



# Charter

December 2022

## Policy Reference Information

Status	DRAFT
Author	Alan Payne / Jane Ferguson
Approval	Trustees
Date of Last Review	December 2022
Date of Next Formal Review	December 2024

## Related Policies

Policy Title
Governing Document (National Health Service (Scotland) Act 1978)
Charities and Trustee Investment (Scotland) Act 2005 (the Charities Act)
Trustee Code of Conduct
Annual Report and Accounts
Risk Management Policy
A Guide to Managing Funds
Conflict of Interest Policy
Register of Interests

## CONTENTS

1. Name
2. Headquarters
3. Role of Scottish Ministers
4. Trustees
5. Statutory Constitution
6. Purposes
7. Agreed Principles for the Use of the Charity's Funds
8. Governance and Administration

## Appendices

- A1 Standing Orders for the Meetings of the Trustees
- A2 Terms of Reference for the Charitable Funds Committee
- A3 Delegated Expenditure Levels
- A4 Scheme of Delegation for Approval of Contracts

## 1. Name

- 1.1 The legally registered name of the charity is *NHS Lothian Charity*.

## 2. Headquarters

- 2.1 The headquarters shall be located in the area covered by Lothian NHS Board. The Office of the Scottish Charities Regulator (“OSCR”) shall be advised of the current address of the principal office of the charity.
- 2.2 The principal and registered office is Waverley Gate, 2-4 Waterloo Place, Edinburgh EH1 3EG.

## 3 Role of Scottish Ministers

- 3.1 The charity is administered under the terms of sections 82, 83, 84 and 84A of the *National Health Service (Scotland) Act 1978* (“the 1978 Act”). Accordingly, Lothian NHS Board holds the funds and property attributable to the charity on trust as a corporate trustee. This charter provides the overall terms of reference for the charity, and the Trustee shall uphold its requirements in the governance and management of the charity’s business.
- 3.2 The members of Lothian NHS Board shall be appointed by Scottish Ministers or elected in accordance with relevant legislation. The Board members become Trustees of the charity *ex officio* by reason of their Board appointment. The appointment as Trustee is legally distinct from the appointment as a Board member. The Trustees collectively are an unincorporated body distinct from Lothian NHS Board.
- 3.3 No individual shall hold the position of Trustee if he or she meets one of the criteria for disqualification as set out in Section 69 of the *Charities and Trustee Investment (Scotland) Act 2005* (“the Charities Act”).

- 3.4 Scottish Ministers have the authority to remove Board members in certain circumstances (Section 77 of the 1978 Act) or may choose not to re-appoint any member of the Board at the end of the term of appointment. Consequently, the issue of removal of Trustees is a matter reserved to the Scottish Ministers.
- 3.5 The Trustee shall comply with the requirements of the Charities Act with respect to any proposed changes to the governance or management of the charity. This may involve simply notifying OSCR of some matters, whilst other matters require OSCR approval. The Trustee shall approve any updates to this Charter to reflect any changes.

## 4. Trustees

- 4.1 The Trustees are responsible for the general control and management of the charity.
- 4.2 The Trustees shall perform general duties as described in Section 66 of the Charities Act and satisfy any other obligations in law required of a Trustee. The Trustees are personally accountable in law for the discharge of these duties and obligations.
- 4.3 Lothian NHS Board shall indemnify Trustees (collectively and individually) against allegations of neglect or breach in respect of their duties as Trustees.
- 4.4 The Trustees shall convene meetings solely to conduct the business of the charity, with distinct agendas from that of Lothian NHS Board.
- 4.5 In the discharge of their responsibilities, Trustees shall place the interests of the charity above all other things, including their own interests and the interests of Lothian NHS Board or any other organisation.
- 4.6 The Chair of Trustees shall be elected from those Trustees who are also non-executive members of Lothian NHS Board. In the event of more than one nomination the incumbent chair will organise a fair selection process that takes account of the Trustees' views. In the absence of nominations, the incumbent chair will nominate a successor for the approval of the Trustees.

