

Appeal No. VA03/3/006

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

**The Management Committee of The Dublin West Education Centre** **APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Offices at Lot No 6Hb/1 (G.F. Rear), Monastery Road, Redcow, Clondalkin Monastery, Clondalkin, County Dublin.

**B E F O R E**

**Frank Malone**

**Deputy Chairperson**

**Michael McWey - Valuer**

**Member**

**Mairéad Hughes - Hotelier**

**Member**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 17TH DAY OF FEBRUARY, 2006**

By Notice of Appeal dated the 22nd day of December 2003, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €140.00 on the above described relevant property.

The Grounds of Appeal are set out in the Notice of Appeal and in a sheet attached thereto a copy of which is set out at the First Schedule to this judgment. Issue: rateability. There is no dispute on quantum.

1. This Appeal proceeded by way of oral hearing which took place at the offices of the Valuation Tribunal, Dublin on the 21<sup>st</sup> day of April 2004 and an adjourned hearing on the 6<sup>th</sup> day of May 2004. Mr. Owen Hickey, Barrister, instructed by Fawsitt, Solicitors, appeared on behalf of the Appellant. Mr. Brendan Conway, Barrister, instructed by Mr. Tom Sweeney of the Chief State Solicitors Office, appeared on behalf of the Respondent.

In accordance with the Rules of the Tribunal the parties had, prior to the commencement of the hearing, exchanged their précis of evidence and submitted the same to the Tribunal. Mr. Gerard McHugh, Director of the Appellant, took the oath on both hearing dates and adopted the written Summary of Evidence submitted by the Appellant as being and constituting his evidence-in-chief. This evidence was supplemented by additional evidence obtained either directly or via the cross-examination process and Mr. McHugh was also questioned by the Tribunal. Ms Olivia Bellamy, a Valuer in the Valuation Office, was the Appeal Valuer and prepared the Respondent's précis. Subject to the legal issues hereinafter appearing Mr. Hickey on behalf of the Appellant admitted the Respondent's précis of evidence without formal proof.

Mr. Hickey cited the authorities and material referred to in the Second Schedule hereto on behalf of the Appellant and Mr. Conway cited the authorities and material referred to in the Third Schedule hereto on behalf of the Respondent. Written submissions prepared by Mr. Hickey on behalf of the Appellant dated 29<sup>th</sup> April 2004 were furnished to the Tribunal and the Respondent and a copy of these is set out in the Fourth Schedule hereto. The references on the second page of these submissions to "Primary Curriculum Support Centre" are a mistake and these references should be to "Primary Curriculum Support Programme". Written submissions prepared by Mr. Conway on behalf of the Respondent dated 30<sup>th</sup> April 2004 were furnished to the Tribunal and the Appellant and a copy of these is set out in the Fifth Schedule hereto.

From the evidence tendered to the Tribunal the following relevant facts either agreed or so found emerged as being material to this appeal.

## **2. LOCATION AND DESCRIPTION OF PROPERTY**

The subject relevant property is located in the Siac Building, Monastery Road, Clondalkin, Dublin 22 and comprises part of the ground floor of a multi-tenanted 5 storey modern high

specification office building. It has an area of 193 sq. metres comprising open plan area and 3 partitioned office areas. There are 8 parking spaces.

### **3. VALUATION HISTORY**

A Valuation Certificate (Proposed) was issued on 9<sup>th</sup> July 2003. The subject relevant property was valued at €140. A First Appeal was lodged on 20<sup>th</sup> October 2003 and a copy of the Notice of Appeal in relation thereto dated 15<sup>th</sup> October 2003 is set out in the Sixth Schedule hereto. The First Appeal was concluded and no change was made. In December 2003 an Appeal was lodged to the Valuation Tribunal. Quantum is not in issue.

### **4. EVIDENCE OF MR GERARD MCHUGH, DIRECTOR OF THE APPELLANT**

Mr. McHugh stated that he was the Director of The Dublin West Education Centre (DWEC) which was the lessee of the subject relevant property. He said that the Primary Curriculum Support Programme (PCSP) was a division of the DWEC and that division, which was a national programme managed by the DWEC, occupied the subject relevant property. He stated that PCSP was not a legal entity and that the DWEC was the legal entity. He could transfer the personnel occupying the subject to another part of the DWEC's premises, for example in Tallaght, and put personnel from another of the DWEC's programmes into the subject.

Mr. McHugh said he was familiar with Section 37 of the Education Act, 1998 and that the DWEC was an "*education support centre*" within the meaning of Section 37 (1) of that Act.

Mr. McHugh stated that the people who turned up to work at the subject relevant property each morning were the senior team of the PCSP namely the National Coordinator, three Assistant Coordinators and three Administrative Personnel. The National Coordinator and the three Assistant Coordinators were responsible for delivering or mediating the Primary School Curriculum 1999 to 24,000 primary teachers throughout the country and by extension to pupils. They also had a responsibility to the wider school community.

Mr. McHugh said the PCSP office, via a Coordinator or a member of staff, dealt with queries about the curriculum from trainers, school principals, the Department of Education and Science, Education Centre personnel and members of the public. The PCSP website also generated queries and the site had 84,000 hits in November 2003.

