

Appeal No. VA06/1/012

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

Citizens Information Service

APPELLANT

and

Commissioner of Valuation

RESPONDENT

RE: Office(s) at Lot No. Pt 13c (Flr 0 and -1), O'Connell Street, Upper, North City, North City 3, County Borough of Dublin

B E F O R E

Michael P.M. Connellan - Solicitor

Deputy Chairperson

Joseph Murray - B.L.

Member

Maurice Ahern - Valuer

Member

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 5TH DAY OF JULY, 2006

By Notice of Appeal dated the 25th day of February, 2006 the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €177.00 on the above described relevant property.

The Grounds of Appeal as set out in the Notice of Appeal are:

"The occupier is a charitable organisation (as defined) that uses the premises exclusively for charitable purposes and otherwise than for private profit. The charitable purpose is the advancement of education and/or the relief of poverty and/or other purposes beneficial to the community. The occupier adheres to the registration and operational guidelines for Citizens Information Services as prescribed by Comhairle, a statutory body. The Appellant uses a similar premises at Green Street, Dublin 7, for similar purposes and that property is exempt from rates."

The appeal proceeded by way of an oral hearing held at the offices of the Tribunal, Ormond House, Ormond Quay Upper, Dublin 7 on the 20th April, 2006. At the hearing the appellant was represented by Mr. James Devlin BL, instructed by Ms. Moya de Paor, Solicitor, Coolock Community Law Centre. Ms. Deirdre Casey, Manager of the appellant service, gave evidence on its behalf. Mr. Brendan Conway BL, instructed by the Chief State Solicitor, appeared on behalf of the respondent. Mr. Michael Keogh, F.S.C.S., F.I.A.V.I., a Staff Valuer in the Valuation Office also attended.

The Citizens Information Service

The City Centre Citizens Information Service (subject property) is located on O'Connell Street, Dublin and is a non profit organisation established in October 2001. For convenience it shall be referred to as the "CIS" or centre. The core mission is "to empower individuals to realise their due rights and entitlements by providing a free and confidential information, advice and advocacy service". This is accessible to all, especially those marginalized in society.

Charitable Organisation and Charitable Purposes

To obtain exemption from rates liability under Schedule 4, paragraph 16 of the Valuation Act 2001, two tests have to be met to ascertain whether the CIS qualifies for such exemption. First of all it must be a "charitable organisation" within section 3 of the Act and have as its main object a charitable purpose. Secondly, the CIS activities must be "charitable purposes" within the meaning of paragraph 16 (a) of Schedule 4 of the Valuation Act and also be non profit making. The first question was not in issue between the parties (save for charitable purposes) and therefore the only issue before the Tribunal was whether the centre's activities were "charitable purposes" within Schedule 4 and accordingly within section 3 also.

Appellant's Case

Ms. Deirdre Casey, Manager of the CIS, said that the centre was an independent company limited by guarantee, with offices in both Green Street and O'Connell Street. The subject property is located at 13a Upper O'Connell Street. The company is funded by Comhairle, a statutory body which was established by the Comhairle Act 2000. She said that they gave advice and educated people about their rights and entitlements and also had an advocacy function. Many of their clients were on low income, unemployed, social welfare recipients,

lone parents, old age pensioners, people with disabilities, migrant workers and people with drug related problems. Many clients had a low level of literacy skills and needed help in filling out forms. Also, there was complex legislation with which people needed assistance to understand. Further, the CIS acted on behalf of their clients in dealing with government departments and other bodies or persons. The company board was independent in its functions and was also non profit making. Its catchment area was the north inner city of Dublin such as Sean McDermott Street and Hardwicke Street.

