

**Response to a Question Pursuant to Rule 14
of The Rules of Procedure of the States of Deliberation and their Committees**

Subject: Administration of Probate

States' Member: Deputy Gavin St Pier

Date received: 2nd June 2021

Date acknowledged: 2nd June 2021

Date of reply: 15th June 2021

Question 1

Is the agreement between the Policy & Resources and the Dean documented? If so, could this be published?

Response

An agreement has been drafted which is still subject to negotiation between the parties with the expectation that it will be finalised before the end of the month.

Question 2

Is the Dean's £25,000 annual management fee fixed? What, if any, is the basis on which the fee will be revised in the future?

Response

This is the subject of ongoing negotiation.

Question 3

The annual accounts for the Ecclesiastical Court are currently not subject to audit. Under the new plan, will the annual accounts for the Ecclesiastical Court for 2021 and subsequent years be subject to external audit?

Response

The agreement requires that the accounts are properly prepared and inspected by an accountant with the necessary skill, knowledge and expertise. The matter of audit is one for the Dean but this is not felt to add sufficient value to justify the increased expenditure and resultant decrease in charitable distributions.

Question 4

Under the rescinded resolutions, the Social Investment Fund was guaranteed a minimum receipt of £400,000 in the first two years of operation. Is it the Committee's intention to continue to honour that minimum receipt, or will the Committee be satisfied if the Ecclesiastical Court's surplus is less than £400,000 in this period?

Response

The future arrangement will ensure that the net surplus is transferred in full to the Social Investment Fund. The £400,000 figure was calculated based on average net proceeds and would have been adjusted up or down following the two-year period dependent on actual receipts. The Policy & Resources Committee is hopeful that this average will be maintained meaning that the Fund will receive more in some years and less in others. However, there is no intention for the States to contribute directly and the Policy & Resources Committee will instead seek to maximise the income available to the Social Investment Fund from other sources.

Question 5

In a press release on 23rd March, the Committee said "[t]he agreement also includes a cap on costs to ensure the surplus transferred to the Social Investment Fund is maximised." Could the Committee please explain the 'cap on costs'?

Response

The 'cap on costs' is a clause which limits any increases in the cost of running the Probate function without the prior agreement of the States.

Question 6

In the UK, the fee for the grant of probate is fixed at £215, irrespective of the size of the estate. In Guernsey, the Ecclesiastical Court charges an ad valorem fee of 0.35% of the gross value of the estate, with fees capped at £100,000. Does the Committee intend to review this charging structure and high level of fees to ascertain whether it remains competitive for the jurisdiction?

Response

The level of fees and charges in respect of Probate services are a matter for the Dean. I am pleased to say that the Dean has recently consulted the Committee on a change to fees which he is considering. I am encouraged by this close working and hope that there will be similar engagement over any future proposed changes.

Question 7

Is the Committee satisfied that the States of Guernsey has no control over the level of fees charged by the Ecclesiastical Court?

Response

As set out in the response to question 6 the level of fees remains, as has been the case in the past, a matter for the Dean. The Dean and Registrars are best placed to understand the estates which are being processed and whether any changes are required to the level of fees which have not been changed for many years.

Question 8

In debate, the President of the Committee said that the agreement would be 'kept under review during this term.' Could the Committee please expand on the timing and nature of that review?

Response

The nature and formality of such reviews is subject to ongoing negotiation as part of the finalisation of the agreement.

Question 9

Has the Committee considered whether the new plan is compatible with Article 14, specifically when taken with Article 9, of the European Convention on Human Rights? If not, does it intend to?

Response

When taken with Article 9 (or any other substantive right) of the European Convention on Human Rights ("ECHR"), Article 14 requires the enjoyment of those rights without discrimination on any ground, including sex, race, religion, and political or other opinion. Under the new approach, a service will continue to be provided in a non-discriminatory manner to all persons requesting probate or letters of administration over personal property. This service will be provided by a public authority (however branded) which forms part of the Bailiwick's civil court structure and is therefore bound to act compatibly with the rights set out in the ECHR.

Deputy Peter Ferbrache

President

Policy & Resources Committee