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FROM THE DEPUTY GENERAL SECRETARY'S OFFICE

SS/sg

11 July 2011

JBB CIRCULAR NO: 021/2011

To: The Chairman and Secretary
All Branch Boards

Dear Colleagues

RECENT DEVELOPMENTS: POLICE BENEVOLENT / WELFARE FUNDS

The Attorney General, at the request of the Charity Commission, has made an application to the First Tier Charity Tribunal ("the Tribunal") to clarify the law relating to certain benevolent funds whose objects concern the relief or prevention of poverty in England and Wales.

Charitable trusts or associations, including benevolent funds that benefit small groups of people and/or whose membership is defined as belonging to a particular society, eg, an organisation, such as a police constabulary, were treated differently prior to the passing of the Charities Act 2006 ("the Act").

The relief of poverty had until section 2 of the Act which came into effect on 1st April 2008, been an exception to the requirement to show public benefit in the sense of benefitting the public or 'a section of the public'.

The presumption that charities established for the relief and/or prevention of poverty are for the public benefit, has been removed and is no longer part of the law.

The Public Benefit Requirement

All charities must have purposes that benefit the public. The Act significantly reinforces this obligation by requiring all organisations on the register of charities to be able to demonstrate benefit to the public. This is known as 'the public benefit requirement' which in principle requires that:-

- There must be an identifiable benefit or benefits; and
- Any benefit must be to the public, or a (sufficiently wide) section of the public.

'Public benefit' is the legal requirement that every organisation established for one or more charitable purposes must be able to demonstrate an identifiable public benefit if it is to be recognised and registered as a charity in England and Wales.

All charities since the passing of the Act, must provide evidence on an annual basis that their purpose is exclusively for the public benefit as well as identifying what those benefits are.

The Scope of the Reference

The Attorney General has sought clarification as to whether a benevolent fund for the relief of poverty can have charitable status if it benefits only:-

- a) People who are related to a particular individual; or
- b) Employees of a particular employer or former employer (a commercial company); or
- c) The members (or their families) of a particular society or organisation.

How does this affect charitable police benevolent/welfare funds?

For example, a police authority is not a 'commercial company' and therefore, if the Tribunal were to approach the question posed in item (b) on principle, it could take the view that there is no distinction between a public or private sector employer and that any beneficiaries defined by reference to an employer may amount to a private class of people rather than a section of the public.

If the Tribunal were to reach such a conclusion, it would be legally binding (subject to a possible appeal). As a consequence, the impact on a police charity could be that any police benevolent/welfare fund which operates for the relief of poverty and whose beneficiaries are linked to an employer/former employer or organisation; and

- i) which was registered as a charity before 1st April 2008, may have to alter its charitable objects in order to maintain its charitable status; or
- ii) if registered as a charity after 1st April 2008, may lose its charitable status altogether. (subject possibly to being able to donate its assets to a newly constituted charity, however).

However, the Attorney General currently considers that charitable trusts for the benefit of needy serving or former military personnel and their families are unaffected by the proceedings he has brought in the Tribunal.

The reasoning for this appears to be because the promotion of military efficiency and 'esprit de corps' can be inferred as the primary purpose, even where this is not expressly stated in the objects.

This is potentially significant for police benevolent and welfare funds. As a result of the successful lobbying of our Solicitors with our support during the formation of the Act, the then Cabinet and Charity Commission agreed to widen the charitable purposes of the Act for "the promotion of the efficiency of the armed forces of the Crown" to include that of the police, and fire and ambulance amongst other rescue services.

As a result, section 2(2)(1) of the Act contains the following amended charitable purpose:-

"the promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue services or ambulance services".

The Need for Intervention and Clarification

The basis for the exclusion for military benevolent funds could equally apply to all police benevolent and welfare funds whose beneficiaries are members of police forces, former members of police forces or the families and dependants of members of police forces, for the reason that they are in reality established for the promotion of the efficiency of the police service. However, this is not clear.

Given that the proceedings initiated by the Attorney General are likely to affect Police Federation officials who play an important role in the administration of benevolent and welfare funds throughout England and Wales, the Joint Central Committee has taken the following urgent steps:

- i) We have applied, for the Police Federation of England and Wales to be joined as an umbrella body to represent, at its own expense, any police benevolent or welfare fund which is administered by Joint Branch Board (JBB) officials, which may be affected by the outcome of the proceedings brought by the Attorney General in the Tribunal;
- ii) We have also written to the Attorney General and the Charity Commission to seek clarification of their position in relation to these proceedings whilst noting our interest in respect of all police benevolent and welfare funds.

Our objective in these proceedings is to obtain clarity from the Tribunal that police benevolent and welfare funds as well as their military counterparts are unaffected by these proceedings. In the event that this confirmation is not forthcoming, the Joint Central Committee aims to ensure that as an umbrella body and party to these proceedings, all relevant arguments are addressed to the Tribunal, whether or not such funds have already applied on an individual basis to be joined as parties;

Our intervention as a recognised umbrella body will help those police funds who have already applied to be joined, to avoid the need to incur unnecessary costs given their limited resources. It is hoped that our involvement may add some further weight in the proceedings given the National importance of this matter to members.

As a result of our intervention, the Tribunal may well take the view that it will assist the case management of the proceedings if all police benevolent/welfare funds who have already applied to be joined as proceedings, are also represented by the Police Federation as a party.

We would therefore invite all charitable police benevolent and welfare funds that are administered by JBB officials (whether you have already applied to be joined in these proceedings or not) and whose objects are for the relief or prevention of poverty, to register with us as quickly as possible in order that we may be able to confirm with the Tribunal the identities of those funds which we represent in these proceedings.

In order for your benevolent or welfare fund submission to be put forward by the Police Federation in these proceedings, please will you confirm this in writing as quickly as possible and enclose a copy of the governing document of your benevolent/welfare fund to:

The Deputy General Secretary
JCC Claims Department
Police Federation of England and Wales
Federation House
Highbury Drive
Leatherhead
Surrey
KT22 7UY

Please remember to quote "Attorney General's Reference CRF/2011/001" in your correspondence.

Once the registration process is complete, Russell Jones & Walker will advise you of the next steps that will have to be taken on your behalf together with what input will be required on the part of your benevolent/welfare fund.

If your benevolent or welfare fund has already been advised by Russell Jones & Walker in relation to these proceedings, then the relevant details of your fund will already be on record with us. This will avoid you of the need to register your benevolent/welfare fund with us as it will automatically have been included for representation by the Police Federation already.

If you require any further information please contact our Claims Manager Catherine Smart on 01372 352091.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'S.A. Smith', written in a cursive style.

STEPHEN A. SMITH
Deputy General Secretary