Submissions - Mr. Devlin

- Mr. Devlin said that there was no definition of what were charitable purposes and the concept of what were charitable purposes must be seen in the context of contemporary conditions. The meaning of what was charitable in former times might not apply today.
- Charitable purposes should not be seen in their ordinary meaning as they had a specific legal meaning and this might have no relation to the ordinary meaning. He referred to the **Barrington Hospital** case – [1957] IR 299 within the fourth category of **Pemsel** and how the decision was based on Irish law, section 63 of the Poor Relief Act which was now repealed. Under the law as it stood then relief for the advancement of education had to be for the education of the poor. This no longer applied.
- It was dangerous to attempt to classify charities and what was charitable had to be understood in contemporary terms. What was a charity 100 years ago might not be so today. Social science had expanded over the years and what was a charity in previous times might come under the umbrella of social welfare today. **VA05/2/034 - Mellow Spring Childcare Development Centre Ltd.** was an example of the modern concept of charities. Mr. Devlin referred to three categories in **Pemsel**, “education”, “relief of poverty” and “other purposes beneficial to the community”.
- Education must be seen in the broad sense as the meaning of the word had changed over time. Universities and academics often engaged in knowledge for its own sake or as an end in itself as opposed to vocational knowledge or practical knowledge as a means to an end. Educating citizens about their rights was a form of practical knowledge or knowledge as a means to an end, not classroom education. The educational aspect of the CIS should be seen as a form of relief. The advancement of various types of useful knowledge was the modern concept of a charitable purpose. It did not have to benefit the poor.

- Charitable purposes within the **Pemsel** categories included “relief of poverty”. Relief of poverty had changed. In former times it was the bread and butter of charities and had now become part of the welfare state. People economically disadvantaged could be regarded as a charitable purpose as the Tribunal decided in **Mellow Spring**. Provision of information could also be seen as a charitable purpose. Legislation changed from year to year and unless you had access to the information poverty would not be relieved. The subject property also fell within the category “other purpose beneficial to the community”. Under this category a public library was held to be charitable in England.

Respondent’s case - Mr. Conway

- Mr. Conway commenced by saying that it was incorrect as a matter of law to say that any purpose which was beneficial to the community was charitable. It was a fallacious proposition. The concept of charitable purposes was much narrower than that. The fact that the appellant gave advice about civil and social rights did not mean it was charitable.
- One could not take an all embracing approach as to what was charitable. It must be given a narrower interpretation. There were no black and white rules and it was a question of degree as to what might be classified as a charity.
- He gave as examples the **Mellow Spring** case and **VA04/1/008 – Clones Community Forum Ltd.**. These represented opposite ends of the spectrum of charitable purposes, with the **Clones** case at the more liberal end. It was a question of degree as to how charitable they were. In the **Mellow Spring** case there was affordable child care and payment of a nominal sum and it was non profit making. They received significant funding from the state on condition that 60% of the users were on social welfare. The poverty factor was the main reason why the Tribunal favoured exemption. The **Clones** case at the other end of the spectrum involved an umbrella group dealing with revitalising the community, youth centred schemes and cross border cooperation. While it was not a charitable organisation, it could have gained exemption as “other purposes beneficial to the community”.
- Both cases and **VA99/3/021 – Dr. Steven’s Centre for the Unemployed** differed factually from the Appellant’s case. All three were self motivated with the element of relief for the needy. Further, all had the element of gratuitous giving unlike the CIS which was fully funded by the state and was more in the nature of a state agency and was a

creature of statute. Informing citizens of their rights and entitlements did not make it a charitable purpose.

- Comhairle was the body which funds the CIS and was a creature of statute. The subject property started from the top down, was funded by the state and acted like a state agency to make people aware of their civic rights.
- **Inspector of Taxes v Patrick J Kiernan [1981] IR 117** found that the word “cattle” must be given its ordinary meaning as the statute is directed to the public at large and not a particular class. Similarly “charitable purposes” must be given its ordinary meaning which the man in the street would give it. It was incumbent upon the Tribunal to construe the term charitable purpose in a manner consistent with the intention of the legislator in accordance with section 5(1) of the Interpretation Act 2005.

Charitable Purposes – Historical Background

No attempt has been made to define what is “charity” in law and also no definition appears in the Valuation Act. Some people may regard this as unfortunate yet there is wisdom in not doing so. The word has its origin in the Latin “*Charites – um*” meaning graces, favour or goodwill. It was said in the **Pensel** case below that the word “charity” had no sharply defined popular meaning and was used at different times in varying senses broader and narrower. Charity in its legal sense comprises four principal divisions which we will come to later. A list of charitable purposes has been given and the objective is to enumerate a variety of purposes which may be recognised as charitable in law.

