



**Appeal Number: EA/2023/0166**

**Neutral Citation Number: [2023] UKFTT 01063 (GRC)**

**First-Tier Tribunal  
(General Regulatory Chamber)  
Information Rights**

**Heard on the papers 17 October & on GRC CVP on 19 December 2023.**

**Directions 17 October 2023 and Oral Hearing on 19 December 2023.**

**Tribunal Panel:** Judge Brian Kennedy KC, Emma Yates and Miriam Scott:

**Between:**

**THOMAS TURNER**

**Appellant:**

**and**

**THE INFORMATION COMMISSIONER**

**First Respondent:**

**and**

**THE CHARITY COMMISSIONER FOR NORTHERN IRELAND**

**Second Respondent:**

**Representations:**

**For the Appellant:** Thomas Turner as a Litigant in Person.

**For the First Respondent:** Sian Williams Solicitor an undated written Response to the Grounds of Appeal.

**For the Second Respondent:** Conor Lockhart of Counsel

**Decision:** a) The Appeal is allowed. For the reasons set out below the public authority was not allowed to withhold the requested information.

- b) The public authority must disclose to the appellant the information specified in the request dated 25 November 2021 within 35 days of the date of promulgation of this decision.
- c) Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

## **REASONS**

### **Introduction:**

1. This decision relates to an appeal brought under section 57 of the Freedom of Information Act 2000 (“FOIA”). The appeal is against the decision of the Information Commissioner (“the Commissioner”) contained in a Decision Notice (“DN”) dated 10 March 2023 (reference IC-218886-L1T0), which is a matter of public record. The preamble to the specific Case Management Directions below is to assist the Parties to identify clearly the material issues pertaining to this appeal.

### **Factual Background to this Appeal:**

2. The case concerns the reliance by the Charity Commissioner for Northern Ireland (“the CCNI”) on the exemption s 40(2) of the FOIA for personal data.
3. A formal request for information was made by Ciaran Barnes (Chief Reporter at Sunday Life newspaper) following an unsuccessful informal request. On 23 November 2022, Mr Barnes emailed the CCNI to state that he believed that a particular named individual had been publicly listed on the CCNI website as a trustee of the Lower Shankill Community Association (“the Community Association”) in 2019 and that his name had been removed from their website in 2020. Mr Barnes wanted to know on what date the particular name had first been added to the Community Association board of trustees and on what date it was removed. The CCNI refused his request but offered to consider it formally under FOIA if Mr Turner liked.
4. On 25 November 2021, made the following request under the FOIA (“the Request”):

*“I would like to be provided with the names of all Trustee Board members for the Lower Shankill Community Association during the years 2018, 2019 and 2020. This should include*

*all names that appeared on the NI Charity Commission website during this period, including those which were subsequently removed.”*

5. The CCNI replied on 21 December 2022 confirming that it held the names of 12 individuals who were at some point identified as charity trustees during the period 2018 to 2020 and pointing out that some of the names were already publicly available on the CCNI’s website, supplying the link. The CCNI, however, refused to disclose the other trustee names on the basis that it was personal data exempt from disclosure under s 40(2) of the FOIA. The CCNI considered that there was no lawful basis for disclosure and any disclosure of the trustee names would be unlawful. It suggested that Mr Barnes should ask the Community Association for this information directly. It informed Mr Barnes that in the period 2018 to 2020, trustees were removed from the charity’s entry on 19 September 2018 and trustees were added on 2 November 2018. On 4 January 2023, Mr Barnes sought an internal review.
6. On 1 February 2023, the CCNI responded to Mr Barnes. As part of the internal review, the CCNI had considered whether it would be lawful, fair and transparent to disclose personal data by way of trustee names no longer on its website on the basis that processing the personal data was necessary for the purposes of a legitimate interest. The Request was refused on the basis that the trustee names were no longer in the public domain, that once a charity trustee resigned, the trustee was obligated to remove their details from the CCNI’s register of charities, and so trustees had a reasonable expectation that after their removal from the register, the CCNI would not continue to process their personal data by disclosing it to the public under the FOIA.
7. The Appellant complained to the Commissioner on 28 December 2022 on behalf of his client, Mediahuis UK Ltd, the publisher of the Belfast Telegraph and Sunday Life. The Commissioner commenced his investigation on 4 March 2023.

