AN BINSE ACHOMHAIRC DO CHARTHANAIS
CHARITY APPEALS TRIBUNAL

DETERMINATION OF APPEAL

TRIBUNAL REF NO: CAT2024-002

UNDER SECTION 39 OF THE CHARITIES ACT 2009

Appeal of Horses of Hope Company Limited by Guarantee

Appeal against Charities Regulator decision of the 23 May 2024 communicated by letter dated 2 July 2024 refusing the application to be registered in the Register of Charities

Determination of the Tribunal following hearing on 7 November 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 Horses of Hope Company Limited by Guarantee, with its registered office at Hillview, Dunmurraghill, Donadea, Naas, Kildare.

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 2014 date, an entitlement to an exemption under section 207 or section 208 of the Taxes Consolidation Act 1997 and held a CHY number provided by the Revenue Commissioners, were deemed to be automatically registered in the Register of Charities ("the Register") established under section 39 of the Act. Such bodies were not obliged to apply for registration under the Authority's registration process.

6. The Appellant was incorporated on 12 December 2022 and (according to its Application) commenced its activities on 19 February 2023 and did not have exemption from the Revenue Commissioners.

THE APPLICATION

7. The Appellant submitted application for registration under section 39 of the Act, on 18 April 2023 (Submission number SR 84833). In the application form, he Appellant stated, in respect of its main object that:

> *"The Main Object is to promote the rehabilitation of offenders and the prevention of crime, for the benefit of the community as a whole, by (a) providing financial and other assistance for the operation of an equine centre attached to Castlerea Prison, Co Roscommon and (b) by providing other supports towards the reintegration of offenders into society following their release from custody."*

8. In terms of the charitable purpose of the Appellant, the Appellant indicated that it was (under section 3 (1) (b) of the Act):

> *"The advancement of education: The integration of offenders into society following their release from"* (sic).

Another purpose identified, of benefit to the community (section 3 (1) (d) was:

> *"The integration of those who are disadvantaged and the promotion of their full participation in society."*

9. In terms of public benefit, the Outcome Setup was identified by the Appellant as: *"to provide financial and other assistance for the operation of an equine centre attached to category prison, Co Roscommon" its* objectives to be achieved through fundraising.

10. In terms of a summary of activity/planned activities, it was stated by the Appellant that:

"Hope of Horses (sic) *proposes to raise funds through public awareness, aimed, principally, at the horseracing industry and its leading entities".*

11. In terms of who would benefit, this was identifying by the Appellant as a defined section of the community consisting of:

"*a group defined by their social exclusion or social disadvantage*".

12. In its Constitution, the main Object of the Appellant was stated as follows:

"The main object for which the Company is established (the Main Object) is to promote the rehabilitation of offenders and the prevention of crime, for the benefit of the community as a whole, by (a) providing financial and other assistance for the operation of an equine centre attached to Castlerea Prison, Co. Roscommon and (b) by providing other supports towards the reintegration of offenders into society following their release from custody.

13. Subsidiary Objects in the Constitution were as follows:

"As objects incidental and ancillary to the attainment of the Main Object, the Company shall have the following subsidiary objects:
41 To seek to raise funds from the public, and in particular the horse racing community, through collaboration with the Irish Prison Service.
4.2 To raise awareness of the benefits of equine programmes in prisons".

REVISED APPLICATION

14. Revised applications were submitted on:

- 31 January 2024,
- 15 February 2024, and
- 15 May 2024.

COMMUNICATIONS WITH THE REGULATOR

15. By email from the Registration Unit of the Regulator to the Appellant on 26 April 2023, 14:20 hours, the Registration Unit of the Regulator advised the Appellant that the registration process had reached the first stage. The email also indicated that certain matters needed to be addressed before the application could proceed further and requested copies of:

    1. Risk Management Policy.
    2. Bank statements.
    3. Business Plan.
    4. Projections of income and expenditure for the following 3 years.
    5. Information in relation to any regulating bodies.
    6. Information in relation to any safeguarding documentation.
    7. Information in relation to Garda vetting.

16. The requested information was duly furnished by the Appellant.

17. By email from the Registration Manager of the Regulator to the Appellant 3 August 2023, at 14.39 hours, the Appellant was informed that there were delays in processing applications due to the volume of work. The email also advised that the application had completed step 1, i.e. initial review, as distinct from legal assessment, and was awaiting assignment to a case officer for step 2. It was indicated that a case officer should be assigned within the following 60 days.

18. By email from Mr. Des Molloy (Case Officer) Registration and Reporting Unit of the Regulator to the Appellant on 6 November 2023, 12.04 hours, Mr. Molloy referenced a telephone call on the same day with Pamela Morton of the Appellant. The email confirmed that the application was at the charity test stage of the application process and an explanation in relation to the nature of that test was outlined. The email went on to request a review of certain documents and uploading of amended versions:

    (a) Details of the Eight Module/Syllabus Course.
    (b) Beneficiary selection policy.
    (c) Public/Private Benefit. In this regard, the Appellant was asked to provide details of how the private benefit to Equine Safety and Training Limited was:

(i) reasonable in all the circumstances,

(ii) ancillary to the furtherance of the public benefit and

(iii) necessary to the furtherance of the public benefit.

19. The email also referenced that in relation to the Main Object stated in the Application Form, it indicated that the text of the Main Object in the Application should be word for word the same as that in the Appellant's Constitution and the Appellant was requested to update the Main Object in the application form in that respect.

20. The email also requested details of the potential employment or training opportunities for prisoner participants post release, and details of ownership of the equine centre.

21. The email also requested clarification on the position of Pamela Morton as she was named as company secretary in the Business Plan, but it was noted that Pamela Morton was not listed with the CRO or listed as a trustee on the application form. Clarification was requested in relation to her role.

22. In relation to the bank account, the email stated that it was noted that the bank account was not in the name of the Appellant. It was stated that the Authority would not be in a position to register the Appellant unless there was a bank account in the name of the Appellant.

23. With regard to trustees, the Appellant was asked to confirm:

- That the trustees were unrelated and independent trustees.
- Whether any trustee was also a paid executive.
- Whether any trustee had a personal connection, as defined in the Charities Act 2009, to the beneficiaries?
- Whether any trustee was involved in any of the businesses from if the Appellant buys services/ materials/ tools or hires equipment, or rents/leases premises?

24. In relation to the address of the Appellant, the Appellant was advised that as the given business address for the Appellant was the home address of Pamela Morton, it should be noted that the consent of Ms. Morton to publication of the address on the Public Register should be given. Information was also requested as to what activity was carried on from this

address and as to whether there was any rental or lease agreement or memorandum of understanding in place in relation to the use of the property. The Appellant was also asked to clarify if any payments were made to Ms. Morton by the Appellant for the use of the property. The Appellant was also advised that any change in the principal address would result in the necessity to file a new application form with the new address, which should be the same address as the CRO registered office address.

