



Corporate Services Scrutiny Panel Draft Charities Law

WEDNESDAY, 30th MAY 2014

Panel:

Deputy J.G. Reed of St. Ouen (Chairman)

Deputy R.J. Rondel of St. Helier

Witness:

Jim Hopley (Chairman of the Jersey Voluntary and Community Sector)

[10.00]

Deputy J.G. Reed of St. Ouen (Chairman):

I would like to formally start the Corporate Services Scrutiny Panel public hearing, which is with the chairman of the Jersey Voluntary and Community Sector, Jim Hopley, and we are considering the Draft Charities (Jersey) Law. I would, first of all, like to give the apologies of our Chairman, Senator Ferguson, and the Constable of St. Lawrence who, unfortunately, are unable to be with us today.

Deputy R.J. Rondel of St. Helier:

But, if I could say, you have the best of the bunch here.

Chairman of the Jersey Voluntary and Community Sector:

I recognised that instantly, yes.

Deputy R.J. Rondel:

Sorry, Vice Chairman.

The Deputy of St. Ouen:

That is on the transcript now. I would like to draw your attention to the scrutiny protocol that is in front of you, just to make sure that you are clear about ...

Chairman of the Jersey Voluntary and Community Sector:

Yes, I am extremely familiar with that.

The Deputy of St. Ouen:

... how we operate at this hearing. Right. I think, without further ado, if we can just go quickly round the table and introduce ourselves, name and position, and I will start. My name is Deputy James Reed. I am Vice Chairman of the Corporate Services Scrutiny Panel.

Deputy R.J. Rondel:

I am Deputy Richard Rondel of St. Helier 3 and 4 Districts.

Chairman of the Jersey Voluntary and Community Sector:

Jim Hopley; in this context, Chairman, as Honorary Chairman of the Jersey Voluntary and Community Sector partnership but, for the record so that it is understood, I also chair Jersey's Disability Partnership, Cheshire Home. I chair Genuine Jersey, which is a not-for-profit organisation. In this context I am associated with lots and lots of other charities, so my reach is very, very broad in this context.

The Deputy of St. Ouen:

Thank you.

Scrutiny Officer:

Sally McKee, Scrutiny Officer.

Deputy R.J. Rondel:

Thank you. Mr Hopley, in general, how has the draft legislation been received by members of the Jersey Voluntary and Community Sector? I mean, you have been consulted upon.

Chairman of the Jersey Voluntary and Community Sector:

Absolutely, yes. I think what the panel perhaps needs to understand is how things have evolved because I think it is totally relative and totally relevant to that. The sector (and I mean by that not only the Voluntary and Community Sector but specifically the charity element of that) along perhaps with the financial charities that are based in the Island, have been pushing for a long time for some sort of formalisation of our position. The main reasons driving that was obviously a concern that, without regulation and without proper registration because the Association of Jersey Charities registration situation is not mandatory, it is not formalised in any sense. In fact it has got no legal standing at all. All that really is is an effort to collate information on charities, to register them for A.J.C. (Association of Jersey Charities) purposes so that they can in the fullness of time apply for grants and so forth. So the whole of the sector (and I can speak with a lot of knowledge over many, many years) has been pushing for some sort of regulation and some sort of legislation. The codicil to that always was that it must not be simply inflicted. It must not be just lift something from other jurisdictions and say: "There it is." It needed to be proportionate, balanced, sensible and take cognisance of the nature of Jersey, the nature and the variety of organisation that already exist in Jersey and the great depth and breadth of charity within the Island, which is amazing when you scratch the surface. So the codicil was always that they must "Jersify" it. They must take cognisance but it must be sensible, balance, proportionate and so forth.

Deputy R.J. Rondel:

Do you feel that your sector has been given sufficient opportunity to be involved in assisting with the law?

Chairman of the Jersey Voluntary and Community Sector:

Well, the mechanism, without going chapter and verse but to give you a flavour, they finally decide the Chief Minister's Department will take responsibility. They will bring forward legislation. So the opening gambit is to consult directly with specific organisations. The A.J.C. are called in under now the chairmanship of Phillip Callow who, to be fair (I believe you are seeing him next week) is extremely well-versed in charities, charities legislation and so forth. His experience in the U.K. (United Kingdom) is quite valuable in that degree. My organisation, in terms of the Jersey Voluntary and Community Sector, was also invited to participate. Not only myself as honorary chair and John Pinel our executive officer, but our broader committee through discussion were ...

Deputy R.J. Rondel:

This was at an early stage?

Chairman of the Jersey Voluntary and Community Sector:

At a very early stage, before the draft legislation was even released.

Deputy R.J. Rondel:

Yes.

Chairman of the Jersey Voluntary and Community Sector:

We were given prior knowledge of what was intended. We had an opportunity influence it to a degree (not to change it particularly, because you have got to start with something) and then obviously, once released, we also had the ability to discuss the nature of the consultation process. Now, the ...

Deputy R.J. Rondel:

Sorry, go on.

Chairman of the Jersey Voluntary and Community Sector:

Sorry. Stop me, because I can talk forever.

The Deputy of St. Ouen:

Are you aware that they selected, as the basis of our charities law, the Scottish model rather than the U.K. one?

Chairman of the Jersey Voluntary and Community Sector:

Yes. A very sensible decision to be honest because the English/Welsh law was their first. Inevitably, it was full of flaws and problems, which are ongoing. The Scottish model, when it came, took the best of the English model, learned some of the lessons, tweaked it to suit the Scottish scenario and gave Jersey an opportunity, in many ways, not to fall into the same traps that the English situation had got into, to take the Scottish model and refine the Scottish model to "Jersify" it. That was a considered policy, which I think the whole of the detailed involved elements of the charity sector would concur with.

The Deputy of St. Ouen:

So are you saying that the Scottish model is held by many to be a good and effective model that deals with and supports local charities as much as the financial services ...

Chairman of the Jersey Voluntary and Community Sector:

Yes. It was designed to avoid much of the litigation and court record situations that the English and Welsh model are currently facing. There are lots and lots of court battles in the U.K., whether an organisation is a charity or whether it is not a charity. In some ways the English law did not go quite far enough because it did not insist on total registration. It had exceptions and that is not

necessarily the best thing to do. It depends what follows after you register, of course, but we will come to that, no doubt, later.

The Deputy of St. Ouen:

Yes.

