

From: Section 40(2)
To: [Vickers, Bruce](#); Section 40(2)
Cc: Section 40(2) [O'Dowd, Michael](#)
Subject: FW: CCNI - Indemnity
Date: 28 June 2019 09:48:27
Attachments: [Draft Letter of Comfort.DOCX](#) Annex C
[LETTER OF COMFORT - Secretarys agreement.msg.msg](#) Annex F

Bruce/40(2),

Please see attached draft letter of comfort for CCNI approved by Perm Sec for your review and approval.

Background

At the High Court on 16 May 2019, Madam Justice McBride delivered a draft judgement finding that the Charities Act (Northern Ireland) 2008 taken together with section 19 of the Interpretation (Northern Ireland) Act 1954 does not provide express or implied power for CCNI to delegate its functions to staff. When the Judge makes her Order it will render all decisions made to date by staff presumptively valid but open to challenge.

The Judgement means that over 1,200 casework and over 6,000 registration decisions made by CCNI since its inception could be appealed and overturned. However, more worryingly over 200 Orders have been made which relate to significant decisions falling out of a section 22 inquiry such as suspension and removal of trustees, appointment of interim managers, and production of documents. It is unknown how many individuals might bring appeals to the Charities Tribunal, however, the usual time limits would not apply in the face of a High Court Judgement impacting on the validity of decisions. It is also unknown how many individuals may sue CCNI for damage incurred as a result of the decisions which have been found to have been unlawfully made.

At a meeting last week between Secretary and CCNI, CCNI requested that the Department provide them with an indemnity in writing for financial losses if they continue to work at risk under existing procedures e.g.

- staff sharing information under section 24 of the Act with HMRC, PSNI etc.
- staff making decisions such as registration.

Legal advice has 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, what we can do, is indemnify CCNI 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. Secretary has asked that such a letter be drafted. I have attached a rough first draft although the exact wording is yet to be confirmed with DSO.

Annex 5.5 of MPMNI requires that all such letters of comfort require the prior written approval of the Department of Finance. I would be grateful if you could seek their approval of this draft or advice as to whether there is a more formal procedure that we must follow.

Let me know if you have any queries or need any further info.

Regards,

40(2)

Section 40(2)

[Redacted signature block]

From: 40(2)

Sent: 28 June 2019 09:43

To: [redacted] Section 40(2)

Cc: [redacted] Section 40(2)

[redacted] Scott, Arthur [redacted] 40(2)

[redacted]

Subject: CCNI - Indemnity

40(2)

Previous emails refer.

As requested by the Finance Director, please find attached Secretary's agreement to the draft letter of indemnity to the Charity Commission for Northern Ireland, required as a result of the recent High Court ruling.

I would be grateful if you could now send the letter to DFP for their formal approval as required by MPMNI.

Thanks.

[redacted]

[redacted] Section 40(2)

[redacted]

[redacted] [redacted] [redacted] [redacted] [redacted]