

# DÁIL ÉIREANN

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## AN CHOMCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

### JOINT COMMITTEE ON JUSTICE AND EQUALITY

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*Dé Céadaoin, 14 Meán Fómhair 2016*

*Wednesday, 14 September 2016*

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The Joint Committee met at 9. a.m.

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#### MEMBERS PRESENT:

Deputy Colm Brophy,	Senator Frances Black.
Deputy Jack Chambers,	
Deputy Alan Farrell,	
Deputy Jim O'Callaghan,	

In attendance: Senator Colette Kelleher

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR

**Charity Appeals Tribunal: Chairperson Designate**

**Chairman:** I welcome Mr. Patrick O'Connor. I also welcome Deputies Colm Brophy, Jack Chambers and Jim O'Callaghan, who are in attendance. I would like especially to thank Senator Colette Kelleher, who has facilitated the committee in getting this meeting under way this morning. I thank her most sincerely for that. Apologies have been received from Deputy Clare Daly and Senators Martin Conway, Lorraine Clifford-Lee and Niall Ó Donnghaile. The purpose of this part of our meeting is to have an engagement with Mr. Patrick O'Connor, who is the chairperson designate of the Charity Appeals Tribunal. On behalf of the joint committee, I thank Mr. O'Connor and his officials, Ms Jillian O'Keeffe, Ms Gráinne Whelan and Ms Bridget Canning, for being here with us today. They are very welcome. Mr. O'Connor will be invited to make a brief opening statement, which will be followed by a question and answer session.

Before Mr. O'Connor gets under way, I have to read a caution into the record to draw his attention to the situation regarding privilege. I ask him to note that he is protected by absolute privilege in respect of the evidence he is to give to this committee. However, if he is directed by the committee to cease giving evidence relating to a particular matter and continues to do so, he is entitled thereafter only to a qualified privilege in respect of his evidence. He is directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, he should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Members should be aware that under the salient rulings of the Chair, members should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I invite Mr. Connor to make his opening statement.

**Mr. Patrick O'Connor:** Go raibh míle maith agaibh as ucht cuireadh a thabhairt dhom teacht ós bhur gcomhar inniú. Is mór an onóir dhom a bheith anseo í bhur measc agus tá súil agam go mbeidh sibh sásta liom mar chathaoirleach ar an mBinse Achomhairc do Charthanas. I am deeply honoured to have been nominated by the Minister for Justice and Equality as chairman designate of the Charity Appeals Tribunal and to be here before the Oireachtas Joint Committee on Justice and Equality. My appointment as a member of the Charity Appeals Tribunal, together with the other members thereof - Ms Carol Fawsitt, Mr. Bill Holohan, Ms Karen Smyth and Ms Deirdre Kiely - took effect from 1 October this year. I am grateful for the opportunity given to me to be a member of the Charity Appeals Tribunal and look forward to the opportunities and challenges that will arise from it.

The Charities Appeal Tribunal derives its statutory basis from Part 5 of the Charities Act 2009, sections 75 to 80. I am a solicitor with 42 years experience in practice. My professional involvement continues in the firm of P. O'Connor & Son, which was established in 1900. I am currently its managing partner and there are 25 staff members of considerable skill and experience. I continue to be active in legal practice, particularly in the areas of dispute resolution, including litigation, arbitration, mediation and negotiations, and in the provision of legal services to clients in estate, wills, wards of court, protection and assisted decision-making. For the benefit of the committee, I set out my involvement in areas of legal practice, policy level involvements, business and sport.

I developed a family legal practice, steeped in tradition, to become a leading law firm in Connacht that is well regarded nationally, I hope. I have extensive experience of advocating for

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clients in the District, Circuit and High Courts. I have addressed all Irish courts, including the Supreme Court, on legal matters. I have been practising arbitration since 1983 with extensive experience in commercial, property, insurance and other contentious matters. I am a fellow of the Chartered Institute of Arbitrators and I have acted as a mediator in commercial, property and other disputes since 2000. I was appointed a notary public in 1977 and have served in four west of Ireland counties. I have acted as coroner in Mayo since 1989 and I regularly conduct inquests. I have been a council member of the Coroners Society of Ireland since 2006 and a member of the Garda Síochána disciplinary inquiry and appeal board since 2007. I have been a member of independent appeals tribunal of the Irish Prison Service since 2011 and I am currently serving as chairman of the Mental Health Tribunal, conducting more than 360 mental health hearings since appointment in 2011. I have been a member of the Charity Appeals Tribunal from 2016, as the committee is aware.

