dealing with the matter, said, "*There will be a minute examination of the objectives by the caseworker*." She pointed out that the caseworker did not raise any issues until much later. Yet, they raised everything else in the course of the pre-caseworker being appointed. She said that she found it very odd that that was a singular one and not discussed or advanced or challenged or whatever, for a couple of years.

207. In response Mr Gageby BL pointed out that, under the Act, when the Regulator makes a decision, the Regulator has to be satisfied about the information provided and must refuse it unless it is satisfied under section 39. So, this, he said, was a case where there was a lot of back and forth seeking information and relevant information in terms of the nature of the Appellant. He said that he thought that, in fairness, whatever criticisms one might have of the delays and all the rest, it was an unusual case in which further information was repeatedly sought. He said he did not fully understand the reference to widely attained information and reminded the Tribunal that he accepted and tried to demur somewhat from the position adopted in the letter of the decision in respect of the findings regarding education, and culture and heritage. He said that it may be sometimes that it is with the benefit of hindsight that one sees a decision was not as, perhaps, focused as it ought to have been, because he said, in fairness, it was the latter part of the decision which was much firmer in terms of its grounds, which rejected matters on the basis of the members' benefit issue, not the education ground and not the heritage ground. He said that perhaps, when one looks back at these decisions in retrospect, it is easier to "*see or to find holes in them*".

208. Miss Fawsitt said that she found it very surprising because the issue of the objectives was not raised from 21 May 2021 until 28 March 2022, and yet there were four different pieces of correspondence between the pre-caseworker, Peter McDermott, and then the caseworker, particularly, Seamus McGovern suggesting very detailed changes to the Constitution, in terms of powers but never the objectives. She said that she was

surprised that the Authority did not respond to the request when the Appellant sought to meet with the Regulator, because this could, in her view, have been sorted out if there had been a meeting, and the Tribunal was aware that the Charities Regulator meets other appellants. She asked if he could answer as to why this had not happened. Mr Gageby BL said he could not answer but to be constructive about it, if he can take the comments made and bring them back to and communicate them to the Regulator so that they might be taken on board in the future, and that that may be the most constructive thing he could take from the comments because he acknowledged the criticism saying, look, this is unfair, if it was raised earlier, if there was more communication, maybe this could have been sorted.

209. Miss Fawsitt pointed out that issue raised by the Regulator appeared to be constitutional which in her view, was obvious enough to warrant a head-to-head meeting. Mr Gageby BL said that he knew from experience with other regulators, where applications come in, sometimes they identify and say, oh you need to fix this or you need to fix that, and sometimes there is a lot of back and forth, but he accepted that maybe it should have been highlighted at the very outset that that was an issue, and he accepted that it was not. He said that he would "*bring that back*" to the Regulator. He said that it did appear sometimes to be a feature of regulators that they can get caught up "*in the minutiae of application forms and all the rest, rather than dealing with the important issues that you've highlighted*". He said that he would communicate the learnings constructively, to the Regulator and efforts would be made to take learnings from this case.

210. Tribunal member Mr Bill Holohan SC said that it was a matter noted by the members of the Tribunal, that had there been more engagement at an earlier stage, one might not have had an appeal at all. He pointed out that there had been an offer to meet, and that it was surprising that the offer was not engaged with. He pointed out that Mr Ó Dúlacháin SC referenced the difficulties they had at one point, in terms of communication, that there was not somebody available from the Regulator who could communicate with them in Irish. Me Holohan SC said it would be speculative to go beyond that simple statement as to any linkage between that experience and the failure to take up the offer, but said that if there was some structural difficulty within the office of the Regulator, in relation to engaging with the applicants, particularly in dealing with applications through the Irish language, that that was perhaps something that needs to be addressed.

211. Mr Gageby BL said that he appreciated those comments, and he assured the Tribunal he would take those comments back to and express them to the Regulator.

212. Mr Holohan SC said that he wished to refer to two passages in the judgment referred to by Mr Gageby BL, at pages 95 and earlier at page 93. On page 95(a), three lines down, paragraph (a):

> *"The first question to be considered in relation to the wider test is whether the advancement or the administration of the law matters, which would include the proper application, and settlement of the law is something beneficial to the*

community law giving an affirmative reply is more conductive to a balanced view. Looking at the issues squarely using the eyes of generality, there is one answer; of course it is beneficial to the community."

