

PWYLLGOR CRONFA ELUSENNOL CHARITABLE FUNDS COMMITTEE

DYDDIAD Y CYFARFOD: DATE OF MEETING:	20 March 2023
TEITL YR ADRODDIAD: TITLE OF REPORT:	Proposal to rationalise number of funds
CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR:	Mandy Rayani, Director of Nursing Huw Thomas, Director of Finance
SWYDDOG ADRODD: REPORTING OFFICER:	Rhian Davies, Assistant Director of Finance

**Pwrpas yr Adroddiad (dewiswch fel yn addas)
Purpose of the Report (select as appropriate)**

Ar Gyfer Penderfyniad/For Decision

ADRODDIAD SCAA SBAR REPORT

Sefyllfa / Situation

There are currently over 250 funds separately held within the Charity. A number of funds have very small balances and as such fund holders find it difficult to spend. As a significant amount of the money held by the Charity are in restricted or designated funds, there are areas of the Health Board that have no easy access to charitable funds. Monitoring this number of funds is also an onerous, time consuming task.

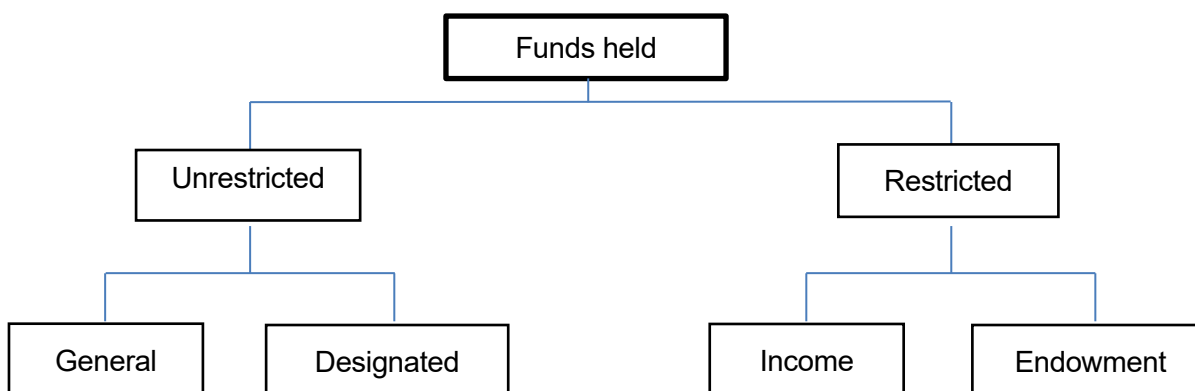
The Committee is as asked to approve the proposals outlined to rationalise the number of funds held.

Cefndir / Background

Statutory context

There are two primary classes of funds that the Charity holds –

- Restricted – which can only lawfully be used for a specific charitable purpose. This includes endowment funds.
- Unrestricted – which can be spent for any charitable purpose of a charity. The Charity can choose to earmark part of the unrestricted funds for a specific project. This designation is an administrative function and does not legally restrict the trustee in how to apply the earmarked funds.



Different rules apply to each, however, there is the opportunity to move from one category to another that gives the Charity more flexibility in how it can use its funds. Chapter 6 of the NHS Charities Guidance, attached at Appendix 1, provides definitions of the different classifications, which are summarised below.

Restricted funds are funds which either:

- must be used for specific purposes (set out by, for example, the donor(s) at the point of donation - including bequests - or by the terms of a public appeal or even by the terms of a grant)
- are subject to a restriction on the expenditure of capital (also known as 'permanent endowment' or 'expendable endowment' depending on the exact terms of the restriction)

A particular fund may be restricted in both these ways (by purpose and a limit on the ability to spend capital). These legally binding requirements for (or limitations on) use are known as 'trusts'. Funds should only be classified as 'restricted' if they are subject to trusts as explained below.