On policy level involvements, I have provided leadership within the legal profession for 35 years, serving as president of the Law Society of Ireland and chairman of a number of its committees. I was president of Mayo solicitors' bar association and I have held other officer roles over the past four decades. I served on the Judicial Appointments Advisory Board from 1999 to 2002 and the Courts Service Board in the same years. I served on the appeals board of the Society of Actuaries disciplinary tribunal from 1999 to 2009 and the rules of the superior courts committee from 2002 to 2012. I was chairman of a preliminary investigation committee of the Irish Auditing and Accounting Supervisory Authority and I have been a member of its external panel since 2009. I developed sports law and sports management expertise through roles such as director with Sport Ireland, national child welfare officer with the Irish Rugby Football Union and judicial officer for rugby competitions.

In business I was appointed to the Press Council of Ireland and served as a board member for two terms, totalling six years, and I served as council vice chairman in 2014. I have been a director of the O'Dwyer Foundation, a not-for-profit charity, since 1990. I have been a director and trustee of the Brabazon Park Trust since 1978. I was a former director of Hope House, an addiction treatment centre established in 1995 from 1995 to 2002; DANA Exploration from 1991 to 1995; and IRD Kiltimagh Limited from 1991 to 2002. I have been chairman of the National Sports Campus Development Committee from 2015 to date. I was a director of the Irish Association of Suicidology from 1997 to 2002. In other areas, I was a former chairman of the board of management of St. Louis Community School for 13 years and the board of management of University Hall SJ for seven years. I am a former member of the Sports Council of Ireland.

In the sport area, I am currently a director of Sport Ireland and have been a member of Connacht Rugby professional game board since 2011 and chairman in 2014. I was a member and chairman of the IRFU child welfare committee from 2007 to 2015 and have been a board member of the IRFU charitable trust since 2011. I have been a member of disciplinary panels for World Rugby, European Rugby and the Six Nations since 2006. I am judicial officer on those panels for rugby competitions. I am currently honorary legal adviser to a number of sailing, golf, rugby, fishing and other sporting bodies.

The committee will observe that I have and had a number of interests in the voluntary and charitable sector, particularly with the O'Dwyer Cheshire Home, Hope House addiction centre, the Irish Association of Suicidology and schools. I have served on the board of management on a number of schools, both national and secondary, and I continue to act as a legal adviser to a number of charities, sporting and philanthropic organisations. The establishment of the chari-

ties regulatory authority and now the Charity Appeals Tribunal are an important development in the oversight, transparency and accountability of charities in Ireland. The Charity Appeals Tribunal is an important addition to the regulatory architecture applying to the charities sector in that it provides the right of appeal by a person whose application to the authority has been refused or in the case of an existing charity whose registration has been revoked. I will not delay the committee in reciting the provisions of Part 5 of the Act save to say that it will be necessary for the tribunal to put in place rules for the hearing of applications, an appeal form and other related matters. Work is already under way in the preparation of the necessary rules and procedures. It is important to ensure that the appeal process will be fair, transparent and relatively simple and does not become cumbersome. I envisage that most appeals will be made by individuals.

Charities are a very important part of Irish Society. People in Ireland are extremely generous and deserve assurances that the sector will conduct its business in an honest and professional manner. Charities should be open and transparent in their activities, particularly with regard to their financial affairs, so that public confidence in them will be maintained and strengthened. The meitheal and community involvement for people less fortunate than oneself is ingrained in Irish people and society. We are a generous nation.