25. By email from Ms. Pamela Morton on behalf of the Appellant to the Regulator on 21 November 2023, 09.59 hours, she advised that she had referred the queries raised to the trustees. Ms. Morton also advised that she been in contact with Mr. Fergus Black of the Irish Prison Service and awaited hearing from him, notwithstanding his retirement from the Irish Prison Service, as she understood he continued to be involved with the programme. Ms. Morton also advised that the address of Mr. Robert Hall, would be a company director, would be the permanent address for the Regulator's Register.

26. By email from Ms. Pamela Morton on behalf of the Appellant to the Regulator on 21 November 2023, 12:20 hours, Ms. Morton enclosed a Horses of Hope brochure and an article from the Irish Field on a recent award.

27. By email from Ms. Pamela Morton on behalf of the Appellant to the Regulator on 6 December 2023, 14.09 hours, Ms. Morton advised that Mr. Robert Hall and Mr. Mark Pery-Knox-Gore were undertaking certain preparatory work. She enquired whether the existing application should be amended or updated, or whether a new application should be entered.

28. By email from Mr. Des Molloy (Case Officer) of the Regulator to Ms. Morton of the Appellant on 11 December 2023, 08.50 hours, Mr. Molloy responded, confirming that a new application was not necessary.

29. By email from Ms. Pamela Morton on behalf of the Appellant to Mr. Molloy (Case Officer) of the Regulator 14 December 2023 at 08:20 hours, Ms. Morton updated Mr. Molloy in relation to work being undertaken by the trustees in relation to the opening of a new bank account and advised that it was hoped to have 2 additional trustees appointed by the end of January.

She also requested clarification as to whether the Horses of Hope brochure previously furnished answered previous queries or whether further information or detail was required.

30. By email from Ms. Pamela Morton on behalf of the Appellant to Mr. Des Molloy (Case Officer) of the Regulator, on 20 December 2023, 12.01 hours, Ms. Morton advised as to the appointment of a new trustee whose contact details would be uploaded.

31. Subsequently, at the end of January 2024, details of:

- the new Horses of Hope bank account with Bank of Ireland, Kildare,
- the course syllabus,
- the Beneficiary Selection Policy,
- the new trustee, Ms. Helen Cooke,
- public/private benefit,
- employment opportunities,
- ownership of the equine centre and,
- arrangements between the Irish Prison Service and the horse racing industry in relation to the equine centre,

were provided.

32. By email 1 February 2024, 12.35 hours from Mr. Des Molloy (Case Officer) of the Regulator to the Appellant, clarification in respect of certain issues was requested, including

- CRO details not matching details provided on the application form,
- the need for updated trustee declarations for Mr. John Oxx and Ms. Helen Cooke, and
- the new business address for the Appellant and arrangements in relation to the use of that property.

33. By email on 12 February 2024 at 07.36 hours from Ms. Pamela Morton of the Appellant to Mr. Des Molloy (Case Officer) of the Regulator responded to queries raised by the Regulator and furnished further information in relation to the bank account.

34. An updated Business Case and Annual Plan for the Appellant as well as trustee declarations of Mr. John Oxx, Mr. Robert Hall and Ms. Helen Cooke were also subsequently provided.

35. By email from Ms. Pamela Morton of the Appellant to the Regulator on 18 February 2024 at 18.20 hours, Ms. Morton forwarded an email dated 5 January 2024 received from Mr. Charles O'Reilly, confirming that he was not related to any trustee or employee, was totally independent, received no payment, was not an executive, had no connection to any beneficiary and was not involved in any business from whom the organisation purchased any services, materials, tools or hires equipment or rents or leases premises.

36. By email from Ms. Pamela Morton of the Appellant to the Regulator on 18 February 2024 at 18.27 hours, Ms. Morton forwarded an email from Mr. Robert Hall dated 4 January 2024, in which Mr. Hall confirmed that:

- he was unrelated and independent of any other trustee,
- he was not a paid executive,
- he did not have a personal connection (as defined in the Charities Act 2009), to any beneficiaries, and
- was not involved in any business that buys services, materials, tools or hires equipment or rent/lease premises from the Appellant.

37. By email from Ms. Pamela Morton of the Appellant to the Regulator on 18 February 2024 at 18.34 hours, Ms. Morton forwarded an email from Mr. Mark Pery-Knox-Gore dated 4 January 2024, in which Mr. Pery-Knox-Gore confirmed that

- he was unrelated and independent of any other trustee,
- he was not a paid executive,
- he did not have a personal connection (as defined in the Charities Act 2009), to any beneficiaries, and
- was not involved in any business that buys services, materials, tools or hires equipment or rent/lease premises from the Appellant.

38. By email from Mr. Des Molloy (Case Officer) of the Regulator, to Ms. Morton of the Appellant on 6 March 2024 at 16.08 hours, referencing a telephone conversation with another colleague, the previous Friday, it was noted that after review of the application,

- there was a partnership between the Applicant, Irish Prison Service ("IPS") and Equine Safety & Training Limited ("Equine"),
- that the IPS contract through an open tender process to provide equine management and training services for prisoners, to operate the equine centre and provide training.
- It was stated in the Beneficiary Selection Policy that the IPS selected beneficiaries to take part in the training course, based on its own criteria.
- The contracted services enabled the IPS to provide the programme of training in equine care, whose purpose was the reintegration of prisoners into society, and their eventual release.
- That it was unclear from the documentation submitted to that date and the main object, what activities the Appellant undertook directly to advance the selected charitable purpose, and how this was of benefit to the public.
- That it was stated in the Beneficiary Selection Policy that IPS contracted Equine to operate the equine centre and provide the training to the prisoners.

39. The Appellant was asked to outline what other assistance the operation of the equine centre, attached to Castlerea Prison entailed and to provide details of the activities involved in providing other supports towards the reintegration of offenders into society following release from custody.

40. By email from Ms. Pamela Morton of the Appellant to Mr. Des Molloy of the Regulator on 8 March 2024 on 15.10, referencing a telephone call from Ms. Meagan Gill of the Regulator on Friday, 16 February 2024, followed by an email from her a couple of days later, advising that Mr. Molloy was on leave for a few weeks and that the case file has been referred to another case officer, but noting that Mr. Molloy was still dealing with the matter. She then proceeded to address queries raised, outlining the history of the development of the programme.

41. On 19 March 2024, there was a telephone discussion between Ms. Morton of the Appellant and Mr. Molloy of the Regulator.

42. By email from Ms. Morton of the Appellant to Mr. Des Molloy of the Regulator on 10 April 2024 at 12.38 hours, Ms. Morton referenced the telephone conversation on 19 March, during which Mr. Molloy had mentioned that it was likely that there would be a response from senior reviewers within a fortnight, that she appreciated the Easter holidays had intervened but would be grateful for an update on the progress of the application.

