Appeal No. VA14/1/010

AN BINSE LUACHÁLA

VALUATION TRIBUNAL

AN tACHT LUACHÁLA, 2001

VALUATION ACT, 2001

Léargas - The Exchange Bureau **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

RE: Property No. 2211689, Office(s), Carpark at Part of Floors 1 and 2, Fitzwilliam Court, Leeson Close, County Borough of Dublin

B E F O R E

Stephen J. Byrne - BL **Deputy Chairperson**

Brian Larkin - BL **Member**

Carol O'Farrell - BL **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 12TH DAY OF SEPTEMBER, 2014

By Notice of Appeal received the on 14th day of March, 2014, the appellant appealed against the determination of the Commissioner of Valuation in fixing a rateable valuation of €1706000 on the above described relevant property.

The grounds of appeal as set out in the Notice of Appeal are attached in Appendix 1.

The appeal commenced by way of an oral hearing in the offices of the Valuation Tribunal, 3rd Floor, Holbrook House, Holles Street, Dublin 2 on the 8th July 2014. The hearing resumed on the 25th July 2014. Mr Owen Hickey SC, instructed by Harry Mooney of Mooney O'Sullivan Solicitors appeared on behalf of the Appellant. Mr Robert O'Neill BL, instructed by Michael Collins of the Chief State Solicitor's Office appeared for the Respondent. Mr James Mullin, Executive Director of the Appellant, having taken the oath, adopted his précis of evidence as constituting his evidence-in-chief. Ms Olwyn Jones, valuer with the Valuation Office, was sworn in and gave evidence on oath on behalf of the Respondent. Ms Jones adopted her précis as evidence-in-chief. Both Mr Mullin and Ms Jones gave additional oral evidence and were cross-examined. In addition to this, the Tribunal has had the benefit of detailed written and oral submissions submitted by or on behalf of the Appellant and the Respondent, respectively.

The Property

The property the subject of the appeal is office accommodation located on the 1st and 2nd floors of a multi-storey second generation office block. The accommodation is serviced by lifts and is fitted out to a good standard throughout. The balance of the property is occupied by Siemens.

Valuation History

Initially the entire of Fitzwilliam Court was valued as one entity under Property No. 840128. The property was inspected by the Valuation Office in January 2012 for the purpose of sub-dividing part of the first and second floors from the remainder of the building. This accommodation was vacant and to let at the time and was valued under Property No. 2211689. The proposed Valuation Certificate issued on the 16th January 2012 with a RV of €717.87. A Valuation Certificate issued on the 20th February 2012 with a RV of €718.87. In July 2012, Léargas - The Exchange Bureau requested a revision. The first and second floors were inspected on the 5th June 2013. Following this inspection, it was decided that the property of the occupier was rateable and that there had been no material change of circumstances. On the 1st August 2013 a Notice of Decision was issued regarding no material change of circumstances with a RV of €717.87. On the 6th September 2013 an appeal to the Commissioner of Valuation was received. On the 18th February 2014 a Notice of Decision to disallow the appeal was

issued on the grounds that there had been no material change of circumstances. This decision is now the subject of an appeal which was received by the Tribunal on the 14th March 2014.

The Issue for Determination

(a) **"*The original ground*"**

The Appellant has argued that it comes within the provisions of Paragraph 16 of Schedule 4 to the Valuation Act, 2001 (hereinafter referred to as "the Act"). Simply put, the Appellant claims to occupy the subject property as "*a charitable organisation*" using the property "*exclusively for charitable purposes and otherwise than for private profit*".

(b) **"*Fresh ground*"**

Firstly, it is noted that there is an objection to the Appellant's entitlement to argue "fresh" grounds, that is to say whether the Appellant can bring itself within the provisions of Paragraph 10 of Schedule 4 to the Act. Simply put, whether the Appellant occupies the subject property as an educational institution and, further, that the property is used exclusively by the Appellant for the provision of educational services.

The objection, in summary, is that this particular ground was not argued prior to this, whether at the original stage and/or at the first appeal stage. The Respondent has argued that the Tribunal's jurisdiction to receive and/or entertain a fresh ground of appeal is limited. The Respondent has further argued that the Tribunal can receive and entertain such fresh ground of appeal only (a) in exceptional circumstances and (b) where the interests of justice "require" the Tribunal to receive and entertain same. The Respondent further argues that the Appellant has not advanced any exceptional circumstances and that, accordingly, the Tribunal should and as a matter of law refuse to receive and, it follows, entertain and/or determine this fresh or additional ground.

By agreement with the parties, the Tribunal decided (a) to hear argument on this preliminary issue, (b) reserve its determination on the preliminary issue, (c) without

prejudice to same, to receive evidence and/or argument touching on the substance of the fresh ground, and (d) in the event that the Tribunal ruled in favour of the Appellant on the preliminary issue, to come to a decision on the substance of the fresh ground.

For the sake of completeness, it is noted that the Appellant, in legal submissions, raised a further issue or ground of appeal, notably whether the Appellant could bring itself within the provisions of Section 15(3) of the Act. Simply put, whether the property was directly occupied by the State. Mr Hickey indicated to the Tribunal that the Appellant would not now be proceeding with this argument.

The Appellant's Case

Mr Mullin, on behalf of the Respondent, gave evidence to the effect that he is the Executive Director of the Appellant. He is an employee of the Appellant. He is the Chief Executive Officer. He has no vote at board meetings. As stated, he formally adopted his précis as being his evidence-in-chief. The Tribunal was referred to the principal object of the company as contained in its Memorandum of Association which is to further the education of young people by promoting, assisting, encouraging and arranging the exchange of young people between Ireland and other countries in the world for the purpose of enabling them to develop an international perspective and awareness in all social, cultural, intellectual, educational, vocational, professional and economic matters and affairs and by embarking upon the establishment of relationships with people in other countries to enable young people to:

"*(a) broaden their understanding of the cultures of peoples of other countries.*
(b) educate themselves in the widest sense.
(c) develop and acquire language and other skills.
(d) develop their abilities in vocational preparation and training.
(e) develop a sensitivity to and an appreciation and understanding of other cultures, economies and work ethics.
(f) promote, demonstrate, explain and interpret our national attitudes, beliefs and understanding in all social, cultural, intellectual, educational, vocational, professional and economic matters and affairs."

Mr Mullin informed the Tribunal that the Appellant is a national agency. It is a company formed by the Department of Education. It promotes opportunities for schools. It is involved in providing relevant training. It is involved with youth and community groups by offering them assistance.

It offers such groups training and support to facilitate their applications for funding. The Appellant Company is involved in the assessment of projects with a view to determining whether they merit entitlement to European funding.

Mr Mullin evidenced the types of projects which might potentially avail of European funding. Mr Mullin emphasised the fact that a lot of the projects were voluntary and targeted towards the disadvantaged. There was involvement with childcare, with work groups and community groups. Again, on examination, Mr Mullin emphasised the interaction with disadvantaged persons and with persons whom he described in evidence as "volunteers".