## 5. Statutory Constitution

- 5.1 The founding document of the charity is the National Health Service (Scotland) Act 1978 (“the 1978 Act”). Section 82, 83, 84 and 84A of the 1978 Act establishes the endowments to be held by the Health Board:

*(1) All endowments vested in a Health Board by virtue of section 37 of the National Health Service (Scotland) Act 1972 are so vested free of any trust existing immediately before 1st April 1974 (hereafter in this section referred to in relation to any such endowment as “the original trust”); but all such endowments shall be held by the Health Board on trust for such purposes relating to services provided under this Act in or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.*

*(2) All property vested in a Health Board by virtue of section 39 of the said Act of 1972 is so vested free of any trust existing immediately before the said 1st April (hereafter in this section referred to in relation to any such property as “the original trust”); but all such property shall be held by the Health Board on trust for such purposes relating to services provided by them under this Act, or to the functions of the Board with respect to research, as the Board may think fit.*

*(3) In exercising the power conferred on them by this section in relation to any endowment or property a Health Board shall secure, so far as is reasonably practicable, that the objects of the original trust (including, in the case of an endowment, the objects of the endowment) and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power.*

- 5.2 The 1978 Act also sets out the basis of the “purposes relating to services under this Act”, which is of relevance to determining the charity’s purpose.

**Section 1: General duty of Secretary of State.**

- (1) It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure;*
- (a) improvement in the physical and mental health of the people of Scotland,*  
*and,*

- (b) *the prevention, diagnosis and treatment of illness,*  
*and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.*

**Section 47 (2):**

*Without prejudice to the general powers and duties conferred or imposed on the Secretary of State under the Scottish Board of Health Act 1919, the Secretary of State may conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as he thinks fit.*

- 5.3 Section 82 of the 1978 Act applies to funds which were transferred to the Trustees at various times, and frees the Trustees from any pre-existing Trust conditions, i.e., in transferred funds which were subject to restrictive conditions on 1 April 1974, or funds transferred from the dissolved NHS Trusts.
- 5.4 For clarity S82 does not apply to any new funds received or the income from future fundraising efforts.
- 5.5 All Trust funds must be managed at arm's-length from Exchequer Board activities.
- 5.6 The Charter has the status of governance policy. In the event of a dispute between the constitution and the Charter the NHS (Scotland) Act 1978 shall prevail.

## 6. Purposes

- 6.1 The purposes of the charity are:
- The advancement of health, through:
    - a) improvement in the physical and mental health of the people of Scotland;
    - b) the prevention, diagnosis and treatment of illness;
    - c) the provision of services and facilities in connection to the above; and

d) the research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as the Trustees see fit.

- To observe any conditions attached to a donation or legacy prescribed by a donor to the charity, so far as is reasonably practicable, and consistent with the above purpose and the law.

6.2 The charity's funds shall only be used for the purposes described at 6.1.

6.3 The Board, by virtue of Section 82 of the National Health Service (Scotland) Act 1978, holds the charity's funds on trust. The board recognises that this places legal responsibilities on its individual members as trustees.

6.4 The Board agrees that the Trustees shall observe the following principles whilst discharging their responsibilities under this charter and the law. This is to reduce the risk of any conflict of interest arising between the role of a board member and the role of a trustee.

## 7. Agreed principles for the Use of Endowment Funds

7.1 The Trustees may issue instructions or procedures, or introduce internal control measures to implement the following principles, to support the discharge of the Trustees' responsibilities:

- The grant of endowment funds must not substitute for a core provision within Lothian NHS Board's financial plans. Nor must endowment funds be used to cover a responsibility of Lothian NHS Board that is a direct requirement of health and safety or employment law or a ministerial policy direction.
- An employee of the board or the Trustees may only benefit from the charity, where the grant or award conferring the benefit satisfies the "public benefit" element of the charity test, as set out in the Charities Act, and the guidance on "Meeting the Charity Test" published by OSCR. The expenditure must be aimed at improving health, or the prevention, diagnoses or treatment of illness for the board's residents and any benefit to the employee must be incidental to (and

necessary for) that public benefit to be realised.

- Neither the charity's funds in totality, nor any individual fund (restricted or unrestricted) shall be permitted to go into deficit at any time.
- It is solely for the Trustees to determine how the charity is to be administered, and what expenditure is permitted, providing that all decisions are consistent with this charter. The Trustees shall discharge their responsibilities free from any external direction.
- All charity expenditure must comply with this Charter and have received the direct approval of the Trustees or be within the limits of any expressly delegated authority that the Trustees may have granted to an individual or a committee.