Chairman of the Jersey Voluntary and Community Sector:

So we felt there were lessons to be learnt. By all means look at the English/Welsh model. Why did the Scots change that? Learn the lessons from Scotland, tweak it again to suit Jersey ...

The Deputy of St. Ouen:

To "Jersify" it.

Chairman of the Jersey Voluntary and Community Sector:

... and then you have the best of all worlds. Certainly you could have looked at other jurisdictions, but ...

Deputy R.J. Rondel:

Have you in turn consulted with your members and how many members would you have and are they supportive?

Chairman of the Jersey Voluntary and Community Sector:

Let me explain. When the Chief Minister's Department put the original proposition in the summer of last year - do not ask me the precise date but it June/July, I believe, of last year - what they then did was obviously engage in quite a robust consultation. They dealt with the financial services element, the financial private trust and so forth, as a separate requirement and that made sense. You cannot split the 2 because they would be covered by the same law but they did deal with that as a separate entity. Then they offered an opportunity - 7 or 8 consultation meetings - to the breadth of the sector. Now, the A.J.C. obviously attended those meetings in a formal sense but also the Voluntary and Community Sector Partnership did. Either John Pinel or myself attended every one of those sessions. We were not there to take sides or to intercede. We were there to listen to the observations coming from the floor, from the charities who attended the consultations, to look for trends and to look for general concerns across the piece that we could then take back to the Chief Minister's Department, to Senator Routier and Ruth Johnson who was leading this, and deal with concerns that were genuinely coming from the floor. The interesting factor was that from day one the first consultation session compared to the last consultation had moved quite significantly. The presentation was changed because observations were made early days. The validity of those observations was recognised and ongoing during the process things were

tweaked. It was often a question of interpretation and how it was put over rather than what was being proposed, but it was a very good consultation, well attended. I think probably close to 200 individual organisations sent representatives to those consultation sessions and, of course, people like me sitting there representing 5, 6, 7, whatever, organisations.

Deputy R.J. Rondel:

Absolutely. Just to clarify, I think it was during April last year they did those consultations.

Chairman of the Jersey Voluntary and Community Sector:

Okay. Well, no, there was a follow up, was there not, Deputy?

Deputy R.J. Rondel:

Yes, then there was a follow up.

Chairman of the Jersey Voluntary and Community Sector:

Having gone through the first consultation and having listened to the concerns and observations, those were digested. There was obviously an element then of trying to record the acceptability of the sector. You have got the figures, no doubt. Okay. Now, it depends how you ask questions how many people support the answers, but the flavour that came back was that the vast bulk respondents were incredibly supportive, not only of the general proposition but of the elements of the proposition. There will always be detractors. Individuals will always have concerns.

Deputy R.J. Rondel:

What would those concerns be? Were there any specific ...

Chairman of the Jersey Voluntary and Community Sector:

Yes. There was a lot of confusion over the term “manager” in the original one, because they were trying to find, to suit the trust law requirement, some sort of terminology that would cover committee members or foundation members or whatever they are. They picked the word “manager” and that was a nightmare because managers in the charity context are the professionals, perhaps, who run the actual organisation. Not in any sense of the word ... but, anyhow, they have dealt with that as time has gone on. There was a lot of concern about the impact that would result, not so much for registration but perhaps concern over what might happen in terms of the onus put on smaller organisations and so forth.

Deputy R.J. Rondel:

Do you feel that has been dealt with sufficiently?

Chairman of the Jersey Voluntary and Community Sector:

Well, you need to track the whole history. Having conducted the first consultation and having then taking a straw poll where you have got favourable results, which I would not particularly argue with (and, as I said, I was there through most of the consultation hearings, et cetera, and that was the flavour of what was going on), they then tweaked the legislation. They took a while to do it. The law draftsmen and so on are not the fastest working animals in the world and they have got lots of commitments. They tweaked what was proposed and obviously, as you say, in April of this year put that out for a second round of consultation.

Deputy R.J. Rondel:

Now, you mention there the word “governors”. They have come back and sort of amended that ... sorry, “managers”. They have amended that to use the term “governors” and the definition of a governor has also been updated to help distinguish between governors and staff, whether they are paid staff or unpaid.

Chairman of the Jersey Voluntary and Community Sector:

Yes. I think it is technical in some ways because I believe you cannot use the word they should be, which is “trustees”, because it conflicts with the elements that are already in the trust law. So they are between a rock and a hard place. As long as the explanation is there I do not think there is an issue at all.

The Deputy of St. Ouen:

The question that needs to be asked is: do you think that the development of the law has been made more difficult because of the 2 objectives, one to deal with the regulation of the local charities and, secondly, to encourage growth with charity trusts.

Chairman of the Jersey Voluntary and Community Sector:

Yes. I think, looking at it from my end of the thing, there was always an attitude, “Well, this must not be delayed this must not be deflected just simply to satisfy the desire to tidy up the private trust situation and to open up the opportunity to drag charitable trusts and foundations and so forth into the Island.” Everybody understood the benefit of that, including certainly people in my voluntary and charity sector, because the opportunity that gives us, complete with proper registration, is immense. It was a problem but, again, at the end of the day it has been a little bit fraught negotiating the way through it and it has been a bit confusing at times because terminology has been changing and words have had to be modified to satisfy both estates, but largely we have got there. The second round of consultation was as good as the first one because, again, it was well advertised. There was a significant invitation. I do not think quite as many organisations attended (I think probably 150 from the charitable sector and 140 or so from the finance sector) because a

lot of people had been satisfied by the first round and it was not a significant change. It was more about tweaking when the law came out and, again, John Pinel or myself attended all those meetings so, again, we could get a flavour of what our colleagues in the sector were coming back with.

Deputy R.J. Rondel:

Are there any issues you feel that perhaps were not addressed during that by the Chief Minister's Department?

Chairman of the Jersey Voluntary and Community Sector:

Well, Deputy Reed did ask me on the way in if I had seen the response that the Chief Minister put out to the consultation this time. I must be honest. Yes, I have seen it. I saw it last night.

[10:15]

Although, having said that, I have been given, along with my executive officer and also the Association of Jersey Charities, opportunity to discuss elements of it as they have evolved since the consultation closed before that report was put out. We have had meetings with the Chief Minister to pick up certain threads and certain concerns and to have input into how they might indeed respond to it.

Deputy R.J. Rondel:

So have you had a chance to digest that last night?

