



An Coimisiún Toghcháin  
The Electoral Commission

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In the matter of the Electoral Reform  
Act, 2022

And in the matter of sections 47, 50  
and 51 of the Electoral Reform Act,  
2022

And in the matter of an appeal by  
James Reynolds under S.51 of the  
Electoral Reform Act, 2022

Decision of the Board of An Coimisiún  
Toghcháin

12 September 2024

IN THE MATTER OF THE ELECTORAL REFORM ACT, 2022

AND IN THE MATTER OF SECTIONS 47, 50 AND 51 OF THE ELECTORAL REFORM ACT 2022

AND IN THE MATTER OF AN APPEAL BY JAMES REYOLDS UNDER S.51 OF THE ELECTORAL REFORM ACT, 2022

DECISION OF THE BOARD OF AN COIMISIÚN TOGHCHÁIN

1. This is an appeal by James Reynolds under s. 51 of the Electoral Reform Act, 2022 (“the Act”) from the decision of the Registrar made under s.50 refusing his application to amend the particulars of the authorised officers of the National Party (“the Party”) to reflect what he contends was a valid decision of the National Directorate of the Party made at a meeting on July 14 2023.
2. The background may be briefly stated. The Party was established in 2019 and particulars registered pursuant to section 25 of the Electoral Act 1992, the then material statutory provision. Section 42 of the Act provides for the carrying over of the previous Register, and makes the chief executive of An Coimisiún Toghcháin the Registrar, with responsibility to prepare and maintain the Register.
3. The Act provides for certain details of a political party to be entered in the Register of Political Parties. The material ones for the purpose of the present appeal are those in s.47 (c) and (d):

“(c) the address of the party’s headquarters,

(d) the names of the officer or officers of the party authorised as being authorised to sign certificates authenticating the candidatures of candidates of the party at elections.”

4. It should be noted that the Act does not provide for the registration of particulars of the constitution of a political party, nor of the names of officers, other than of those authorised for the purpose identified in s.47(d). It does not provide for registration of the nominated or elected president of a political party.
5. The unequivocal evidence is that the Party's executive functions were performed by its National Directorate of which the two sole members were James Reynolds and Justin Barrett (referred to as "officers" in this decision for convenience).
6. At all material times the Register showed that the person authorised for the purposes of s.47(d) were "any one of" Justin Barrett or James Reynolds. It is solely with regard to the registration of these statutory officers, and with the registered address of the Party, that this appeal is concerned.
7. The National Directorate has power to amend the constitution of the Party and to appoint or dismiss its own officers under its express provisions.
8. At a meeting of the National Directorate held on 14 July 2023 James Reynolds purported to amend the constitution of the Party and to dismiss Justin Barrett from office, leaving himself as sole member of the National Directorate. Whether valid notice of that meeting was given is contested. Justin Barrett had himself on or about the 3 July 2023, purported to remove Mr Reynolds from office in purported exercise of his constitutional power to so do.
9. Both Justin Barrett and James Reynolds each separately applied to the Registrar of Political Parties under s.50(1) of the Act to amend the registered particulars of the statutory authorised officers of the Party. The Registrar, having given both parties the opportunity to furnish such evidence and submission as they thought fit, and having received a statutory declaration from each of them, declined both requests.

10. The Board of An Coimisiún Toghcháin (referred to here as “An Coimisiún” for convenience) is the statutory body responsible to determine an appeal from the decision of the Registrar by reason of s. 51 of the Act. Mr Reynolds lodged an appeal of the decision of the Registrar by email of 29 April 2024. Justin Barrett did not appeal.
11. One member of An Coimisiún, Peter Finnegan, recused himself from the consideration of the appeal on account of his prior involvement in the registration of the Party.