The PCSP had links with other relevant statutory bodies and agencies such as the Local Drugs Task Force Areas, RTE, the National Centre for Technology and Education, Trocaire, Dúchas, Sustainable Energy Ireland and the Environmental Protection Agency.

The Coordinator for Social, Personal and Health Education (SPHE) would organise her team of ten persons nationwide to work with the Local Drugs Task Force personnel. One aspect of the Coordinator's work would be to go out and lecture people in drugs affected areas.

Mr. McHugh said the PCSP supported community-based activities such as Child Protection, Drug Awareness, Art Education, Library Services, and Parent Information. The SPHE Coordinator would work with teachers and parents and take them through the Child Protection guidelines which had been put together by the Department of Education and Science and the Department of Health and Children. The PCSP had worked with RTE and the National Centre for Technology and Education to put together 30 5-minute programmes on the visual arts and the visual arts and technology. The Libraries, the Schools and now the PCSP worked very closely together. Mr. McHugh confirmed that all the organizations and individuals he had mentioned and the wider education community was what he would call "other relevant persons" in Section 37(1) of the Education Act 1998.

At the conclusion of Mr. McHugh's direct evidence Mr. Hickey addressed the Tribunal on paragraph 10 of Schedule 4 of the Valuation Act 2001 and the parts of that paragraph not being relied on by his client. He and Mr. Conway agreed that 10(a)(i) and (ii) were not in issue, Mr. Conway confirming that one of his arguments would be that the services provided were not available to the general public per paragraph 10(b).

### **Cross-examination of Mr. McHugh**

Under cross-examination Mr. McHugh stated the following. The subject property occupied about one third of the ground floor of the SIAC building in Clondalkin and the accommodation comprised a large space plus three rooms which might be used as offices or for seminar work and meetings. The administrative staff worked in the larger space in which there was a lot of filing, storage and normal office furniture and equipment. There were eight parking spaces. Of the three rooms the largest one was used for meetings and some seminars. The meetings had to do with business meetings and training of the senior team being the four Coordinators mentioned earlier and two Coordinators who worked elsewhere. The business meetings were meetings the Coordinators had for their own purposes. The training included presentations from other bodies and agencies, for example the National Council of Curriculum Assessment. Asked about the

kind of seminars held Mr. McHugh said he was using the terms seminars and presentations interchangeably. Seminars/presentations involving external bodies took place roughly on a monthly basis. Meetings took place more frequently than that.

The professional educational qualifications of the senior team were that they all originally qualified as primary teachers and all had Masters degrees in Education or equivalent as well as Diplomas in Professional Development and extensive experience of working in the Professional Development area.

The Coordinators worked in the building and elsewhere. Each would have ten or eleven teams working to them nationwide and would have to travel to meetings and training events involving those teams and other bodies at different locations outside the Dublin area. The Coordinators would spend three days a week in the subject property and for that time would be involved in the meetings and seminars described.

Enquiries to the PCSP at the subject property mainly came from personnel in the education area, people who were already trained teachers, and were be dealt with by a Coordinator or by an administrative staff member depending on the nature of the enquiry. The Coordinators would handle a significant number of such enquiries on a daily basis.

The PCSP dated from 1999 and was originally intended to have a time frame of 1999 to 2005 or 2006. If the original timescale were adhered to the PCSP would cease to exist after another two years.

Mr. McHugh agreed that the predominant function of the PCSP was to provide an explanatory facility for teachers regarding the heads of the new curriculum so that they could understand and teach the programme more efficiently. He added that the 1999 curriculum replaced the 1971 curriculum and the objective of the PCSP was to ensure that teachers would be familiar with everything in the new curriculum but particularly with anything that might have changed from the previous one. The emphasis in 1999 curriculum, and consequently in the PCSP seminars, was on methodology. Mr. McHugh agreed that the PCSP was providing a support function for teachers and said this was also extended to the education community. The Coordinators did not teach the curriculum to pupils in primary schools while assigned to work on the PCSP.

On the question of external links with other bodies such as Trocaire, Duchas, Sustainable Energy Ireland, the Library service etc. Mr. McHugh said that the PCSP supported and advised these

bodies on education programmes they might wish to become involved in or education practice they might wish to design. The PCSP worked with the Library service to bring the libraries and the schools closer together so as to consolidate work done in school. He agreed that the role of the PCSP with regard to all of those external bodies was a support or advisory role.

With regard to the 84,000 hits on the PCSP website in November 2003 Mr. McHugh said he did not have a statistical breakdown of the source of the hits but would conjecture that a majority of them would be from practicing teachers and a significant minority would come from others in the education community, in particular parents.

Mr. McHugh stated that the PCSP did not run programmes of courses for parents or interested members of the public. It was originally envisaged that the PCSP would provide extensive parent information evenings throughout the existence of the Programme but because of cutbacks in the 2002 Budget this was an area that had not been developed. Parents from different locations in Dublin and elsewhere seeking information would be given access to that information either by a seminar or lecture. This would be arranged by the PCSP via the 20 other Education Centres throughout the country with which the PCSP interacted on virtually a daily basis. In practice the parent's query would be referred to the nearest Education Centre. The information provided would be information on the PCSP or elements of it. The PCSP confined its work to curricular areas and dealt with enquiries in that context. Other aspects of school were dealt with by other programmes.