Unrestricted funds are those funds which are given to a charity (whether solicited or unsolicited) without any restrictions imposed by the particular donor or grant maker

They could include proceeds of an appeal, provided that the trustees have included a disclaimer to the effect that the appeal proceeds may be used for other purposes of the charity in the event that the appeal purposes cannot be fulfilled. (Endowment funds, permanent endowment or expendable endowment, are always restricted funds.) Unrestricted funds, therefore, are the funds of a charity that may be spent at the discretion of the trustees, in furtherance of the objects of the charity in which the funds are held, without any distinction between capital and income.

Designated funds

The trustees may exercise their discretion to set aside part of the unrestricted funds of a charity for designated purposes. For example, a proportion of the funds held within a general research charity may be designated specifically for cancer research. Designation of funds may also be used where donors have expressed a preference without imposing a 'trust'. Designated funds remain unrestricted since the trustees can remove the designation at any time. These designations, whilst being a perfectly acceptable and common practice, do not themselves create legally separate charities. Designated funds continue to be held ultimately for the overall purpose of the charity in which they are contained. Designated funds should be recorded within the summary of unrestricted funds in a charity's accounts.

Funds given on this basis (of a donor preference falling short of a restriction) are normally to be treated as designated funds for use in relation to a particular ward, department, speciality or service.

Are donors' wishes 'trusts'?

A trust does arise from an unequivocal restriction imposed by a donor but it does not arise from a 'desire, wish, recommendation, hope or expression of confidence' that the trustees will use it in a certain way. In practical and accounting terms the implication is that donations should be presumed to be unrestricted (and not subject to a 'trust') unless the donor places an unequivocal restriction on it, for example by saying it 'must be used' or 'can only be used' for a specified purpose or by giving to a specific appeal. For a particular donation to be treated as restricted requires positive evidence of restriction. In most cases, trustees should make this classification only where there is written evidence of an intention to restrict, for example a will, a letter from a donor, terms of a grant, appeal literature.

Designations in the NHS context

Designations are created at the discretion of trustees from unrestricted funds of the charity. NHS trustees have the same power as other trustees to create designations from unrestricted funds received with no indication of an intended use.

In the context of the NHS, however, it is more typically the case that a donation will be received with the donor expressing a 'desire, wish, recommendation, hope or expression of confidence' as to use. In other cases the context of the gift, for example to a particular fund holder/adviser or within a particular setting gives a strong clue as to a donor's probable wishes. These expressed wishes or contextual clues provide a fairly clear indication/expectation (but not a legal restriction) as to how the donation should be used, if possible and practicable.

NHS trustees should have due regard to these contextual clues/expectations as a basis for creating designations and allocating donations between designated funds. This will enable them to respect the wishes or perceived wishes of donors without, wrongly, classifying such funds as 'restricted'. If it becomes impractical to maintain a particular designation the trustee(s) will be free to reconsider the use of the funds without seeking external authority. Where possible they should consider the spirit of the original donations when redesignating funds.

Asesiad / Assessment

Position within Hywel Dda

The Charity has 107 restricted funds, £5.5m and 167 unrestricted funds, £3.4m. Of the unrestricted funds, all are designated by nature for a certain purpose.

Restricted funds

Historically, restricted funds have been created based on gifts/bequeaths made in wills or for specific appeals. Given the definition set out above, it is uncertain as to whether a number of these funds have been misclassified as restricted and should more appropriately be termed designated. Particularly as there are some restricted funds that have designated funds for the same ward/service area.

Proposal 1 – review the evidence for the restriction. If the fund was established with a clearly restricted donation and that donation has been spent, then subsequent donations are unrestricted and should be reviewed. If the restricted donation has been spent the fund is no longer restricted.

Where there is a clearly restricted fund that has not been used then simply spend the fund down. Where no evidence for the restriction can be located Charity Commission guidance suggests that funds can be properly reclassified as unrestricted.

Transfer of funds from restricted to unrestricted should be discussed by the Corporate Trustee and clearly documented along with the evidence to support the decision.

Proposal 2 – for currently classified restricted funds that following the review above should not be classified as such and have a corresponding designated fund consider whether these funds can be merged into the corresponding designated fund.