## 8. Governance and Administration

- 8.1 The Trustees shall approve standing orders for the conduct of Trustees' meetings and business.
- 8.2 The Trustees shall approve the arrangements for the management and administration of the charity, including the appointment of senior officers (i.e. higher than Agenda for Change Band 7) employed primarily in the management and administration of the charity.
- 8.3 The Trustees shall approve all policies and procedures to be applied to the administration of the charity's activities.
- 8.4 The Trustees shall adopt the board's standing financial instructions for the charity's activities. However, the Trustees may adapt these provisions in order to best serve the requirements of the charity.
- 8.5 The Trustees shall directly approve all matters relating to the charity unless they have expressly delegated the matter to another person or committee.



## APPENDIX A1

# Standing Orders for the Meetings of the Trustees of NHS Lothian Charity

## 1. General

- 1.1 These Standing Orders are for the regulation of the conduct and proceedings of NHS Lothian Charity. The Standing Orders cover the meetings of the Trustees, and any committees or sub-committees that the Trustees may establish.
- 1.2 Any statutory provision or regulation shall have precedence if it is in conflict with these Standing Orders.
- 1.3 Any one or more of these Standing Orders may be suspended on a duly seconded motion, incorporating the reasons for suspension, if carried by a majority of the Trustees present.
- 1.4 Any one or more of these Standing Orders may be varied or revoked at a meeting of the Trustee by a majority of Trustees present and voting, provided the agenda for the meeting at which the proposal is to be considered clearly states the extent of the proposed repeal, addition or amendment.
- 1.5 In these Standing Orders, references to the male gender shall apply equally to the female gender.
- 1.6 A copy of these Standing Orders shall be provided to all Trustees on appointment, and to senior managers.

## 2. Trustee

- 2.1 The Charter of NHS Lothian Charity sets out the status of the Trustees.

### 3. Chair

- 3.1 At every meeting of the Trustees the Chair, if present, shall preside. If the Chair is absent from any meeting the Vice-Chair, if present, shall preside. If both the Chair and Vice Chair are absent, a Trustee who is also a non-executive member of the Health Board shall be chosen at the meeting to preside.
- 3.2 The duty of the person presiding at a meeting of the Trustees or its Committees is to ensure that the Charter and these Standing Orders are observed, to preserve order, to ensure all of the Trustees have an opportunity to contribute and are treated fairly and with respect, and to determine all questions of order and competence. The ruling of the person presiding shall be final and shall not be open to question or discussion.

### 4. Vice-Chair

- 4.1 Where the Chair has died, ceased to hold office, or is unable to perform his/her duties due to illness, absence, or for any other reason, the Vice-Chair shall assume the role of the Chair in the conduct of the business of the Trustees and references to the Chair shall, so long as there is no Chair able to perform the duties, be taken to include references to the Vice-Chair.

### 5. Resignation and Removal of Trustees

- 5.1 The role of Trustee is *ex officio* by reason of a board appointment and may not be separately resigned from. A Board Member may resign from office at any time during the period of appointment by giving notice in writing to the Scottish Ministers to this effect. In so doing, they resign simultaneously from their *ex officio* Trustee role.
- 5.2 If the Scottish Ministers consider that it is not in the interests of the health service that a member of Lothian NHS Board should continue to hold that office they may forthwith terminate that person's appointment. Any individual whose appointment to the Lothian NHS Board is terminated will automatically cease to be a Trustee.

- 5.3 Where a Trustee who was appointed for the purposes of paragraph 2A of Schedule 1 to the *National Health Service (Scotland) Act 1978* (representative of a University on the Health Board) ceases to hold the post in a University with a medical or dental school, which was held at the time of appointment for those purposes, the Scottish Ministers may terminate the appointment of that person as a Trustee.
- 5.4 Where any Trustee becomes disqualified in terms of Section 69 of the *Charities and Trustee Investment (Scotland) Act 2005* that Trustee shall immediately cease to be a Trustee.

