

EXECUTIVE SUMMARYREPORT TO THE BOARD MEETING ON 20th JULY 2016

Subject	Proposed Changes to the Governance Arrangements of Sheffield Hospitals Charity
Supporting TEG Member	Assistant CEO
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Status¹	A*

PURPOSE OF THE REPORT

The Department of Health (DH) undertook a review of the regulation and governance of NHS charities during 2011/12. In November 2012 it published a consultation on proposals for change, seeking responses from interested parties. This was as a response to the concerns of a number of NHS charities about the NHS legislative framework and its inherent inflexibilities for NHS charities.

The consultation closed on 31 January 2013 and 83% of respondents were supportive of the proposals for change. The preferred option was to remove most NHS legislation, including the powers of the Secretary of State (SofS) to appoint trustees and for the Department of Health to support a voluntary transition to a linked but independent charity.

Following the conclusion of this review, NHS charities are now permitted to transfer their charitable property to another specifically established charity, subject to a range of agreements. The Trustees of Sheffield Hospitals Charity have therefore decided to establish a new Charity which will also be a Company Limited by Guarantee (CLG) with effect from 1st April 2017.

KEY POINTS

It is proposed that the attached draft Articles of Association at Appendix 1 will serve as the governing document for the New Charity, and the document is set out in a form which both the Charity Commission and the Department of Health are familiar with.

Can I draw your attention in particular to:

Clause 3 – this clause sets out the objects of the New Charity. These have been drafted to reflect Sheffield Hospitals Charity's current objects (i.e. operation in support of the three Foundation Trusts), but have been widened at 3.1(b) in order to allow the New Charity maximum flexibility in the future for the promotion of health.

Clause 5 – this clause sets out the manner in which trustees are appointed, the duration of their office and, at 5.4, the right of the Sheffield Teaching Hospitals NHS Foundation Trust to nominate one Trustee to the board of the New Charity.

Clause 10.5 – this describes how meetings of Trustees may proceed and also deals with the issue of Conflicted Trustees. Please note Withers LLP have drafted the definition of Conflicted Trustee such that a Trustee appointed by Sheffield Teaching Hospitals NHS Foundation Trust will be able to participate in meetings in which grants to the Foundation Trust, and other arrangements with it, are considered.

The DH is of the view that there are good governance reasons why NHS bodies should have some continuing means of input into the decisions on the use of the New Charity's resources. This is to ensure that there is shared understanding of how the New Charity is meeting its charitable objects in the use of those resources.

Deed

The purpose of the Deed at Appendix 2 is to provide the Foundation Trusts' consent to Sheffield Hospitals Charity's transfer to the New Charity, and it contains the binding commitment by the Foundation Trusts to transfer Gifts (as defined in the draft Deed) to the New Charity.

There is a provision for Excluded Gifts from Excluded Charities, which are listed in Schedule 2. The form of the draft Deed is one which Withers LLP are confident will be acceptable to the Department of Health and contains provisions which are, in the Department's view, necessary to give effect to the

conversion to independent status. The Deed is legally binding upon the parties.

Memorandum of Understanding

The Memorandum of Understanding at Appendix 3 is a non-binding overview of the 'guiding principles' which will inform the relationship between the New Charity and the three Foundation Trusts after completion of the restructuring on 1 April 2017. The purpose of the MoU is to focus the parties' attention on how we will work together going forward and to provide continuity in the relationship, even when the personnel of the Foundation Trusts and the New Charity change. The 'guiding principles' at clause 3 (which form the central part of the MoU) are set out in a form similar to those that have been agreed between other NHS charities and their Foundation Trusts – but they should very much be a product of how the three Foundation Trusts and the Charity want to work together, and reflect the nuances relevant to us all. The MoU is intended to be a flexible, living document, which will be reviewed by the Foundation Trusts and the New Charity and adapted as necessary to meet changing needs in the future.

IMPLICATIONS²

	AIM OF THE STHFT CORPORATE STRATEGY 2012-2017	TICK AS APPROPRIATE
1	Deliver the Best Clinical Outcomes	x
2	Provide Patient Centred Services	x
3	Employ Caring and Cared for Staff	
4	Spend Public Money Wisely	
5	Deliver Excellent Research, Education & Innovation	x

RECOMMENDATIONS

The Trustees of Sheffield Hospitals Charity request that, subject to any proposed changes, the Board of STHFT approve these documents in principle allowing the Charity to proceed to the next step, being the incorporation of the New Charity and registration with the Charity Commission.

The final documents will then return to the February or March 2017 STHFT Board meeting for formal agreement and signing.

Prior to completion of the conversion, the DH will require to see:

- a copy of the Memorandum of Understanding and Deed agreement in final form.
- evidence of their due consideration and approval by the STHFT Board.
- evidence of their due consideration and approval by the other two NHS FT boards served by Sheffield Hospitals Charity.

The Board are requested to approve these documents in principle at this stage in the transfer process.

APPROVAL PROCESS

Meeting	Date	Approved Y/N
TEG	13.7.16	Y

¹ Status: A = Approval

A* = Approval & Requiring Board Approval

D = Debate

N = Note

² Against the five aims of the STHFT Corporate Strategy 2012-2013