The charity sector is involved in the collection and distribution of billions of euro each year and has an involvement with tens of thousands of people who are in need of support. This is a vital addition to, and often a substitution for, State provision of materials and services. The charity sector in Ireland is in a good place notwithstanding some high-profile difficulties and concerns over the past few years. The introduction of the authority and regulator will give added confidence to Irish people in their ongoing continued support of this vital and important sector in Irish society.

Ba mhaith liom mo bhuíochas a ghabháil libh as ucht bhur gcuid ama a chaitheamh ag éisteacht liom inniú agus beidh mé ag súil go mór le bhur moladh. Many thanks for giving the committee's valuable time to listen to me. If members have any questions, I will be happy to endeavour to answer them.

**Chairman:** I thank Mr. Patrick O'Connor for his address to the committee this morning. I welcome Senator Frances Black to the meeting. This is the first meeting of the joint committee and she is the first Senator to grace us with her presence.

**Deputy Jim O'Callaghan:** Ar dtús báire, ba mhaith liom comhghairdeas a dhéanamh leis an tUasal O'Connor ar a oifig nua. Tá súil agam go mbeidh sé an-sásta ar fad san oifig sna blianta atá romhainn. It is obvious he is an eminently qualified person. It is important from the point of view of the committee and the public that we are aware that the tribunal's functions are rather limited. They only really kick in if the Charities Regulatory Authority either refuses to grant charitable status or the Minister wants to appeal the granting of status. Is that correct?

**Mr. Patrick O'Connor:** That is correct.

**Deputy Jim O'Callaghan:** Mr. O'Connor helpfully gave us the names of the five members of the tribunal. Like any statutory body, it can only really function if it has a secretariat. Section 76 of the Charities Act 2009 states that "the Minister shall ... provide the tribunal with such and so many staff as he or she considers appropriate". Have any staff been put in place or is it too early at this stage?

**Mr. Patrick O'Connor:** Yes, Deputy. In fact, I met with them last week and two of them are sitting here today. Accommodation has also been provided in the Valuation Tribunal's office at the back of Holles Street. It is a temporary measure but at least we have accommodation and secretarial backup.

**Deputy Jim O'Callaghan:** Is Mr. O'Connor satisfied he has sufficient backup to allow the appeal tribunal perform its functions?

**Mr. Patrick O'Connor:** So far, so good.

**Deputy Jim O'Callaghan:** Mr. O'Connor mentioned that it is important that the work of the appeal tribunal be transparent. Section 78 of the Charities Act 2009 states that "proceedings before the tribunal shall be conducted in public". Obviously, there have not been any hearings as of yet. However, is Mr. O'Connor satisfied he has a suitable forum available where the public can hear submissions be made to the tribunal?

**Mr. Patrick O'Connor:** The accommodation provided is adequate for the present. As we have hearings, we will have to gauge whether we need different or greater accommodation. Much of that will depend on whether the Valuation Tribunal is sitting as it has good accommodation. If we need to have an overflow facility, we will be permitted to use those rooms as well. There are some consultation rooms at the site as well which I examined last week. So far, so good. It is a living process.

**Deputy Jim O'Callaghan:** Mr. O'Connor cannot bring forward any hearings of his own motion. He is purely dependent on a charitable entity which has been refused charitable status bringing an appeal to him or, alternatively, the Minister bringing an appeal on the basis he or she believes status should not have been granted.

**Mr. Patrick O'Connor:** That is correct. We will not be initiating anything ourselves. We have to wait for someone to initiate the process of appeal, be it an individual or a Minister.

**Deputy Jack Chambers:** I welcome Mr. O'Connor and thank him for his opening statement. He has considerable background and experience. I wish him well in his new role as chairman of the Charity Appeals Tribunal.

There has been much discussion about the allocation of resources by the Minister to the Charities Regulatory Authority and staffing issues in the agency. Is Mr. O'Connor confident that the staff complement he has been provided with is adequate? Will the staffing issues in terms of the investigatory powers and oversight of the Charities Regulatory Authority limit the potential future meetings of the appeals tribunal?

