

NORTHUMBERLAND TYNE AND WEAR NHS FOUNDATION TRUST

BOARD OF DIRECTORS MEETING

Meeting Date: 23 September 2015

Title and Author of Paper:

Stewardship of Charitable Funds from the Newcastle Healthcare Charity (DoH Section 52 Body) to Northumberland, Tyne and Wear NHS Foundation Trust.
James Duncan, Deputy Chief Executive / Executive Director of Finance

Paper for Debate, Decision or Information: Decision

Key Points to Note: The outcome of the 2011/12 Department of Health review of the future regulation and governance arrangements of NHS charities has brought about that the Newcastle Healthcare Charity will not be able to continue in its current form.

This change has resulted in a decision being taken by Newcastle Hospitals of the intended merger of the Newcastle Hospitals Charity and the Newcastle Healthcare Charity.

The newly incorporated charity serving the Newcastle upon Tyne Hospitals (NHS) Foundation Trust will no longer be legally allowed to have stewardship of the charitable funds of another NHS Foundation Trust, including those charitable funds held for Northumberland, Tyne and Wear NHS Foundation Trust (NTW).

It has therefore been agreed that the transfer of all NTW related charitable funds are transferred in to the stewardship of this Trust as of the 1st April 2016. The fund balances as at 1st April 2016 will be transferred and unrealised gains on investments and adjustments from the 2015/16 annual accounts will follow post audit.

A working group has been established including representatives of the Newcastle Healthcare Charity to manage the transfer and a plan has been developed.

The outcome of the 2011/12 Department of Health review also encourages all NHS Charities to consider their future and determine whether or not they should convert to 'independent status.' Whilst NHS charities currently set up as a Corporate Trustee have the option to retain the status quo, options to establish a charity independent of the Department of Health and Secretary of State in the form of a company limited by guarantee (CLG) or a charitable incorporated organisation (CIO) should be explored.

Options Available:

Whilst the Trust does not have a choice about creating its own charity, there are advantages and disadvantages to this change which need to be acknowledged by the Board.

The options available in creating this charity are to a) set up an NHS Charity with NTW as the Corporate Trustee, or b) set up an independent charitable body. The advantages and disadvantages of these options need to be explored.

Outcome required: Decision whether to (i) create an NHS charity with NTW as Corporate Trustee and establish a charitable funds committee or (ii) explore setting up an independent charity, subject to timing of a 1 April 2016 transfer being feasible.

**Stewardship of Charitable Funds from the Newcastle Healthcare Charity
(DoH Section 52 Body) to
Northumberland, Tyne and Wear NHS Foundation Trust**

Background

NHS Trusts are permitted to hold charitable funds for purposes relating to health for the public benefit of those for whom they were intended and the majority of NHS Trusts administer their charitable funds with the Board of the NHS Trust as the sole Corporate Trustee of the charity.

Where the Trust is the sole corporate trustee, the individuals who are responsible for the management of the corporate body, i.e. the Trust Board, are not themselves trustees of the charity and are merely agents acting on behalf of the corporate body.

The corporate body must act through individuals to express its will and therefore if the corporate body commits a breach of duty as trustee, it will have done so as a result of a breach by the directors or other officers. However, the corporate body, as sole trustee, remains accountable for actions taken for and on its behalf.

Commercial insurance is available for charity trustees to cover against damages as a result of data protection, maintaining satisfactory accounts, fraud, negligence, etc, but cover is not available for deliberate acts.

The common model in NHS Foundation Trusts established as a Corporate Trustee is to establish a Charitable Funds Committee, which is a formally constituted committee of and accountable to the Corporate Trustee to manage the administration of charitable funds under clear delegated authority and terms of reference.

Advantages of NTW having its own Charity:

- Creating a charity with a clear, unrestricted focus on NTW service users and carers, NTW staff and the services the Trust provides.
- Clearer identity with a NTW charity brand name that is for NTW and not just one of the umbrella funds of the Newcastle upon Tyne Hospitals (NHS) Foundation Trust.
- Improved control of strategic direction, fund management and investments without reference to an external body.
- Improved service as NTW is sometimes the poor relation in the service received from Newcastle Healthcare Charity and there are often long lead times with bids or information requests.

