

Charity Commission Direct
PO Box 1227
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3 September 2008

Dear Sirs,

Consultation on draft guidance on NHS charities

We welcome the production of this guidance aimed specifically at NHS charities. Whilst we understand that NHS charities are, in reality, not very different from any other charity we are aware that it is the areas where there are differences that tend to cause difficulties. The old "blue book" was a very useful reference and we welcome its replacement.

During our review of the guidance, we considered your consultation questions as to the workability of the guidance and how easy it is to understand. Most of our comments are therefore of a detailed rather than general nature and are set out in the appendix to this letter.

Whilst reviewing this document, we looked at the areas where we, as auditors of NHS charities, had experienced difficulties in the past and the one area which came up again and again was that of the effect of reorganisation of the host NHS bodies on their associated NHS charities. We are pleased to see that this is an area which the draft guidance tackles in some detail by setting out eight different restructuring scenarios. However, in some cases there are only minor differences between the scenarios and some are not likely to occur in practice. We therefore suggest that the transfer accounting notes be simplified to look at the three possible accounting solutions and the key features which differentiate between them. Ideally, these features would be based on the FRS 6 criteria for using merger accounting. Our detailed comments on this section of the guidance are contained in the attached appendix.

Should you have any questions concerning this letter, please contact Fiona Westwood on 0117 903 7068 or fiona.westwood@uk.pwc.com.

Yours faithfully,

Fiona Westwood
Director
Assurance

Appendix – detailed comments on draft guidance on NHS charities

Reference	Comment
Section 1, second paragraph under heading “What about Welsh charities”	<p>We are not sure what the paragraph starting with the words “we have tried to make a distinction ... ” means. It seems to be under the wrong heading and does not assist with the reader’s understanding of the document.</p> <p>In practice, the distinction which matters to those working with NHS charities is the one between those areas where they should seek the Department of Health (or Welsh Assembly Government’s) advice and those where they should look to the Charity Commission for guidance.</p>
Section 2.3	<p>It would be useful to know what impact the fact that charities linked to NHS foundation trusts or s51 trustees are not included in the s43 definition has in practice.</p> <p>Having read the guidance, it would seem that the only practical difference is in relation to the appointment of auditors and independent examiners. A link to the areas where there are differences would be useful.</p>
Section 2.5	<p>The guidance indicates that it may be possible for the Charity Commission to play a role in the disposal of land or property which was the property of a charity prior to 1948. Without further guidance as to how trustees can identify if they are one of the few cases then this paragraph simply raises more questions than it answers.</p>
Section 3.2	<p>It would be useful to refer to the Department of Health manual for accounts (third party assets) for guidance on accounting for non-charitable funds held on trust.</p>
Section 4.1	<p>A link should be added to the Department of Health guidance</p>
Section 4.3	<p>A link to the guidance on establishing a s11 body should be inserted here.</p>
Section 4.4	<p>Whilst the NHS bodies affected presumably know whether they fall under any of the models of individual trusteeship it would be useful if there was guidance as to how these different types of trustee can be identified or simply a list of the affected bodies.</p>
Section 4.4	<p>The sentence which starts “it has been understood ... “ is not clear. This is clearly an issue which has not been decided upon, it would be useful to understand the background to the problem and also where interested parties should look for further information, if that is being produced.</p>
Section 4.5.2	<p>The sentence starting “Accepting or soliciting funds ...” is not clear as illustrated by the fact that two PwC colleagues read it to mean different things. One interpretation was that this guidance was intended to help NHS staff accepting funds to ensure that they only accept funds which are in accordance with the charitable purposes. In that case, some</p>