Designated funds

Designated funds can be redesignated by the trustee without seeking external authority. If there has been no or little spend in the last 3 years consider whether the designation should be removed and the funds moved into and an unrestricted, undesignated general fund. There are several funds for specific service areas eg Carmarthenshire OT, Ceredigion OT, Pembrokeshire OT and General Surgery across each hospital site.

Proposal 3 – consult with fundholders regarding options for rationalising funds for example consider whether a generic fund for a service area should be created across the three counties or alternatively a general fund for a county eg Therapies fund for each of Carmarthenshire, Ceredigion and Pembrokeshire or OT, Dietetics etc funds across the whole Health Board. Representatives from the Counties/Services would then be required to jointly agree on priorities for spend.

In addition, for small value (less than £1k) if no suitable ‘family’ can be identified, the remaining balance be moved to the Support for Life Response Fund.

The scheme of delegation for authorising spend will need to be updated dependent on the agreed way forward.

Future

The proposals above will help rationalise the existing number of funds. We also need to consider how we stop unnecessary future growth.

Proposal 4 – ensure all specific appeals include a disclaimer to the effect that the appeal proceeds may be used for other purposes of the Charity in the event that the appeal purposes are completed/cannot be fulfilled.

Proposal 5 – for gifts/bequeaths ensure a trust is in existence before a new restricted fund is created

Proposal 6 – consider whether a new designated fund is required or whether a current fund can be used

Next steps

Subject to the Charitable Funds Committee approving the proposals outlined above, we will need to:

- Consult with Internal and External Audit regarding our approach
- Discuss with Charity Commission
- Secure resource to undertake the activities. This will need to be a combination of skills from both the Finance and Fundholding teams with an agreed timetable set out.

Argymhelliad / Recommendation

The Charitable Funds Committee is asked to approve the proposals set out in the document.

Amcanion: (rhaid cwblhau)

Objectives: (must be completed)

Committee ToR Reference:
Cyfeirnod Cylch Gorchwyl y Pwyllgor:

3.1 To make and monitor arrangements for the control and management of the Board’s Charitable Funds, within the budget, priorities and spending criteria determined by the Board and consistent with the legislative framework.

Cyfeirnod Cofrestr Risg Datix a Sgôr
Cyfredol:
Datix Risk Register Reference and
Score:

Not Applicable

Safon(au) Gofal ac Iechyd: Health and Care Standard(s):	Governance, Leadership and Accountability
Amcanion Strategol y BIP: UHB Strategic Objectives:	Not Applicable
Amcanion Cynllunio Planning Objectives	Not Applicable
Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Objectives Annual Report 2018-2019	10. Not Applicable

Gwybodaeth Ychwanegol: Further Information:	
Ar sail tystiolaeth: Evidence Base:	NHS Charities Guidance (updated 31/10/22) Charities Statement Of Recommended Practice Streamlining NHS charitable funds - HFMA briefing December 2022
Rhestr Termiau: Glossary of Terms:	Included in document
Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Cronfa Elusennol: Parties / Committees consulted prior to Charitable Funds Committee:	Not Applicable

Effaith: (rhaid cwblhau) Impact: (must be completed)	
Ariannol / Gwerth am Arian: Financial / Service:	The proposal seeks to make it easier to spend donations in a timely manner.
Ansawdd / Gofal Claf: Quality / Patient Care:	The proposal seeks to make it easier to spend donations in a timely manner.
Gweithlu: Workforce:	Not applicable
Risg: Risk:	We will seek appropriate advice regarding the proposed changes to minimise risk.
Cyfreithiol: Legal:	We will seek appropriate advice regarding the proposed changes to ensure compliance with legislation.
Enw Da: Reputational:	The proposal seeks to make it easier to spend donations in a timely manner.

Gyfrinachedd: Privacy:	Not applicable
Cydraddoldeb: Equality:	This is a proposal document only. The requirement for an EQIA will be reviewed when a decision will be required.