The Appellant Company is involved in teaching young people skills, teaching them how to work with other people.

There are 31 participating countries including countries in the European Union, Eastern Europe and the Mediterranean, America and North Africa.

By way of example, Mr Mullin instanced the Ballymun Job Centre. This particular centre tended to afford opportunities for people who are disadvantaged. It was, on Mr Mullin's account, a large-scale project involving up to 400 people. Mr Mullin emphasised the access to computer skills on-line. He also made reference to what he termed strategic innovations.

There was an emphasis also on enhancing educational opportunities. There was an emphasis on exploring culture. There was an emphasis on adult education with the focus on encouraging people to come back to learning. There was also reference to prison-based education. Mr Mullin gave evidence of interaction as between the company and the higher education authority in management of a project styled "Erasmus".

In Mr Mullin's evidence the company's services were open to the public. The service had the widest possible dissemination. The company ran an open information centre. The tangible benefits offered by the company were, according to Mr Mullin, open to all provided that they meet objective criteria as set by the European Commission. In cross-examination Mr Mullin explained that the Appellant Company had moved offices to the second floor of the Siemens building from premises situate in Parnell Street for a combination of reasons.

Mr Mullin was asked to deal with the Appellant Company's funding. It was clear from this cross-examination that the Appellant Company derived significant funding from the European Commission for allocation of grants. For the last year the Appellant Company had operational costs of €3.1 million and received in grants from the European Commission a sum in the amount of €11.5 million. Mr Mullin anticipated a 40% increase in the Appellant Company's budget for the next year. The grant, that is to say the €11.5 million, was funded entirely from the European Commission. The European Commission and the State jointly funded the operational costs of the Appellant Company in the order of €3.1 million. The breakdown of funding of operational costs is in the order of 58% from the State and 42% from the European Commission.

It was put to Mr Mullin that the function of the Appellant Company in real terms was simply to get funding from the European Commission and to distribute same. Mr Mullin did not accept this. He stated that this was too mechanical a view of the operation of the Appellant Company. Mr Mullin emphasised that the role or object of the Appellant Company was to ensure that the money was applied properly. The company is involved in distribution of the money and in evaluation of the projects to ensure that they complied with objective criteria set down.

The objective criteria and the assessment of whether or not individual projects met the criteria involved a relatively complex procedure.

Mr Mullin gave evidence of training on site. The Appellant Company engaged in training courses. It engaged in workshops on site. Young people are encouraged to

develop skills. Mr Mullin stated that there was limited training on site and that most training took place off site.

Mr Mullin was questioned on whether or not any of the individual projects could turn a profit. In evidence he stated that it rarely happens. He further stated that any beneficiary of funding turning a profit was obliged to inform the Appellant Company in such event. Mr Mullin accepted that there was no requirement that individual projects be "*not for profit*". In his précis of evidence he stated that the Appellant Company is obliged by its Memorandum of Association to use all income for the promotion of the primary object. Furthermore, he stated that the structure of the Appellant Company prohibits payment to the board other than public service travel and assistance rates or legitimate vouched out-of-pocket expenses.

The Respondent's Case

Ms Olwyn Jones adopted her précis of evidence as being her evidence-in-chief. The Tribunal was referred to Part 1 of the précis which contained a description of the subject property as follows:

> "*The subject property is office accommodation located on the first and second floors of a multi-storey second generation office block. The accommodation is serviced by lifts and is fitted out to a good standard throughout. The balance of the property is occupied*."

In considering whether or not there was a material change of circumstances, Ms Jones had regard primarily to the Memorandum ('Memo') and Articles of Association ('Articles') of the company. Ms Jones discussed the Memo and Articles with her team leader and consulted with him. The Memo and Articles were reviewed with the team leader. Regard was had to the primary objects clause as contained in the Memorandum of Association. In Ms Jones' view the powers as contained therein were wide powers. The accommodation was predominantly offices. Ms Jones did not recall any training rooms. Ms Jones noted that the property was held by way of a sub-lease from Siemens. The lease is attached by way of appendix to the précis of evidence. The lease is dated the 24th May 2012. It refers to a term which commences

on the 1st July 2012 and which expires on the 30th November 2016. The rent referred to is rent in the sum of €139,500 per annum.

In Ms Jones' opinion the primary object of the company, as cited in the Memorandum of Association, was to promote, assist and encourage the exchange of young people. In Ms Jones' opinion, this was "too broad". In Ms Jones' opinion the primary object of the company did not meet the requirement that it be for a charitable purpose so defined.

She spoke with Mr Pat Crowe (of Léargas) at the time of her inspection. She recalls having a conversation with Mr Crowe regarding the purpose of the Appellant Company. She does not recall asking him any questions. She recalls seeking advice and consulting with her team leader. The conclusion as reached by Ms Jones rested predominantly on her construction of the Memo and Articles of Association of the company. Ms Jones gave evidence to the effect that she would ordinarily review the Schedule to the Act. She would in the normal course of things look at Schedule 4. As a matter of general procedure she would have regard, *inter alia*, to Paragraph 10 of Schedule 4. Having said that, the main focus of her attention was at Paragraph 16(a) of Schedule 4. In Ms Jones' opinion, the subject property was not used by the Appellant as a school, college or other educational institution. In Ms Jones' view the use of the subject property was primarily as office accommodation.

Thereafter and as has been stated, the Tribunal has had the benefit of detailed written and oral submissions by the legal representatives on behalf of both Appellant and Respondent. The Tribunal has carefully considered the legal and oral submissions as made.

Determination of the Tribunal

(a) The preliminary issue

As stated, the preliminary issue concerns whether or not the Appellant should be permitted to argue a ground of appeal which said ground was not raised by the Appellant originally or at first appeal.

Mr Hickey, on behalf of the Appellant, appears to accept, or in any event does not demur from the Respondent's contention, that the Appellant did not, in its appeal to the Commissioner, argue that the property concerned was not rateable by reason of the application of Paragraph 10 of Schedule 4 to the Act.

In any event, it is clear from a consideration of the grounds of appeal as submitted that the argument before the Commissioner was limited to an argument that the property was not rateable by reason only of the application of Paragraph 16 of Schedule 4.

Whilst there is reference in the said grounds of appeal to *the* "*promotion of education*", same is clearly intended to buttress an argument to the effect that the occupation of the property by the Appellant is as a charitable organisation and exclusively for charitable purposes and otherwise than for profit.

Further it is clear from the decision of the Commissioner of Valuation that the determination of the merits of the appeal are (understandably) confined to a consideration of whether the Appellant could bring itself within the provisions of Paragraph 16 of Schedule 4 to the Act.