### **Tribunal questions to Mr. McHugh**

In reply to questions from the Tribunal Mr. McHugh stated the following. In his Appeal Application to the Commissioner of Valuation he had listed, as "...other factors to be taken into account", the following:

- (i) *The PCSP Office is a source of information for teachers and trainers.*
- (ii) *The Office is open from 9am – 5pm*
- (iii) *The Office is used for meetings and training of trainers.*
- (iv) *It is an education establishment.*
- (v) *While we are not advertised as a community centre of education, we do serve a wide range of community needs through supporting community based activities i.e. Child Protection, Drug Awareness, Art Education, Library Services and Parent Information on School and Education.*

Asked if he could give a percentage for each activity Mr. McHugh said this would arise only in the case of items (i) (iii) and (v) and that more than 50% of the activity was certainly under

heading (i). He confirmed that this service was exclusively for teachers and involved dealing with information and with administrative work associated with the Programme. It included all the documentation that came from throughout the country and all the payments that were made which was a very substantial aspect of the work. He confirmed to the Tribunal that 50% of the activity was to do with administration. He could not offer a breakdown of the percentage devoted to items (iii) and (v). He confirmed that the activity at item (iii) was exclusively for teachers. Asked if a member of the public could attend Mr. McHugh said it depended on how one defined “public”. If one were talking about someone from the Gallery, the Museum or from the local Drugs Task Force Area the answer was yes but the meetings that took place in the office were specific meetings among the team or with other teams or with Department of Education personnel or with himself.

Replying to a question in relation to paragraph 10(b) Mr. McHugh stated that the meetings referred to at item (iii) were not meetings for the general public.

Mr. Conway stated that he was not calling evidence and Mr. Hickey admitted the Respondent’s précis of evidence without formal proof.

## **5. ADJOURNMENT APPLICATION**

Mr. Hickey said that in order to qualify for exemption under paragraph 10 of the Valuation Act 2001 his client had to meet five criteria namely:

- (i) The body must be an educational institution;
- (ii) It must be using the property in question for the provision of educational services;
- (iii) It must not be established for the making of a private profit.
- (iv) Its expenses must be defrayed wholly or mainly out of moneys provided by the Exchequer;
- (v) The services provided must be available to the general public.

It was common case, he said, that the criteria at (iii) and (iv) were met so the issue was confined to the remaining 3 criteria.

The test with regard to criterion (i) was a test addressed to the DWEC as distinct from the PCSP as the DWEC, as lessee under the Lease, was the legal occupier of the subject property and it was an educational institution for the purposes of the Act. When both the Tribunal and Mr. Conway questioned this submission on the basis that their understanding was that it was common case that the PCSP was both the occupier of the subject property and the appellant in the appeal

Mr. Hickey referred to his earlier direct evidence adduced from Mr. McHugh. The PCSP had no legal existence in itself being merely a division of the DWEC. The occupier of the property for the purposes of paragraph 10 was the DWEC and not the part of it that occupied the property at the moment. There was evidence from Mr. McHugh that the personnel of the PCSP could be transferred to another of the DWEC's premises proving that the occupier was the DWEC.

Following a brief adjournment to allow the parties to discuss the issue which had arisen Mr. Hickey sought an adjournment to allow legal submissions to be made on the point that had arisen which he said was fundamental to his case as his first test for exemption under paragraph 10 had to be applied to the DWEC as occupier. He would also be seeking to put the lease of the premises, which had been made available to the respondent, into evidence on consent. Mr. Conway stated that his client's understanding of the appeal to date was that the PCSP was the occupier of the relevant property and that the issue turned on whether that body was entitled to the exemption contended for under paragraph 10. This understanding was informed by everything that had happened in the process to date including at first appeal to the Commissioner. He would not otherwise oppose the adjournment application. The Tribunal adjourned the hearing with agreement that Mr. Hickey would furnish his legal submission to the Mr. Conway who would, in his own submission, reply to it. The Tribunal also required the Appellant to furnish it with: a copy of the Lease of the subject property; a complete copy of the Constitution of the DWEC; and information on the relationship between the DWEC and the PCSP. The Tribunal further indicated that Mr. McHugh would be recalled to give further evidence as to whether the services at the subject property were available to the general public.

## **6. EVIDENCE OF MR GERARD MCHUGH AT RESUMED HEARING**

At the resumed hearing on 6<sup>th</sup> May 2004 Mr. McHugh was recalled and gave direct evidence as follows. The Lease furnished to the Respondent some months previously and now to the Tribunal was the Lease by which the subject property was occupied. It dated from February 2002 and the DWEC was the Lessee. Mr. McHugh described the physical arrangements in the building for access by the public. At the entrance there was a reception area staffed by a member of the administrative personnel who dealt with all the people who called to the office. He said he defined being open and available to the public as being available by telephone and by way of the Coordinators working with public organisations both in the PCSP offices and elsewhere. It was not the case that members of the public wandered in to the PCSP offices. The public who had dealings with the PCSP would primarily be parents of pupils in the primary school system and other organisations who had an interest in education.



With regard to the rateability of the DWEC Mr. McHugh said it was not rateable or had not paid rates. There had been no rates demand. He had been Director for two and a half years at that stage and the question of rates had never been raised and there was a presumption by the Management Committee that the Centre was not rateable.