NOTICE OF INTENTION TO RECOMMEND REFUSAL

43. By letter dated 24 April 2024, by way of Notice of Intention to Recommend Refusal, the Registration Unit of the Regulator informed the Appellant that it was the view of the Unit that the application for registration should be refused. The Notice set out the reasons for this proposed course of action.

44. The Appellant responded to the notice on 8 May 2024, by way of a five-page letter responding to the Notification from the Regulator, indicating that the Appellant was of the view that the Registration Unit had made an error in its finding that the Appellant did not carry out any activities that promoted its stated charitable purpose. Subsequently, the Appellant wrote to Mr. Gerry Kearney, the Chair of the Board, by email on 20 May 2024 at 08.55 hours, enclosing a copy of the 8 May response and a letter of endorsement from the Irish Prison Service, which were duly considered by the Board.

45. The Response from the Appellant indicated that it was noted that the Notice of Intention to Recommend Refusal did not deny that the main object of the Appellant was a charitable purpose and indicated that the Appellant, therefore, regarded it as settled that the purpose was indeed a charitable purpose.

46. While acknowledging that the Irish Prison Service was not a charitable organisation, it was asserted by the Appellant that the Irish Prison Service could and did provide charitable services. It was suggested that the rehabilitation of offenders was "*clearly a charitable purpose and the rehabilitation programme involving equine care is an activity which supports a charitable purpose.*" It was contended by the Appellant that the Appellant "*will promote its charitable purpose by providing funding to support a charitable activity and the fact that*

IPS is not a charitable organisation as a matter of no consequence". It was further submitted that what was important was that the activity was charitable. The Response from the Appellant also referenced an "*intention from early on to have a written agreement with IPS*" once registered as a charity.

47. By email from Ms. Helen Cooke, Director and Secretary of the Appellant to Mr. Gerry Kearney, Chair of the Regulator, on 20 May 2024 at 08.55 hours, Ms. Cooke referenced the response submitted by the Appellant to the Notice of Intention to Recommend Refusal and her understanding that that documentation would be considered by the Board prior to its next meeting, and enclosed a copy of the 8 May response and a copy of correspondence from the Irish Prison Service, confirming that same had also been submitted by post, and requested the Authority to give the matter "*careful consideration before reaching its decision*" and, indicating that the Appellant was "*at a loss to understand why the Registration Unit considers we are not a charity*".

48. By email from Ms. Meagan Gill, Head of Registration of the Regulator, to Ms. Helen Cooke of the Appellant on 20 May 2024 at 10.20 hours, Ms. Gill acknowledged receipt of the email of 17 May 2020 to Mr. Kearney. Ms. Gill outlined that the Appellant had a right of reply to the Notice of Intention to Recommend Refusal, to correct any error of law or any misrepresentation of facts that may be contained in the Notice and that the Appellant had responded in early May 2024. Ms. Gill confirmed documentation would be considered by the Board of the Charities Regulator before making any final decision. Ms. Gill also confirmed that an Appellant could not make any changes to the application or withdraw the application, this being in the interests of fairness to all Appellants, and the appropriate allocation of resources, an Appellant at that stage, having been given "*sufficient opportunities information to understand the requirements of the Act*".

DECISION TO REFUSE

49. By letter dated 2 July 2024, the Regulator communicated to the Applicant that on the 20 June 2024 the Board of the Charities Regulatory Authority refused its application to be registered on the Register of Charitable Organisations. This letter appended the Decision to Refuse.

50. At paragraph 9 of the Decision, the Board noted that the Appellant had stated in correspondence dated 8 March 2024 that the Appellant's "*sole activity will be fundraising so that its aims and goals can be delivered*", with the Appellant's funds then being donated to the Irish Prison Service, which it was noted was not a charitable organisation, the Prison Service, utilising then the donations received from the Appellant to engage the services of a third party who would then run education programmes in relation to prisoners and horses.

51. It was further noted that the Appellant stated in correspondence that there was no formal agreement between the Appellant and the Irish Prison Service, that the Appellant had acknowledged in its correspondence of 8 March 2024, that the Appellant was not involved in "*any activities that provide support towards the reintegration of prisoners following their release from prison*" and it was a matter for the Prison Service "*how, and by whom, the equine training services will be provided*".

52. It was further noted at paragraph 10 of the Decision, that while the Appellant's main object for which it was established might appear charitable, it was also necessary for the Appellant to demonstrate how, through its activities, it was promoting this charitable purpose for the public benefit. It was noted that the Appellant's sole activity was fundraising and that the Appellant had accepted in its correspondence by way of response that it "*fully accepts that fundraising, in and of itself, is not a charitable purpose*.". It was further noted that the Appellant did not supply details of proposed future activities, clarifying the nature of those proposed activities, or how they would be operationalised or run. The Board indicated that it viewed such statement as "*vague and aspirational*" and that the Appellant had not demonstrated how they would advance the Appellant's chosen charitable purposes.

53. At paragraph 11 of the Decision, the Board indicated it was of the view that the Appellant would have no control over, or input in to any aspect of the project run by the Irish Prison Service, and that the Board was of the view that the Appellant was not carrying out any activities that would promote its stated charitable purpose, but rather that the Appellant was raising funds for another organisation which might promote the selected charitable purposes, and that as a consequence, the Board was of the view that the Appellant had not demonstrated how its sole activity of fundraising would promote its selected charitable purposes.

54. For that reason, the Decision noted, at paragraph 12, that the Board was not satisfied that the Appellant was a charitable organisation within the meaning of the Act, and the Decision notified the Appellant that pursuant to section 39 (8), the Board was refusing the application for the reasons outlined.

55. The letter from the Irish Prison Service was submitted that the decision of the Registration Unit was "*flawed*" as it was suggested that the charitable purpose of the Appellant was a public benefit. It was submitted that the Horses of Hope initiative through its education training and future employment placement programme with the horse industry, performed an important role in preventing poverty, advancing education and reducing the risk of harm to the public and the likelihood of reoffending by providing rehabilitation in custody.

APPEAL

56. The Appellant duly entered an appeal dated 21 July 2024 against the Decision of the Authority.

57. By email from Ms. Helen Cooke, Director and Secretary of the Appellant to the Secretariat of the Tribunal on 20 August 2024 at 15.26, Ms. Cooke submitted "*supporting documents and citations*" for the appeal, confirming that these documents were also submitted in hard copy.

THE APPEAL HEARING

58. The appeal hearing took place at the premises of the Residential Tenancies Board at O'Connell Bridge House, Dublin 2, on 7 November 2024.

REPRESENTATION AT THE HEARING

59. The following parties appeared at the hearing.

<u>On behalf of Appellant</u>:	Robert Hall
	Mark Pery-Knox-Gore
	Helen Cooke
	Charles O'Reilly

John Oxx

On behalf of Respondent:	Brian Gageby BL	(Counsel for the Authority)
	Mr. Alan Fitzgerald	(Legal Advisor, Charities Regulator)

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

THE HEARING

60. Mr. Pat O'Connor, Tribunal Chair ("the Chair"), welcomed those in attendance and asked the members of the Tribunal to introduce themselves. They did so.

