Appeal No: VA19/5/0716

AN BINSE LUACHÁLA
VALUATION TRIBUNAL

NA hACHTANNA LUACHÁLA, 2001 - 2020
VALUATION ACTS, 2001 - 2020

Nua Healthcare Services Ltd. **APPELLANT**

and

Commissioner of Valuation **RESPONDENT**

In relation to the valuation of
Property No. 1803461, Nursing Home at Kiltinan, Fethard, County Tipperary

B E F O R E
Majella Twomey - BL **Deputy Chairperson**
Patricia O'Connor - Solicitor **Member**
Michael Brennan – BL, MSCSI **Member**

JUDGMENT OF THE VALUATION TRIBUNAL
ISSUED ON THE 6TH DAY OF MAY, 2022

1. THE APPEAL

1.1 By Notice of Appeal received on the 14th day of October, 2019 the Appellant appealed against the determination of the Respondent pursuant to which the net annual value '(the NAV') of the above relevant Property was fixed in the sum of €7,700.

1.2 The sole ground of appeal as set out in the Notice of Appeal is that the determination of the valuation of the Property is not a determination that accords with that required to be achieved by section 19 (5) of the Act because :

"The Appellant states that the property should not be included in The Valuation List as it qualifies under:

1) *Section 15(2) of the Valuation Act 2001 provides inter alia that relevant property referred to in Schedule 4 shall not be rateable.*
2) *Paragraph 14(b) of Schedule 4 of the Valuation Act 2001 (as amended by section 39(c) of the Valuation (Amendment) Act 2015 refers to: 'Any land building or part of a building occupied for the purpose of caring for elderly handicapped or disabled persons. By a body being…..a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the*

Exchequer other than a body in relation to which such defrayal occurs, by reasons of the Nursing Homes Support Scheme Act 2009'.

3) *This property is occupied by the Appellant for the purpose of caring for four elderly handicapped or disabled persons.*
4) *The expenses incurred by the Appellant in carrying on the aforesaid activity are defrayed wholly or mainly out of moneys provided by the Exchequer.*
5) *Such defrayal does not occur by reason of the Nursing Homes Support Scheme Act 2009.*
6) *By reasons of the foregoing the property is not rateable and ought to be excluded from the Valuation List."*

1.3 The Appellant considers that the valuation of the Property ought to have been determined in the sum of €0.

2. REVALUATION HISTORY

2.1 On the 15th day of March, 2019 a copy of a valuation certificate proposed to be issued under section 24(1) of the Valuation Act 2001 ("the Act") in relation to the Property was sent to the Appellant indicating a valuation of €7,700.

2.2 A Final Valuation Certificate issued on the 10th day of September, 2019 stating a valuation of €7,700.

2.3 The date by reference to which the value of the property, the subject of this appeal, was determined is the 15th day of September, 2017.

3. THE HEARING

3.1 The Appeal proceeded by way of a remote hearing, on the 19th day of May, 2021 and legal submissions were heard remotely on the 23rd day of July, 2021. At the hearing the Appellant was represented by Mr. Proinsias Ó Maolchalin BL, Mr Niall Devereux of Nua Healthcare Services Limited and Mr. John Algar MSCSI, MRICS of Avison Young. The Respondent was represented by Ms. Rosemary Healy Rae BL and Mr. Séamus Costello MSCSI, MRICS of the Valuation Office.

3.2 In accordance with the Rules of the Tribunal, the parties had exchanged their respective reports and précis of evidence prior to the commencement of the hearing and submitted them to the Tribunal. At the oral hearing, each witness, having taken the oath, adopted his précis as his evidence-in-chief in addition to giving oral evidence.

4. FACTS

From the evidence adduced by the parties, the Tribunal finds the following facts:

4.1 The subject property is known as "Millview" and is located in the townland of Kiltinan in south Co Tipperary approximately 4.3km south of Fethard and 10.2km north of Clonmel.

4.2 The property comprises a detached dormer bungalow of modern construction on a site extending to 0.22 hectares. The ground floor accommodation comprises a sunroom, kitchen, sitting room, utility room, bathroom, office and two bedrooms. The first floor accommodation comprises of three bedrooms.

4.3 The property is held freehold and registered in the Land Registry under Folio TY42113. The property was acquired by Maple Healthcare Limited around 25th October 2019 and was subsequently transferred to Nua Healthcare Services Limited around 26th March 2021.

4.4 At the valuation date, the property was subject to a lease dated 21st December 2016 for a term of four years in favour of Maple Healthcare Limited as tenant. The permitted user under the lease was for the provision of residential care to persons with disabilities. The lease was subsequently amended to extend the term by a further four months.

4.5 Maple Healthcare Limited is wholly owned by Nua Healthcare Service Limited.

4.6 The subject property is in use as a care facility and operates as a supported residence for the provision of 24-hour care to children (male and female), aged between 12 – 18 years with a wide range of support needs including autism, intellectual disability and challenging behaviour.

4.7 Nua Healthcare Services Limited ("Nua") has an existing contract with the HSE in the form of a Part 1 Service Arrangement (Standard Terms and Conditions) comprising of the terms and conditions under which the HSE funds them for their care services. Ancillary to this is a Part 2 Service Arrangement which consists of various Service Schedules which are furnished by each HSE Community Healthcare Organisation ("CHO") and are completed and returned by Nua in respect of each resident being funded by the HSE.

5. ISSUES

5.1 This appeal only concerns the interpretation, and application, of Schedule 4 of the Valuation Act, 2001, as amended, specifically the exemption contained in Paragraph 14(b) thereof, and the extent to which same applies to the Appellant. The parties were agreed that Schedule 4, Paragraph14(a) and 14(b) are mutually exclusive and an applicant does not have to satisfy both in order to qualify for an exemption under the Act.

5.2 In determining whether the Appellant is entitled to the exemption contained in Paragraph14(b) of Schedule 4 of the Valuation Act, 2001, certain matters fall to be considered including:

(i) Whether the HSE (the Exchequer) provides funds to the Appellant, qua service provider, or in the alternative provides them to the Service Users cared for by the Appellant;
(ii) Whether and to what extent the expenses incurred by the Appellant in carrying on the are defrayed wholly or mainly out of moneys provided by the Exchequer; and

(iii) Whether and to what extent, the decision of the High Court in ***Glendale Nursing Home v The Commissioner of Valuation*** [2012] IEHC 254, applies to the present case based on the evidence presented to the Tribunal.

6. RELEVANT STATUTORY PROVISIONS:

6.1 The net annual value of the Property has to be determined in accordance with the provisions of section 48 (1) of the Act which provides as follows:

"The value of a relevant property shall be determined under this Act by estimating the net annual value of the property and the amount so estimated to be the net annual value of the property shall, accordingly, be its value."