The grounds of appeal to the Tribunal expressly seek to include "*in the alternative Léargas would also constitute an 'other educational institution' using the property exclusively for providing educational services of the nature envisaged by Paragraph 10 of the Fourth Schedule to the Valuation Act 2001 and complies with the conditions in that paragraph*." There does not appear to be any issue concerning the Respondent's entitlement to raise this preliminary issue. It is in any event clear from the foregoing that the Respondent's entitlement to raise the preliminary issue is well founded. Simply put, it is clear that the Appellant seeks to introduce and argue a ground of appeal that was not before the Commissioner of Valuation. The ground of appeal so raised is the Appellant's contention that its occupation of the subject property is in the nature of an educational institution exclusively providing educational services otherwise than for profit and within the meaning of Paragraph 10 of Schedule 4.

The law concerning the Tribunal's jurisdiction to receive and entertain new and fresh grounds of appeal appears to be relatively well settled. It appears to be well settled that the Tribunal has jurisdiction to receive and entertain new and/or fresh grounds of appeal. Further, it appears to be well settled that such jurisdiction ought to be exercised sparingly and in circumstances where the Tribunal is satisfied by a combination of argument and evidence that there are exceptional circumstances in the interest of justice for the exercise of same.

In a previous decision, **VA95/5/015 – John Pettitt & Son Limited**, the Tribunal concluded that it has the jurisdiction to receive and entertain fresh grounds of appeal at the appellate stage and in the following terms:

> "*10. This Tribunal is of course a creature of statute. It is not a court established by or under the Constitution or by or under the Courts (Establishment and Constitution) Act 1961. Whilst its existence depends on the 1988 Act, the validity of its actions and decisions must surely be constitutionally safe as falling within the provisions of Article 37 thereof. In any event it would in our view be quite invidious for a Tribunal of this nature to have a rule of practice or procedure or to adopt a jurisprudence which is at variance with that practiced in the Courts above mentioned and in particular in the Supreme Court. It seems to us therefore that we ought, and indeed must follow the principles enunciated in the cases above identified. Accordingly it is our firm view that it would be quite wrong to have a practice of exclusion which, given the importance of the case and the interests of justice, did not permit of exceptions or deviations therefrom. So, it is therefore our decision that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it will not be possible to raise it before us, nevertheless, in exceptional circumstances where the interest of justice requires, this Tribunal will permit the raising of a ground, the reception into evidence and the reliance on a point of law none of which have* [sic] *previously been so raised or so adduced. We are satisfied that the previous judgments of this Tribunal, on this point, were all intended to be read and understood in this manner.*"

This decision of the Tribunal was appealed to the High Court by way of Case Stated. Mr Justice Butler gave judgment on the 1st May 2001. In the course of this judgment he states as follows:

> "*I am satisfied that the Valuation Tribunal was entitled to so conclude. The Tribunal concisely reviewed the law and came to the view that it ought and must follow the principles which it referred to as enunciated by the Supreme Court and held that it would be quite wrong… [if] the practise of exclusion… given the importance of the case in the interests of justice, did not permit of exceptions or deviations therefrom. It accepted that whilst, as a general rule, where a ground of appeal has not been advanced before the Commissioner it would not be possible to raise it before the Tribunal nevertheless, in exceptional circumstances where the interest of justice requires, the Tribunal will permit the raising of a ground, the reception into evidence and the reliance of a point of law none of which have* [sic] *previously been raised so far or adduced.*"

Mr O'Neill argues that the requirements are distinct, separate and divisible, that is to say that the Appellant, if it is to have the benefit of the Tribunal's exceptional jurisdiction to receive and entertain fresh grounds, must satisfy the Tribunal (i) that there are exceptional circumstances and (ii) that it is in the interests of justice that the Appellant be permitted to agitate in favour of a fresh ground of appeal.

Having carefully considered the Tribunal's reasoning in the above mentioned decision, that is to say **John Pettit & Son Limited**, and having considered the fact that the same approach has been endorsed by the High Court (Mr Justice Butler), the Tribunal takes the view that the primary consideration is whether and in all of the circumstances it is in the interests of justice that an Appellant be permitted to adduce a fresh and/or new ground of appeal.

The interests of justice require the Tribunal to consider, *inter alia*, the explanation as advanced by the Appellant for its failure to put before the Commissioner of Valuation the new and/or fresh ground. Further, the interests of justice require the Tribunal to

consider such explanation together with other relevant features of the case touching on the exercise by the Tribunal of its exceptional jurisdiction.

Moreover, the interests of justice require the Tribunal, *inter alia*, to consider whether the Respondent is materially prejudiced by allowing the Appellant to argue a point which was not raised in any substantive way prior to this.

The Respondent has generously permitted the Tribunal to receive and, if necessary, to consider the documentation relevant to the substance of this new or fresh ground of appeal. In the particular circumstances the Tribunal can, when considering the interests of justice, consider whether the ground as raised has, in reality, substance and/or, in the alternative, is in reality a ground which is without substance and/or merit.

Mr O'Neill is correct in his assertion that the onus is on the Appellant to persuade the Tribunal that it should exercise this exceptional jurisdiction by permitting the Appellant to argue in substance this fresh or new ground of appeal. Mr O'Neill is correct insofar as he has asserted that the Appellant must and in the circumstances discharge a relatively onerous burden.

Having carefully considered matters touching upon consideration of this preliminary issue, the Tribunal is satisfied that the interests of justice require that the Tribunal entertain, consider and determine the additional ground of appeal, that is to say, whether or not the Appellant can bring itself within Paragraph 10 of Schedule 4 to the Act.

In so concluding, the Tribunal has taken into consideration the following:

(i) The explanation as offered by the Appellant for its failure to formally and precisely articulate the grounds upon which the Appellant maintains that the property concerned is not rateable. The Tribunal is prepared to accept on its face the explanation which the Appellant has put forward for its failure to formally articulate the fresh ground as a separate alternative ground of appeal. It appears to be the case that the Appellant did not at the time have the benefit

of appropriate expert legal advice and assistance. Whilst this, in and of itself, cannot justify a failure to formally articulate the additional ground of appeal, it nevertheless puts the "overlap" emphasised by Mr Hickey, (the overlap between the Appellant's perception of itself as "a charitable organisation" and its perception of itself as involved in the provision of education) in context. In the circumstances it is understandable that the Appellant, not having at the time availed of the benefit of expert legal advice and/or assistance, failed to appreciate the requirement separately to identify and articulate the overlapping "strands", that is to say of a charitable organisation using a property for charitable purposes and those of an educational institution using the property for the provision of educational services. Whilst failure on the part of the Appellant to engage appropriate expert legal advice at that time was ill-judged, it is nevertheless understandable in circumstances where the Appellant had "an exemption from rates" in respect of its occupation of premises at 189 Parnell Street and where the Appellant was in the circumstances and in effect engaged in no more than a relocation of its activities to vacant premises whose previous occupation could not have been characterised as occupation by a charitable organisation for exclusively charitable purposes.

