



Trustee Induction 2019

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Charter, standing orders, & Charitable Funds Committee ToR (on request)
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1 Chairman's Foreword

Dear Colleague

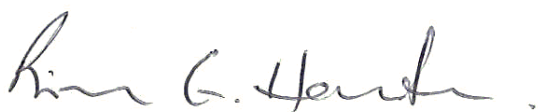
Welcome to your new role as a trustee of the Edinburgh & Lothians Health Foundation. As you will learn, this role is quite distinct from your role and remit as a member of the health board.

In the Lothians we are privileged to be the custodians of funds donated over many decades. These donations form assets worth c.£76million, and are held in investments, property and cash holdings.

The generosity of donors, past and present, enables the trustees to supplement the core services provided by the NHS. Our grants are used in healthcare settings to improve the experience of patients, and increasingly, in the community to improve the general health of the population.

Being a trustee is hard work, but the process of deploying funds for the general good is stimulating and hugely worthwhile.

Please take time to study this induction pack, and do not hesitate to raise any issues with me as Chair of Trustees.

A handwritten signature in black ink, appearing to read "Brian G. Houston". The signature is fluid and cursive, with a small dot at the end.

Brian Houston
Chair of Trustees
Edinburgh & Lothians Health Foundation

2 Charity Framework

2.1 Definition of a Charity

A charity is essentially an institution which is established for purely charitable purposes, and one which provides a public benefit. A charity in Scotland is defined as an organisation which is entered in the Scottish Charity Register. Successfully registering with OSCR (Office of the Scottish Charity Regulator) requires an organisation to pass the “charity test”, ie having charitable purposes and providing public benefit.

2.2 The Governing Document

This essential document sets out the legal structure of the charity: its name, charitable purpose, powers and so on. (This can also be referred to as a Founding Document or Constitution). Commonly there are three different types of charity, each with slightly different governance arrangements: trusts, unincorporated associations and company limited by guarantee.

2.3 The Role of the Office of the Scottish Charity Regulator (OSCR)

OSCR is the independent regulator and registrar for around 24,000 Scottish charities. Its powers are derived from *The Charities and Trustee Investment (Scotland) Act 2005* (referred to as “the Act”). Its functions are principally to:

- determine whether bodies are charities (setting the “charity test”)
- keep a public register of charities
- encourage, facilitate and monitor compliance with the Act
- identify and investigate apparent misconduct and take remedial or protective action
- give advice to Scottish Ministers on matters relating to OSCR’s functions

2.4 The Role of a Trustee

Trustees are the people who sit on the charity’s governing body. Technically trustees have ultimate responsibility “for the general control and management of the administration of a charity.”¹ In practice, trustees concern themselves with the governance of the charity, and employ staff to manage the business affairs of the charity on their behalf. Under the Act, a trustee must:

- Act in the interests of the charity
- Operate in a manner consistent with the charity’s purpose
- Act with due care and diligence
- Ensure the charity complies with the provisions of the Act, and any other relevant legislation.

In addition to these “general” duties, trustees must also ensure that the charity follows “specific” requirements:

- charity details are on the Scottish Charity Register
- reporting to OSCR
- financial record keeping and reporting
- control and report on fundraising activity in its name
- providing information to the public

¹ *The Essential Trustee* Charity Commission 2008

The trustee role description covers all these aspects in more detail, and is included as an appendix, along with a code of conduct. Trustees also receive an appraisal (separate to that of their appraisal as board members).

Remuneration: Most trustees are volunteers and are thus unpaid; they must not in any case benefit in any way from their connection with the charity. This does not include out of pocket expenses.

Investment Powers: Trustees are entitled to make any kind of investment of the charity's estate (including stocks and shares). They should:

- Consider appropriate diversification of investment (manage risk)
- Consider the suitability of the proposed investment (eg a restriction on shares in tobacco firms by a cancer charity)
- Consider seeking appropriate, professional advice on investments (including the appointment of investment advisors, property advisors)

Liabilities: If trustees act in accordance with the Governing Document, then any liabilities they incur as trustees can normally be met out of the charity's resources (so long as the liabilities are not in excess of the charity's total asset value). If trustees act imprudently, or in breach of the law or Governing Document, then they may be personally responsible for liabilities incurred. Trustees act collectively, and are collectively liable.

2.5 HMRC Charitable Status

A charitable organisation must be registered as a charity with HMRC to receive tax benefits (eg Gift Aid and VAT exemption). This is separate to the OSCR registration: some charitable organisations which are not required to be registered as charities, should still register as "charities" with HMRC.

