

STATES OF JERSEY



CHANGES TO THE OBJECTS AND PURPOSE OF THE ANN ALICE RAYNER FUND (P.92/2021) – COMMENTS

Presented to the States on 14th December 2021
by the Minister for Treasury and Resources

STATES GREFFE

COMMENTS

Introduction

On 23 November, as Minister for Treasury and Resources, I brought a Proposition to the Assembly seeking changes to the terms of AA Rayner fund (AAR). The need for the Proposition arises due to notification by the Bailiff to the Trustee of the Fund (the Treasurer of the States) that the current Delegation of Income Administrators (Jurats appointed by P.38/2001) had reached the unanimous conclusion that they felt it was no longer appropriate for them to fulfil the role, as the environment under which their original involvement has changed, with the advent of many new laws regulating the administration of Trusts and Charities.

The Scrutiny Panel raised various points of concern, and the Assembly concluded that it had insufficient information to conclude. The outcome was a 'reference back' whereby I was asked to return with additional information on two main points:

- 1. What are the impacts of the removing the phrase philanthropic?**
- 2. For clarification that the JCF can make awards to individuals and is not against the objects of the JCF**

Various questions were raised in the debate, which illustrated as a wider theme that Members would have liked more contextual information as well as specific information on the two points above. I have provided answers to various points that were raised in the debate by way of appendix.

Before moving into the detail of this response I would like to focus Members back to P.38/2001 which originally appointed the Jurats as income administrators of the AA Rayner Fund. This current Proposition is not a radical departure from that approval as it is, at the highest level, simply seeking the Assembly's approval for new income administrators.

1. What are the impacts of removing the phrase "philanthropic"?

I believe that removal of the phrase would not impact the nature of awards currently being made. In P.38/2001, objects of the fund were re-established as:

- a) The provision of pecuniary relief to needy persons residing in Jersey; and
- b) Such other objects or purposes of a charitable or philanthropic nature as the States may hereafter in their absolute discretion determine

This removed two previous objects:

- c) For promoting the happiness and comfort of the inmates of the Poor Law Department of the General Hospital; and
- d) For the provision of up-to-date equipment for the treatment of patients at the said Hospital

It remains the prerogative of the States to determine new objects in the future, as they so wish.

The reason for removing the phrase “philanthropic” is to make it clearer that the use of the Fund in practice meets the public benefit test of the Charities Law, which is a requirement if a Registered Charity is to administer the fund on a permanent basis.

Whilst helpful, the change is not absolutely necessary at the present time. As he stated to the Scrutiny Panel prior to the debate, the Charity Commissioner is satisfied to evaluate whether the nature of awards meets the public interest test by conducting a thorough review during the pilot period.

Evidently, Members have concerns in this area and I do not wish to jeopardise the urgently needed appointment of income administrators for a change that is not essential at this juncture. I will not therefore be asking the Assembly to consider part (i) of the Proposition (removing this change) to avoid further delay.

2. Clarification that the JCF can make awards to individuals and is not against the objects of the JCF

It was raised in the debate that the objects of the Jersey Community Foundation (JCF) do not provide for awards to be able to be made to individuals:

The JCF's charitable objects are to pool, steward and deploy, by way of grants or other payments, donations or distributions from charitable structures, individuals, families, businesses, funds, the Government of Jersey, or any other body, to support the community of the Island of Jersey provided always that such support is by way of grants or other payments to Jersey registered charities and/or excepted foreign charities as defined under the Charities (Jersey) Law 2014, and/or to charitable purposes. To this end the JCF will seek to create an enduring source of funds dedicated to the good of the community of the Island of Jersey.

The objects are clear that awards must be charitable in nature (that is a fundamental requirement of any Registered Charity overseen by the Charity Commissioner) – a point addressed in the answer I have just covered. Whilst the JCF objects do not currently say that awards can be made directly to creditors or providers of services/ equipment, rather than via Registered Charities, the Charity Commissioner is content to permit such awards to be made for the duration of the pilot prior to considering any request to widen objects at the end of the pilot. Therefore, this is not a barrier to appointment.