(ii) The absence of any material prejudice to the Respondent should the Tribunal permit the Appellant to argue the fresh ground of appeal. Mr Hickey has argued that the Respondent is not prejudiced. Whilst Mr O'Neill argues that material prejudice is not relevant to the Tribunal's decision on whether or not to exercise its jurisdiction to receive the fresh ground of appeal, Mr O'Neill does take issue with the Appellant's assertion that exercise by the Tribunal of its exceptional jurisdiction would not in the circumstances prejudice the Respondent in a material and/or concrete way.

In point of fact and to the credit of the Respondent, the detailed submissions as furnished clearly evidence the Respondent's capacity to meaningfully engage with and argue the substance of the new or fresh ground of appeal. Moreover, Ms Jones confirmed in evidence that whilst she looked predominantly at Paragraph 16, she did look at Schedule 4 to the Act as a whole to see whether the relevant property came within any of the other exemptions.

In summary, the Respondent does not in the circumstances suffer any material prejudice by reason of the Tribunal's decision to exercise its exceptional jurisdiction to permit the Appellant to raise and argue the additional ground of appeal.

(iii) Cursory consideration of the detailed submissions as furnished by the Appellant and the Respondent suggests that the point as raised by way of additional ground is worthy of consideration on the merits.

All of the above considerations, when viewed individually, would not have been sufficiently cogent to persuade the Tribunal that the interests of justice require it to exercise its "exceptional circumstances" jurisdiction by allowing the Appellant to argue and/or to rely on the ground of appeal. Taken together, however, the considerations are, in the Tribunal's view, sufficiently persuasive to allow the Tribunal to conclude that the interests of justice require the Tribunal in this instance to invoke its "exceptional circumstances" jurisdiction by permitting the Appellant, if necessary, to argue and to rely upon this fresh ground of appeal.

This may only become necessary in the event that the Tribunal finds against the Appellant on what the Tribunal has labelled the "original ground": occupation by the Appellant as a charitable organisation exclusively for charitable purposes otherwise than for profit; Paragraph 16(a) of Schedule 4 to the Act.

(b) **The original ground of appeal: occupation by the Appellant as a charitable organisation for charitable purpose otherwise than for profit: Paragraph 16, Schedule 4.**

In order to succeed on this ground, the Appellant must satisfy the Tribunal by evidence, oral and documentary, and/or by force of legal argument, that the Appellant can bring itself within the provisions of Paragraph 16(a) of Schedule 4 to the Act. Simply put, the Appellant must satisfy the Tribunal as follows:

- It is a charitable organisation
- Its occupation of the subject property is exclusively for charitable purposes

- The Appellant has not engaged in making private profit in its use of the property as a charitable organisation for charitable purposes.

Key considerations include:

(i) whether the Appellant has satisfied the Tribunal that it is a charitable organisation as defined by the Act;

(ii) Whether the Appellant has satisfied the Tribunal that it uses the property for charitable purposes within the meaning of the Act and, more particularly, within the meaning of Paragraph 16(a) of Schedule 4 to same.

Charitable organisation

As to (i), Section 3 of the Act provides a definition of charitable organisation. In order to come within this definition, an individual appellant must satisfy a number of prescribed conditions. The Appellant has adduced evidence, oral and documentary, from which the Tribunal can safely and readily determine that the Appellant is a company within the meaning of and for the purpose of section 3(1) of the Act. The Appellant, being a company must, if it is to satisfy the Tribunal that it is a charitable organisation (as defined), satisfy the following prescribed conditions;

The Memorandum of Association and/or the Articles of Association of the company must (a) state that the company's main object or objects is for charitable purpose; (b) specify that the purpose of any secondary object is to be the attainment of the main object or objects; (c) provide for the application of income, assets or surplus towards the company's main object; (d) prohibit distribution of income, assets or surplus to its members; (e) prohibit payment of remuneration (other than reasonable out-of-pocket expenses) to the directors or any officer of the company other than any officer who is an employee of the company; (f) provide for disposal of surplus of wind-up to another charitable organisation the main object of which is similar to the appellant's main object.

Alternatively, in the event that the company which seeks to bring itself within the definition of charitable organisation is a body which receives a substantial proportion

of its financial resources from a State department or agency, the Memorandum of Association and/or the Articles of Association must make provision in effect for the return of any "surplus" to the department of State and/or agency from which it received the said substantial proportion of financial resources.

It is clear from a consideration of the case law submitted and from a consideration of the provisions of the Act that the Appellant must, *inter alia*, satisfy the Tribunal that it is a charitable organisation as defined. The Appellant is a company as defined within the meaning of the Act. There is no issue on this. As such, the Appellant is required to satisfy the Tribunal (and where issue is taken on the point) that its constitution (Memorandum of Association/Articles of Association) meets the mandated or prescribed conditions as provided for under section 3 and more particularly under section 3(1)(b) of the Act (as set out *supra*).

It is clear from the authorities as submitted and is in any event clear from the wording of the Act that failure on the part of a company to strictly adhere to the said requirements is fatal. The Act itself, together with the Tribunal's requirement to interpret and apply the Act's provisions, are unforgiving in this regard.

By way of illustration, there is the decision of the Valuation Tribunal in **VA04/1/008 – Clones Community Forum Ltd** of 15th June 2004. The purposes of the company concerned were self-evidently laudable. The Tribunal by way of addendum expressly held this to be so. Moreover, the Tribunal determined that the purposes were charitable purposes within the meaning of the Act. The appeal nevertheless failed because the provisions contained in the company's constitution did not meet or substantially meet or conform to those prescribed under the Act. At page 8 of the Judgment it is stated as follows:

> "*In our view the Memorandum of Association of the Forum does not distinguish between main or primary objects and secondary objects. It does not state the two objects isolated by Mr Pringle as being the main objects of the organisation. Nor does it specify the particular purpose of the other objects. Neither does it specify that the purpose of these or other secondary objects is in fact the attainment of the main objects. In our view the failure of*

> *the Memorandum of Association in this regard means that the company in question cannot be regarded as a 'charitable organisation' within the meaning of that phrase as set out in section 3 of the Act. Nor does it appear that the appropriate provision is made for the application of its income in accordance with the main objects.*"

The Tribunal went on to determine that there was a failure on the part of the Memorandum of Association to make provision as required by section 3(1)(a)(ix) in relation to the winding up of the company.

It is clear from the submissions as made by the Respondent that the Respondent has taken issue with the Appellant's assertion that it is a charitable organisation. This being so, the Appellant is required to prove this to the satisfaction of the Tribunal and to the requisite standard of proof.

Has the Appellant adduced evidence to satisfy the Tribunal that it is a charitable organisation as defined?

This requires consideration, *inter alia*, of the company's constitutional documentation, that is to say the Memorandum of Association as adduced in evidence. It also requires consideration of whether or not the said documentation, when reasonably construed and where applicable, complies with the requirements of the Act.