HMRC registration requires that the organisation is established for charitable purposes only, is under the jurisdiction of the Court of Session (Scotland), is registered with OSCR (if required), and is controlled and managed by persons (trustees) deemed "fit and proper".

3 NHS Endowment Charities

3.1 Definition of Endowment

An endowment is the property of a charity (eg land, property, investments or cash) which trustees invest for the benefit of the charity's beneficiaries.

"Endowment" has become a generic term used to refer to funds held in trust, donations made to NHS Boards, or any "charitable" activity related to the NHS Boards. It is important to understand the difference between the original endowment (vested with the health boards on trust), and donations received, managed and disbursed in the furtherance of the charity's purposes.

Trustees should try to avoid misuse of this terminology.

3.2 Governing Document (1978 Act)

The Governing Document of NHS Endowment Charities is the *National Health Service (Scotland) Act 1978* (referred to as "the 1978 Act"). The 1978 Act concerns the fourteen territorial Health Boards only.

NHS Endowment Charities' charitable purpose, as set down by the 1978 Act is "to promote the physical and mental health of the people of Scotland".

In summary endowments are vested in the Health Board free of trust (before 1st April 1974), but are to be used on trust for purposes in relation to hospitals, healthcare or related research. In addition, the Board is supposed to secure as far as possible the original trust's objects.

Endowment funds should enhance statutory NHS provision, but not substitute it. There are no hard and fast rules about what is exchequer expenditure, and what can appropriately receive endowment support: trustees should use common sense and measure current attitudes of the public ("the tabloid test").

3.3 The Corporate Trustee and the Role of Individual Members

Endowments are vested in a Health Board as a "corporate trustee" – ie the Board is the trustee. Members of the NHS Lothian Board (both executive and non executive) become trustees of the charity *ex officio*.

It is possible to request that an individual board member does not undertake this *ex officio* role, but that decision rests with ministers. Ultimately, as the Board is a "corporate trustee", primary responsibility rests with the whole board, whether or not the individuals within it are permitted to "opt out".

Whilst in legal terms board members are not separately and individually appointed trustees, the role of those individual members of the Corporate Trustee does not differ from the role of trustee of most charities: act in the interests of the charity, in a manner consistent with the charitable purpose, with due care and diligence, and complying with the Act and other relevant legislation. In this respect OSCR "looks through" the corporate trustee structure to the individuals within that trustee board.

This can have the potential to create conflicts of interest (for example for executive board members whose departments may be impacted either positively or negatively from the approval or rejection of endowment-fund support.)

The Foundation's Conflict of Interest policy is included as an appendix; new trustees must identify their interests in writing at appointment, and information held on the Register of Interests is updated annually. At the commencement of all trustee and trustee committee meetings, trustees are reminded to declare any interests they have in the items of business under consideration.

The Foundation is not permitted to invite any other “independent” individuals (ie non board members) to act as trustees.

The Term of Office as trustee runs parallel to the term of office on the Health Board.

Remuneration: as with other charities, members are not remunerated, beyond reasonable out of pocket expenses.

Investment Powers: as with other charities, the trustee may invest the charity’s estate.

Liability: as with other charities, it is the Health Board (as corporate trustee) which has the primary responsibility and liability: liability for negligent acts or omissions rests with the board. If individual trustees are neglectful in their duty of care, then they are personally liable, but are indemnified by the Board.

3.4 Definition of Fund Types

There are three main types of charitable fund held by an NHS Endowment Charity: General, Specific and Endowment:

- **General Funds** (unrestricted) may be used at the discretion of trustees, for wholly general purposes, or directed to a particular hospital site or sites, or to a broad area of research. (Historically, these funds may have arisen from now defunct NHS Hospital Trusts’ Endowment Funds). This category includes so-called designated funds, usually ward funds, where the funds are held for a particular purpose or ward, but they are not restricted.
- **Specific Funds** (restricted) hold monies donated for a specific purpose, eg for the benefit of a specific area of research. Day-to-day management of these funds is normally delegated to stewards. At present, the specific funds are classified as “restricted” funds (see below).
- **Endowments** are funds where the capital is preserved, and only the income arising may be spent. ELHF holds no Endowments.

Individual **Restricted funds** may have their restriction removed with the permission of the charity regulator OSCR, since the *Charities Restricted Funds Reorganisation (Scotland) Regulations 2012*. For clarity, a restriction is most frequently defined as where a “trust” or unequivocal restriction is created (donation *must* be used, can *only* be used) for example in a bequest or in the terms of a public appeal or grant. Self imposed restrictions, ie where there is no formal restriction, may be un-self-imposed, without deferral to OSCR

4 Edinburgh and Lothian Health Foundation

The charity is registered with OSCR (SC007342) as the *Lothian Health Board Endowment Fund*. The charity shall be known as Edinburgh & Lothian Health Foundation. Its charitable purpose, as set down by the 1978 Act is “to promote the physical and mental health of the people of Scotland”.