The Charity Commissioner is the person responsible for overseeing the JCF’s charitable registration. He has reviewed the JCF objects, the terms of the Fund, interviewed Treasury staff about existing processes by which sponsors present applications for individuals and has concluded that he is satisfied that the JCF can be appointed for the pilot period of 18 months. He stated such in an open letter to the Corporate Services Scrutiny Panel in advance of the debate. A letter which the Panel have published.

In his letter, he explained that he sees substantial potential benefits in the arrangement. However, by allowing the JCF pilot to continue as an “ancillary activity”, he has a window to scrutinise the suitability of the arrangement and of the JCF, and to evaluate whether the awards truly fit within the public benefit criteria of charitable awards, prior to granting any changes to objects that may be needed on a permanent basis. In summary, he expressed his agreement with the proposals.

The Treasurer as Trustee, the Charitable Funds Oversight Board and the JCF agree that the pilot approach makes sense. The final evaluation of the appointment in 18 months will involve all these parties and also take into consideration findings from the separate review into the potential for an Office of the Public Trustee.

Minister for Treasury and Resources

Appendix- Answers to general queries raised in the debate

1. Responsibilities under the Public Finance Law are unchanged.

This is a change of one income administrator group for another and is not structural. The Treasurer remains the de facto Trustee and continues to hold ultimately responsibility for ensuring that the Income Administrators (formerly the Jurats but proposed to be the JCF for a pilot period) are acting in line with the requirement of the Trust.

2. Protection against perceived conflicts of interest within the Treasury & Exchequer is improved.

It remains the case that, under the Trusts Jersey Law, the Treasurer has a legal responsibility to protect fund assets for their stated use. He is overseen in these aspects by the Charitable Funds Oversight Board. In addition:

- a. Income administrators will source award applications directly and not be reliant on information provided by Treasury officers, thus removing one area of potential conflict.
- b. Presently there are overlapping responsibilities between Trustee and Income Administrator. Furthermore, should the Treasurer as Trustee be unsatisfied that income administrators are acting properly, under the current arrangements he is unable to remove them. A formalised contractual relationship (in place of none presently) defines the expected reporting and respective accountabilities in specific areas and allows the Trustee to take appropriate action to ensure compliance.
- c. As a Registered Charity, the Charity Commissioner demands that the JCF has sole discretion in discharging its income administration duties. He introduces additional independent oversight and will be involved in the review at the end of the pilot period.

3. Access to the public will be improved.

The JCF will retain and develop the present system of sponsorship whereby applicants are introduced to the fund by a charity, social worker, Citizens' Advice, doctor etc. However:

- a. The JCF is better placed to access the third sector given its existing responsibilities for lottery and Jersey Reclaim Fund awards,
- b. Is quite clearly independent from Government
- c. Will use modern media including their existing website and online application infrastructure to publicise the funds and improve access.

4. There has been sufficient scrutiny

- a. The changes were advertised for public comment in the JEP and Jersey Gazette.
- b. Treasury & Exchequer staff spent time trying to trace surviving relatives of Ann Alice Rayner.
- c. Letters were sent to current award beneficiaries, Groups that have recently applied for awards and to recent sponsors of applications.

- d. Parallel changes to the Greville Bathe Fund deeds (which have a higher threshold for income administrator independence) have been approved by the Royal Court.
 - e. Lengthy discussions were held with the Jersey Charity Commissioner and the Charitable Funds Oversight Board to ensure that they were satisfied with the proposals
 - f. Within Government, the Law Officers Department were consulted extensively (with independent counsel as well), and the performance of the JCF on the Reclaim and Lottery funds was considered.
 - g. The Scheme is a pilot and will be used to develop future plans to improve governance and administration arrangements across all charitable funds.
5. **The power of the States to amend objects in the future will be preserved.**
There are no changes proposed in this regard