Does the company's Memorandum of Association, when reasonably construed, meet the requirements of section 3(1)(b) of the Act?

In the first instance, does the company Memorandum of Association state as its main object or objects a charitable purpose?

This necessarily invites consideration of and a determination of what is a charitable purpose within the meaning of this particular provision. There has been significant discussion forward and back on what is or is not a charitable purpose within the meaning of the Act. The Tribunal has had the benefit of and considered the detailed

submissions (written and oral) and has had the benefit of and has considered the various authorities as submitted:

The following can be gleaned from said consideration.

The Act does not define charitable purpose. The Tribunal historically has had to draw inspiration/guidance from the common law when considering whether or not an individual appellant is using a property for "a charitable purpose".

There has been a tendency, if not a practice, on the part of the Tribunal pre and post 2001 to draw inspiration and/or guidance from the statement of Lord MacNaghten in *Commissioners for Special Purposes of Income Tax v. Pemsel* [1891] AC 531. This statement is as follows:

(Appearing at page 583 of the judgment)

> "*How far then, it may be asked, does the popular meaning of the word 'charity' correspond with its legal meaning? 'Charity' in its legal sense comprises four principal divisions: trusts for the relief of poverty; trusts for the advancement of education; trusts for the advancement of religion; and trusts for other purposes beneficial to the community, not falling under any of the preceding heads. The trusts last referred to are not the less charitable in the eye of the law, because incidentally they benefit the rich as well as the poor, as indeed, every charity that deserves the name must do either directly or indirectly*."

Thus Lord MacNaghten has laid down markers leading to the identification of a charity or charitable purpose. Three of the four markers are by definition specific and are perhaps, for that reason, capable of relatively straightforward application.

The fourth "head" is by definition broad in its application. The "trust" involved cannot by definition fall under any of the preceding heads, that is to say relief from poverty, advancement of education, advancement of religion. It must have a purpose "*beneficial to the community*".

The Appellant argues that the Tribunal should define charitable purpose by reference to Lord MacNaghten's formulation. When applying this formulation, the Tribunal should conclude that the Appellant is a charitable organisation within the meaning of the fourth category of Lord MacNaghten's formulation, in other words that the Appellant's use of the property constitutes "a purpose for the benefit of the community".

In determining whether the primary object as provided for in the Memorandum of Association of the Appellant Company satisfies the requirement that same "states" a "*charitable purpose*", the Tribunal should and where possible have regard to previous cases where the Tribunal, applying MacNaghten's formulation, has found and/or determined that the objects of a company are for charitable purposes as defined.

There are three cases which are of particular assistance in that, taken together, they in the Tribunal's view illustrate (a) consistent application on the Tribunal's part in the enactment of the 2001 Act of MacNaghten's formulation when it comes to considering whether "a body" is a charitable organisation and/or when it comes to considering whether a company's use of a property is for charitable purposes and (b) relatively speaking, a modern or liberal approach when applying the fourth head of Lord MacNaghten's formulation to defining charitable purpose.

In the case of **Clones Community Forum Ltd** which has already been referred to, the appeal was rejected because of the failure of the company's constitution to comply with the mandated requirements. The Tribunal nevertheless felt it desirable and/or necessary to emphatically endorse the Appellant's use of the property as use for charitable purposes. It is instructive to note the Tribunal's conclusions on this point:

> "*It seems to us that the evidence of Mr Pringle would tend to establish that it is appropriate to describe the main objectives of the Forum as charitable purposes. Perhaps more pertinently, the two objects identified in the objects clause referred to above likewise appear to us to be charitable purposes under the fourth heading in the Pemsel case, as approved by the Supreme Court in the Barrington's Hospital case. This is a voluntary not-for-profit organisation. In our view its commitment to these objectives is absolutely sincere. These*

> *objectives, if achieved, will undoubtedly confer considerable benefit on a sizeable section of the community directly. Indirectly they will of course benefit the entirety of the community, as indeed must any charity…. [W]e wish to make it clear that absent the difficulties relating to the Memorandum of Association, this organisation is undoubtedly a charitable organisation whose main objects are charitable purposes and whose office premises would appear to be otherwise exempt from rating having regard to the case law cited above.*"

The evidence in that case established that the company focussed on social needs including work with youth, women, heritage, education and training. It was also noted that the company sought to provide sports facilities for the town of Clones. It worked to support Special Olympics programmes within the town.

> "*In essence, it works by consulting with various individuals and groups within the town to try to identify the needs of the community and to address those needs. It supports the work of various voluntary bodies within the town. It also draws up plans and strategies to meet those needs. Of particular significance is its role in trying to promote reconciliation within the community and indeed on a cross-border basis. Indeed Mr Pringle was at pains to emphasise the peace-related aspect of its enterprise which he says is central to the Forum.*"

In the case of **VA09/2/011 – Clanwilliam Institute**, the Memorandum satisfied the section 3 definition of charitable organisation. The Tribunal determined that the Appellant's use of the property was "*for charitable purposes*". Again it is instructive to note the findings upon which this determination is based.

At page 14 of the judgment:

> "*The Appellant's objects clause states as its main object, 'the support, treatment and study of the family as a fundamental social unit and the provision to that end of 1) counselling and therapy for families, couples and individuals, 2) training and consultation for health and social service workers, 3) educational programmes to enhance family life and 4) research in the area*

of marriage and the family. The question to be asked is whether or not this is a purpose beneficial to the community. In order to answer this question, it is necessary to ascertain who are the organisation's target group, are they numerically negligible and do they pass the public benefit test.

"*The evidence provided by Ms Tierney was that the appellant treats a broad range of symptoms relating to mental health functioning, ranging from depression to family breakdown and adolescent problems She stated that the institute sees approximately 100 clients per week for psychotherapy and these clients come from different walks of life with some in a position to pay full fees and others only able to provide a small donation. Furthermore, the appellant also provides services to corporate clients surrounding bereavement and work-related issues for their staff. Therefore, the target group of the appellant is people suffering from some form of dysfunction or disorder, in relation to which they require psychotherapeutic services in order to assist them to resolve. Accordingly, this amounts to an identifiable group, who are from various backgrounds and walks of life and who are not numerically negligible and the activities of the appellant are clearly for the benefit of such people, in order to assist them to deal with their difficulties. Therefore, the public benefit test is also satisfied and so the Tribunal finds that the activities of the appellant are for a charitable purpose under category 4) of the Pemsel case as other purposes beneficial to the community, and therefore comes within the meaning of 'charitable purposes' under the Valuation Act 2001 (paragraph 16(a) Schedule 4).*"

In the case of **VA11/3/039 – Active Retirement Network Ireland**, the Tribunal determined that the Appellant Company was a charitable organisation and that its use of the property concerned was a use for charitable purposes. In so doing the Tribunal stated as follows:

"*On balance, it seems to us the purposes of the appellant are charitable purposes within the fourth category of the Pemsel's case. The facilities organised by the appellant for retirees of all ages seems to us to benefit a sizeable section of the community directly and (indirectly) the community*

> *generally. Promotion of mental and physical health and wellbeing on an ongoing basis for retired persons is recognised as a significant objective of society today by the United Nations, the World Health Organisation and the Office for Old People of the Department of Health and Children; there is thus both international as well as national recognition for the benefit to the community of the purposes and activities of an organisation such as the appellant.*"

This, relatively speaking, liberal approach to consideration and determination of what constitutes charitable purpose by application of the fourth category of MacNaghten's formulation must of course be tempered and/or measured.