**Mr. Patrick O'Connor:** I thank Deputy Jack Chambers for his good wishes. As far as I can see, the resources that have been made available to us thus far are adequate. Time will tell, however. I do not envisage that the tribunal will be sitting that regularly but we will not know until we see what sort of caseload comes up. If an issue arises, I will not be shy in making it clear that we need additional resources. For the present, the staff made available to us in the Department of Justice and Equality are very adequate and extremely helpful.

The staffing issues in the Charities Regulatory Authority are in the public domain. As I understand it, the number employed in the authority is 36. I do not know whether that is adequate or not. The regulator or the chief executive, Mr. John Farrelly, would be the person to talk on that. Now that Part 4 of the Charities Act, the investigative side of it, has been initiated, it seems

the number of staff will need to be increased. However, I do not know, as this is a matter for the Charities Regulatory Authority. It is positive that Part 4 has been initiated at least.

**Deputy Jack Chambers:** When does Mr. O'Connor expect the rules of the tribunal to be formalised and published?

**Mr. Patrick O'Connor:** They are currently in draft form. It is important we have a consultation about them. They are all subject to the approval of the Minister ultimately. I am a firm believer in the use of plain language. I edited a document some years ago for the National Adult Literacy Agency, NALA, on the use of plain language for legal or quasi-legal proceedings. It is important we keep this process as simple as possible and not get bogged down in legal jargon. That is the point from where I am coming on the drafting of the tribunal's rules. Hopefully, they will be relatively simple for people to follow. At the end of the day, it will be mainly individuals and not too many professionals coming before the tribunal.

**Deputy Jack Chambers:** Does Mr. O'Connor have a projected caseload? Part 4 has been initiated and Revenue is examining shadow banking and other issues in the charities sector. Could this create a considerable caseload for the tribunal?

**Mr. Patrick O'Connor:** To predict the caseload at the stage when one is setting up a body is a bit like asking someone to predict what the Irish weather is going to be in six weeks' time. We really do not know. I do not think there will be a significant caseload initially but we will learn as it goes along.

I do not believe the tribunal will have involvement in Part 4 investigations. That is a matter for the authority, an inspector who might be appointed under any inquiry and the High Court.

**Deputy Jack Chambers:** What was the process of appointment for the members of the tribunal? What will the process be if someone cannot participate or resigns?

**Mr. Patrick O'Connor:** I do not know what the future will be. A procedure has been set out in the Act on how, if a vacancy arises, it can be filled by the Minister. That appointment will see out the rest of the term.

There are five members of the tribunal. There was an application process through the Public Appointments Service. I filled out a form on the website, *publicjobs.ie* and gave my various credentials. A decision was then taken on my being appointed to the tribunal.

**Deputy Colm Brophy:** I congratulate Mr. O'Connor on his appointment. The question I wished to ask has been partially answered already. It relates to how grounds for an appeal to the tribunal might work or how the tribunal's approach might differ from the way the regulator originally looked at it. In other words, is there a framework or will criteria be laid down, a set of three or four grounds, for example? Will it focus mainly on the decision of the regulator in a narrow sense or will Mr. O'Connor be interpreting it in a broader sense? What is the type of framework under which an appeal will be able to reach his office having been refused by the regulator?

**Mr. Patrick O'Connor:** I thank Deputy Brophy for his kind regards.

We want to keep the process as simple as possible. We are going to be confined, it seems to me, by section 39 of the Act which sets out whether a charity can be registered. I would expect the regulator to be fair in its procedures and to be very careful. The regulator must give a

reasoned decision as to why an application is being refused. If there is a refusal and an appeal, obviously the reasons given and the whole process will have to be considered by my office. We want to keep it as simple as possible but at the same time we must be accountable and, more importantly, fair. We do not want to start off with a situation where there is a judicial review of a decision of ours simply because we did not follow fair procedures.

To answer the specific question, there would be a formal notice of appeal. I would not expect that there would be too much detail in it. The grounds on which the appeal is taken should be set out, but not too legalistically, as well as the reasons that the applicant feels the appeal should succeed.

