

CHARITABLE FUNDS PROCEDURE

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POLICY SUMMARY
The procedure outlines the process for receiving donations, fundraising and spending money out of charitable funds including the associated forms and list of available funds.
The Trust Monitors the implementation of and compliance with this policy in the following ways:
Internal Audit

Services	Applicable	Comments
Trustwide	✓	

**The Director responsible for monitoring and reviewing this policy is
Executive Chief Finance Officer**

ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CHARITABLE FUNDS PROCEDURE

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

CHARITABLE FUNDS PROCEDURE

1.0 INTRODUCTION

This procedure should be read in conjunction with the Trust's overarching Standing Orders, Standing Financial Instructions and Scheme of Delegation which are applicable to both charitable funds and exchequer funds.

The procedure provides an overview of what constitutes a charitable fund, the guiding principles to be applied in the management of charitable funds including statutory guidelines, role of trustees, sources of income and appropriate charitable expenditure.

It should be noted that for any advertisements or correspondence, the Charity Registration Number must be included in accordance with Charity Commission Regulations.

In addition, the Charity Commission website is also a useful source of information which is located on <https://www.gov.uk/government/organisations/charity-commission>

For avoidance of doubt, this procedure refers to a number of key staff within the Finance Department for the completion of a range of tasks. In the absence of these key members of staff, the task will be undertaken by the covering member of staff. In the event there are no suitable staff to cover the identified task, the decision will be referred to either the Deputy Chief Finance Officer, Head of Financial Accounts or Head of Financial Management.

2.0 WHAT IS A CHARITABLE FUND

- 2.1 A charitable fund is created when funds are accepted by a Trustee to be held and used for a beneficial purpose. The arrangement is usually governed by an instrument which sets out the terms of the placement on Trust and the purpose to which funds are to be applied by the Trustee. Trustees are not obliged to receive funds into the charity and may refuse where conditions imposed by the donor are too onerous.
- 2.2 For a fund to be a charity it must have a purpose which according to the law is exclusively charitable, unless it is for public benefit. It must be of actual benefit, and, it must benefit the public as a whole or a sufficient section of the public. Therefore, a fund is not charitable if it is wholly or mainly for the benefit of specific individuals. For example, a fund for the benefit of, or to provide equipment for a single individual would not be charitable.
- 2.3 Broadly, the law has accepted four heads of purposes of charity as a basic classification. These are:
 - a) The relief of those in financial need, those who are ill or have a disability.
 - b) The advancement of education.

- c) The advancement of religion.
 - d) Other purposes beneficial to the community not falling under any of the other three heads.
- 2.4 Most charitable funds held by NHS organisations fall under the first heading i.e. the relief of people who are ill or have a disability, providing financial assistance to patients who are in need, and for people connected with patients either directly or indirectly.
- 2.5 The advancement of education is a charitable purpose, and includes funds for medical research and the professional development of staff. There are two main types of research, and these are detailed below:

Non-Commercial Medical Research:

Where medical research is being financed by a charitable fund the useful results of the research must be published in such a way that the public will benefit from the advancement of medical science to which the research has contributed. Research is not always successful; and, if a particular programme of medical research fails to lead to a worthwhile advancement in medical science then there is no point in publishing the results except in so far as this might assist subsequent such programmes. Nevertheless, where charitable funds are spent on medical research the Trust should keep track of the progress of the research and keep the programme of payments for the research under proper review. Appendix 3 sets out the Charity Commission guidance on principles governing the funding of medical research by charities.

Commercial Medical Research:

The support by a charity of private commercial research is not permitted.

- 2.6 Staff welfare and amenity funds are charitable only because their immediate non charitable purpose of providing benefits to the employees of a particular employer is perceived as being conducive to the furtherance of the charitable purpose of the employer i.e. relieving people who are ill. It is not necessary to discriminate those employed in administration or support services as opposed to those directly involved in patient care. However, the benefits must not go beyond what a good employer would consider reasonable to provide for its staff.