This is so, notwithstanding the fact that the fourth category is by any measure broad and in principle capable of capturing a field and range of good intentions that would no doubt cause Lord MacNaghten, were he still alive, a few sleepless nights.

This perhaps explains the Oireachtas' attempt to "rein in" the fourth category by enacting the Charities Act, 2009 wherein specific "community benefits" are enumerated and among them the following:

> Section 3(11)(l): *"the integration of those who are disadvantaged, and the promotion of their full participation, in society.*"

Moreover as O'Halloran observed in Charity Law, 2nd Edition, at page 11:

> "*The ruling in Williams Trustee v. IRC.*
>
> *1 – 26 In this case the House of Lords made a statement regarding the legal limits of charity. It indicated that two propositions must be borne in mind: a trust is not charitable unless it is within the spirit and intendment of the Statute of Elizabeth I; and the classification of charity in its legal sense to four principal divisions in Pemsel must be read subject to the qualification that every object of public general utility is not necessarily charitable.*

> *If the purposes are not charitable per se, the localisation of them will not make them charitable.*"

In the Tribunal's view, the requirement that a body's occupation of property be beneficial to the community must, and at a minimum and when objectively viewed, have a charitable aspect as ordinarily understood if it is to satisfy the fourth category of MacNaghten's formulation.

In addition, it appears reasonably well established that an object which a company intends to pursue cannot in law constitute a charitable purpose if it is intended to "benefit" a negligible group. This principle was laid down by Keane J. *in re Worth* [1994] 1 ILRM 161 and has on occasion been applied by the Tribunal.

Moreover, it is equally reasonably well established that the fact that the Memorandum of Association does not expressly recite that the object in question is "*for charitable purpose*" or "*exclusively for charitable purpose*" will not and of itself result in a determination that the requirements of section 3(1)(b) have not been satisfied.

It follows that the Tribunal is required to scrutinise, consider and have regard to the company's constitutional documentation as adduced in evidence and must consider whether the objects therein recited are in substance, when reasonably construed, objects which state a charitable purpose.

The primary object clause of the Appellant Company is as set out at paragraph 2 of the Memorandum of Association of the company and states as follows:

> "*The primary object for which Léargas is established is to further the education of young people by promoting, assisting, encouraging and arranging the exchange of young people between Ireland and other countries in the world for the purpose of enabling them to develop an international perspective and awareness in all social, cultural, intellectual, educational, vocational, professional and economic matters and affairs and, by embarking upon the establishment of relationships with people in other countries, to enable young people to: -*

(a) broaden their understanding of the cultures of peoples of other countries.
(b) educate themselves in the widest sense.
(c) develop and acquire language and other skills.
(d) develop their abilities in vocational preparation and training.
(e) develop a sensitivity to and an appreciation and understanding of other cultures, economies and work ethics.
(f) promote, demonstrate, explain and interpret our national attitudes, beliefs and understanding in all social, cultural, intellectual, educational, vocational, professional and economic matters and affairs."

Simply put, the primary object of the Appellant Company is to provide young people with an opportunity to enrich their lives in the broad sense by putting in place structures so that they can travel to other countries and experience (in the broadest sense) what those countries have to offer.

It is clear from the evidence as adduced that the company, in pursuit of this primary object, strives to ensure that persons from economically deprived or disadvantaged areas can avail of the financial incentives involved. Providing young persons from economically deprived or disadvantaged areas with opportunities to enrich their lives by putting in place structures to enable such young people to travel to other countries, to experience the cultural, intellectual and vocational diversity which invariably results from properly structured, maintained and controlled secondment abroad is, in the Tribunal's view and on any reasonable construction, a purpose beneficial to the community within the meaning of the fourth category of Lord MacNaghten's formulation in Pemsel. The Tribunal is therefore satisfied that the Memorandum of Association of the company states as its main object a charitable purpose as required by the Act.

Further, and having regard to the provisions of paragraph 3 of the Memorandum of Association wherein secondary objects are recited, the Appellant's Memorandum states, as required, that the purpose of such secondary objects is the attainment of said main object. The Tribunal has considered, in particular, the following express provision:

> "*Léargas is empowered to do all or any of the following things for the purpose of attaining, and insofar as they are consistent with, the primary object*…"

The requirement that the Memorandum of Association make provision for the application of income/assets towards its main objects is met by the following express provision at paragraph 4:

> "*The income and property of Léargas whencesoever derived, shall be applied solely towards the promotion of the primary object of Léargas 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 Léargas.*"

Does the Memorandum of Association of the Appellant Company, when reasonably construed, prohibit the payment of remuneration other than reasonable out-of-pocket expenses to a director/officer of the company other than an officer who is an employee?

The intention of the provisions of paragraph 3(1)(a)(vii)(III) of the Act is reasonably clear. The Memorandum of Association or Articles of Association of the company must prohibit the payment of remuneration to directors or officers of the company. The company by its constitutional documentation is permitted to pay to the officers/directors reasonable out-of-pocket expenses. The company is by its constitution permitted to pay remuneration to any officer who is an employee of the company.

The first paragraph of Clause 4 of the Memorandum of Association of the Appellant Company, *inter alia,* expressly precludes the company from paying or transferring either directly or indirectly any portion of the company's income or property to members of the company.

The second paragraph at the outset appears to expressly allow payment of reasonable and proper remuneration to officers of the company "*in return for any services actually rendered to Léargas*..." This "concession" is in turn qualified by what

follows thereafter. In summary, members of the board of directors cannot be appointed to a salaried office of the company or any office "paid by fees". Directors are not entitled to remuneration or other benefit in money and/or money's worth except repayment of out-of-pocket expenses.

Express reference in the Memorandum of Association to "*reasonable and proper remuneration to any officer or servant"* of the company in return for services is unfortunate in circumstances where the company seeks to pray in aid a statutory provision which expressly and mandatorily requires that the company memorandum prohibit payment of remuneration to directors or any other officer of the company. It is not, however, in the Tribunal's view fatal.