Chairman of the Jersey Voluntary and Community Sector:

I have read the report. I would not be able to give you chapter and verse on it.

Deputy R.J. Rondel:

No, but generally your concerns have been ...

Chairman of the Jersey Voluntary and Community Sector:

Nothing jumped out at me and said: "That really is an issue." It is not perfect by any means. This will never be perfect. It has got to, at the end of the day, be reduced to the art of the possible rather than anything else but, largely, the major concerns raised by colleagues in the charitable sector have been addressed. There will always be the odd organisation or the odd individual who has a completely different point of view or has got a particular agenda or a particular problem with the organisation that they represent, but even there I think a lot of that was covered by the responses to the consultation. Those concerns have been raised and there is a degree of

reassurance from the Chief Minister that those specific cases will be discussed face to face and they will attempt to find a way through it.

The Deputy of St. Ouen:

Given that the consultation has recently ended and now there has been a response and the law in certain parts has been amended to reflect the responses, what do you plan to do to ensure that the Jersey Voluntary and Community Sector membership has the ability to gain reassurance that that has been the case rather than just simply taking it as a given?

Chairman of the Jersey Voluntary and Community Sector:

Well, I suppose, a little bit like politicians, it is a bit difficult. You kind of speak for the full States but you can only reflect and consider what you have heard from individuals who have raised concerns and so forth. You have got to distil them. With the timescales involved, with the proposition being lodged next week or whenever it is and presumably, hopefully, being debated before July, there is probably not sufficient time to do a full whatever and I am not sure it would be beneficial to do that anyhow. Effectively, the state of play at the moment is fairly simple. Our understanding of the whole process and our involvement has given us the belief that the sector has got some concerns. Most of those concerns are not about the first stage, the registration stage. It will be about the detail, when you get into the regulation, and having already extracted, in writing, promises from the Chief Minister - and whoever the Ministers are subsequent to the general election will not change that situation; whoever sits in the chairs then will have to take cognisance of what their predecessors have agreed to - we have been assured that there will be detailed consultation as the regulations evolve. If there are elements within the regulation that cause concern, because of the timescales, we will certainly have time to open that up to debate within the sector and take cognisance of the general opinions of everybody.

Deputy R.J. Rondel:

So if the process carries on as it has done with your consultation then you would be pretty satisfied?

Chairman of the Jersey Voluntary and Community Sector:

Pretty comfortable, yes.

Deputy R.J. Rondel:

Guidance on public benefit will be issued by the Commissioner. Do you still feel that this part of the law should have been amended so that the guidance is issued by the States?

Chairman of the Jersey Voluntary and Community Sector:

I think it should come from the Commissioner but it should be ratified by the States. That is a personal opinion but I think it is an opinion that would be generally agreed with. I think it needs the credence of States approval.

Deputy R.J. Rondel:

They do say in their response that Article 5 has been amended. While it is still the Commissioner who issues the guidance, there is now a requirement for the Commissioner to consult with the Minister about the content of the guidance prior to publication and the Minister will lay the guidance before the States as a report.

Chairman of the Jersey Voluntary and Community Sector:

That is absolutely what we requested, yes.

Deputy R.J. Rondel:

So that has been dealt with?

Chairman of the Jersey Voluntary and Community Sector:

Yes.

Deputy R.J. Rondel:

Good. Okay.

The Deputy of St. Ouen:

Can you just tell me, if you can, what part the Association of Jersey Charities has played in this process?

Chairman of the Jersey Voluntary and Community Sector:

Well, you have got to understand the relationship between the Jersey Voluntary and Community Sector and the Association of Jersey Charities to start with. We were constituted just over 2 years ago as a subcommittee of the A.J.C. It was always envisaged that in a fairly reasonable time we would break free and, in some areas, supplant the Association of Jersey Charities. We have got an absolutely first-class working relationship with them. My executive officer, John Pinel, works with Lyn Wilton at the A.J.C. on all sorts of matters. Phillip Callow sits on my Jersey Voluntary and Community Sector Partnership representing the A.J.C. as its chairman. We have got one of his predecessors, Advocate Christopher Renouf, sitting on the committee as well with history of both the A.J.C. and the evolving thing. So we are working in partnership on this. The A.J.C. might have a slightly different take on matters than the Voluntary and Community Sector because we are

not only representing the charities. We are representing the totality of the not-for-profit sector and it will be organisations currently who are not registered with the A.J.C. we believe, under the new legislation, might secure charitable status and it will be organisations who would like to secure charitable status under the new legislation, if it is accepted by the States, who might not be granted that. We will have a responsibility to assist and play the honest broker between the 2 sides, so our responsibility is a lot broader than the A.J.C.'s.

The Deputy of St. Ouen:

Can you give us a couple of examples of the types of non-profit organisations that might be affected?

Chairman of the Jersey Voluntary and Community Sector:

Well, under the current charitable regulations here, which are very archaic (do not ask me to quote you chapter and verse, but they are), and under the constitution that the A.J.C. was set up under, there are elements of what would, in any other jurisdiction, be regarded as charitable enterprises - sports clubs and so forth - who are debarred from joining the A.J.C. because of their constitution and, more importantly, at the moment in time are debarred from securing charitable tax status and so forth in the Island because of the nature of the work or the benefit that they are delivering. There are other organisations who perhaps historically were granted charitable status by the tax authority, a very low bar, which had granted it (nobody is really checking to see what you are doing since) who, under the new legislation, might suffer the penalty of: "Well, you are not a charity. Your purpose has changed so significantly, et cetera. If you do not modify what you are doing, we will not be able to register you." So there will be these little problems evolving and there are some anomalies out there. I mean you gentlemen will be more aware than I am. There are some earlier charitable organisations tied to parishes, for instance.

Deputy R.J. Rondel:

Twining committees and things like that.

Chairman of the Jersey Voluntary and Community Sector:

Yes, and church organisations which are beyond the normal purview, whatever that might be, in terms of the Anglican Church or the Methodist Church or whatever it might be. There will be some anomalies here but, to my personal satisfaction by observation when these questions have come up, the officers of the Chief Minister's Department involved in this have recognised some of these difficulties and I am sure they will do whatever they can to accommodate and make the necessary adjustment where it is possible and where it is valid to accommodate this sort of thing in the fullness of time.