6.2 Section 48(3) of the Act as amended by section 27 of the Valuation (Amendment) Act 2015 provides for the factors to be taken into account in calculating the net annual value:

"Subject to Section 50, for the purposes of this Act, "net annual value" means, in relation to a property, the rent for which, one year with another, the property might, in its actual state, be reasonably be expected to let from year to year, on the assumption that the probable annual cost of repairs, insurance and other expenses (if any) that would be necessary to maintain the property in that state, and all rates and other taxes in respect of the property, are borne by the tenant."

6.3 Section 15(2) of the Valuation Act 2001 provides inter alia that relevant property referred to in Schedule 4 shall not be rateable.

6.4 *Paragraph 14 of Schedule 4 of the Valuation Act 2001 (as amended by section 39(c) of the Valuation (Amendment) Act 2015 refers to:*

'Any land building or part of a building occupied for the purpose of caring for elderly handicapped or disabled persons being a body either.

(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity as aforesaid, or

(b) A body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer other than a body in relation to which such defrayal occurs, by reasons of the Nursing Homes Support Scheme Act 2009'.

7. APPELLANT'S CASE

7.1 The first witness called was Mr Niall Devereux, Chief Financial Officer and Deputy Executive Officer of Nua Healthcare Services Limited ("Nua"), the Appellant Company. Mr Devereux adopted his précis of evidence in addition to giving oral evidence.

7.2 Mr Devereux commenced his evidence by stating that he has been in his current role for five and half years. He said that the subject property which they refer to as 'Millview' (hereinafter referred to as 'Millview') is a "Designated Care Facility" and have always occupied the property for this purpose. He stated that Millview is registered as a Designated Centre with HIQA and is registered pursuant to S.I. No. 366/2013 – Health Act 2007 (Registration of Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013. He also stated that Millview is subject to the regulatory conditions provided for in S.I. No. 367/2013 – Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013. He said that Millview is monitored and audited by HIQA on a regular basis.

7.3 Mr Devereux stated that the persons that are in their care generally have disabilities such as autism and challenging behaviour and their role is to implement a level of base line care. He said that the staff at Millview work with each resident on an individual basis and develop a personal plan to develop their individual care goals. He stated that Millview is home to four children with intellectual and/or physical disability or mental illness and their ages range from 12-18. He said that the centre is staffed by a Person in Charge who is supported by a Team Leader and two Deputy Team Leaders. He stated that their staffing model is entirely different to a nursing home setting and that each person in their care in Millview receives 2:1 care meaning Millview is staffed by eight social care workers that care for four residents. He stated that there is dedicated night staff in the form of three social care workers comprising of two on duty care staff and one sleepover member.

7.4 Mr Devereax explained that residents come into their care through a referral from the HSE or Courts through TÚSLA. He stated that there are nine Community Healthcare Organisations ("CHO") in Ireland and the disability or mental health manager within these organisations provide referrals to the Nua admissions team. He explained that the admissions process involves a bed space demand and needs assessment as well as a review of the peer to peer impact on existing residents. He explained that a cost proposal is then forwarded to the Courts or HSE which includes their view of the likely level of care required. He said that admissions applications for the HSE are submitted through the relevant CHO and they make the decision if the care proposal is acceptable. He explained that if the proposal is accepted, a further Nua assessment is required and a costing proposal in accordance with a detailed Service Agreement that exists between the HSE and Nua.

7.5 Mr Devereux stated that, at present, only one resident out of the four residing in Millview, was referred by TÚSLA. He stated that Nua does not have a detailed agreement with TÚSLA in comparison to the HSE. He said that whilst the cost proposal for the HSE is a two stage

process, there is just a single cost proposal for TÚSLA. He stated that a standard price list does not exist for their services as it is entirely patient dependant and based on expenses that are incurred. He went on to say that Nua's business consists entirely of the provision of supported residential services to people with intellectual disabilities, brain injuries, autism and mental illness. He said that Nua has 62 similar facilities serving the needs to approximately 275 residents nationwide as of 5th May 2021. He stated that Nua does not operate any nursing homes.

7.6 In relation to the income generated by Nua at Millview, Mr Devereux stated that 98.4% of income generated in 2018 was provided from the Exchequer. He stated that 97.8% related to funds received from the HSE and TÚSLA, 1.1% was provided indirectly by the HSE through Ability West and St John of God together with the remaining 1.6% originating from health and social care trusts in Northern Ireland and self-financed wards of court. He went on to state that in 2019, 100% of the income received in Millview was entirely from the HSE and TÚSLA and that this was also the position in 2020.

7.7 Mr Devereux submitted an example of a Costings Proposal Agreement that forms part of the Service Agreement between Nua and the HSE for the benefit of the Tribunal. He demonstrated that it comprised of a three page document that is usually signed by the HSE disability manager on behalf of the resident that comes into their care. He said that irrespective of whether the proposed resident is referred from the HSE or TÚSLA, a representative of the HSE or TÚSLA signs the agreement on cost. He stated that care costs can vary during the period of care and that there is the contractual provision with the HSE that deals with cost variations. He provided an example of a cost variation in practice which he said demonstrates that there is no maximum cut off point relating to the cost of care. He also submitted an invoice which demonstrated a reduction in the cost of additional funding from 2018 – 2020 and stated that there is a clear link between the expenses incurred and the income received.

7.8 Mr Devereux provided an example of an inspection report in relation to an Audit that was carried out on Millview by HIQA. He stated that care of residents at the property is governed by S.I. No. 367/2013 – Health Act 2007 (Care and Support of Residents in Designated Centres for Persons (Children and Adults) with Disabilities) Regulations 2013. The report submitted demonstrated 100% compliance with the requirements of S.I. No. 367/2013. Mr Devereux also submitted that Nua was an organisation in receipt of Exchequer Funding, and is obliged by the Department of Public Expenditure and Reform Circular 13/2014 to comply with core principles in the administration of and management of funding from Exchequer sources, including clarity, governance, value for money and fairness.

7.9 Mr Devereux referred the Tribunal to the Profit and Loss Accounts pertaining to Millview and to Nua's entire operation. He stated that the HSE are invoiced in advance and the staff get paid on the 7th of every month following the submission of the invoice to the HSE. He said that there are direct wage costs for the carers and indirect costs such as training, payroll and temporary staff. He said that as the service provides for 2:1 cover which is personal to each resident, that overheads go down commensurate with the number of residents. He said that

some expenses such as the rent of a premises remains fixed and other expenses are subject to change depending on occupancy. He said that other expenses are incurred at Millview that relate to the provision of services by the Clinical Team in the Naas head office such as psychologist, psychiatrist, speech therapist etc in addition to their training and internal audit team in head office.

7.10 Mr Devereux stated that they receive no income pursuant to the Nursing Home Support Scheme Act. In addition to this, he stated that the Nursing Home Support Scheme Act is subject to maximum pricing whereas their pricing model accommodates price variations commensurate with care requirements. He also stated that the NTPF negotiates the price under the Nursing Home Support Scheme Act which is different to the pricing process for their care provision which is negotiated with the HSE.