61. The Chair then requested Mr. Mark Pery-Knox-Gore to identify those in attendance on behalf of the Appellant and he did so.

62. The Chair referred to the fact that Mr. Pery-Knox-Gore had previously been a partner in and was now a consultant to the firm of Beauchamps Solicitors who had acted for the Regulator in the past and indicated that the Tribunal members could not see any conflict in that issue. Mr. Gageby on behalf the Regulator agreed with that.

63. Mr. Gageby introduced himself and Mr. Fitzgerald from the Regulator.

64. The Chair indicated that there was a preliminary matter which he would ask Tribunal Member Mr. Bill Holohan to address. Mr. Holohan indicated that in the course of preliminary discussions between the members of the Tribunal, he Mr. Holohan had raised what appeared to him to be a preliminary matter which might well be described as a "*gateway issue*" which might in itself be determinative of the appeal. He said he would pose a question and invite responses in relation to the question which he expressed as follows:

"Is a body, which itself does not carry on any activities of a charitable nature, but which raises funds to be provided to a second body (which is not and cannot be a charity) to be used by that second body for purposes which may be charitable in objective, capable of satisfying the requirements for registration as a charity?"

65. Mr. Holohan indicated that this was an issue of concern to the members of the Tribunal. He indicated that it might well be common cause that the ultimate objective in terms of the project being carried on by the Appellant might be regarded as charitable but indicated that the Act was "*very prescriptive in terms of requirements*" for registration as a charity and that as an appeal body, the Tribunal was restricted to considering what was considered by the Regulator and the Regulator was restricted to considering what was within the law.

66. The Chair indicated that there was therefore a legal issue which should be addressed as a preliminary but substantive issue in relation to the determination of the appeal. He invited the parties to respond.

67. Mr. Pery-Knox-Gore in response indicated that he would see the question as "*a false antithesis*". He submitted that if the money is ultimately being spent on a charitable activity, that means that the person who is raising the money, is carrying on a charitable activity. He submitted that the fact that the Irish Prison Service ("the IPS") was not a registered charity was not a "*relevant consideration*".

68. Mr. Pery-Knox-Gore then referred to what he described as "*friends type charities*" which carry on a variety of activities, for example, to provide support to a care home, which would be raising funds to support the activities of the care home. He indicated that there were some friends' charities which simply raise money from the public and provide financial support to a given charity.

69. Mr. Pery-Knox-Gore then referred to a guidance note prepared by the Charity Commission for England and Wales in relation to connections with a non-charity. He indicated that the UK document indicated that it was perfectly permissible for a charity to establish a long-term relationship with an organisation which is not a charity, and he then proceeded to quote page 189 of the UK guidance document. He indicated that in England and Wales, it

was clear that it was acceptable for a charity to establish a long-term relationship of giving to / funding the activities of an organisation which was not a charity.

70. Mr. Holohan responded indicating that the Regulator (in Ireland) had inherited, as a result of the grandfathering provisions of the legislation, such charities which were in existence at the time of the legislation coming into being and insofar as Mr. Pery-Knox-Gore would be referring to friends' charities which predated the legislation that was "*a foreign country*". Mr. Holohan also pointed out that the legislation in the UK was different from the legislation in Ireland, and he therefore asked Mr. Pery-Knox-Gore to focus his argument in relation to the eligibility requirements of the Irish legislation. Mr. Holohan referred to a distinction between who was actually carrying out a charitable activity, as distinct from who was raising funds for the purposes of the charitable activity.

71. Mr. Pery-Knox-Gore responded indicating that there were many examples of charities which provided funds to non-charities, but Mr. Holohan again asked him to focus on the issue of whether these were post-or prior to the legislation coming into force.

72. Mr. Pery-Knox-Gore indicated that he did not know of any NGOs which had been established which sought registration since the passing of the 2014 Act. He referenced examples of NGOs such as Concern or Oxfam, which provided money to other organisations without questioning whether those other organisations were a charity, indicating that they were more concerned about whether the activity was activity of a charitable nature.

73. Mr. Holohan responded indicating that such groups might not need to concern themselves with that question, regardless of whether or not they were or were not a charity, but the Regulator certainly had to consider the question in the context of an application for registration, having regard to the provisions of the legislation and he again asked Mr. Pery-Knox-Gore to focus on that issue. He asked Mr. Pery-Knox-Gore to address the question originally posed, i.e., how was the eligibility requirements to be registered satisfied?

74. Mr. Pery-Knox-Gore responded indicating that if a body was established with the purpose of supporting a charitable activity, he did not see anything in the Act that says they could not do that if the later recipient of the funding was not a registered charity and did not see anything in the Act which prevented that from happening. He said he would have thought

that one could expect to see something in the Act, which pointed in that direction, but he did not.

75. The Chair asked Mr. Pery-Knox-Gore if he had anything further to say, and Mr. Pery-Knox-Gore responded indicating that he would say that there is nothing in the Act which prevents a charitable organisation from providing finance to another organisation which is not a registered charity, in support of a charitable purpose.

76. Mr. Holohan responded indicating that that was a question which might arise post-registration and pointed out that the Regulator had been dealing with and the Tribunal was dealing with an application for registration. He pointed out that there were 2 questions, and the first question which required an answer was the one he had posed.

77. Mr. Pery-Knox-Gore indicated that he did not understand the point being made.

78. Mr. Holohan indicated that there were two separate questions, as articulated by Mr. Pery-Knox-Gore. He said the first was the question of a registered charity giving funds to another body, a charity or otherwise, for charitable purposes or purposes which might be charitable. Mr. Holohan indicated that the question for consideration by the Tribunal was the question of a body, which, according to its own constitution and stated objectives exists to raise funds to be provided to others, for purposes which might be charitable in objective, and whether the activity of simply raising funds could "*cross the eligibility threshold*".

79. Mr. Pery-Knox-Gore responded indicating that he believed that it did. And he could see no reason why raising funds and providing funds to somebody in order for a charitable purpose to be carried out, would not be permitted.

80. In response to a statement from the Chair, indicating that it was not a charitable purpose, Mr. Pery-Knox-Gore acknowledged that it was not a charitable purpose in its own right, and indicated that he had dealt with that in his letter to the Regulator, but he submitted that it could be a charitable activity, if the fundraising was for a charitable purpose.

RESPONSE FROM THE REGULATOR

81. The Chair invited Mr. Gageby on behalf of the Regulator to respond.

82. Mr. Gageby indicated that it was helpful that the Tribunal had indicated something which would focus the parties' thinking and that it was helpful to be able to respond to the query. He said that the Regulator had a clear view in respect of the question asked and the Regulator's answer to the question which had been posed by Mr. Holohan on behalf of the Tribunal, was in the negative.