213. Mr Holohan SC said he understood Mr Gageby BL to accept that there was a benefit to the community/public as a result of the Appellant's activities, the question being whether it was the primary objective. He said that he would move on to the second part about where does the balance lie, is the benefit to the community consequential or ancillary to the benefit of the members, or vice versa?

214. Mr Holohan SC then referred to page 93, paragraph (e), of the judgement where it says,

"Where the purpose of producing a book is to make available a specified subject and a learned subject at that is be studied, it is in my judgment published for the advance of education as this of course includes as regards the statutes one, the advancement of learning, that remains its purpose, despite the fact that professional men, be they lawyers such as the gentlemen to my right-hand side here and members generally doctors or chemists, use the knowledge acquired to earn their living, one must not conclude the results flowing from the achievement of a purpose with the purpose itself, any more than one should have regard to the motives of those who set that purpose in motion."

215. Mr Holohan SC said that he understand Mr Gageby BL's argument when he marked out paragraph 3 in particular in the Appellant's constitution, that the Tribunal was bound by the primacy afforded by positioning in relation to the stated aims and objectives in the constitution, i.e., primarily benefit to members, and that as a consequence the benefit to the public at large may be ancillary to the benefit experienced by the members, but because primarily it was members' benefit, not public benefit, it was de facto then not a charitable purpose. He asked Mr Gageby BL if he had correctly paraphrased his argument in those terms?

216. Mr Gageby BL said that he would offer a slight clarification. He would not say that the Tribunal was so bound, and he said that what the case laws says is they are important documents, and one must look at them. He said that he did think that the case law says if somebody says blacken your constitution white somewhere else, it would be difficult to accept that, but he could not say one was bound by documents because the case law makes clear one is entitled to consider the call for evidence. So, he said that was just one clarification to the comment.

217. Mr Gageby BL said that he would say one other thing in terms of the case law regarding education. He said that is fairly broad and he thought it would be difficult for him to make the case that a publication of a book or law reports or seminars or whatever else was not educational, and the case law makes it clear that education is evolving, it is not necessarily classroom based, whatever else, but there were all different types of education that could be taught in charitable purpose in the case law in the UK. So, he did not want to be seen as to limit that either. He said that the only other qualification to what Mr Holohan SC had said was the benefit was not, the test was not whether or

not the benefit is ancillary to the public, it was benefits ancillary to the members of the organisation. He said that the question understandably arises, and the Tribunal had highlighted all the valuable work that was being done by Cumann Barra, but when one was looking at it, he would say that the Tribunal did have to look at constitution, but he was not suggesting the Tribunal was bound by it.

218. Mr Gageby BL said that the members of the Tribunal would all have "*real world experiences*" of these types of organisations and in fairness his presentation was that, if one had ever been involved, they have different and dual purposes, and some day one would be going along and saying, "*I'm here because there is a published talk and I want to learn about and I want to advance my education*", and some days one would be going because one would be saying "*a solicitor I know who does similar areas of work might be there and I'd quite like to get to know him and I'd quite like to meet him up and network*" and "*all the rest*"; and he said that there was nothing wrong with any of that, but he said that we all know that there are different purposes to these organisations, and nothing wrong with any of that, but when one has a dual purpose organisation or a multi-purpose organisation, like most organisations are, you have to come back to the Act and say is it for charitable purposes only? If you have a constitution which said, it is actually mostly for the benefit of the members, and someone comes in and says well, forget about that. He said that he would suggest to the Tribunal that was something to be taken "*with a pinch of salt*", and he said that was not by any criticism.

219. Mr Gageby BL said that in fairness to Mr O Dúlacháin SC, he was "*trying to somewhat put a round peg in to a square hole or the other way round*", because the Appellant's constitution was never designed for a charitable application, and that was because it was not a charity, because it was designed to benefit its members, as a members' organisation designed for the education of its members and all the things set out there and it may do all sorts of other good things, but what does it really do, it was there to benefit its members. It was a members' organisation, and once it has got those aims and objectives, it was very, very hard, in his respectful submission, to say it was a charitable purpose only, and he did think that was the difficulty in the case and the application.