7.11 Mr Devereux also submitted a brochure pertaining to the services offered at Millview which is required under Regulation 24 of S.I. No. 367/2013 to provide to the family of residents in their care. He stated that there is no provision regarding expenses of invoices within this and that settlement always occurs with the HSE and TÚSLA direct notwithstanding that the resident of their representative signs and agreement with Nua.

Cross Examination of Mr Devereux

7.12 Under cross examination, Mr Devereux that there was no Service Level Agreement with TÚSLA but that a Costing Proposal is the formal agreement that is in place and has been in place for approximately five years. He went on to state that as Nua mostly operate within the spectrum of intellectual disability that section 5 of the Childcare Act might only impact mainstream children. When it was put to him that if TÚSLA stopped paying Nua that they have no legal agreement he said that it was his understanding that the Cost Proposal is legally binding.

7.13 Mr Devereux was also questioned about the receipt of the health levy by residents. He said that no residents in their care were in receipt of the health levy and that Nua were not part of the Health Levy Agreement. He said that two residents in their care are in receipt of the disability allowance and that they help residents manage that money. He stated that it would be in breach of Regulation 24 of S.I. No. 367/2013 if any of the residents own funds were used to defray the expense of their care in Millview.

7.14 Mr Devereux was also asked as to what happens to residents when they reach the age of 18 and he said that the resident has to be moved out in accordance with Regulation 2 of S.I. No. 367/2013 and they are generally rehoused by Nua or go back to HIQA to a facility for over 18's.

7.15 He confirmed that a staff member gets paid to sleep over when on night duty and that Nua pays the LPT in respect of Millview and other residences. He confirmed that Millview was not on the Section 69 Register pertaining to HIQA registration and was not familiar with the

purpose of the Section 69 Register. He did confirm that Millview is registered and regulated under S.I. No. 366/2013 and S.I. No. 367/2013 respectively.

7.16 He confirmed that neither the HSE nor TÚSLA were parties to the lease said that it was rare to have a property unoccupied when the question was put to him as to the responsibility of Nua for the rent if the property was unoccupied. He was referred to clause 2.1 of the Service Arrangement between Nua and the HSE and confirmed that there was no reference to costs in this clause. He also confirmed that there was no guarantee of commitment having regard to clause 2.5 but stated that residents tend to stay a long time given the nature of their disabilities. He also confirmed that the expenses of the business have to be met if the HSE pulls out but also stated that such expenses would fall away significantly if the HSE withdrew the resident s 88% of the costs associated with the care are personalised costs.

7.17 He was also referred to clause 3.1 of the Service Arrangement and it was put to him that clause 3.2(b)(i) places limits on funds that are paid to Nua. In response he stated that Schedule 10 of the Service Arrangement clearly provides for funding variations. He was further directed to clause 4.2 of the Service Arrangement and it was put to him that the HSE can reduce funding if Key Performance Indicators ("KPI's") are not met and in response he stated that Nua wrote to the department responsible for the implementation of KPI's and confirmed that there were no defined KPI's under the Service Arrangement. In relation to clause 4.4 he question as to the scope of services that were paid under the Service Arrangement and he confirmed that funding by the HSE was not limited to direct services as indirect services were provided by their head office. In relation to clause 9.4, it was put to him that this provision existed to allow for the withholding or reduction in funding. He stated that if the HSE reduced funding, bed space would become available and this would be offered to TÚSLA. He also confirmed that the HSE nor TÚSLA have any involvement in insurance or personnel matters and that any contracts entered into in respect of Millview are solely a matter for Nua and all matters pertaining to funding under this contract are dealt with by Clause 4.

7.18 Mr Devereux was referred to page 61 of Part 2 of the Service Arrangement between the HSE and Nua and it was put to him that under the heading 'Charging of Service Users' that residents may be charged for "ad hoc costs that may arise such as damage to property that they have caused, personal care, holidays, social events of their preference etc". In response to this he stated that he didn't believe that residents have ever been charged for these ad hoc items and accepted that the clause existed. He was also referred to an example of a costing proposal contained within Part 2 of the Service Arrangement between the HSE and Nua which appeared in Appendix 4(d) of the documents submitted by the Appellant to the Tribunal. It was put to him if increases in required funding were linked to staffing and he confirmed that in this example the increase was due to an increased staff cost and a vehicle cost. He confirmed that this is not always the reason for an increase but staff costs are generally the largest cost associated with care of residents.

7.19 Mr Devereux was also referred to financial information submitted by the Appellant and contained within Appendix 13(b)(2(i) of the documents submitted by the Appellant which

related to the sum of €350,000 described as "Other residential income" in the Nua Healthcare Services turnover reconciliation for the financial year 2019. He confirmed that this related to cost inflation, sleep over costs and insurance recovered from the HSE as cost variations for additional services which is governed by Schedule 10 of Part 2 of the Service Arrangement. He stated that this amount related to the overall Nua operation and not the subject property.

7.20 He was referred to Appendix 5(b)(i) of the documents submitted by the Appellant which comprised of a the funding obtained from Millview for residents for the financial year 2020. It was put to him that this demonstrated that the property was not a full capacity and that the HSE only paid for residents in care. He agreed with this and stated that costs go down significantly with discharges. He also confirmed that fixed charges associated with Millview were insignificant. He accepted that residents also enter a contract with Nua and stated that it was a mandatory requirement under Regulation 24 of S.I. No. 367/2013. It was put to him that there was an item referred to as investment assets in the financial information provided and he confirmed that this comprised of cash at bank which is used to pay the expenses of the business. He was also asked to identify various items of expenditure that comprised of fixed and variable costs. He confirmed that direct wages, indirect wages and overheads comprised of variable costs and the rent was a fixed cost. It was put to him that there was no link between costs and turnover and that if additional rates were imposed on Nua that they would be required to seek additional funds from HSE and that this would be an incredulous proposition. He stated that cost changes are taken into account and referred the Tribunal to the €350,000 payment that was received by Nua overall in the financial year 2019. He also stated that if they had vacancy that they would seek new residents. It was put to him if expenses ever went down and he confirmed that in 2018 and 2019 that there was a reduction in invoiced amounts to the HSE of approximately €1,000,000. He also said that there was a reduction of approximately €700,000 in invoiced amounts to the HSE in 2020. He confirmed that expenses are paid out of income when the question was put to him.

7.21 In summarising his evidence he referred the Tribunal to redacted costing proposals at Appendix 4(a)(i) and 4(g) of the documents submitted by the Appellant to demonstrate that costing proposals for the care of residents are executed by HSE and TÚSLA for residents. He also stated that funding for a resident has never been withheld and that payments are made weekly every Friday. Referring to the Part 1 Service Arrangement submitted at Appendix 3(b) of the documents submitted by the Appellant he stated that under clause 2.1 of the Service Arrangement, funding is based in the expenses required for the care of each resident and the prices is entirely dependent on the nature of this care. He stated that income of the business is applied to defray expenses and to pay for services and the all expenses are paid entirely from income received for care being provided to residents.