The Deputy of St. Ouen:

Coming back to a question that Richard asked you earlier around the issue of public benefit and the need to be very clear about what is considered to be a public benefit or not, I support that is one of the key issues of determining charitable status.

Chairman of the Jersey Voluntary and Community Sector:

Yes. To give you an example, if a sports club is set up - let us say it is a golf club without naming names - and the requirement to join the golf club is that you have got to pay a very substantial annual fee and you have got to get 3 people to nominate you and so forth, then in many elements that is a private club and the barriers put up to general entry are such that the plethora of the population would never be able to do it. If you are, say, a table tennis club and you hire a parish hall for one night a week and the fee is £10 a year to join and you ask people for £2 or whatever every time they play and it is open to everybody and anybody to join without the need to be black-balled or to get whatever, then I think that would be construed much more to be for public benefit.

Deputy R.J. Rondel:

Similarly the shooting clubs and all the organisations like that.

Chairman of the Jersey Voluntary and Community Sector:

If you draw that sort of parallel, so there will be organisations that will be able to claim public benefit. There will be other organisations, because of the construction of their constitutions and the way they operate, which really would be there for private benefit rather than public benefit. The biggest problem, I would suggest, will evolve about maybe fee paying schools and elements of that but, at the end of the day, if those schools offer bursaries and they offer sufficient public benefit within the thing, there are ways where that can be, and has been in Scotland, accommodated. But that is an issue for another day because until the regulations come out you will not be able to pass detailed comment on that one way or the other.

Deputy R.J. Rondel:

Do you believe the law would have any and can you highlight any other negative implications for either the voluntary or finance sector?

Chairman of the Jersey Voluntary and Community Sector:

I take a lot of street soundings and talk to people. I mean lots of organisations attend other meetings that I chair. The Disability Partnership might have 20 or 30 organisations at any of the meetings. The general consensus is people are worried. They are bound to be concerned with change, but they have not seen anything yet which is too significant. One or 2 individuals have but they have got strong personal opinions and they are entitled to those. They have raised those and

they have had answers, but the general consensus is okay. The issue will be, as I said, as you get into the regulations and that is the second phase of this. I mean our situation is very clear at the moment. We see the registration process, the way it has been promulgated in terms of the timescales involved and so forth, to be relatively simplistic. Nobody is being asked to do very much beyond what they are currently doing, particularly if they want to be on the register of the A.J.C. currently and, as I say, it has got no legal standing. It does not give you a recognised charity number for the U.K. because it is not formalised and so forth, but there is nothing within the initial proposition that is too onerous or whatever. The difficulty will come if the regulation then comes in and is constructed in such a way that it puts a lot of requirement particularly on smaller organisations with more of a community-based thing and whatever.

Deputy R.J. Rondel:

Again, we have had a number of individuals express concerns that the law could have an adverse effect on these small organisations by placing more administrative burdens.

Chairman of the Jersey Voluntary and Community Sector:

Well, it could do but, as I say, you have got to take it in its phases. The registration process is really simple. You are not being asked to do anything more than you would be doing now to register with the Financial Services Commission as a not-for-profit organisation, with the Tax Office if you want to get your tax benefit or with the A.J.C. if you want to join the A.J.C.

Deputy R.J. Rondel:

But would that concern be warranted in the regulations? Is it something to look out for?

Chairman of the Jersey Voluntary and Community Sector:

Not necessarily. It depends how the regulations are designed.

Deputy R.J. Rondel:

Absolutely.

Chairman of the Jersey Voluntary and Community Sector:

The A.J.C. has raised this matter as much as my organisation has raised this matter. Our assurances are that once they ... and I think you need to understand the great opportunity with this registration process is nobody - and I mean nobody - at the moment in time knows the breadth and depth and nature of the charitable sector here. We have been trying since we were created over 2 years ago to get some sort of feel for the number of not-for-profit organisations on the Island. It might be 800. We do not know. The Tax Office has got 450 or something organisations registered. Some of them might not even exist anymore. Nobody knows. I mean J.F.S.C.

(Jersey Financial Services Commission) will not even release the information because it is debarred under data protection. I understand that. So nobody knows the breadth and depth of the sector. Registration will give us the information. If organisations choose to register - and do not forget they have not got to, but if they choose to register - that gives them the right, if they then accepted, to call themselves a charity. If they do not register they will not be able to call themselves a charity. They will be able to call themselves a community organisation or something. They will be part of my sector and I will be there to fight in their corner and represent them, but they will not be there as charities. It will give the opportunity to establish the size of these organisations, generally where they are raising their funds from and what they are doing and then you will be in a position to look at the technical things. Do we ask, in the fullness of time, for all charities to produce accounts? If we do ask them to produce accounts, accounts to what level? There is a bit of a difference between ...

Deputy R.J. Rondel:

Have you seen my question plan? You always come up with the answer just before I am asking the question.

Chairman of the Jersey Voluntary and Community Sector:

I mean, do you ask them for a single A4 sheet with their income and expenditure on it or do you ask them for full audited accounts? Now, that has got to be a question of scale obviously.

[10:30]

Deputy R.J. Rondel:

Well, the draft law does not make provision for accounts.

Chairman of the Jersey Voluntary and Community Sector:

No, I know.

Deputy R.J. Rondel:

Now, is that the right approach or should it be a requirement?

Chairman of the Jersey Voluntary and Community Sector:

I know some politicians - perhaps one politician missing from here today - have got a very, very strong view that from day one all organisations should be asked to produce proper accounts. I disagree totally with that. They should produce accounts after a fashion. One of my charities, Huntington's Disease Association, has 6 or 7 members. We raise £500 a year. It is a self-help group to advise sufferers, give a bit of assistance and perhaps to fight in their corner with the

Health Department or Social Security where necessary. Yes, we have accounts. We have a girl from Moore Stephens who produces the accounts. We cannot afford to get them audited. Somebody else looks over them and says: "Yes, they are fine." We do submit them to the A.J.C. and the A.J.C. accepts them and we can apply for funding. We have not, but we could apply to the A.J.C. for funding if we so choose.

Deputy R.J. Rondel:

So are these accounts that are prepared by a volunteer from an organisation, a history of accounting?

