

Submissions on concern in relation to Feile An Phobail

On behalf of Mr Gary Murray

Introduction

On 15 August 2022 I wrote to the Chief Charity Commissioner to raise concerns in relation to the promotion of terrorism associated with Feile An Phobail NICN: 102830 ('Feile').

In that correspondence I outlined that there were many victims of IRA terrorism deeply concerned by the use of a charity to promote that same terrorism. I was told, as per the response from the Chief Commissioner, to formally raise a concern and do so now on behalf of my client Mr Gary Murray.

It will be well known that in 1993, Mr Murray's little 13-year-old sister Leanne was brutally murdered by the IRA in the Shankill bomb. In those circumstances, the celebration of the IRA is deeply distressing for Mr Murray, and the commission's work in regulating the sector to prevent the glorification of terrorism is a matter in which he has a keen and relevant personal interest.

This is not the first time the issue has arisen, and there is a concern- as set out in my letter of 15 August 2022- that the commission do not treat this issue with sufficient seriousness and/or believe it will blow over. It will not.

There are serious issues arising not only in relation to the activities of this charity, but also as to the commission's powers to effectively deal with charities which have links to terrorism. It is a matter of grave public importance that it be probed as to whether the commission are in fact an effective regulator, or whether in truth it is powerless to deal with an issue as serious as charity resources being used for the promotion of terrorism.

It is, of course, trite to point out that the commission found no difficulty in relentlessly pursuing the disabled police officers charity, many of whom were disabled for life as a the result of the very terrorism promoted by Feile.

Background

In 2019, I personally raised a concern in relation to the charity, which again related to the promotion of terrorism.

On 2 December 2019 I received a response from the inquiries team. It stated, *inter alia*:

"We have engaged with the charity and are content with the responses received regarding how charity trustees are managing this issue. We will continue to monitor the situation and take action if necessary. However, at this stage, we will not be taking any further action."

The problem will be immediately apparent. In 2019 the commission (not notwithstanding the clear and obvious breach of the guidance which we will come to *infra*) were “content” with how the trustees were managing the “issue” (as a side point, benignly describing the promotion of terrorism as a mere “issue” raises some concerns in of itself).

However, in the very next Feile (for two years Feile didn’t take place due to Covid) in 2022, the same incident has arisen. It is plain therefore that the commission were wrong to have been “content” with the responses received, because the charity never had any intent of “managing the issue”.

The promotion of terrorism in 2022 concern

If we were to give the charity the benefit of the doubt in 2019 (and the years before) that they were somehow taken by surprise by the promotion of terrorism which accompanies the Wolfetones, then this ‘defence’ falls away when it comes to 2022.

The true position is that subsequent to significant public concern and indeed engagement from the commission, the charity knowingly, willingly and shamelessly once again booked performances by not only the Wolfetones, but also Shebeen. A basic due diligence check on Shebeen would have included simply typing their name into google and viewing their YouTube channel (see for example [Shebeen - Live at the Barrowlands - YouTube](#)) which makes it patently obvious that this is a group which promotes and glorifies terrorism.

On Sunday 14 August 2022, the Feile hosted two self-proclaimed ‘rebel bands’- Shebeen and the Wolfetones. Both of these performers used charity resources to promote IRA terrorism.

That cannot seriously be in dispute. The commission must apply the law, and not take into consideration the inevitable convoluted justification by the charity which will, undoubtedly, begin by providing a political lecture on the ‘peace process’.

To make political judgements on the ‘peace process’, or to consider the merits of submissions seeking to hide behind that somewhat elastic concept used as justification for just about every action, particularly by the nationalist community, would be entirely inappropriate.

The job of the commission is to protect the public by ensuring the charity sector is properly regulated, and those benefitting from charity status are operating with a lawful charitable purpose.

Whatever about the type of submissions envisaged, and whether they command political support from one political party or not, the position as a matter of law is that the IRA is a proscribed terrorist organisation under the Terrorism Act. If the commission are to turn a blind eye to the promotion of that organisation’s activities, based upon some subjective judgement as to a unique context of the ‘peace process’, then the commission will effectively be ‘legislating’ in so far as it will give immunity

to charities to promote terrorism, but of course the logic would be that there would be a commission-determined hierarchy of terrorism which it is acceptable for charities to promote.

This would create all sorts of problems for the commission and public confidence in the sector. Who would determine which terrorism it is ok for a charity to support, and which isn't? Who would determine which proscribed organisation sits where on the commission-created hierarchy of terrorism?

