

Dear Colleague

GUIDANCE FOR NHS BOARDS ON ACCEPTING CHARITABLE DONATIONS

1. This letter advises of the attached Guidance on the acceptance of charitable donations by NHS Boards and Special Health Boards.

Background

2. The Cabinet Secretary for Health & Wellbeing decided to develop guidance on this area following questions that were raised in Parliament in relation to it. This guidance was developed in conjunction with representatives of NHS Scotland and the Scottish Government Health Directorates and has been approved by the Scottish Parliament Health & Sport Committee.

Action

3. Please ensure that the attached guidance is brought to the attention of appropriate officers in your Board for application with immediate effect.

Yours sincerely



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Director of Health Finance

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Addresses

For action

Chief Executives, NHS Boards and Special Health Boards
Chief Executive, NHS National Services Scotland

For information

Directors of Finance, NHS Boards and Special Health Boards
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GUIDANCE FOR NHS BOARDS IN ACCEPTING CHARITABLE DONATIONS

Purpose

1. The purpose of this document is to provide additional guidance to NHS Boards on the acceptance of Donated assets and the associated risks to consider in doing so. You should consider this in addition to any other relevant guidance issued to NHS Boards in respect of such transactions.

Asset Donations

2. NHS Boards who are entitled in terms of their Statutory Instruments to hold endowment funds or property on trust usually arrange for the trustees of such funds to manage charitable donations received in the form of legacies or bequests from patients, their relatives, other members of the public or private sector organisations. For those NHS bodies that do not have statutory powers to hold endowment funds, a private Trust Fund (which is completely independent of the body) would have to be used to hold such funds. This guidance specifically relates to the acceptance of assets directly by NHS Boards but explains the nature of NHS Endowment Trustees who should also be aware of it in considering assets to be provided from their Trust Funds for NHS purposes.

3. In this respect, NHS Boards and Endowment Funds are distinctly separate in that different statutory rules apply to each. NHS Endowment Trusts are charities for HM Revenue & Customs purposes although not required to register as such with the Office of the Scottish Charity Regulator (OSCR). However Ministers control the constitution, appointment and removal of Trustees of Endowment Funds for the purposes of the Charities and Trustee Investment (Scotland) act 2005.

Risks Associated with receiving Charitable Donations

4. NHS Boards should not normally refuse to accept charitable donations. However, the receipt of a charitable donation can attract substantial media interest, particularly where it represents a considerable amount of money. NHS Boards must consider whether there are reasons why a donation might be inappropriate and therefore be refused. While the following list is not exhaustive, it sets out circumstances where a donation should be refused.

- It specifies further requirements that the NHS body cannot meet.
- Onerous conditions are attached to the donation, which are not acceptable or cannot be met. For example where the donation is for the provision of particular equipment or facilities, the running of which would not be cost-effective or would be unaffordable.
- The acceptance of a donation places the NHS body under any inappropriate obligation. For example to provide any preferential NHS treatment to parties specified by the donor.
- It would be wrong to accept the donation on ethical grounds. Acceptance of a gift from a particular source may be incompatible with the ethos of the Health Service, or be likely to alienate beneficiaries or other potential donors;
- The acceptance of the donation could result in unacceptable controversy or adverse publicity. For example, the charitable donation should not benefit the person or organisation making the charitable donation at the expense of NHS patients as a whole.
- The Donation is made payable to individual members of staff.

5. Rather than having to refuse a potential donation, it may be possible to discuss with the donor or his /her legal adviser in the case of a draft will, a change to the terms of the proposal. Details of any restrictions imposed should be disclosed in a note to the financial statements of the NHS Board concerned. NHS Boards should, however, encourage people to make general donations for Health Service purposes as this gives the greatest flexibility in the application of donations.

Management of Charitable Donations

6. NHS Donations that are held on trust must be managed and accounted for separately from exchequer funds and the normal running costs of the NHS Board. NHS Boards appoint Endowment Trustees from their Directors ex officio. The Endowment Trustees are personally liable for the assets they hold and their powers to control the assets are limited by statute. Normally assets transferred from NHS Endowment Funds would therefore require to be funded from the income of these funds.

7. Donated assets received directly by NHS Boards should be accounted for appropriately as capital or revenue, whether received directly from individual donors or via NHS endowment trustees. Donations that meet the definition of fixed assets should be accounted for in accordance with the relevant guidance in the NHS Scotland Capital Accounting Manual. Donated Assets do not currently attract capital charges so their receipt should not confer any additional expenditure in this respect.

Acceptance of non-charitable donations

8. Most of the donations offered to NHS Boards will be for charitable purposes. This guidance does not cover patients' monies or staff funds, but does apply to other non-charitable donations except where there are specific references to charitable funds.

9. Occasionally, donations may be offered on terms which are not legally charitable. This would include donations made for the benefit of individuals or nominated groups, management of resources for whom is not a normal part of the functions of the NHS and should only be entered into exceptionally. NHS Boards should consult the Scottish Government where they are considering accepting such donations, as the principal is that they should not confer favourable NHS treatment on individual patients or groups of patients.

Endowment Funds

10. A Board Endowment Fund, which is funded by donations and legacies, is set up in terms of the National Health Service (Scotland) Act 1978 and is administered by the Board's Endowment Trustees. The Endowment Fund can be used to support the expenditure of the NHS Board in whatever way the Trustees consider appropriate, but subject to the terms of the 1978 Act or the terms of the donor's specific instructions.

11. Endowment Funds can consist of a number of funds, some of which may be 'unrestricted' and some of which may be 'restricted'. Unrestricted funds can be categorised as General to be expended at the discretion of the Endowment Trustees in aiming to meet the objectives of the Fund or categorised as Designated to be earmarked for a particular project. Restricted Funds can only be used in the manner instructed by the donor. Regard should be had to the lifting of such restrictions in terms of the 1978 Act – section 80 (property pre 5 July 1948), section 82 (endowments pre 1 April 1974), section 2A (endowments and property vested in terms of the Public Appointments and Public Bodies, etc (Scotland) Act

2003), section 2B (endowments and property transferred to a Board by an order under paragraph 26 of Schedule 7A of the 1978 Act.

General Duties of Trustees

12. Appointed Endowment Trustees are responsible for ensuring their duties are discharged appropriately, taking advice as necessary. These duties include:

- to administer the trust effectively on behalf of the beneficiaries;
- to take appropriate professional advice
- to ensure they act in accordance with the conditions under which a donation is made and, charity law;
- to maintain a proper distinction between their responsibilities as Endowment Trustees and their exchequer functions ; and
- to provide the proper infrastructure to ensure funds are managed efficiently and effectively. Where administrative services are shared between exchequer functions and Endowment Trustee funds, the cost of providing these services should be apportioned on an appropriate equitable basis.

Additional Information

13. Additional information on donations can be found in The Institute of Fundraising's publication "The Acceptance and Refusal of Donations". Guidance on patients' monies is available in the HMFA practical guide 'Patients' monies and belongings'. Each Board's Endowment Funds will be operated under the statutory provisions of the 1978 Act. The basis for holding NHS Endowment Funds is controlled by the 1978 Act as there are no trust deeds setting up the holding of such funds.