Second Witness

7.22 The second witness called for the Appellant was Mr John Algar, Director of Avison Young. Mr Algar adopted his précis of evidence in addition to giving oral evidence. Mr Algar stated that the property is not rateable and ought to be excluded from the valuation list. He

stated that in accordance with section 15(2) of the Act, the subject property falls into a category referred to in Schedule 4. He stated that Millview comprises of a property referred to in Schedule 14(b) of Schedule 4 as amended by section 39(c) of the Valuation (Amendment) Act 2015.

7.23 Mr Algar confirmed that he inspected the property on 30th October 2018 and that it comprised of a detached dormer bungalow located in a rural area. He stated that at the time of his inspection there were four staff cars parked at the property. He stated that there were four long term residents in care at the time if his inspection. He confirmed that it was his understanding that the property was being used to care for residents who were disabled or handicapped. He said that he disagreed with the valuation categorisation of the property as a "office (House)". He stated that the comparison relied upon by the Respondent comprised of crèche buildings and he said that they were not comparable as they both comprised of purpose built commercial buildings in high density residential locations close to Clonmel.

8. RESPONDENT'S CASE

8.1 Mr Costello, valuer in the Valuation Office appeared for the Respondent and adopted his précis of evidence in addition to giving oral evidence.

8.2 Mr Costello confirmed that he was the valuer responsible for Millview. He stated that there were no direct comparisons for the subject property and it was his view that the two crèche comparisons relied upon by him were the most similar. He stated that there is no "Care Home" classification within the Valuation Office and that the classification as had no bearing on the valuation. He said that he disregarded the existing lease as an outlier as Nua may have paid a premium. He said that the profitability lead him to believe that the property should not be excluded from the valuation list and that he erred on the side of caution in this regard.

8.3 Under cross examination, Mr Costello confirmed that he considered the exemption being sought under section 14 of Schedule 4. He agreed that profit was a relevant consideration under this but that he did not request any financial information in this regard although he acknowledged the wide scope that existed under section 45. He said that he could not say for sure that the expenses in Millview were being defrayed by the State and said that he had no evidence to prove that it should be exempt and that is the reason that he included it in the list. He stated that he requested relevant information from Mr Algar and from the legal advisors to the Appellant and he stated that he was in an information deficit until the hearing. He was unable to confirm the date he made this request when it was put to him. He stated that he inspected the property and agreed that it was in use as a care facility by the Appellant and that there were a number of residents in care. He said that he was unaware that the HSE and TÚSLA were paying for the care of the residents and that he was only of the lease that existed. He said that he was aware that there were employees working in the property but was unable to confirm how many worked there. He acknowledged that residents in care are under 18 years of age, that they are placed there by the HSE and TÚSLA and that he understood the funding model. He accepted that the nature of the expenses that existed for the Appellant and that all income

was derived from the HSE and TÚSLA. He agreed that the property was not a nursing home and that the residents did not pay a nursing home levy as well as there being no full time nurse.

9. SUBMISSIONS

9.1 Counsel for the Appellant, Mr Ó Maolchalain stated that the main issue concerns the application of paragraph 14(b) of Schedule 4 of the Act. He stated that amendment of this section by section 39(c) of the Valuation (Amendment) Act 2015 is significant:

> *"Section 15(2) of the Act provides inter alia that relevant property referred to in Schedule 4 shall not be rateable. Paragraph 14 of Schedule 4 provides as follows:*
>
> ***"Any land, building or part of a building occupied for the purpose of caring from the elderly, handicapped or disabled persons by a body, being either-***
>
> *(a) a body which is not established and the affairs of which are not conducted for the purpose of making a private profit from an activity aforesaid,* ***or***
> *(b)* ***a body the expenses incurred by which in carrying on an activity as aforesaid are defrayed wholly or mainly out of moneys provided by the Exchequer*** *other than a body in relation to which such defrayal occurs by reason of the Nursing Home Support Scheme Act 2009."* (Mr Ó Maolchalain's emphasis underlined in bold)

9.2 Mr Ó Maolchalain stated that Millview is a Designated Centre and is registered pursuant to S.I. No. 366/2013. He stated that it is regulated pursuant to S.I. No. 367/2013 and there are publicly available reports from inspections of Millview and all properties registered under S.I. No. 366/2013. He said that there are detailed obligations imposed by the regulations contained in S.I. No. 367/2013. He said that a notable omission from S.I. No. 367/2013 is the requirement to have a nurse in duty 24/7 unlike a nursing home. He also stated that Mr Devereux's evidence demonstrated that there was no nursing requirement.

9.3 Mr Ó Maolchalain stated that there was nothing in dispute regarding the variation of care costs for residents which is provide for in Schedule 10 of Part 2 of the Service Arrangement between the HSE and Nua. He referred to the evidence of Mr Devereux which demonstrated that costs savings and costs increases apply depending on the care requirements. He stated that 100% of the income stream from Millview of derived from State funding.

9.4 Mr Ó Maolchalain stated that the evidence of Mr Devereux confirmed that Millview receives no funding under the Nursing Home Support Scheme Act 2009. He also said that Nua does not have a contractual relationship with residents in care unlike agreements under the Nursing Home Support Scheme Act 2009. He stated that the Appellant cannot recover money from residents for care and that this is a very significant distinction between the subject and a nursing home. He stated that there is no recourse to the estate of resident in care for the cost of care that was received by them.

9.5 In relation to the evidence of Mr Costello, he said that Mr Costello accepted that Millview is used as a care facility for handicapped or disabled persons. He said that Mr Costello agreed that the expenses of the business are paid by the Appellant from moneys received from the HSE and TÚSLA. He restated that Mr Costello accepted that there was no nurse on site at the time of inspection and that residents did not pay for their care.

9.6 Mr Ó Maolchalain said that there was a lot of agreement between the parties on the facts. He said that Millview is a designated centre under section 2 of the Health Act 2007. He stated that ***Glendale Nursing Home v The Commissioner of Valuation*** [2012] IEHC 254 (***"Glendale')*** is the only case dealing with this point. He said that in ***Glendale***, 60% of patients were subject to the Nursing Home Support Scheme and it was his view that the decision of Mr Justice Bermingham emphasised that support was being provided to residents by way of payments from the HSE and comprised of subvention. He referred to paragraph 26 of the judgment where it stated that such payments did not amount to the defrayal of Glendale's costs but only the defrayal of the expenses of the individual person in need of care. He said that it was clear that the Appellant does not present individual expenses to the HSE. He said that it was clear the Appellant pays all of their expenses out of money provided to them by the Exchequer. He stated that residents in care in Millview do not have expenses. He stated that ***Glendale*** can be distinguished from the subject case having regard to paragraph 22 of the decision of Mr Justice Bermingham which held that the HSE payments were made in respect of a shortfall charged by the nursing home to the consumer. In Millview, Mr Ó Maolchalain stated that the Appellant does not have any consumers and that the State provides the full cost of care for residents.

