



14 January 2022

Dear Senator Moore,

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

Thank you for your letter of the 7th inst. Let me respond with the following thoughts and comments:

1. The reason for **treating the involvement of the Jersey Community Foundation (JCF) as a pilot** is that it enables me to regard the proposal as something purely ancillary to its, the JCF's, stated charitable purposes. That is permissible in law notwithstanding the deviation from those stated purposes, thus enabling the *pilot* to proceed. (This is in line with Art. 5(1)(a)(ii) of the Charities Law.) This reason is not quite fully adduced on the third page of the Minister's note of 14 December last but I am keen for it to be understood as a specific regulatory act and exercise of my discretion in order to move things along.

Since, however, the objects of the AARF are really rather different from those of the JCF it would, in my considered view, be impermissible for the planned arrangement to become one of permanence absent change to the objects and registered public benefit statement of the JCF. (The latter is what is cited in italics on page 3 of the Minister's note, and the statement is, for any registered charity, that which creates its public benefit duty. Such change would be likely to be not inconsequential and, though I must and shall keep an open mind and not fetter my discretion, it is possible that I could find myself in a year or two's time unable readily to agree to it on the grounds it would represent such a move away from the concept of support for the community as a whole, on which the remit of the JCF is currently founded. (The Charities (Jersey) Law 2014 requires my approval of any such changes to a registered charity's constitutional documents.)

That, however, is best not a debate for now given the need for promptitude in getting the continuing administration of AARF on to an effectual footing, Jurats having stepped away. It is obviously desirable, though, that it is not set aside for too long so that there is an agreed and reasonable permanent solution ready by summer next year.

2. **My pertinent responsibilities as Commissioner**, about which your letter asks, are, I believe, as follows:

- I must seek to ensure that the JCF duly meets its public benefit duty, which is to give effect to its charitable objects through the provision of public benefit in accordance with its registered public benefit statement. I am able to take appropriate regulatory action if it doesn't. The legislature has given the Commissioner appropriate powers in this regard

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- I have a general power to assist other persons in relation to....entities with charitable purposes [and] any [relevant] function of such a person [Art.4(1)(e)]
- and I have a general power to advise the Minister as to the nature of charities in Jersey [Art.4(3)(b)]

The above are powers and duties that I am to exercise independently.

3. To answer one of your questions, **should the proposition be adopted, my ensuing responsibilities would be:**

- first, to ensure that the *pilot*, as an ancillary activity for the JCF, is indeed a non-permanent arrangement, and that any future permanent arrangement involving either the JCF or another registered charity is not in conflict with its, or another's, public benefit duty
- secondly, to ensure that the JCF's giving effect to AARF's principal object - *the giving of pecuniary relief of needy persons* – is done in such a way that the public benefit rules in Art.7 of the Charities Law are properly met. The essence of these, on which I issued guidance in 2018, is that benefit must be suitably available to the public at large, being accessible through clear and transparent selection criteria that reflect the nature and scale of the public benefit to be delivered. Meeting those requirements may well not be straightforward (in any case), starting with the genuine problem of defining 'need' and identifying the 'needy' by reference to the population generally. The *pecuniary relief* requirement probably only makes that harder. This is a challenge for any registered charity with objects aimed at the public at large, both as a simple matter of intrinsicalness and because, these days, the state deliberately and by public policy caters for a deal of 'need' through the social security system, utilising the taxpayers' funds of which it is steward. Entitlement to certain benefits, for instance, may very well not, on its own, be a good proxy for *need*, yet seeking to find or discern it among the surprisingly large proportion of the working population wherein is no entitlement to taxpayers support is a hard task, if equitable treatment among the whole cohort is to be assured

The notion of *pecuniary relief* - in effect the giving of doles, as it was described and understood in the old days – could thus be seen somewhat to ill sit with public policy. None of our registered charities whose focus is on individual need find this process of identification easy; yet working to get it right is very important for continuant meeting of the public benefit element of the charity test. It is something I watch out for in the annual returns of those charities concerned; and it has clearly been a matter of real difficulty over the years for the Jurats responsible for the administration of the AARF

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- thirdly, to be alert to the possibility, in the case of whatever permanent solution is brought forward which involves a registered charity, lest the second object of AARF compromises that registered charity's continuing to meet the charity test. (This is the object, as cited at the beginning of the Minister's original report, which empowers the States to add any other charitable or philanthropic object or purpose.) This is very difficult from a registered charity perspective since it is the rule, in Art.5(2) of the Charities Law, that the charity test cannot be met, even if otherwise met, if an entity's constitution expressly permits its activities to be directed or otherwise controlled by any member of the States Assembly, acting in that capacity. I have sidestepped this for now by agreeing to treat the pilot as an activity purely ancillary to JCF's charitable purposes but it is an important statutory provision which goes to the heart of the law of charity and cannot be gainsaid
- and fourthly, taking account of the above points and having regard to my general powers, to help policy and law makers to find the best way forward so that the AARF monies can be put to good, proper, use in a modern manner that nonetheless remains in keeping with, or akin to, the wishes of the testatrix. That of course includes all elements of potential impact on existing registered charities

4. As for **philanthropy**, the idea of dropping that word from the objects is based, I imagine, on the fact that something *philanthropic* may not necessarily be something *charitable*. "Philanthropy" means, generally, benevolence towards mankind in the round and concern for its general welfare. The breadth of the notion, however, can sit counter to the need, under the charity test, to link a registered charity's objects to specific charitable purposes, for it can clearly or possibly encompass purposes (or activities) that might not be charitable as defined by the Law. Continued inclusion of the word, therefore, could have implications for any long-term solution for AARF that involved a registered charity approach. This includes a solution that involved AARF itself becoming a registered charity. I think that that may have been the thinking behind the Minister's original position, which I would have approved.

It is worth adding that this is not mere abstraction. It is a matter of general import in the charity sphere and has raised its head in a fair number of applications for registration this last three years, given that the principal requirement of the charity test is that purposes are exclusively charitable.

5. In the instant case, however, I note that **the Minister now proposes not to proceed with seeking approval to drop the word**. In truth, it is not too important a point either way, since the main problem with AARF either becoming its own registered charity or moving in, so to speak, with any other registered charity, is the whole of the second object, because of the express rule against political control of charities as referenced above. AARF could not become a registered charity unless the second object adjusted to remove any vestige of political control. If the legislature's preference is to see AARF become registered itself or have its future permanently secured by reference to another registered charity, so that it was subject to the protective oversight of statutory regulation to ensure its objects and public benefit duty were delivered (alongside some 440 other registered charities), the simplest course would probably be to drop the whole of object 2 now rather than later and start a new start. That is of course for the legislature not me but it is, perhaps, an obvious, and, one might

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venture to add, desirable consequence of the regime put in place by the same legislature for the regulation of charities in Jersey. One must remember that its overarching purpose is the maintenance of public trust and confidence in registered charities, largely through transparent, public, process, the which it could be said has not entirely obtained with AARF these last good number of years.

6. I hope that this short letter is of some assistance in your counsels and I am naturally content for it to be placed in the public domain as you will. I should, of course, also be very content to go over the issues with you and your Panel more thoroughly as thinking turns to things post the *pilot*. That could also take in any implications for the other gift funds, which I sense there may possibly be but on which I have judged not to comment in this letter.

Yours truly,

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