Following the Elizabethan statute which did not apply to Ireland, the Preamble of the Irish Statute of Charitable Uses 1634 repealed in 1878 gives a useful insight into the question of what is legally charitable.

“The erection, maintenance or support of any college, schoole, lecture in divinity or in any of the liberall arts or sciences; or for the reliefe of any manner of poore, succourlesse, distressed, or impotent persons; or for the building, re–edifying, or maintaining repaire any church, college, schoole or hospital; or for the maintenance of any minister and preacher of the Holy Word of God...” and continues, referring to the erection, maintenance and repair of bridges, causeways and highways. From this 17th century statute there are clear guidelines as to what is legally charitable such as trusts for education, the poor, the sick or religion or the

maintenance or building of bridges etc. Although the words provide a useful guide over the years they are clearly not tailored to current social problems. The list was never intended to be exhaustive.

Charitable Purposes

The Tribunal has to determine the meaning of the expression “charitable purposes”. We look for wisdom to the wise words of Lord MacNaghten in **Commissioners for Special Purposes of Income Tax v Pemsel, House of Lords [1891] AC**. It does not help much to take the word charity in the abstract and then turn to dictionaries for its meaning. It is said that the most common signification of the word charity is conveyed by the word “alms”. He draws a distinction between charity in its vulgar or common sense and a gift for purposes which the law recognises as charitable. He gives an example from one of Oliver Goldsmith’s stories about the French priest at Rheims. The story goes that the priest was so miserly that he went under the name of “The Griper” and refused to give relief to distressed people. The priest worked hard in his vineyard and amassed a fortune. The whole fortune he laid out on an aqueduct by which he did the poor more useful and lasting service than if he had distributed his whole income everyday to the poor at his door. From Goldsmith’s example we can see that charitable purposes in law have nothing to do with casual almsgiving or charity of that nature. Indeed people getting water from the aqueduct has the element of public benefit or utility and indeed could well be classified as a charity in law.

Judge Kingsmill Moore in the **Barrington Hospital** case said that “charitable purposes” were minutely examined in Ireland and England in the judgement of Lord MacNaghten and has ever since been the “*locus classicus*” on the subject. It is now generally accepted that trusts are to be considered charitable if they fall within the four broad categories identified by Lord MacNaghten in **Pemsel**. These categories covered 3 specific headings and one general heading and were approved by Judge Keane in **In Re The Worth Library [1995] IR 2 301**. These categories are not necessarily mutually exclusive and are as follows:

1. Trusts for the relief of poverty
2. Trusts for the advancement of education
3. Trusts for the advancement of religion
4. Trusts for other purposes beneficial to the community

First we look to the **Barrington Hospital** case, to ascertain “charitable purposes”. It was held by the Supreme Court that the hospital, despite having a number of fee paying patients, was a charitable purpose within the fourth general heading of **Pemsel**. The matter concerned charitable purposes within section 63 of the Poor Relief (Ireland) Act 1838. Kingsmill Moore J. accepted that charitable purposes within the meaning of the section had a less extensive meaning than the words in the **Pemsel** case. Be that as it may, the entirety of the section was repealed by the Valuation Act 2001. It was not re-enacted in any form whatsoever in the new legislation. While the judgement contains a number of important statements of general principle, such as that the word “impotent” includes sick and injured, the judgement cannot carry the same weight as it formerly did as the particular section in question has been repealed. Accordingly, the Tribunal looks for legal construction for charitable purposes to the categories established in **Pemsel**. And, as stated above, Judge Ronan Keane approved of these in the **Worth Library** case in 1995.

It has been recognised that this classification is one of convenience only and that there are many purposes which do not fit neatly into one or another of these. Some trusts may fit into one or more categories at the same time. For over a century it has provided a basis on which the courts in Ireland and England approached the question of charities.

Lord MacNaghten said that neither the Elizabethan statute nor the Statute of Mortmain (George 11) extended to Ireland, yet the legal and technical meaning of the term “charity” is precisely the same in Ireland as it is in England.