9.7 Mr Ó Maolchalain referred the Tribunal to the Part 1 Service Arrangement between the HSE and Nua. He said that the service delivered pursuant to this agreement is delivered on behalf of the State where the State is not delivering directly. He said that in ***Glendale,*** the State is providing support.

9.8 Mr Ó Maolchalain highlighted that the decision in ***Glendale*** was delivered in 2012 by the High Court and the amendment to section 14(b) of Schedule 4 of the Act was in response to the decision in ***Glendale*** and took place in 2015. Without objection, Mr. Ó Maolchalain submitted an extract from Byrne and McCutcheon, The Irish Legal System, 6th Edition, at page 671, and stated that one of the canons of statutory interpretation is a presumption that all words bear a meaning:

> *"It is assumed that the legislature intended that each word in the provision should contribute to its meaning. It is taken that the legislature did not intend words to be redundant and provisions are to be construed accordingly."*

He stated that the interpretation of the Act today has to be seen in light of the 2015 amendment to paragraph 14(b) of Schedule 4. He stated that the Appellant would have been exempt under the original exemption and having regard to the amendment in 2015. He stated that the amendment puts it beyond doubt that the issues of defrayal of expenses. The evidence given

was that all of the Appellant's expenses are defrayed out of those monies. There is no other source of money from which any expense can be defrayed. He submitted that the Appellant therefore clearly comes within that exemption.

9.9 Mr Ó Maolchalain commented that the Respondent have amended their position late in the day and now suggest that the Nursing Home Support Scheme Act, 2009 applies to Millview. He said that this was a striking change of position without prior reference that Millview as a nursing home. He said that Mr Costello, the Respondent's valuer confirmed that it was not a nursing home and that there was no evidence to suggest it is that. He referred to the Nursing Home Support Scheme Act, 2009 and in particular to section 3. He said that Millview does not conform to an "approved nursing home" under this Act nor to the definition prescribed by the Health (Nursing Home) Act, 1990. He further stated that the National Treatment Purchase Fund is a designated body under this Act and the Appellant has no engagement with them in the operation of Millview. He referred to the provision of "long term residential care services" by nursing homes where there is a statutory requirement for a nurse to be on duty at all times. He reiterated that Millview receives no finance under the Nursing Home Support Scheme Act 2009, that 100% of Millview's funding is from the HSE and TÚSLA and there is no legal obligation on residents in care to pay for care services. He stated that the property has to be valued *rebus sic stantibus* and at the valuation date the expenses associated with the care of residents is derived from the HSE or State.

Respondent Legal Submission

9.10 Counsel for the Respondent, Ms Healy Rae stated that the onus of proof was on the Appellant to prove that Millview comprises a non-rateable property. She stated that in accordance with section 9 of the Interpretation Act 2005, that the exemption relied upon by the Appellant is to be interpreted strictly against them and reiterated that the ordinary literal meaning of words have to apply.

9.11 She stated that the Respondent's reliance on the Nursing Home Support Scheme Act, 2009 arose in relation to the Appellant's reliance on the Health Act, 2007. She said that it would be logical to assume that the Millview could be said not to be a nursing home, but the definition of "long term residential services" contained within the Nursing Home Support Scheme Act, 2009 goes further. She also contended that the definition of a nursing home under the Health (Nursing Homes) Act, 1990 was also broad. She said that the fact the residents are under 18 years of age has no bearing on the definition of a nursing home nor was there any reference to TÚSLA in the 1990 Act. She also stated that it was relevant that there was no reference to TÚSLA in paragraph 14(b) of Schedule 4 of the Valuation Act, 2001 as amended.

9.12 She agreed that paragraph 14(a) of Schedule 4 Valuation Act, 2001 did not apply. She stated that in relation paragraph 14(b) of Schedule 4, that the manner in which expenses arose and were defrayed was relevant and that this was dealt with in ***Glendale.*** She said that section 14(b) makes no reference to a body paid for services by the Exchequer.

9.13 Ms Healy Rae stated that she was relying heavily on ***Glendale*** and referenced the fact that it was a case stated to the High Court whereby the Tribunal originally found that it fell with section 14(b) but not within the "wholly and mainly" test prior to the 2015 amendment. She referred to paragraph 2 of the judgment of Mr Justice Bermingham in relation to the question that was before the High Court as to whether *"The HSE in making payments to nursing homes under the Nursing Homes Support Scheme Act, 2009, is, within the ordinary meaning of the word defraying the expenses of the nursing home in its purpose for caring for elderly;".* She also referred the Tribunal to paragraph 10 of said judgment with regard to the approach to be taken in the task of interpreting the statute as set out in ***Nangle Nurseries v Commissioners of Valuation*** **[2008] I.E.H.C. 73.** She acknowledged that the facts contained paragraphs 14 and 16 of the judgment differed to the subject case in that the HSE pays the Appellant the entire cost of a residents care and that residents in the care of the Appellant did not select Millview as the care residence but that it was nominated to them. She stated that the Court's assessment in paragraph 19 was similar to Millview in terms of the focus on the individual requiring care. She also referred the Tribunal to paragraph 21 and 22 of the judgment in relation to the meaning of the word "defray" and that it applied to the costs of the care of the individual. She emphasised that paragraphs 23, 24, 25 and 26 applied equally to the subject case. In relation to paragraph 29, she stated that she accepted that the Appellant met the "wholly or mainly" test set out in section 14(b) given that at least 97% of moneys is received from the HSE and TÚSLA. She reiterated the applicability of paragraph 30 which emphasised that the origins of income received for the care of residents is not determinative as to how expenses are paid. It was her stated view that ***Glendale*** was entirely applicable to the subject case and had to be followed by the Tribunal as a binding decision of the High Court.

9.14 In relation to the facts of the case, Ms Healy Rae referenced the lease dated 21st December 2016 for a term of four years in favour of Maple Healthcare Limited as tenant. She stated that there was no reference to the HSE or TÚSLA in the within lease and that the Appellant was responsible for the rent and liabilities under the lease even if there are no residents. She also made reference to the Part 1 Service Arrangement between the HSE and Nua and stated that there was no reference to expenses or to the defrayal of expenses. She also made reference to other clauses within the Service Arrangement and stated that funding can be withheld, non-compliance can reduce funding and has nothing to do with expenses and that there was no power under this agreement with the HSE to bind or contract with a third party. She also pointed to clause 33.11 and she emphasised that on the whole, this indicated that expenses were not wholly or mainly defrayed by the State. She also referred to the Appellant's House brochure for Millview which is provided to residents and their family members which was included at Appendix 6(3)(c)(i) in the Appellant's submission. She said that this was a separate contract with residents or their parents and that the Appellant could impose a charge on parents of residents in their care.