**Deputy Colm Brophy:** I take Mr. O'Connor's point about the charity sector being in a good place right now. There are a lot of very brilliant charities operating in Ireland but I am not quite sure I would be as positive as Mr. O'Connor about it being in a good place. There are definite problems in the sector and the need for a regulator to be in place and to be given additional powers shows that is the case. There is, however, a flip side to all of that. I acknowledge the importance of transparency, openness and conducting business in public, but I worry about a charity getting caught up in a process between the regulator and an appeal which could do quite a lot of damage to it. In the world we live in, if one searches Google for the name of a charity and the first thing one sees is an appeal to the regulator, even if the charity wins, that could be damaging. What safeguards have been considered to try to minimise any potential reputational damage for charities which get caught up in this process?

**Mr. Patrick O'Connor:** That is a very interesting comment and question. There are approximately 7,900 charities registered with the regulator, arising from the original approximately 8,500 bodies that had charitable status with the Revenue Commissioners. Since then, approximately 600 have dropped out. They are all deemed to be registered charities so unless the charity itself wishes to cease to be registered or there are other reasons, that will not change. The Deputy's question would apply to prospective charities, that is, those which have not yet been established. It is very important that all charities when presenting a case to the regulator actually set out what they intend to do and make sure that they comply with the overall scheme of what it is to be a charity, the purpose of it and to make sure there is a public benefit to it. I suspect, without naming any charities, that in the past there was a very general view taken that one could set up a body to help a few people in a local community and that could be regarded as a charity. One then simply went to the Revenue Commissioners and got a charity number. That will not apply, as I understand it, going forward and rightly so. Otherwise, we will not have a properly regulated sector.

Those who set up charities to provide or to help do so out of goodwill but there is an onus on them to make sure that they are doing it properly, have proper objectives and that the powers of the charity are set out correctly.

**Chairman:** I now call Senator Black.

**Senator Frances Black:** I welcome Mr. O'Connor to the meeting and apologise for being late. I was not expecting the traffic to be so bad this morning. This is my first meeting of the Joint Committee on Justice and Equality and while I am a little nervous, I am delighted to be here. I do not have a specific question for Mr. O'Connor. I simply wish to congratulate him on his appointment. He is highly skilled, which is fantastic because the job requires a lot of skill.

I welcome the establishment of the tribunal. My background is in the charity sector and I

know of the difficulties faced by charities. I also welcome the establishment of Charities Regulatory Authority because it is time for charities to get organised and to sort out their fundraising principles. As we all know, recent times have been very difficult for the charity sector. I think this development is fantastic and I look forward to observing the tribunal in action and possibly even working with Mr. O'Connor at some point. I imagine Mr. O'Connor is facing into a busy time.

To take up a point made by one of my colleagues, does Mr. O'Connor believe that there will be a lot of appeals? What is his feeling on what will happen going forward? Will there be many charities trying to see what is going on? The Charities Regulatory Authority is only starting up now, in effect, and getting organised. The issue with Console has made everyone more aware of what is going on. What is Mr. O'Connor's feeling on how this will progress? Will many charities use the tribunal?

**Mr. Patrick O'Connor:** I thank the Senator for her good wishes. I share two things with her. One is the nervousness that she had this morning and the second is the traffic problem coming in. I nearly did not make it.

I do not know, quite frankly, whether we will have a large caseload. I would hope that we would not. It is important to remember, as others have pointed out, that when a group of people come together to form a charity now, they know there is a framework there that they must follow. They should know what is to be done and hopefully they will get guidance and help from the various organisations out there that can assist them in preparing their application. They must make sure that the trustees of the charity or the company are limited by guarantee, as the case may be, understand what they are doing and make sure that they comply with the provisions of the Charities Act and other relevant legislation.

I do not think we will have many appeals but I do not know for sure. Perhaps at some stage in the future I can come back before the committee to outline how we are getting on. By that stage I might have a better idea because it is always easier to answer that sort of question retrospectively rather than prospectively. My answer is that I do not think there will be a lot of appeals.

