

Charitable expenditure policy

Key Messages:

- **ACT shall ensure that charitable expenditure for charitable purposes satisfies the objects of the charity**
- **Approval of all grants (charitable expenditure) shall be given by authorised individuals, up to their designated threshold, as set out in the Authority Levels Policy, and ensure:**
 - **the expenditure is consistent with ACT's objects;**
 - **the expenditure is for a charitable purpose;**
 - **the expenditure shall result in public benefit; and**
 - **in the case of restricted funds, it must be consistent with the objects recorded for that fund and any conditions applied, to the expenditure, by the donor**
- **This document describes how the policy is to be applied throughout ACT.**

Owner: Charitable Expenditure
Committee (on behalf of Trustees)

Maintainer: Chief Executive

Approved by: Board of Trustees

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Applicability: ALL ACT

Next Review Date: June 2021

Charitable expenditure policy

1. Introduction

- 1.1 This document sets out the policy of the ACT Trustees concerning charitable expenditure from the funds of the charity.
- 1.2 In this policy, where we use '**must/shall**', we mean it is a specific policy, legal or regulatory requirement affecting trustees and the Charity. The Trustees and the Charity must comply with these requirements. We use '**should**' for items we regard as minimum good practice, but for which there is no specific policy requirement. Trustees and the Charity should follow the good practice guidance unless there is a good reason not to.

2. Definitions

2.1 Charitable Expenditure

Charitable expenditure relates to any expenditure for charitable purposes satisfying the objects of the charity. Costs such as operating costs or fundraising costs do not constitute charitable expenditure.

2.2 Grants

Grants refers to charitable expenditure recommended via one of the grant-making panels.

2.3 Grant Agreement

A formal agreement setting out the terms and conditions of a grant

2.4 Authority Levels Policy

Charitable expenditure shall conform to the scheme of financial delegation as approved by the Board and set forth in the Authority Levels Policy.

3. Scope

This policy applies to all charitable expenditure from ACT funds. It may be supplemented by additional guidance for committees on grant-making policy.

4. Management responsibilities

4.1 Board

The Board has responsibility for ensuring that there are clear criteria in place for approving charitable expenditure. The Board shall have approval over all Charitable Expenditure above a threshold as set out in the Authority Levels Policy.

4.2 The Charitable Expenditure Committee

The Charitable Expenditure Committee shall approve Charitable Expenditure in accordance with the thresholds set out in the Authority Levels Policy.

In exceptional circumstances, the Chair of the Charitable Expenditure Committee plus one Trustee may approve Charitable Expenditure in accordance with the thresholds set out in the Authority Levels Policy.

4.3 The Chief Executive Officer (CEO)

The CEO, or their delegate, shall approve Charitable Expenditure up to a threshold as set out in the Authority Levels Policy.

4.4 Fund Advisors

Fund advisors should approve all charitable expenditure from their designated funds. Approval thresholds shall be set out in the Authority Levels Policy.

5. Procedures and implementation

All expenditure from ACT funds must satisfy the following criteria to meet the requirements of charity law:

- the expenditure is consistent with ACT's objects; and
- the expenditure is for a charitable purpose; and
- the expenditure shall result in public benefit; and
- in the case of restricted funds, it must be consistent with the objects recorded for that fund and any conditions applied to the expenditure, by the donor.

In addition, expenditure from ACT funds should be used to:

- provide new additional services where the NHS body has no statutory obligation and insufficient resources to do so; or
- enhance existing services over and above the level that can be provided by exchequer funds; or
- maintain services on a time limited basis.

All charitable expenditure shall be in accordance with applicable legislation and charity law.

Approval of charitable expenditure is regulated by the ACT Authority Levels Policy, which must be adhered to at all times. Fund Advisors must follow this policy in making expenditure decisions under delegated authority.

Generally, funds should be working for the fund advisor, the donor and charitable causes alike. This means that balances should not be accumulated within charitable funds unless there are clear and approved plans for the use of such funds for charitable purposes.

In circumstances where there is no significant expenditure for over a year (typically less than 20% of the fund balance) and Fund Advisors are not able to demonstrate future spending plans consistent with this policy, then the trustees may re-assign funds to other purposes, subject to any restrictions imposed by gifts. Fund Advisors are encouraged to plan for the strategic use of their charitable funds, both in terms of income and expenditure. As part of this planning, Fund Advisors are encouraged to actively engage with the charity and in grateful patient fundraising to help to sustain income and maximise the benefit of charitable expenditure.

5.1 Further explanation of criteria

This section provides further explanation of the criteria set out above. Each heading is marked as M (mandatory – legal requirements) or G (following Charity Commission guidance)

Consistency with ACT's objects (M)

'Objects' describe and identify the purposes for which a charity exists. ACT's objects, which are defined by statute, are:

- to further any charitable purpose or purposes relating to the general or any specific purposes of Cambridge University NHS Foundation Trust (CUH) or the purposes of the health service;
- to advance and promote all or any aspects of the health and welfare of the public; and
- to advance and promote knowledge and skills in health care, including by engaging in and supporting health-related research (and the dissemination of its useful results), education and training.

