

From: **Section 40(2)**
Voluntary and Community Division

Date: 20 June 2019

To: 1. **Section 40(2)** (Amended and Cleared 21/6/19)
2. Tracy Meharg

CHARITY COMMISSION FOR NORTHERN IRELAND - REQUEST FOR INDEMNITY / LETTER OF COMFORT

Issue: You requested a letter of comfort to be drafted for CCNI to indemnify them against losses in connection with any decision made by a member of staff prior to 16 May 2019, where they are sued by an aggrieved party.

Timing: Routine

FOI Implications: In the event of a request for disclosure of information contained in this submission under the FOI Act, the request would be considered in the context of the relevant provisions of the legislation, including any relevant exemptions that may be applicable.

Presentational Issues: None at present. [Cleared by Press Office. HA 20/06/19]

Financial Implications: Unknown at present but would be determined in the context of legal proceedings and DOF approval as necessary. [Cleared by Finance Branch 26/06/19]

Legislation Implications: None.

Equality implications: None.

Recommendation: That you note this briefing and agree the content of the draft letter at **Annex B**.

At your meeting with CCNI representatives on 5 June, Tom McGrath requested that the Department provide them with an indemnity in writing (Annex A) against financial losses if they continue to work at risk under existing procedures.

2. Legal advice confirmed that it would not be appropriate for the Department to provide such an indemnity as it would in effect allow CCNI to discharge its functions unlawfully. However the Department could, if it wished, indemnify CCNI against losses in connection with any decision made by a member of staff prior to 16 May 2019, when the draft judgement was made, where they are sued by an aggrieved party. You asked for such a letter of comfort to be drafted and this is attached at **Annex B**, the wording reflects advice from Counsel.
3. Our Finance Director has advised that your agreement to the letter is required prior to it being submitted to the Department of Finance for their written approval as required by Annex 5.5 of Managing Public Money Northern Ireland.
4. I will prepare a further SUB with the letter and DFP's approval, when received, at which point the letter can issue to CCNI.

Recommendation

5. That you note this briefing and agree the content of the draft letter at **Annex B**.

Section 40(2)

Voluntary and Community Division

Cc: Moira Doherty

Section 40(2)

Peter Toner

Gillian Morton

Gavin Patrick

DfC Press Office

Section 40(2)

Deputy Secretary's Office ECG

Permanent Secretary's Support

ANNEX A

Immediate issues arising from High Court decision re Charity Commission for NI

5 June 2019

- Emergency decision-making procedures have had to be established formally by the Board, always involving at least one Commissioner.
 - Commissioners were not recruited, are not resourced and do not have time to commit to this indefinitely. Arrangements should be considered for additional remuneration to reflect this additional workload.
 - These new procedures place Commissioners at risk of having to give evidence in the Charity Tribunal as primary decision makers.
 - Only emergency decisions can be made in this way – the vast majority of routine registrations, consents to allow charities to operate, compliance decisions requiring orders, and enquiries activities requiring orders or directions will have to be suspended. This will inevitably place serious pressure on charities and hamper the effectiveness of the Commission's regulatory work.
 - Involvement of all Commissioners in statutory decision making runs counter to the independent role of Commissioners on the Audit & Risk Assurance Committee – recent A&RA training highlighted they should absent themselves from operational decisions and thus the Commission has introduced a governance risk through these arrangements.
 - Decision reviews will no longer be possible for charities who are unhappy with decisions but do not yet want to pursue a Tribunal appeal. There is no level to which a decision involving Commissioners could be progressed.
 - We can no longer share information under the legislation with other statutory bodies such as the PSNI and HMRC without Commissioners exercising the power on each occasion. This has implications for regular and routine sharing (such as with HMRC) and for specific sharing related to, for example, ongoing criminal investigations. The PSNI have already raised queries with us about whether our decision to share information with them in the past, if not lawfully taken, will now jeopardise an ongoing criminal investigation.
 - Can the Commission be indemnified by the department in writing against financial losses if we continue to work at risk and make certain decisions under our existing procedures? This decision making would be on a spectrum from, at one end, sharing information with other public bodies to, at the other, continuing to register charities under existing procedures. As things stand, we could be sued by an individual for sharing their information with the PSNI, even if the police find that they can use
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evidence shared by us under PACE – that does not protect the Commission. Will the department indemnify us for continuing to allow staff to exercise certain functions? If so, which?

- More appeals and complaints are being submitted, on foot of the decision, challenging past decisions of the Commission.
- Enquiries are being received from solicitors seeking assurances that commercial transactions will not be invalidated based on past decisions of the Commission.
- All of this means the Commission's decision-making targets in this year's business plan are in jeopardy and legal costs are likely to increase substantially.

T McGrath

Section 40(2)

ANNEX B

DRAFT LETTER FROM SECRETARY TO TOM MCGRATH



From: Tracy Meharg
Permanent Secretary

Level 9
Causeway Exchange
1-7 Bedford Street
BELFAST
BT2 7EG

Telephone: 40(2)

E-mail: Section 40(2)

Your Ref:

Our Ref:
Date: X June 2019

Mr Tom McGrath
Chief Commissioner
Charity Commission for Northern Ireland
257 Lough Road
Lurgan
Craigavon
BT66 6NQ

Dear Tom,

At our meeting on 5 June you requested that the Department issue the Commission with a letter of indemnity against any financial losses incurred if you continue to work at risk under the existing procedures i.e. staff discharging the functions assigned to the Commission in the Charities Act (Northern Ireland) 2008.

Legal advice indicates that it would be inappropriate for the Department to provide such an indemnity to the Commission for the continued operation of a decision making process which has been deemed by a High Court Judge to be unlawful.

I can confirm, however, that the Department will meet any costs which the Commission cannot meet from its own resources which are incurred as a result of any claim made against the Commission in respect of decisions taken prior to the High Court Draft

Judgement handed down by Madam Justice McBride on 16 May 2019. This will apply to actions taken against the Commission as a whole or any member of staff who acted in good faith on behalf of the Commission.

Yours Sincerely,

Tracy Meharg
Permanent Secretary