3.0 STATUTORY LEGISLATION

- 3.1 All documentation, notices, letterheads, advertisements, documents soliciting money, bills of exchange, cheques, invoices, receipts etc. must state that the charity is registered and should quote the relevant charity registration number as follows:

Essex Partnership NHS Foundation Trust General Charitable Fund: **1053793**

- 3.2 Trustees of Registered Charities have to prepare an Annual Report and Accounts. The charity is also required to file an annual return on-line by the same deadline, and submit them to the Charity Commissioners within 10 months of the year-end for the charity. The Charities Act states that any member of the public may request a copy of the most recent accounts of any charity. The Trustees may ask for a reasonable fee to cover the cost of providing these.
- 3.3 The Charities Act requires Charity Trustees to ensure that proper records are kept which record the financial transactions of the charity on a day to day basis.
- 3.4 The records must:
- a) Show and explain all the charity transactions.
 - b) Disclose, at anytime, and with reasonable accuracy the financial position of the charity at that time.
 - c) Show entries on a day to day basis for all sums received and expended, identifying the matter in respect of which the transaction took place and to include a record of assets and liabilities.
 - d) Enable the Trustees to ensure that any statements of accounts required by the Charities Act comply with statutory requirements.
- 3.5 It is the Trustees' responsibility to ensure that the statutory obligations have been complied with and they are responsible for the proper conduct of the affairs of the charity.
- 3.6 The Charity Commission requires all charitable funds to be audited or independently examined (subject to financial thresholds) by an auditor approved by the Commission.
- 3.7 A recommended guide on Internal Financial Controls for charities is available from the Charity Commission website (www.charity-commission.gov.uk document CC8) and the Trust adheres to this guidance where applicable.
- 3.8 Charities are governed by a number of statutory guidelines as follows:

Charities (Protection and Social Investment) Act 2016

This Act replaced a number of now out of date Acts, and gives stronger powers to the Charity Commission for England and Wales (CCEW) - in particular in terms of disqualifying and suspending trustees. The CCEW is also given more explicit powers to direct a charity to wind-up or transfer its assets to another charity or to direct a charity not to do something.

The Act amends the rules in the Charities Act 1992 regarding the use of professional fundraisers and commercial participators (a commercial participator is a business which sells products with a promise that part of the price will go to charity). The written agreements which are already required between a charity and a professional fundraiser/commercial participator now

have to include specific provisions to protect vulnerable people and to ensure that the public are not subject to “unreasonably persistent approaches”.

The Act inserts some new provisions in the Charities Act 2011 which makes it explicit that charities have the power to make social investments as a means of advancing their charitable aims. A social investment is defined as an investment or commitment made by a charity where it expects to achieve some financial return (so not a pure grant) as well as advancing its charitable aims

Charities Statement of Recommended Practice (SORP)

The charities’ statement of recommended practice (SORP) gives a framework for accounting and reporting, designed to:

- help charity trustees meet their legal requirement for their accounts to give a true and fair view
- encourage consistency in charity accounting standards
- give recommendations for charity annual reporting

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (MLR 2017)

This regulation came into force on 26 June 2017. They replace the Money Laundering Regulations 2007 (MLR 2007) and the Transfer of Funds (Information on the Payer) Regulations 2007 which were previously in force. These regulations aim to seek assurance that there are robust arrangements in place to ensure incoming resources, especially cash donations, are not the proceeds of crime.

4.0 THE BOARD OF TRUSTEES AND CORPORATE GOVERNANCE

- 4.1 The Essex Partnership University NHS Foundation Trust’s Executive and Non Executive Directors are Trustees of the charitable fund by virtue of their office and, therefore, are the Board of Trustees.
- 4.2 On a day to day basis the management of the charitable funds are delegated by the Trustees to other directors and managers;
- 4.3 Primarily, liability for the Trust’s charitable funds rests with the Essex Partnership NHS Foundation Trust as Corporate Trustee. The Trustees are not liable for the funds administered, provided they carry out their duties with diligence.
- 4.4 The Trustees, however, are liable for any misdeeds, negligence etc., as they are in their roles of Director for NHS public funds.
- 4.5 Trustees are not entitled to receive any payment out of the charitable funds other than reasonable and necessary out of pocket expenses which can be met from charitable income. In addition, Trustees should not benefit either directly or indirectly from the charity.