9.15 In relation to the Profit and Loss Account submitted by the Appellant, she stated that it revealed expenses of €886,000 for Millview and therefore if the HSE are defraying the expenses only the HSE would have only paid €886,000 and not approximately €1.3m. She stated that the Service Arrangement in place between the HSE and Nua was very important.

She referenced the fact that this agreement allows for cost variations which she stated were not related to expenditure but were related to care. She said that there was no link between funding received by the Appellant and expenses and that cost variations were entirely in the control of the Appellant. She stated that there are fixed expenses to be met regardless of occupancy and that this type of expense event is not covered by their agreement with the HSE. She said that there were no details provided in relation to the arrangements in place between the Appellant and TÚSLA. She stated that she did not believe that the Mr Costello stated that Millview was not a nursing home and that his views on legislative interpretation were not relevant.

9.16 In summary, she stated that the services provided by the Appellant are paid for by the HSE and TÚSLA. She said that the expenses were paid from TÚSLA's income and that the HSE are not defraying the expenses of Nua. She stated that defray would mean that the HSE would have control of the expenses being paid out. She confirmed to the Tribunal that if Millview does not fall within the definition of a nursing home then ***Glendale*** applies.

9.17 In reply to the Respondent's legal submission, Mr Ó Maolchalain stated that the contracts with the Appellant and the HSE are not for the payment of monies but concerned the conduct of care for residents. He said the manner in which TÚSLA engages with the Appellant is irrelevant. He stated that cost variations with the HSE are provided within Schedule 10 of the Service Arrangement and that it is utilised in practice with them. He said that expenses are defrayed by moneys provided by the Exchequer and that there was no implication that the HSE or TÚSLA defray expenses in a different manner. He relied on the ***HSE v Commissioner of Valuation [2010] 4 I.R. 23*** in which he stated that the decision of Mr McMenamin held that the HSE forms part of the Exchequer. He stated that TÚSLA is equivalent to the HSE. He said that the key issue is whether monies were defrayed under the Nursing Home Support Scheme Act, 2009 to which he stated that it is absolutely not the case that monies are defrayed under the 2009 Act. He said that the evidence was clear that Millview was not a nursing home nor was it subject to the maximum charges imposed by the National Purchase Treatment Fund. He reminded the Tribunal that the definition of "long term residential services" under the Nursing Home Support Scheme Act, 2009 is a cumulative provision and is not subject to alternative conditions. He said that it was extraordinary that the Respondent maintains that Millview is a nursing home. He said that an issue is being drawn in relation to the contract that exists with the HSE to provide care services. Bearing this in mind he stated that the operation of paragraph 14 of Schedule 4 has two divisions. He said that paragraph 14(a) deals with non-profit making entities and paragraph 14(b) is clearly there to provide for profit making entities such as the Appellant. He stated that it was inconceivable to suggest that paragraph 14(b) of Schedule 4 could not apply in circumstances where all expenses are paid through the receipt of HSE funding in addition to the profit of the Appellant for the care provided if there wasn't some arrangement with the State. He said that it was necessary to have a contract for services where the State is required to pay for those services. He said that there is no other source for expenses to be defrayed. He said that the only test is whether the Appellant's expenses are defrayed wholly or mainly out of moneys provided by the exchequer which he insisted that they absolutely were and that this was uncontradicted evidence. He reiterated that the amendment in 2015 to paragraph 14(b) deals with the inapplicability of the defrayal of expenses in

Glendale to the subject case and that this decision must be read in light of the amendment. He summarised by stating that in Millview, every single expense was defrayed out of monies received by the Exchequer.

10. FINDINGS AND CONCLUSIONS

10.1 The Tribunal in this case must decide whether the subject property should be excluded from the valuation list because it falls within Schedule 4 Paragraph 14 (b) of the Valuation Act, 2001, as amended by the Valuation (Amendment Act) 2015, in that the Appellant is a body the expenses incurred by which in carrying on an activity are defrayed wholly or mainly out of moneys provided by the Exchequer.

10.2 The Appellant's claim for exemption is advanced pursuant to Paragraph 14(b) of Schedule 4. In order to avail of this exemption, the Appellant is bound to establish that the exemption applies clearly and without doubt and in express terms.

10.3 In considering this case, the Tribunal has had regard to the principles applicable to the interpretation of the provisions of the Valuation Act 2001, which were summarised by MacMenamin J. in ***Nangle Nurseries v. Commissioner of Valuation [2008] IEHC 73*** as follows:

> (1) while the Act of 2001 is not to be seen in precisely the same light as a penal or taxation statute, the same principles are applicable.
>
> (2) the Act is to be strictly interpreted.
>
> (3) impositions are to be construed strictly in favour of the rate payer.
>
> (4) exemptions or relieving provisions are to be interpreted strictly against the rate payer.
>
> (5) ambiguities, if they are to be found in an exemption are to be interpreted against the rate payer.
>
> (6) if, however there is a new imposition of liability looseness or ambiguity is to be interpreted strictly to prevent the imposition of liability from being created unfairly by the use of oblique or slack language.
>
> (7) in the case of ambiguity, the Court must have resort to the strict and literal interpretation of the Act, to the statutory pattern of the Act, and by reference to other provisions of the statute or other statutes expressed to be considered with it.

10.4 Based on the dicta outlined above, the Tribunal finds that Paragraph 14(b) of Schedule 4 is a provision that falls to be interpreted strictly against the ratepayer and ambiguities, if found, are to be interpreted against the ratepayer.

10.5 The Tribunal must, therefore, determine the following:

> (i) Whether the property is a nursing home; and

(ii) Whether the Appellant is a body, the expenses incurred by which, in carrying on an activity as aforesaid, are defrayed wholly or mainly out of monies provided by the Exchequer, and is not a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009.

Findings of fact:

10.6 Having assessed the evidence, provided by the parties, the Tribunal makes the following findings of fact.

(i) The subject property is not a nursing home. The Appellant's case was that there was never a question that it was a nursing home and there are no nurses on the premises. The Appellant's evidence was that the subject property is run as a designated care facility which is currently a home to four children with intellectual and/or physical disabilities ranging from the ages of 12-18. While the Respondent appears to have accepted this, at first, its position changed before the hearing and the Respondent's Counsel suggested that the Tribunal should consider and determine whether the subject property does, in fact, fall within the definition of a nursing home. However, the Tribunal notes that Counsel for the Respondent did not press the matter, at hearing. The Tribunal finds that the factual evidence, before it, is that the subject property is a designated care centre which is registered and monitored by HIQA and which homes young, vulnerable disabled persons. It operates under a distinct regulatory framework, in compliance with The Health Act 2007. No funding is available to residents under The Nursing Home Support Scheme. The evidence was that there are no nurses on-site and the staff and personnel working there are a social workers and assistance workers. Furthermore, the property is not registered as nursing home as is required under the Health (Nursing Homes) Act, 1990 nor is it subject to the compliance requirements of a nursing home as is also required under the Health Act 2007. The Tribunal notes that Mr Algar, for the Appellant, stated that there were no similar care facilities on the list in 2018. Furthermore, Mr Costello, for the Valuation Tribunal, stated that he compared the facility to two creches and he described it as a clinic as this was the closest description he could think of. It is significant that, in cross-examination, Mr Costello agreed that the property was not a nursing home. Taking the totality of the evidence into consideration, the Tribunal finds that this property cannot be characterised as a nursing home, particularly in circumstances where the valuer for the Respondent expressly said that it was not.

