

**HFMA introductory guide to NHS finance**

# **Chapter 19: NHS charitable funds**



# Chapter 19. NHS charitable funds



## Overview

This chapter looks at the management of funds held on trust and is based on the legislative framework as it applies to England and Wales. The key Act is the Charities Act 2011 (as amended by the Charities Act 2022) that brought together all relevant charities' legislation from previous years including Acts passed in 1992, 1993 and 2006.

## 19.1 Background

There are over 230 NHS charities in the UK that collectively give £1m every day to the NHS (NHS Charities Together<sup>335</sup>). Most of these charities have a single corporate trustee, an NHS body, but over 20 NHS charities in England are now independent charities that appoint their own individual trustees.

Most of the funds given come from a small number of significant NHS charities - for example, the Great Ormond Street Hospital Children's Charity, however most NHS charities operate at a much lower level. The NHS saw an increase in charitable donations during the Covid pandemic and therefore the level of charitable giving is expected to reduce in the coming years.

There is no single total held for all NHS charities; some charities are independent such as Great Ormond Street Hospital Children's Charity or the Barts charity, and these are not consolidated into the Department of Health and Social Care's (DHSC) accounts. However, the vast majority of NHS charities are consolidated, and as at 31 March 2022, these had a value of £590m<sup>336</sup>. If the value of independent charities were to be added to this total, the value would significantly increase.

The accumulation of these funds is, in part, a consequence of the historical funding of early health services through charitable sources. When the NHS was created, most existing charitable assets were pooled into hospital endowments funds. The main exceptions to this were teaching and university hospitals that retained control of their endowments through boards of governors and management committees respectively.

Over the years, the NHS has been reorganised many times and laws passed to allow the charitable funds to transfer to NHS organisations that can use them for their intended purpose.

More recently, charitable funds have been boosted through capital growth and income from investments, legacies, donations and fundraising appeals. During the covid-19 pandemic, appeals managed by NHS Charities Together raised over £150m<sup>337</sup>, and in addition to this, individual NHS charities will have run local appeals.

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<sup>335</sup> NHS Charities Together, *About us: who we are*, 2023

<sup>336</sup> Department of Health and Social Care, *Annual report and accounts: 2022 to 2023*, January 2024

<sup>337</sup> NHS Charities Together, *Our covid-19 appeal*, 2023

## 19.2 Regulation – roles and responsibilities

### Department of Health and Social Care

Although the DHSC does not have a role in regulating NHS charities in England, it does need to be informed when an NHS charity moves to independent status, and may be involved in conversations at an early stage of that decision process.

NHS charities (those with a corporate trustee) are designated by the Office of National Statistics (ONS) as public sector bodies. This means that they need to be consolidated into the DHSC's annual report and accounts. Therefore, NHS bodies in England need to submit information about their charitable funds to NHS England at the financial year end. Independent NHS charities are not consolidated into the DHSC's annual report and accounts.

### Devolved governments

The Department for Communities is responsible for the policy and legal framework for charities in Northern Ireland, including the appointment and removal of trustees.

Welsh ministers have authority under the NHS (Wales) Act 2006 to appoint/ remove trustees and to hold and administer NHS charitable funds.

Scottish ministers have authority under the National Health Service (Scotland) Act 1978 to appoint or remove trustees and to manage NHS charitable funds.

All NHS charities in the devolved nations have their associated NHS body, local health board, NHS trust or health and social care trust, as their corporate trustee. They are consolidated into the local health body corporate trustee's accounts as well as the devolved government's accounts.

Further details are provided in the *Devolved nations* chapters of this guide.

### Charity Commission for England and Wales

The Charity Commission for England and Wales<sup>338</sup> (the Commission) is the statutory organisation that regulates charities in England and Wales. Its aim is to maintain public confidence in the integrity of charity which it does by encouraging better methods of administration, giving advice to trustees and investigating and correcting abuse. The Commission has the power to change the objectives of a charity where this is necessary and where trustees do not have the power to do so themselves.

All charities in England and Wales must apply to register<sup>339</sup> with the Commission if either:

- the annual income of the charity is at least £5,000
- the charity is established as a charitable incorporated organisation (CIO).

Only exempt charities and certain excepted charities are not required to register.