Public Benefit Test

One of the most important English authorities on this matter is **Oppenheim v Tobacco Securities Trust 1951 AC**. (**Hilary Delany - Equity and the Law of Trusts in Ireland** page 313). A trust was set up to provide for the education of children of employees of a tobacco company. Despite the fact that the employees exceeded over 100,000 the trust failed as the class of beneficiaries was a relationship with a named propositus and therefore did not constitute a section of the public. Therefore for public benefit to exist:

- The beneficiaries must not be numerically negligible.

- The quality which distinguishes them from other members of the community must be a quality which does not depend on their relationship to a particular individual.
- What constitutes a section of the public is a question of degree and cannot by itself be decisive of whether a trust is a charity. Much must depend on the purpose of the trust - **Lord Cross, Dingle v Turner 1972 AC.**

Categories

The courts have inferred that trusts coming within the first three categories in **Pemsel** will be assumed to be for the benefit of the community and therefore charitable unless the contrary intention appears. Trusts for education of persons in common employment were held **not** to have satisfied the public benefit test. Lord MacNaghten did not mean that **all** trusts beneficial to the community were charitable, but that certain trusts fell within that category. Accordingly, one must demonstrate that it is a charitable trust.

Charitable Purposes

The following principles have been established by judicial interpretation as to what constitutes a charity or “charitable purposes” (**Delany**). The Valuation Tribunal is guided by following principles built up through Chancery practice over the past 350 years. The Tribunal has no doubt that the legislator of the 2001 Act intended that this practice and legal philosophy established over the years should not be ignored. Further, the Tribunal considers Mr. Justice Keane’s opinion in the **Worth Library case** that a trust might be considered charitable if it fell within the “spirit and intendment” of the statute.

Guidelines

1. The Tribunal applies the construction to the word charity/charitable purposes according to the legal guidelines set down in **Pemsel** i.e. the four divisions:
 - The relief of poverty
 - The advancement of education
 - The advancement of religion
 - Other purposes beneficial to the community.
2. There must be the element of public utility.

3. The Tribunal appreciates that not all purposes which benefit the public are charitable under the law. The group or part of the community must not be numerically negligible. The group must be one which does not depend on their relationship to a particular individual such as a company and its employees.
4. The purpose must be exclusively for charitable purposes and not for making a profit.

Findings

We examine the subject activities to find if they are “charitable purposes” within the meaning of the Valuation Act.

1. **Benevolence or gratuitous factor.** These are a particular class of citizen in the north inner city of Dublin where a large proportion of the people are economically disadvantaged and many may have literacy problems. In focusing on this particular class of persons the CIS has benevolent or gratuitous factor in that the service is free of charge. We could refer to this group as a class “*sui generis*”.
2. **How does the CIS differ from a government information office?** The difference lies in both substance and form. A government information office caters for *all* the citizens while the CIS focuses on a special group in the community. A government information office gives out information and documentation at a cost. The CIS has a different function in that it educates people about their rights and even acts for them in dealing with government bodies, departments or other persons. Accordingly, the Tribunal does not perceive the CIS as a government “agency”, but as an independent body set up under company law.
3. **The activities – educational factor.** The CIS covers a wide span of activities to empower individuals to realise their rights and entitlements. The principal object in the memorandum of association is the advancement of “education” in the area by ensuring that people are aware of their civil and social rights and entitlements. In 2005 the centre dealt with 54,052 queries. While this may not be education in the formal sense with classroom chalk and talk, it is certainly education in the informal sense where people can meet to obtain advice about their needs and discuss matters. This is part of the daily work of the centre. They run group sessions for people with specific needs like “returning to work” for people who may have mental health problems. This would be more in the

nature of a small class teaching environment. In addition the advocacy work CIS does, mediating with employers, landlords or government departments on behalf of the clients etc., is indicative of the lack of educational background, self confidence, literacy or language skills which many of the clients may have. Many may not be articulate enough to express their problems fully and certainly would have difficulty understanding complex legislation. The nature of the work is social but the approach is from an educational perspective. While the centre is not a school or university it does have an informal educational role in so far as it educates disadvantaged people about their rights and entitlements. Judge Keane said in the **Worth Library case** that “education” should be given a broad meaning to include gifts to theatres, art galleries, museums and the promotion of literature and music. In this case the centre is promoting civil rights awareness and social inclusion.