## 6. Ordinary Meetings

- 6.1 The Trustees shall meet at least three times in the year, and meetings of the Trustees, unless otherwise determined in relation to any particular meeting, shall be held at a date, time and venue determined by the Trustees or the Chair and specified in the notice calling the meeting.
- 6.2 Subject to Standing Order 6.6 below, the Charity Director shall convene meetings of the Trustees by issuing to each Trustee, not less than five working days before the meeting, a notice detailing the place, time and business to be transacted at the meeting, together with copies of all relevant papers (where available at the time of issue of the agenda).
- 6.3 Meetings of the Trustees may be conducted in any other way in which each member is enabled to participate although not present with others in the same place.
- 6.4 A meeting shall be conducted in accordance with 6.3 above only on the direction of the Chair, or in their absence the Vice-Chair, or in their absence the Trustee nominated to act as Chair for that meeting.
- 6.5 Any notice of meeting shall be delivered to each Trustee or sent by post to the place of residence of each Trustee, or such other address as notified by them to the Secretary.
- 6.6 Inadvertent lack of service of the notice on any Trustee shall not affect the validity of a meeting.

## 7. Matters Reserved for the Trustees

7.1 The following matters are reserved to the Trustees:

- Standing orders
- Any strategy relevant to the charity
- Any policy or procedure pertinent to the system of governance and control to be applied to the charity's activities
- Annual budgets
- The annual accounts, report, and any required returns to OSCR.
- The establishment of, and Terms of Reference of all of its committees.
- The appointment of all committee members
- The appointment of the senior officers (i.e. higher than Agenda for Change Band 7) employed primarily in the management and administration of the charity's activities.
- The appointment of external and internal auditors, and agreement of their fees.
- The internal and external audit plans.
- Risk Management policy
- The appointment of investment advisors or changes to the investment arrangements for the funds
- Any proposal for expenditure on a single item over £250,000 not covered by the approved annual budget
- Any proposed changes to the Charter of NHS Lothian Charity prior to referral of the proposal to the Scottish Ministers and OSCR.

## 8. Delegation of Authority

- 8.1 Lothian NHS Board is accountable under NHS and charity law (as a Corporate Trustee) for the governance and management of the funds. Except for matters reserved for the Trustees (7 above), Trustees may delegate responsibility for governance and management functions, and the authority to act on its behalf to committees, individual trustees, individual officers or stewards.
- 8.2 The Trustees may delegate responsibility for certain matters to the Chair for his action. In such circumstances, the Chair's action should be homologated at the next ensuing ordinary meeting of the Trustees.
- 8.3 The Trustees may also delegate the day-to-day functions for statutory matters in respect of health and safety, data protection and insurance arrangements to the Charity Director for action.
- 8.4 The Trustees shall approve a Scheme of Delegation setting out the respective responsibilities and authority of individuals acting on the Trustees' behalf.
- 8.5 The Trustees shall also approve a *Guide to Managing Funds*, setting out the governance and day to day management arrangements for the correct use of the funds.
- 8.6 The Trustees may, from time to time, request reports on any matter or may decide to reserve any particular decision for a meeting of the Trustees.

## 9. Special Meetings

- 9.1 The Chair of the Trustees may call a special meeting of the Trustees at any time so long as at least three days' notice shall be given.
- 9.2 The Chair of the Trustees shall call a special meeting of the Trustees on receipt of a requisition in writing for that purpose which specifies the business to be transacted at the meeting and is signed by one third of the whole number of Trustees.
- 9.3 In the case of a requisitioned meeting, the meeting shall be held within 14 days of receipt of the requisition and no business shall be transacted at the meeting other than that specified in the requisition.

- 9.4 If the Chair refuses to call a meeting of the Trustees after a requisition for that purpose, or if, without so refusing, does not call a meeting within seven days after such a requisition has been presented, those Trustees who presented the requisition may forthwith call a meeting by signing the notice calling the meeting provided that no business shall be transacted at the meeting other than that specified in the requisition.