4.6 Charity Trustees have four primary responsibilities, they:

- are accountable for the solvency and continuing effectiveness of the charity and the preservation of its endowments
- must exercise overall control over its financial affairs
- should ensure that the way in which the charity is administered is not open to abuse by unscrupulous associates or employees
- should ensure that their systems of control are rigorous and constantly maintained.

4.7 The role of the Executive Chief Finance Officer

The Executive Chief Finance Officer of Essex Partnership University NHS Foundation Trust holds and administers charitable funds and acts as a charity trustee in respect of that property. The Director of Finance and Resources, by virtue of holding that office, is also Financial Trustee of Essex Partnership University NHS Foundation Trust's Charitable Funds. As well as complying with the Charities Acts and the general law, the Executive Chief Finance Officer must also operate within directives issued by the Secretary of State for Health under the NHS Acts, the governing documents of the charitable funds and the spending policies of Essex Partnership University NHS Foundation Trust.

5.0 REGISTRATION OF CHARITIES

5.1 The statutory obligations that have to be complied with for each charity are so onerous that some concessions are made to the NHS. Even after the concessions we still have to register each and every new fund with the Charity Commission. Every registration document for any new fund has to be first sanctioned by the Charity Commission on the application of the Board of Trustees and approved by the relevant organisation's Chair and Executive Chief Finance Officer. **Staff are advised, where practical to encourage the public to donate to existing charities.**

5.2 Therefore, unless expressly stated otherwise, donations to charitable funds will be deemed to fall into the receiving organisations General Purpose fund.

6.0 POTENTIAL SOURCES OF CHARITABLE INCOME

The charitable fund receives income from a number of sources. These are outlined below:

6.1 Grants

Grants are often given for research. If you are a recipient of any grant given by other charities or by companies it is essential that you contact the Executive Chief Finance Officer. The Executive Chief Finance Officer will then ascertain if the grant can be classified as charitable and advise you of what procedures need to be followed.

6.2 Donations

When a donation is received it is important to ensure that any condition or direction which is attached is noted and complied with. However, if you feel that the condition or direction attached is unduly onerous and is not capable of being fulfilled without disproportionate difficulty, and bearing in mind the price of the gift, it maybe necessary to point this out to the donor, or even with regret, to decline the gift. Potential donors should be given a Donation Form to complete.

6.3 Legacies

Legacies are usually notified to the Trust by solicitors or other professional executors. If, however, you happen to be notified of any such legacies, again, please contact the Executive Chief Finance Officer who will deal with the executors and notify you of the outcome.

All legacies and potential legacies should be notified to the Executive Chief Finance Officer or Deputy Chief Finance Officer of Essex Partnership University NHS Foundation Trust.

6.4 Medical or Other Professional Fees

In some instances, medical/dental consultants or other professionals may wish to donate all or part of their fees received from, for example, private patients, providing that this is undertaken in their own time. If the donation is passed direct to the charitable fund, no tax is deducted from the fee. However, if the consultant or the professional wishes to receive it first and then pass it on to the charitable fund then tax is deducted. It is, therefore, beneficial for the charity to receive the donation directly.

If a member of staff receives money for work/research undertaken in work time, the income cannot be banked into the charitable fund and must be banked into exchequer funds.

6.5 Fund Raising

Prior authorisation must be obtained from the Executive Chief Finance Officer or Deputy Chief Finance Officer before any fundraising can commence.

Where funds are raised for a specific project or purpose this implies that the money raised will be spent on that project. The donor must not be misled as to how their money will be used. Any literature must include details of how the money will be used if insufficient funds are raised, and of how any surplus funds will be utilised.

It is important to ensure that trading activities are not undertaken in the guise of fundraising. If further assistance is required to ascertain whether an activity is fundraising or trading, please speak to the Finance Team in the first instance.

ALL funds raised must be paid into the Charitable Funds bank account prior to being spent. This ensures that all money is correctly accounted for.

All fund raising literature should state that the charity is registered and should quote the charity registration number. Fund raising events should be registered for VAT if the event is likely to earn income over the current VAT threshold.

If the event is a single one off event VAT need not be charged on sales such as tickets, tee-shirts etc.

If the event is one of a series, for example, monthly car boot sales, monthly discos etc. VAT must be charged on sales.

Note that all VAT must still be paid on purchases.

