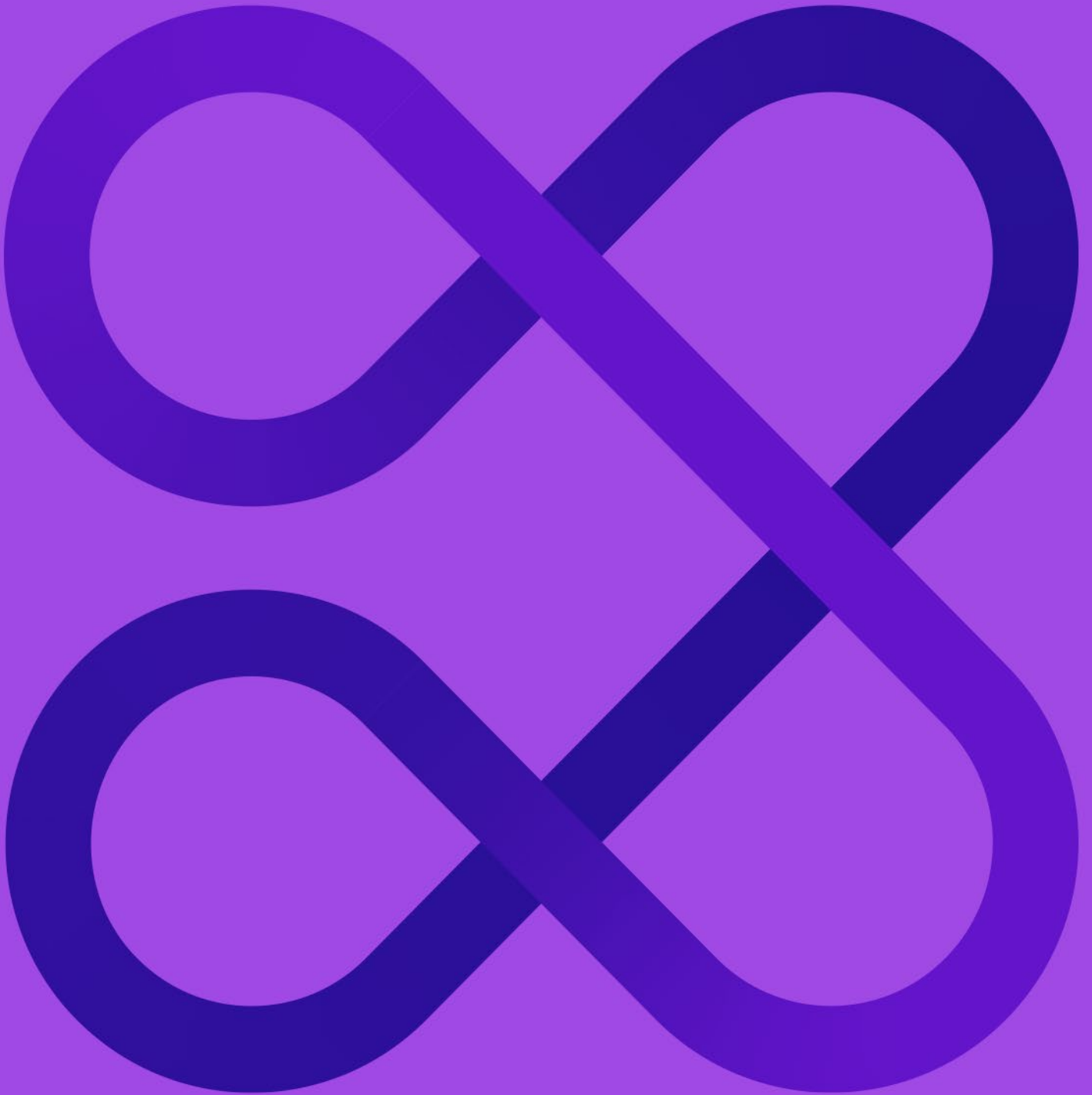




NHS Lothian
Charity

Trustee Induction



nhslotiancharity.org

NHS Lothian Charity is a registered Scottish charity (No. SC007342)

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1 Chairman's Foreword

Dear Colleague,

Welcome to your new role as a trustee of NHS Lothian Charity. 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. £90million, and are held in investments, property and cash holdings.

We're proud to be the official charity of NHS Lothian. We aspire to be viewed as a partner and strategic asset of the board.