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	<p>reference to training staff needs to be added.</p> <p>The other interpretation was that it related to staff effectively restricting funds to suit their own needs, as illustrated by the example of a medical consultant who donates the fees received from speaking engagements to the NHS charity linked to the body where they work but specifies that they should only be used to finance research lead by them. If the research did not have a charitable purpose then this would not be within the remit of the NHS trustee. The donation would then simply be to the NHS body's exchequer funds (assuming the research was funded by the NHS body) and would offset the relevant expenditure in the NHS body's accounts. If this is the intended interpretation of the guidance then it needs to be illustrated by an example.</p>
Section 4.5.3	A link to the finding of the Inquiry of the Commission would be useful here.
Section 4.6 (final paragraph)	<p>Given the earlier comment about the appointment of s51 trustees to NHS charities linked to NHS foundation trusts, it is not clear whether this final paragraph applies to them.</p> <p>Equally, the Appointments Commission does not appoint the Board members of NHS foundation trusts. Therefore, the guidance should be expanded to cover that circumstance.</p>
Section 5.2.1	<p>This section starts with some background information but then goes on to describe how the special purpose charity model included a power of amendment without indicating why that was included – presumably to allow the funds to be appropriately managed. On first reading the guidance seems to jump from simple background to actions required without any linking explanation as to why this power was necessary.</p> <p>Reference should also be provided to section 7.2.2.</p>
Section 5.2.2	It is clear that current practice is different from the practice adopted in the 1990s but it is not clear what action, if any, the trustees of 'umbrella registrations' should take as a result. If they need to take action to change their registration then this needs to be made clear.
Paragraph 6.2	The guidance should make it clear what the status of the representatives of the service providers are in respect of whether or not they are individual trustees or part of the corporate trustee.
Paragraph 6.3	A link or reference to how copies of the transfer orders can be obtained would be useful. As auditors of NHS charities, it has been difficult to get access to these orders and, in some instances, the NHS charity themselves have not seen a copy.
Paragraph 6.4	It would be very useful if there could be a simple illustrative example of each of the scenarios set out in this section and the next. This simply needs to be along the lines of – scenario 1 "Trust A and Trust B are

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	dissolved and Trust C is established to take over their functions”; scenario 2 “Trust A is dissolved and its functions are taken over by Trust B and Trust C which already exist”. At the moment, it is not clear in what circumstances scenario 2 would occur as there are too many unknowns.
Section 7.2.2	<p>This section sets out the 2 different approaches to the process of formalising the trusts. However, it does not set out why there are 2 approaches and why one may have been adopted rather than the other and, most importantly, whether there are any practical implications now for the NHS charities as a result of the approach which was adopted.</p> <p>This information is provided in section 7.3 - it would be more useful if that guidance was moved to be included in this section.</p>
Section 7.4.4	Reference to some NHS trustees incorporating a gift aid declaration into the model receipt. If this is considered to be best practice, should the model provided not be updated?
Section 7.5.2	Given that charities should spend income within a reasonable period after it is received, it would be odd if there were any funds remaining from 1946. Therefore, it would seem that this guidance will apply to a very small number of funds, presumably, were there is an ongoing endowment. It would be useful if the guidance could provide an example of when this particular part of legislation is likely to be applicable, or that it states that this is unlikely.
Section 7.5.3	This guidance is difficult to understand and the first sentence of this section indicates that the Charity Commission should be approached for guidance in respect of bequests. The guidance from paragraph 7.5.3 to the end of the section should be deleted.
Section 7.5.5	This section would be more useful if it simply stated that the statutory trusts which established many NHS Charities mean that the Secretary of State or Welsh Ministers have a role to play which mean that the Charity Commission will not exercise its powers under the Charities Acts without consultation with the relevant statutory body. Therefore, whilst the general guidance in relation to small charities and schemes and orders guidance may be useful background material, it will not cover the added complexities of the statutory basis of NHS Charities and advice should be sought from the Charity Commission before any action is taken.
Section 8.2	Reference to Charities (Accounts and reports) Regulations 2005 (SI 2005 No 572) – should this not be Charities (Accounts and reports) Regulations 2008 (SI 2005 No 629)?
Section 8.3.2	It would be useful if paragraphs 3 and 4 of this guidance could make it clear that the Audit Commission’s default position is that they appoint the appointed auditors to the host body to audit or examine the NHS charity’s accounts.