### **The appeal**

12. By reason of s. 51(4) the appeal from the decision of the Registrar is a full rehearing and the decision of An Coimisiún is final.
13. Mr. Reynolds relied on the evidence and submissions already lodged for the first instance application and made further submissions by email.
14. Justin Barrett was invited to make submissions or adduce further evidence on the appeal but advised An Coimisiún that he had nothing further to add to the evidence and arguments already made at first instance.
15. An Coimisiún in an appeal is empowered by the Act to consider all the material submitted by the appellant in his application to appeal, and all the material available to the Registrar in making his decisions of 10 April 2024. In the circumstances, whilst Mr Barrett did not appeal, An Coimisiún has considered the materials, submissions and evidence presented by both Mr Reynolds and Mr Barrett at first instance, and by Mr Reynolds on the appeal.
16. An Coimisiún in carrying out its appeal functions under the Act is conscious of the general legal limitations in its competence to resolve extensive conflicts of evidence and/or conflicts of interpretation of the constitution of the Party. It must also take

account of the general law on unincorporated associations, which applies to political parties.

17. An Coimisiún has identified a considerable number of conflicts of evidence and/ or conflicts of interpretation of the constitution of the National Party. The contested facts include the precise version of the constitution of the Party governing the matters in issue, and whether the meeting at which Mr Reynolds purported to dismiss Mr Barrett was quorate in the light of a dispute as to whether the constitution of the Party requires “at least 50%” of the National Directorate to be present at a meeting or “50% or more” of its members. Mr Reynolds contends that at a meeting held on 14 July, 2023, the constitution was amended to make the second version operative. He relies on that version of the constitution and that meeting to support his application to amend the particulars in the Register and in support of this appeal.
18. An Coimisiún considers that the multiple conflicts of evidence and interpretation apparent from the materials provided at first instance and on appeal do not require to be resolved for the purpose of the resolution of this appeal, and do not form part of this decision for the reasons later appearing.
19. One matter of mixed fact and law is crucial to the validity of the resolutions passed at the meeting of 14 July 2023. This will be outlined in detail on account of their centrality.

#### **The notice of the meeting**

20. Mr Reynolds says he sent an email to Mr Barrett on 13 July 2023 at 23.26, inviting Mr Barrett to a meeting of the National Directorate at 7pm the following day at an identified address.



21. A second email is said to have been sent at 9.53 the following morning bringing the time of the meeting forward to 2pm on 14 July 2023.
22. Two addresses are noted in the emails, Mr Reynolds himself and Mr Barrett, who says he never received the emails and that they were sent to an email address he seldom used.<sup>1</sup>
23. Thus on Mr Reynold's version of the facts the meeting was to be held at 2 pm on 14 July 2023, at the designated place. That the only person in attendance was Mr Reynolds himself, is not in issue<sup>2</sup>. It is also undisputed that the notice of the meeting, if it was indeed sent, did not contain any detail of the matters proposed to be considered, nor any formal motion for discussion or decision. The email did not show any attachment, and Mr Reynolds does not contend that the matters intended to be considered were notified in advance.
24. An Coimisiún proposes to consider the adequacy of the notice given for the meeting on 14 July 2024 as the logical first step to the resolution of the appeal. The issue of notice is a gateway or threshold requirement for a proper consideration of the validity of the resolutions purported to have been passed at that meeting.
25. The constitution of the Party is silent with regard to the notice procedures for the holding of meetings of the National Directorate, with regard to the manner of service of notice, the length of notice or the contents of any notice. The parties to this dispute agree that a degree of informality was apparent in the convening and conduct of previous meetings of the National Directorate, that they were held on an informal but frequent basis, were generally not convened in any formal manner, and often took place by phone. Neither of the parties to this appeal contend that meetings of the National

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<sup>1</sup> Copies of the emails were enclosed with the documentation submitted at first instance. No attachment is contained or identified in the email

<sup>2</sup> The minutes show only one attendee and both Mr Reynolds and Mr Barrett agree the latter was not present

Directorate were ever conducted by one of them alone without the presence of the other. The informality appears to have been a function of their working relationship between them until the matters giving rise to the present impasse.