4. **The poverty factor.** The concept of poverty differs in time and space. Poverty as it was understood 300 years ago may not be poverty as it is understood to-day. Poverty in Calcutta may bear no relationship as to what is poverty in Europe. Nevertheless the CIS does cater for the needy, and those on the lowest rung of the economic ladder. It would be meaningless for the CIS to set its office up in the more affluent parts of Dublin.

In view of these factors the Tribunal sees the CIS activities as coming within the categories in **Pemsel** with regard to the advancement of education and/or the relief of poverty. When it does advocacy work on behalf of its clients, this could well be regarded as “other purposes beneficial to the community”. The CIS is involved in all three categories in varying degrees and its work improves the quality of life of the citizen in need.

5. **Public benefit.** To qualify under the **Pemsel** principles it is fundamental that there is the element of public benefit or utility. If people are informed about their civil and social rights and helped in this regard it can only improve the quality of their lives and make them less vulnerable. Definitely the public benefit element is present. But public benefit is qualified in that the group must not be numerically negligible or depend on their relationship to a particular individual. Over 54,000 enquiries were handled by the CIS in 2005. The Tribunal is satisfied that the CIS satisfies the public benefit test for charitable purposes.

6. In interpreting the meaning of “charitable purposes” the Tribunal believes that it was the intention of the legislator that the construction put on the words should be one of strict legal interpretation and not one of everyday use used by the man in the street. We find the Supreme Court decision in the **Kiernan** “cattle” case and the man in the street concepts not helpful for the purposes of charities. A legal interpretation must be applied and we cannot ignore over 350 years’ legal philosophy in Ireland and England on the matter.
7. The CIS is a non profit company incorporated under the Companies Acts 1963 to 1999. It has seven private members and its liability is limited by guarantee. It was registered as a company in December 1999. It is funded by a statutory body known as Comhairle which was created under the Comhairle Act 2000, which repealed the National Social Service Board Act of 1984. It would appear that the CIS is a “voluntary body” as opposed to a “statutory body” under the Comhairle Act 2000. Its object is to educate local communities about their rights and entitlements particularly in areas of economic marginalisation and to counter social exclusion. However, what the Tribunal has to consider here is the rateable liability of the CIS premises on O’Connell Street. It is not concerned with Comhairle as a statutory body but only insofar as it funds CIS which is independent in its functions of Comhairle. What the Tribunal is fundamentally concerned with is the “purpose” for which CIS was established and whether this purpose is charitable. We are not particularly concerned with the method of funding as state funding was involved in **Mellow Spring**.
8. The Tribunal also notes that the CIS office at Green Street is exempt from rates.
9. The Tribunal is satisfied that on the evidence before it, including case law and legal concepts, the purpose and activities of the Citizens Information Service are charitable purposes and come within the principles set down in **Pemsel** particularly as regards the advancement of education and/or relief of poverty. Moreover, the Tribunal is of the opinion that the legislator had these principles in mind for the purpose of “charitable purposes” within the Valuation Act 2001 as the “old code”, in the **Barrington** judgement based on section 63 of the Poor Relief Act (Ireland) is now repealed under Schedule 1 of the Valuation Act 2001. Finally we refer to Judge Keane’s statement that a trust might be considered as charitable if it fell within the “spirit and intendment” of the statute. We

are satisfied that the purpose and activities of the CIS are within the “spirit and intendment” of the law.

Determination

Accordingly, the Tribunal determines that the Citizens Information Service performs “charitable purposes” within the meaning of paragraph 16(a) of Schedule 4 of the 2001 Act and accordingly also satisfies the requirements of section 3(a)(iii) of the Act relating to the company objectives. Therefore the subject property is relevant property not rateable under the Valuation Act 2001.

And the Tribunal so determines.