**Chairman:** I have one or two questions for Mr. O'Connor. I have listened to Senator Black's focus and recognise that Mr. O'Connor's office can only be activated by refusals by the authority or referrals by the Minister, as the case might be. In terms of the role of the Charities Regulatory Authority and the appeals tribunal, does Mr. O'Connor believe that the full need is being addressed by the entities or structures that are currently in place? Will they be able to address the concerns referred to by the Senator which are quite widespread in public opinion today *vis-à-vis* high-profile charities where significant payments were made to officers of those charities? Senior figures working in the area of oversight of the health sector have, on many occasions, expressed concern that the HSE is funding entities without sufficient oversight or accountability. Does Mr. O'Connor, in his newly designated role or based on his earlier experience, have a view as to whether or not all of these areas are now being adequately covered, addressed and provided for, or does he believe there is still a need to look at the formulation of entities which have been entrusted to ensure the highest standards and real accountability and transparency across the board? This, ultimately, is what Seán and Áine Citizen want to see. They want confidence restored.

**Mr. Patrick O'Connor:** My view of the charities sector, which I hope is commonly held, is that there is a big number involved in it - 7,000 and maybe more. They range from three or

four people who come together for one particular purpose to large organisations which have CEOs and staffing and other issues. It is a very diverse sector and is a wide fan across Irish life. It is also a very important part of Irish life, as I said in my opening statement, and it needs to be fostered. As I understand it, the Chairman asked whether the Charities Act 2009, and what has been put in place as a result of the Act, will be adequate to police charities and encourage them to do the right thing and to be open and accountable. It is a major step but I do not know whether it will work out. The Charities Regulator has prepared a first statement of strategy, which takes us to 2018. That sets out what the regulator and the authority will achieve. The Chairman's question is more relevant to that level than the level at which the tribunal will be involved. We will be dealing with the small, focused area of appeals relating to failures to register and other such things. In light of the way in which certain issues came to public attention in the past few years, it is timely. The question of whether or not it could have been done earlier is one for policy and I will not get into it. At the end of the day, the enactment is important, the initiation is important and the powers given to the regulator under Part 4 to carry out an investigation are also very important.

**Chairman:** In answer to colleagues earlier, Mr. O'Connor said that the rules for the conduct of business which were left to the tribunal to formulate were now in draft form. That suggests the tribunal has already met as an entity. Has Mr. O'Connor met with the other four designated colleagues to determine and prepare the rules? If that is not the case, by whom are the rules being determined? I noted in the briefing which was circulated that it states that appointments come into effect from 1 August but Mr. O'Connor actually read 1 October into the record.

**Mr. Patrick O'Connor:** Oh my goodness.

**Chairman:** Was that just a mistake?

**Mr. Patrick O'Connor:** It was a mistake. The date was 1 August.

**Chairman:** I have made more mistakes than that this morning, so we will not worry about it. I wondered if it represented a change in the commencement date for the work of the tribunal.

**Mr. Patrick O'Connor:** My apologies. The members of the tribunal were appointed on 1 August. There are five, as set out in the Act. We met informally last week. I did not want to presume anything as I am only chairman designate and until I have been formally appointed, it would be presumptuous in the extreme to do too much but the tribunal has been established so we will have to get up and running. There is no point in waiting for the process to be fully completed before we have a meeting. We discussed the broad parameters and principles of how we might run a hearing and what our rules and procedures will be. I have drafted a set of rules, which will be circulated to all other members with a request for comments. It will then go back to the Department for the approval of the Minister. I want to keep it as simple as possible so that it is not too legalistic.

**Chairman:** I thank Mr. O'Connor and my colleagues on the committee for their respective contributions. The committee will now notify the Minister that we have met and engaged with Mr. O'Connor. On behalf of the committee, I thank him for his attendance and his engagement with us and I wish him and his colleague members of the tribunal well in their respective roles in the time ahead. Go raibh míle maith agat.

**Mr. Patrick O'Connor:** Go raibh míle maith agat.

**Chairman:** We will go into private session to deal with our agenda.

CHARITY APPEALS TRIBUNAL: CHAIRPERSON DESIGNATE

The joint committee went into private session at 9.50 a.m. and adjourned at 11 a.m. until 9 a.m. on Wednesday, 21 September 2016.