The language employed by those responsible for the drafting of the Memorandum, in making express provision for the payment or non-payment of remuneration to directors and officers of the company is frankly far from satisfactory. That said, the express reference to payment of what is termed proper remuneration to any officer, servant or member of Léargas in return for services actually rendered to Léargas must be viewed in the context of and construed in the light of the entire of the relevant provision. Applying this construction and notwithstanding the unfortunate and express reference to "*proper remuneration to any officer or servant of Léargas, or to any member of Léargas, in return for any services actually rendered to Léargas*" the Tribunal takes the view that in the overall context this express reference does not take from the intention as otherwise expressed, notably that there should not be payment of remuneration to officers and/or directors unless they are employees, save for reimbursement of reasonable out-of-pocket expenses.

Accordingly the Tribunal, having carefully considered the matter, takes the view that Clause 4 of the Memorandum of Association, when properly and reasonably construed, meets the express requirements of the provisions of Section 3(1)(a)(vii)(III) of the Act wherein the Memorandum of Association is required to prohibit *"the payment of remuneration (other than reasonable out-of-pocket expenses) to its trustees or the members of its governing board or committee or any other officer of it (other than an officer who is an employee of it).*"

Finally, there is a requirement that the Memorandum of Association make provision for the disposal of a surplus on wind-up which complies with the provisions of Section 3(1)(a)(ix) of the Act. This particular provision permits alternatives. In the event that the body receives a substantial proportion of its resources from any State department or agency, the body's memorandum must expressly provide for the return of any surplus on wind-up to that State department or agency.

In every other instance, the body's memorandum must expressly provide for the disposal of a surplus on wind-up to "*another charitable organisation*". The Respondent has argued that there is a want of compliance with this provision. The Respondent maintains that the Appellant in fact, having regard to the evidence, receives a substantial proportion of its resources from "*the State*". On this presentation, the Appellant is required through its Memorandum to make express provision for the return of the surplus on wind-up to the State. The Respondent contends that there is no express provision in the Appellant's Memorandum of Association. This is in fact the case.

It follows and the Respondent so argues that the Appellant does not meet with the requirements of Section 3(1)(a)(ix) of the Act and by reason of the said non-compliance cannot be a charitable organisation within the meaning of Section 3. If the Respondent is correct in this, the Appellant's appeal fails, given the mandatory and/or prescriptive wording of the provision.

The evidence clearly establishes that the Appellant Company is financially resourced in part by the State and in part by the European Union ('EU'). The evidence further establishes that the breakdown of funding for the current year is as follows: €11.5 million is EU funded and which is intended to be allocated by way of grants and €3.1 million operational costs which is part-funded by the EU and part-funded by the State. Of the €3.1 million operational costs, it seems that 58% is State funded and 42% is funded from the European Commission. The State funding is exclusively directed towards what might be termed running and operational costs. Part of the total EU funding (€11.5 million) is ring-fenced and is made available to the Appellant in order that the Appellant can distribute same to successful projects or applicants. Applicants for this funding are scored objectively and by reference to set criteria.

It is clear from the tenor of Mr Mullin's evidence that allowing for the type of oversight that one would expect where significant sums of "public money" are being applied, the Appellant Company retains complete discretion concerning the allocation of the €11.5 million provided to the Appellant by the European Union.

In addition and subject to the restrictions on deployment of funds as provided by the Memorandum of Association, the Appellant Company retains exclusive control and discretion concerning the dispersal of those funds.

The allocation and/or disbursement of the European Commission funds is an integral part of the operation of the company in pursuit of its primary objects as expressed in the Memorandum of Association.

In the circumstances it would, in the Tribunal's view, be artificial and in a real sense unfair to the Appellant for the Tribunal, when considering the Appellant's financial resources, to have regard solely and exclusively to the funding (State and European) provided to the Appellant and intended to meet the Appellant's operational or running costs.

Having so concluded, the question remains whether the Appellant, having regard to the evidence as adduced, receives a substantial proportion of its "financial resources" from a State department and/or a State agency. The evidence establishes that the funding for the current year is typical insofar as it represents the year on year draw down by the Appellant Company of its finances. Just to recap, the Appellant Company receives €3.1 million funding in respect of its operational costs. Fifty-eight per cent of this €3.1 million is provided by a State department and/or State agency. The balance is provided by the European Commission. The entirety of the monies available for allocation and/or dispersal to "worthy projects" in the sum of €11 million or thereabouts is provided by the European Commission and, it follows, is not provided by a State department and/or agency.

A sum of €1.798 million or thereabouts in State funding is substantial by any measure. Proportionate to total funding of €14.5 million, State funding represents in or about 12.4%. The Tribunal does not consider the receipt by the Appellant

Company of in or about 12.4% of its total annual financial resources from a State department or State agency as constituting a "substantial proportion" of its financial resources within the meaning of Section 3(1)(a)(ix) of the Act.

This being so, the Appellant Company is not required to include in its Memorandum of Association a provision requiring the Appellant Company to return a surplus to the State in the event that the company has been wound up.

The Memorandum of Association expressly requires the company to dispose of its 'surplus on wind-up' to "*some other charitable institution or institutions having a primary object similar to the primary object of Léargas…*" (Clause 9).

The Tribunal finds that the Appellant Company is a charitable organisation within the meaning of Section 3(1) of the Act.

Charitable purpose

Paragraph 16 of Schedule 4 requires that the Appellant, being a charitable organisation, must use any land or building it occupies "*…exclusively for charitable purposes* (such use to)…*be otherwise than for private profit*."

The Tribunal has determined that the primary object of the company as recited in its Memorandum of Association is a charitable purpose within the meaning of Section 3(1) of the Act.

The evidence of Mr Mullin establishes that the use of the property is consistent with and directed towards achieving this primary object and simply put, and as has already been stated, to provide young people with an opportunity to enrich their lives in a broad sense by putting in place structures so that young people can travel to other countries and experience (in the broadest sense) what those countries have to offer.

The Tribunal does not propose to rehearse verbatim Mr Mullin's evidence insofar as it is material to the issue of whether or not the use of the property is consistent with and directed towards achieving the primary object of the company. It is abundantly clear

from any reasoned appraisal of Mr Mullin's clear, coherent and largely unchallenged evidence that the Appellant Company uses the property for charitable purposes.

The property is fitted out as office accommodation and is being used as such by the Appellant. The property has been characterised as the administrative headquarters of the Appellant Company. It is not clear whether this is intended to denigrate the work that the Appellant Company strives to carry out from the property. It is clear in any event from Mr Mullin's largely unchallenged evidence that there is activity and pursuits carried out on the premises which go far beyond routine administration and are carried out with the intention of achieving the company's primary object which has already been stated.

It is clear from Mr Mullin's evidence that the work in which the Appellant Company engages involves the scrutinising of applicants and the determination of whether or not individual applicant projects should be allocated funding. Such work is necessarily administrative in nature. It is nevertheless and in the scheme of things an integral part of the Appellant Company's pursuit of its primary object.

The Tribunal finds that the Appellant Company uses the property exclusively for charitable purposes.

Is occupation of the property for charitable purposes or otherwise than for private profit?