220 Mr Holohan SC said that while Mr Gageby BL had been making his submission it had reminded him that a broadly similar member organisation, the Chartered Institute of Arbitrators, the Irish Branch of which Mr Holohan SSC said he was a former chair, a distinguishing feature being that the Chartered Institute of Arbitrators was established by royal charter as distinct from members' constitution, but he said that if you look at the objectives as set out in that for the Chartered Institute of Arbitrators, again, they were broadly similar, and he would emphasise "broadly", in terms of:

- the provision of education and training both for those that wish to become qualified and proficient ADR practitioners and to persons with an interest in private dispute resolution.
- the encouragement of members to become qualified and proficient.
- the promotion, dissemination as a learned society, knowledge etc,

Mr Holohan said that this was not on all fours, but the Chartered Institute of Arbitrators was a registered charity, registered with the UK Charities Commission.

221. Mr Gageby BL said that there were a number of professional bodies which are so registered and so the Tribunal might then look as to what was the difference. He said it was difficult to answer and he was not trying to avoid the question. He said that first of all it was difficult to answer in the abstract because every case turns on its own facts. You have to look at any documents and try to determine what it's true objective is. He said that he did know there were a lot of professional organisations that are so registered, and he thought they may well have been "*grandfathered in*" under different provisions of the Act, i.e. certain organisations were automatically deemed charitable when they were on the Revenue register, prior to commencement of the Act. He said it was somewhat hard to deal with, but he did appreciate it may not always be clear. He said that he would submit that in fairness, when you go back to the principles in the case law, that is why one would have to do an analysis in each particular case, and ultimately you may say that actually all their aims and objectives, they are all completely wrong, that is not what they are doing, they are doing something else entirely.

222. Tribunal Member Miss Carol Fawsitt pointed out that the Charity Regulator's own application form asks specifically what was the purpose for which the organisation had been set up and the Appellant had made it clear that the purpose was to increase the use of Irish in all aspects of the legal world and facilitate the use of Irish in official business and personal matters.

223. Mr Gageby BL, in response, pointed out that if you go back to main objective which was on the page before, the aims and objectives of the Cumann were stated to be (a) provide a forum for legal practitioners, and (b) promote the welfare of members of the Cumann.

224. Tribunal Member Ms Fawsitt said that she did understand the point, but pointed out that the Regulator thought it prudent to ask the Appellant to make changes to its constitution on various occasions, six or seven times, but never in relation to the objectives. Mr Gageby BL said he took the point.

225. Tribunal member Ms Nuala Dockery BL said that she wanted to refer to the section of the Regulator's decision that pertains to challenges to the issue to culture, and asked Mr Gageby BL if he was saying that he was not pressing those points. Mr Gageby BL said that he was not because he thought that it would probably be evident to members of the Tribunal that there was an educational aspect to the Appellant, and he thought that it would be also evident from what he described as "*Mr O'Dúlacháin's eloquent description of the important heritage and cultural aspects"* of their promoting and preserving the Irish language and to allow people to have access to it through the courts. He said he obviously did have his instructions and he was there to stand over a decision but was indicating to the Tribunal that there were aspects of the decision he thought that the Tribunal should not trouble itself with and he was not pressing those aspects of the decision.

226. In response to a further question from Tribunal member Ms Dockery BL if it was the case that the Regulator did not accept that there was a benefit to the public at large or to the general public on the basis of the aim of the Cumann Barra, Mr Gageby BL referred to the definition of a charitable gift under section 3 (4)

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

He said that clearly a section of the public could be a delineated group of people such as people who spoke Irish and wanted to access the courts. He said that the question is, it does not have to be the public at large, it could be a section of the public, and that it was obvious that certain charities are aimed at particularly deprived people in one way or another, but it was obviously, "and", so (a) and (b) are read in the conjunctive. He said that you must not have the second requirement which is that if there are any benefits, that was why he would say that that was the real crux of it, because the Tribunal may come to the come to the view that it meets the requirement for education, meets the requirement for heritage, meets the requirement for a section of the public, but, he said, ultimately on the definition of public benefit, that was actually that it was a membership organisation set up for the benefit of the members.

