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Senator Kristina Moore
Chair
Corporate Services Scrutiny Panel

21 October 2021

Dear Senator Moore

Changes to the Objects and Purpose of the Ann Alice Rayner Fund (P.92/2021)

Further to your letter of 15 October and the Assistant Minister's earlier reply to confirm postponement of the debate of proposition P.92/2021, I am now able to provide a full response along with the supporting information.

Context

You will be aware from the text of the report accompanying the proposition that the changes put forward are, as a whole, intended to allow the appointment of a Registered Charity as income administrator. The purpose in doing so is to both resolve an immediate vacancy (the existing Jurats have now stood down) and to provide an alternative, durable mechanism for future appointments in the absence of the ability to make new Jurat appointments. It is envisaged that the reforms will also provide the opportunity to strengthen governance and give enhanced access to appropriate skills, expertise and infrastructure as the fiduciary landscape continues to mature.

1. What is the full and complete rationale behind the removal of the word "philanthropic" from the Fund?

In 1949 the States accepted a bequest from Ann Alice Rayner to be used for such objects and purposes of a charitable or philanthropic nature as the States of Jersey might at their absolute discretion from time to time determine.

In a general sense, "charitable" is commonly understood to relate to addressing issues in a manner of immediate response to an issue, whereas "philanthropic" relates to actions to tackle underlying causes (usually in a longer-term manner).

The original bequest from Ann Alice Rayner contained two parts. The first part may be considered "philanthropic" in the manner defined above, and the second part may likewise be considered "charitable". Firstly, the bequest was to provide a Nurse's Home, to provide equipment to the General Hospital and to help inmates of the Poor Law Department. Secondly, the remainder was

to be used for 'grants of pecuniary relief in any form to needy persons of either sex of the professional classes residing in Jersey'.

The first part has become an absorbed responsibility of States of Jersey expenditure, meaning that the remaining funds were to cater for pecuniary relief of the needy (though without the original restriction to professional classes).

Both the Charity Commissioner and our QC have suggested to us that it would now be advisable to remove the word philanthropic, as the term is effectively redundant in the scope of permitted award making, and its presence risks mis-spend or incorrect application.

This will not impact the awards being made. The position of the fund currently is that it already acts in very close alignment to the criteria of the Charities (Jersey) Law 2014, specifically: "the prevention or relief of poverty" and/ or "the relief of those in need by reason of age, ill-health, disability, financial hardship or other disadvantage".

Removing the word "philanthropic" will also be helpful to our proposals because for a Registered Charity to be able to perform the income administrator role, the Charity Commissioner must be satisfied that the administrated fund meets the public benefit test (of the Charities (Jersey) Law 2014). This edit identifies that the funds will be used exclusively for charitable purposes.

2. What oversight will be in place to meet:

a) The proposed framework for the administration of the fund

Should the power to appoint/terminate income administrators be granted to the Minister for Treasury and Resources, and that power be used to appoint a Registered Charity as income administrator, the oversight of the fund will be increased as follows:

- i. Any Registered Charity appointment would then be monitored by the Jersey Charity Commissioner
- ii. By virtue of being a Registered Charity or by the Trustee's stipulation, any appointed Income Administrator would itself become subject to external audit procedures
- iii. In the case of the Jersey Community Foundation, it is already overseen by Government on account of its Lottery and Reclaim Fund engagements

Governance would also be enhanced in a few other ways:

- iv. There would be a service level agreement ("SLA") that clearly defines the respective responsibilities of the Trustee and the Income Administrator. Currently there is ambiguity in some areas, and this would enhance accountability and formally define standards in areas such as reporting.
- v. The proposals would introduce a mechanism for terminating appointments (currently there is none) should the need arise. In doing so, it empowers the Trustee to address issues arising via their recommendations to the Minister.

It would remain the case that the Trustee would be personally accountable for the wider fiduciary management of the arrangement per the Trusts (Jersey) Law (1984), and they would remain subject to the oversight of the Charitable Funds Oversight Board ("CFOB"). It would also remain the case that the Income Administrators would be solely responsible for the distribution of awards, although it will be clearer (from the SLA) where their respective responsibilities start and end.

The method by which the Trustee will have sight of the activities of the Income Administrators on an ongoing basis will be a mixture of active engagement, rights to access and reporting, and mutual pre-agreement of standards and audit scope (under the SLA).

However, in the initial period, the fixed term pilot period of 18 months, it is expected that several parties (the Trustee, the Charity Commissioner and the CFOB) will be working particularly closely with the Jersey Community Foundation to refine the new income administrator model prior to any decision about a permanent appointment.

b) The “public benefit test” raised in the proposition

The “public benefit test” is a reference to the Charities (Jersey) Law 2014, under which the Charity Commissioner has responsibility to ensure that Registered Charities meet certain criteria. An aspect that the Commissioner must be satisfied with is that the funds being distributed by a Registered Charity are available for the benefit of the wider Jersey community, and not necessarily restricted to a small sub-set of potential beneficiaries.

The Charity Commissioner will review the nature of awards being made during the pilot appointment, the breadth of access to the funds and so forth before determining (prior to the pilot’s end), whether he is satisfied that the Greville Bathe and AA Rayner funds are indeed suitable for administration by a Registered Charity on a permanent basis.

It should be noted that a key aspect common to the requirements of the funds, the Trustee and the Commissioner is that the appointed Income Administrator executes its duties independently of the Trustee’s day-to-day influence.

c) The agreed framework, and

d) Any associated policies and procedures in place to further administer the Fund

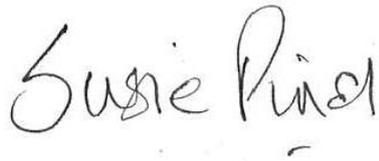
In discharging its duties any appointed Income Administrator must have the ability to make awards independently, as it sees fit within the parameters of the Fund’s objects and without interference. However, the Trustee retains a personal overarching responsibility for ensuring all aspects of the Fund are appropriately discharged. Furthermore, other parties (the CFOB and the Charity Commissioner) also have responsibilities of oversight.

To achieve the correct balance, and to ensure that there is a measure for performance standards, the SLA is critical. The SLA defines the boundaries and measures of accountability, and so becomes the framework by which the Trustee can hold the Income Administrator to account. The SLA defines mutual expectations in respect to standards, costs, responsibilities and reporting outputs. To provide balance, it is important that there is a mechanism whereby the Income Administrator appointment can be terminated as the ultimate sanction should it fail to reach these standards.

In addition to the power to terminate appointments that the Minister would have, the Charity Commissioner would also effectively have a power of termination, in cases where the behaviours of a Registered Charity fell below appropriate standards.

I hope the Panel finds this information useful and allows you to conclude that my proposals are in the best interest of Islanders who may ultimately be able to benefit from the generous bequest of Ann Alice Rayner.

Yours sincerely

A handwritten signature in black ink that reads "Susie Pinel". The signature is written in a cursive, slightly slanted style.

Deputy Susie Pinel
Minister, Treasury and Resources

Enclosures:

- 2020 accounts for the Jersey Community Foundation
- The draft agreement ('SLA') between the Trustee and the Jersey Community Foundation