

Appeal No. VA02/3/005

AN BINSE LUACHÁLA
VALUATION TRIBUNAL
AN tACHT LUACHÁLA, 2001
VALUATION ACT, 2001

The Carers Association Ltd.

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Offices at Lot Number 1c, Property Number 2101197, Rating Authority : Wexford Borough Council, Rural District : Wexford Borough, Electoral Division/Ward : Wexford No 1 Urban, Town : Wexford, Townland : Sundry Townlands, Street : Henrietta Street.

B E F O R E

Frank Malone

Deputy Chairperson

Patrick Riney - FSCS FRICS FIAVI

Member

John Kerr - BBS. FIAVI. ASCS.

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 25TH DAY OF FEBRUARY, 2004

By Notice of Appeal undated but received in the Tribunal Office on the 15th day of May 2002 a copy of which is set out in the First Schedule hereto the Appellant appealed to the Tribunal against a certain decision of the Commissioner of Valuation. There is no dispute on quantum which is fixed at €22.86. The sole question for resolution before the Tribunal is whether the premises are entitled to exemption from rates. The Appellant claimed exemption by virtue of being “or other building used exclusively for charitable purposes” within the meaning of the proviso to Section 63 of the Poor Relief (Ireland) Act, 1838.

1. This Appeal proceeded by way of oral hearing which took place at the Courthouse, Wexford on 22nd November 2002. Mr Michael Paul Kavanagh, Barrister-at-Law, instructed by Mr Kieran Boland of Boland & Co, Solicitors, Kilkenny appeared on behalf of the Appellant. Mr Dan Feehan, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the Respondent. Mr Patrick Conroy, Dip Environ Econ, MIAVI, MSc, a Staff Valuer in the Valuation Office with in excess of 28 years experience was the Appeal Valuer. The parties to the Appeal exchanged their written précis and submitted the same to this Tribunal. Mr Feehan on behalf of the Commissioner admitted the Appellant's précis of evidence without formal proof the parties having previously agreed that despite the contents of the letter contained on page 30 of the Appellant's précis no exemptions from rates had been granted to the Appellant in respect of any of its premises. Mr Conroy having taken the oath adopted his précis as being and constituting his evidence in chief. Mr John Welsh, the National Financial Controller of the Appellant and Ms Marie Mahon, the Centre Manager at the subject relevant property, both gave sworn evidence. All of the witnesses were cross – examined. Both Counsel made opening statements and closing submissions. From the evidence so tendered the following relevant facts either agreed or so found emerged as being material to this appeal.

2. **VALUATION HISTORY**

The Valuation date is November 2001 the subject relevant property being revised at an RV of €22.86. The Publication date of the First Appeal is stated in Mr Conroy's précis as 23rd April 2002 whereas the Notice of Appeal to this Tribunal states the date of the decision of the Commissioner of Valuation as 26th April 2002, a difference of a few days which is immaterial. The Commissioner made no change at First Appeal.

3. **LOCATION AND DESCRIPTION OF SUBJECT RELEVANT PROPERTY**

The property which is known as The Carers Resource Centre, 24 Henrietta Street is located in Wexford town on a secondary but centrally located street that links the Main Street with Crescent Quay and comprises a ground floor lock-up premises used by the Appellant as a Carers Resource Centre. The Centre comprises a small meeting room for support groups, disabled toilets, a small office for the centre manager and a desk for a clerical support person.

4. THE APPELLANT

The Appellant's solicitor undertook at the hearing of the Appeal to produce the original Certificate of Incorporation a copy of which appears at page 31 of its précis to the Tribunal Registrar. THE CARERS ASSOCIATION LIMITED is a Company Limited by Guarantee and Not Having a Share Capital and was incorporated under the Companies Acts 1963 to 1990 on the 9th day of December 1993.

Clause 2 of the Memorandum of Association of the Appellant sets out its sole purpose as follows:-

“The Association is established for the sole charitable purpose of supporting those (hereinafter referred to as ‘carers’), who provide care and attention (hereinafter referred to as ‘caring’), for elderly persons, persons with physical, learning, emotional or other disabilities or handicaps or illnesses and any other persons receiving caring in the home; In furtherance of the above charitable object, but not further or otherwise, the Association shall have power:-”.