Mr. McHugh said that the DWEC was one of a network of 21 Education Centres throughout the country. One of its activities was to manage a number of national programmes for and at the request of the Department of Education and Science such as the PCSP and the Substance Misuse Prevention Programme (SMPP). The DWEC therefore was the authority and the PCSP and the SMPP were among the activities of the DWEC. He was the Accounting Officer for all of the finance that went through all of the programmes and every cheque in respect of any programme was signed by him and by the Treasurer, Chairperson or some other member of the Management Committee. The PCSP did not have a cheque book and was not recognised by the banks for management purposes.

Mr. McHugh said the three administrative staff at the PCSP were employed directly by the management committee of the DWEC. The four professional staff were also employed by the management committee of the DWEC on secondment from their teaching posts in which they were employees of the respective schools' boards of management. The DWEC advertised the posts. It hired and, if necessary, fired the staff. Therefore it acted as employer in all respects.

### **Cross-examination of Mr. McHugh at resumed hearing**

Mr. McHugh said it would be fair to say that it was not the position in the subject property that members of the public walked in the front door, turned in to the reception area and went and sat in a classroom to take a lecture on some aspect of education.

Mr. McHugh's attention was directed to the Aims and Objectives of the DWEC at paragraph 2 of its Constitution namely:

- ”(a) To provide a meeting place for the dissemination of knowledge and information to all teachers, especially by the organisation of seminars, conferences, lectures, debates and symposia and by all other means subject to the approval of the Committee.*
- (b) To promote and encourage research and experimental projects in the field of Irish Education.*
- (c) To act as a resource centre which would enable teachers to prepare and construct*

*equipment and materials for use in their own schools and in addition to facilitate the display of teachers' and pupils' work and materials and to provide for a display of textbooks, materials and equipment.*

*(d) To promote and facilitate inservice training for teachers.*

*(e) To promote such other functions as the Committee may from time to time decide."*

and he confirmed in respect of each of the functions at (a) to (e) that they were the functions of the DWEC, that the DWEC carried out those functions and that the PCSP was a subset of those functions being a division or section of the DWEC. He also confirmed that the PCSP had occupied the subject property since February 2002.

### **Tribunal questions to Mr. McHugh at the resumed hearing**

The Tribunal directed Mr. McHugh to section 37 of the Education Act 1998 which reads as follows:

*37.—(1) In this section "education support centre" means a place in which services are provided for schools, teachers, parents, boards and other relevant persons which support them in carrying out their functions in respect of the provision of education which is recognised for that purpose by the Minister in accordance with subsection (2).*

*(2) The Minister may recognise a place as an education support centre and where the Minister so recognises a place he or she shall cause the name and address of that centre to be entered in a register maintained by the Minister and available for inspection by members of the public during normal working hours.*

*(3) An education support centre shall have a management committee, to manage the business and staff of that centre.*

*(4) A committee established in accordance with subsection (3) shall be a body corporate with perpetual succession and with power to sue and may be sued in its corporate name and no action shall lie against a member of a board in respect of anything done by that member in good faith and in pursuance of their functions as such members.*

*(5) The Minister may withdraw recognition from an education support centre.*

*(6) The Minister may, from time to time, make regulations relating to all or any of the following matters:*

*(a) procedures for the appointment of management committees;*

*(b) the appointment and remuneration of staff;*

*(c) the making of grants to education support centres;*

*(d) the provision of information to the Minister on any matter relating to the operation of education support centres;*

*(e) access to an education support centre and to the financial and other records of that education support centre by persons appointed by the Minister, and*  
*(f) such other matters relating to the operation of such centres as the Minister considers appropriate.*

Mr. McHugh confirmed that the DWEC was an “education support centre” under section 37(1) and that the subject property was part of that education support centre and that the rest of the education support centre was in the DWEC’s headquarters. He said that, under section 37(2), the DWEC was recognised by the Minister and that while he himself had not seen a register his understanding was that the DWEC was recognised according to section 37(2). The DWEC had a management committee in accordance with section 37(3). The management committee was comprised of 12 persons being primary, post primary and third level teachers. It was his understanding and the understanding of management that the DWEC was a body corporate. He confirmed that the Minister had not withdrawn recognition from the DWEC.

Mr. McHugh stated he was in daily contact with the National Coordinator and that while as general manager with a number of other sections and divisions to look after he might not be clear about the minutiae of what happened from minute to minute he was very clear about what went on daily on a general basis in the PCSP office. He confirmed his earlier evidence that most of the queries to the office came from teachers or educationalists which included Department personnel, colleges of education and other organisations. He confirmed that, apart from the odd occasion when they might demonstrate lessons in class, none of the professional staff of the PCSP taught pupils in classes during their period of secondment to the PCSP. He further confirmed that most of the activities of the PCSP at the subject property came under the heading of its being “*a source of information for teachers and trainers*” (see (i) on list at page 6 of this judgment), a small amount of the activities would come under heading (iii) “*meetings and training of teachers*” and about 15% of the activity would relate to heading (v) “*supporting community activities*”. The activities under headings (i) and (iii) were exclusive to teachers and constituted 85% of the activities on the office. The activity under heading (v) was exclusive to the community and constituted 15% of the activities of the office. He corrected his earlier evidence to say that the amount of time the Coordinators spent in the office was three and a half days rather per week than three as he had previously stated.

Mr. McHugh confirmed his view that the DWEC was a body corporate and that the PCSP was not a body corporate nor a legal person.