In England and Wales, all registered charities are required to make an annual return to the Commission within 10 months of the financial year end (so, for NHS charities with a 31 March year end this is the end of January the following year)<sup>340</sup>. In addition, the following information is required by the same deadline:

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<sup>338</sup> UK Government, *Charity commission for England and Wales, 2023*

<sup>339</sup> UK Government, *Set up a charity, 2023*

<sup>340</sup> The Charity Commission, *Prepare a charity annual return, 2023*

- charities with an annual income of less than £10,000 must submit their income and expenditure
- charities with an annual income over £10,000 but less than £25,000 must file an annual return that asks questions about the charity, its financial position, funding sources, where it operates and how it is managed and submit its annual report and accounts
- charities with an annual income over £25,000 must file an annual return and submit their annual report and accounts with the statement from the independent examiner or auditor.

## Office of Scottish Charity Regulator

The Office of the Scottish Charity Regulator (OSCR)<sup>341</sup> is the statutory independent body that grants charitable status to and regulates charities operating in Scotland. It has a statutory duty under the Charities and Trustee Investment (Scotland) Act 2005 to encourage and assist charities to meet their legal requirements.

All charities in Scotland are required to register with OSCR. This may include charities registered with the Charity Commission for England and Wales where those charities also work in Scotland<sup>342</sup>.

All charities in Scotland must submit the following to OSCR within 9 months of the financial year-end<sup>343</sup>:

- the annual return
- annual report and accounts
- the independent examiner or audit report.

The Charities (Regulation and Administration) (Scotland) Act 2023<sup>344</sup> amends the 2005 act. It:

- gives OSCR wider investigative powers
- amends the rules relating to who can be a charity trustee or a senior office-holder
- increases the information held by the OSCR holds on charity trustees
- updates the information requirements for the Scottish Charity Register
- creates a record of merged charities.

## Charity Commission for Northern Ireland

Charities operating in Northern Ireland must register with the Charity Commission for Northern Ireland (the NI Commission)<sup>345</sup> to be recognised as a charity for tax purposes. The NI Commission is an independent regulator and a non-departmental public body sponsored by the Department for Communities. It was established in March 2009, to deliver the legislative requirements of the Charities Act (Northern Ireland) 2008.

The NI Commission's vision is to deliver 'a dynamic and well governed charities sector in which the public has confidence, underpinned by the Commission's effective delivery of its regulatory and advisory role.'

All organisations that meet the following conditions must apply for registration as a charity in Northern Ireland:

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<sup>341</sup> OSCR, *About us*, 2023

<sup>342</sup> OSCR, *Registration*, June 2023

<sup>343</sup> OSCR, *Annual monitoring*, 2023

<sup>344</sup> Scottish Parliament, *Charities (Regulation and Administration) (Scotland) Act 2023*

<sup>345</sup> The Charity Commission for Northern Ireland, *About us*, 2023

- the organisation has exclusively charitable purposes
- it is governed by Northern Ireland law
- it is an organisation that is an independent body – it has control and direction over its governance and resources.

The NI Commission is currently running a staged process for the registration of charities where charities will be called for registration. Newly formed charities must file an expression of intent so that the NI Commission is aware of their existence.

In Northern Ireland, charities registered with the NI Commission must submit the following<sup>346</sup>:

- the annual return
- annual report and accounts
- the independent examiner or audit report.

### 19.3 The nature and purpose of charitable funds

A charitable fund is created when funds are accepted by a trustee to be held and used for the benefit of a beneficiary or beneficiaries. The arrangement is usually governed by a legal instrument that sets out the terms of the fund and the purpose to which monies are to be applied by the trustee.

Charitable funds held on trust must provide public benefit, be exclusively charitable and be used to further the funds' objectives. There are thirteen acceptable charitable purposes set down in legislation<sup>347</sup>. The categories are subject to the overriding requirement of demonstrable public benefit.

#### The thirteen charitable purposes in England and Wales

1. The prevention or relief of poverty
2. The advancement of education
3. The advancement of religion
4. The advancement of health or saving lives
5. The advancement of citizenship or community development
6. The advancement of the arts, culture, heritage or science
7. The advancement of amateur sport
8. The advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality or diversity
9. The advancement of environmental protection or improvement

<sup>346</sup> The Charity Commission for Northern Ireland, *Annual reporting, 2023*

<sup>347</sup> For England and Wales, these purposes are set out in the *Charities Act 2011*. The charitable purposes in Scotland and Northern Ireland are set out in the *Charities and Trustee Investment (Scotland) Act 2005* and *Charities Act (Northern Ireland) 2008*. The charitable purposes in all four nations are similar but there are some differences.