The full text of Clause 2 of the Memorandum of Association is set out in the Second Schedule hereto.

By letter dated 30th August 1995 from the Office of the Revenue Commissioners, Charities Section, a copy of which is set out in the Third Schedule hereto, the Appellant was granted an exemption from tax on the basis that it was established for charitable purposes only.

Clause 3 of the Memorandum of Association of the Appellant provides as follows:-

“The income and property of the Association whencesoever derived shall be applied solely towards the promotion of the main object of the Association as set forth in this Memorandum of Association, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever, by way of profit, to the members of the Association.”. The full text of Clause 3 of the Memorandum of Association is set out in the Fourth Schedule hereto.

There is a cy-près clause contained in the Appellant's Memorandum of Association (Clause 7) as follows :-

“If upon the winding up or dissolution of the Association there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to, or distributed among the members of the Association, but shall be given or

transferred to some other charitable Institution or Institutions having a main object similar to the main object of the Association, and shall prohibit the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Association under or by virtue of Clause 3 hereof, such institution or institutions to be determined by the members of the Association at or before the time of dissolution, or in default thereof by such Judge of the High Court as may have or acquire jurisdiction in the matter and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object.”

Article 90 of the Appellant’s Articles of Association provides as follows:-

“The provisions of Clause 7 of the Memorandum of Association of the Association relating to the winding up or dissolution of the Association shall have effect and be observed as if the same were repeated in full in these Articles.”

5. ACTIVITIES OF THE APPELLANT

(a). The Carers Association was founded in 1987 originally as an unincorporated body and was eventually incorporated as hereinbefore described at Paragraph 4 hereof on the 9th of December 1993 as THE CARERS ASSOCIATION LIMITED. The Appellant is the national voluntary organization of family Carers in the home. The Appellant had 22 Carers Resource Centres in June 2002 nationally including the subject relevant property with almost 200 staff nationally. The Carers Resource Centre, 24 Henrietta Street, Wexford, being the subject relevant property has been providing services in Wexford since October 2000.

(b). January 2002 – June 2002 – Activities of the Appellant at the subject relevant property and activities of the Appellant outside the subject relevant property activated by the administration of the Appellant within the relevant subject property.

Activities	Total
‘Drop – In’ Personal Callers to Centre	230
No. of callers to Outreach	34
No. of telephone callers to Centre	403
No. of hours of training delivered	70
No. of Carers attending training this year	44
*No of hours of Home Respite provided	3588
No. of visits carried out by Centre Manager	44

No. of phone calls made from center to Carers	209
No. of phone calls made from center on behalf of Carers	106
No. of Carers Support Groups held	26
Social events and Pamper Days held	6
No. of Carers on Wexford database	178
No. of Carers Information Packs and Take Care Magazine Distributed	350

***Home Respite Service**

Eight respite workers provide a service to 27 families in Wexford town and county providing a break every week for each family. These families can be detailed as follows:-

Caring for a child with a disability	6
Caring for an elderly frail relative	15
Caring for adult relative with a disability (e.g. partner or sibling)	6

(c). Waiting List for Services (July 2002) at subject relevant property.

Services	Waiting List
Care in the home training	12
Personal Development Courses	30
Home Respite (Carers on waiting list for)	14

6. FINANCIAL INFORMATION RE APPELLANT

(a). Audited Consolidated Accounts for year ended 31st March 2000 for THE CARERS ASSOCIATION LIMITED (These are the national accounts of the Appellant).

These accounts reveal the following figures:-

	Y/e 31/3/2000	Y/e 31/3/1999
	IR£	IR£
Consolidated Income & Expenditure a/c –		
Surplus of Income over Expenditure after tax	12,585	27,260
Consolidated Balance Sheet-Surplus of		
Assets over Current Liabilities	96,624	84,039

In Note 8 of these accounts a Schedule of Income is included a copy of which is set out in the Fifth Schedule hereto.

(b). Financial Position nationally of the Appellant as of 30th September 2002 and projections thereafter.

The financial position nationally of the Appellant is set out at page 13 of the Appellant's précis as follows :-

	€
Debtors	145,000
Bank Liability	71,000
Collector General Dues	51,000
Creditors	109,000
DEFICIT 30 Sept 2002	€6,000.