For instance, if the commission treat the promotion of IRA terrorism in a particular way, applying a hierarchical 'peace process' context (which finds no expression in the Terrorism Act) then if a 'charity' comes along holding events promoting Al Qaeda and using charity resources to celebrate the 9/11 twin-towers bombers, is it to be seriously suggested that would also fail to trigger any commission action other than the most benign inquiries?

It is important to note that the Feile, via their twitter account (@FeileBelfast), promoted the event, and indeed tweeted live from the event. The program of events for the charity included, and again promoted, the Wolfetones event.

The charity resources, in terms of volunteers, equipment (the stage etc) and the branding of the charity (which was displayed proudly on the stage for the duration of the Shebeen/Wolfetones pro IRA concert) were all used for this concert.

It may be said, and indeed has been said publicly, that the event was not publicly funded and/or some device was used to divert the funds raised away from the charity. As will be addressed *infra*, this argument is not only fatally flawed, but in fact raises even greater concerns, and potentially issues of terrorist financing/money laundering, or at the very mismanagement of charity funds.

The legal principles to be applied

It is trite to point out that the promotion of terrorism is not only a non-charitable purpose but is in fact antithetical to operating with a charitable purpose.

Section 2 (2) of the Charities Act 2008 ('the 2008 Act') sets out the exhaustive list of charitable purposes. In all activity, a charity must operate- and deploy its resources-in pursuit of one of the defined purposes in Section 2 (2) of the 2008 Act.

The simple question must be asked as a starting point: which purpose within section 2 (2) of the 2008 Act is fulfilled by the promotion and glorification of IRA terrorism?

Indeed, section 2 (2) (h) lists as a charitable purpose:

"the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity..."

The actions of the charity in hosting the promotion/glorification of IRA terrorism is in fact antithetical to that purpose. Put simply; the actions of the Feile are not only non-charitable, but it is also in fact anti-charitable.

The next stage is to formally consider whether the Feile acted with a non-charitable purpose, applying section 2 (2) of the 2008 Act. That cannot seriously be in dispute by any reasonable person.

In any event, for completeness, that is so for the following reasons:

- (1) The charity branding, promotional material and social media (which are all charity resources) were used in the promotion and hosting of this pro IRA and thus pro terrorism concert. That is a misuse of charity resources, and accordingly goes directly to the administration of the charity.
- (2) It has been suggested that no public funding was used for the event. That may be so, but the event self-generated funds via ticket sales. It has also been suggested that in some attempted clever manoeuvre, the self-generated funds did not in fact come directly, or at all to the charity. Two issues arise:
 - (a) Self-generated funds by the charity, are still charity funds. A charity cannot get around the requirement to act at all times with a charitable purpose by self-generating funds, and using such funds for a non-charitable purpose.
 - (b) If it is to be suggested that in fact the monies self-generated were diverted away from the charity (in an effort to bypass charitable accountability), then this attempt to be too clever by half in fact creates an even more serious issue. If the charity is acting to facilitate- via the deployment of its resources (as set out at (1) *supra*)- fundraising by another body, most notably one profiting from the promotion of terrorism- facilitated by charity resources- then this in fact means the charity is assisting in the laundering/diverting of funds derived from the promotion of a proscribed organisation.

It should be obvious that whichever way you look at this present promotion of IRA terrorism, it is beyond any doubt that the charity has acted- at the very least via the use of its resources- for a non-charitable purpose.

The next step is to consider the powers of the commission. That requires consideration firstly of the commission's statutory functions.

Section 8 (2) (3) provides that one of the commission's functions is as follows:

"Identifying and investigating apparent misconduct or mismanagement in the administration of charities and taking remedial or protective action in connection with misconduct or mismanagement therein."

The misuse of charitable resources (which is not confined to monies and rather includes charity volunteers, equipment, branding etc.) for a non-charitable purpose

(and in this instance a purpose antithetical to a charitable purpose) plainly relates to the administration of charities. It therefore triggers, at the very least, the function set out in section 8 (2) (3).

Whilst section 8 (2) (3) in of itself is a sufficient function justify the deployment of the range of statutory powers, there is also an incidental power of the commission to act as set out in section 10.

Investigating the misuse of charity resources relates to the administration of a charity, and therefore in exercise of the function set out at section 8 (2) (3) the commission can deploy its full menu of statutory powers.