83. Mr. Gageby also said that he would like to respond to certain things which Mr. Pery-Knox-Gore had raised. He pointed out that the detailed relations in the UK which deal very precisely with how the funding of non-charitable organisations is to be done and particular statutory requirements were in place in the UK, which did not arise or apply in Ireland. He referred to Mr. Tudor's book and the reference at page 163 as to the nature of the guidance given by the Charity Commission as the Regulator charity in the UK which "*is not a judicial entity, does not make decisions as to what is or is not a charity, which are binding as a matter of the law of precedent*".

84. He submitted that what one then had was an English regulator giving guidance in England under a different statutory scheme where there was a specific statutory scheme in relation to dealing with finance of non-charities, and consequently that was of limited assistance.

85. He also referred to the points raised by Tribunal member Mr. Holohan, that in the charity sector in Ireland, you have grandfathering provisions, and in the UK, very long established charities, as result of which there was a certain inconsistency in the law with a consequential difference between charities which had been grandfathered in, say friends type charities and new charities which were making an application for registration.

86. The Chair indicated that while the Regulator and the Tribunal members might understand the reference, he would ask Mr. Gageby to clarify the reference to pre-existing charities having been “grandfathered” into registration with the Regulator, and Mr. Gageby explained that there were particular provisions which allowed for the continued existence of pre-existing charities and registration of such charities which were already in being at the time of the commencement of the legislation and that that had resulted in a degree of inconsistency in terms of charities which were pre-existing, which were allowed to continue, and the assessment of new charities which were making applications and would now have to meet

the tests of the new legislation, the Regulator being obliged to refuse an application, unless it was satisfied that the charitable test as set out in the legislation was being met.

87. Mr. Gageby then referred to what Mr. Pery-Knox-Gore had said, submitting that it was not relevant whether or not a charity was giving to an organisation that is not a charity, and he said he would describe that as "*a pretty radical statement*" which did not find favour in any case law, any legislation, of which he was aware. He said he would not labour the point but referred to the definition of charitable purpose under section 3 and he said that a gateway issue was, if an organisation existed for fundraising only and was not actually engaged in any charitable activities, could it be a charity for the purposes of the legislation?

88. Mr. Gageby indicated that Mr. Pery-Knox-Gore had accepted and noted that it was accepted by the Appellant that fundraising in and of itself is not a charitable purpose. He said that he did not think that there could be any controversy about that because it could not be. He said that when one considered the constitution of the Appellant, and its main object, one would have to ask, was it for a charitable purpose only, the stated main object being fundraising only.

89. He said that there was a surprising dearth of case law, but he identified one case of Oxfam v Birmingham City District Council [1976] AC 126, which arose in the context of tax of the application of local authority rates, there being a series of such cases which dealt with the application of local authority rates in the UK. He said that issues would arise in circumstances where the building was being used for charitable purposes, and whether it would be entitled to a rates exemption, if it wasn't for a charitable purpose. He outlined the case concerning Oxfam shops, which dealt in second-hand clothes, tribal art and that type of thing from Africa. He agreed with the Chair that village handcraft would also be sold.

90. Mr. Gageby referred to the headnote: *"That the appellant charity's main charitable object was the relief of poverty, distress and suffering, operated gift shops throughout the United Kingdom. Shops were used for the reception and sorting of articles given to it and the sale of those donated articles which could not be used in its work overseas in order to convert the articles into money which could be so used."* He said that there is no issue in relation to that, as Oxfam was a registered charity.

91. He went on to quote further from the judgement relating to the interpretation and the true construction of section 40 of the UK Act of 1967 and the distinction between use for charitable purposes or for purposes directly related to the achievement of the object of the charity as opposed to use for the purpose of getting in, raising or earning money for the charity. He said the decision was that charity shops being used mainly for the sale of clothing given to the charity in order to raise money for the use and the charity works overseas, were not entitled to relief as "*used for charitable purposes*", meant user for purposes directly related to the achievement of the objects of the charity as opposed to user for the purpose of getting in, raising or earning money for the charity; and that, accordingly, the charity's shops, being used mainly for the sale of clothing given to the charity in order to raise money for use in the charity's work overseas, were not entitled to relief. He said the decision was a long one, which discussed where the dividing line or to be drawn in such cases.

92. Mr. Gageby then quoted from the judgement of Lord Morris of Borth-y-Gest at page 148:

> *"The charitable purposes of Oxfam as .set out in their registration as a charity are clearly stated. Its objects are:*
>
> > " To relieve poverty, distress and suffering in any part of the world (including starvation, sickness or any physical disability or affliction) and primarily when arising from any public calamity (including famine, earthquake, pestilence, war or civil disturbance) or the immediate or continuing result of want of natural or artificial resources or the means to develop them and whether acting alone or in association with others; . ."
>
> *There being a distinction between, on the one hand, activities which a charity may undertake, and, on the other hand, activities which consist in the actual carrying out of its charitable purposes, it is manifest that some activities are on the one side of the line and some activities are on the other. This is shown on a consideration of decided cases. But because each case must be decided by an application of the relevant statutory words to some particular facts or sets of circumstances, I consider that any useful comment on any particular decision 'requires detailed statement of the features of the particular facts and*

circumstances. The facts in the present case are ascertained and are uncomplicated and so our only task is to apply the statutory words to them."

93. Mr. Gageby then continued to quote from the judgement:

> *"While care must always be taken to adhere to the statutory words and not to supplement them or to supplant them, I consider that user* "for charitable purposes" *denotes user in the actual carrying out of the charitable purposes: that may include doing something which is a necessary or essential or incidental part of, or which directly facilitates, or which is ancillary to, what is being done in the actual carrying out of the charitable purpose. There may, on the other hand, be things done by a charity, or a use made of premises by a charity, which greatly help the charity, and which must in one sense be connected with the charitable purposes of the charity and which are properly within the powers of the charity, but yet which cannot be described as being the carrying out, or part of the carrying out, of the charitable purposes themselves. The nature of the user may not be sufficiently close to the execution of the charitable purpose of the charity. A charity may be entitled to occupy premises and to use them other than for its charitable purposes: only if to occupation by a charity there is added user* "for charitable purposes" *will be the benefit given by the section accrue."*

94. Mr. Gageby submitted that what the case made clear was the fundraising in and of itself was not sufficiently proximate to the activities to be counted as a charitable purpose for the consideration before the House of Lords, and he indicated that the difficulty was that there were mischiefs which could attach to the circumstances which arise. He said he was expressing no criticism of the Appellant but dealing with the issue as a matter of theory. He said that there was a degree of oversight which was entirely removed if one had a non-charitable organisation. With reference to the statement made by Mr. Pery-Knox-Gore that it was not relevant that the organisation which would be receiving the money was not a charity, he said that this would create a risk that you would have money going into an organisation in respect which the charity did not have oversight.

