

**WRITTEN QUESTION TO THE
MINISTER FOR EXTERNAL RELATIONS AND FINANCIAL SERVICES
BY DEPUTY M.R. HIGGINS OF ST. HELIER
QUESTION SUBMITTED ON MONDAY 18TH OCTOBER 2021
ANSWER TO BE TABLED ON MONDAY 25TH OCTOBER 2021**

Question

Will the Minister advise whether, under the Charities (Jersey) Law 2014, local charities are prohibited from being registered with the Jersey Charities Commission if they have a member of the States Assembly on their Committee or Board of Directors and, if so, explain why?

Answer

Article 5(2) of the Charities (Jersey) Law 2014 states that:-

“(2) An entity that otherwise meets the charity test, nevertheless does not meet that test, despite paragraph (1), if its constitution expressly permits its activities to be directed or otherwise controlled by, or any of its governors to be –

- (a) a Minister;*
- (b) a member of the States Assembly; or*
- (c) any equivalent of such a person in another jurisdiction,*

acting in that capacity.”

This is based on the principle that the governors (which term includes the directors of a company where the company is the charity) of a charity should be independent, including from political control or influence, and must act only in the best interests of their charity avoiding any conflict of interest or loyalty, and ensuring that the charity is run so as to fulfil its charitable purposes.

The Charity Commissioner has produced Guidance on this in his Guidance Note 2 “The Charity Test” at paragraphs 39 – 45. The full section of the Guidance should be read but it is noted that the Commissioner indicates in the Guidance that a States Member can be a governor of a charity ‘*provided that the person has been appointed in a personal capacity and that there is no actual requirement in the given entity’s constitution for such a person, as an office-holder, to be a governor.*’ The Commissioner also indicates that in some circumstances it is permissible for a Parish Constable, a Crown Officer, the Dean or the Lieutenant Governor, to be a governor, by virtue of her or his holding one of those offices, depending on the circumstances.

<https://charitycommissioner.je/wp-content/uploads/2017/12/CC-Guidance-Note-2-The-Charity-Test-2.pdf>

Accordingly, in certain situations it is possible for an entity to be registered as a Jersey charity where a governor is a member of the States Assembly; it is a matter for the Charity Commissioner to apply the charity test according to the particular circumstances of each application.