**The Decision Notice:**

8. The Commissioner concluded that the CCNI was entitled to rely on s 40(2) of the FOIA to withhold the names of former trustees reasoning that the trustee names were personal data relating to identified living individuals, which could only be disclosed if it would be lawful, fair and transparent to do so. The Commissioner considered whether there was a legitimate interest in disclosure of the information, whether

disclosure was necessary and whether any legitimate interests in disclosure overrode the rights and freedoms of the individual trustees whose names would be disclosed. He considered that Mr Turner had a legitimate interest in requesting the disclosure because there was a public interest in the actions of charities and former trustees and that disclosure of trustee names was necessary to meet that legitimate interest. Nevertheless, the Commissioner took account of the CCNI's statement that the trustee names were no longer in the public domain and that once a trustee resigned, the CCNI was obliged to remove the person's details from the CCNI's register of charities. Therefore, the Commissioner accepted the CCNI's argument that the trustees had a reasonable expectation that, once they stepped down as trustees, their names would no longer be in the public domain. The Commissioner also concluded that disclosure contrary to the trustees' reasonable expectation would cause them damage or distress.

### **The Grounds of Appeal:**

9. For the benefit of the Parties, the Tribunal repeat the Appellants' pertinent and material issues as set out in his grounds of appeal verbatim as follows;

*"My letter to the ICO dated 28 February 2023 sets out the history of my client, the Sunday Life's, information request to the Charity Commission for Northern Ireland.*

*In short, my client's limited information request has been rejected by the Charity Commission and by the ICO. My client sought the names of individuals who have previously been trustees of a charity during the period 2018 - 2020.*

*The ICO has recognised that my client has a legitimate interest in the information. However, it has rejected the request, essentially for the reasons set out in paragraph 16 of its judgment:*

*"However, the Commissioner accepts the Charity Commission's argument that the trustees would have a reasonable expectation that, once they step down, their personal information will no longer be in the public domain. Disclosure would be contrary to this reasonable expectation and would cause damage or distress in any situation."*

*In this appeal I am going to focus on two points: (1) the strength of my client's legitimate interest in the information; and (2) the failure by both the Charity Commission and the ICO to accurately assess the competing interests as part of the "balancing test".*

- 1) *Legitimate Interest The Sunday Life is a weekly Sunday newspaper, headquartered in Belfast. It is the sister title to the Belfast Telegraph. It has won numerous awards for its journalism. Last November it won "Investigation of the year" at the Media Freedom Awards for its revelations about the Ulster Defence Association (UDA), one of Northern Ireland's biggest paramilitary groups and crime gangs. The newspaper was praised for their "courage, dedication and bravery" and "vital work" in holding power to account.*

*My client is currently investigating the links between the UDA and public charitable bodies. In particular, it is investigating the activities of a registered charitable body called the Lower Shankill Community Association (LSCA).*

*The LCSA has been in existence for many years prior to its registration as a charity. The LCSA professes to encourage "residents to cut old ties with paramilitaries and to work with the Police Service Northern Ireland". However, it has been identified by BBC Spotlight (amongst others) as being the unofficial headquarters of the UDA. In addition, in 2013 a convicted UDA killer was convicted of assaulting a man at the LCSA's premises.*

*Investigations into the relationship between a public charity and a paramilitary group is clearly a matter of public interest. Any link to the UDA is entirely contradictory to the stated aims of the LCSA. It is already known that convicted terrorists, including Denis Cunningham, were associated with the charity during this period and their official status within the charity needs to be confirmed.*