Disadvantages of needing to leave Newcastle Healthcare Charity:

- The Trust will no longer receive the benefits of scale in terms of the increased investment income derived from a percentage of 'pooled' funds which will result in a reduction in investment income.
- The Trust will need to set up its own financial management and accounting system (Harlequin, or its equivalent) to support the receipting of donations, investment of income, and expenditure of funds.
- The present service level arrangements with the Newcastle upon Tyne (NHS) Foundation Trust currently mean all stationery, and its associated costs are absorbed by the Newcastle Healthcare Charity from its central support budget. This will no longer be the case going forward in whatever is to be the preferred arrangement. The Trust will need to make provision to meet the need for appropriate NTW charity logoed stationery, etc.
- There is currently no need for independent audit of the Trust's charitable funds. A statutory audit will be required for the charitable funds annual accounts. It would also be appropriate for the systems associated with the administration of charitable funds to be subject to internal audit.
- There is currently no dedicated 'charitable funds' support office staff or technical expertise for administration of the funds and to advise and support potential 'fund raisers' for the charity. If the charity is to succeed in its ambition to proactively grow, consideration will need to be given to how the charity is to be supported. There is also no technical expertise in the Trust in relation to charity legislation, fund raising or legacies.
- It should be noted that the aforementioned costs may exceed the investment income achieved by the total funds held.

Advantages of setting up an Independent Charity:

- In establishing a company limited by guarantee (CLG) or a charitable incorporated organisation (CIO), the charity's contractual liability will be limited. The liabilities of NHS Charities are not limited.
- NHS charities are within the public procurement and VAT regime; the independent charity would not be which can lead to greater freedom on spending money. However, the need to follow public procurement laws does protect trustees to the extent that it ensures value for money in the use of its funds and a robust process.
- There would be no risk of consolidation of the charity accounts into the accounts of the NHS body or the Department of Health providing the NHS body has no 'control' over the new charity. However, there is no risk of consolidation and so the benefit for the charity is minimal.
- The charity can choose its own trustees and advisors and external auditors. NTW would need to give the charity a memorandum of understanding to protect the interests of NTW service users benefiting in the way the Trust intends.
- Where there is a prospect of NHS re-organisation affecting the NHS body, the new charity would not be directly affected by NHS organisational change.

- The charity would be able to adopt wider charitable purposes (for new money) and enter into more innovative fund-raising initiatives, collaborations and mergers
- The new charity would be able to demonstrate to donors and the Charity Commission independence in decision making.

Disadvantages of setting up an Independent Charity:

- Establishing an independent charity would be more costly, resource intensive and would take more time to establish. This may not be possible within the deadline of 1st April 2016 as it would take more time to establish separate trustees and advisors and more time to understand the rules outside the NHS for charities.
- A charity established as an independent entity responsible for its own management and operations may give rise to further administration costs and this is particularly relevant due to the size of NTW's funds.
- Risk of loss of control and NTW brand identity detailed above as an advantage of bringing the funds back to NTW.
- Lack of NHS Foundation Trusts set up as independent charities to tap into for advice.
- There may be disadvantages to being outside of the NHS procurement regime, i.e. agreed NHS contracts and frameworks.
- Due to the size of the charitable funds, initially there will be no staff dedicated to the charity and it will be a part of some NTW employees' existing roles. An independent charity would require its own independent arrangements for staff including pension schemes, HR policies, etc.

Charitable Funds Working Groups

There are currently two groups in place for the management of Charitable Funds.

The first group is a Charitable Funds Advisory Group. This group ensures the smooth operational running between Newcastle Healthcare Charity and the Trust and includes Executive and Non-Executive Directors as members and a Newcastle Healthcare Charity member. The Executive and non-Executive Directors currently approve bids for funds by an electronic process prior to the request going to Newcastle Healthcare Charity outside of the meetings and a review of transactions takes place at the quarterly meetings of the Group.

A Charitable Funds Transfer working group was established to manage the operational transfer of the funds including representatives from Newcastle Healthcare Charity. A plan was developed at the meeting held on 15th July 2015.