26. Informality in the convening or conduct of meetings, and in the procedures or arrangements for a time and venue may have been appropriate in these circumstances, because the holding of the meetings would have been agreed or acquiesced in by the respective attendance and participation in the meeting. Informality in the convening of a meeting can in many instances have the effect of curing any deficiency in notice, if the only persons entitled to be present were in fact present without demur.
27. A number of factors suggest that a different approach was purported to be adopted by Mr Reynolds with regard to the meeting of 14 July 2023. First, it is apparent that only one person was present at that meeting, so it cannot be said that Mr Barrett and Mr Reynolds mutually informally agreed to the meeting, or that Mr Barrett by his attendance at the meeting acquiesced in the method of notice in fact adopted by Mr Reynolds. The only two members of the National Directorate did not in fact meet, so waiver or acquiescence can provide no answer to a defect in notice, if such there be.
28. Second, Mr Reynolds did on his version of the facts send an email to convene the meeting and a second email changing the time. He relies on those notices as valid and does not contend that the meeting on 14 July 2023 was convened in an informal manner. In fact, he contends for the opposite proposition: the meeting was formally called by the combined effect of his two emails to Mr Barrett.
29. Third, Mr Reynolds relies on the emails as the basis of legitimacy and not on any other basis or proposition of law.

30. For these reasons An Coimisiún considers that the legitimacy of the meeting cannot be resolved by reference to the fact that in the past a degree of informality was apparent in the convening and conduct of meetings.

31. This leads to the conclusion that the validity of the notice, as to the length of notice, the contents of the notice and the mode of communication fall to be considered in the light of the general law of unincorporated associations. That law requires that where the rules of an association do not make express provision for notice, a valid notice must be reasonable<sup>3</sup> in all of the circumstances.

#### **Was the notice reasonable?**

32. The law on giving notice of meetings is that in the absence of express provision regarding the giving of notice in the rules of an unincorporated body, “reasonable notice” is required. This requirement derives from the obligation of the officers of a unincorporated association to act in good faith and to a high standard<sup>4</sup>. What is reasonable depends on a number of factors, including the existing practice of the organisation, the urgency of the matter, and the significance of what is being considered. No minimum period of notice is required for the notice to be reasonable. Existing practice in an organisation will be taken into account in assessing reasonableness in regard to the length of notice, the content of a notice and the mode of communication.

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<sup>3</sup> See the discussion in *GKN Sports Club* 1982 1WLR 774, a decision of the High Court of England and Wales, generally regarded as the definitive statement of the law and referred to with approval by Hogan J. in the Irish High Court and on appeal to the Supreme Court in *Dunne v Mahon* 2012 IEHC 412, 2014 IESC 24, 2104 2 IR 337.

<sup>4</sup> See in general the discussion in Biehler *Equity and the Law of Trusts in Ireland* 7<sup>th</sup> edition (Round Hall, 2020) chapter 13.



33. The courts have noted that a “degree of reasonableness, fairness and common sense” is the preferred approach<sup>5</sup>, rather than rigidity.
34. Applying these factors in this instance, An Coimisiún notes that the existing practice of the National Party was informal, and therefore short notice of a meeting of the National Directorate could, in some instances, be reasonable, including giving overnight notice of a meeting to be held the next day or giving notice of a change of time on the morning of a meeting.
35. The general law is that where the matter to be discussed is urgent, short notice could, in some instances, also meet the test of being reasonable. However, in this instance the matters to be considered at the meeting on 14<sup>th</sup> July 2023 were of the highest significance, including significant changes to the constitution of the Party, and the removal, and replacement, of an officer of the Party and his removal as President, and the change of the registered address.
36. An Coimisiún considers that even were we to assume that Mr Barrett received the emailed notices of the meeting held on 14<sup>th</sup> July 2023 (which Mr Barrett denies), that the notice was not reasonable notice in its content: neither email identified to the recipient any indication— whether reasonable or otherwise – of the significant purposes of the meeting, including that, at the meeting Mr Reynolds would propose to make significant changes to the constitution, to remove Mr Barrett as officer, leaving only other officer of the Party, to remove him also from the office of President of the National Party, and to alter the registered address.
37. Reasonableness is also to be tested in the light of the length of the notice. Short notice may suffice in many circumstances, but in the present instance the foreshortening of

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<sup>5</sup> This quote is from the judgment of Megarry V-C in *GKN* and was quoted with approval by the Irish Supreme Court in *Dunne v Mahon* at para 31.

the notice by the second email requires a degree of scrutiny. No evidence is proffered by Mr Reynolds that he did, or attempted to, satisfy himself that Mr Barrett was aware of the altered earlier time, and he has not proffered either evidence or argument of a response to either email by Mr Barrett. The fact that Mr Barrett did not in the event attend the meeting should have raised a concern in the mind of a reasonable person as to whether the email notices had been received. Mr Reynolds does not contend that he phoned or emailed or otherwise made, or attempted to make, contact with Mr Barrett when it became apparent that he was not in attendance at such an important meeting.