*Without explicitly stating as much, these points appear to be recognised by the ICO who acknowledge that my client has a "legitimate interest" in obtaining the information. However, the strength of the legitimate interest does not appear to have been adequately appreciated by the ICO when conducting the balancing test.*

- 2) *Balancing Test*

*The ICO judgment states that "trustees would have a reasonable expectation that, once they step down, their personal information will no longer be in the public domain".*

*No explanation for this expectation is provided.*

*As a preliminary point, I note that the information is not removed from the public domain once a trustee steps down. The Charity Commission website publishes annual reports for the previous three years. The information will identify the trustees of the charity during that period, regardless of whether they have subsequently resigned. The three year publication period appears to be based on the Charity Commission's own determination of what should be published and for how long, rather than any legitimate expectation of trustees. It is clear that the information sought by my client has already been published by the Charity Commission on its website. It has now been removed following the expiry of the three year period, rather than because the trustees have subsequently stepped down.*

*The situation can be compared to the publication of information in relation to the directors of private companies. Their names and period of directorship are publicly available on the Companies House website and these details remain publicly available notwithstanding that the individual may have subsequently resigned as a director. The case for public access to information on the trustees of a charity is of course far greater than the case for being able to obtain information on directorships of private companies. Trustees of charitable bodies are individuals who are, or have been, responsible for the administration of public funds.*

*In terms of the "balancing exercise" it is also important to acknowledge the extremely limited nature of the information sought by my client. It seeks simply the name of trustees during the relevant period. It does not seek any other personal information that would ordinarily be published in relation to directors of companies, like their date of birth or address.*

*The information sought is not information that relates to an individual's private life, but relates to their performance of a public role, including the receipt of public funds. In *The Corporate Officer of the House of Commons v the Information Commissioner and Norman Baker MP* the Information Tribunal considered this issue and confirmed that "where data subjects carry out public functions, hold elective office or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives." The scrutiny in this instance is no greater than confirmation of the name of individuals who were trustees of a charity.*

*The information sought is also relevant contemporaneous information, rather than historic information. It is information from within the last 6 years, meaning the limitation period for legal claims against Trustees for their actions as trustees of the charitable body has not passed. There can be no reasonable expectation that their names would not be publicly available during this period.*

*The statement by the ICO that publication of the names of a trustee of a charitable body, responsible for the investment of public funds three years after their resignation, "would cause damage or distress in any situation" is frankly not credible. There is no conceivable "damage or distress" arising from being identified (by name only) with a public role, such a short time period after resignation.*

*With such a strong legitimate interest in the release of this limited information, and no credible countervailing factors, it is clear that the balancing exercise should be determined in favour of publishing the limited information sought. The Charity Commission has already confirmed that it has this information to hand."*

**10.** In reliance on his grounds the Appellant refers to the following documents;

*- ICO Decision Notice dated 10 March 2023*

*My letter to the ICO dated 29 February 2023*

*Letter from the Charity Commission dated 1 February 2023*

*Letter from the Charity Commission dated 21 December 2022*

**11.** The outcome the appellant seeks is;

*Provision of the limited information sought by my client, namely the names of individuals who have previously been trustees of the LCSA charity during the period 2018 - 2020.*

**Case Management Directions:**

**12.** The appeal was listed as a paper hearing before this Tribunal on Tuesday 17 October 2023. The Panel had carried out a detailed examination of the papers before us, and after much deliberation, the Tribunal find it impossible to determine, with any definitive accuracy on the available evidence, or at all, if the exemption cited in the DN of the FOIA has been properly applied and whether the Commissioner can be said to have exercised his discretion lawfully in all the circumstances.

**13.** It is necessary for the Tribunal to understand the manner and extent to which the Requested Information has been (or continues to be) in the public domain and the potential effect this may have on disclosure in response to the Request.