The figures in this subparagraph are taken from Financial Report & Survival Package Proposal dated 16th October 2002 submitted by the Appellant to the Minister for Services for Older Persons – Department of Health and Children a copy of which is included in the Appellant's précis.

(c). Subject Relevant Property (The Carers Resource Centre, 24 Henrietta Street, Wexford) – Income & Costs – Actual and Projected 2002.*

	Jan-Jun 02	July-Dec 02
	€Actual	€Projected
South Eastern HB (Wexford)	25,000	57,333
Training	1,140	3,640
Total Income	26,140	61,173
Wages – Centre Manager	14,368	14,698
Wages – Home Respite	35,880	36,000
Wages – Clerical Assistant	0	0
Rent	3,431	3,682
Training	7,616	10,000
Centre Overhead Costs	5,112	5,920
Total Expenses	66,407	70,300
Deficit	- €40,267	-€1,127

*** These figures are set out in the Proposal to The South Eastern Area Health Board from the Appellant dated July 2002 a copy of which is included in the Appellant's précis. It should be noted that the Projected Income for July-Dec 02 actually totals €60,973 and not €61,173 as hereinbefore stated and as set out on page 18 of the Appellant's précis but the difference of €200 is hardly significant.**

(d). Correspondence re funding from South Eastern Health Board.

The following correspondence copies of which are set out in the Sixth Schedule hereto are included in the Appellant's précis :-

- (i). Letter dated 17th September 2002 from Mr Con Pierce, General Manager Community Services, South Eastern Health Board, to the Appellant.
- (ii). Letter from the Appellant dated 1st October 2002 to South Eastern Health Board.
- (iii). Letter from the Appellant dated 21st October 2002 to South Eastern Health Board.

APPELLANT'S CASE

7. OPENING STATEMENT BY COUNSEL FOR THE APPELLANT

Mr Kavanagh cited the authorities mentioned in the Seventh Schedule hereto on behalf of the Appellant.

Mr Kavanagh in reply to a question from the Tribunal confirmed that the Appellant looked after the Carers. Asked by the Tribunal then to explain the references to the Cared For persons in the Appellant's précis Mr Kavanagh stated that these were the persons looked after by the Carers and that the Appellant did not exist in vacuo.

Mr Kavanagh referred to the Judgment of the Tribunal in the **National Association of Widows in Ireland Ltd v. Commissioner of Valuation VA 88/130** where it is stated :-
"Any activity carried on in the building (such the work of administration or any form of education) is so inextricably bound up with the main objects of the association as to be part of the charitable purposes for which it exists."

Mr Kavanagh submitted that the words "integral to the functioning of the hospital" set out at Page 348 of the textbook **Charity Law** by Kerry O'Halloran mirror the meaning

of the words “inextricably bound up with the main objects” used in the foregoing quotation from the *National Association of Widows case.*

Mr Kavanagh further submitted that what the Appellant was and did were a reflection of the needs of Ireland in the 21st Century in contemporary circumstances.

Mr Kavanagh submitted that the subject relevant property was used exclusively within its four walls for charitable purposes and that if one looked outside the subject relevant property the persons who were activated by the administration which came from the subject relevant property theirs was a charitable purpose as well..

8. EVIDENCE OF JOHN WELSH NATIONAL FINANCIAL CONTROLLER OF THE APPELLANT

Mr John Welsh said he was the Financial Controller of the Appellant. He was not a Director of the Appellant but a paid employee who worked from the national office of the Appellant in Kilkenny. He said the Appellant’s accounting year ended on 31st March in every year. For the year April 1st 2002 to 31st March 2003 he estimated the Appellant’s income would be €1,850,000 of which €710,000 would come from the Department of Health and Children in terms of a core grant and about €1,040,000 from the Health Boards. When the Tribunal pointed out to Mr Welsh that the Valuation date was November 2001 he said the figures for that date would be very similar and that the Appellant’s income did not change very much. He said for the year ending November 2001 the Appellant’s core grant from the Department of Health and Children was less than €90,000 and the income from the Health Boards would be about the same and you would be looking at a total of around €1,000,000 from the Health Boards. He stated that there was a difference between the Health Boards income and the funding from the Department of Health and Children. Mr Welsh said the Appellant had service agreements with the Health Boards and the Health Board told you what to spend the income from it on. He stated the Appellant had to report back to the Health Board. Mr Welsh said that the core funding from the Department of Health and Children was different in that it supported the national organization.

