



## JERSEY CHARITY COMMISSIONER

The Jersey Charity Commissioner  
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*Dear Senator Gurr,*

### **Registration of Charities**

I thought I might write to you ahead of next week's debate in the States Assembly on P.2019/80, principally to update you on how registration is going. You may care to circulate this letter to States members ahead of the debate. I shall also, separately, place the letter in the public domain.

The proposition is about extending for another year the transitional tax arrangements for entities formerly in receipt of charitable tax exemption whose applications for registered charitable status, where made before 1 January 2019, were not determined before that date. The existing rules, put in place over a year ago, gave relief only for calendar year 2019. The proposal is to extend this through 2020 so that any such entities whose applications still remain undetermined at the end of 2019, and which may be in a position to benefit from tax exemption, are not thereby disadvantaged.

I mooted the idea of such an extension in my 2018 Annual Report, at paragraph 40, not only because of likely continuing workload pressures but also lest tax exemption would be lost where '2018' applications had not yet been determined, for whatever reason, while it would continue, where I had reflected applications, and appeals to the Tribunal ensued. The case for a further year's extension strengthened in succeeding months, as I said to you in the summer, and I am grateful that you have now put forward the proposition. If agreed, it will help considerably towards satisfactory outcomes to outstanding applications being reached in an unhurried way.

This said, my small, excellent, team has been strengthened lately on a temporary basis and I am confident that 'throughput' of cases will continue at a good rate in the last quarter. This includes some where I expect to determine that the charity test is not met, a category of case to which it is necessary to give a lot of consideration and where the judgements to be made can be quite finely balanced.

### **Current Position**

This has moved on quite a bit since the proposition was lodged in August. As of Friday last, the 27th, I had received 477 applications for registration, 20 more than the number noted in the proposition report. 444 of these were for general registration and 33 for restricted registration. (The latter category, as you know, is available to those entities which, broadly speaking, are able to commit to not seeking to raise funds from the public at large.) Seven of the 477 had been withdrawn and 25 put on hold by agreement with the applicants, leaving, effectively, 445 requiring determination under the charity test.

215 of those are now registered. Since last Friday I have approved a further 16 for registration although the particulars of these may not yet have been entered on the register. That makes 231 approved to date and, as of now, 214 applications yet to be determined.

Of those 214, 193 were submitted before 1 January 2019. That group therefore forms the cohort of applications in respect of which any putative benefit from the extension of transitional relief would accrue, were they otherwise to have a liability to tax in 2020. The cohort will reduce in size steadily as the remainder of this year goes by and, in any event, in many cases the applicant entities in question will not be in the tax net at all. The extra transition year, however, if agreed, will provide a safety net, so to speak, where a tax liability may otherwise arise.

The group of 193, I should also say, may or will include a number – in single figures, I think, but, taken together, quite large in reach - whose applications I would probably expect now to be in a position to seek to determine favourably but for their falling within Art.5(2) of the Charities Law. By this, an entity that meets the charity test nevertheless does not do so if its constitution expressly permits its activities to be directed or otherwise controlled by a Minister or member of the States Assembly acting in that capacity. The various arrangements in question have grown up over the years, mainly, it would seem, from a ‘keeping control’ perspective, an approach it could be said was now perhaps overtaken by the regulatory and registration scheme brought into play under the 2014 Law (as well as other things such as the guidance of the Appointments Commission). Action at both official and political level is, I understand, in hand in respect of certain of these cases to see whether necessary amendments to constitutions may or should be made, but it’s the kind of business that’s rarely easy to rush. An extra year’s tax transition would certainly make things easier in this particular regard.

It is also fair to say that some of the applications for restricted registration are not without their complexities, of a legal as well as a financial kind, and this part of our business really does need whatever time it takes both on our part, and that of trustees and their legal advisers. An extra transition year will for sure be of value in some of these cases.

Summing up, the number of applicant entities for which the extra year’s transition has the potential to be beneficial is one that will probably be fairly small, but that is not, of course, to diminish its possible importance for those concerned.

It is also to be remembered, for the avoidance of doubt, that transitional tax exemption is of no consequence for the nearly 50 entities that have applied for registration since 31 December 2018.

### **The Registration Challenge**

I adumbrated in my Annual Report last April most of the points set out below. A further half a year’s experience has reinforced these. In most cases it is appearing that problems and questions are capable of resolution, in some instances by seeking or urging particular actions during the first year of registration. Cumulatively, however, they add to the time needed to

address our overall caseload, with a few taking up a good portion of the intellectual capital we have available at any one time. It is also generally the case that we have to work with trustees who are busy people and, by and large, volunteers. A lot of organisations, moreover, have but quarterly or even half-yearly trustee or board meeting cycles. I commend the commitment of the people with whom I and my team are thus engaging both to their organisations and to the sense that the regulatory regime the States Assembly has established for charities is a good thing viewed in the round.