**14.** The Tribunal find the Charity Commission for Northern Ireland ("CCNI") needs to be joined to these proceedings for the purposes of providing evidence to assist the

Tribunal on these matters. The Tribunal set out detailed issues that were required to be addressed as follows:

In particular and without prejudice to the generality of all the evidence:

- (a) To what extent was the Requested Information published more widely than on the CCNI website? The Second Respondent to provide evidence and/or examples to assist the Tribunal.
- (b) To what extent was the Requested Information available online at the time of the request as a result of any wider publishing referred to above or as a result of the published information on the CCNI website? Again the Second Respondent needs to provide evidence and/or examples.
- (c) Are there any ongoing relationships or responsibilities in existence between the individuals named in the Requested Information and the charity they were associated with which would give rise to a legitimate interest in disclosure? For example are they receiving any ongoing benefit (eg pension) or will do in the future?
- (d) CCNI are directed provide some clarity of how this disclosure may cause damage or distress given that the information was previously available
- (e) CCNI are directed to provide some clarity about why disclosure does not fall within the scope of legitimate interest.
- (f) CCNI are directed to provide an explanation on what basis that they are obliged to remove trustee details from the register

**15.** Accordingly under Rule 9 of the Tribunal Procedure (First-Tier Tribunal) (General Regulatory Chamber Rules 2009), we joined the Public Authority, herein, the Charity Commissioner for Northern Ireland (“CCNI”) as a Second Respondent and directed that an oral hearing take place to provide the Tribunal with sufficient evidence and reasons, through such evidence, witness statements and comprehensive submissions as are required, in order to properly determine the material issues identified between the parties (see above the Commissioners’ Response and the Appellants Reply thereto, of this appeal).

**The Hearing:**



16. The CCNI is a public authority and presented helpful written submissions on behalf of the CCNI dated 15 November 2023 and these in return were addressed in detailed and helpful written submissions dated 30 November 2023 on behalf of the Appellant. However many pertinent issues sought through the Tribunals' Directions were not provided and little by way of further material evidence was provided on the issues raised therein.

**The Issues:**

17. In essence, there is no legal dispute between the parties, the only matter before the Tribunal is whether the third strand of the tripartite test is satisfied thereby warranting disclosure of the requested information by CCNI.

18. On behalf of CCNI it is argued that they are in an invidious position in that while they agree there is a legitimate interest and in fact valid arguments for disclosure which are proportionate have been presented in this case, they must assess the privacy rights of the data subject in the absence of consent particularly when the information has never been in the public domain. CCNI also argue that in the circumstances of this case the inference that reputational harm and distress would be possible, or even be likely to arise from disclosure and that disclosure would leave CCNI vulnerable to legal action. However they present no evidence to this Tribunal to support these assertions or demonstrate how this can be given much, if any weight.

19. The Appellant argues;

- a) Irrespective of whether the information is no longer in the public domain (or has never entered the public domain) a Trustee who has voluntarily acted in the administration of public funds cannot have a "*reasonable expectation*" that their name would not be associated with that role.
- b) The First Respondent and the Second Respondent have failed to identify any basis for such a "*reasonable expectation*". There is no obligation to remove Trustee names from the register which could be relied on to ground such a "*reasonable expectation*". The decision in *Kayode* is therefore distinguishable.
- c) The starting presumption would be more accurately described as the opposite:

given their role as Trustees of a charity, the presumption is that the Trustees will be known and accountable for their actions.