There is, in fact, no need to rely upon the incidental powers in section 10. However, if such incidental powers did need to be relied upon, then the same position applies. It is notable that section 10 (3) expressly makes clear that nothing in section 10 (2) prevents the commission using its powers under section 36 or 37.

The commission has previously adopted the regulatory approach of engaging with the charity on their promotion of terrorism. This is put beyond doubt by the 2019 response to my concern from the commission.

This approach has been unsuccessful, and demonstrated the commission's apparent weakness in addressing this most serious of concerns. The commission has expressed, in writing, its contentment at the assurances given by the charity, only for the charity to willingly and flagrantly do exactly the same thing again.

Therefore, this is an appropriate case for the opening of a statutory inquiry under section 22. There could not conceivably be a more serious issue than the use of charity resources for the promotion of terrorism, and- if the charity's public utterances are replicated in answer to the commission- serious concern about charity resources being used to facilitate the raising of funds from the promotion of terrorism in a way which effectively launders the money around the charity.

The commission has broad powers, particularly under section 33, when a section 22 inquiry is in place. It would simply not be credible for the commission to suggest they have no power to deal with this serious concern in relation to the mismanagement of charity resources for a non-charitable (and indeed pro terror) purpose, which is of course strikes at the core of the administration of the charity.

I again wish to emphasise my concern, and that of IRA victims, that the commission are treating this matter with a flick of the wrist and failing to appreciate its seriousness, and potential to cause serious harm to the reputation of the commission. I do however accept the assurances of the Chief Commissioner that this charity will be treated the same as any other charity. The issue arises, as we will explore *infra*, in circumstances whereby it isn't in fact commissioners making the relevant decisions, at least in some stages of the investigation.

The commission's 'guidance' on charities and terrorism

The commission has material on its website relating to terrorism and charities (www.charitycommissionni.org.uk/charity-essentials/controlling-against-terrorist-financing-and-money-laundering) and sets out what must be done by trustees in circumstances whereby issues relating to terrorism arise, such as the circumstances presently applicable.

This material and the requirements are plainly welcome; however, an issue arises. The commission has told the public what trustees must do (indicating a mandatory requirement) in circumstances when issues of terrorism arises. If they do not, what is the consequence?

In putting this on the website, the commission has led the public into believing that these are mandatory requirements on charity trustees (and indeed, they should be). This goes to the very core of public confidence in the charity sector.

However, are these in fact mandatory requirements enforceable via regulatory sanction? If so, then plainly the sanctions should be applied to Feile who have, at the very least, failed to:

- take reasonable steps to ensure your charity's premises, assets, staff, volunteers or other resources cannot be used for activities that may, or appear to, support or condone terrorism or terrorist activities
- take immediate steps to dissociate the charity from any activity that may give, or appear to give, support to terrorism or terrorist activity

If these are not enforceable requirements on trustees, then why have the commission presented them as such on the website, thus misleading the public and creating false confidence in the charity sector?

Only one of the following scenarios are possible: (1) the commission's 'mandatory requirements' are what they purport to be (mandatory requirements) and therefore Feile is in clear breach of them and should face appropriate regulatory sanction; (2) the 'mandatory requirements' are not in fact mandatory at all, and therefore the commission has (a) misled the public engendering false confidence in the charity sector and (b) there is a gaping lacuna and the charity commission is in fact toothless to deal with the promotion and condoning of terrorism by charities operating in Northern Ireland.

This concern raised by IRA victim Mr Murray will inevitably force this matter to be confronted. If it transpires that the commission material on the website is wrong, then a public statement to this effect should be made with the public made aware as to why they cannot expect enforcement of that which is presented as a mandatory requirement on the commission's own website.

This matter must be dealt with by commissioners

The consideration of this concerns relates to the statutory functions, and scope of same, of the commission, and the exercise of incidental and other statutory powers. It is therefore a matter properly within the statutory remit of commissioners and cannot in fact be delegated to staff.

As I understand it from previous cases, the practice is that when complaints are received, the first stage of investigation is carried out by staff, and indeed it is staff who determine whether the matter requires the consideration of the use of statutory powers. This means that there will be occasions when staff, exercising an investigative discretion, may decide that a case only requires self-regulatory advice or indeed no action, and therefore the commissioners are never consulted.

It seems obvious to point out that this is staff discharging an investigative function and making decisions within the investigative process (including acting as 'gatekeepers' as to when commissioners will be asked to consider using statutory powers, and thus making investigative decisions). This is exercising the commission's function set out in section 8 (2) (3) of the 2008 Act.

