

26 May 2004

The Jersey Law Commission
Whiteley Chambers
Don Street
St Helier
Jersey
JE4 9WG

Dear Sirs

Consultation Paper - The Jersey Law of Charities

Further to my letter of 17th March the Executive Committee has received feedback from some of our members on the Commission's proposals for reforming the law of charities, whilst the following charities have responded direct to the Commission: Jersey Blind Society, Jersey Hospice Care and Family Nursing & Home Care (Jersey) Inc.

There is a commonality in the responses we have received in respect of the following matters:

- 1) The filing of audited financial statements
- 2) The recommendation that public Charities should have at least one trustee who is registered under the Financial Services (Jersey) Law 1998
- 3) Conflict of interest if the Association of Jersey Charities was to fulfil certain roles of a Charity Commission whilst retaining it's grant funding function.

1) The filing of audited financial statements

- a) Response of Good Companions Club:

'In principle we agree with this proposal but there needs to be clear definition of the level of audit required. We note that an exemption from the audit requirement is proposed for charities with income less than £5000 per annum but we expect that this will still leave the majority of Jersey Charities requiring an audit.

If the proposal is that charities should be audited by one of the accountancy practices in the island, we believe that this will cause problems both for the charities and for those accountancy firms. All of the audit firms are already under pressure to carry out a lot of "honorary audits". We believe that they will not welcome the extra work and will need to make a commercial charge which will increase charities' costs. The current practice of our two Clubs is to use the services of qualified accountants who are Rotary members, and we believe that many other local charities follow a similar (cost free) practice. We propose therefore that the definition of the required audit should be sufficiently flexible to allow charities to arrange a meaningful audit, without being over-burdened with additional cost'.

b) Response of The Anthony Nolan Trust:

'The paper also proposes introducing a requirement for the production and public filing of audited financial statements, to significantly reduce the possibility of funds being used for fraudulent purposes. There can be little objection to the principle that an organisation raising funds from the public should produce and file publicly accessible financial statements (in the way that a public company is required to do so under the Companies (Jersey) Law 1991), but the proposal to require an audit should be approached with care, not least because there is a finite number of auditors in Jersey, and, in particular, those prepared to act in an honorary capacity. The Commission's proposals to set a threshold are therefore welcomed, but the level should not be set until there has been an opportunity to consider the additional costs involved with an external audit.'

c) Response of The Wanangwe School and Orphanage Trust Fund:

'It is hoped that the regulation will not be so tight as to insist that all charities must have annual accounts professionally audited whilst many accountants currently audit charity accounts without charge there can be no guarantee that such kindness will continue indefinitely.'

2) The recommendation that public charities should have at least one trustee who is registered under the Financial Services (Jersey) Law 1998

a) Response of Good Companions Club:

'Firstly the consultation paper is inconsistent on this point. In section 4 there is a statement that the Law Commission is of the opinion that in the application of further regulation, a distinction should be drawn between public and private charities. The section goes on to suggest that private charities (which do not have to apply for Jersey Tax exemption) should have one trustee who is registered under the Financial Services Law. Then in its conclusion, the Law Commission recommends that this should apply to both private and public Charities. This is inconsistent in that it results in no distinction between private and public charities. There also seems to be some confusion in the paper in the references to 'trusts' and 'charities'. We believe that most registered charities in Jersey are not formalised as trusts. If the proposal to require at least one trustee to be a registered person was intended to apply to charitable trusts, then we would support the proposal. However, we believe that this form of additional regulation is inappropriate and unnecessary for public charities.'

b) Response of The Anthony Nolan Trust:

'The paper's summary of proposals suggest that at least one of the trustees or directors or members of the management of a public charity should be registered under the Financial Services (Jersey) Law 1998. The body of the paper, however, suggests that this would apply only in the case of private trusts. If it is the Commission's intention to apply this requirement to both types of charity then we would object most strongly, on the basis that a separate oversight regime is already proposed for public charities within the paper. The costs involved in securing the services of a person registered under the Financial Services (Jersey) Law 1998 would not be insignificant, and it is questionable whether the participation of such a person in the affairs of a public charity (as opposed to one established for the purpose of a capital market transaction) would add greatly to its overall governance.'

c) Response of Centre Point:

'The recommendation is clear, although there appears to be contradiction in that the Reform section (page 15) the Commission makes its recommendations for further regulations to distinguish between public and private charities. Part (b) of their recommendations (at the foot of page 15) reads 'As regards private trusts with charitable objects or other private charity, a requirement should be introduced that at least one of the trustees or directors or one member of the management would have to be a registered person under the Financial Services (Jersey) law'. Note here the reference to private charities.

It is difficult enough finding and retaining suitable people to act as trustee, director of committee members of private charities. Obviously there are only a limited number of persons registered under the Financial Services (Jersey) Law to fulfil this requirement. The number available may well be restricted if their own employers or organisation (which in turn are registered with the Financial Services Commission) were unwilling for their employees acting in such a charitable capacity.

I believe that smaller charities (indeed even some of the larger charities) may well encounter a significant problem in meeting this proposed recommendations.'

3) Conflict of interest if the Association of Jersey Charities was to fulfil certain roles of a Charity Commission whilst retaining its grant funding function

a) Response of Jersey Society for the Prevention of Cruelty to Animals Inc:

'At present the Association (AJC) allocates monies for specific projects if the members are in agreement. This check of the members may need to be removed or the allocation of funds removed from the work of AJC to avoid conflicts of interest.'

b) Response of Jersey Mencap:

'We feel that the committee dealing with assessing applications for charities to receive funds should not be the same body, investigating complaints against charities.'

c) Response of Jersey Cancer Relief:

'We are not sure how a non-governmental commission based on AJC would equate with the independent aspect.'

4) Other points raised by members

- 'Registration of public charities should be mandatory not voluntary.' (Jersey Cancer Relief)
- 'The paper proposes to exempt any charity already registered as a charity in a EU Member State from the requirements of the law, without setting out its reasons for doing so. If funds are being raised in Jersey by EU based charities then, at the very least, there should be a requirement to notify an authority in Jersey of that fact and a power (whether it is used or not) to investigate local fund-raising activities (assuming that this is also proposed for Jersey public charities). In addition, there is no assessment of how effective oversight regimes are within the EU.' (The Anthony Nolan Trust)

- 'If any charity already registered is to be exempt from the requirements of the law we assume that such a charity would be required to provide its registration details on any activity in the island.' (Jersey Cancer Relief)

A number of members commented that of the results of the questionnaire, sent out to members of the AJC some years ago to gauge views on the formation of a Charity Commission, is somewhat irrelevant given its age and the changing regulatory environment.

It would seem sensible to draw up a new questionnaire, with the help of the Law Commission and JFSC, in order to establish a more accurate picture of current thinking.

The Executive Committee of the AJC look forward to working closely with the Jersey Law Commission and the JFSC to increase public confidence in the integrity of charity and to progress the matters set out in the JLC's consultation paper.

Yours faithfully

Francis Le Gresley MBE
Chairman