



ALBA | CHRUTHACHAIL

Convener of the Constitution, Europe, External Affairs and
Culture Committee
Clare Adamson MSP
Company
The Scottish Parliament
Edinburgh
EH99 1SP

16 April 2024

Dear Clare

Thank you for your letter dated 25 March 2024 regarding the funding previously provided to Rein, through our Open Fund for Individuals. As the fund name suggests, this award was made to the individual applicant leading the project, rather than to an organisation or to the project team.

I note the specific questions that you ask in your letter, and I provide a reply to those below. Before that, however, I would like to offer a bit of wider context to this award and the background in which it was made.

Art and artists operate at both the centre of our society and on the fringes, entertaining and inspiring us but also pushing boundaries and challenging us in ways that may make us uncomfortable.

Creative Scotland seeks to fund a broad range of cultural and creative work, across a wide spectrum of creative practice and for a diverse range of audiences, from that which can be seen as mainstream, to work which is far more challenging, provocative, and may risk controversy. Themes of sex and sexuality have been seen in art throughout history and continue to be visible in contemporary life.

It is an important part of our role that the work we support is representative of all parts of Scottish society, including those who are more marginalised. This is consistent with our legal responsibility to, amongst other things, promote equality, diversity, and inclusion.

It is not Creative Scotland's role to censor work, nor be the arbiters of cultural taste, however Creative Scotland does have important responsibilities to the public for the appropriate use of public funding, responsibilities we take extremely seriously. Whilst not everyone will agree with, or like, all the decisions Creative Scotland makes, I hope the Committee agrees that artistic freedom is to be encouraged and supported.

It is worth recognising that Scotland has a long history and solid reputation as a producer and presenter of radical and experimental performance, and there has been a return and growth of this status in recent years with increasing international recognition of contemporary performance and live art from Scotland.

It is within this context that we supported the Rein project through its R&D phase in 2022/23, and subsequently awarded further funding earlier this year to support the realisation of the project, with a view to it being premiered in 2025.

Rein was originally supported in the knowledge it would be a challenging, creatively ambitious piece of experimental performance art, with a clear storytelling narrative, strong sexual themes and simulated sexual performance, and would speak to a particular audience rather than the mainstream.

The track record of the lead applicant, and the production team, was (and is) a strong one, having worked with a broad range of established and respected cultural organisations both in Scotland and elsewhere. The explicit representation of certain aspects of Queer culture and sexuality in Rein had been carefully considered in the approved application and the team was understood to be sensitively addressing the nature of the content.

However, as became clear in March 2024 when the project team developed new content for their website and publicised that as part of a call-out for participants, one new and significant difference emerged which took the project into unacceptable territory. That was the intention to include real sex, as opposed to performance depicting simulated sex, in the work.

This represented a significant change to the approved project, moving it from 'performance' into actuality, and into a space that was, in Creative Scotland's view, inappropriate for public funding.

As such, following internal review and discussion, including taking legal advice, we made the decision to withdraw funding from the project on the grounds of breach of contract by the applicant. Following discussion with the applicant and the project team, we issued the following statement across our channels, which explained our decision:

Following a review of the application, assessment, and contractual agreement regarding the project Rein, Creative Scotland has made the decision to withdraw support for this project and will be seeking recovery of funding paid in respect of this award to date.

What has emerged in the latest phase of the project represents a breach of the conditions of funding award, as the nature of the project has changed. The central role that 'non-simulated' (i.e real) sex acts now play in the project, marks a significant change to the nature of the work presented in the original application which was assessed for funding. This significant change to the nature of the work has been evidenced in the most recent announcement on the project's website, without the agreement of Creative Scotland.

Creative Scotland makes in the region of 2,000 funding awards each year. We support artists and projects across all art-forms, some of which are challenging in content, and push creative and social boundaries.

However, Creative Scotland has important responsibilities to the public for the appropriate use of public funding, and, as recipients of that public funding, award recipients also have legal responsibilities as reflected in their funding contract.

Background:

The project was awarded £84,555 through the Open Fund for Individuals on 29 January 2024 following an application, assessment, and panel decision process.

