

Education, population, poverty, tax...getting views on topics like those in Jersey isn't the difficult part – but have you ever noticed how many people sound eminently credible when talking about them, even though they may actually be basing their views on conjecture, false facts and blind guesswork?

There is a real danger in making the 'facts' fit the opinion, rather than the other way around – which is exactly the point at which someone with an eye on the latest buzzwords will smugly insert the phrase 'post-truth' into the conversation, imagining its actually helpful.

So, we've asked the Jersey Policy Forum to add some robust material to those crucial local debates – the point is not to provoke agreement or acquiescence; it is to provide reliable material on which others can build their views.



Gailina Liew, Director, Jersey Policy Forum



## Reforming the charitable sector

**What is a 'public benefit'? Does a 'benefit' need to be tangible or measurable in some way? How many people does 'public' encompass? How is a 'public' benefit different from a 'private' one? These are some of the questions that lie at the heart of the significant social policy reform that is taking place in Jersey's charitable sector. The Jersey Policy Forum invited Jersey's recently appointed Charity Commissioner, John Mills CBE, to speak at a roundtable discussion held last month and share his thinking as he works to establish Jersey's first public charity registry and the statutory guidance on the operation of the new Charities Law enacted in 2014 by the States ('Jersey Charities Law'). The full text of the sections of the new law that are currently in force may be found here <https://www.jerseylaw.je/laws/revised/Pages/15.070.aspx>**

I am continually struck by the generosity and kindness of the people who live here. The third sector is vibrant and diverse and the passionate energy and commitment of the trustees/governors, staff and volunteers is palpable in every organization that I have encountered. The Jersey Community Partnership engaged KPMG to run a survey last year to understand a little more about the size of the third sector in Jersey and the results suggest that it is significant, with 1 in 8 adults volunteering in some capacity, and an estimated £80 million in annual donations raised by 535 voluntary organizations listed in their database. The Association of Jersey Charities currently has 313 organizations that qualify for tax-exempt status in their membership and, according to the States, there are over 700 organizations that have non-profit status. How these organizations overlap, what they do with the funds raised, how they are governed

and who they are governed by is not entirely transparent. The Jersey Charities Law was enacted, in part, to provide more clarity and transparency, and to encourage greater public engagement and confidence in the third sector. The impact of this reform is significant: from January 1, 2019, only organizations that qualify as a registered charity may refer to themselves as a 'charity', continue to solicit funds from the general public and claim tax exempt status. So, what is the reform all about?

Laws to regulate charities were reformed about a decade ago in England and Wales, and separately in Scotland. Jersey's reform most closely resembles the Scottish approach in setting up a 'charity test'. There are two main elements that an organization needs to meet to qualify as a registered charity in Jersey:

- (i) it must have a charitable purpose or purposes that fall within the 16 categories included in the Jersey Charities Law; and
- (ii) the organization's activities in pursuit of the charitable purpose(s) must provide public benefit to a reasonable degree.

Any other purpose that the organization



THINK-TANK



pursues may only be incidental or ancillary to its charitable purpose(s). Under the law, no charitable purpose is presumed to be for public benefit so this element must be demonstrated in its own right. The new charity register will also require each registered charity to file a financial statement and the identity of its trustees/governors. All of these requirements must be met on a continuing basis and will be assessed through the filing of an annual return. The charity register will be open for public inspection with a carve out for philanthropic organizations that do not solicit funds from the general public.

A unique feature of Jersey's reform is that the charity register is being set up from scratch so all organizations that wish to claim the benefits of being a registered charity must go through the registration process when it is launched. Many aspects of the registration process are set out specifically in the law but more details and the draft statutory guidance are expected to be published later this month. The Charity Commissioner then intends to hold a series of open public discussions to receive feedback and address

questions. The target date for the launch of the charity register is May 2018. An organization that currently has tax-exempt status and holds itself out as a charity will be able to safeguard its tax-exempt status so long as it files a draft application for registration no later than December 31, 2018. Subject to any changes in the law, this safe harbour mechanism will be in place until the final determination on the organization's registration is made. A tribunal to hear appeals against registration decisions made by the Charity Commissioner is being set up and is expected to be operational next year. Of note, appeals by third parties are specifically permitted.

Now, back to the questions posed at the beginning of this article. Although the Jersey Charities Law has prescribed a number of parameters to define the new world for the third sector, we learned at the roundtable discussion that the Charity Commissioner has a degree of discretion in defining what might fall within the definition of 'public benefit' and other aspects of the law. The task to translate a concept such as

'public benefit' into a guidance that does not fetter the Charity Commissioner's discretion, but which also provides practical information to allay uncertainty, is not easy. The roundtable discussion was encouraging as it was clear that the Charity Commissioner is approaching his task with attentive listening, thoughtful inquiry and common sense. Helpful tools such as a model constitution and sample financial disclosure form are also being contemplated. The ball now lies in the court of the organizations that aspire to qualify as registered charities; time to dust off your foundational documents to see how your organization aligns with this new framework!

### Do you agree?

Please share your thoughts by email to [contact@jerseypolicyforum.org](mailto:contact@jerseypolicyforum.org). The Jersey Policy Forum is running a series of roundtable discussions to focus on understanding social and economic inclusion/exclusion in Jersey, education and population drivers and the development of a more comprehensive dashboard to assess how well Jersey is performing beyond GDP and GVA.