

Jersey Charity Commissioner Annual Report for 2017

1. Under the Charities (Jersey) Law 2014 [Schedule 1, Art. 4(8)] I am required to prepare and publish an annual report on my activities in each calendar year; and to provide the Minister with a copy of it for her or him to lay it before the States as soon as practicable after having received it.
2. I was appointed as Charity Commissioner on 10 July last and so this, my first annual report, relates only to the period of 175 days from then to the end of 2017, although I have, I hope for convenience, strayed a little into the first period of 2018.
3. At the time of my appointment, the Charities Law was not yet fully in force. I was briefed by officials on the intended plan to achieve that by 1 May 2018, when the new register of charities would first be open for business. I am pleased to say that that date has been kept, the States having approved the relevant transitional regulations on 6 March. Since my appointment I have been fully involved in the development not only of those regulations but also the preparation of a range of Orders, as provided for in the Law, covering certain detailed matters such as requisite information to be provided by applicants for registration and the rules governing the restricted section of the register for those putative registered charities that do not intend to seek or solicit donations from the general public. This work is now complete, in so far as the applications process is concerned.
4. Since my appointment I have had the opportunity to meet with and get to know a wide range of people involved in the charitable sector in Jersey. This has been most illuminating and interesting, not least since it has brought home to one the sheer breadth and scope of the sector in our small country, and the amount of commitment and drive provided, voluntarily, by many people, to make things go well and deliver benefit to citizens and more widely. For me this has not only been a chance to learn a lot but also to seek to understand the challenges and issues faced by charities in Jersey generally. This learning process goes on and one suspects it will intensify once the register is open for business.
5. Probably what has most noticeably emerged from all this dialogue is the general welcome which there has been for the new regulatory arrangements. This message has come from just about all quarters within the charity sphere. At the heart of this is, I think, a realisation that appropriate but reasonable rules, along with the prospect of concomitant transparency, is the very best way – perhaps these days the only way – to protect and sustain public trust and confidence in charities generally. If so, the States got things very right when it passed the Law four years ago. The task now is to make the rules work in practice and for them to be a factor operating in support of what is, in aggregate, so important a part of the country's civil society.
6. A key aspect of the new rules worth mentioning, since in this sphere of charity law it marks out Jersey from, I believe, all other common law countries, is that all entities, whatever their current status (that is to say, even if already designated as 'charities' by the Comptroller of Taxes) will need to apply for registration and, as a condition of that, meet the charity test set out in the Law. In Scotland, on the other

hand, when its register was established a decade ago on the basis of very similar rules, some 24,000 existing charities (defined by reference to tax exempt status) were 'grandfathered' across to the new register. It has not been at all easy for the Scottish Regulator to get to know such a large group. In Jersey, by contrast, the scheme established by the States will allow us to be sure from the start about the number, scale and governance of all those entities that become registered charities, and that they do indeed have exclusively charitable purposes and defined plans and intentions for delivering public benefit in giving effect to their purposes. Little could be better designed to seek to ensure the protection of public trust and confidence in the sector as a whole.

7. Alongside interaction with many people and involvement in the development of the detailed rules under the law, I devoted considerable time during the second half of 2017 to the preparation of the guidance on the operation of the Law that I am required to publish. The starting-point for this was considerable immersion in the English law of charity, on whose principles the concepts in the Law are largely founded and which has been regarded by the Royal Court as providing 'valuable guidance' to it in the cases concerning the law of charity in Jersey that it has had before it in the past.

8. In particular, the Charities Law echoes the long-standing common law concept that, for an entity to be charitable, its purposes must be charitable purposes and they must be publicly beneficial. The purposes must relate to the statutory list of purposes given in the Law, and they are to be published on the register. The Law adds to this a model taken from Scottish law whereby any charity, to be, and remain, registered, must demonstrate the public benefit it intends to deliver in giving effect to charitable purposes. Unlike in England, the law in Jersey does not leave this purely to the discretion of trustees (intituled 'governors' in the Law) but follows Scotland in requiring a statement of intended public benefit to be on the register, available to view free of charge by any citizen or other interested party. Successful registration of any entity, whatever its prior status, will depend upon its meeting the 'charity test' established by the Law. Governors of registered charities will be under a duty to act in a manner consistent with the charity's published statements of charitable purposes and intended public benefit. The citizen will thereby be empowered readily to be able to find out, if she wishes, the main details of a charity's operations, something that has manifestly not obtained in the past. That may, or may not, over time influence the pattern of giving but it is hard but to see it as a public good.

9. The guidance is being published in a numbered series of Guidance Notes, all of which are or will be available to view on a new website, www.charitycommissioner.je. Details of all the relevant legislation will be placed there together with other useful materials. The website has been designed to facilitate on-line applications for registered charity status, and there is a mechanism for the asking of questions about any aspect of the Law, and for registering comments, complaints or concerns. The key Guidance Note, No. 2, on the Charity Test, was published for consultation in February last. It has been well received, and a number of thoughtful questions and comments about aspects of it have been put. These are being weighed at the moment and the final version will be published in April 2018, ready for the start of business in May.

10. Although the Charities Law has several ‘unique’ aspects, in thinking about how to approach administering it and ensuring that registration decisions are in all cases wellfounded in law and good practice, I have already benefited from contact with the Scottish Charity Regulator and the Charity Commission in London. I expect such contacts to deepen in the coming period because, as such a small operator, we need to draw as much knowhow as possible from our much larger partners, while of course ensuring that we have our own solutions to problems arising purely under the law as it now stands in Jersey.

11. So the second half of 2017 was a period of learning and preparation for the introduction of charity registration in 2018. All has so far gone according to plan.

12. It has gone so, I must record, only because of the exemplary work of a small team of officials which has been involved with this work over the last year or more. I state my thanks especially to Richard Jouault of the Constitutional and Community Affairs Department, without whose energy, grip and knowledge the implementation of the Law would by now be well behind schedule. He has been especially active in ensuring that the new website is in place and that we are ready to receive on-line registration applications and to establish and manage the public register in a straightforward but satisfactory way. He has also, with colleagues including from the Law Officers’ Department, ensured that the necessary work to bring the law fully into force has been achieved in a timely but thorough manner. This kind of work to give effect to the wishes of the Legislature, often rather unseen and generally unsung in an atmosphere where people are sometimes fonder of focussing on mistakes than on successes, goes to the heart of an effectual public service, and it has been a pleasure to have become associated with it.

Resources

13. The States, in passing the Charities Law 2014, required the costs of the office of Commissioner to be met from its annual income, the Minister being required to provide what he or she considers necessary for the effective discharge of the Commissioner’s functions. In 2017, direct costs were £6500, indirect being subsumed within existing departmental budgets. No expenses were claimed by me and no overheads arose since all my desk-work was done from home. In 2018 there will be an increase in requisite expenditure as the operation of the Law gets going in earnest and the charity register goes live but it is my objective to ensure that this is all done at the lowest reasonable cost to taxpayers. As already noted, the States wisely decided not to impose any charges at all on applicants for registration or for the viewing of the register, which invites a not uninteresting comparison with similar arrangements such as, for instance, the register of companies. It is that very lack of charges that will drive transparency.

John Mills CBE
Charity Commissioner
March 2018