We deliver non-clinical services and invest in programmes and projects which promote better physical and mental health and wellbeing for the people of Edinburgh and the Lothians.

Our funded programmes Tonic Arts, Greenspace and Health, Volunteering Well and Work Well, plus capital investment in the physical and technological environment of Lothian's hospitals and healthcare facilities, support for staff wellbeing and professional development, clinical research and innovation, altogether enhance the experience and care for patients in hospitals and their communities.

We invest an historic endowment and manage philanthropy and fundraising for NHS Lothian, which enables us to continue this important work and increase our impact.

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 or our Director, Jane Ferguson.



Andrew Fleming
Chair of Trustees
NHS Lothian Charity

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”, i.e. 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 four different types of charity, each with slightly different governance arrangements: charitable incorporated organisation, unincorporated association, charitable company (limited by guarantee) and trust.

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

¹ *The Essential Trustee* Charity Commission 2008

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

The NHS Lothian Charity trustee Role Description covers all these aspects in more detail, and is included as an appendix, along with a trustee Code of Conduct. Trustees also receive an annual 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 (e.g. land, property, investments or cash) which trustees invest for the benefit of the charity’s beneficiaries. See 3.4.

“Endowment” has become a generic term used to refer to funds held on 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 contained within sections 82, 83, 84 and 84A of the National Health Service (Scotland) Act 1978 (referred to as “the 1978 Act”).

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 (along with voluntary and investment income received) for purposes relating 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 fixed rules about what is exchequer or “core” 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” – i.e. the Board is the trustee. Members of the NHS Lothian Board (both executive and nonexecutive) 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 as 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.)

NHS Lothian Charity’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.

NHS Lothian Charity is not permitted to invite any other “independent” individuals (i.e. 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. NHS Lothian Charity holds no Endowments (see 3.1 above)

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, i.e. where there is no formal restriction, may be un-self-imposed, without deferral to OSCR.

Expenditure from **Specific Funds** is delegated to fund stewards at the discretion of trustees. Stewards are assisted in their role by an approved set of Operating Instructions, available on request, and are encouraged to plan and use donated funds proactively to improve patient experience.

3.5 Freedom of Information (Scotland) Act 2002

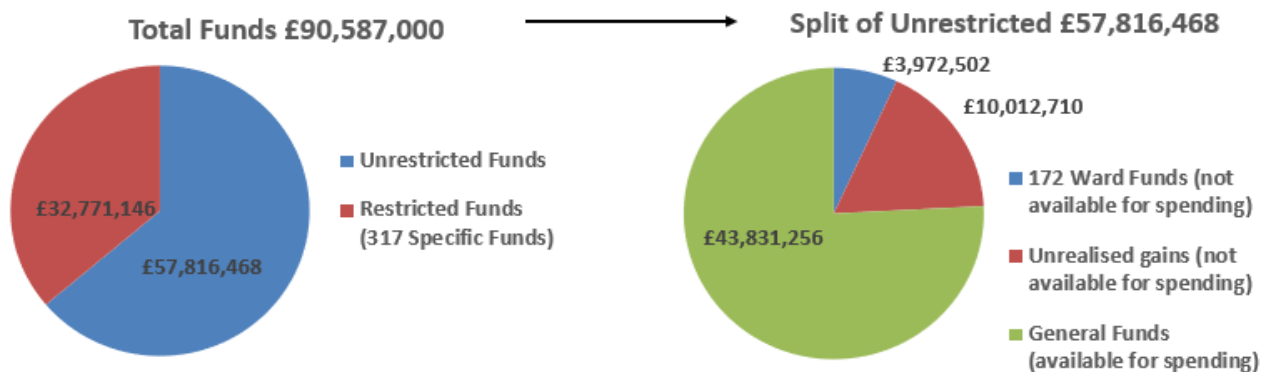
NHS Endowment charities are not listed within the Freedom of Information (Scotland) Act 2002 (FOISA): Schedule 1, Part 4: The National Health Service. Charities by themselves are not bound by FOISA unless they are carrying out a public function. NHS Lothian Charity does not fund core functions which the NHS is obliged to provide to the public, and the board of NHS Lothian does not direct the charity's activities (i.e. what trustees fund). For these reasons we believe we are not bound by FOISA.