95. Mr. Gageby indicated that there were regulations in the UK to address such issues and such dangers. Referring to the 3 examples given by Mr. Pery-Knox-Gore in his bundle of

documentation, the Friends of Bandon, Friends of Nenagh and Friends of Cross, he indicated that it was his understanding that the latter two had been grandfathered in. In relation to the Friends of Bandon, he indicated that the charitable object was to promote and provide for the benefit, care and comfort of the elderly, sick and infirm patients, attending and availing of the services of or residing in Bandon Community Hospital and for the advancement of services and improving infrastructural facilities and resources in the hospital. So that, he said, was not an object which is fundraising only. It was on its face, he said, a different object, which was promoting and providing benefit and care and comfort of the elderly and sick in Bandon Community Hospital. So, he said, it actually was not a fundraising only object; when you look at that on its face, he said that it was clearly a charitable object.

96. Mr. Gageby said that therefore there wasn't actually any precedent for the application being made, it being a novel application that carries with it in principle, certain mischiefs which cause a difficulty for the Regulator and the public. For those reasons, the Regulator was strongly of the view that fundraising was not a charitable purpose, which was accepted by the Appellant and therefore "*doesn't get past the gateway*".

97. Mr. Gageby also referred to the subsidiary object of the Appellant which was to raise funds from the public and in particular, the horse racing community through collaboration with the Irish Prison Service and to raise awareness of the benefits of equine programmes in prisons, as per clause four of the constitution, subsidiary objects, and indicated that in the view of the Regulator, there had not been sufficient clarity in relation to how that would be achieved.

98. Mr. Holohan asked Mr. Gageby to confirm whether the view would be different if the activities being funded were actually being carried on by the Appellant and Mr. Gageby replied indicating that he did not have instructions on that particular question, because they did not get past the first hurdle. He said that from a personal point of view, he could readily see the benefits of the activities and that there was nothing that anybody would have an issue with it in terms of the objectives in themselves, but that the Regulator had to look at it from the point of view of the legislation and the statutory scheme and that was the basis of the decision.

99. In response, Mr. Pery-Knox-Gore said he had not seen anything that would show that the 2009 Act would change the law in any fundamental respect with regard to the nature of charitable purpose and submitted that if an organisation was formed to promote a charitable purpose then provided what it was doing was for the public benefit it was entitled to be registered as a charity and he said that he had not seen anything or heard anything that that leads him to think that fundraising was not a charitable activity which promoted a charitable purpose, if the fundraising was specifically intended for a charitable purpose.

100. Mr. Holohan referred to section 3 (1) of the Act and the four charitable purposes listed (a) to (d). He referred to (d), which referred to any other purpose of benefit to the community. He asked Mr. Pery-Knox-Gore if he was suggesting, with particular reference to 3 (1) (d) that the raising of funds was a purpose that is of benefit to the community?

101. Mr. Pery-Knox-Gore responded indicating that the Decision of the Regulator was not questioning whether they were carrying on a charitable purpose or not, their focus was on the activities of the Appellant company, and they said we were not showing enough activity to justify saying that they were promoting a charitable purpose.

102. Mr. Holohan asked Mr. Knox Gore, did he accept that the raising of funds by itself was not a charitable purpose.

103. Mr. Pery-Knox-Gore said he would absolutely accept the raising of funds was not a charitable purpose.

104. The Chair asked Mr. Pery-Knox-Gore if he was then suggesting that by identifying a charitable purpose this is something which could come under section 3 (1) (d) and Mr. Pery-Knox-Gore replied in the affirmative.

105. Ms. Fawsitt indicated that she thought that in the context of the Appellant's application that (d) was more appropriate to what was being tried to achieve rather than (b) the advancement of education. Ms Fawsitt expressed her surprise that that they had gone for education as opposed to the one of benefit to the community. Ms. Fawsitt expressed her surprise that the application had not included information in relation to the work done in terms of creation of job opportunities, provision for retired horses, health and social

benefits of the ex-offenders, the community et cetera. Ms. Fawsitt expressed her surprise that the main object was limited to just fundraising.

106. In reply, Mr. Pery-Knox-Gore accepted "*absolutely*," that the application should have been made under (d).

107. Ms. Fawsitt again pointed out that the Appellant was accepting the fundraising in itself was not a charitable purpose.

108. Mr. Pery-Knox-Gore responded stating that fundraising of itself, and in and of itself, was not a charitable purpose. He accepted that is not charitable, so it had to be directed towards charitable purpose. Mr. Pery-Knox-Gore referred to the attendance of two people from the Irish Prison Service who could explain how the IPS thought the Appellant could help in finding employment for people post-release, something in respect of if the Appellant would "*play a supporting role in, through the contacts we have with the people in the horseracing industry*". He indicated that some of the leading trainers in the country had expressed an interest in having former prisoners come to work with them on work placement, working with horses, something which, if achieved, he said would be a positive contribution. He said he did not accept that explanations given to the Regulator were vague or aspirational. He said that they were aspirational in the sense that anybody who was involved in a start-up charity did not know exactly how the plans were going to materialise, but suggested they were not vague. He queried why, if the Regulator had found the explanations vague, they not asked for more information. He said that the Appellant would have been happy to provide further information.

109. The Chair reminded the hearing that the Tribunal was dealing with the initial question which had been raised by the Tribunal. He asked if the Appellant intended to carry on its work regardless of the outcome.

110. Mr. Pery-Knox-Gore indicated it would be more difficult for them to achieve their goals without achieving registration as it would be more compelling for potential donors if they were a business with a charitable tax exemption, as the benefit and value of contributions to registered charities would be increased under the revenue donation scheme. Mr. Pery-

Knox-Gore said it would be a major setback for them if they did not achieve charitable registration.

111. The Chair asked Mr. Gageby if there was anything he wanted to say, by way of response. Mr. Gageby replied in the negative.

112. The Chair asked if there was anything further to be said in relation to the preliminary issue and Mr. Pery-Knox-Gore responded that while accepting the fundraising in itself was not a charitable activity, it was his submission that when that fundraising was then directed towards a charitable purpose, then it was a charitable activity.

113. Mr. Holohan pointed out that the decision by the Regulator was based on the acceptance by the Appellant in the course of the application that fundraising in itself was not a charitable activity, as distinct from the qualification submitted to the Tribunal that if the fundraising was later directed for a charitable purpose, then it could come within section 3 (1) (d), which had only been advanced for the first time that morning before the Tribunal. Mr. Pery-Knox-Gore acknowledged this.

114. Mr. Holohan pointed out that qualification, advanced by Mr. Pery-Knox-Gore for the first time before the Tribunal, was not in the mind of the Regulator when the decision was made because the Appellant had limited its response to accepting the fundraising itself was not a charitable purpose.

115. In response, Mr. Pery-Knox-Gore referred to correspondence which had been sent to the Regulator which, while accepting the fundraising in and of itself was not a charitable purpose, submitted that many charities promoted a charitable purpose, not by direct engagement with the beneficiaries of the charitable work but by providing financial assistance to others more directly involved in providing the services to beneficiaries, the correspondence going on to reference examples. He suggested that the Regulator had disregarded this.