The Appellant was not entirely publicly funded said Mr Welsh and he stated there would be approximately €100,000 from fund raising, other grants and other income. Mr Welsh said there would be other grants from local partnerships such as the Galway Partnership.

He said Wexford VEC gave the Appellant some money towards training. He continued that you might get some money off the local church. He said it was predominantly carers who went on courses. He said these were thirteen week courses of three and a half hours a week and included a training manual. Mr Welsh stated that the Appellant also got income from FAS as well and this was to do with training.

In cross-examination by Mr Feehan Mr Welsh replied as follows :-

- He didn't have an exact figure for the percentage funding by the State of the Appellant but he said it would be approximately 90% to 95% and that included the Health Boards. That would be the case for the years ended 31st March 2001 and 31st March 2002 and for the period projected through to the 31st December 2002.
- In answer to a question as to who directed the activities of the Appellant Mr Welsh said that was a difficult question to answer and that initially it came from and was driven by the carers and then decided by the Appellant as representative of the carers in consultation with the health services namely the Department of Health and Children and the Health Boards.
- Asked if the whole focus of the Appellant was not on the cared for but rather on the carer Mr Welsh said again that was a difficult question. He stated when the Appellant got a referral from a public health nurse or from a carer this involved a home visit to assess the situation in the family and a determination as to what sort of services were needed and he continued that all the cared for people would be known to the management and staff of the Appellant. Mr Welsh concluded by saying that obviously the Appellant was the Carers Association.
- Asked if it was an object of the Appellant to be an advocate for carers rather than necessarily the cared for Mr Welsh stated that it would be true to say that and that they were the Carers Association. He continued however by saying that it was difficult to distinguish in many cases and that the people who provide the home respite service actually relieve the carer so that the carer left the home and got a break and the respite worker looked after the cared for person who might be frail, elderly, severely disabled or ill. He stated it was a difficult distinction to make and he didn't think it was as clear-cut as that.
- Asked if the Appellant was basically an advocate for the carers rather than providing services for the cared for Mr Welsh said on the face of it that would be a fair statement but that however in any discussions he had with the Department of Health

and Children and the Health Boards underlying all of this was the needs of the family unit and the needs of the cared for person and that you got to this through the carers.

- Mr Welsh said the Appellant was a demand driven organization and that they had people coming to them in desperate need and they had to respond to that need.
- Mr Welsh stated the Appellant was in its infancy, that it was charitable and that it did fund raising. He said they were trying to step up their fund raising to increase their income and lessen their dependence on Government.
- He started work for the Appellant in September 2001 as financial controller and one of his first jobs was to complete the accounts for the year ending 31st March 2001 which had not been finished when he started work for the Appellant.

In answer to a questions from the Tribunal Mr Welsh replied as follows :-

- The Tribunal noted that on Page 18 of the Appellant's précis dealing with actual and projected costs and income for 2002 there was no reference to income from the Department of Health and Children and Mr Welsh stated that initially the Appellant would go in to the Health Board and would not disclose exactly what it was getting from core funding but there would be some indication to the Health Board of the funding shortfall the Appellant would make up through other grants, the Department of Health and Children and fundraising.
- In the case of The Carers Resource Centre, 24 Henrietta Street, Wexford (the subject relevant property) Mr Welsh stated there would be a projected loss of forty to fifty thousand Euro for the period January to December 2002 which would have to be covered from the national core funding and national fund raising.
- The subject relevant property was open five days a week and was occupied solely by the Appellant which held the said property under lease.
- Asked when the Appellant started going in to deficit nationally Mr Welsh stated it was really about November 2001 and that became quite evident by 31st March 2002.
- Four full time paid employees ran the national office of the Appellant in Kilkenny. There were fifteen centre managers including Ms Marie Mahon who managed the subject relevant property and she was a full time paid employee. There was no other full time employee at the subject relevant property but there were seven or eight home respite workers attached to the subject relevant property doing approximately twenty hours per week each out in the carers' homes. These home respite workers had been on the care and home training courses so the carers were confident enough to leave the cared for in the care of the home respite workers and the carer could go and have

a break, go shopping or do whatever the carer wanted to do when the home respite worker was there.