4.1 Facts and Figures

The following facts and figures are taken from the accounting year 2017/2018. All figures are in 000s.

FUNDS	TOTAL	UNRESTRICTED	RESTRICTED
Total value of funds	76,757	49,249	27,508
%	100%	64%	36%

INCOME	%	TOTAL	UNRESTRICTED	RESTRICTED
Donations & Grants	76%	11,914	271	11,643
Legacy income	9%	1,367	132	1,235
SUBTOTAL Voluntary Income	85%	13,281	403	12,878
Investments/property income/other	15%	2,261	1,704	557
GRAND TOTAL INCOME	100%	15,542	2,107	13,435

EXPENDITURE	%	TOTAL	UNRESTRICTED	RESTRICTED
Charitable Activities	98%	14,201	1,662	12,539
Raising Funds (investment management and fundraising costs):	2%	332	193	139
GRAND TOTAL EXPENDITURE	100%	14,533	1,855	12,678

4.2 Charitable Funds Committee

It is not permitted for the trustees to delegate their legal responsibilities, but the Charitable Funds Committee (CFC) has delegated authority to carry out some duties, and to offer advice to the trustees on governance and policy decisions.

The Charitable Funds Committee Terms of Reference is attached as an appendix.

4.3 Specific Funds and Stewards

As at 31/03/2018, the *Edinburgh & Lothians Health Foundation* manages 339 Specific funds, totalling £27,508.

The trustees have delegated limited authority on the day-to-day management of the specific funds, including expenditure, to the fund stewards. Stewards are mostly senior staff, and the role of stewardship is at the discretion of trustees. Stewards are assisted in their role by an approved set of Operating Instructions, available on request.

4.4 Donations

Donations to *Edinburgh & Lothians Health Foundation* are received, managed and disbursed separately from specific and general funds, and distinct from exchequer funds used to provide health services by NHS Lothian.

Donations may come from individuals, from grant making trusts or other charities, from companies, or as legacies or bequests. Individual donors can increase their gift by signing a Gift Aid declaration – currently worth an additional 25%. Higher rate tax payers (40% and above) can also claim the difference between the higher and basic rate of tax paid on their donation.

Donors commonly specify that their donation is to go to a particular specific fund, or towards a particular department, ward, service, or area of research. Uncommon with most charities, donors to NHS-linked charities do not usually make gifts towards general purposes or for the discretion of trustees.

4.5 Charitable Activities

Aside from the expenditure from Specific Funds managed by stewards (see 4.3 above), Trustees have an agreed annual spending rule of 5% of General Fund capital assets (based on a 3 year average). This funds a number of grantmaking, including the Small Grants Programme, the Elsie Inglis Staff Development Award Scheme, a number of standing grants, and a cycle of annual focused investment. In 2017, £500k is pledged towards the East Lothian Community Hospital redevelopment; in 2018 it will be Older People. The Small Grants and “Elsie’s” are restricted to benefit NHS Lothian patients and employees respectively.

4.6 Arts

Following the appointment of an Arts Manager in 2014, an Arts in Health and Wellbeing Strategy was approved by trustees in 2015. The vision of the arts programme is to improve the health and wellbeing of staff, patients and visitors through the provision of high quality arts in the healthcare environment and patient experience, to conserve the artistic assets of NHS Lothian and to foster a culture in which the benefits of the arts and the skills of the artist are valued across the service. These are achieved through the management of an art collection of over 2,500 works, changing hospital gallery exhibitions, a thriving participatory workshop and live music programme and a range of high-quality public art and design commissions and residencies as part of all new capital builds.

4.7 Investments

The Trustees’ investment objective is to maximize the Total Return (ie cash yield and capital growth) within moderate risk parameters, and to maintain the real capital value of the portfolio over the long term. The investment target is to achieve an annual “real” rate of return of RPI inflation plus 4%.

The trustees have no direct investments in companies involved in tobacco production, brewers and distillers of alcoholic beverages or the manufacture of armaments. Pooled funds are screened prior to acquisition of 5% tolerance, and reviewed every six months. Trustees aim to observe responsible investment principles and the charity’s investment managers are expected to take into consideration the environmental, social and governance risk characteristics of existing and prospective investments.

The trustees participate, together with the trustees of Lanarkshire Health Board Endowment Fund, in a Common Investment Scheme.