### The thirteen charitable purposes in England and Wales (continued)

10. The relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantages
11. The advancement of animal welfare
12. The promotion of the efficiency of the armed forces of the Crown, or of the efficiency of the police, fire and rescue service or ambulance services
13. Other purposes beneficial to the community not falling under any of the other headings.

There are three classes of charitable funds recognised in law:

- unrestricted funds – that may be spent at the discretion of the trustees in line with the charity's objectives
- restricted funds – that can only be spent in accordance with, usually, written restrictions imposed when the funds were donated or granted or in accordance with the specific terms of an appeal raised for the charity
- endowment funds – where capital funds are made available to a charity and trustees are legally required to invest or retain them.

Endowment funds can be 'permanent' (trustees have no automatic power to spend the capital, only the income generated through its investment), or 'expendable' (trustees can convert capital to income and spend it on the fund's purpose). The law does allow charities to spend permanent endowment in certain circumstances but permission (except in some limited circumstances) would need to be sought from the Commission.

Funds may also be 'designated' or 'earmarked' which means that trustees can set aside unrestricted funds for a specific purpose or more typically for an area of the hospital's operations - for example, cardiology, urology or nursing staff benefits.

Designating funds can be a useful way of building up funds through periodic transfers from unrestricted funds over time for a significant project or where funds are needed to meet on-going costs to which formal, on-going commitments have been made. It may also be a useful way to recognise the apparent wishes of donors which do not create a restricted fund. Funds can be undesignated if the original need is no longer relevant.

Donations are given to be spent on charitable purposes, so trustees are expected to spend them as soon as possible rather than simply accumulating them 'for a rainy day' or 'just in case'. Trustees are therefore required to develop and regularly review their reserves policy that sets out the level of unspent, unrestricted funds the charity intends to hold.

Charities can accumulate funds for specific long-term projects but if trustees want to accumulate funds generally, they must request a 'power of accumulation' from the appropriate regulator (unless the governing document already allows them to do so).

## 19.4 Charitable income

There are five main sources of new money for charitable funds:

- donations
- fundraising
- legacies
- investment income and interest
- grants.

In some circumstances, income can also be generated through:

- trading – but only if it is in pursuance of the fund’s primary purpose - for example, at a training course for NHS staff there may be an ancillary trade in refreshments
- charging for part or all of a service provided by the fund (but only if it is for public benefit, and charging must not restrict access).

It is important to note that trustees are not obliged to accept funds on trust and should refuse income where the conditions imposed by the donor are too onerous, inappropriate or where the trustees are unlikely to be able to use funds as directed. To avoid criticism and safeguard their own position, trustees are advised to seek advice from the appropriate regulator before refusing a donation.

Acceptance of all donations should be tested against the general principle that it does not, nor appear to, place an NHS charity or the trustee NHS body under an inappropriate obligation. Consideration should also be given where the values of the donor are not consistent with those of the NHS.

## Donations

Donations can be:

- solicited - for example, through posters, leaflets or other appeals
- unsolicited - for example, where, at the end of a hospital stay, a patient asks how they can donate to the ward or hospital charity.

Donations of both types can be unrestricted or restricted - for example, an unrestricted donation would arise when a patient or relative gives money ‘for the hospital charity’ or ‘for the ward funds’ without specifying how it should be used. Even if there is a particular use suggested, it will only be a ‘restriction’ if the terms are strictly limited - for example, ‘it must be used’ or ‘must only be used’ – and it is formalised in writing. A donation made in response to a fundraising leaflet soliciting donations for a general fund would also be unrestricted.

Ideally, the proportion of donations received as restricted funds is minimised to avoid limiting spending flexibilities. One way to do this is to use a standard form of receipt that invites donors to record how they ‘wish’ their donation to be used ‘without imposing any trust’. The wishes expressed can be reflected through the designation of donations, but donations on these terms are unrestricted. Such a receipting system can also assist with accountability and the receipt can incorporate an invitation to donate under Gift Aid arrangements.

It is important that staff who receive unsolicited donations know how to deal with them as a matter of good financial management as well as to ensure that restricted funds are not unwittingly established.

## Fundraising

Fundraising income results from events (anything from coffee mornings and sponsored swims through to high profile celebrity events) and targeted appeals. If the money is sought for an explicit purpose - for example, if tickets or a poster for a charity dinner state 'all proceeds from this event will be used to buy monitors for the special care baby unit', then it must be used for that and nothing else.