- The carers were family members and there were no paid carers in any of the Appellant's services. Immediately after this reply Mr Welsh stated in reply to a question from Mr Kavanagh that there was no financial motivation for the carers.

9. EVIDENCE OF MS MARIE MAHON, MANAGER OF THE CARERS RESOURCE CENTRE, 24 HENRIETTA STREET, WEXFORD (THE SUBJECT RELEVANT PROPERTY).

Ms Mahon confirmed that she was the manager of The Carers Resource Centre situate at 24 Henrietta Street, Wexford being the subject relevant property. She said she started working for the Appellant in the aforesaid capacity in the month of April 2001. She stated she was a paid employee of the Appellant. She said that she was the only employee of the Appellant at the subject relevant property, that she had no clerical assistant and that she did everything herself. The Appellant was the only person in occupation of the subject relevant property. Ms Mahon said she had eight respite workers who lived in different parts of County Wexford who reported to her on a weekly basis. She received updates on the people the respite workers were going to see, the homes that the respite workers were visiting and on the carers that the respite workers were relieving from the homes. She had contact with the carers also who came in to the subject relevant property on a regular basis. She stated there was a Carers Support Group in Wexford and these carers would call in regularly for a cup of coffee. She said carers would also call in to see her on their own as they might have a problem. Further she stated the carers came in for training and for pamper days.

Cross – examined by Mr Feehan Ms Mahon stated that the respite workers were paid from the Head Office of the Appellant.

Questioned by the Tribunal Ms Mahon replied as follows :-

- The Appellant was the only person in occupation of the relevant subject property and there was nobody else there.
- She dealt with carers every day.
- She would have carers on the telephone some of whom would have a problem with getting the carers allowance and others of whom would have a problem getting a mobility allowance.

- The carers she dealt with had different problems.
- The focus of her work was the carers and the people they were looking after. She would be dealing with the carers but she would have seen most of the cared for people because she would have gone to all of the homes initially.
- In answer to a question from the Tribunal if it was stated something like 75% of her work would be dealing with carers would that be right or wrong she said “Ahm I would say yes that is as right as I could.” The majority of her work was dealing with carers but they would be providing home respite workers to relieve the carers in the home so that the carers could take a break.
- Some of the cared for are looked after by a single carer who might not have family support.

RESPONDENT’S CASE

10. OPENING STATEMENT BY COUNSEL FOR THE RESPONDENT

Mr Feehan cited the authorities mentioned in the Eighth Schedule hereto on behalf of the Respondent.

Mr Feehan stated that in his reading of the circumstances that had arisen in this case the operation of the Appellant was not exclusively charitable. He said that the Appellant might have laudable intentions and that it might indeed perform a very necessary social service. He went on to say that the Appellant could in no sense be described as charitable for the following reasons :-

- (a). 90% to 95% of the Appellant’s funding came from the State.
- (b). The services of the Appellant are focused towards the providers of care rather than what would be classically understood as the objects of charity.

Mr Feehan submitted that charitable exemption was provided for in Section 63 of the Poor Relief (Ireland) Act, 1838 and as a result of the case of **Barrington’s Hospital v. Commissioner of Valuation (1957) I.R. 299** the definition of charitable was restricted. He said that in the appeal before the Tribunal the objects of the Appellant were not actually the recipients of the charity but were the conduits. He submitted that Section 63 did not apply.

Mr Feehan stated that in his view the function of the Appellant should be seen as managerial or organizational to try and facilitate the care of people who were looking after the poor and afflicted.

11. EVIDENCE OF PATRICK CONROY, STAFF VALUER IN THE VALUATION OFFICE, ON BEHALF OF THE RESPONDENT

Mr Conroy confirmed that he prepared the précis of evidence for the Valuation Office and that he was appointed the Appeal Valuer to report to the Commissioner and to advise him on the decision. Mr Conroy emphasizing that his expertise was not in law and that he was a Valuer said that his interpretation was that the support function carried out by the Appellant was not a charitable activity.