Chairman of the Jersey Voluntary and Community Sector:

Well, we are lucky in that we have got a girl who is a member who does financial work for Moore Stephens who is happy to do our accounts, but there are lot of organisations that do not. I produce the accounts for Shopmobility. I am not a trained accountant but I do produce the accounts for Shopmobility. We get them looked over by a friendly whatever not in a formal sense. They are not audited. In the fullness of time ... but it is a question of degree. My Cheshire Home £2 million plus business, we produce full accounts. They are all up to U.K. standards which are professionally audited and so forth and rightly so. We are dealing with vast amounts of public and private money and that is an absolute necessity, but you cannot from day one suddenly say to 100 charities out there who would not know how to produce professional accounts to save their lives but who are running their organisations in a professional manner ...

Deputy R.J. Rondel:

So should there be a turnover maximum?

Chairman of the Jersey Voluntary and Community Sector:

Yes. So even when the regulations come the regulations should be appropriate and proportionate. They might have to do it slightly better than they do now. They will need assistance within that. That is part of the mission of my Voluntary and Community Sector Partnership. If they need help we will give them help. We will find people to assist them, et cetera, but we cannot do it from day one.

Deputy R.J. Rondel:

But do you think there should be a threshold whereby they do not need to do it?

Chairman of the Jersey Voluntary and Community Sector:

I am sure there will be a threshold introduced. There will be proper thresholds but we cannot decide the thresholds ...

Deputy R.J. Rondel:

Have you considered what figure?

Chairman of the Jersey Voluntary and Community Sector:

No, you cannot until you know the depth and breadth of the organisations, what they are doing and where they get their money from, at least a feel for it. I mean it could very well be any organisation below £5,000 does not necessarily have to produce more than a simple income and expenditure figure, between £5,000 and £50,000 you need slightly better and then when you get above £100,000 you need properly audited accounts. I do not know what the figures will be but it is going to be something hopefully on that sort of basis. I think the critical thing you must not do in this is fall into the English dilemma of allowing certain organisations below a level not to register because if you do that you open up this whole issue of vulnerability and bad eggs. I mean whether somebody is extorting £1,000 a year or whether they are extorting £500,000 is relative and the danger of non-regulation and non-registration is organisations can then be set up to claim to be charities who are being totally spurious and that is the big concern the sector has always had. A couple of bad eggs will taint the whole sector with concern.

The Deputy of St. Ouen:

As it is not mandatory for charities to register and you suggested that some charities might not choose to register, what is the likelihood of quite a large number of organisations not registering until they are clear about the regulations that support the primary legislation?

Chairman of the Jersey Voluntary and Community Sector:

Correct me if I am wrong from your interpretation. My understanding is that if you do not register by the close of the registration period you will not be able to call yourself a charity even if, in reality, you are a charity. So you will not be able to go out and try to solicit public funds or States funds or parish funds.

Deputy R.J. Rondel:

It is an opt in/opt out.

Chairman of the Jersey Voluntary and Community Sector:

It is an opt in. You will not be able to call yourself a charity. You can call yourself a community organisation or a voluntary organisation or a not-for-profit organisation but unless you register by the closing date and fulfil the minimum criteria, which is not onerous in any sense, you will not be able to operate and call yourself a charity. You can go on operating and call yourself Joe Bloggs' Voluntary Organisation. That will not be a problem.

The Deputy of St. Ouen:

So it is mandatory, really, for charities to register otherwise they do not have the benefits that are derived ...

Chairman of the Jersey Voluntary and Community Sector:

Well, the benefits are a different thing. I think the pivotal factor at first is that registration gives you the right to call yourself a charity in our opinion, but I believe the A.J.C. believes that is absolutely correct as well. You should be forced to register to call yourself a charity.

The Deputy of St. Ouen:

We have spoken about the tax benefits that are linked to charitable status. Are you suggesting that charities that currently enjoy those tax benefits, if they do not register by a particular date, will automatically lose the tax benefits that have allowed to them?

Chairman of the Jersey Voluntary and Community Sector:

The tax benefits is a fairly complicated piece. I cannot speak for future political regimes, but I do not think the current political regime has got any intention within the construction of this to save money by withdrawing tax benefits from charities. Okay? So I think we need to get that on the table from day one. I think what you will find when you go through this is that there will be the odd organisation - and we are not talking of large numbers - who 20 years ago managed to get the Tax Office with a very low barrier to sign off that that organisation is a charity and give it tax exemptions. Now, it has changed the nature of its organisation quite dramatically in the intervening period and, by any stretch of the imagination, it really is not engaging in charitable purposes but they have still got tax exemptions because they were granted it ages ago because nobody is following this up and checking, et cetera. Once you have got your tax number, unless something very obvious comes out, then you have got it for life basically. So there will be a few organisations that get called to account. Now, they have got 2 options then. They will not, as I understand it, immediately lose their tax exemptions. There is this grace period where they move from the registration to the regulation where they will still retain their tax benefit. They will then be given advice on what they need to do to re-establish their charitable status. It is their decision then whether they meet the new definition and modify their procedures to re-engage and retain their tax status of they say: "Well, no, the tax status is not that important to us. We will go on doing what we are doing the way we are doing it now, but we will lose our charitable tax status."

The Deputy of St. Ouen:

So, just for the sake of clarity, we could have a number of not-for-profit organisations that currently accept donations from the public, that may not wish to register and will not fit the definition of a

charity. However, for all intents and purposes, they would still continue to be considered by the public, who are donating funds to them, a charity. How does that work?

Chairman of the Jersey Voluntary and Community Sector:

Well, technically you are right but I think you have got to put this in perspective. I mean if any organisation is currently soliciting money from the public then they really should be fulfilling a charitable purpose if they are claiming to do it as a charity. So if there a not-for-profit organisation that is acting in that way and then is not providing public benefit then I think it is fair to say they should not have been granted the status in the first place. As I said to you, the rules are fairly simple as I currently understand them. You are invited to register. If, when you put your registration application in as one of these organisations and under the rules that are drawn up by the Commissioner, endorsed by the Minister, countersigned by the States, because that is what we have discussed and what is our position, then that organisation will be given a grace period where they will go on enjoying the tax benefits and they will then be given advice on how they need to modify to fulfil the requirement. It is their choice. If they decide: "No, we are not going to do that; we want to operate as we do," they will still be able to call themselves XYZ Voluntary or XYZ Community Organisation and so forth. They might lose their charitable tax benefits.

The Deputy of St. Ouen:

I understand absolutely the ...

Chairman of the Jersey Voluntary and Community Sector:

They still might be able to apply for contributions from the public, but not as a charity.