Fundraising is regulated by two non-statutory bodies:

- for England, Wales and Northern Ireland - the Fundraising Regulator<sup>348</sup>. Charities that register with the regulator are listed in their publicly available directory and are allowed to use the fundraising badge on their website and fundraising materials. There is a fee for registering
- in Scotland - the Scottish Fundraising Adjudication Panel<sup>349</sup>.

Applicable from October 2019, the *Code of Fundraising Practice*<sup>350</sup> covers the whole of the UK.

A consultation has commenced on a new Fundraising code<sup>351</sup>. The consultation closed in December 2023 and the intention is to publish the new code in early 2025, with an implementation date sometime later in the same year.

The power of NHS trustees to raise funds is set out in legislation:

- section 222 of the NHS Act 2006
- section 169 of the NHS (Wales) Act 2006
- section 84A of the NHS (Scotland) Act 1978
- schedule 14 of the Health and Personal Services (Northern Ireland) Order 1972.

These Acts permit funds to be used more flexibly where there is an insufficient response (a failed appeal) or an excess of funds over and above the appeal target, provided certain safeguards are met. However, attention should be paid to the wording of all promotional literature and tickets to ensure they do not remove the flexibility the Act provides in applying excess funds, or the funds of failed appeals, for general purposes.

## Legacies

Legacies can be restricted or unrestricted depending on the terms on which the bequest is made. The wishes or desires of a donor are normally non-binding designations; however, reference should be made to the terms of the gift to ensure that a binding restriction does not mean that the legacy is restricted funds.

NHS charities that are the beneficiary of any will should, as a matter of best practice, ensure that they have a copy of the will and that it is kept for as long as the charity has the bequest. This will ensure that the charity can meet any terms attached to the donation.

If the legacy cannot be fulfilled - for example, if the function it was intended for no longer exists, or has been transferred to another body, the NHS trustee(s) concerned should consider whether they received the legacy under section 218 of the NHS Act 2006, which may provide a power to redirect the funds, but advice should be sought from the Charity Commission for England and Wales.

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<sup>348</sup> Fundraising Regulator, *About us*, 2023

<sup>349</sup> Scottish Fundraising Adjudication Panel, *About us*, 2023

<sup>350</sup> Fundraising regulator, *Code of fundraising practice*, updated June 2021

<sup>351</sup> Fundraising regulator, *Code review 2022-25*, 2023

If it appears that section 218 does not apply, then an application must be made to the Charity Commission for England and Wales for a scheme that allows the legacy to be used in another way. Scottish and Northern Irish charities should apply to their regulator for a scheme.

## Investment income and interest

Where charitable funds have surplus monies not needed to fund immediate charitable activities, trustees may invest to generate additional income. However, they must do so in line with legislation and the relevant regulator's guidance and having considered all aspects when making their decision.

In England and Wales, the relevant legislation is the Trustee Act 2000 which includes a general power of investment that can be used in relation to any charity property held on trust (except property of charitable companies) subject to any 'restriction or exclusion' affecting the charity.

Investment income and interest (and any gains or investment losses) must be apportioned to the individual fund that generates it. Where the trustee(s) administer(s) more than one charity, the income and investment gains and losses must also be apportioned to the respective charities. In the case of designated unrestricted funds of a charity the trustee(s) is permitted to apply investment gains for any of the objects of the charity concerned.

Where investments are made in stocks and shares, trustees should consider the appropriateness of the investment; either as regards the company or industry sector – for example, the trustees may not consider it appropriate in a tobacco company, or one involved in the arms trade.

### Trustees' responsibilities when making investments

When making investments, trustees must ensure they further the purposes of the trust; this is normally achieved by securing the best possible returns on investments. However, following the Butler-Sloss case<sup>352</sup> further investment guidance has been issued.

The high court judgement<sup>353</sup> ruled that where an investment, or a class of investment, could be in potential conflict with the charitable purposes, trustees can decide to exclude such investments from their portfolio. For example, a charity can exclude investments in tobacco companies if this is deemed to conflict with the purposes of the charity.

The Charity Commission guidance is found in *Charities and investment matters: a guide for trustees (CC14)*<sup>354</sup> and includes further information on social investments.