## 10 Conduct of Meetings

- 10.1 A meeting of the Trustees shall be deemed to have been held when a quorum of at least one third of the Trustees are present. In the event of this quorum not being reached, it shall be deemed that the meeting has not taken place, and consequently no Trustees business shall be transacted or minuted. The Chair may set a time limit to permit the required number of Trustees to be present before formally abandoning the proceedings. If a Trustee leaves during a meeting, with no intention of returning, and this has the effect of removing the quorum, the meeting shall be brought to an end.
- 10.2 In the event of a Trustees' meeting not proceeding due to quorum not being reached, the Chair shall record the circumstances and report them to the next meeting of the Trustees.
- 10.3 No business shall be transacted at any meeting of the Trustees other than that specified in the agenda except on grounds of urgency and with the consent of the majority of the Trustees present. Any request for the consideration of an additional item of business shall be raised at the start of the meeting and the consent of the majority of Trustees for the inclusion must be obtained at that time.
- 10.4 All acts of, and all questions coming and arising before, the Trustees shall be done and decided by a majority of the Trustees present and voting at a meeting of the Trustees. Majority agreement may be reached by consensus without a formal vote. Where there is doubt, the Trustees shall formally vote by a show of hands, or by ballot, or any other method determined by the person presiding at the meeting.

- 10.5 In the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.
- 10.6 A motion, which contradicts a previous decision of the Trustees, shall not be competent within six months of the date of such decision, unless submitted in the minutes of a Committee, or notice of the proposed variation is provided in the notice of the Trustees meeting. Where a decision is rescinded, it shall not affect or prejudice any action, proceeding or liability that may have been competently done or undertaken before such decision was rescinded.

## 11. Minutes

- 11.1 The names of Trustees and other persons present at a meeting of the Trustees, or of a Committee of the Trustees, shall be recorded in the minutes of the meeting.
- 11.2 Minutes of the proceedings of meetings of the Trustees and its Committees and decisions thereof shall be drawn up by the Charity Director and be submitted to the next ensuing meeting of the Trustees or relevant Committee for approval as to their accuracy.

## 12. Order of Debate

- 12.1 Any motion or amendment shall, if required by the Chair, be reduced to writing, and after being seconded, shall not be withdrawn without the leave of the Trustees. No motion or amendment shall be spoken upon, except by the mover, until it has been seconded.
- 12.2 After debate, the mover of any original motion shall have the right to reply. In replying he shall not introduce any new matter, but shall confine himself strictly to answering previous observations, and, immediately after his reply, the question shall be put by the Chair without further debate.
- 12.3 Any Trustee in seconding a motion or an amendment may reserve his speech for a later period of the debate.
- 12.4 When more than one amendment is proposed, the Chair of the meeting shall decide the order in which amendments are put to the vote. All amendments carried shall be incorporated in the original motion which shall be put to the meeting as a substantive motion.
- 12.5 A motion to adjourn any debate on any question or for the closure of a debate shall be moved and seconded and put to the meeting without discussion. Unless otherwise specified in the motion, an adjournment of any debate shall be to the next meeting.

## 13. Adjournment of Meetings

- 13.1 A meeting of the Trustees, or of a Committee of the Trustees, may be adjourned by a motion, which shall be moved and seconded and be put to the meeting without discussion. If such a motion is carried, the meeting shall be adjourned until the next scheduled meeting or to such day, time and place as may be specified in the motion.



## 14. Declaration of Interests and Register of Interests

- 14.1 The Conflict of Interest Policy of NHS Lothian Charity sets out the framework for Conflict of Interest and the Register of Interests. The policy is reviewed and updated biennially and is provided to Trustees and/or Committee members at induction. The Register of Interests is updated annually.
- 14.2 Trustees have a legal duty to act in the best interests of *NHS Lothian Charity*, in accordance with the charity's governing document and the Charities Act. This means placing the interest of the charity above that of any other person or body (including the Health Board), or where any other duty prevents the trustee from doing so, disclosing the conflict of interest and withdrawing from any discussion or decision on the matter in hand.
- 14.3 The Charity Director shall be responsible for maintaining the Register of Interests and for ensuring it is available for public inspection at the principal offices of the charity at all reasonable times.
- 14.4 The Register shall include information on: -
- the date the interest was declared
  - the name of the person who declared the interest; and
  - a description of the interest (for example statement of the information contained in the notice, or a copy of, that notice).

## 15. Suspension of Trustees

- 15.1 Any Trustee who disregards the authority of the Chair, obstructs the meeting, or conducts himself offensively shall be suspended for the remainder of the meeting, if a motion (which shall be determined without discussion) for his suspension is carried. Any person so suspended shall leave the meeting immediately and shall not return without the consent of the meeting. If a person so suspended refuses, when required by the Chair, to leave the meeting, he may immediately be removed from the meeting by any person authorised by the

Chair so to do.

