

# The Treasurer of the States v HM Attorney General

<b>Jurisdiction:</b>	Jersey
<b>Judge:</b>	J. A. Clyde-Smith O.B.E., Jurats Olsen, Hughes
<b>Judgment Date:</b>	26 May 2021
<b>Neutral Citation:</b>	[2021] JRC 152
<b>Court:</b>	Royal Court

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## Text

[2021] JRC 152

ROYAL COURT

(Samedi)

Before:

J. A. Clyde-Smith O.B.E., Commissioner, and Jurats Olsen and Hughes

In the Matter of the Representation of the Treasurer of the States

And in the Matter of Various Trusts for Educational Purposes

And in the Matter of Article 47A of the Trusts (Jersey) Law 1984

Between  
The Treasurer of the States  
Representor  
and  
Her Majesty's Attorney General  
Respondent

**Advocate M. T. Jowitt Q.C., Solicitor General for the Representor.****Authorities**

Trusts (Jersey) Law 1984.

Charities (Jersey) Law 2014

Trusts — reasons for the orders made

**THE COMMISSIONER:**

- 1 On 1<sup>st</sup> April 2021, the Court effectively wound up a number of trusts in the form of bequests pursuant to Article 47A(1) and (2) of the Trusts (Jersey) Law 1984 (“the Trusts Law”).
- 2 The Treasurer of the States (“the Treasurer”) has over a number of years taken on the administration of a number of historic bequests made for educational purposes with a varying degree of specificity for the benefit of Victoria College, the Jersey College for Girls, Highlands College and Rouge Bouillon Primary School for their respective pupils and for Jersey pupils generally who have gained entrance to university. In addition, the Treasurer administered one bequest in favour of the Jersey Public Library. Over time the value of the bequests had diminished with inflation. There were 31 bequests in all, of which ten were valued at less than £1,000, the lowest being valued at £22.07. Many of the bequests were in the low thousands, and one, the “Sayers Bequest”, was valued at approximately £157,000.
- 3 All but three of the bequests stipulated that prizes/awards must be paid from the income generated by the capital. In all but one of those income-only bequests (the Sayers Bequest) the income generated is paltry and insufficient to give meaningful effect in the present age to the original purpose of the bequest: only a modicum of the original bequest could be used to achieve the original purpose.
- 4 In the case of the Sayers Bequest, the purpose of which was to assist less well-off scholars at Victoria College to proceed to English universities, the income in 2020 was only £1,123.59. The capital could more effectively be applied with other funds provided for a similar purpose.
- 5 Furthermore, economies of scale in managing investments and the Treasury Department's investment expertise could not be effectively employed in handling a multiplicity of modest to trivial capital sums leading to low returns and an attritional effect on the value in real terms of remaining capital.

6 Article 47A(1) and (2) of the Trusts Law is in the following terms:

***“47A Trusts for charitable or non-charitable purposes***

***(1) Where trust property is held for a charitable or non-charitable purpose and any of the circumstances mentioned in paragraph (2) apply, the court may on the application of a trustee or the Attorney General, declare that the property or the remainder of the property, as the case may be, shall be held for such other charitable or non-charitable purpose, as the case may be, as the court considers to be consistent with the original intention of the settlor .***

***(2) The circumstances are that –***

***(a) The purpose has, as far as is reasonably possible, been fulfilled, has ceased to exist or is no longer applicable;***

***(b) The purpose cannot be carried out having regard to the directions given by the settlor or the spirit of the gift;***

***(c) The purpose provides a use for only part of the trust property;***

***(d) The property, and any other property, applicable for a similar purpose, can more effectively be applied for a common purpose, regard being had to the spirit of the gift;***

***(e) The purpose was laid down by reference to an area that is no longer a unit for that purpose, or by reference to a class of persons or to an area that is no longer appropriate, regard being had to the spirit of the gift or the practicality of administering the gift;***

***(f) The purpose has been adequately provided for by other means;***

***(g) In the case of a trust for charitable purposes, the purpose has ceased for whatever reason to be charitable; or***

***(h) The purpose has ceased in any other way to provide a suitable and effective method of using the property, regard being had to the spirit of the gift.”***

7 The Treasurer had assembled such constitutional documentation in respect of the bequests as could be found, but with the lapse of time, it had not been possible to establish written evidence of the Treasurer's trusteeship, but in each case, and in practice, the Treasurer acted as trustee and was therefore a trustee as defined in Article 2 of the Trusts Law, entitled to bring the application.