NHS Charities Guidance (updated 31/10/22) Chapter 6 - extract

6. Classifying funds (restricted v unrestricted and designated) and reviewing structures

6.1 The short answer

It is crucial to the correct management and use of NHS charitable funds that they are correctly classified as either restricted or unrestricted. Once this classification has been completed it is possible to consider how to structure the charities and the funds held by the trustee in a way that:

- minimises the administrative burden
- maximises the flexibility for the trustee in spending decisions
- reflects, if appropriate, the structure of the services the charitable funds have been given to support

The Commission supports the principle of trustees aiming to reduce the proportion of the funds they hold that are restricted. It also supports trustees seeking to reduce the number of charities they administer. In addition the Commission supports rationalisation of designated unrestricted funds, where that process will result in more effective support to the services for which they were donated. The guidance below offers specific suggestions and strategies to achieve greater flexibility and reduce administration.

6.2 In more detail

The general position for charities

The terms 'restricted' and 'unrestricted' are contained in the [Charities SORP](#). What follows is a summarised explanation only.

a. Restricted funds are funds which either:

- must be used for specific purposes (set out by, for example, the donor(s) at the point of donation - including bequests - or by the terms of a public appeal or even by the terms of a grant)
- are subject to a restriction on the expenditure of capital (also known as 'permanent endowment' or 'expendable endowment' depending on the exact terms of the restriction)

A particular fund may of course be restricted in both these ways (by purpose and a limit on the ability to spend capital). If it is, and the income is above the registration threshold, the fund may need to be registered [see Compulsory registration criteria](#). Trustees who receive a restricted donation or other restricted payment (the income from which will be below the registration threshold) can properly choose to add that sum to the funds of an existing charity provided that:

- that charity's objects are wider than the restriction
- the restricted funds are accounted for as such within the accounts of the charity

These legally binding requirements for (or limitations on) use are known as 'trusts' (and fall within the definition of 'trusts' given at s353 of the Charities Act 2011). Funds should only be classified as 'restricted' if they are subject to trusts. Please see (d) in this sub-section.

b. Unrestricted funds are those funds which are given to a charity (whether solicited or unsolicited) without any restrictions imposed by the particular donor or grant maker

They could include proceeds of an appeal, provided that the trustees have included a disclaimer to the effect that the appeal proceeds may be used for other purposes of the charity in the event that the appeal purposes cannot be fulfilled. Endowment funds, permanent endowment or expendable endowment, are always restricted funds).

Unrestricted funds, therefore, are the funds of a charity that may be spent at the discretion of the trustees, in furtherance of the objects of the charity in which the funds are held, without any distinction between capital and income.

c. Designated funds

The trustees may exercise their discretion to set aside part of the unrestricted funds of a charity for designated purposes. By way of example a proportion of the funds held within a general research charity may be designated specifically for cancer research.

Designation of funds may also be used where donors have expressed a preference without imposing a 'trust'. Designated funds remain unrestricted since the trustees can remove the designation at any time. These designations, whilst being a perfectly acceptable and common practice, do not themselves create legally separate charities. Designated funds continue to be held ultimately for the overall purpose of the charity in which they are contained. Designated funds should be recorded within the summary of unrestricted funds in a charity's accounts.

Funds given on this basis (of a donor preference falling short of a restriction) are normally to be treated as designated funds for use in relation to a particular ward, department, speciality or service.

d. Are donors' wishes 'trusts'?

An authoritative commentary on trust law explains the position as follows:

If a gift in terms absolute is accompanied by a desire, wish, recommendation, hope, or expression of confidence that the donee will use it in a certain way, no trust to that effect will attach to it, unless on the will as a whole, the court comes to the conclusion that a trust was intended.

(Underhill's Law of Trusts and Trustees, 15th edn)

In simple terms this explanation means that the answer to the question is 'no'. A trust does arise from an unequivocal restriction imposed by a donor but it does not arise from a 'desire, wish, recommendation, hope or expression of confidence' that the trustees will use it in a certain way.