Creative Scotland's contract for the Open Fund states that:

- No changes may be made to a project without Creative Scotland's prior written permission;*
- Award recipients must start, complete and carry out the project as set out in their application. If the project is varied or the timeline does not meet the dates set out in the application, or as agreed between Creative Scotland and the award recipient in writing, Creative Scotland reserves the right to withdraw the offer of funding, and;*

- *Should an award recipient wish to issue a press release or make any public announcements regarding their or Creative Scotland's involvement in the project, the award recipient must seek Creative Scotland's prior written approval.*

With the above in mind, I move on to address your specific questions.

As regards the funding we have awarded to the applicant for this project, I can confirm that the R&D phase of the project was awarded £23,210 in August 2022. We have no reason to seek to reclaim this award as the work was completed as set out in the approved application.

An award of £84,555 was then made at the end of January 2024 for the delivery phase of the project and it is this award that has been withdrawn.

As is the case for all Open Fund for Individual awards, an initial payment of 90% of the award was made upon receipt of the signed contract, in this case, equating to £76,100. The applicant had incurred contractually legitimate costs of £8,359, mainly to sub-contracted freelancers, by the time Creative Scotland informed them that the funding was being withdrawn. In the interests of protecting the, often precarious, income of these sub-contracted freelancers, on this occasion, we are not recovering fees already paid to third parties, meaning that we have recovered £67,741 from the applicant.

Combined with the 10% of the award which had not yet been paid, this means that £76,196 of the total award has now been withdrawn. This represents 90% of the original award.

As regards your second question, all criteria we adopt in assessing applications for funding are published and available on our website, for anyone to read. This is the case for all our different main routes to funding support:

- Open Funding: [Open Funding | Creative Scotland](#)
- Multi-Year Funding: [Multi-Year Funding | Creative Scotland](#)
- Targeted Funding: [Targeted Funding | Creative Scotland](#)
- Funds delivered on our behalf by Partners: [Funding Delivered by Partners | Creative Scotland](#)

The application in question was made to our Open Fund for Individuals, the full guidance and criteria for which can be found here: [Open Fund for Individuals | Creative Scotland](#).

It's important to be clear that the applicant in question applied through the proper channels, the application was assessed according to our published criteria, and was awarded funding according to our published guidance and processes. The decision to withdraw funding was necessary due to the changes made by the applicant in the manifestation of the work.

As regards your encouragement that we publish the application materials associated with the project, we intend to do so, but not until we have completed a thorough review of these materials to remove any personal information, any business confidential information, or any information that, if publicly disclosed, could pose a threat to an individual. We will also be taking legal advice on what we issue, prior to doing so to ensure that we comply with our legal obligations, including those under applicable data protection legislation.

The Committee should be aware that since the project became a focus of mainstream and social media, individuals involved have received threats and abuse, both online and in person. There has also been highly discriminatory comment directed at individuals, organisations and groups linked to the project, as well as at Creative Scotland staff.

This is, in our view, not acceptable, and we will be seeking legal advice before we take any further action, including making further application information available.

We need to consider the safety and well-being of those involved and ensure that any further information released does not put people at risk. I hope the Committee will appreciate the necessity of this approach.

One final point I want to make is that the issues in this case have arisen as a consequence of material changes being made to the nature of the project, as set out above. However, we are nonetheless conducting a review of our handling of this application, its journey through our Open Fund for Individuals process, what we can learn from that and any changes we may need to make as a result.

Examples of pre-award changes could include additional risk-based prompts for assessors and decision-making panels, an escalation process, and an additional review stage, post-panel before any decision is issued to applicants.

In terms of post-award protections, we may consider options for standard conditionality to be applied to higher risk awards, for example relating to monitoring updates and additional reporting/clearance requirements. It is also likely that we will recommend a reduced level of maximum award for funds being awarded to individuals, given the additional governance protections organisational structures offer once awards are made.

In the meantime, we have introduced a temporary additional assurance stage for this Fund to allow for a further check on all applications that are deemed successful at the final Panel stage. This is to identify projects where there may need to be closer working with the successful applicant as they implement their work, specific conditions included within the funding contract, or additional risks identified and mitigated.

We have added a maximum of four weeks to the existing timescales for the Open Fund for Individuals to allow for this, however, for the majority of applicants, any delay will be minimal. Since making this change, three quarters of applicants have received their decision within the existing timescales with the remainder receiving their decisions within a few days.

I acknowledge the lengthy nature of this response to what may, at first, seem like two quite straightforward questions. However, I feel it necessary that the Committee understands the context as well as specific points.



Iain Munro
Chief Executive.