- 8 The Treasurer's Representation was first brought before the Court on 18<sup>th</sup> September 2020, when the Court:
- (i) Convened the Attorney General.
  - (ii) Ordered that notice of the application be given to the Principal of the Jersey College for Girls, the Principal of Highlands College, the Headteacher at Rouge Bouillon School, the Chief Librarian, the Headmaster of Victoria College and the Headteacher of Hautlieu School.
  - (iii) Ordered that notice of the application be given in the Jersey Gazette and the Jersey Evening Post.
- 9 It was proposed under the Representation that each of the bequests be liquidated and the funds transferred to the school or institution closest to its purpose.
- 10 In response to the notice, the Jersey Charity Commissioner, John Mills, met with the Attorney General, the Solicitor General, the Head of Treasury and Investment Management and others, and submitted a note on 7<sup>th</sup> December 2020, which we summarise as follows:
- (i) The Charity Commissioner has a function under Article 4(1)(e) of the Charities (Jersey) Law 2014 ("the Charities Law") to assist other persons, including the Attorney General and the Court, to discharge any of their functions in relation to registered charities and entities with charitable purposes.
  - (ii) He had intervened in the proposals as he felt it wrong that the Court should be invited to pass the lion's share of the monies in the bequests to two schools, namely Victoria College and the Jersey College for Girls which are public sector organs and not themselves charities and which could not, under present law, become Jersey registered charities. Both schools charge fees to parents alongside receiving substantial support from taxpayers.
  - (iii) Both schools had foundations established for many years as charitable entities which had as their general aim financial and other support for the respective schools, their facilities and their pupils. Both had applied to be registered under the Charities Law and at the invitation of the Charities Commissioner, had reviewed and widened their constitutions to ensure that benefit was cast more widely. Central to this, although not the only element, was widening access to the education offered by the schools through making provision for bursaries to support those who could or would benefit from the education, but whose parents could not afford the fees. These changes were achieved, and the two foundations have now been registered. As registered charities, they will be required to account annually for how they provide public benefit in giving effect to their objects, in particular through annual public benefit narratives, which would be on the public register of charities.

(iv) These changes having been achieved with good agreement on all sides, it was evident to the Charities Commissioner that the monies in the bequests would best have a home with these foundations, and not the schools themselves, which are agents of the State and subject to a range of political oversight or control. In this way the funds in the bequests would expressly continue to be charitable funds and subject to the modern scheme of regulation put in place by the Charities Law. The governors of the foundations are held to public account for the deployment of funds available in a manner that is exclusively charitable, but which focuses on benefits to the pupils at the two schools present and future in a manner that averts the restriction implied or imposed by the fee structures. In practice, that means an increasing focus on both will be an improved bursary provision. It also means that where a foundation applies to or is desirous of winding up, its remaining assets would have to be deployed to a related charitable purpose in the manner laid down in the Charities Law. Hautlieu School and Highlands College also has their equivalent of a charitable foundation which has been registered under the Charities Law.

- 11 The Attorney General and the Treasurer accepted these helpful proposals on the part of the Charities Commissioner, and the Representation was therefore amended so that the bulk of the bequests would now be appointed to the registered charities associated with the Jersey College for Girls, Victoria College, Highlands College, and Hautlieu School. Only two institutions had no associated charity, namely Rouge Bouillon School (to which there were two bequests valued at £2,953.90 in total with a total annual income of £4.47) and the Public Library (to which there was one bequest valued at £1,019.49 with an annual income of £1.54).
- 12 All of the appointments will be made subject to a signed memorandum of understanding from each of the recipients that the funds will be used (as far as reasonably possible) consistently with the spirit of the original gift. Each of the recipient charities will report annually to the Charities Commissioner and the Attorney General as to how monies appointed had been applied and Rouge Bouillon School and the Jersey Library had agreed to report to the Attorney General on the appointment of the funds received by them confirming how they had been spent.
- 13 These revised proposals were approved by the Charitable Funds Oversight Board, the Charities Commissioner, the Attorney General, the Treasurer and the recipients. No objection had been received following the public notice.
- 14 The power of the Court under Article 47A(1) can only be exercised if any of the circumstances in Article 47A(2) apply. Without going through each of the 31 bequests, the Court was satisfied that variously Article 47A(2)(b), (c),(d) and (h) applied.

## Conclusion

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- 15 In all but one instance, the income-only stipulation serves to render the benefactions all but worthless in practical charitable terms, whilst their low value serves to guarantee a continuing diminution of the capital in real terms. In consequence, the benefactors' original specific purposes cannot be carried out in a manner which has practical value. All the funds could be better employed for educational charitable ends if consolidated in the manner proposed.
- 16 In the light of financial reality, the Court agreed that the significant need now is not to allow these 31 bequests to continue to wither on the vine but to honour, if not the specific purposes of the benefactors, nonetheless, to honour the spirit of their intentions.
- 17 The Court was provided with a schedule setting out the names of the bequests and the relevant recipient and ordered:
- (i) that the bequests be held for the benefit of and paid to the relevant recipient.
  - (ii) that upon completion of the payments, the bequests cease to exist and the Treasurer be discharged from the office and duties of trustee in respect thereof.