- d) In this instance, the Trustees in question have been involved in the administration of public funds and have provided important declarations to the Second Respondent in relation to their role and to the conduct of the organisation applying for charitable status (See A33 / A34 of the Open Bundle)
- e) No assumption can be made as to why the Trustees resigned in September 2018
- f) In any event, the relevant Trustees continued to act as Trustees for an additional two-year period following the application for charitable status in August 2016.
- g) No potential damage or distress has been identified at any stage, by any party. only, as the Trustee of a charitable body.
- h) Publication of the names of the Trustees “*may*” ultimately lead to investigations being undertaken by the Sunday life, which “*may*” lead to articles being published by the Sunday Life, which “*may*” lead to prejudicial information being published about the named individuals, and that this prejudicial information “*may*” be unwarranted.
- i) The publication of an individual's status as a trustee of a charitable body is eminently suitable for disclosure into the public domain.
- j) With such a strong legitimate interest in the release of this limited information, and no credible countervailing factors, it is clear that the balancing exercise should be determined in favour of publishing the limited information sought.

**20.** The Commissioner considered that the Appellant had a legitimate interest in requesting the disclosure because there was a public interest in the actions of charities and former trustees and that disclosure of trustee names was necessary to meet that legitimate interest. Nevertheless, the Commissioner took account of the Charity Commission's statement that the trustee names were no longer in the public domain and that once a trustee resigned, the Charity Commission was obliged to remove the person's details from the Charity Commission's register of charities. Therefore, the Commissioner accepted the Charity Commission's argument that the trustees had a reasonable expectation that, once they stepped down as trustees, their names would no longer be in the public domain. In the circumstances of this case and the evidence before us now, the Tribunal do not accept that premise.

21. The Commissioner in his Response to the Grounds of Appeal (at OB A20) argues the DN does not depend upon his finding that disclosure of the trustee names would cause damage or distress, because personal data is protected from disclosure except in accordance with the legislation and there is no precondition that it is protected if, and only if, disclosure of the data subject is relevant if and only if it is necessary to resolve a conflict between the interests of the person who requested the information and the person to whom it relates. The Tribunal find in the all the circumstances of this case and on the evidence before us, that the balance of the data subjects rights are outweighed in favour of disclosure of the names of the Trustees of the Community Association.
22. The Tribunal accept the Appellants submissions summarised above and find the Appeal should be allowed. The CCNI evidence and arguments failed to persuade us and taking into account the balancing test the tribunal was of the opinion that disclosure as requested should be made.
23. We cannot accept that any data subject could accept a voluntary Trusteeship could not expect to be accountable and transparent at any stage throughout and beyond the role accepted:
- a) There has never been any evidence or suggestion that acceptance was in any way conditional on confidentiality.
  - b) The comparison with a Company Director indicates a presumption of acknowledgment that identity of a Trustee is not protected per se even in the absence of potential or likely loss, damage if it distress.
  - c) Each case must be decided on its merits, but in this case it seems public funds destined to assist a local community must realise an expectation of exposure of the identity of Trustees into the public domain and the world at large. This is what is sought by the request and in the circumstances it clearly is, in our view a reasonable expectation that a Trustees names could and would be released into the public domain even after a reasonable time has expired after relinquishing the position.
24. Trustees were appointed 22 August 2016, Trustees removed from Charity Entry 19 September 2018. New trustees added 2 November 2018. Charitable status granted 7

December 2018 – the request was made on 25 November 2021. All within a six year period (which we regard as a reasonable period in all the circumstances) of removal of four of the Trustees of the Community Association.

25. Trustees are subject to public scrutiny particularly when a charity is in receipt of public funds. CCNI suggested that because the information was never in the public domain that the trustees should have a reasonable expectation that their involvement should remain private however we were not persuaded and were not provided with any evidence of objection in relation to the disclosure or any potential damage or harm to the trustees, and any suggestions that there would be, were purely speculative.

**Substituted Decision:**

26. The Appeal is allowed. For the reasons set out above the public authority was not allowed to withhold the requested information.
27. The public authority must disclose to the appellant the information specified in the request within 35 days of the date of promulgation of this decision.
28. Any failure to abide by the terms of the tribunal's substituted decision notice may amount to contempt which may, on application, be certified to the Upper Tribunal.

Brian Kennedy KC

19 December 2023.