In cross – examination by Mr Kavanagh, Mr Conroy stated that Mr Feehan Counsel for the Respondent was present to deal with legal argument, that he did not wish to comment on the case law and that he did consider the user of the relevant subject property as an element in coming to a conclusion.

12. CLOSING SUBMISSIONS BY COUNSEL FOR THE APPELLANT

Mr Kavanagh stated that this appeal must be looked at in a 21st century context.

Mr Kavanagh said the Memorandum and Articles of Association of the Appellant showed it to be a charity and that it functioned as such. The Appellant's user of the subject relevant property was exclusively charitable.

Mr Kavanagh confirmed in reply to a question from the Tribunal that the Appellant was seeking exemption from rates on the basis of the following words used in the proviso to Section 63 of the Poor Relief (Ireland) Act, 1838 :-

“ ..., or other building used exclusively for charitable purposes,...”

FINDINGS

13. Counsel for the Respondent has argued that the Appellant could not be described as charitable as 90% to 95% of its funding came from the State. It is quite clear from Mr Welsh's evidence that on or about the Valuation Date approximately 90% to 95% of the Appellant's funding nationwide came from Department of Health and Children and the Health Boards. The Tribunal are of the view that it is the funding of the Appellant in relation to The Carers Resource Centre, 24 Henrietta Street, Wexford (the subject relevant property) that is relevant to this case rather than the funding nationwide of the Appellant. It is clear from the evidence before us that on or about the Valuation Date the funding of the Appellant in relation to the subject relevant property (see in particular Page 18 of the Appellant's précis, Paragraph 6(c) of this Judgment and the evidence of Mr John Welsh) was mostly provided by the South Eastern Health Board and the Department of Health and Children. No authority was advanced by Counsel for the Respondent in relation to his contention arising from State funding and the Tribunal note that in the case of **Northside Community Enterprise Ltd. v. Commissioner of Valuation VA97/5/027** where the Tribunal found the subject property was used exclusively for charitable purposes the Judgment of the Tribunal stated at Page 14 thereof that the Appellant in that appeal was dependent almost entirely on funding from a state agency. In the **Barrington's Hospital Case** it was held that Barrington's Hospital was used exclusively for charitable purposes. On the basis of the figures set out at Page 314 of the Report of the Barrington's case it is clear that 46.36% of the cost of running the Hospital in 1950 came out of public funds (£400 a grant from Limerick Corporation and £8565.99 provided out of public funds by the Hospital Commission) and that there was further public funding involved. There is no suggestion at Paragraph 14.8.1 of the textbook **Charity Law** by Kerry O'Halloran that funding coming to a charity from national or local government disqualifies it from being a charity. In the case of **Cork City Partnership Ltd. v. Commissioner of Valuation VA97/5/011** where the Tribunal found the subject property was used exclusively for charitable purposes the Judgment of the Tribunal found that the Appellant was dependent on funding from the European Union and the Irish State. We find the fact that most of the Appellant's funding in relation to the subject relevant property on or about the Valuation Date was provided by the South Eastern Health Board and the Department of Health and Children does not prevent the relevant subject property from being used exclusively for charitable purposes. If we are wrong and it is the Appellant's funding nationwide that is relevant we find the fact that approximately 90% to 95% of the Appellant's funding nationwide on or about the

Valuation Date came from the Department of Health and Children and the Health Boards does not prevent the relevant subject property from being used exclusively for charitable purposes.

14. The question to be decided by the Tribunal is whether the subject relevant property was used exclusively for charitable purposes. The Supreme Court have laid it down that, apart from specific exemptions to be found in other statutes, the grounds for exemption from rates are to be found in the proviso to Section 63 of the Poor Relief (Ireland) Act, 1838. That proviso is as follows :-

“Provided also, that no church, chapel, or other building exclusively dedicated to religious worship or exclusively used for the education of the poor, nor any burial ground or cemetery, nor any infirmary, hospital, charity school, or other building used exclusively for charitable purposes, nor any building, land or hereditament dedicated to or used for public purposes, shall be rateable, except where any private profit or use shall be directly derived therefrom, in which case the person deriving such profit or use shall be liable to be rated as an occupier according to the annual value of such profit or use.”

Counsel for the Appellant confirmed during the hearing that he was relying only on the words to which emphasis has been added by underlining in the foregoing quotation and Counsel for the Respondent agreed that this was the law applicable to exemption in this appeal.