(i) The subject property is a profit-making company. This was not in dispute.
(ii) The designated care centre operates under a HSE service agreement and a costing proposal agreement with TÚSLA.
(iii) The Appellant is the sole shareholder of Maple and on the 26th March 2021, the subject property was transferred from Maple to NUA. This was not disputed; and
(iv) 97.8% of all monies received by the Appellant come from the HSE and/or TÚSLA. This was not in dispute. Furthermore, it was not in dispute that in 2019, 100% of the income received in Millview was entirely from the HSE and TÚSLA.

10.7 As the subject property is not a nursing home, the Tribunal finds that there is no defrayal of expenses under the Nursing Homes Support Scheme Act 2009. The uncontradicted evidence of the Appellant was that that the Nursing Home Support Scheme Act is subject to maximum pricing whereas their pricing model accommodates price variations commensurate with care requirements. It was also stated that the NTPF negotiates the price under the Nursing Home Support Scheme Act which is different to the pricing process for their care provision which is negotiated with the HSE and TÚSLA.

Glendale Nursing Home v The Commissioner of Valuation [2012] IEHC 254:

10.8 The Tribunal notes, at this juncture, that both parties referred to the High Court Case of ***Glendale Nursing Home v The Commissioner of Valuation [2012] IEHC 254***. Counsel for the Appellant said that this case could be distinguished from the present case as the Glendale case dealt with a Nursing Home subvention scheme under The Nursing Homes Support Scheme Act 2009, which was not relevant to this case. Counsel for the Respondent submitted that the situation in Glendale was comparable to the arrangement that exists between the Appellant and the HSE in the present case. The Tribunal notes that this decision was handed down prior to the amendment to Paragraph 14 (b) of the 2015 Act, which falls to be considered in this appeal.

10.9 Counsel for the Respondent relied upon the principle in Glendale, that what is being provided to the Appellant is payment for the support of specific individuals. She argued that the payments are paid in respect of each resident based on their individual needs (as opposed to simply paying for the expenses of providing the facility) and if any individual were to cease residing at the facility, the payment would cease.

10.10 The Tribunal finds that the Glendale decision is useful in so far as it re-iterates that the HSE is not an office of the State for the purposes of The Valuation Act 2001 but is 'the State'. The Tribunal, accepts, the Appellant's submission in this respect.

10.11 The Tribunal finds, however, that facts of Glendale can be distinguished from the present case as the Glendale case (and the Nursing Home Support Scheme) is separate and distinct to the situation in the present case which deals with a designated care centre as per Section 2 of The Health Act 2007. Furthermore, the Tribunal has found that the present case does not concern a nursing-home. The Glendale case related to The Nursing Home Support Scheme Act 2009, which sets out prescriptive and extensive provisions regarding what is commonly known as The Fair Deal Scheme. The National Treatment Purchase Fund (NTPF) negotiates the price under the Nursing Home Support Scheme Act which is different to the pricing process for their care provision of service users in the current case . In the present case, the Appellant has entered into contractual agreements with the HSE and TÚSLA.

10.11 The Tribunal finds that Glendale can also be distinguished from the subject case having regard to paragraph 22 of the decision of Mr Justice Bermingham, which held that the HSE payments were made in respect of a shortfall charged by the nursing home to the consumer. The Fair Deal Scheme provides a contribution towards the cost of the persons care based on the persons financial means at the time they apply. The person may be required to 'top up' that

contribution if they elect a private nursing home. On the facts, in this appeal, there is no 'top up' facility catered for under the Service Level Agreement provided to the Tribunal and the evidence from the Appellant was that they receive almost 100% of their funding from the HSE and TÚSLA and no additional funds are sought from the Service Users. Service users are placed in this facility, whereas under the Fair Deal scheme, the patient can choose a private nursing home or one in Northern Ireland. Under the Nursing Home Scheme, an individual's incomes and assets are assessed, including land and property in the State and the nursing home loan element is referred to as 'ancillary state support'. It is significant that the Glendale case states that this *'in effect means that in the case of certain individuals the HSE/the State can expect to recoup some of the monies it has expended on their behalf'*. On the facts, in the present case, there is no question that this situation arises. The Tribunal finds, therefore, that in the present case, the Appellant does not have any consumers and that the State provides the full cost of care for residents. In the present case, it would appear, from the facts, that the service is delivered on behalf of the State, in circumstances where the State is not delivering this service directly. It is noted that in the Service Level Agreement, it states that '*The Executive wishes to procure the provision of services and the provider wishes to provide such service'*. The agreement states that the Executive is required by Statute to deliver such services. However, in Glendale, it was found that what the State is doing is providing support to individuals.

10.12 In the circumstances, the Tribunal finds that the Glendale case can be distinguished from the present cases for the reasons set out above.

10.13 The Tribunal's assessment does not, however, stop there. In determining whether the Appellant is entitled to the exemption contained in Paragraph14(b) of Schedule 4 of the Valuation Act, 2001, the Tribunal must decide whether the expenses incurred by the Appellant in carrying on the activity are defrayed wholly or mainly out of monies provided by the Exchequer.

Are the expenses defrayed by the Appellant 'wholly or mainly out of monies provided by the Exchequer'?

10.14 The Tribunal has already accepted that the HSE is the State/ Exchequer as per the dicta in Glendale. Counsel for the Appellant submitted that the HSE & TÚSLA provides funds to the Appellant as a service-provider and the entire costs of running the care facility are, therefore, funded by the HSE(92.1%) & TÚSLA (5.7%). Counsel for the Respondent argued that payments are paid in respect of each service user and based on their individual needs, as opposed to simply paying the Appellant the expense for providing the facility. It was submitted, by Counsel for the Respondent, that the focus of the State support and subvention was on the individual in need of care rather than on the care provider. The Tribunal has assessed the evidence of each of the witnesses, along with the documentary evidence, in order to evaluate what the actual situation is.