## Grants

Grants are usually restricted income given for a specific purpose. As well as the general principles that apply to the use of (and accounting for) restricted funds, grants often have additional requirements attached - for example, how an acknowledgement is made in the accounts or other public documents.

As well as the general principles that apply to the use of and accounting for restricted funds, grants often have additional requirements attached including - for example:

- how an acknowledgement, if any, is made in the accounts and other public documents
- how any asset purchased, facility built, or service provided with grant monies is named or branded

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<sup>352</sup> UK Government, *Investing charity money: guidance for trustees (CC14)*, updated August 2023

<sup>353</sup> England and Wales high court (chancery division), *Butler-Sloss & Ors v The Charity Commission for England And Wales & Anor [2022]* EWHC 974 (Ch) (29 April 2022)

<sup>354</sup> The Charity Commission, *Charities and investment matters: a guide for trustees (CC14)*, June 2023

- the nature and frequency of monitoring and evaluation reports.

It is important that these additional requirements are met.

## 19.5 Spending charitable funds

A charitable fund can only spend money in line with its charitable purpose. In other words, in the interests of the fund's beneficiaries (i.e. NHS patients) and not the NHS organisation to which it is linked. Charitable funds cannot be used to fund services; they are for areas that are not covered by national funding.

This does not mean that the charitable fund must itself purchase items of equipment etc. for use in its linked NHS organisation. Most NHS charities are grant making – this means that they provide the funding for the NHS body to purchase goods or services. This ensures that ownership (and any related liabilities) of assets rest with the NHS trust.

Grant making charities should have clear policies and procedures in relation to how grant applications should be made and what types of grant the charity will fund. This guidance should make it clear that grants can only be made to fund schemes that have a charitable purpose and what this means in practice. It should also be well advertised to all possible beneficiaries to ensure that funding is not restricted to those who understand the system.

There are some areas of charitable spending that may need additional consideration:

- spending on staff<sup>355</sup> – this can be a complex area and trustees need to be satisfied that the expenditure will have the result of making staff more effective in their roles. Expenditure on staff is not in itself charitable but it can be conducive to the furtherance of the charitable purposes of the employer on the basis that happy staff result in happy patients. Different charities will reach different conclusions in relation to such items of expenditure – this is not necessarily an issue as long as the reasons for the conclusions are well documented.
- spending on research – trustees need to be satisfied that the outcome will be publicly available and is within the scope of the charity's objectives.
- delivery of public services - generally, most NHS charitable funds have been set up to enhance statutory provision rather than to provide what might be regarded as basic public services. If funds are to be used to deliver services, then the trustees will need to ensure that they follow the appropriate processes to approve the expenditure.

Many NHS charities hold lots of small funds and this can impact on the effective use of charitable monies; values may be low, and it can be difficult to spend the monies effectively. It is good practice to regularly review the volume and the purpose of funds. The HFMA briefing *Streamlining NHS charitable funds: lessons learned from experience*<sup>356</sup> provides some additional detail in this area.

## 19.6 Trustees - the different types

NHS bodies are not themselves charities. Only the property they hold on trust exclusively for charitable purposes constitutes a charity.

The charitable fund's governing documents set out who or what controls, manages and administers the charity; these are the trustees. There are two types of trustee in the NHS, corporate and independent.

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<sup>355</sup> HFMA, *Charitable expenditure on staff, August 2023*

<sup>356</sup> HFMA, *Streamlining NHS charitable funds, 2022*

## Corporate trustees

Most charitable funds in the NHS are managed by a corporate trustee; it is the NHS corporate body (the NHS organisation as an entity) that is the trustee. The governing body of the NHS body acts on behalf of the corporate trustee in the administration of the charitable funds but the members of the governing body are not themselves individual trustees.

This means that the regulator will have a relationship with the corporate body rather than the individuals on the board of the NHS body. Should regulatory action need to be taken, it will be with the NHS body rather than the members of the board. Other than this difference in accountability, the way that members of the board need to act towards the NHS charity is very similar to an individual trustee.

Members of the board must be aware of the requirements of being part of the corporate trustee, and guidance is issued by the relevant bodies that detail requirements as follows:

- in England and Wales, *CC3 The essential trustee: what you need to know*<sup>357</sup>
- in Scotland, *Guidance and good practice for charity trustees*<sup>358</sup>
- in Northern Ireland, *CCNI EG024 Running your charity guidance*<sup>359</sup>.

Corporate trustee meetings should be held separately from other business, and relevant directions for the establishment, functions and operations of the committee be included in trust standing orders.