In broad terms the Appellant Company is engaged in the allocation of European Community based funding towards projects aimed at achieving the company's primary object. Funding is allocated with the primary, if not exclusive emphasis on a successful applicant achieving this primary object. There is nothing in the evidence as adduced to suggest that the Appellant Company, when engaging in the allocation of European Commission funds towards individual projects, deliberately or consciously engages in efforts to "turn a profit". In point of fact, the précis of evidence which has been adopted as evidence-in-chief and is unchallenged, states that the Appellant is a not-for-profit organisation established by the Minister for Youth and Sport in 1987.

The evidence suggests the careful management, scrutiny and selection of projects to ensure that an individual project meets objective criteria consistent with the Appellant's primary object as expressed and/or recited in its Memorandum of Association. This is as it should be when public (EU) funds are being allocated and/or disbursed. Such careful management and/or oversight, when it comes to the allocation/disbursements of public (European Commission) funds does not, however, evidence a capacity, less so an intention on the part of the Appellant Company, to pursue or achieve profit when it goes about the business of pursuing what the Tribunal has found is a charitable purpose.

The incidental turning of a profit by one of the projects fortunate enough to receive the benefit of European Commission funding affirms success by the Appellant Company in its allocation/distribution of relatively limited resources. It cannot and should not be construed as part of a design or desire on the part of the Appellant Company to achieve profit.

The Appellant Company brings itself within the provisions of Paragraph 16 of Schedule 4 to the Act. Its occupation of the subject property is as a charitable organisation. Its occupation of the subject property is exclusively for charitable purposes and otherwise than for profit and the Tribunal so determines.

(c) **New ground**

Occupation by the Appellant Company of the property as an educational institution for the purpose of providing educational services otherwise than for profit; Paragraph 10 of Schedule 4 to the Act.

The Appellant seeks to bring itself within Paragraph 10 of Schedule 4 to the Act. The Appellant argues against the application of the "*ejusdem generis*" rule of construction. The words "*any other educational institution*" should not in the Appellant's case be limited by the preceding specifics, that is to say "*school, college, university, institute of technology*". The words "*any other educational institution*" should, according to the Appellant, be construed as including a body which provides or caters for education in the broadest sense of the word and so to include the Appellant which, on the evidence as adduced, provides training and runs courses ostensibly for

persons/projects who are aspiring recipients of European Commission funding or actual recipients, in either case with the overall object and/or purpose of permitting the persons and/or projects to avail of the "prize" for exchange of persons to foreign parts with a view in the broadest sense to social, cultural, educational, intellectual, vocational enhancement.

The Appellant seeks to draw support for this particular argument, *inter alia*, from the decisions of the Tribunal in the cases of **VA07/2/047 - Naomi-Billings Ireland Limited,** and **VA04/1/001 – City of Dublin VEC** ('CDVEC'). The Appellant argues that the measure of whether a body is an educational institution is whether the body has adduced evidence of its facilitating "*the acquisition of skills or knowledge to develop the person in a particular discipline*" (per the Tribunal in **Naomi-Billings Ireland Limited** at page 10).

The Tribunal finds that applying such a measure in isolation disregards the context and tenor of the Tribunal's determination in **Naomi-Billings Ireland Limited** and when read as a whole. Whether a body can bring itself within the definition of "*any other educational institution*" can and ought to be measured by whether the "participants", that is to say persons availing of the services as provided, can be *"regarded as students in the true scholastic sense"* or as persons who "*fall within the concept of 'student' in the normally accepted sense…[or]…within the concept of 'pupil'* " (**Naomi-Billings Ireland Limited** at page 9).

Whilst *"the absence of an opportunity to measure standards is not fatal",* the important "*thing is that the <u>pupil</u> progresses and develops in the discipline concerned*" (*idem*).

The concept of pupil/student as ordinarily understood is, in the Tribunal's view, critical to assessing whether or not the body concerned comes within the definition of "*any other educational institution*".

The Appellant in submission has in addition emphasised the following extract from the determination of the Valuation Tribunal in **City of Dublin VEC**:

> "*It seems to us that the facilitation and provision of educational programmes to students does fall within even a relatively narrow definition of 'educational services'*" (at paragraph 25).

It is clear from the above-emphasised extract that one of the key findings by the Tribunal is that the body concerned facilitated and provided educational programmes to "students". At paragraph 24 the Tribunal determined as follows:

> "*In our view the CDVEC is an educational institution within the meaning of paragraph 10, Schedule 4 of the Act of 2001. Created by statute, the CDVEC provides a variety of programmes for full time and trainee students as well as night class students. The evidence suggests that it employs large numbers of staff in a variety of colleges and other centres. The fact that the committee is part-time and that most of the work is done by a Chief Executive Officer does not deprive it of the status of an educational institution, nor does the fact that the programmes it provides are drawn up on consultation in part with the Department of Education.*"

The Tribunal is of the view that *ejusdem generis* does apply. The Oireachtas in enacting Paragraph 10 of Schedule 4 has posited "*a list or string of genus describing terms followed by wider residuary or sweeping words*" (as per Dodd, Statutory Interpretation, page 137, para 5.68).

Applying the *ejusdem generis* canon of construction the Tribunal must consider whether the Appellant body comes within the class which includes "*school, college, university, institute of technology*". The evidence as adduced does not, in the Tribunal's view, permit the Tribunal to determine that the Appellant's occupation of the subject property constitutes occupation which in any way or fashion resembles occupation as a school, college, university or institute of technology.

Allowing for the possibility (however remote) that the Tribunal is wrong in finding the *ejusdem generis* canon of construction applies, and allowing for a broader stand-alone interpretation of "*any other educational institution*" incorporating "education" in its broadest sense, the Tribunal, out of an abundance of caution, will consider

whether the Applicant's occupation of the property constitutes in a real and/or substantial way the fostering and/or enhancement of the acquisition of "skills" or "knowledge" by persons who on any reasonable view of things can be regarded as "students" or "pupils".

The evidence as adduced and, insofar as it touches on this point, suggests training (non-specific) and the running of courses (non-specific). This is in the overall context of the Appellant's main or primary focus which, as stated, includes in the main the identification of projects capable of meeting material required for availing of commission, funds, the assessment of potential projects, the oversight of the promotion and encouragement of same. The provision of training and the running of courses is very much ancillary to the pursuit by the Appellant of its main object.

Having carefully considered the matter, the Tribunal is of the view that the evidence as put forward by the Appellant in support of the Appellant's assertion that its occupation of the property is occupation as *"any other educational institution"* is not persuasive on the point.

If by chance the Tribunal has erred in its application of the *ejusdem generis* canon of construction, the evidence as adduced by the Appellant fails to establish that the Appellant occupies the property concerned as "*any other educational institution"* within the meaning of Paragraph 10 of Schedule 4 to the Act.

And the Tribunal so determines.