227. Tribunal Member Ms Dockery BL repeated her question in respect of public benefit asking if it was the Regulator's position that the Regulator did not recognise it was of benefit to the public or to a general sector of the public based on the aims of the Appellant. Mr Gageby BL responded that because the decision said they failed at the first hurdle, it was not meeting the statutory objectives, the next question was whether or not it was for the public benefit, and he thought that because they said it did not meet the first criteria, it was not.

228. In response to further questions, Mr Gageby BL said what you have is the interpretation section which says charitable purpose is to be set out in accordance with section 3 and public benefit as set out in accordance with section 3 and then you have a definition for charitable purpose and then you do not have what you would expect, which is a clear definition for public benefit but they define it in a roundabout way through the definition of a gift. He said that it was the Regulator's view that that is the way in which the legislation has sought to capture the definition, but he absolutely accepted, it was certainly not a clear drafting in the legislation and it certainly could be clearer because one would expect from the interpretation that what you then have in section 3 is public benefit means X.

229. In response to a further question from Tribunal Member Miss Fawsitt, Mr Gageby BL said that the Regulator would say there were problems because of the way things are set out in the Constitution. He said that if you have a members' organisation which is there for the benefit of the members, even if you re-jig your constitution in such as saying, "*These are the objects*", you would still or the Regulator would still first and the Tribunal then on appeal would still have to look at the activities of the organisation and determine what were its true purposes and one would still have to look at a members

organisation and say, "*Well, actually it's got multi purposes. It's still going to meet, it's going to be a forum, it's going to be education for members, all those things that are in its objectives".* He pointed out that there was a clear conflict between the purpose as recoded in the Application and the Aims in the Constitution.

230. In response to a question from Tribunal Chair Mr Patrick O'Connor Chair to Mr Ó Dúlacháin SC, as to whether the Appellant would consider amending its (a) objectives and (b) its purposes to define what in fact it is, as Cormac Ó Dúlacháin SC, had said and submitted was the purpose, Mr Ó Dúlacháin SC confirmed that he anticipated that there would be no difficulty in doing that.

231. The members of the Tribunal rose to consider the matter.

RESUMED HEARING

232. Having risen for deliberations for a period of time, the Tribunal Chair Mr O'Connor informed the parties that the Tribunal members would consider the matter further overnight and deliver a decision the following day.

HEARING 16 MAY 2024.

DETERMINATION OF THE APPEAL

233. The Tribunal Chair Mr Patrick O'Connor informed the Parties that the members of the Tribunal had listened carefully to the evidence on behalf of the Appellant and submissions made by /on behalf of the Appellant and the Regulator. It was noted by the members of the Tribunal that it was clearly stated by Mr Cormac Ó Dúlacháin SC on behalf of the Appellant, that the Appellant had not been established and the constitution of the Appellant had not been drafted, with a view to seeking registration as a charity. It was also noted by the members of the Tribunal that it was clearly stated by Mr Cormac Ó Dúlacháin SC on behalf of the Appellant that the Appellant's application for registration was prompted by circumstances where registration as a charity and recognition as a charity would enable the Appellant to apply for and receive grant aid to further its activities, aims and objectives.

234. The members of the Tribunal noted that the following question was posed to the Appellant in the application for registration: –

"For what purpose was your organisation set up?".

The reply given by the Appellant was: –

"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."

235. The members of the Tribunal noted that evidence was given and submissions made in relation to the nature and the range of activities undertaken by the Appellant since its establishment, to date, which demonstrated to the satisfaction of the members the Tribunal that since its original foundation, Cumann Barra na Gaeilge has indeed evolved to the point where the primary objective, purpose and aim of Cumann Barra na Gaeilge in reality, is indeed

"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."

notwithstanding that this is not reflected in the constitution of the Appellant.

