



Minutes of Extraordinary Board Meeting No. 80 held on Tuesday 10 March 2020 at 12.00 noon, at Europa Hotel, Belfast.

Present:

Nicole Lappin, Chief Charity Commissioner
Gerard McCurdy, Deputy Chief Charity Commissioner
Steven Cockcroft, Charity Commissioner
Kieran Donaghy, Charity Commissioner
Séamus Magee, Charity Commissioner
Carmel Mullan, Charity Commissioner
Rachel Harrison, Board Apprentice

In Attendance:

Frances McCandless, Chief Executive
Aubrey McCrory, Head of Corporate Services
Punam McGookin, Head of Charity Services
Myles McKeown, Head of Compliance & Enquiries
Ruth McMurray, Legal advisor
Colleen Gallagher, Legal advisor

Apologies: Hugh McKeag, Charity Commissioner

1. Conflicts of Interest

No conflicts were declared.

2. Chair's Business

The Chair welcomed everyone and indicated that this extraordinary meeting offered an opportunity to discuss, ask questions and consider advice regarding the Court of Appeal decision. However, initially she wanted the Board to discuss complaints that were being dealt with by Commissioners. All staff left the meeting for a brief period, joining again once the discussion on complaints was complete. The Chair advised that she would be in touch with Commissioners to form a further complaints panel.

3 Issues arising from Court of Appeal decision and legal advice

The Board examined the implications of the 19 February 2020 Court of Appeal judgement and the position of the charity sector. Legal advice

previously received relevant to the appeal and additional advice sought from counsel on foot of the judgement was considered at length. A number of options were explored and the implications across small to large charities operating in Northern Ireland were examined.

The Board noted a decision was now required from the Minister for Communities whether to amend the Charities Act (Northern Ireland) 2008 to permit delegation to staff, or to permanently reshape and resource the Commission to facilitate Commissioners as decision makers.

The Board discussed previous challenges to the Charities Act (Northern Ireland) 2008, resulting in amendment in 2013 that had retrospective effect.

Commissioners noted the current position which impacts on charities will have to be communicated in a timely manner. It was agreed that, as a regulator, in furtherance of the Commission's public confidence objective pursuant to section 7 of the Act (to increase public trust and confidence in charities) and in consideration of the principles of best regulatory practice, the Commission would inform the public at large of the judgment and explain the practical implications of it on previous decisions that have been made by the Commission through a statement published on the Commission's website.

Séamus Magee left the meeting at 12.40

The Board decided it would not seek to appeal the Court of Appeal decision to the Supreme Court.

The Board considered the status of around 8,200 decisions previously made by staff and an assessment of the risks of appeal and need to remake certain decisions for various reasons. Recent correspondence from the Attorney General was discussed and it was agreed to write to him seeking his views on the current position. It was noted some decisions would be put before a schedule 1 committee after this board meeting.

AP1: Write to Attorney General requesting views.

The Board reviewed the position in all the ongoing Tribunal cases and a number of steps were identified. It was agreed to communicate with the Charity Tribunal on case management. It was agreed to robustly defend out of time actions as proposed by Stephen Cockcroft and seconded by Gerald McCurdy.

In light of the judgement also impacting on the publication of statutory inquiry reports, Commissioners noted temporary action had been taken pending further consideration of publication. It was noted that the factual findings of investigations recorded in the reports have not been undermined by the judgment.

In terms of governance impacts, the Chief Executive, as Accounting Officer, advised she had informed the Northern Ireland Audit Office of the Court of Appeal judgement and had also reviewed the Management Statement and Financial Memorandum to ensure that there were no reporting requirements that arise from the judgement. Confirmation had also been received from sponsor department that no formal notification of the current situation to the Departmental Accounting Officer is required, given the department's involvement in the litigation.

Commissioners discussed the more resource intensive and slower method of decision making now required, likelihood of increased complaints and challenges. It was accepted these along with transformation work and relocation would have a substantial impact on next year's business plan targets. It was noted revisions to the current plan would be required once the Minister's views on the way forward are known.

The Board reviewed the criteria for prioritising decisions for Schedule 1 committee and agreed to add registration cases brought forward based on oldest cases at recommendation as proposed by Kieran Donaghy and seconded by Gerald McCurdy.

AP2: Amended criteria for prioritising cases for Schedule 1 committee to be implemented.

The Board was satisfied that the Court of Appeal judgement only impacts on statutory decisions made under the Charities Act (Northern Ireland) 2008. Other decisions which staff of the Commission make as staff of a public body are unaffected.

Commissioners considered the impact of managing the urgent response to the Court of Appeal judgement and assessed priorities around strategic work and responding to complaints and litigation. It was noted with reluctance that relocation needed to be deprioritised. Commissioners also undertook to make time to visit the office and support staff.

4. AOB

Following a request from the Audit & Risk Assurance Committee the Board reviewed the Corporate Risk Register, in particular Risk 3: Public Trust and Confidence. No change was made to the existing rating as recommended by the Committee.

Commissioners noted the visits to a range of charities by staff and Commissioners.

The Board residential at the end of March including governance workshop was postponed in light of the assessment of emerging health risks. The Board will instead meet at the Commission's offices on that date.

AP3: Identify new date for Board Residential and Governance training.

The Chair thanked everyone for their input and the legal team for their advice and assistance.

Meeting ended at 2.30pm

Date of next meeting 31 March 2020