In practice, ACT's policy is to support CUH. The fact that the whole of the NHS is within the scope of the objects means that it would be within ACT's powers to support another NHS organisation or organisations such as the University of Cambridge which serve to benefit CUH and the wider NHS. This would be relevant if, for example, CUH wished to work in partnership with other organisations benefiting the NHS.

For charitable purposes (M)

The Charities Act 2011 defines a charitable purpose, explicitly, as one that falls within one of thirteen descriptions of purposes and is for the public benefit. This statutory list of purposes includes three that are of likely relevance to expenditure of ACT funds:

- The advancement of health or the saving of lives.
- The advancement of [the arts, culture, heritage] or science.
- The advancement of education.

In practice, most charitable expenditure associated with the work of the hospital will fall under one or more of these headings.

For public benefit (M)

For a charity to qualify for charitable status it must, in accordance with the 2011 Charities Act, serve purposes that are for the public benefit. There is no automatic presumption that expenditure with a stated aim that falls within one of the descriptions of purposes is charitable. To be a 'charitable purpose' it must also be for the public benefit. This has to be demonstrable in each case.

There are two aspects of public benefit: the 'benefit aspect' and the 'public aspect'. Both must be satisfied to pass the public benefit test.

To satisfy the **benefit aspect**, a purpose must be beneficial and any detriment or harm that results from the purpose must not outweigh the benefit.

As an example, clinical research is an activity which has the potential to harm as well as to benefit. Compliance with research governance policies and processes of CUH will ensure that this matter is appropriately addressed and is included as the host institution's obligations within the Grant Agreement. For other expenditure, ACT shall place obligations on the host institution to ensure adequate clinical governance.

To satisfy the **public aspect**, the purpose must benefit the public in general or a sufficient section of the public and not give rise to more than incidental private benefit (to an individual or an organisation). For this reason, ACT will typically not provide funding directly to commercial organisations or where the primary beneficiary is a commercial organisation (e.g. where a commercial organisation will own a share of new intellectual property generated from the Charitable Expenditure).

The question of incidental personal benefit may arise in relation to expenditure on professional education, training, development, attendance at conferences and development of intellectual property. In these circumstances, the public benefit (e.g. the advancement of education through the presentation of new knowledge to a conference) must be weighed against the private benefit (advancement of personal profile, networks and career prospects) and the former *must* outweigh the latter for the expenditure to be charitable.

The question also arises in the case of staff social functions, e.g. Christmas parties. The justification for subsidies to social functions is that it improves staff morale and thereby leads to better care of patients. In practice, this is hard to demonstrate. Such support shall be limited to one event a year, an upper financial limit per person and be available to staff up to and including NHS Band 7 (or equivalent).

Most of ACT's expenditure will benefit a section of the public, rather than the public in general, because it will support the healthcare of a group of people with a specific disease, injury or long-term condition. In some cases, for example when dealing with rare diseases, the section of the public may be small in number. This satisfies the definition of 'a section of the public'.

Consistent with the objects of restricted funds (M)

In addition to the objects of ACT as a whole, the charity maintains a statement of fund objects for restricted funds. These typically restrict expenditure to a particular ward, clinic, group of patients, field of research etc. Expenditure from restricted funds must be consistent with the statement of fund objects that relates to that fund.

Consistent with the objects of designated funds (M)

The charity maintains a statement of fund objects for designated funds. These typically designate expenditure to a particular ward, clinic, group of patients, field of research etc. Expenditure from these funds should ordinarily be consistent with the statement of fund objects that relates to that fund. However, the Trustees reserve the right to divert the funds to other projects consistent with the Charity's objects.

Additional, enhanced and maintained services (G)

The Charity Commission says that NHS Charities should not fund items that the NHS body is legally bound to fund. In practice, this is a very limited exclusion. Although the Secretary of State is required by statute to promote a comprehensive health service, this requirement has consistently been interpreted by the courts with reference to the resources at his/her disposal. Despite this situation, the range and standard of services to be provided by an individual NHS Foundation Trust has become ever more tightly defined by the regulatory

regime. Drawing an objective line as to what an NHS body is 'legally bound' to fund is, therefore, problematic.

ACT must consider the perceptions of donors when approving expenditure. Many supporters have an expectation that their gifts will fund items or activities that are 'over and above' the 'core service' that should be funded from exchequer sources, regardless of the difficulty in establishing precisely what an NHS body is legally bound to fund.

Charitable funds may therefore be used to:

- provide a new **additional** service or facility where CUH has no obligation to provide the service or facility and no exchequer resource to do so; or
- **enhance** an existing service or facility (where exchequer funds provide a certain level of service but additional funding could improve the level and quality of the provision); or
- **maintain** an existing service or facility on a time-limited basis, normally of no more than one year. This might be to 'bridge' a gap in research or service programme or to extend a 'pilot project' where there is a reasonable prospect of securing long-term exchequer funding.