With regard to the Lease of the subject property Mr. McHugh confirmed that the “Permitted User” as Science and Technology Enterprise and ancillary storage at Clause 1.6 of the Lease had not changed.

## 7. THE APPELLANT’S SUBMISSION

Mr. Hickey submitted that the occupier of the subject property was the DWEC. The valuation system and the rating system were inextricably linked. To ask who was the occupier was to ask who was the person to be rated. In support of this he cited:

- (i) section 14(1) of the Valuation Act 2001 that relevant property is property in respect of which a rate may be made;
- (iii) section 15(1) of that Act with regard to rateable property;
- (iv) section 28 of that Act in particular subsections (11) and (14) with regard to the amendment of valuation lists and the making of a rate;
- (v) Articles 4 and 34 of the Local Government (Financial Procedures and Audit) Regulation 2002 S.I. No. 508 of 2002 which:
  - (a) refer to the preparation of a rate book “*which shall include all relevant properties, which are liable for rates*” (Article 34(1) and (2));
  - (b) provide that “*In the rate book the annual rate on valuation determined by the rating authority shall be assessed upon the persons liable in respect of the relevant properties and otherwise in accordance with the provisions of the relevant statutes.*” (Article 34(3))
  - (c) state that “*relevant property*” shall be construed in accordance with Schedule 3 of the Valuation Act 2001 (Article 4).

There was a direct link between the mechanism for the collection of rates and the Valuation Act 2001. For all of these purposes there had to be a person with respect to which to make the rate and in order to have a rateable person there had to be a legal person. The PCSP was not a legal person. If there were to be a suit for rates such a suit was actually impossible against the PCSP. In this case the proper rateable person was the DWEC which was a body corporate under section 37 of the Education Act 1998. The evidence adduced from Mr. McHugh was that the persons who occupied the subject property on a day to day basis were employees of the DWEC. According to **The Law of Local Government in the Republic of Ireland** by Ronan Keane (page 285):

*“The occupation of a hereditament by a servant or agent on behalf of his master or employer is normally treated as rateable occupation by his master or employer”.*

The definition of “*occupier*” in section 3 of the Valuation Act 2001 (which definition was effectively a re-enactment of the definition of the same word in section 124 of the Poor Relief (Ireland) Act, 1838 save for the substitution of the word “*property*” in the 2001 Act for the word “*hereditaments*” in the 1838 Act and the substitution of the word “*means*” in the 2001 Act for the words “*shall include*” in the 1838 Act) as “*every person in the immediate use or enjoyment of the property*” did not have the effect of making the PCSP into a legal person. The DWEC was the legal person in the immediate use and enjoyment of the property. There might be some suggestion that the PCSP was an unincorporated body of persons but it did not have the characteristics of that either. According to **Unincorporated Associations : Law And Practice** by Jean Warburton (2<sup>nd</sup> ed. 1992)(pages 2 and 3):

*““Legal Basis An unincorporated association has no legal existence apart from the members of which it is composed..... In the past there has been some debate as to the legal basis of unincorporated associations but it is now clear that it is contractual. This was set out by Walton J. in RE Bucks. Constabulary Widows’ and Orphans Fund Friendly Society (No. 2) “I think that there is no doubt that, as a result of modern cases springing basically from the decision of O’Connor M.R. in Tierney v. Tough [1914] IR 142 judicial opinion has been hardening and is now firmly set along lines that the interests and rights of persons who are members of any type of unincorporated association are governed exclusively by contracts; that is to say rights between themselves and their rights to any surplus assets.””*

There was no question here that the employees of the DWEC were an unincorporated body of persons or rateable in any sense.

Mr. Hickey then addressed Mr. Conway’s written submission as follows. He disputed Mr. Conway’s assertion that the 2001 Act defined “*occupier*” for the first time arguing that the definition in the 2001 Act, only slightly changed, was in the 1838 Act and was a well settled concept of valuation and rating law. He also took issue with Mr. Conway’s statement that the Supreme Court dicta in relation to the interpretation of taxing statutes also had application “in the parallel discipline of valuation.” To say, as Mr. Conway had done, that as a matter of law the occupier of the subject property was the PCSP meant nothing as the PCSP was not a person for the purposes of rates. It was incorrect to say that no issue arose for the purpose of implementation of the Act regarding the legal personality of the PCSP. Referring to Mr. Conway’s statement that ““Any other concepts of “*occupier*” or occupation of property emanating from the previous statutory valuation regime, from common law or from decided authorities under the previous regime have no application to the Act of 2001.””, Mr. Hickey opened **Cross on Statutory Interpretation** third edition page 146 quoting:

*“...when a statute provision is re-enacted in the same words and those words have been the subject of a judicial decision it is natural to assume that the draughtsman was aware of that decision and it is not unreasonable to say that there is a presumption that Parliament intended to endorse the decision.”*

All the statutory interpretation books would say that where the same words are used in a new statute as in a previous statute the body of jurisprudence which was brought to bear on the interpretation of those words is to be looked to again. This would include **Carroll v. Mayo County Council, (1967) I.R. 364**. He pointed out that section 124 of the 1838 Act had not been repealed.