If you are selling tickets to raise income, you should ensure:

- i) Tickets are pre numbered.
- ii) Records kept of all persons issued with tickets to sell and numbers allocated.
- iii) Records kept of tickets sold.
- iv) Money received reconciled to tickets sold.
- v) Controls maintained for receipts as for other donations.

Records maintained for each fund raising event.

Records kept for sponsored and non-sponsored events.

If professional fund raisers are engaged there are sections of the Charities Act of 1992 which have to be complied with.

In view of the financial controls imposed by the Charity Commission on fund raising events for charities, if you are embarking on a fund raising event, it is advisable that you contact the Executive Chief Finance Officer for proper advice and guidance.

6.6 Employee Donations

It is not appropriate for NHS Foundation Trust employees to donate money belonging to the NHS Foundation Trust to the Charity. For example, payment for work carried out under the contract of employment will generally be due to the NHS Foundation Trust.

Personal donations may be made by NHS Foundation Trust employees. For example, payment for work carried out outside of the contract of employment will generally be due to the employee, and may be donated to the Charity at the employee's discretion.

Personal donations made to the Charity will be subject to the same rules as all donations, and will be under the control of the Trustee. They may not be used to supplement the NHS Foundation Trust budget of the individual, unless appropriate process has been followed, as per this document.

6.7 Gift Aid

The Gift Aid scheme allows the charitable fund to reclaim tax on any donations made by individuals, thereby increasing the value of the donation to the charity at no additional cost to the donor. The following donations are able to be applied to the Gift Aid scheme:

- donations by tax-paying individuals resident in the UK
- donations by individuals who are Crown servants or members of the UK armed forces serving overseas
- donation by other non-resident individuals, provided they have income or capital gains charged to UK tax at least equal to the gross amount of the donation (ie, the donation before deduction of basic rate income tax).

In order to reclaim the tax, the charity needs to obtain a Gift Aid declaration from the donor containing the following information:

- the donor's name and address
- the charity's name
- a description of the donations to which the declaration relates
- a declaration that the donations are to be treated as Gift Aid donations
- a note explaining the requirement that the donor must pay an amount of income tax and/or capital gains tax equal to the tax deducted from his or her donations

The Trust's Donation Form (Appendix 4) has been designed in such a way as to incorporate the Gift Aid scheme requirements. The Trust will reclaim tax on all donations for which there is a fully completed Instruction Form.

A record will be maintained of all claims submitted to ensure that all income receivable is accounted for.

6.8 Charities Aid Foundation

The Charities Aid Foundation is a registered charity. Certificates are received from them indicating that a donor has donated money, for example, to one of the Trust's charities. The donor may remain anonymous. If you are the recipient of a Charities Aid Foundation Certificate, please contact the Essex Partnership University NHS Foundation Trust Finance Department who will 'cash' in the certificate.

7.0 PROCEDURE FOR RECEIPT OF DONATIONS

- 7.1 In the event of a donor wishing to donate funds to the charitable funds, staff should provide them with a Donation Form (Appendix 4).
- 7.2 Staff should assist donors to ensure that the Donation Form is fully completed. Where it is not practical for donors to complete a Donation Form, for example where donations have been received at a funeral and given to staff, staff should complete one Donation Form for these, showing name and address of the family of the deceased, purpose of the funds if specified and details of the staff who received the donations.

Where a donation is to be made by post, this should be sent by cheque together with confirmation of purpose of fund and restrictions if any, to the Finance Department at Thurrock Hospital who will issue a thank you letter to the donor.

- 7.3 The top white copy of the Donation Form should be given to the donor, the middle yellow copy should be retained by the office of the staff receiving the donation, and the bottom white copy should be handed together with the Donation Envelope to staff in one of the following designated areas,
- a) Finance Department, Thameside House, Thurrock Hospital
 - b) General Office, Mental Health Unit, Basildon Hospital
 - c) General Office, Brockfield House, Runwell
 - d) General Office, Rochford Hospital
 - e) St Margarets Hospital Reception, Epping
 - f) The Lakes, Colchester
 - g) St. Aubyn Centre, Colchester
 - h) The Linden Centre, Chelmsford
 - i) The Derwent Centre, Harlow
- 7.4 Income will not be accounted for by the Trustees until it has been received and banked by one of the above offices. The cashiering staff responsible for banking the donation will ensure the Trust's procedures on cash income are adhered to.