Every spending decision should be patient-focussed and should address patient needs as directly as possible, although not every piece of spending will be directly on patient services or facilities.

The Trustees shall always consider the following issues, and expect those acting under delegated authority to do likewise:

- How far the spending is removed from the patients and the needs that have brought them into the care of the NHS body. Links to patient benefit from the proposed spending must not be tenuous.
- The value for money to be achieved by the proposed spending.
- Fit with donors' reasonable expectations of how their donations would be used. Would donors view some spending as substituting for exchequer funding, especially for core services? Or as frivolous or unlikely to be effective in benefiting patients?

Further guidance around the use of charitable funds can be found at Appendix A.

5.2 Approach to unspent and underspent grants

Generally, grant monies shall be made available for a period of 12 months. If, after 12 months of the award date, remedial action has not been possible, the remaining sum shall be returned to the General Fund or the monies from which the funding originated. Allowance shall be made for the time of the award date of grants and the agreed start dates to accommodate issues such as recruitment etc.

5.3 Approach to making grants to other charities

An external charity may apply for funding from ACT. This is subject to the following conditions:

- a) A particular project may be funded for a maximum of three consecutive years.

- b) If a project has been funded for a maximum of three consecutive years, a further application may be made but only for funding to commence a minimum of twelve months after the previously agreed funding has come to an end.
- c) A project will ordinarily be approved for a maximum of one year at a time, with no guarantee or implied agreement to fund beyond that one year.
- d) There shall be no limit to the number of projects that a charity may submit a funding application for.

The above conditions may be deviated from at the discretion and direction of the Chief Executive. Where these conditions are being deviated from and the expenditure meets the threshold for trustee approval, this deviation should be notified to trustees.

5.4 Approval of Charitable Expenditure

Charitable Expenditure shall be subject to a written agreement which sets out the agreed purpose of the funding and sets out the schedule and format for evaluation and reporting. This requirement is subject to the following conditions being met:

- That the charitable expenditure is being made through one of the formal grant streams, or;
- The charitable expenditure is over £5,000.
- The Chief Executive can deviate from this requirement if it is considered that this requirement is unnecessary or disproportionate.
- The Chief Executive can subject any charitable expenditure under £5,000 to a written agreement and a proposed schedule and format for evaluation and reporting in circumstances where this is deemed necessary.

6. Related policies and guidance

ACT Authority Levels Policy
ACT Charitable Funds Guide

7. Monitoring and review

Charitable Expenditure Committee review of charitable expenditure including grants,
Audit of Trustees Annual Report and Accounts

8. Appendices

Appendix A - Charitable Expenditure Principles

This policy was accepted by the Board of Trustees on 21 May 2021 and is due for review in June 2021.

Appendix A

Charitable Expenditure Principles

- The Trustees can only consider approving charitable expenditure for charitable purposes within the objects of the various funds available to them
- The Trustees shall normally expect to disburse unrestricted general funds for the benefit of the generality of patients or staff although they recognise that on occasion they will wish to make exceptions to this principle.
- It is anticipated that the needs of restricted groups of patients and staff will be met in the main either from restricted or designated funds or, if this is not possible, the Trustees may support fund-raising by a particular group for a specific project.
- Charitable expenditure shall not normally be used for work that is part of normal refurbishment or to meet statutory requirements unless such charitable expenditure can be shown to improve patient facilities to a greater extent than, or significantly in advance of, anything that can be achieved through exchequer funding.
- “The Trustees shall not normally support employment costs for periods of longer than three years. Charitable Expenditure will only be approved by Trustees to cover employment costs where they receive adequate assurance as to the arrangements to meet any other costs arising from the Charitable Expenditure, including, but not limited to, the implications of any employment rights accrued.”
- The Trustees shall support projects or the purchase of new equipment only where there has been a clear commitment to the project or purchase, including revenue costs, on the part of the NHS Foundation Trust. Normally this commitment in accordance with the NHS Foundation Trust’s normal approval processes.
- The Trustees shall expect an evaluation of the effectiveness of Charitable Expenditure within 12 months of its being made or in accordance with a specific Grant Agreement.

Research Strategy

The Trustees shall consider research applications from all groups of staff. They are, however, particularly keen to provide 'pump priming' for pilot projects that aim to strengthen clinical research applications to external funding bodies. Applications from junior doctors, nurses and professionals allied to medicine are especially welcome. In addition to the scientific merit, the Research Advisory Committee shall take into account the relevance of the research to strategic priorities within NHS Trusts and opportunities for research training.

Disbursement of Restricted and Designated Funds

The Trustees have put in place an Authority Levels Policy, which, within the objects of the funds, gives fund holders some freedom in the disbursement of restricted and designated funds. The Trustees shall work with fund holders to develop spending plans for restricted funds and will view requests for Charitable Expenditure from those funds in the light of those plans.