## Independent trustees

In England, there is a second type of trustee for NHS charities. Under the NHS Charitable Trusts (Etc) Act 2016, English NHS charities can decide to apply to transfer their charitable property to another specifically established independent charity<sup>360</sup>.

Where this route is followed, the new charity is regulated solely by the Charity Commission for England and Wales and is 'free to set its own constitution including objects, legal form and trustees' appointments appropriate to its needs'<sup>361</sup>. Independent charities have no relationship with the DHSC and are not classified as public bodies by the ONS.

The transfer of assets to the new charity cannot be reversed but there are several safeguards to protect the interests of patients and the linked NHS organisation. In particular, all assets retain the same designation and the objects of the original charity continue (although they could be expanded to support wider health provision).

The independent trustee model does not currently apply in the devolved nations, where all NHS charities have a corporate trustee. However, work is underway to change the governance arrangements for NHS charities in Scotland following an independent review<sup>362</sup>. The review recommended that an independent trustee board should be established for each of the 16 NHS charities in Scotland<sup>363</sup>. The recommendations were accepted and further legislation will be introduced.<sup>364</sup>

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<sup>357</sup> The Charity Commission, *The essential trustee*, updated May 2018

<sup>358</sup> OSCR, *Guidance and good practice for charity trustees*, updated December 2017

<sup>359</sup> The Charity Commission of Northern Ireland, *Running your charity guidance*, 2021

<sup>360</sup> Department of Health and Social Care and NHS Charities Together, *NHS charities - conversion to independent status*, updated February 2020

<sup>361</sup> Department of Health and Social Care, *Regulation of NHS Charities*, updated March 2014

<sup>362</sup> Health Secretary, *Statement on the independent review of governance of NHS endowments*, October 2021

<sup>363</sup> Julie Hutchinson LLB TEP WS, *Review of governance of NHS endowment funds*, October 2021

<sup>364</sup> Scottish Government, *Independent review of governance of NHS endowments: Health Secretary statement*, October 2021

## 19.7 Trustees – roles and responsibilities

Whether trustees are individually appointed to independent charities or are board members of the corporate trustee, it is important to read the appropriate guidance issued by the charity regulator about trustees' roles and responsibilities.

They should also familiarise themselves with the:

- terms of the charity's governing document
- procedures that have been prescribed in legislation and regulations
- standing orders and standing financial instructions
- relevant guidance on public benefit, decision-making and managing conflicts of interest.

In broad terms, trustees have a duty to ensure compliance, a duty of prudence and a duty of care.

### Compliance

Trustees must ensure that:

- the charity complies with charity law and with the requirements of the appropriate regulator. As part of this, they must ensure that the charity prepares its annual report, returns and accounts as required by law
- the charity does not breach any of the requirements or rules in its governing document
- any fundraising activity undertaken by or on behalf of the charity is properly undertaken and that funds are properly accounted for – this will usually include issuing detailed guidance to staff and volunteers.

### Duty of prudence

Trustees must:

- ensure the charity is and will remain solvent
- ensure the charity's income and property is applied solely for the purposes set out in its governing document and for no other purpose
- use charitable funds and assets wisely and only in furtherance of the charity's objects
- avoid activities that might place the charity, its assets or reputation at risk
- take special care when investing the charity's funds
- ensure adequate financial management and control arrangements are in place
- ensure the charity's expenditure is applied fairly amongst those who are qualified to benefit from it
- not allow the charity's income to accumulate unless there is a specific power of accumulation and a future use for it in mind
- have an agreed reserves policy that is reviewed regularly.

## Duty of care

Trustees must:

- exercise such care and skill as is reasonable in the circumstances having particular regard to:
  - any special knowledge or experience that he or she has or professes to have
  - where he or she acts as a trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession
- act with integrity and avoid any personal or organisational conflicts of interest
- ensure they have appropriate risk management plans in place. Trustees of charities with gross annual income over £500,000 must make a statement about risk management in their annual report
- consider using external professional advice where there may be a material risk to the charity.

## 19.8 The management of charitable funds

### Day-to-day management

Trustees have ultimate responsibility for the running of their charity and can only delegate authority that is specified in the trust's governing document or legislation.

When acting on behalf of corporate trustees, governing bodies of NHS organisations must recognise that:

- the charitable funds they are managing are distinct from their exchequer (NHS) monies
- they have separate and distinct responsibilities for the administration of the charitable funds.