4 NHS Lothian Charity

The charity is currently registered with OSCR (SC007342) as the *Lothian Health Board Endowment Fund*. The charity shall be known as NHS Lothian Charity. 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 Statement of financial activities for the year ended 31 March 2022

	UNRESTRICTED FUNDS £000	RESTRICTED FUNDS £000	TOTAL FUNDS £000
INCOME AND ENDOWMENTS FROM			
Donations and legacies	448	1,171	1,619
Charitable Activities	-	156	156
Investments	1,403	463	1,866
Total Income	1,851	1,790	3,641
EXPENDITURE ON			
Raising Funds	479	232	711
Charitable Activities	1,388	1,732	3,120
Total Expenditure	1,867	1,964	3,831
Net surplus/(deficit) before gains	(16)	(174)	(190)
Gains/(losses) on investments & tfrs	491	2,669	3,160
Net movement in funds	475	2,495	2,970
Total funds brought forward	57,341	30,276	87,617
Total funds carried forward	57,816	32,771	90,587



Balance Sheet	
	£'000
Investments	84,711
Investment Property	3,715
Current Assets	4,686
Current liabilities	(2,161)
Total Assets less current liabilities	90,587

4.2 Charitable Funds Committee, Committees & Advisory Groups

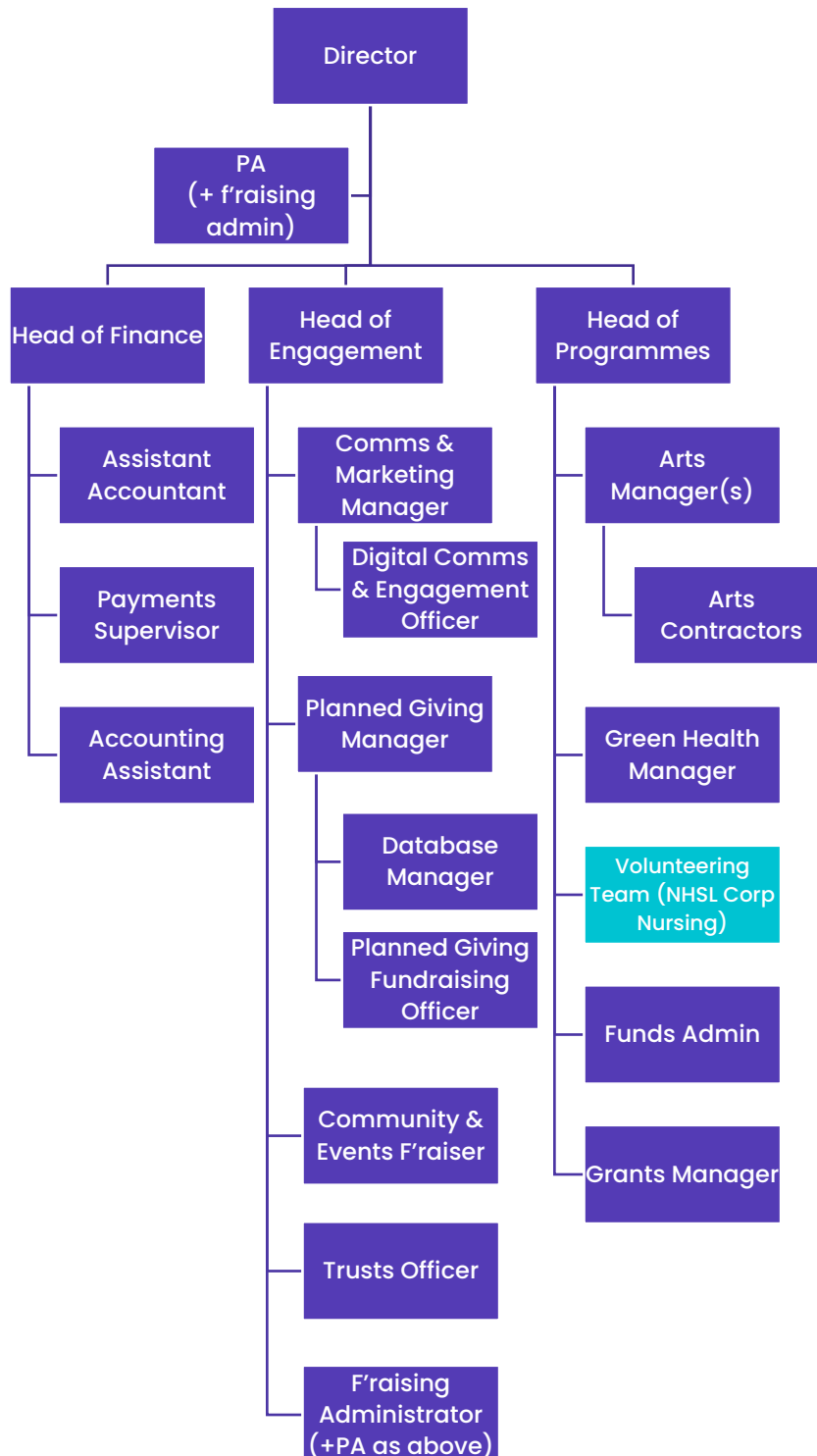
It is not permitted for the trustees to delegate their legal responsibilities, but the Charitable Funds Committee (CFC) has delegated authority to carry out some duties, and to offer advice to the trustees on governance and policy decisions.