116. The Chair asked Mr. Pery-Knox-Gore to confirm that the letter to which he was referring was a letter addressed by Helen Cooke, director and secretary to Meagan Gill Head of

Registration and Mr. Pery-Knox-Gore confirmed that that was correct, that letter of 8 May 2024 being the reply to the initial notice of intention to recommend refusal.

BREAK

117. The Tribunal rose to consider the matter over lunch.

RESUMED HEARING

118. The hearing resumed in the afternoon.

119. The Chair asked if Mr. Pery-Knox-Gore could clarify, purely as a matter of interest, why the main objects of the company seem to limit the question of the provision of financial assistance for the operation of an equine centre attached to Castlerea prison only, when there were a number of other prisons in the country.

120. Mr. Pery-Knox-Gore clarified that Castlerea prison was where the equine centre had been established and when they came into being in December 2022, the equine centre had already been established there, but it was conceivable that the Irish Prison Service would open other equine centres in other prisons and as far as they were concerned, should that ever happen, and if it was their intention to provide funding for other centres, the main objects clause might then be amended, but at the time they followed the guidance documents of the Regulator.

121. The Chair thanked Mr. Pery-Knox-Gore for that information.

122. The Chair indicated that the Tribunal wished to make it very clear that the Tribunal took it that it was common case among all present, including the Regulator, that the general purposes for which the Appellant company was established was "*very laudable*" and that any decision of the Tribunal was not to reflect on "*the very good work*" that was being done.

He said he would invite Mr. Holohan to outline the nature of the determination of the Tribunal.

123. Mr. Holohan indicated that the Tribunal members were unanimous in their view. He said that he proposed to simply outline the basis of the decision, but that a detailed written determination would follow in a number of weeks. He pointed out that in terms of any potential further consideration by either party as to the outcome, time would only begin to run when they received the formal written determination.

124. He said in coming to the "*gateway*" question as he had outlined it the commencement of the hearing, the Tribunal were of the view that the Regulator, in considering the application of the Appellant, was bound by the information and documentation which was available to it at that time. As to the statement that the activity of fundraising was not to be regarded as a charitable purpose, notwithstanding the qualification in the letter quoted by Mr. Pery-Knox-Gore as to the transfer of funds to other organisations to be expended by them in charitable activities, did not satisfy the Tribunal that the decision of the Regulator was incorrect.

125. Mr. Holohan stated that it would be a different decision if it had been clearly stated that it was intended to raise funds for charitable activities and purposes to be delivered by the Appellant, but that was a different case and not the case put forward for consideration by the Regulator. Mr. Holohan referenced previous appeals where there were laudable purposes being pursued by Appellants who were not successful on the basis of the particular form of the application made. He said that quoting Lord Morris of Borth-y-Gest in the Oxfam decision, it was with "*a certain measure of regret*" that the Tribunal would dismiss the appeal on the basis that the Regulator's decision must be upheld, and it was not open to the Tribunal to rewrite an application, and it was not open to the Tribunal to consider further information that might be available, which was not available to the Regulator at the time of its decision.

126. Mr. Pery-Knox-Gore queried if the Tribunal was saying that fault lay in the letter which said the fundraising in itself was not a charitable purpose. Mr. Holohan responded saying that the clarification in the correspondence from the Appellant, which had been considered by

the Regulator, to the effect that the fundraising would be given to other bodies, and reference to the purposes to which that might be applied by those of the bodies, did not, in the view of the Tribunal disqualify the decision which had been made by the Regulator.

127. Mr. Pery-Knox-Gore indicated that he was in some difficulty in understanding the difficulties with their application. Mr. Holohan responded that was not the role of the Tribunal to advise. Ms. Dockry indicated that the written determination would follow. The Chair indicated that the modus operandi of the Tribunal was that they would give a decision orally on the day, 7 November 2024, so the parties would know the nature of the outcome, but the written determination would follow.

128. Mr. Gageby indicated that he would raise one procedural matter. He said that the Rules of the Tribunal made it clear that the conduct of the hearing was to be determined by the Tribunal in a manner which the Tribunal felt best accorded with fairness and transparency, and that "*obviously*" the Tribunal was entitled to amend its procedures to deal with what was deemed to be a preliminary point if it felt that that was dispositive, the issue having been referred to as a "*gateway issue*". He said that it was the view of the Regulator that this was a properly formulated appeal and so determination under section 45, subsection 5 should be made, albeit that was dealt with on the basis of a preliminary legal issue. He said that he suspected that was also the view of the Tribunal, but he just wanted to be clear for the record.

129. The Chair accepted the clarification and confirmed that the Tribunal had indeed formed the view that it was better to deal with the gateway issue first, rather than spending time dealing with the substantive hearing, which might not have been necessary, in fairness to everyone. Mr. Gageby indicated that the Regulator would agree with that approach.

130. Mr. Pery-Knox-Gore indicated he would take issue with something which had been said by Mr. Gageby earlier which was that the object of assisting with post prisoner placements was a subsidiary object. He said it was "*right there*" in the main objects clause.

131. The Chair reminded him of the main object clause 3 of the Constitution had been quite clear, and the question of possible amendment could be considered by the Appellant.

132. Mr. Pery-Knox-Gore expressed disappointment that as one of the functions of the Regulator, under the Act was to advise charitable organisations, they did not receive any advice at any stage of the registration process and had they been dealt with differently, the appeal would have been necessary.

133. The Chair indicated that the Tribunal had indicated on a number of previous occasions that the Regulator, as a public entity should be as helpful and as open and as advisory as possible while at the same time not going down the route of actually drafting an application.

134. Mr. Hall enquired if he might add something, and the Chair invited him to do so.

135. Mr. Hall indicated that they did charitable work, helping the community, helping prisoners, but they had an arm tied behind their back, if they were to continue without charitable status. He said that was the situation. He said that the Appellant had the opportunity to be a world leader in this regard and in 4 years had seen wonderful results. He said that the whole proceedings seem to be stymied all the way and that he knew that what they did was good work and the country would benefit, but he was so sorry.

136. Ms. Fawsitt said she would encourage the Appellant in the future, if they did decide to make another application, to look for assistance in its formulation because the project was extremely laudable and a wonderful piece of social entrepreneurship with a charitable purpose.

137. Mr. Holohan added that sometimes parties were so close to and buoyed up by the nature of the good work that they were doing that they did not understand that at times, that if they form a body such as a CLG and frame its constitution for the intended purpose of the activities in which they are engaged, this might be done without a view as to the

requirements to register as a charity, and without a view to satisfying the statutory requirements when drafting the founding documentation.

138. The hearing concluded.

DETERMINATION

139. During the course of the hearing, Mr. Pery-Knox-Gore indicated that if a body was established with the purpose of supporting a charitable activity, he did not see anything in the Act that says they could not do that if the later recipient of the funding, which was raised was not a registered charity and that he did not see anything in the Act which prevented that from happening. As a simple statement of fact, that was indeed correct. There might be nothing unlawful in that fundraising activity. That however did not mean that simply because such fundraising activity would not be unlawful, the body raising the funds was therefore entitled to be registered as a charity. The requirements for registration as a charity under the Act are clearly set out in the Act.