The Deputy of St. Ouen:

I understand the benefits that are going to come from regulation, but are you aware of significant concerns being raised by the public around the registration of charities?

Chairman of the Jersey Voluntary and Community Sector:

I do not think there is a huge groundswell. I mean we have been very lucky in the Island in that we have had the occasional insinuation that charities are not working quite as they should or they are not doing it the right way and so forth, but I have been in the Island now for 35 years and I cannot really recall an instance where a charity has been taken to court or has been found to be doing anything totally dubious. There is a risk out there, of course, that that could happen and the biggest danger of all is that one or 2 rotten eggs could ruin the basket because, when you consider the Island and the nature of charitable donations and participation here, it is absolutely amazing. The number of people engaged with charities as volunteers and the public's response to charity appeals with regular contributions and whatever is totally disproportionate per head of population

with anywhere else in the world. I think it is a fantastic environment. Cameras and big society existed here decades ago and there is an awful lot they could learn from us, but it is at risk if there is not the underwriting of proper regulation and proper registration. I think the sector has perceived that and I think the more perhaps deep-thinking elements of the public also understand that and they have seen illustrations in the U.K. and elsewhere where people have set up charities that are somewhat dubious and their purpose bears very little relationship to their title. You set up a charity, a holiday for a deprived community, and the money is all spent on the trustees going to Australia to do research or something. I mean it has to be sensible and balanced and I think there is a public concern there and I think this sort of regulation, if it can be negotiated through in a balanced, sensible and proportionate way, will give the public, it will give donors from the private sector, it will give donors in the way of parishes and the States, a lot more confidence that their money is going to organisations that are using it for proper purposes.

The Deputy of St. Ouen:

Are you concerned that non-local-based charities and individual trusts are going to be treated differently to the local-based charities?

Chairman of the Jersey Voluntary and Community Sector:

Let us say you are a U.K. charity and you want to raise funds in the Island. Great Ormond Street is a perfect example. Great Ormond Street is not and will not be a Jersey-registered charity, I would suggest. It will be a U.K. charity. It will be entitled to call itself a U.K. charity. It will be entitled to raise funds here in the Island on that basis, but it will not be on the Jersey register. It will be a public decision. The individual will decide whether they want to donate to Great Ormond Street or not and there is no way the Island can stop the public donating to Great Ormond Street if they wish to, but what it would not be able to do is in any way claim tax benefits here in the Island on those donations, et cetera.

The Deputy of St. Ouen:

I hear what you are saying but it also seems to me that within the charities law, although Great Ormond Street - and I am pleased you used that example - is not able to claim the tax benefits that would generally arise from that sort of activity, we have got wealthy individuals and families and others that are able to not only bring money to the Island but gain tax advantages legitimately through the charity law.

Chairman of the Jersey Voluntary and Community Sector:

There are 3 elements to this. Let me use another example. You have the British Red Cross. The British Red Cross has got an operation here in Jersey. They are obviously directly linked to the British Red Cross but what they will do, I assume ... I have not discussed this in detail with Nick

Chandler at the British Red Cross but I know Nick has been to the sessions. He has the opportunity, in conjunction with the mother ship in the U.K. to register his charity here as a Jersey-based element of the U.K. charity. They will have to, somewhere along the line presumably, produce some level of accounts to satisfy the requirement here. That organisation then will be able to gain Jersey tax benefits based on what is happening at this place.

[10:45]

Deputy R.J. Rondel:

Is that what they will do?

Chairman of the Jersey Voluntary and Community Sector:

That is my assumption. I have not discussed it in detail with them, but there are a lot of charities involved with U.K. arms. Some have broken free and declared U.D.I. (Unilateral Declaration of Independence) in the last ...

The Deputy of St. Ouen:

Coming back to the question, the question was ...

Chairman of the Jersey Voluntary and Community Sector:

Yes. The third element is what you were talking about, which is private charities and charitable trusts and so forth. Now, I do not want to discuss the ethics of some of these private charities or whatever. They are not really covered totally by charities law. They are covered by trust law. I mean the States have perceived an opportunity there to expand the opportunity for setting up charitable trusts and foundations and so forth in the Islands. I do not understand the advantage of that to the revenue in the Island and employment in the Island. I also understand the opportunity that gives the charitable sector here to tap into sources of funds that do not exist currently. Those organisations, providing they can demonstrate that they are set up for charitable purposes and are providing public benefit and there is an element of that public benefit to Jersey, I do not see any problem with them being given tax status and ...

The Deputy of St. Ouen:

It is not necessarily the case that they have to demonstrate public benefit, as I understand it, within the description of the law.

Chairman of the Jersey Voluntary and Community Sector:

They have got to operate with a charitable purpose. If they do not operate with a charitable purpose, my understanding is they will ... I am not an expert I there. You would be much more

advised to fire that question at Phillip Callow because Phillip Callow obviously talks with a financial hat on rather than simply a charities hat on as I do.

The Deputy of St. Ouen:

So you have been led to believe that this charities law will provide a level playing field where the ...

Chairman of the Jersey Voluntary and Community Sector:

I do not see it really as a necessity to provide a level playing field because I think we are talking of 2 totally different constituencies, if you know what I mean, and that is what is caused some of the confusion. This law is trying to encompass both sides. It would have been easier and cleaner, but probably not practical to produce two laws, one for the purely charitable sector and one for the other; but, with the complication of a trust law in place, some sort of charities legislation here already, I think it was inevitable the 2 things had to be lumped together. I think the voluntary, community, purely charitable sector here is quite happy with the law being designed in the way it is promulgated at the moment providing it goes through the various elements as promised. There is a lack of understanding and knowledge even within my sector relative to the technicalities as applied to the financial charities, et cetera. We have been given explanations on why that is there. I have not seen too much that worries me. I think there is an element of, shall I say, pragmatism to ensure that we do not throw the baby out with the bath water and lose these organisations and I think there has needed to be some adjustments to what was originally promulgated to ensure that does not happen. As I said, the ethics of how some of these organisations are structured and set up and what they do from a personal perspective (I am certainly not talking from my sector) would cause me a degree of concern in a limited way, but I am not here to discuss that. I am not an expert.

Deputy R.J. Rondel:

In the law, Article 9, there is a restricted section.

Chairman of the Jersey Voluntary and Community Sector:

Yes.