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

The Investment Committee was established by the Trustees as a standing committee with delegated responsibility for overseeing NHS Lothian Charity's Investment Policy, the setting of appropriate benchmarks for investment performance, and the monitoring of investment performance against those benchmarks.

A number of Advisory Groups have been established to support the delivery of some strategic funding programmes, namely the Arts Advisory Group, Greenspace and Health Advisory Group, and Volunteering Well Strategy Implementation Group. These groups are chaired by a trustee and report to the Charitable Funds Committee. The membership includes a number of NHSL representatives and sector-expertise.

4.3 Organisational Structure (at 29/03/23)



4.4 Voluntary Income and Fundraising

Donations and legacies to NHS Lothian Charity are largely received from grateful patients and members of the public and are usually directed to specific and ward funds following a positive care experience. The funds are managed separately from exchequer funds used to provide health services by NHS Lothian.

Individual donors can increase their gift by signing a Gift Aid declaration – currently worth an additional 25%. Higher rate taxpayers (40% and above) can also claim the difference between the higher and basic rate of tax paid on their donation.

NHS Lothian Charity is in the early stages of developing a new fundraising strategy, supporting donor-led fundraising in the community, raising funds for priority projects and increasing legacy income. A team of expert fundraisers is in the process of being recruited.

Trustees play an important role in enabling the Charity to meet its fundraising objectives. As well as supporting through their professional skills, knowledge and experience, Trustees also bring a wide contact network who can engage in the work of the Charity, talking to them about the Charity's work, sharing their enthusiasm for the cause and fostering further relationship building and support. The Chartered Institute of Fundraising's [Trustees and Fundraising Practical Handbook](#) provides a useful guide for Trustees and their role in fundraising.