With regard to paragraph 10(b) of Schedule 4 of the 2001 Act Mr. Hickey submitted firstly that in none of the educational institutions listed at 10(b) (“...*school, college, university, institute of technology...*”) was the general public allowed in. Each by its very nature was attended by a section of the general public. A voluntary secondary school for girls, for example, was restricted to girls between the ages of twelve and eighteen. In every one of the listed institutions the notion of the general public was constrained by the nature of the institution. Otherwise, paragraph 10(b) would be meaningless. Secondly, a body which provided services for “...*schools, teachers, parents, boards and other relevant persons.....*” pursuant to section 37(1) of the Education Act 1998 was a lot broader than a girls’ secondary school. Schools, teachers, parents, boards and other relevant persons across the country for the purposes of the proper interpretation of paragraph 10(b) had to be qualified as the general public unless such a narrow construction were applied as to be legally perverse. The broader constituency identified in the Act to which the services were extended, the people who came into the office, the people who used the web site and the people who attended the lectures when the Coordinators went out into the country formed as wide a tranche of the general public as any of the other institutions in the Act would meet.

The DWEC was an educational institution in accordance with paragraph 10. That paragraph was deliberately so drafted as to allow in a broad range of educational institutions. Contrasted with paragraph 8 which was imbued with absolute specificity paragraph 10 contained the phrase “...*any other education institution..*” and the word “*any*” was of extraordinary significance. Nearly every Act which referred to a group such as that in paragraph 10 did not use the word “*any*” and it was a principle of statutory interpretation that every word in a statute had a meaning. Furthermore the paragraph used the broad term “*educational services*”. It did not say “*teaching*” or “*lectures*” and could have done so if that was what was intended. The legislative provisions were intended to be broad and to bring in the kind of institution in the instant case.

Mr. Hickey submitted that the Tribunal had inherent jurisdiction as well as jurisdiction under section 37(1)(b)(i) of the 2001 Act to amend the notice of appeal and the valuation certificate to name the DWEC as the occupier.

## **8. THE RESPONDENT'S SUBMISSION**

Mr. Conway opened his submission stating that there were two very fundamental points of difference between the parties to the appeal. Firstly, it was not a requirement of the 2001 Act that to be identified as the occupier within the meaning of the Act the occupier had to be a legal person. To argue so was to import into the terms of the Act a definition or an adaptation of the existing definition which had no statutory basis. Secondly, the 2001 Act was not premised on identifying an occupier who had the financial capacity to pay rates. That simply did not arise for the purposes of the Valuation Office as laid out statutorily under the Act in carrying out their valuation functions.

The definition of "occupier" in the Act was quite clear: "...every person in the immediate use and enjoyment of the property.." Those words had their literal effect. Even on the basis of Mr. Hickey's own argument in which he cited **Carroll v. Mayo County Council** that case made the very point the respondent was arguing for. In that case the Plaintiff claimed from the Defendant County Council a certain sum of money on foot of a written agreement between the parties whereby the defendant had worked a quarry on the plaintiff's land in consideration of an agreed sum payable to the plaintiff for every cubic yard of material removed from the quarry. The defendant then submitted that the plaintiff had been the occupier of the quarry during the relevant period and that he owed the relevant rates in respect of that occupation. Henchy, J. in dismissing the appeal held that the defendants themselves had been in the immediate use and enjoyment of the quarry and had been the occupiers within the meaning of the Poor relief (Ireland) Act, 1838. In his Judgment (page 366) Henchy, J. had cited the decision in **Westminster Council v. Southern Railways and Others:**

*"rateability does not depend on title to occupy, but on the fact of occupation.."* and

*"...what is material is not necessarily the terms of the grant, but the de facto occupation which may be greater or less than the terms convey."*

Henchy, J. went on to say:

*"In the present case, the de facto position as to occupation (or as to immediate use and enjoyment, as the Irish Statute puts it) is that during the three relevant trading years, and indeed for a much longer period, the defendants had sole and unrestricted use and enjoyment of the quarry subject to the payment of a royalty for the material quarried."*

*There was no right under the agreement to exclude the owner of the quarry or other persons, but the factual situation was such that it would be impossible to say that during the relevant rating years the defendants were not in the immediate use and enjoyment of the quarry.”*

It was immaterial, Mr. Conway submitted, for the purpose of that Judgment whether the logic of it was that the local authority should collect rates from itself. Mr. Conway referred further to the Judgment at page 368:

*“The conclusion I reach from the oral evidence given and the photographs put in evidence is that, far from the plaintiff having any concurrent occupation of the quarry during the relevant rating years, the plaintiff withdrew completely from the quarry and allowed the defendants to have the unrestricted use and enjoyment of it in consideration of the royalty that he had agreed to accept. The de facto position (which, rather than the de jure position, is what I must look at) during those years was that the use and enjoyment exercised by the defendants was as full as if they had a tenancy or a lease. If they had, as trespassers, exercised the same degree of use and enjoyment, they would be equally liable for the rates. The right to exclude the owner in such cases is not the test. It is sufficient if it be shown that there was such a withdrawal of the owner from the occupation as enables a court to hold that the licensee (or lessee, or tenant, or even trespasser) was in ‘the immediate use or enjoyment’ as the statute puts it, or in paramount occupation as some of the cases say. To hold that the defendants in the present case were not in such occupation would be a distorted and inaccurate interpretation of the facts.”*

Mr. Conway submitted that the Tribunal should look at the literal reality of the present situation to see who was in actual occupation of the subject property and that it would be “*a distorted and inaccurate interpretation of the facts*” if the Tribunal were to look at the Lease and identify the lessee as a person with legal personality as a body corporate as they may well be under section 37 of the Education Act 1998. The property could well be occupied by a partnership of accountants or architects, for example, and a partnership had no legal status but would be identified as the person in occupation for the purpose of the valuation list and for the purpose of any appeal that might arise therefrom.