Deputy R.J. Rondel:

Have you looked through and what is your view of that?

Chairman of the Jersey Voluntary and Community Sector:

Essentially I think what we are talking about here ... I can understand if you are setting up a private charity here and you have got it professionally run by whatever it is, a firm of lawyers or a firm of accountants, there will be a need for less disclosure than if you are a public charity like most of the

ones that I am involved in, et cetera. I would have no problem at all with my name being put on the paperwork and whatever, but I suppose if you are XY Lawyer in Hill Street and you are fronting a private charity you would not necessarily want all the disclosure to be there. So there is a need for restriction to a degree, providing the Commissioner ...

Deputy R.J. Rondel:

Is satisfied that ...

Chairman of the Jersey Voluntary and Community Sector:

... is satisfied that everything is bona fide. We are going to put a lot of faith in the Commissioner. There are checks and balances with the Commissioner, with the tribunal and so forth but, providing the structures are put in place as promulgating, again I think there is enough reassurance there.

The Deputy of St. Ouen:

Picking up on the Commissioner's role, especially with regard to tax benefits, for want of a better word, that are allowed to support charities in general, are you aware whether the law requires the Commissioner to liaise directly with the Tax Department when he is reaching conclusions around public benefit and who should be registered and not registered?

Chairman of the Jersey Voluntary and Community Sector:

Well, I think you have got to put it in the context of where we have come from. I think probably the worst organisation in the world to decide on somebody's charitable status has probably been the Tax Office and that is not derogatory to any individual in the Tax Office, but they have been working to a set of rules which are archaic and not formalised and when they get an application there is no real investigation and so forth. At the moment my understanding is the Commissioner will decide in terms of the application whether an organisation really should be entitled to register for tax benefit or not. At the end of the day it will not be his decision whether that organisation gets the tax benefit. That will still lie with the Controller of Taxes. He will make the final decision on the advice he has been given by the Commissioner. So, on that basis, I would suggest that that will probably reduce the number of instances in the year where the Controller of Taxes will need to take a real decision to a handful because the vast bulk of the referrals will be very straightforward. It is a bona fide charity, been set up in memory of Joe Bloggs who has passed away, et cetera. It fulfils all the criteria. Tick the box and tax man will say: "Yes." There will be a few instances, no doubt, where the Commissioner has had to make a judgment and if the Commissioner has got any sense he will flag that up with the tax authorities before he even puts a recommendation in: "Now, this one is a little bit more complicated and we might need a discussion on this," but at the end of the day I think the Commissioner, if it is a little bit more complicated and so forth, would be in a

situation whereby he would, in negotiation with the tax man, explain his concerns and whatever but, at the end of the day, whatever tax laws are in operation (I think they do need to be refined and tuned in the context of this) the tax authority then would take the final decision based on that discussion and that advice.

The Deputy of St. Ouen:

Yes. As much as you suggest that we might have archaic legislation in place, if the Tax Office base all their decisions around the legislation and, to my knowledge, I am not aware of any proposal to revisit the current legislation prior to or alongside the introduction of this charities law.

Chairman of the Jersey Voluntary and Community Sector:

Well, you will need to in the short term. I think that is the emphasis at the initial stage registration; no real changes in your tax benefit you currently enjoy until you get to the end of the regulation introduction, which might be 18 months, 2 years or 2.5 years down the road. I think inevitably in that intervening period ... I am not here to put words in the Minister for Treasury and Resources' mouth or the Chief Minister's mouth, but my understanding is that it would be immensely sensible to look at the current rules that cover charitable tax exemptions and tweak them if needs be. Now, whether that is needed to be done by changing the law or whether it could be done by regulation or whatever you guys call it when you bring forward an adjustment to primary legislation, then my assumption and my understanding is that is what will occur.

The Deputy of St. Ouen:

There has been some discussion about that?

Chairman of the Jersey Voluntary and Community Sector:

There have been discussions about a need to refine the current I think it is Article 115 or something of the current tax law because it is not very explicit. I do not know how the tax man makes a decision at the moment in time based on the rules he is operating under. I am not suggesting for a second there is a problem there but I think the tax authorities will welcome some tweaking and changing and redefinition because it will make their job that much easier.

Deputy R.J. Rondel:

The law has got some overarching aims and they say they want to support Jersey charities to flourish in order that they get better placed to deliver their own aims and objectives and meet the community's needs and to support the growth of charitable trusts and foundations in Jersey, enabling the Island to position itself as a centre of excellence for philanthropic wealth management. Do you agree with those statements?

Chairman of the Jersey Voluntary and Community Sector:

Yes. Believe it or not (let me get my briefcase the right way round) I have got exactly the same bit of paper because I went to the coffee shop on the way here and so I will read what they are whatever. I mean you asked me, and I did not answer the question, a little while ago what the A.J.C. and the Jersey Voluntary and Community Sector is on this. I cannot speak for the A.J.C. but my understanding of the A.J.C. situation, and I did have an exchange of emails a couple of days ago, was: "Yes, there is nothing of major concern to us anymore. Most of our reservations ..." That is what Phillip Callow will tell you but, certainly talking from the Chairman of the Jersey Voluntary and Community Sector, we are quite happy to go public and if we feel that there will be a lot of resistance to this legislation in the States I think we are quite happy to go public and endorse what is proposed, with minor reservations and the codicil when it comes to regulation and so forth. So we are quite happy that the plethora of the overarching aims in the key principles have been met. Most of the printing will be in the offering. I mean John Pinel, my executive officer, and I have got a sessions planned with the Committee of the Connétables shortly. Other issues could be discussed but we will certainly, at that meeting, indicate to the Connétables that, as far as our Jersey Voluntary and Community Sector Partnership is concerned, we will be supportive of the proposition that goes in front of the States. Now, I believe the A.J.C. are moving in the same direction but that is down to Phillip Callow to tell you.

The Deputy of St. Ouen:

Have you had access to independent legal advice around the proposal?

Chairman of the Jersey Voluntary and Community Sector:

Independent legal advice in the sense that, as I said, sitting on my Voluntary and Community Sector Partnership committee - board as I have now got to call it apparently - we have got expert legal opinion in that we have got a full Jersey advocate sitting on there who has obviously eyeballed this proposed legislation. He had a history as chairman and indeed in the past as vice chairman of the Association of Jersey Charities. He is not an expert in this field, but he has looked at it. I believe sitting on the current committee of the Association of Jersey Charities there is legal opinion and legal experts now and they have eyeballed this as well. So, no, we have not formally put this out for legal advice. We have not got the funds to do it, but we have got expertise sitting within the organisation.