38. An Coimisiún notes that the purported resolution to remove Mr Barrett as officer had the effect of reducing the members of the National Directorate to one. The constitution of the Party provides for a minimum number of two officers. This is irrespective of which version of the constitution is to be considered valid and operative for the purpose of this appeal.

39. The current entry in the Register provides that either or both of Mr Reynolds or Mr Barrett are to be considered as “authorised” for the purpose of s.47(d) but that fact alone does not permit the reduction of the number of officer below the Party’s constitutional minimum of two persons who act as officers. Whilst An Coimisiún does not need to take a view as to the circumstances that might arise should one of two officers resign or die whilst in office, the fact that the resolution purported to have been passed at the meeting of 14 July 2023 had the effect of reducing the membership of the National Directorate below its prescribed minimum of two members requires a degree of scrutiny and care in compliance with the procedural requirements for such resolution. We consider that the appropriate degree of compliance was not engaged.

40. For these reasons, and applying the general law on unincorporated associations, An Coimisiún concludes that, because reasonable notice was not given of the meeting held

on 14<sup>th</sup> July 2023, that meeting was not a validly held meeting of the National Directorate of the Party.

41. Accordingly, we conclude that the resolutions purported to have been made at that meeting were not validly made.

### **The meeting of 14 December 2023**

42. We wish to make some comments on the meeting held on 16 December 2023 of which materials were furnished for the purpose of this application and the appeal. A meeting of the Party, purported to be an AGM, was held on 16 December 2023, and Mr Reynolds contends that the constitution of the Party was amended and the decisions made at the contested meeting of 14 July 2023 were “confirmed”<sup>6</sup>.

43. An Coimisiún considers that the evidence of the events at the meeting of 14 December cannot form the basis on which this appeal can be resolved in Mr Reynold’s favour. First, this appeal is from a decision of the Registrar refusing to make the amendments said to have derived from the earlier meeting of July 14 2023. The resolutions contended to have been passed at the December meeting are proffered in support of that application, and not as stand-alone bases for the appeal. The application at first instance and on appeal is with regard to the decisions argued to have been made at the 14 July meeting. Mr Reynolds does not contend that An Coimisiún, or at first instance the Registrar, could determine the application grounded on the resolutions said to have been passed on 16 December 2023.

44. More crucially Mr Reynolds says that Mr Barrett was not notified of the 14 December AGM and relies on the version of the constitution as amended by the resolutions

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<sup>6</sup> It is not contended that a fresh resolution to that effect was passed, and the language used is that the resolutions were “confirmed”

purposed to have been passed at the 14 July 2023 meeting. His contention is that Mr Barrett had ceased to be a member or officer of the Party as of July 14, 2023 and therefore was not entitled to notice.

45. For the reasons already explained An Coimisiún considers that the resolutions purported to have been passed at the meeting on 14 July 2023 are invalid and that Mr Barrett had not been validly removed as officer and President. Thus, he was entitled to notice of the December meeting and the failure to notify him had the effect of invalidating the resolutions purported to have been passed at that meeting. This is not merely because Mr Barrett held high office in the Party, but because the convening of the meeting was based on a flawed understanding of the rules and procedures then operating.

#### **Determination**

46. The Board of An Coimisiún Toghcháin therefore concludes that the resolutions purposed to be made at the meeting of July 14 2023 were not validly made. The appeal therefore is dismissed and the Board of An Coimisiún refuses to direct the amendment of the Register of Political Parties to reflect the removal of Mr Barrett as authorised officer and the alteration of the registered address of the National Party.



Ms. Justice Marie Baker

Chairperson

An Coimisiún Toghcháin

12 Sept 2024