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Section 8.3.3	<p>The first paragraph of this section does not read properly – the first half of the second sentence should be deleted up to the opening brackets. This should be replaced by a full stop and the start of a new sentence and the closing bracket should be deleted so that the sentence simply reads:</p> <p>“Foundation trust corporate trustees and s22/s51 trustees are subject to the same audit and examination regime as all other charities and should refer to booklet CC15.”</p>
Section 8.4	<p>The third bullet point under rules for allocating/apportioning support costs seems to be missing a word and also includes too many negatives.</p> <p>We are surprised that, in the final paragraph, the advice appears to be for the Trustees to place a restriction on unrestricted funds. This would result in the Trustees creating a Trust – is this possible?</p>
Section 8.5	<p>This section needs some introduction to set out what it is intended to provide guidance in relation to and why it is an issue.</p> <p>We are aware that, in the past, there has been guidance in relation to pooled investment funds and there has been confusion as to whether they are acceptable or need Charity Commission approval. Some guidance on pooled funds would be useful in this section even if it is to refer to more general guidance for all charities.</p> <p>The final bullet point of the allocation rules should refer to “accounting policies” not accountancy policies.</p>
Section 8.5.1	<p>It would be useful if the “how often” section could explain why annual apportionment is likely to be unfair and also provide some explanation of what the consequences would be for the NHS charity, if any.</p>
Section 8.6, paragraph 6.4.1.1 and transfer accounting note 1a	<p>The scenario set out in paragraph 6.4.1.1 is not quite the same as that set out in transfer accounting note 1a. Paragraph 6.4.1.1 sets out the example of Trust A and Trust B ceasing to exist and Trust C being established to take over their services. In the accounting note, the first sentence seems to refer to a situation where one of the Trusts continues – this is closer to scenario 2 and simply confuses the matter. Our comment on paragraph 6.4.1.1 was that it would be useful if it could be supported by examples. If they are not applicable in that section then they should be included in the transfer accounting note.</p> <p>We accept that merger accounting can be used in this scenario as that is approach now taken by public sector bodies where there has been a machinery of government change (in accordance with the HM Treasury Financial Reporting Manual). However, the Charities SORP requires merger accounting to be used when the criteria set out in FRS 6 are met. It would be useful if the transfer accounting notes could establish why, in this instance, the FRS 6 criteria are met and why they are not met in scenario 2 or 3.</p>

Reference	Comment
Section 8.6, paragraph 6.4.1.2 and transfer accounting note 2a	<p>Paragraph 6.4.1.2 is unclear as it contains too many unknowns – the accounting note indicates that a single NHS body is dissolved with the services it provided being transferred to one or more existing NHS bodies. Therefore, Trust A ceases to exist and Trusts B, C and D take over the services it used to provide.</p> <p>Note 2a should also include guidance on the timing of the final transfer. Presumably, where Trust A ceases to exist the transfer should take place before the financial year end and therefore the NHS charity attached to Trust A should have a nil closing balance sheet.</p>
Section 8.6, paragraphs 6.4.1.3 and 6.5.1 and transfer accounting note 3a and 4a	<p>It is not clear whether there is any difference in practice between scenario 3 and scenario 4 as set out in paragraphs 6.4.1.3 and 6.5.1 – this is confirmed by notes 3a and 4a. We therefore suggest that scenarios 3 and 4 are merged to form a single scenario.</p> <p>It is not clear what affect, if any, the difference between sections 6.4 and 6.5 has. If there is an affect then this should made clear in the guidance.</p>
Section 8.6, paragraph 6.5.2 and transfer accounting note 5a	<p>This would seem to be the same scenario as scenario 1, the only difference is that a s213 order has not been made to transfer the funds. In accounting terms, as these are no difference, we suggest that scenarios 1 and 5 are merged to form a single scenario.</p> <p>As stated above, it is not clear what affect, if any, the difference between sections 6.4 and 6.5 has. If there is an affect then this should made clear in the guidance.</p>
Section 8.6, paragraph 6.5.3 and transfer accounting note 6a	<p>It is not clear what the difference between scenario 6 and scenario 5 is as set out in paragraphs 6.5.2 and 6.5.3. The confusion is then compounded by the sentence just before paragraph 6.5.4 which says that they are the same scenario but are different in the transfer accounting note. Accounting note 6 seems to be dealing with the accounting treatment where an NHS charity holds funds which relate to another NHS body rather than how the merger should be accounted for.</p> <p>If this is correct, then this guidance should be provided as a separate section, outside of the merger section.</p>
Section 9	<p>The introduction section refers to an illustrating example of a member of staff requesting funding support for a course. This example does not seem to be referred to again. Several illustrative examples would be useful in this section.</p> <p>We are aware that there has been debate in the NHS as to whether funding research and development can be charitable. It would be useful if this section of the guidance provided references to the Charity Commission’s other guidance on this matter.</p>
Section 9.1	<p>As most NHS charities have corporate trustees then the second paragraph should set out the consequences for when corporate</p>

Reference	Comment
	trustees (presumably the NHS body's exchequer funds) would become liable.
Section 9.5	The first sentence is difficult to understand – it would make more sense if the words “the formula” were omitted.