The Deputy of St. Ouen:

Which strengthens your view that you support the primary legislation that is being presented?

Chairman of the Jersey Voluntary and Community Sector:

They have not come up with any showstoppers. They have come up with: "It could have been phrased a bit better," or: "The wording is a bit confusing and you ought to perhaps get clarification on that element," and so forth, but it has been of that ilk rather than: "It is a fundamental flaw and it is whatever."

Deputy R.J. Rondel:

Do you feel that there will be many organisation that might decide to opt out because it might be too onerous administratively?

Chairman of the Jersey Voluntary and Community Sector:

At least in the initial stage I do not think it will be a question of being too onerous. I think it will be more about the fact: "Well, hang on a minute. We have got away with it for the last 10 years. We have not really been a charity for a long time now, but we never were a charity in the first place. So we are going to go on calling ourselves whatever we are and soliciting public funds on that basis," and they are entitled to do it. I mean there is nothing to stop people collecting public funds as long as they do not call themselves a charity. I think when it comes to the regulation, in the final detail of that, it will depend so much on the things we were talking about; what the bands are and whatever. As long as that situation is promulgated and negotiated on the basis we are promised it will be, once we have got this full understanding of the breadth and depth, scale and what charities are doing, because everything at the moment in time is based on anecdotal information and the sort of information I carry in my head because of my involvement with so many organisations ... until we have got that we will not know whether what will come forward will be onerous or not. The emphasis that both the A.J.C., I believe, and the Voluntary and Community Sector will have there is to ensure it is proportionate, reasonable and sensible.

The Deputy of St. Ouen:

One final comment with regards charitable status: we are aware quite regularly a number of charities are set up for a specific case of an individual, supporting an individual. What information have you been provided which identifies how those groups, specific one-issue charities, will be dealt with?

[11:00]

Chairman of the Jersey Voluntary and Community Sector:

Again, this is a personal opinion; nothing to do with my sector. I think there is a tendency in Jersey, which perhaps is not, shall I say, benefit-wise sensible, that people create a charity whenever something happens and I can see the reasons. Very emotive situation - a member of

the family dies or whatever, "We will create a charity," I can fully understand that, for the benefit of other potential sufferers in memory of the individual involved. I always caution people in the end: "Well, look around. There are probably 3 charities doing that already and that is a bad use of available funding and resources and so forth," but I can understand why it happens. I think there will be some difficulty where an organisation is set up purely for the benefit of one individual. So a charity set up to put Susie through her nursing degree. Now, is that really a charitable purpose because, at the end of the day, Susie might come back and be a nurse in the Island and do some fantastic work but, really, it is for the benefit of Susie? The assumption is she will benefit the community in the fullness of time but there is no guarantee of that. Now, I would argue that is not necessarily charitable purpose. I do not think there is a problem with a charity being created where the beneficiaries of that charitable purpose is a limited number of people. I have got the Huntington's Disease Association. I am the vice chairman - publicity officer, whatever that means - and basically we are there to support the 2 sufferers we know in the Island at the moment in time. We do raise some public funds and we do utilise some of those funds to supply those 2 individuals with some of the necessities of life. I do not think anybody would criticise us specifically for doing that, but we also use the funds to increase awareness because there is going to be an explosion in the number of sufferers in the Island in the fullness of time because of the hereditary nature of the disease. So it is horses for courses.

The Deputy of St. Ouen:

You think that would satisfy public benefit?

Chairman of the Jersey Voluntary and Community Sector:

It certainly would. I mean we have got a cast-iron case when it comes to it in terms of whatever, and I think that is what will occur in the fullness of days.

Deputy R.J. Rondel:

Just lastly, what about regarding religion, parish churches and things like that? Have you heard of any concerns?

Chairman of the Jersey Voluntary and Community Sector:

Well, I have got a very broad reach in terms of individuals, as you know, in the sectors, politicians and ex-politicians, and there are some concerns. There are some concerns on very specific constructions. Now, that was evident when legislation reform was brought up both in England and Wales and also in Scotland. Now, what you have got to be is pragmatic. These organisations are set up for the right purposes. Not right in that sense but they are charitable organisations under any sort of definition if you use commonsense. The way they are constructed and organised might not fulfil the specifics of the legislation as it stands. I think the Commissioner, the Chief Minister's

Department and you politicians at the end of the day have got to be a bit sensible to allow some flexibility in this as it evolves and develops. If they have got to bring a quick hit to the States forward to adjust something to allow 2 specific churches to continue to retain their status, commonsense says that is what you should do. It is all a question of degree, is it not?

Deputy R.J. Rondel:

Yes, and that is what we have got to make sure we highlight now before it is too late.

Chairman of the Jersey Voluntary and Community Sector:

Yes. There is an understanding that in the final analysis there will be a few organisations of various natures sitting there where we will need to ... you have got to be careful, mind. I mean if you have an organisation which is basically there to promulgate any religion - let us say it is a Middle Eastern religion to protect the women of XYZ, but really it is a front for sending money to a terrorist organisation - that is a different issue. You know, there does need to be some commonsense in this. To give you an example (I believe John Pinel would have told you this) the St. John's Ambulance organisation in the Island was challenged on the basis of: "You are sending money to the Palestinians." Whether sending money to the Palestinians is right or wrong or whatever, what they were doing is they were funding a nurse in an eye hospital in Jerusalem. It was crazy, but the financial services are concerned about terrorism and money-laundering and rightly so. So it has got to be sensible and I think we are fortunate in that this is not a huge jurisdiction. We are not going to have millions of charities. We might have 400 or something at the end of the day. We will have a lot of charitable trusts, et cetera, but a commissioner properly established with a tribunal backing him up, with ministerial government and you guys as scrutiny keeping your eye on it, we should be able to cope of the scale of it without too much difficulty.

Deputy R.J. Rondel:

Well, thank you. That is the last question from me.

The Deputy of St. Ouen:

Thank you for giving up your time this morning to attend this public hearing and I will declare the meeting closed.

Chairman of the Jersey Voluntary and Community Sector:

Thanks for the opportunity.

Deputy R.J. Rondel:

Thank you very much indeed.

[11:05]