Donations are not permitted to be sent to one of the above designated areas via internal post.

8.0 PROCEDURE FOR EXPENDITURE FROM CHARITABLE FUNDS

8.1 General Expenditure:

Any expenditure from the charitable funds administered by the Trust should comply with petty cash, ordering, requisitioning and payment procedures of the Trust.

Any purchases that are to be funded from charitable funds need to be ordered on a payment with order form if less than £100 or a stock/non stock requisition if over £100, and duly authorised by the authorised charitable fund manager.

The purchase of alcohol is not deemed to be charitable expenditure and is therefore not permitted from charitable funds, unless by prior agreement of the Chief Executive and/or Financial Trustee.

Charitable Funds can be spent on items which enhance the service user's experience. These are "extras" that the NHS Foundation Trust would not be expected to provide.

Examples of items which may be appropriate to purchase from Charitable Funds include:

- Games for service users
- Garden items for service users
- Entertainment items for service users / ward areas
- Christmas decorations
- Parties/celebrations for service users, family and carers

Examples of items which are not appropriate to purchase from Charitable Funds include:

- Staff "leaving" parties / celebrations
- Gratuities for staff / suppliers, etc.
- Alcohol
- Refurbishment, furniture and equipment which is generally required for the running of the NHS Foundation Trust services
- Items which would be in breach of NHS Foundation Trust policies, (e.g. around infection control, patient safety and confidentiality, etc.)

Please note that the examples provided are not intended to be exhaustive lists and are provided for illustration purposes only.

8.2 **Payment of salaries:**

A charitable fund maybe set up by the Trust if a grant has been received to fund a specific post within the Trust.

All such posts need to be authorised and approved in advance by the Chief Executive and Executive Chief Finance Officer and then approved by the Board of Trustees. The authorising organisation must ensure that the charitable funds are sufficient to cover the cost of the post during the tenure of employment. It is also important that the cost of the post is stated at gross charge level.

Initial authorisation for such posts is limited to the amount of the grant. The fundholder and the Executive Chief Finance Officer should monitor the accumulative expenditure for salaries and other incidental expenditure from the charitable fund against the amount entered as the approximate cost. If the accumulative expenditure is set to exceed the amount authorised, the fundholder must be contacted as soon as possible in order that additional authorisation maybe sought. At no stage are the fundholders permitted to incur expenditure over and above the income that is within the charitable fund.

8.3 Overheads

Additional costs such as administration, personnel costs, finance costs and office space and other overheads etc. are also able to be charged to a charitable fund. These must be applied for and authorised separately and the accounting entries actioned by the Essex Partnership University NHS Foundation Trust's Finance Department in order to refund the appropriate budget.

On an annual basis the Finance Department will charge an audit fee and administration fee across all funds based on the fund value. The audit fee will be determined and agreed annually by the appointed external auditors. The administration fee represents the notional cost of finance staff time spent on administering the fund and is uplifted annually by inflation.

8.4 Miscellaneous Expenditure

The law requires Trustees to be careful to observe so far as practicable, any special obligations in regard to any particular gift. If for any reason, the Board of Trustees finds it quite impossible to spend an earmarked part of the funds on the purpose for which it is held, and, if they cannot return it to the donors, they must apply to the Charity Commission for permission to spend it on a suitable alternative purpose, which simply means spending the money as nearly as possible to the donors' wishes.

8.5 Reserves Policy

The Trustee does not wish to establish any level of reserves other than those appropriate to a reasonable level of working balances. The Trustee aims to utilise funds in the manner in which they were intended with as little delay as possible.

Money given for charitable purposes should be used as such, rather than simply be deposited and retained.

Designated funds should be used only for the purpose of their designation. Where funds become too small to utilise, or where the designation is no longer appropriate, the Trustee will consider whether the fund could be more appropriately used.

Where a particular fund is increasing in value, the fund manager may be asked to provide a spending plan of how it is proposed the funds are utilised.

8.6 The Trust's Detailed Scheme of Delegation, specifies the authorised signatories and their nominated deputies for all charitable funds administered by this Trust.

END