236. The members of the Tribunal had noted that the evidence and submission of the Appellant as to the foregoing being the reality was not contested by the Regulator. However, the foregoing is at odds with the provisions of the constitution of Cumann Barra na Gaeilge at Article 3 which clearly states:

"The aims and objectives of the Cumann are to:
(a) provide a forum for legal practitioners, both barristers and solicitors who practice law through the medium of Irish or who are interested in developing expertise in the practice of law through Irish or expertise in legal matters and the Irish language.
(b) promote the welfare of members of the Cumann in particular:
i. to promote awareness of members' skills and experience in practising law through Irish and legal and language matters;

ii. promote good relations with professional associations or other organisations involved in the practice of law through Irish or with legal and language matters, including lawyers' associations abroad who deal with legal and language matters for lesser-used language communities.

(c) provide ongoing education and training for members and others in relation to the practice of law through Irish and legal and language matters, specifically:

i. holding seminars, meetings, group discussion or conference on a regular basis;

ii. Organise lectures at these meetings;

iii. consult with the Bar Council and the Law Society on the recognition of these Continuing Professional Development (CPD) proceedings.

iv. encourage all Cumann members to participate in these seminars, meetings, discussion groups and conferences, regardless of seniority or where they are practising.

(d) Consult with and co-operate with the Bar Council to ensure appropriate access to the Council's resources to achieve these aims and objectives.

(e) Promote and develop scholarship in relation to law-practice through Irish, law and the Irish language and legal and language matters and gather and disseminate information to meet the needs of the members.

(f) Actively participate as a Cumann in public discussion and promote amendments to laws and practices in relation to language matters as deemed necessary by the Cumann.

(g) The Executive Committee may join Conradh na Gaeilge on behalf of the Cumann.

(h) To do such other lawful deeds as are corollary or constructive in achieving the aims and objectives of the Cumann, or any of them."

237. The members of the Tribunal had noted that it was clearly stated by Mr Cormac Ó Dúlacháin SC on behalf of the Appellant that he was confident that the members of Cumann Barra na Gaeilge would be happy to amend the constitution of

Cumann Barra na Gaeilge to reflect the current reality and the evolved primary objective, purpose and aim of Cumann Barra na Gaeilge, i.e.

> *"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."*

238. The members of the Tribunal were aware that the Regulator's website provides access to a number of key documents including two documents in particular:

- Charities Regulator Key Steps to Registering a Charity, and
- Charities Regulator Public Benefit Guidance.

The Tribunal also drew attention to the Charities Regulator website.

239. The members the Tribunal had noted that page 13 of the "Key Steps to Registering a Charity" document provides guidance on the governing document (Constitution) and also provides a link to the recommended model constitutional clauses for use, as well as guidance on developing the charity's main object and what information needs to be outlined in it. Page 14 provides a checklist for the Governing Document.

240. The members of the Tribunal noted that the "Public Benefit Guidance" document outlines clearly how the Regulator assesses public benefit, and the importance of demonstrating that any private benefit is reasonable or ancillary and provides case studies to illustrate this further.

241. Had these documents been consulted and considered by the Appellant prior to its application, and necessary amendments made in accordance with the advice and guidance made available by the Regulator, then the constitution of the Appellant might well have been amended to align the "legality" with the "reality".

242. The members of the Tribunal wished it to be clearly understood that they do not seek to usurp the powers and functions of the Regulator, but following due

consideration were of the view that and were satisfied that the evolved primary objective, purpose and aim of Cumann Barra na Gaeilge, i.e.

> *"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."*

was capable of being and might well be accepted by the Regulator in a subsequent application to be charitable, in that it would meet the requirement to be for purposes for "*the advancement of education*" and other purposes "*of benefit to the community*", satisfying the requirement of section 3 of the Act that such purposes be of "*public benefit*". The members of the Tribunal wished to be noted that the foregoing is stated by way of observation and not by way of direction or advice.

243. While the members of Cumann Barra na Gaeilge undoubtedly enjoy benefits as a result of membership, the members of the Tribunal were also of the view that in the context of an altered application, such benefits might be likely to be regarded as ancillary to or subsidiary to the overall benefit to Irish society and the public at large, as a result of an increased "*use of Irish in all aspects of the legal life*" and "*the use of Irish in official, business and personal matters*". The members of the Tribunal wished to be noted that the foregoing is stated by way of observation and not by way of direction or advice.