10.15 The evidence from Mr Devereux, for the Appellant, was that the monies received by the Appellant from the HSE and TÚSLA represented 97.8% of the revenue stream of the Appellant. Mr Devereux's evidence was that the expenses that are defrayed by Nua are '*wholly or mainly out of moneys provided by the Exchequer*'. He said there was a very clear link

between the expenses incurred and the income coming in from the HSE & TÚSLA. He said that if one service user left that the ESB bills and the rent would remain the same and would still be paid from HSE/ TÚSLA monies. Mr Devereux said that there was a service level agreement in place between Nua and the HSE and there is no direct agreement between Nua and each individual resident in relation to payment of fees. The Tribunal finds that it is significant that individual residents are not party to any costing proposal agreements. It is also significant that Mr Devereux's evidence was that, each month, Nua invoices the HSE for the total cost of providing residential care, community outreach and day services. Furthermore, invoices are not issued to and are not copied to individual residents or their families. The Tribunal notes that the Appellant's uncontradicted evidence was that it would be in breach of Regulation 24 of S.I. No. 367/2013 if any of the residents own funds were used to defray the expense of their care in Millview. The Tribunal finds that the evidence set out above from Mr Devereux's makes a compelling case for the Appellant.

10.16 Counsel for the Appellant submitted that each of the residents of the care facility were placed by the HSE or TÚSLA. It was submitted that a costing proposal agreement is entered into by Nua and the relevant funder in respect of each prospective resident. It was submitted that there is no other source of funding for the expenses incurred by the Appellant. It was also submitted that as the Appellant is an Organisation in receipt of Exchequer Funding, it is obliged by the Department of Public Expenditure and Reform Circular 13/2014 to comply with core principles in the administration of and management of funding from Exchequer sources, including clarity, governance, value for money and fairness. Furthermore, it was submitted that the Appellant is a '*service provider'* for the purposes of Section 2 of The Health Act 2007. It is noted that Section 2 states that a *'service provider' means a person who—enters into an arrangement under section 38 to provide a health or personal social service on behalf of the Executive.*' The Tribunal finds that Section 2 strongly suggests that the activity which is being carried by the Appellant is being carried out as a service provider at a designated centre at the request of the executive.

10.17 When questioned, by the Tribunal, on the issue as to whether the expenses defrayed by the Appellant are *'wholly or mainly out of moneys provided by the Exchequer'*, Mr Costello, the Valuer for the Respondent, stated that he did not have the opportunity to go into the issue of '*wholly or mainly'* in relation to expenses. He said that he was not qualified to make that decision and he, therefore, erred on the side of caution when deciding that the subject property should not be exempt. Mr Costello said that, in his opinion the property did not meet the requirement to be left off the list. However, he did not put it any further than that and did not provide a clear explanation as to why is should not be left off the list. He did, however, say that he had no evidence at the time to show why the property should be exempt. It was put to Mr Costello that almost 100% of the funding for the services came from two State bodies and he said that he accepted this but in relation to the lease itself, he was of the belief that Nua or Maple were paying for the rent, and this created confusion for him. There is no evidence to suggest that Mr Costello made any efforts to investigate this matter further. The Tribunal notes that the reason given by the Respondent, in the initial valuation report, for not exempting the subject property was that it was '*operated by a private company which is operating for the purpose of making a private profit'.*

10.18 The Tribunal notes that paragraph 14(b) does not expressly exclude profit making bodies. However, by contrast 14(a) expressly states that such bodies must be non-profit. On reading the paragraph in a holistic manner the Tribunal finds that two eventualities are envisaged in Paragraph 14, one being for profit, the other not for profit. The Tribunal, therefore, finds that the fact that a profit is included in what the HSE pays the Appellant does not exclude the applicability of 14(b). The Tribunal has also had sight of the service level agreement, which refers to the Appellant as the '*service provider'.* It states that '*the Executive wishes to procure the provision of the services and the Provider wishes to provide such services'.* Paragraph 2.1 refers to the fact that '*The Executive hereby agrees to give funding to the Provider to provide the services…'* The Service Level Agreement sets out how the funds paid by the HSE to the Appellant inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services are to be paid. Paragraph 4.1 states that *"Subject to the terms and conditions of this Arrangement and the Provider having at all times a current valid tax clearance certificate (a copy of which must be furnished to the executive upon request), the funds to be paid by the Executive to the Provider inclusive of all duties, taxes, expenses and other costs associated with or incurred in the provision of the Services shall not exceed the amount specified in Schedule 6 (Funding)…."* The Appellant supplied numerous invoices to the Tribunal in respect of services provided. The invoices issued by the Appellant each month are in respect of the current Service Users of the property. The invoices set out the monthly costs for each resident and there are also invoices seeking money for 'additional support' and 'residential day services', inter alia. These invoices arise from the contract between the HSE and the Appellant to provide food, accommodation, support inter alia to Service Users placed with them by the HSE, the profit of which is built into each monthly invoice, as envisaged in the terms of contract.

10.19 When Mr Costello was questioned by Counsel for the Appellant, he accepted that the staff of the centre were paid by Nua from funds coming from the HSE. It was put to Mr Costello, by Counsel for the Appellant, that all the expenses of Nua are defrayed by the HSE and/or TÚSLA and Mr Costello said that what muddied the waters for him was the lease and it looked like Nua and/or Maple were paying the rent and not the Exchequer. It was put to Mr Costello again, by Counsel for the Appellant, that all the income stream comes from TÚSLA or the HSE and he accepted this was the case. It was also put to Mr Costello that all the running costs/expenses of the centre were paid for by Nua from this money, including groceries, toiletries, training, light, heat, power, travel and telephone, inter alia, and he agreed with this. Counsel for the Appellant suggested that Nua, therefore, paid for all the expenses of the designated centre out of the money which comes from the State and Mr Costello said that he could not argue with that. The Tribunal finds the evidence of Mr Costello, in this respect, to be highly significant and favourable to the Appellant's case particularly in circumstances where he had more information, at hearing, than he had at the valuation date.

10.20 Considering the totality of the evidence before it and in particular the service level agreement, costing proposals, accounts provided and documentary evidence put forward by the Appellant, along with the oral evidence of the parties, the Tribunal finds, on the balance of probabilities, that the HSE & TÚSLA provide monies to the Appellant as a Service Provider. Furthermore, the Tribunal finds that there is no defrayal by the HSE of the expenses of

theservice users in the present case and that the Appellant is provided with monies from which they defray the expenses of carrying out the activity.

Determination:

10.21 The Tribunal concludes, for the following reasons that the claim for exemption under Paragraph 14(b) of Schedule 4 succeeds.

10.22 The Tribunal finds that the relevant property falls within the ambit of Paragraph 14(b) above, and further, that the Appellant is a body the expenses incurred by which in carrying on an activity of caring for disabled persons, the expenses of which are defrayed by the Exchequer, other than a body in relation to which such defrayal occurs by reason of the Nursing Homes Support Scheme Act 2009. Accordingly, for the above reasons, the Tribunal allows the appeal and decreases the valuation of the Property as stated in the valuation certificate to €0.