Meeting these responsibilities is best achieved by:

- holding board meetings separately to deal with charitable funds business
- establishing a separate committee to deal with matters relating to the charitable funds – this committee then reports to the board of the NHS organisation acting as corporate trustee.

The frequency of trustee meetings will vary depending upon the size of the charitable funds being administered and the volume and complexity of its transactions. Meetings need to be frequent enough to avoid any delays to the charity's administration that might lead to a failure to meet legal and regulatory requirements or to poor management of its resources.

Whenever they delegate responsibility, trustees must ensure that:

- they have the power to delegate the proposed responsibilities and the arrangements are documented in a scheme of delegation
- the scope of delegated authority is clearly written down – in the form of standing orders, standing financial instructions, policies, procedures and guidance notes

- the person(s) to whom they delegate specific responsibilities has the necessary skills and experience to discharge them competently
- proper reporting procedures and clear lines of accountability are in place
- they are properly informed of all matters that affect their ability to fulfil their responsibilities.

NHS charities often use the financial services facilities used by the corporate trustee NHS body. However, its responsibilities as trustee cannot be delegated and it remains liable for the quality of the services it receives.

An inquiry by OSCR, *Inquiry report made under section 33 of the Charities and Trustee Investment (Scotland) Act – Tayside NHS Board Endowment Funds (SC011042)*<sup>365</sup> illustrates some of the issues that need to be considered when making grants to an NHS body, particularly in a corporate trustee situation:

- the corporate trustee was effectively acting to meet a deficit incurred by NHS Tayside in its provision of NHS services by retrospectively agreeing grant applications
- the charity trustee did not sufficiently recognise its duty to consider separately and distinctly the interests of the charity
- despite poor governance and decision-making, charitable assets were only used for charitable purposes and the projects to which grants were awarded were advancing the health of the people of Tayside and therefore in pursuit of the charity's purposes
- charity trustee's board members did not at the time of the key decision see legal advice provided to the charity
- the legal advice the charity received came from the NHS in-house solicitors; it would have been good practice for the charity to have obtained independent legal advice to ensure it was acting, and seen to be acting, independently.

## Governance best practice

All the regulators have produced guidance on best practice in governance:

- Charity Commission for England and Wales, *Charity governance, finance and resilience: 15 questions trustees should ask*<sup>366</sup>
- OSCR, *Guidance and good practice for charity trustees*<sup>367</sup>
- Charity Commission for Northern Ireland, *Manage your charity*<sup>368</sup>.

Charities in England and Wales are encouraged to follow the advice set out in the *Charity governance code*<sup>369</sup> which is not a legal or regulatory requirement but sets out the principles and recommended practice for good governance.

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<sup>365</sup> OSCR, *Inquiry report made under section 33 of the Charities and Trustee Investment (Scotland) Act – Tayside NHS Board Endowment Funds*, February 2019

<sup>366</sup> Charity Commission for England and Wales, *Charity governance, finance and resilience: 15 questions trustees should ask*, March 2017

<sup>367</sup> OSCR, *Guidance and good practice for charity trustees*, December 2017

<sup>368</sup> Charity Commission for Northern Ireland, *Manage your charity*, June 2019

<sup>369</sup> Charity Governance Code, *Good governance*, 2020

## Seven principles of charity governance

1. Organisational purpose - the charity's aims are clear so trustees can ensure that they are being delivered effectively and sustainably.
2. Leadership - every charity is led by an effective board that provides strategic leadership in line with the charity's aims and values.
3. Integrity - the board acts with integrity, adopting values and creating a culture that help achieve the organisation's charitable purposes. This includes being aware of the importance of the public's confidence and trust in charities and undertaking duties accordingly.
4. Decision-making, risk and control – making sure that decision-making processes are informed, rigorous and timely and that effective delegation, control and risk assessment and management systems are set up and monitored.
5. Board effectiveness - the board works as an effective team, using the appropriate balance of skills, experience, backgrounds and knowledge to make informed decisions.
6. Equality, diversity and inclusion - the board's approach to diversity supports its effectiveness, leadership and decision-making.
7. Openness and accountability – the board leads the organisation in being transparent and accountable.

To be able to discharge their responsibilities effectively, trustees need management information to inform their decision-making. As well as the more usual financial information relating to budget and expenditure to date, trustees will need:

- to be informed of significant donations
- a list of large or significant transactions
- a summary investment report
- a report on slow moving or overdrawn funds
- a report on the use of the chairperson's discretionary powers.