244. The Tribunal considered whether it would be open to the Tribunal to accept an undertaking from Mr Cormac Ó Dúlacháin SC on behalf of the Members of Cumann Barra na Gaeilge (if offered) to convene a general meeting for the purpose of amending the constitution to reflect the reality as outlined above, on foot of which the Tribunal might then decide to grant recognition. The Tribunal considered the scenario where if the appeal was to be allowed in response to such an undertaking, and amendments were not subsequently made within a reasonable period of time, action might then be taken by the Regulator to remove the registration status from the Appellant, but the Tribunal considered that this was not only undesirable, but was not appropriate for the following reasons:

- The Tribunal is not satisfied that the Tribunal has the legal power or right to accept such undertaking if offered.

- The Tribunal is not satisfied the Tribunal has the legal power to seek or require such an undertaking as a condition of allowing the appeal.

- The Tribunal is not satisfied that the Tribunal has legal power to allow any appeal, on a conditional basis.

245. The members of the Tribunal of the view that the role and function of the Tribunal in the context of an appeal such as that of the Appellant is clearly set out in section 45 of the Act which provides:

> *"45.— (1) A person whose application under section 39 is refused by the Authority may appeal the refusal to the Tribunal...*
> *…*
> *(5) Upon an appeal under subsection (1), the Tribunal may make a determination—*
>
> *(a) requiring the Authority to register the appellant in the register, or*
>
> *(b) affirming the decision of the Authority."*

246. The representatives of the Regulator were questioned by members of the Tribunal during the hearing as to why the Regulator had not met with the representatives of the Appellant in response to the offer made by the representatives of the Appellant to address any issues arising and any concerns of the Regulator in a meeting. It was also noted by the members of the Tribunal that while various amendments had been requested by the Regulator, over a period of time, in relation to the Appellant's Application, no appropriate and/or relevant amendments were requested in relation to the objects of the constitution, prior to the refusal of the application. Nor was issue taken by the Regulator with and the issue highlighted to the Appellant as to the apparent conflict between the evolved aim and purposes outlined above and stated aims in the Appellant's

constitution. The Members of the Tribunal will not speculate as to the reasons for failure to engage with the representatives of the Appellant in response to such offer of the Appellant to engage in a meeting but considers it unfortunate that there was no such meaningful engagement by way of a meeting which might well have addressed matters to the mutual satisfaction of the Regulator and the Appellant.

247. The Tribunal is restricted to considering whether the decision of the Regulator, in response to the application as constituted, was correct and whether the Tribunal, as required by section 45 (5) of the Act should make a determination:

> *"(a) requiring the Authority to register the appellant in the register, or*
>
> *(b) affirming the decision of the Authority."*

248. In light of the conflict between the "legality" as reflected by the constitution as it currently exists and the application based on such form of constitution, and the "reality" as outlined in the uncontroverted evidence and submissions of the Appellant, while the members of the Tribunal are of the view that accepting the evidence and submissions made by the Appellant that the evolved primary objective, purpose and aim of Cumann Barra na Gaeilge

> *"To increase the use of Irish in all aspects of the legal life and to facilitate the use of Irish in official, business and personal matters."*

would indeed be open to being considered by the Regulator to be charitable and indeed laudable, the decision of the Regulator, notwithstanding the failure of the Regulator to engage with the Appellant to address the issue on foot of which the decision of the Regulator was ultimately made, should be upheld.

249. The members of the Tribunal noted it was accepted by the legal representative for the Regulator that the Regulator was not pressing the position taken / adopted in relation to (1) education and (2) heritage as set out in its written decision of August 2023. It is of course open to the Appellant to make a fresh

application following suitable amendments to the objects of its constitution to reflect the current evolved reality, based on the evolved primary objective, purpose and aim, and following a process of positive engagement with the representatives of the Regulator, to possibly secure the desired registration.

Dated this 14th September 2024

Mr Patrick O'Connor
Chair, for and on behalf of the Tribunal.