Looking at the various issues, the first is simply that we have received a lot more applications than was envisioned. The working assumption at the outset was around 330, which reflected information from the Comptroller as to the number of tax-exempt entities on his books, the which was also in fair line with the then membership list of the Association of Jersey Charities. It's good that in our small country we have rather more charities than it might formerly have been owned, but it follows that getting through all their applications for registration to a wholly satisfactory standard is taking longer than was thought when the transition arrangements for 2019 were developed eighteen months ago.

The second is that there are more cases that are not straightforward than I, for one, had contemplated there would be. Many of the issues which arise are not inherently difficult, but they invariably involve having to make a judgement about the charity test and thus require particularly careful analysis and, often, interaction with applicants. The issues in question are mainly the following, whether singly or in combination:

- objects that are not, or may not be, exclusively charitable
- objects seemingly not being pursued and things being done outwith them
- claimed public benefit not deriving from the pursuit of objects
- public benefit demonstrable in respect of only some objects
- question-marks over whether public benefit is being delivered, or planned, to a reasonable degree [one of the public benefit tests in the Charities Law]
- prevalence of private benefit beyond anything purely incidental
- possibly undue restrictions on access to benefit because of, say, membership arrangements that are restrictive or not transparent, or charges for access to benefits that may be untoward, and where such restrictions may not readily or obviously be capable of satisfactory mitigation
- public 'disbenefit' from what an entity does possibly outweighing any public benefit [balancing these, one against another, is also one of the public benefit tests in the Law].

Thirdly, I would now also add to this list

- some surprisingly complex structures that are not always straightforward to disentangle
- a variety of information shortcomings, mainly concerning the time taken to produce 2018 accounts but also where applications, perhaps done in a rush at the end of 2018, are incomplete in one way or another; and

- a few cases so far where the name of an intended registered charity may be misleading [a sphere of some importance for public trust and confidence in charities where the States chose to lay down some quite detailed rules in the 2014 Law].

My approach to all such issues were addressed in the statutory guidance on the charity test and the operation of the Law which I issued last year after public consultation. In most instances it must be said that one is confronted much more by sins of omission than of commission. Sorting them out so that public confidence in registered charities is protected is exactly what the registration scheme was designed to do; but, with nearly half a thousand cases on the table, in aggregate it is not always speedy work. And the process needs to be the more intense where I may have formed a provisional view that an application may have to be rejected for not meeting the charity test. The test is not a formality, although perhaps to start with some people did think that.

Nor is the time we are needing to take a matter of 'resources'; the small team we now have in place, recently strengthened for the rest of this year, has now got good expertise and is, I believe, well regarded by those in contact with us about their applications; and we have a door on the latch when people ring up or call by. We have learned a great deal and I think that, little by little, we keep on getting better at handling the cases before us; although each is different, common themes abound.

It is also important to remember for whose benefit this process is being put in place: not just charities themselves and their beneficiaries but also, and primarily, citizens and donors: that is to say, the public at large. My principal duty under the Law is to protect public trust and confidence in registered charities and I must, and shall, give each application the time necessary to ensure that we have a public register of Jersey charities that is not verisimilar (as perhaps some are in other countries where they have not been initiated from scratch as is ours) but which can offer real assurance from the start that the entities named on it do in fact do what it says on their tins, to a good standard, with good governance and, above all, with serious and valuable benefit to the public.

One intention of policy when the Law was being developed, you will recall, was that for the first time we would have good information about the charity sector as a whole, as to its scope and scale, and its place in the economy. This was always a kind of big unknown; the sector has never, for example, been classified separately in economic statistics or its 'social and economic value' [one of the key tests in the business licensing rules] assessed, whether quantitatively or qualitatively. The data that we shall have gathered once the register is complete will help to change this. It seems to me that this is important not just intrinsically but also as a new window on economic policy and regulation. I should welcome the opportunity to explore this with you further in due course with a view to developing public discourse on something which is really quite hidden from view at the moment, and maybe disregarded as a result.



## Conclusion

Good progress is being made on developing the public register of charities. There is, however, rather more to do than we first thought, measured both by the volume and complexity of applications for registration, which is why the proposed extra year's transition will, if agreed, be a good thing. It would give some extra room for manoeuvre in the correct resolution of residual cases - including, I hope, 'ministerial [or States Assembly] control' cases - while removing the risk of any potential financial disadvantage to the applicant entities involved. Notwithstanding, in the last quarter of this year we are, anyway, well-placed to determine a considerable, further, number of applications. Engagement with applicant entities is proceeding constructively, and, I sense, with a deal of understanding of the underlying administrative and intellectual challenges.

I do also readily recognise that we have been obliged to be slower in resolving some applications than we may have wished or liked. I have sought to explain why this is so and there is no one answer. Casework can be inherently complicated in any sphere of public policy, whatever resource is available to deal with it; but it always has to be done to an absolutely high standard in order for confidence in the process to be sustained, among both 'producers' and 'consumers'. I am grateful to all those involved for their forbearance, but I know that they, generally, know too that it is important to get this process right.

I shall, if I may, update you again as we approach the Christmas break but am, of course, at the disposal of you or any States member should there be any questions or comments to be put or made about the Commissioner's work.

I look forward to following next week's States debate.

*Yours truly,  
John Mills*

John Mills

Senator Ian Gorst