## Risk management

Trustees should maintain a risk register and review it on a regular basis to ensure the effectiveness of actions taken to mitigate identified risks.

## 19.9 Accounting requirements

The detailed requirements for the preparation and submission of annual accounts of individual charities that are not charitable companies depend upon their level of income or expenditure and where they are based in the UK.

All charities with a gross annual income of over £250,000<sup>370</sup> in the financial year (and all charitable companies) must prepare their accounts on an accruals basis (i.e. all income and expenditure relating to the financial year is included in the accounts regardless of whether cash has actually been

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<sup>370</sup> These thresholds are subject to change. The current thresholds are available on the relevant regulator's website.

received or paid) and follow the *Statement of Recommended Practice (SORP)*<sup>371</sup>. Below this threshold, eligible charities may elect to prepare their accounts on a receipts and payments or accruals basis.

Trustees are also required to ensure that the charity keeps proper books and records. As a minimum, all charities must:

- prepare and maintain accounting records that must be retained for at least 6 years
- prepare annual accounts and make these available to the public on request
- prepare a trustees' annual report and make it available to the public on request.

### What charity accruals accounts comprise

- a statement of financial activities (SOFA) for the year that shows all incoming and outgoing resources and reconciles all changes in its funds
- a balance sheet, showing the recognised assets, liabilities and different categories of fund of the charity
- for larger charities<sup>372</sup> only, a cash flow statement
- notes explaining the accounting policies adopted.

### Independent assurance

In England, NHS charities appoint their own auditor or independent examiner. NHS charity accounts must be audited if either the charity's gross income exceeds £1m, or its gross assets exceed £3.26m and gross income exceeds £250,000<sup>373</sup>.

NHS charities below the audit threshold must be independently examined in accordance with the guidance issued by the Charity Commission for England and Wales.

In Wales, Scotland and Northern Ireland NHS charities are audited by the same auditor as their corporate trustee NHS body.

## 19.10 The annual report

The trustees' annual report is one of the key tools available to charities to help them communicate with stakeholders including donors, beneficiaries and the wider public. It is normally presented with the accounts but is legally a separate document. The SORP sets out in detail the minimum data requirements. These include<sup>374</sup>:

- objectives and activities
- achievements and performance
- financial review
- structure, governance and management
- reference and administrative details.

The amount of detail required depends on whether the charity is a larger charity or not.

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<sup>371</sup> [Charities SORP, Download a SORP, October 2019](#)

<sup>372</sup> Larger charities are those with a gross income exceeding £500,000.

<sup>373</sup> [Charity Commission for England and Wales, Charity reporting and accounting: the essentials November 2016, updated 14 June 2023](#)

<sup>374</sup> This is not an exhaustive list. Full details, including exemptions for smaller charities, are set out in the published SORPs that are available via the Charity Commission's website.



## Key learning points

- To be charitable, funds must exist to provide public benefit.
- There are 13 acceptable charitable purposes; they differ slightly depending on the nation in which the charity operates.
- There are three main types of charitable fund – restricted, unrestricted and endowment.
- Charitable funds income comes from five main sources – donations, fundraising, legacies, investment income and interest and grants.
- All charitable funds spending must be in line with its charitable purpose.
- There are two types of trustee in the NHS in England – corporate and independent.
- Only corporate trustees currently exist in Wales, Scotland and Northern Ireland.
- Trustees have a duty to ensure compliance, a duty of prudence and a duty of care.
- The Charity Commission for England and Wales, the Office of the Scottish Charity Regulator (OSCR) and the Charity Commission for Northern Ireland are the statutory organisations that regulate all charities not just NHS charitable funds.
- Trustees cannot delegate their statutory duties and responsibilities.
- Charitable funds have written rules and procedures governing the formal conduct of their business including standing orders, standing financial instructions and schemes of delegation.
- Charities with a gross annual income of more than £250,000 must prepare accruals accounts and follow the Charities SORP.
- Charitable funds must produce an annual report which is normally presented with the annual accounts.

## Additional HFMA resources

The HFMA maintains a directory of resources which provides links to other HFMA outputs such as briefings and webinars across a range of subjects, including a section dedicated to NHS charitable funds. It also highlights online learning courses that are available. [The directory of resources can be found here.](#)