In the *Barrington’s Hospital Case* Kingsmill Moore J.(at pp. 333 and 334 of the Report) set out propositions warranted by the Irish authorities and the wording of Section 63 of the 1838 Act which are in the following words :-

“The following propositions would appear to be warranted by the Irish Authorities and the wording of s. 63.

- 1, *Apart from specific exceptions to be found in other statutes (such as Marsh’s Library, Armagh Observatory, and buildings belonging to certain societies instituted for purposes of science, literature, or fine arts) the grounds for exemption from rates must be found in the proviso to s. 63 of the Act of 1838 (McGahan and Ryan’s Case (2)).*
- 2, *“Charitable purposes” in s. 63 has a meaning less extensive than the meaning given to those words in Pemsel’s Case (3). How much less extensive has never been*

- decided, but at least there must be excluded from the denotation of “charitable purposes” in the section any charitable purpose which is mentioned expressly in the section (O’Neill’s Case (4) and Scott’s Case (5) as applied to s. 63).*
- 3, *Neither the wording of s. 63 nor any authority leads to the conclusion that “charitable purposes” means, or is confined to, “charitable purposes devoted exclusively to the benefit of the poor.”*
 - 4, *The word, “exclusively,” in no way alters or modifies the meaning of “charitable purpose.” It does ensure that, in order to qualify for exemption, a building must be used for charitable purposes only. Where a building is used for mixed purposes, some charitable, some non-charitable, it is not exempt, though if the purposes are carried on in different buildings or in different parts of the same building s. 2 of the Valuation Act, 1854, gives power to the Commissioner to distinguish as exempt the buildings or portions of buildings which are exclusively used for charitable purposes. (O’Connell’s Case (1), Clancy’s Case (2), case of Good Sheperd Nuns (3)).*
 - 5, *Although, where a building is used for education, in order to secure exemption, it must, on the express wording of s. 63, be used “exclusively for the education of the poor,” yet, even in the case of educational charities, the receipt of fees or income is not necessarily a bar to exemption if the fees are incidental to such user (Gibson J. in O’Neill’s Case (4).) When the fees or income are subject to a trust which requires them to be applied for the charitable purpose their receipt does not make the user any the less “exclusively for charitable purposes.” (Suggested by Palles C.B. in the Waterford Case (5) adopted by all the members of the Court in the Pembroke Case (6) and two members of the Court in University College, Cork Case (7) and further endorsed by Palles C.B. in Clancy’s Case (8).)*
 - 6, *By parity of reasoning, even if the section required hospitals to be used exclusively for the treatment of the poor, the receipt of fees would not be a bar to exemption if such fees were subject to a trust to be applied to the use of the hospital and such hospital predominantly treated poor patients. As there is no such limitation to the treatment of poor patients in the section, the charging of fees in a hospital, where by the nature of the trust such fees must be applied to the use of the hospital, cannot affect the right to exemption.*
 - 7, *Neither schools (O’Neill’s Case (4))nor hospitals (Royal Victoria Hospital Case (9)) are used for charitable purposes if they are carried on exclusively, or predominantly, for the well-to-do.*

8, *The payment of masters or doctors to carry on the charitable work does not prevent the building in which the work is carried on from being used exclusively for charitable purposes.*”

The Appellant’s activities at the subject relevant property and the activities of the Appellant outside the subject relevant property activated by the administration of the Appellant within the subject relevant property are summarized at paragraph 5(b) of this Judgment.

Ms Marie Mahon is the Manager of the subject relevant property where she started working for the Appellant in this capacity in the month of April 2001. She is the only employee of the Appellant at the subject relevant property.

Eight respite workers paid from the Head Office of the Appellant provide a service to twenty-seven families in Wexford town and county providing a break every week for each family.

The Carers associated with the subject relevant property are unpaid.

The Appellant is in sole and exclusive occupation of the subject relevant property and the only activities taking place there are those of the Appellant hereinbefore mentioned.

The Revenue Commissioners have certified that the Appellant is a charity for tax purposes . This is not conclusive in relation to the claim for exemption from Rates where the requirements have always been stricter than those for tax exemption.

Counsel for the Respondent argued at the hearing that the services of the Appellant were focused towards the Carers rather than what would be classically understood as the objects of charity.