The statutory wording of this provision is clear. The commission is responsible for, *inter alia*:

"Identifying and investigating apparent misconduct or mismanagement in the administration of charities..."

It will be immediately apparent (or at least should be) that taking investigative decisions (for example, deciding commissioners do not need to be asked to consider using statutory powers) is a discharge of the commission's functions. It would be one thing if staff were considering all cases and making recommendations on investigative decisions, but that- it seems- is not in fact the practice. Lower level decisions on investigative steps are being taken by staff.

For example, if staff decide that a case does not warrant the consideration of exercising statutory powers, then it seems- from previous experience- that the case goes nowhere near the commissioners, with the investigation conducted and concluded by staff.

In *McKee, Hughes and the AG for Northern Ireland [2020] NICA 13* it was expressly made clear that staff cannot discharge any of the commission's statutory duties or functions (see *inter alia* para 38 and 44).

It seems beyond any rational dispute that as a matter of simple statutory construction, staff are precluded from investigating (to be construed as taking investigative decisions- they can, of course, at the direction of commissioners undertake investigative duties and provide recommendations etc.).

The commission, it appears, have failed to properly understand the scope of McCloskey LJ's decision in *McKee, Hughes and AG for Northern Ireland*. It is not only

the exercise of statutory powers which cannot be delegated to staff (save for some specified circumstances), but also the exercise of the commission's functions (as set out in section 8 of the 2008 Act).

We can also swiftly deal with any issue which may arise in relation to reliance upon the internal manuals of the commission. These are totally irrelevant for the purposes of statutory interpretation and have no statutory standing (see para 37 of *McKee, Hughes and AG for Northern Ireland*).

In simple terms, the statutory framework applies to the instant case in the following way: (1) is the decision as to what investigative steps, if any, to take, part of investigating apparent misconduct or mismanagement?; (2) if, as it seems plainly so, that is correct, then all those investigative decisions must be taken by commissioners themselves as that is a discharge of a statutory function set out in section 8 (2) (3) of the 2008 Act

The riposte to this submission may be two-fold. Firstly, that such a workload would not be practical for commissioners to undertake. There may be a sound public policy argument to be made for that, but it cannot alter the basic statutory provisions or alter a matter of simple interpretation. Whether the effect of the statute is inconvenient or not, that cannot alter its effect. This is simply an inevitability argument (that the statute must have envisaged this work being carried out by staff as a matter of practicality) put a different way. That argument was dismissed in *McKee, Hughes and AG for Northern Ireland* (see para 44), with McCloskey LJ remarking that nothing in the statute in fact requires commissioners to be only part-time.

Secondly, it may be said things are different now given the 2022 Act. However, as it presently stands there has been no scheme of delegation for investigative decision making by staff (and thus the discharge of section 8 (2) (3) functions). Whilst staff are doing this, and have always done this, that doesn't matter. Acting unlawfully because you have always acted unlawfully as a matter of practicality cannot reasonably be a credible argument.

It should be said, for completeness, section 1 of the 2022 Act is not a defence. That is not a forward-looking provision. It relates to things done before (and so not after) 16 May 2019 (see section 1 (1)). It is retrospective rather than prospective.

In light of the issues raised, this concern- and all decisions in relation to investigative steps- must be dealt with by commissioners rather than staff, given that for all the reasons set out above, it involves a discharge of the commission's statutory function provided in section 8 (2) (3) of the 2008 Act.

Conclusion

This concern goes to the very core of public confidence in the charity sector of Northern Ireland. It equally creates the necessity for the commission to face up to its regulatory duties, functions, and scope of its powers.

These concerns have been raised before, and the commission's actions have been shown to be impotent. The public are rightly concerned as to how a charity can so flagrantly, and shamelessly, use its resources for the promotion and glorification of terrorism.

In regards the issue which may arise in relation to the flow of monies through (or around) the charity in an effort to ensure the pro-terror activities of the Feile escape regulatory accountability, this is an urgent matter and the commission must act swiftly to protect charity resources and assets.

Given the seriousness of the issues arising, and the matters relating to the exercise of the commission's core functions, I am copying this submission to the Chief Commissioner.

It is also being copied to the Assistant Chief Constable Bobby Singleton for two reasons: firstly, there may reputational issues for the PSNI who have previously participated in Feile and secondly to draw attention to the potential criminal matters relating to offences under section 1 (2) of the Terrorism Act 2006.

Jamie Bryson

On behalf of Mr Gary Murray

21 August 2022