## 16. Admission of Public and Press

16.1 Meetings of the Trustees shall not be open to the public and press unless the Trustees decide otherwise in respect of a particular meeting.

## 17. Committees

17.1 The Trustees shall appoint such Committees as they think fit to uphold the Charter and discharge their responsibilities. The Trustees shall approve the terms of reference of any such Committee.

17.2 Committee Chairs and Vice-Chairs shall be appointed by the Trustees on the recommendation of the Chair of the Trustees.

17.3 The Chair of a Committee may call a meeting of that Committee any time and shall call a meeting when requested to do so by the Trustees.

17.4 The foregoing Standing Orders, so far as applicable, and so far as not hereby modified, shall be the rules and regulations for the proceedings of formally constituted Committees and Sub-Committees, subject always to the following additional provisions:

- A Quorum for a Committee or Sub-Committee shall in no case be less than four Trustees. The requirement for a quorum to be present, as described in Paragraph 10.1, shall apply to Committee and Sub-Committee meetings, except that the Chair shall wait no longer than 30 minutes from the announced starting time for a quorum to be reached.
- In the event of a Committee meeting not proceeding due to its quorum not being reached, the Committee Chair shall record the circumstances and formally report this to the next meeting of the Trustees. In the case of a Sub-Committee, the report shall be provided to its parent Committee.
- If the absence of the Chair of the Committee or Sub-Committee has contributed to quorum not being achieved, then another member of the Committee or Sub-Committee (who was present) should prepare the report.
- All Trustees shall have the right to attend all Committees except where the

terms of reference of such Committees do not permit this.

- Meetings of Committees and Sub-Committees shall not be open to the public and press unless the Trustees decide otherwise in respect of a particular Committee or a particular meeting of a Committee.
- Committees of the Trustees and their Chairs can be appointed at any meeting of the Trustees. Vacancies in the membership of Committees shall be filled, so far as practicable, by the Trustees at the next scheduled meeting following a vacancy occurring.
- Committees of the Trustees may appoint Sub-Committees and Chairs thereof as may be considered necessary.
- Minutes of the proceedings of Committees shall be drawn up by the Charity Director and submitted to the Trustees at the first scheduled meeting held not less than seven days after the meeting of the Committee for the purpose of advising the Trustees of decisions taken.
- Minutes of meetings of Sub-Committees shall be submitted to their parent Committee at the first scheduled meeting of the parent Committee held not less than seven days after the meeting of the Sub-Committee for the purpose of advising the Committee of decisions taken.
- A Committee, or Sub-Committee may, notwithstanding that a matter is delegated to it, direct that a decision shall be submitted by way of recommendation to the Trustees or parent Committee for approval.

# Charitable Funds Committee

## Terms of Reference

18 July 2022

### Policy Reference Information

Status	<b>DRAFT</b>
Author	<b>Jane Ferguson</b>
Approval	
Date of Last Review	<b>December 2022</b>
Date of Next Formal Review	<b>December 2024</b>

### Related Policies

<b>Policy Title</b>
Governing Document (National Health Service (Scotland) Act 1978) Charities and Trustee Investment (Scotland) Act 2005 (the Charities Act) Charter Trustee Code of Conduct Annual Report and Accounts Risk Management Policy Operating Instructions for Specific Funds Conflict of Interest Policy Register of Interests

## CONTENTS

1. Background
2. Aims and Objectives of the Charitable Funds Committee
3. Membership
4. Quorum
5. Reporting Arrangements
6. Frequency of Meetings
7. Sub-Committees to the CFC
8. Administration
9. Duties
10. Authority

## INTRODUCTION

### 1. Background

- 1.1 The Charitable Funds Committee (CFC) is a standing committee which has been established to exercise Lothian NHS Board's functions as sole corporate trustee of NHS Lothian Charity (Scottish charity number SC007342).
- 1.2 Lothian NHS Board is accountable under NHS and charity law (as a Corporate Trustee) for the governance and management of the funds. The Board delegates responsibility for these functions to the CFC, within any limits set out in these Terms of Reference and NHS Lothian Charity Charter, and the Funds Held on Trust (Endowments) section of the Standing Financial Instructions.
- 1.3 The CFC is accountable to the Board of Trustees.
- 1.4 In accordance with charity law, CFC members must act in the interests of the charity, operate in a manner consistent with the charity's purpose and act with due care and diligence (see Trustee Role Description).