There is authority for the view that the word “charitable” should be construed in relation to contemporary circumstances and the Tribunal are of this view and so find. See the Judgment of the Tribunal in the case of *The National Association of Widows case* where it is stated :-

“Social science has expanded over the years and the range of services provided by the modern State has expanded. The law cannot remain stagnant and, in particular, the Tribunal takes the view that the invocation of the constitutional provisions as regards the family is relevant in deciding whether this association is entitled to exemption on the grounds of its charitable purposes.”

See also page 20 of the textbook **The Law Relating To Charities In Ireland (Revised Edition 1962)** by V.T.H. Delany where it is stated :-

“There is little to be gained by definitions , legislative or otherwise, in charity matters. The social conscience of the judiciary, working in the light of contemporary conditions, will do more for the fair administration of charities than any definition.”

The textbook **Charity Law** by Kerry O’Halloran at pp. 19 and 20 states :-

“A charitable purpose has never been strictly defined in law. The courts have tended to interpret this in accordance with contemporary social conditions.”

We take the view that the argument of the Respondent’s Counsel that the services of the Appellant were focused towards the Carers rather than what would be classically understood as the objects of charity completely ignores contemporary conditions, the way Caring is now organized in this State by the Appellant and the fact that the Appellant is totally dedicated to the needs of Ireland’s family Carers in the home. We are living in the early part of the 21st Century and must take account of contemporary conditions.

The Appellant was set up for the support of Carers. We accept the evidence of Ms Marie Mahon that 75% of her work was dealing with Carers. Any other activities of the Appellant described at Paragraph 5(b) of this Judgment are so inextricably bound up with the support of Carers that they are part of the support of Carers and are an integral part of the support of Carers. We live in a real world and it is not possible to operate in vacuo. For all of these reasons we find that the activities which are summarized at Paragraph 5(b) of this Judgment are all activities for the support of Carers. Further we find the Appellant is limited by Clause 2 of its Memorandum of Association to the sole purpose of supporting Carers.

We have read with interest the Appellant's Information Pack set out at Appendix B of Mr Conroy's précis all of which we accept. Caring in the twenty-seven cases with which we are concerned is a physically and emotionally stressful activity.

The Tribunal find that the support of Carers described at Paragraph 5(b) of this Judgment is a support of Carers who are involved in unpaid, stressful, loving and caring work.

The support of Carers described at Paragraph 5 (b) of this Judgment is more than just good and laudable and the Tribunal are in no doubt that by its very nature this support of Carers and every part thereof is and are charitable. In reaching this conclusion the Tribunal also rely on the following:-

(a). The Tribunal find that the support of Carers hereinbefore described ameliorates the physical and emotional stress experienced by the Carers associated with the subject relevant property and this apart from all the other matters mentioned in this Judgment constitutes this support of Carers and every part thereof as charitable.

(b). The Appellant can not in any true sense be described as carrying on commercial activities at the subject relevant property dependent as it is there on funding mostly provided by the South Eastern Health Board and the Department of Health and Children. See the Judgments of the Tribunal in the *Northside Community Enterprises case* and the *Cork City Partnership case*.

(c) Clause 3 of the Appellant's Memorandum of Association provides that no portion of its income and property whencesoever derived shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever, by way of profit, to the members of the Appellant Company. See the Judgment of the Tribunal in the *Northside Community Enterprise case*.

(d). Clause 7 of the Appellant's Memorandum of Association provides that if upon the winding up or dissolution of the Appellant there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to, or distributed among the members of the Appellant Company and then contains a cy-près provision. This is repeated in Article 90 of the Appellant's Articles of Association.

(e). The Carers associated with the subject relevant property are unpaid.

(f). All of the findings at Paragraphs 13 and 14 of this Judgment.

The Tribunal find that the subject relevant property is used exclusively for charitable purposes by the Appellant, namely the support of Carers as provided in Clause 2 of the Appellant's Memorandum of Association.

15. DETERMINATION

The Tribunal therefore determine that the subject relevant property is entitled to exemption from rates pursuant to the proviso to Section 63 of the Poor Relief (Ireland) Act, 1838 on the basis that it is used exclusively for the charitable purposes hereinbefore described.