In practical and accounting terms the implication is that donations should be presumed to be unrestricted (and not subject to a 'trust') unless the donor places an unequivocal restriction on it, for example by saying it 'must be used' or 'can only be used' for a specified purpose or by giving to a specific appeal. For a particular donation to be treated as restricted requires positive evidence of restriction. In most cases trustees should make this classification only where there is written evidence of an intention to restrict, for example a will, a letter from a donor, terms of a grant, appeal literature. For appeals please see section [6.8](#).

6.3 The position for NHS Charities

a. Historical formalisation of trusts of charitable funds

Many registered NHS charities were established using the Commission's published model trust deeds. The funds were previously held without written trusts.

The declaration of written trusts over funds held did not of itself affect whether the funds concerned were restricted or unrestricted. That classification was determined at the original point of receipt. Donations to NHS trustees without any restriction imposed at the point of donation should be regarded as unrestricted funds held for the statutory remit of the receiving trustee. Trustees have power to designate such funds (please see also (c) of this sub-section). Reviews of funds by trustees subsequently have indicated that many charities were erroneously created using the model documents where the funds in question were merely designated funds, and were not subject to restrictions.

b. The 2 different approaches to the process of formalising the trusts which developed following the publication of the Commission's models were:

- the single charity approach

Some NHS trustees opted to establish a single charity with objects reflecting their statutory remit. Within this charity they established designated funds, to which they apportioned some or all of the unrestricted funds of the charity. The designations typically reflected the perceived wishes of donors, for example donations made by cancer patients and their families (without formal restrictions) were allocated to a designated Cancer Fund. The trustees may also have held restricted donations within the single charity.

- the general and special purpose charities approach (multiple charities)

Other NHS trustees opted to establish a general purpose charity to hold only those donations which appeared to be expendable for any purposes related to the NHS. All other donations (where it seemed either that donors had imposed a restriction or that the donation should be designated because donors' wishes or intentions were clear) were allocated to special purpose charities. Some trustees opted for broad special purpose charities, for example one per hospital, and others established a greater number to reflect subdivisions of service provision, for example one per ward, one per medical condition etc. In some cases several hundred special purpose charities were established.

Under this second approach the unrestricted funds held within the special purpose charity were made subject to a trustee imposed limitation (the declared object). In practice this means that, the funds of such special purpose charity must be applied within the objects declared in the trust deed, but:

- the unrestricted funds within the special purpose charity remain ultimately unrestricted for the statutory remit(s) under which they were received - if the charity dissolves the unrestricted funds are released to be available for that/those remit(s)
- new donations naming the special purpose charity (in the absence of any further donor restriction) should be regarded as unrestricted funds of the charity, as they are subject to the power to dissolve the charity (even if the donor is unaware of the terms of the dissolution clause)
- any restricted funds within the charity must be applied in accordance with the restriction - if the charity dissolves the restriction will remain intact wherever the funds are transferred
- the funds of the 'general purpose charity' are wholly unrestricted to the statutory remit of the trustee, which should be reflected in that charity's objects

c. Designations in the NHS context

As indicated, designations are created at the discretion of trustees from unrestricted funds of the charity. NHS trustees have the same power as other trustees to create designations from unrestricted funds received with no indication of an intended use.

In the context of the NHS, however, it is more typically the case that a donation will be received with the donor expressing a 'desire, wish, recommendation, hope or expression of confidence' as to use. In other cases the context of the gift, for example to a particular fund holder/adviser or within a particular setting gives a strong clue as to a donor's probable wishes. These expressed wishes or contextual clues provide a fairly clear indication/expectation (but not a legal restriction) as to how the donation should be used, if possible and practicable.

NHS trustees should have due regard to these contextual clues/expectations as a basis for creating designations and allocating donations between designated funds. This will enable them to respect the wishes or perceived wishes of donors without, wrongly, classifying such funds as 'restricted'. If it becomes impractical to maintain a particular designation the trustee(s) will be free to reconsider the use of the funds without seeking external authority. Where possible they should consider the spirit of the original donations when redesignating funds.