### 2. Aims & Objectives of the Committee

- To develop the strategy and objectives for NHS Lothian Charity for consideration by the Trustees.
- To oversee the implementation of an infrastructure appropriate to the efficient and effective running of the charity
- To oversee the development and delivery of the Fundraising Strategy
- To oversee the expenditure of NHS Lothian Charity
- Monitor the performance of all aspects of the charity's activities and ensure that it adheres to the principles of good governance and complies with all relevant legal requirements.

### 3. Membership

- 3.1 The Board shall appoint all Committee members, ensuring that the Committee's membership includes an adequate range of skills and experience that will allow the Committee to effectively discharge its responsibilities.

- 3.2 The CFC comprises as a minimum:
- (Six) Trustees
    - (at least) Two non-executive Directors
    - (at least) Two executive Directors, normally including the Director of Finance.
    - An Operational Director (e.g. Medical or Nursing)
  - Co-opted non-trustees, including fund stewards, up to a maximum of six, with one preferably having marketing or charity fundraising experience.
- 3.3 There are no arrangements for deputising at CFC meetings, however all Trustees shall have the right of attendance and have access to all papers.
- 3.4 The CFC shall be chaired by a non-executive Director (appointed by the Trustees), but this shall not be the Chair of Trustees.
- 3.5 In addition to CFC members detailed in paragraph 3.2, the following people shall be permanent non-voting attendees: Charity Director, Head of Finance, Head of Fundraising, Head of Funding Programmes.
- 3.6 Other NHS Lothian Charity and/or Board officers may be asked to attend when the CFC is discussing areas that are the responsibility of that individual. The CFC may also invite external advisors to attend for appropriate items, where items require detailed knowledge or expertise.
- 3.7 It is expected that members will attend every meeting. Members must attend at least half of all meetings. Poor attendance will be followed up by the CFC Chair and may result in them being replaced.
- 3.8 A Committee member shall cease to hold office if he or she:
- Gives written notice of resignation;
  - Is removed by resolution of the Board; or
  - Ceases to be a member of the Board.

## 4. Quorum

- 4.1 No business shall be transacted at a meeting of the CFC unless at least six members are present including four trustees.

## 5. Reporting Arrangements

- 5.1 The CFC will report to the Trustees by means of regular updates, including summaries of discussion and decisions made within delegated authority, and escalate recommendations for trustee approval.
- 5.2 The CFC will also produce an annual report on its activities, which can be used to:
- Provide assurance to the Board of Trustees to support the management of audit and risk
  - Support the preparation of the Trustees Annual Report and Financial Statements.

## 6. Frequency of Meetings

- 6.1 Meetings of the CFC shall be held at such intervals as the Committee shall determine in order to conduct its business. In any event, meetings shall normally be held four times a year.

## 7. Sub-Committees to the CFC

- 7.1 The CFC may establish a sub-committee for a specific purpose for example, a Fundraising / Appeal Committee.
- 7.2 The members of the CFC who are also members of the Board of Trustees may on occasion act as an ad hoc sub-committee of the Trustee to review a particular charitable issue for the Board. Their findings will normally be reported to the committee for information.

## 8. Administration

- 8.1 It is the duty of the CFC Chair to ensure that:
- The administration of the CFC is managed efficiently and effectively
  - The CFC undertakes the duties assigned to it
  - Reports to the CFC and actions arising from meetings are completed in a timely manner
  - The Chair, Operational Leads and CFC administrator meet as required to set agendas and follow-up action points
  - Meeting papers are circulated at least five working days in advance of the meeting



by the administrator and minutes circulated within ten working days.