4.5 Investments

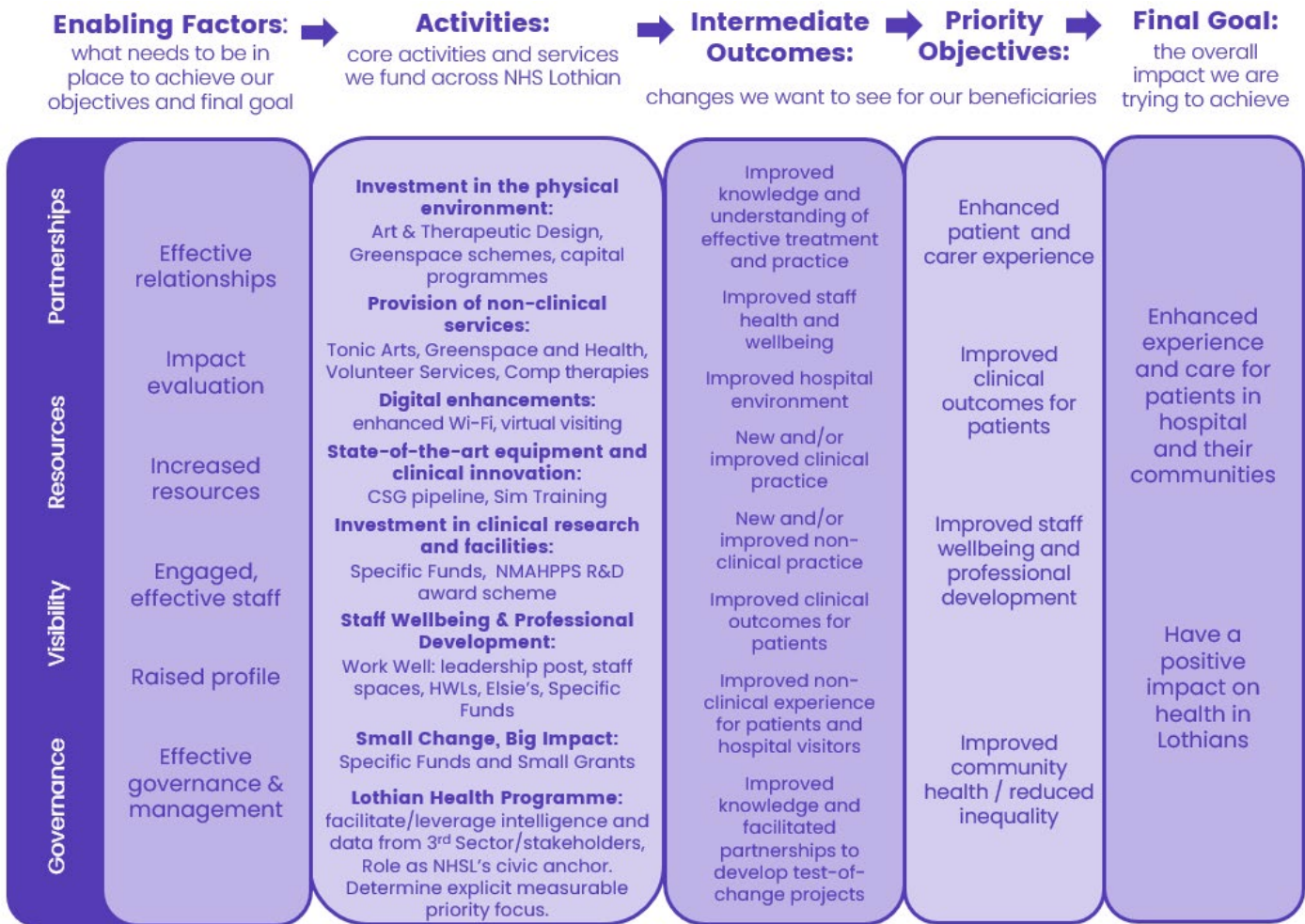
The Trustees' investment objective is to maximize the Total Return (ie cash yield and capital growth) within moderate risk parameters, and to maintain the real capital value of the portfolio over the long term. The investment target is to achieve an annual "real" rate of return of CPI inflation plus 4%. The portfolio consists of a diversified mix of equities, fixed income (bonds) and alternatives.

Trustees take an ethical and responsible approach to investment and hold no direct investments in companies involved in tobacco production, manufacturers of alcoholic beverages or the manufacture of armaments, which they believe would be in direct conflict with the charity's objectives. Pooled funds are screened prior to acquisition of 5% tolerance, and reviewed every six months. The portfolio also includes an investment in a Charity Responsible Multi-Asset Fund, with similar return, asset mix and risk parameters, but a broader set of exclusions including coal and tar sands, high interest lending and pornography.

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

4.6 Corporate Strategy

Trustees approved the new Strategic Plan 2021-2026 in September 2021, based on the concept of Theory of Change. Our four priority objectives are to enhance the patient and carer experience, improve clinical outcomes for patients, improve staff wellbeing and professional development and improve community and health and reduce inequality.



Appendix 5.1

Dates of 2023 meetings

Trustee Meetings

Wednesday 15 March 2023

Wednesday 21 June 2023

Wednesday 6th September 2023

Wednesday 6th December 2023

Charitable Funds Committee Meetings

Tuesday 7th February 2023

Tuesday 6th June 2023

Tuesday 15th August 2023

Tuesday 7th November 2023

Membership:

Trustee members: Angus McCann (chair), Martin Connor, Andrew Fleming, Tracy Gillies, Craig Marriott, Katherina Kaspar

Non-trustee members: Chris Stirling, Tim Walsh, Melanie MacKean, Olly Young, Judith Mackay

Investment Committee Meetings

Wednesday 3rd May 2023

Wednesday 1st November 2023

Membership:

Martin Connor (chair), Craig Marriott, Katharina Kaspar, Angus McCann, Brian Moore (representing NHS Lanarkshire Endowment)