The plan includes the establishment of a Charitable Funds Committee to commence in October 2015 and which would be tasked with the responsibility of:

- reviewing the initial terms of reference for the Committee and proposing changes to the terms of reference from 1 April 2016 to recognise the increased responsibility from that date

- developing and ratifying all of the governance documents for the charity including the objects, reserves policy, investments policy, governance policy and possibly a treasury policy
- preparing for the operational responsibilities from 1st April 2016

The proposed initial Charitable Funds Committee terms of reference are attached at appendix 1.

The terms of reference assume that the Committee will be chaired by a Non-Executive Director but it may also be an option to appoint a non-remunerated independent person to chair the Committee.

Recommendation

Establish the charity from 1st April 2016 with NTW's Board as Corporate Trustee and proceed with the establishment of a Charitable Funds Committee to commence in October 2015. The Charitable Funds Committee to take on the role of the Advisory Group once established. Charitable Funds Committee to explore further the advantages and disadvantages of independent charitable status for the fund to bring a further recommendation to the Board during 2016.

James Duncan
**Executive Director of Finance/
Deputy Chief Executive**
September 2015

Charitable Funds Committee

Purpose

- The Committee has no executive powers other than those specifically delegated by the Trust Board and included in these terms of reference
- To develop the overall strategy and plans for charitable funds including setting spending targets and fundraising and investment plans
- Ensure fund objectives and spending plans are within the agreed objects of the charity and spending of charitable funds meets the criteria and priorities set by the donors
- Approve charitable funds expenditure in accordance with charitable funds policies
- Monitor progress against targets and plans
- Update and maintain charitable funds policies and procedures in accordance with Charity Commission guidance
- Participate in drafting the charitable funds annual report and annual accounts

Membership

Chair: Non-Executive Director/Independent Chair

Non-Executive Director (Deputy Chair)

Chief Executive

Deputy Chief Executive and Director of Finance

Group Representation (to be agreed)

Communications Lead

Head of Transactional Services

Transactional Services Manager

Quorum

2 members, 1 of which must be a Non-Executive Director

Deputies

Deputies for the meeting to be by exception and prior agreement with the Chair.

Key Outputs

- To ensure best value so funds are maximised for the benefits of service users
- To review withdrawals and ensure each request is an appropriate use of the fund and in line with policies and plans
- Review of funds balances against targets/plans
- Fund raising plans and monitoring
- Investment plans and monitoring
- Review of governance arrangements and policies and procedures
- Ensure effective involvement, marketing and communications

Time, Frequency & Duration

- Quarterly, 1.5 hours (or more frequently if required, i.e. the Chair can call extra-ordinary meetings as necessary)
- If needed, meetings by conference telephone call are acceptable with the approval of the Committee Chair.

Support Arrangements

Venue: To be determined
 Secretary: PA Director of Finance
 Minutes: Draft by one week after meeting
 Papers: One week prior to meeting

Linkages to other meetings & groups

- Trust Board (provide minutes on a quarterly basis with verbal updates in between, if necessary)
- Fund raising sub group

Governance, rules and behaviours

- Papers should not be tabled at the meeting, all agenda items to be agreed by Chair two weeks before meeting.
- All members are expected to attend – absenteeism is an exception
- Meetings will start and end on time
- Papers to be presented should be concise with the purpose clearly articulated.
- All blackberries and mobiles must be switched off unless expressly agreed by the Chair
- Authority to cancel meeting: Chair

Standing Agenda

1. Apologies for absence
2. Minutes of the previous meeting
3. Matters arising not included on the agenda
4. Chair's business
5. Review of Expenditure
6. Review of Funds Balances and Expenditure Targets/Plans
7. Review of Investments and Investment Targets/Plans
8. Fundraising Plans and Activities and Marketing
9. Governance matter
10. Sub group Minutes (received for information)
11. Items for information
12. Any other business
13. Date and time of next meeting

Key Responsibilities:

- To be agreed / developed

Sub-groups

The committee will be responsible for reviewing and monitoring the plans of the fund raising group

Monitoring

The committee will review its performance annually against its Terms of Reference.
Date reviewed by the Charitable Funds Committee: To be determined

Date approved by Trust Board: To be determined

Annual assessment against Terms of Reference: To be determined