Mr. Conway stated that that he was not disputing that the affairs of the PCSP were conducted for purposes other than making a private profit nor that its expenses were defrayed wholly or mainly out of moneys provided by the Exchequer. This left a series of tests none of which, he submitted, were met by the PCSP. It was not making educational services available to the general public. It carried out support functions for professionals in the education sector, as



confirmed by Mr. McHugh's evidence. It trained trainers, updated teachers on the 1999 curriculum, appraised them of developments in educational thinking and worked to a limited extent with community bodies. It worked in a very specific and constrained manner as one programme within the remit of the DWEC dictated by section 37 of the Education Act 1998 which created the education centres of which it was a satellite.

The PCSP was not providing education services at all within the meaning of the Act. The educational services envisaged by the Act were the types of educational services provided by a school, college, university or an institute of technology namely educational tuition services. Its functions were set out at paragraph 2 of the Constitution of the DWEC. It did not have a teaching function or a primary educational role in the way that schools, colleges etc. had within the contemplation of the Act. In that regard Mr. Conway relied on the Supreme Court's interpretation of the *eiusdem generis* rule in **The Royal Dublin Society v. The Revenue Commissioners, (2000) I.R. 270** which had to do with whether a licence was appropriate for a pavilion in the RDS and the question was whether the pavilion fell within the description of "*any theatre or other place of public entertainment*". In that case Keane, J. referred to Asquith's, J findings in **Allen v. Emerson [1944] K.B. 362**:

*"In that case, the divisional court concluded that the fun fair was 'a place of public entertainment' within the meaning of the local Act.*

*The Law is thus stated in Bennion on Statutory Interpretation, (2<sup>nd</sup> ed.), 1992, at pp.860:-  
'(1) For the *eiusdem generis* principle to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the general words it is said to regulate.*

*(2) The nature of the genus is gathered by implication from the express words which suggest it (in this Code referred to as the genus-describing terms). Usually these consist of a list or string of substantives or adjectives (in the Code referred to as the generic string)...*

*The *eiusdem generis* principle may apply where one term only establishes the genus, though in such cases the presumption favouring the principle is weakened because of the difficulty of discerning a genus...a rule that two or more genus-describing words are always required would be too rigid. The question is invariably one of the intention conveyed by the entirety of the passage, and there can be no absolute rule...It is true that the mention of one genus-describing term only may make it more difficult to arrive at the nature of the genus..."*

*In the case referred to by Asquith J. in Allen v. Emerson [1944] K.B.362, Anderson v. Anderson [1895] 1 Q.B. 749 Rigby L.J. said at p. 755:-*

*‘In modern times I think greater care has been taken in the application of the doctrine [of ejusdem generis ]; but the doctrine itself as laid down by great judges from time to time has never been varied: it has been one doctrine throughout. The main principle upon which you must proceed is, to give all the words their common meaning: you are not justified in taking away from them their common meaning, unless you can find something reasonably plain upon the face of the document itself to shew that they are not used with that meaning., and the mere fact that general words follow specific words is certainly not enough.’*

*I am satisfied that the decision in Allen v. Emerson [1944] K.B. 362 is applicable to the present case and should be followed. It is correct in principle and is in accordance with the principles of statutory interpretation set out in the authorities to which I have referred.”*

Mr. Conway submitted that the common meaning of the concepts of school, college, university, institute of technology was necessarily carried in to the words which followed, i.e. “*any other educational institution*”. Simply, that phrase might be interpreted as “*any other such educational institution*”. It must have a commonality with the generic words which had gone before it. The common features were that they were available to the general public in the programmes of study they made available and which the general public could apply to enter. The PCSP was not providing educational services within the meaning of the Act because it was training people who were already professionals or providing information to other educators and to a very limited extent to parents and that on such a limited basis that it could be said to be providing educational services and certainly could not be said to be providing such services exclusively from the premises it occupied.

Mr. Conway submitted that it had been open to the DWEC under section 30 of the 2001 Act, as an interest holder, to appeal the Commissioner’s decision at the appropriate time. They had not done so and it was not now open to them to interpose themselves in the appeal and to submit that they supplant the PCSP as appellant at this late stage. Nor, in his view, was it open to the Tribunal to amend the notice of appeal under section 37(1)(b)(i) because the amendment required would not be to “*any other detail*” but to a much more fundamental matter i.e. the occupier. Section 37(1)(b)(i) was premised on an appeal being properly constituted and without a substantive error of the nature of the occupier being wrongly identified. Neither, he submitted, did the Tribunal have any inherent jurisdiction to so amend.

## **9. APPELLANT'S REPLY**

Mr. Hickey stated that the situation was the result of flawed paperwork. He was asking the Tribunal to exercise its inherent jurisdiction to put the matter right. Nobody would be prejudiced by such a decision.

