

Approval of: Change of Terms of Conditions to existing Gift Award to Les Amis from the H.E. Le Seilleur Gift Fund

Introduction

The Minister for Health and Social Services (“the Minister”) has received a request from Les Amis to transfer the re-call conditions attached to the gift previously received from the H.E. Le Seilleur Gift Fund (“the Fund”) under MD-HSS-2021-0041 to new assets, to be acquired in an asset swap. The asset swap is for a different project but still in accordance with the original aim and still in accordance with the terms of the Fund .

Under P.71/1997, the Minister is considered the administrator of the Fund.

Issue

Les Amis was founded in 1975 to help people with learning disabilities such as Down Syndrome and Autism move from institutional into community care. Today, the charity supports more than 130 residents and service users of all ages, many of whom live independent lives in the community. Many hold down jobs and share flats and houses around the Island. Others live permanently in supported accommodation and there are those who come to Les Amis for respite care to give their carers a break. The charity also provides domiciliary services in the clients' home.

Further to MD-HSS-2021-0041 and in line with the Partnership Agreement, the Fund made an award to Les Amis totalling £1,000,000.00 to *‘create supported accommodation, care and nursing care facilities for Islanders with a learning disability’*. The gift was used for the purchase and development of the property known as ‘Hampshire Hotel’. This project is no longer viable and the property was put on the market for sale. The Fund has a right to recall the award from the proceeds of the sale as per Partnership Agreement.

However, it is understood that the recoverable value of the Hampshire Hotel site will not provide sufficient funds for a full repayment. HCS Officers have received confirmation from Les Amis that the value of the security gained (13 apartments at the Limes) is equivalent if not higher of the security being released (Hampshire Hotel site) as Les Amis have not received a higher value bid for the site. Furthermore, the resulting financial stress on the charity would most likely cause its closure. In that circumstance, all the services currently provided by Les Amis, which are aligned to the aims of the Fund, may be lost to the Island. The event may also cause wider reputational damage to the Fund and may have adverse impact on external donors to support charities such as Les Amis or to leave legacies such as the Le Seilleur Gift Fund.

Les Amis have provided details of alternative plans to the Hampshire Hotel and these are financially dependent on the ability to retain the original award. These involve an asset exchange arrangement with a social housing developer that would result in achieving much needed, independent and modern accommodation for Islanders with Learning Disabilities and would result in an increase of the charity’s service capacity. In other words, the recoverable amount would become working capital for an alternative project with similar aims as the original project.

The asset exchange is also expected to help secure the ongoing viability of Les Amis as a charity and to enable provision of services directly related to the aims of Les Amis.

Most importantly, the new assets and their service model would be in compliance with the award restrictions of the Le Seilleur Gift Fund “... for the benefit of aged, infirm and needy residents of the Island”.

The new assets will be available immediately after completion of the exchange (without re-development works) and secure better living and support arrangements for existing Les Amis clients whilst also providing accommodation for a projected increase in demand.

HCS officers have supported Les Amis in reviewing and developing the new service model, including service demand projections. HCS officers have obtained information and representations from Board and Management of Les Amis that confirm:

- The sunk costs relating to the Hampshire Hotel and the likely realisable value
- Assurance about the process of valuation for the properties involved in the asset swap;
- Confirmation that Les Amis is forecast to remain a going concern until at least July 2024, and that management foresee the asset swap as enabling the continuation of going concern after that;
- Confirmation that Les Amis, and this specific project, will continue to provide services consistent with the aims of the Fund;

The funding will be used to increase the service capacity of the charity and to provide a better accommodation offer for Islanders with Learning Disabilities under terms detailed in the updated and signed Partnership Agreement (PA) .

The waiver and retention of the previously awarded gift is recommended to the Minister by the HCS Chief Officer as being in compliance with the award restrictions of the Le Seilleur Gift Fund “... for the benefit of aged, infirm and needy residents of the Island”.

Furthermore, this recommendation has been made independently of Departmental interest.

HCS officers recognise that the situation provides a finely balanced dilemma: a decision to waiver the recovery of the gift (instead of immediately recouping a portion of gift) puts the recoverable value at risk of loss, for a charity that will remain in a precarious financial position. However, on balance of the factors above, **the HCS officer recommendation is that the Minister agrees to not to exercise the recall for a period of three months. After which, subject to the following conditions being met, the right of recall shall transfer to the new award on the same terms as the original gift:**

- Les Amis will provide early notice and communication regarding any material change in Les Amis’ financial position;
- Les Amis shall not sell, swap or use these assets without prior notice and mutual agreement of the Minister;
- The asset swap described to HCS is completed and evidenced within 3 months
- Les Amis commit that the asset swap properties will be used as described and being in compliance with the award restrictions of the Le Seilleur Gift Fund “... for the benefit of aged, infirm and needy residents of the Island”.
- Should this position change within ten years, Les Amis will communicate this at the earliest opportunity to the Minister and the Chief Officer, Health and Community Services, and the Fund will have the right to repayment of the full award value
- Les Amis recognise a commitment to re-imburse the Fund from liquidated assets as a preferred creditor should Les Amis dissolve within the next five years

The HCS Chief Officer will thereafter be responsible for monitoring the charity's adherence to the Partnership Agreement, including the enforcement of any clauses.

In forming this recommendation, HCS officers have discussed the reasons for the variation of terms with Treasury officers. This provided opportunity for objective comment on matters of governance and compliance from Treasury to be factored into the recommendation.

Recommendation

The Minister is recommended to approve this decision to change the conditions and to waive the right for re-imbusement of previously awarded funding from Les Amis, as outlined above.

Resource Implications

There are no Departmental or Fund resource implications arising from this decision. The assets in the Fund will not be affected as the specified amount was released as part of MD-HSS-2021-004.