

Judicial Communications Office

Thursday 19 March 2011

JUDGE APPROVES CONTRIBUTION BY THE PRESBYTERIAN CHURCH TO “RESCUE PACKAGE”

Summary of Judgment

The Hon. Mr Justice Deeny, sitting today in the Chancery Division of the High Court in Belfast, granted authority to the Trustees of the Presbyterian Church in Ireland to make an ex gratia contribution of £1m from its unrestricted charitable funds to an access fund which is being proposed as part of the Government’s “rescue package” in respect of the Presbyterian Mutual Society (PMS).

The Court was told that the Presbyterian Church in Ireland had no legal responsibility for the PMS. This, however, was not apparent to very many members of the Church who tended to consider that the Church was responsible for the Society. Pressure has been put on the Church by those who have suffered hardship as a consequence of the PMS going into administration.

The Minister for Enterprise, Trade and Investment has described the Government rescue package as a “mutual access fund”. It will consist of some £25m from the Government of the United Kingdom, £25m from the Northern Ireland Executive and the £1m from the Church subject to the approval of the court. These grants are coupled with the offer of a loan from the Government of the United Kingdom of a further £175m.

On 13 April 2010 a Special General Assembly passed a resolution to contribute £1m from its charitable funds towards a hardship fund. This stated:

“That in the event of the Government failing to secure a “commercial” solution and the NI Executive bringing forward a final comprehensive proposal which includes a “Hardship” Fund element, the General Assembly agree in principle to contribute £1m while affirming their view that the members of the PMS are thrifty savers and not risk taking investors.”

Judicial Communications Office

The general principle under law is that a charity is only allowed to make disbursements for charitable purposes. To do otherwise would be inconsistent with the purpose for which the charity was set up. It would also be an abuse of the privileged tax position which a charity can enjoy. The fund now proposed went beyond the relief of poverty and was not in law charitable as a result. .

Mr Justice Deeny referred to case law which stated that the court (or the Attorney-General) has power to give authority to charity trustees to make ex gratia payments out of funds held in charitable trusts if there is a moral obligation to do so. He noted that such a power should not be exercised lightly and only in cases where it can be fairly said that if the charity were an individual it would be morally wrong of him to refuse to make the payment.

The judge then went on to consider what is a moral obligation and how it would apply in this case. He referred to examples given by Rev Dr Donald Watts, Clerk of the General Assembly and General Secretary of the Church of the hurt felt by some of the small savers in the PMS who were deprived of their investments. Mr Justice Deeny stated that these people will benefit to a considerable extent by the proposed scheme: "If the Church does not contribute it may well be that the scheme does not proceed and therefore the persons exposed to poverty will not be assisted". If the fund comes to reality it will bring substantial relief to those impacted.

Only members of the Church could be members of the PMS. It would be paradoxical if the general body of taxpayers funded all of the assistance without any contribution from the only Church whose members would benefit from the fund. Such an outcome would, if it occurred, reflect badly on the Church.

Mr Justice Deeny concluded that he was satisfied that the circumstances in this case, including the promise given by the Special Assembly Resolution to contribute to the hardship fund, constituted a moral obligation on the Church which enables and allows the court to authorise the payment of up to £1m towards the mutual assistance fund.

NOTES FOR EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or

Judicial Communications Office

amends the judgment. The full judgment will be available on the Court Service website (www.courtsni.gov.uk).

ENDS

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