With regard to Mr. Conway's reference to partnerships he repeated his submission that the PCSP was not a partnership nor an unincorporated association. There was no difficulty in suing partnerships for rates. But the people in the PCSP were employees. Employees were not rateable occupiers. There was nothing in **Carroll v. Mayo County Council** against this position. The County Council was the occupier. If the rates demand went to the Roads Department of the County Council the Roads Department would not be liable. If the Tribunal found that the PCSP was the occupier the rates would not be collectable.

Mr. Conway had made no argument about the status of the DWEC as far as qualification as an educational institution was concerned. His arguments related to the PCSP. The DWEC was an educational institution having been set up under the Education Act. The word "teaching" did not feature in paragraph 10 of Schedule 2. That paragraph made provision for schools and a parallel provision for activities such as the DWEC's. The DWEC was "*an education support centre*". Per section 37 of the Education Act an "*education support centre means a place in which services are provided for schools...*". These, Mr. Hickey submitted, must by definition and context be educational services and they could not be any other kind of services. The services provided were as available to the general public as those provided by schools, colleges etc.. For each institution listed in paragraph 10 the notion of the general public was constrained by the nature of the institution. Paragraph 10 departed from the *ejusdem generis* rule by virtue of the inclusion of the word "*any*" in "*any other educational institution*". This argument was in line with the authorities cited by Mr. Conway.

## **10. RESPONDENT'S REPLY**

Mr. Conway said that he had already made it clear and now did so again that his comments to the Tribunal in the context of the interpretation of paragraph 10 applied both to the PCSP and to the DWEC.

## **FINDINGS AND DETERMINATION**

1. Primary Curriculum Support Programme is not a legal person.

2. On or about the Valuation Date the subject relevant property was occupied by the Management Committee of The Dublin West Education Centre a body corporate established pursuant to Section 37 (3) and Section 37 (4) of the Education Act, 1998.
3. On or about the Valuation Date the subject relevant property was part of an “education support centre” as defined in Section 37 (1) of the Education Act, 1998.
4. Primary Curriculum Support Programme is a division of the The Dublin West Education Centre. The Management Committee of The Dublin West Education Centre provides educational services under the name Primary Curriculum Support Programme at the subject relevant property.
5. On or about the Valuation Date the subject relevant property was recognised by the Minister for Education and Science pursuant to Section 37 (2) of the Education Act, 1998 as part of an “education support centre” as defined in Section 37 (1) of the Education Act, 1998 and the name and address of the subject relevant property was on or about the Valuation date entered in a register maintained by the Minister for Education and Science pursuant to Section 37 (2) of the Education Act, 1998.
6. On or about the Valuation Date the subject relevant property had a management committee as defined in Section 37 (3) of the Education Act, 1998 to manage inter alia the business and staff of the subject relevant property.
7. The foregoing management committee is a body corporate with perpetual succession and with power to sue and may be sued as provided in Section 37 (4) of the Education Act, 1998.
8. The Minister for Education and Science has not withdrawn recognition from the subject relevant property as provided in Section 37 (5) of the Education Act, 1998.
9. The Constitution of The Dublin West Education Centre is that handed in at the resumed hearing of this appeal on 6<sup>th</sup> May 2004.

10. On or about the Valuation Date the subject relevant property was held by the Management Committee of The Dublin West Education Centre under a Sub – Lease dated February 2002 a copy of which was furnished with legal submissions to the Tribunal on 29<sup>th</sup> April 2004.
11. Primary Curriculum Support Programme have locus standi.
12. In the exceptional circumstances of this case and in the interest of justice the Tribunal make an order for the amendment of the name of the Appellant in the Notice of Appeal to this Tribunal and in the title of this Appeal and an order for the amendment of the name of the occupier of the subject relevant property in the valuation list and in the valuation certificate to read as follows :-  
  
The Management Committee of The Dublin West Education Centre, a body corporate established pursuant to Section 37 (3) and Section 37 (4) of the Education Act, 1998.
13. On or about the Valuation Date the subject relevant property was occupied by the Management Committee of the Dublin West Education Centre, a body corporate established pursuant to Section 37(3) and Section 37(4) of the Education Act, 1998 which said committee was on or about the Valuation Date “any other educational institution” within the meaning of Paragraph 10 of Schedule 4 of the Valuation Act, 2001.
14. On or about the Valuation Date the subject relevant property was used exclusively by the said committee for the provision of the educational services referred to in Paragraph 10 of Schedule 4 of the Valuation Act, 2001 otherwise than for private profit.
15. On or about the Valuation Date the said committee was “other educational institution” within the meaning of Paragraph 10 of Schedule 4 of the Valuation Act, 2001.

16. The Tribunal note that at the hearing of this Appeal the parties agreed that the requirements of Paragraphs 10 (a) (i) and 10 (a) (ii) of Schedule 4 of the Valuation Act, 2001 had been complied with and the Tribunal so decide.
17. On or about the Valuation Date the educational services hereinbefore referred to were not made available to the general public as provided in Paragraph 10(b) of Schedule 4 of the Valuation Act, 2001 and consequently the subject relevant property is rateable. Accordingly the appeal fails.
18. The Tribunal note that there is no dispute on quantum. The Tribunal therefore determines the Rateable Valuation of the subject relevant property to be €140.
19. Rateable Valuation of €140 affirmed.