140. In the course of the hearing before the Tribunal, Mr. Pery-Knox-Gore submitted that the fact that the Irish Prison Service ("the IPS") was not a registered charity was not a "*relevant consideration*". Mr. Gageby, in response to Mr. Pery-Knox-Gore, submitted that he said he would describe the submission from Mr. Pery-Knox-Gore as "*a pretty radical statement*" which not find favour in any case law, any legislation, of which he was aware. The Tribunal is of the view that Mr. Gageby is correct in that regard.

141. In the course of his submissions on behalf of the Regulator, Mr. Gageby referred to potential risks arising from a lack of oversight where funds raised by a charity would be given to an organisation which was not a charity and therefore not subject to regulation and control by the Regulator. It is the view of the Tribunal that this is a perfectly legitimate, real and valid concern.

142. The Charities Regulatory Authority in Ireland is responsible for overseeing the operation of charities to ensure compliance with the Act. Its regulatory functions include maintaining the Charities Register, promoting transparency, and ensuring that charities are operating in the public interest. A key responsibility is the supervision of how charities use their funds. This

involves monitoring financial practices to ensure that funds are used exclusively for charitable purposes, as defined by the law. The Regulator has the authority to investigate complaints, conduct audits, and take enforcement actions if a charity misuses funds or fails to comply with regulatory standards. The goal is to promote accountability and public trust in the charitable sector.

143. Under section 14 (1) (c) of the Act the Charities Regulatory Authority is required to ensure probity, require accountability, set and monitor standards for promoting "*the effective use of the property of charitable trusts or charitable organisations*". Section 14 provides:

> *"14.— (1) The general functions of the Authority shall be to—*
>
> *(a) increase public trust and confidence in the management and administration of charitable trusts and charitable organisations,*
>
> *(b) promote compliance by charity trustees with their duties in the control and management of charitable trusts and charitable organisations,*
>
> *(c) promote the effective use of the property of charitable trusts or charitable organisations,*
>
> *(d) ensure the accountability of charitable organisations to donors and beneficiaries of charitable gifts, and the public,*
>
> *(e) promote understanding of the requirement that charitable purposes confer a public benefit,*
>
> *(f) establish and maintain a register of charitable organisations,*
>
> *(g) ensure and monitor compliance by charitable organisations with this Act,*
>
> *(h) carry out investigations in accordance with this Act,*

(i) encourage and facilitate the better administration and management of charitable organisations by the provision of information or advice, including in particular by way of issuing (or, as it considers appropriate, approving) guidelines, codes of conduct, and model constitutional documents,

(j) carry on such activities or publish such information (including statistical information) concerning charitable organisations and charitable trusts as it considers appropriate,

(k) provide information (including statistical information) or advice, or make proposals, to the Minister on matters relating to the functions of the Authority.

144. This statutory provision only applies in respect of registered charities under the Act. Section 14 (2) provides that the Authority shall have all such powers as are necessary or expedient for the performance of its functions. However, in relation to bodies such as the Irish Prison Service and/or Equine Safety and Training Limited, which are not registered charities, the Regulator has no authority to investigate complaints, conduct audits, or take enforcement actions in relation to possible misuse of funds or failure to comply with regulatory standards. Powers under section 64 (Investigation of affairs of charitable organisation) and section 66 of the Act (Inspector's reports) to inspect, and powers under section 68 (Power of Authority to require production of documents) and powers under Section 69 (Power of Authority to require production of documents) to seize documents (without a court order), or to issue directions under section 68 (1), to suspend trustees (without a court order) under sanction 74 (4) (a), (Protection of charitable organisations) all of which are powers afforded to the Authority to enforce charity accountability, would be unavailable for use against the Irish Prison Service or Equine Safety and Training Limited or any other body which is not a registered charity. The officers and or executives of such a second body or third party would not be accountable to or answerable to the Authority.

145. Were the Regulator to allow registration of a body such as the Appellant/Appellant to be registered as a charity, whose sole activity relates to the raising of funds, where the Appellant, rather than utilising its funds for charitable purposes, in a manner which would be open to supervision by the Authority, would simply disperse those funds to a second body,

(which is not a registered charity, and which is incapable of being registered as a charity under the Act), which second body in turn would use those funds to engage the services of a third party to provide services with a view to achieving a purpose (which might well be considered as coming within the definition of a charitable purpose within the meaning of section 3 of the Act), it would, in the view of the Tribunal, be abrogating its statutory duties and obligations in that it could not thereafter ensure it could discharge its statutory obligations in relation to ensuring that there was compliance by the registered charity with the legislation, in relation to openness or transparency in respect of the conduct of the affairs of the registered charity.

146. While in the particular circumstances of the arrangements in place in the case of the Appellant, in terms of its relationship with the Irish Prison Service, in the first instance, and the relationship between the IPS and Equine Safety and Training Limited, in the second instance, there is nothing currently apparent which might give rise to immediate or mediate issues of concern, and while such arrangements may indeed facilitate the achievement of very laudable intentions outlined, and while all those involved may be completely honourable and upright, the fact is that structure of any such arrangements would be capable of lending itself to what was described by Mr. Gageby as possible "mischiefs", which would not be subject to the scrutiny and oversight of the Authority. Even if it was accepted that the use of the funds which ultimately make their way to Equine Safety and Training Limited, were being used for purposes capable of being within the definition of charitable purpose under section 3 of the Act, this does not detract from the foregoing and entitle the Appellant to registration.

147. In a form of what might be described as a "*never mind the quality, feel the width*" argument, Mr. Pery-Knox-Gore submitted that one should ignore the legalities and focus on the realities that funds were being raised for what might well be a charitable purpose, and those funds were being used (in this instance, by the IPS and Equine Safety and Training Limited) for what might well be a charitable purpose, and that as a consequence, the Appellant should be registered as a charity. The members of the Tribunal regard this as a legally nonsensical argument. There are clear requirements set down in the legislation in relation to the criteria and requirements for registration as a charity. If an Appellant cannot satisfy those criteria and requirements, then they are not entitled, as a matter of law, to be registered as a charity under the Act. Motivation and intention are irrelevant in the absence

of compliance with statutory requirements. The simple fact that the ultimate use of the funds raised, such use being by a second or third party, in a manner which might be described as achieving a charitable purpose, regardless of whether such second or third party was, or was, not a registered charity, would not entitle the party raising such funds, to claim entitlement to be registered as a charity.

148. For the foregoing reasons, the Tribunal is of the view that the Decision of the Regulator is to be affirmed and upheld and the Appeal of the Appellant dismissed.

Dated this 04 day of February, 2025

Patrick O'Connor,

Chairperson,

The Charity Appeals Tribunal