8.2 The CFC's Administrator's duties include:

- Agreement of the agenda with the Chair and Charity Director
- Collation of all meeting papers
- The taking of minutes and keeping a record of action points and issues to be carried forward
- Forward planning of agenda items
- Ensuring records of CFC business, Terms of Reference etc are stored appropriately and are retained in line with the corporate record retention requirements
- Reminding contributors of report deadlines
- Distributing papers one week in advance of meetings
- Keeping mailing lists up to date
- Recording attendance and drawing the Chair's attention when this needs follow up action.
- Maintaining a risk register

## 9. Duties

9.1 The CFC will:

- Act as the committee which discharges the Board's responsibilities (as Corporate Trustee) as they relate to Charitable Funds under the Board's custodianship.
- Ensure that the Charitable Funds held by the Board are managed in a manner consistent with the requirements of the relevant regulatory and statutory frameworks.
- When in this role act solely in the best interests of NHS Lothian Charity and in a manner consistent with OSCR's requirements and expectations of Charity Trustees.
- Oversee NHS Lothian Charity's strategy, governance, major plans and key risks on behalf of the Corporate Trustee.
- Establish, prioritise and approve major fundraising projects over (£100,000), and approve major expenditure items over (£100,000). See Appendix for the full list of authority levels.
- Monitor the performance of the fundraising and marketing activity, ensuring that the return on investment is satisfactory and that income targets are met.-

- Ensure the approval and submission of Annual Accounts and Trustees' report in accordance with the Charity Statement of Recommended Practice.

## 10. Authority

- 10.1 The CFC has delegated authority from the Board of Trustees and is authorised to pursue any activity within its Terms of Reference. It may seek and secure the information it requires from any employee of NHS Lothian Charity and/or Board and all employees are directed to co-operate with any request made by the committee.
- 10.2 The CFC can seek external advice from any source if necessary, taking into consideration issues of confidentiality and Standing Financial Instructions.

## 11. Monitoring Compliance and Effectiveness

- 11.1. In order to support the continual improvement of governance standards, subcommittees of the Board of Trustees are required to annually:
- Complete a self-assessment of the effectiveness of the CFC
  - Review the terms of reference for the CFC, reaffirming the purpose and objectives
  - Prepare an annual work plan, where appropriate
  - Maintain an up-to-date Risk Register
  - Present a written report to the Trustees

## APPENDIX A3

### Delegated Expenditure Levels (Updated July 2022)

Specific and Ward Funds	
>£250,000	Board of Trustees
£100,000 - £250k	Fund Steward + NHS Manager + NHSL Capital Planning + Charity SMT * + CFC (Reported to Board of Trustees)
£50,000 - £100,000	Fund Steward + NHS Manager + NHSL Capital Planning + Charity SMT and CFC Chair * (Reported to CFC)
£5,000 - £50,000	Fund Steward + NHS Manager + NHSL Capital Planning + Charity SMT * (Reported to CFC)
< £5,000	Fund Steward

\*Charity SMT – Charity Director, Head of Finance, Head of Fundraising

General Funds (through Grants Programmes)	
>£5,000	CFC
< £5,000	Charity Director and Chair of CFC

## Appendix A4

### Scheme of Delegation for Approval of Contracts

#### Overview of process

- This Scheme applies where NHS Lothian Charity is procuring/contracting goods or services to be funded from the Charity's budget. There is a separate Scheme of Delegation for expenditure from specific and ward funds.
- The following groups / individuals can award tenders up to the values stated below
- The Charity's Charter reserves specific items for Trustee approval highlighted below
- The Charity follows the NHS Lothian scheme for the requirements of market testing and tendering.

<b>Items reserved for Trustee approval:</b>	<p>The appointment of External and Internal Auditors.</p> <p>The appointment of Investment Advisors.</p> <p>Any proposal for expenditure on a single item over £100,000 not covered by the approved annual budget.</p> <p>The appointment of the senior officers (i.e. higher than AfC Band 7 employed primarily in the management and administration of the charity's activities.</p>
<b>Any tender or contract award of a value above £100k:</b>	<p>Approval at Trustees meeting required.</p> <p>Contract documents can be signed by: Director of Finance</p>
<b>Any tender or contract award up to £100k:</b>	<p><b>For tender / contract award from £50,000 to £100,000</b></p> <p>Approval by CFC, assuming within agreed annual budget. The contract documents can be signed by:</p> <p>Director of Finance</p> <p><b>For tender / contract awards from £15,000 to £50,000</b></p> <p>Assuming within agreed annual budget the contract documentation can be approved and signed by: Director of Finance</p> <p><b>For tender / contract awards up to £15,000</b></p> <p>Assuming within agreed annual budget the contract documentation can</p>

	be approved and signed by: Charity Director
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