

# PAPER

BOD 58/2014

(Agenda Item 17)

# Report to the Meeting of the

# Oxford Health NHS Foundation Trust

# Board of Directors

**30 April 2014**

**Transfer of Contraception & Sexual Health Fund to Oxford Radcliffe Hospitals Charitable Funds**

**For: Decision**

**Executive Summary**

The Contraception and Sexual Health service (and the staff of that service), previously managed by Oxford Health NHS FT, transferred to Oxford University Hospitals (“OUH”) on 1st April 2014.

This service has a charitable fund of approximately £28k which was largely built up by staff donating fees from training courses.

There is a general principle that charitable funds should follow the service, and that therefore, provided there is no obstacle to doing so, the charitable fund should be transferred to the Oxford Radcliffe Hospitals Charitable Funds (“ORHCF”), being the charity for OUH. This was considered by the Charitable Funds Committee of Oxford Health on 9 April 2014 and the transfer recommended to the Board.

Subsequent to the Charitable Funds Committee meeting, the Department of Health have raised a technical issue which needs to be brought to the attention of the Board about any liabilities in respect of the fund. The paper proposes that this should be dealt with by the Board taking a view on the likelihood and scale of any potential liability, and that no other arrangements (insurance or an indemnity) should not be put in place. Because this was not considered by the Charitable Funds Committee, the Board will have to assure itself that it is comfortable on this point.

Subject to this the Board is asked to approve the transfer of the funds to OHRCF.

**Alternatives Available**

Where a service transfers to another NHS organisation, any charitable funds held to support that service remain related to the service in question. There are two ways of dealing with this:

1. The funds can remain with the current charity (Oxford Health Charitable Funds) and grants can be made from these funds to support the service on the basis of specific applications. This is legally robust, but messy given that the staff have transferred to OUH. It would require Oxford Health to appoint alternative fund-advisors to approve grant applications.
2. Normally a better solution is to transfer the funds to the charity associated with the new provider, in this case ORHCF. That charity will then continue to use the funds to support the service, as they have been used in the past. This transfer requires a statutory instrument. The Department of Health have indicated their willingness to obtain a statutory instrument.

This was considered by the Charitable Funds Committee and it was agreed to recommend to the Board that the latter approach be adopted.

**Liability for Any Claims**

Subsequent to the Charitable Funds Committee meeting the Department of Health highlighted a potential issue, which has recently been brought to their attention by the Parliamentary draughtsmen in relation to transfers of this type. The Department provides the following advice which it requires be brought to the attention of the Board.

*“Transferring trustees should be aware of the limits of what is affected by the transfer Statutory Instrument (SI).  The SI transfers trust property, and any rights and liabilities arising from that property, but does not transfer any personal liabilities that may arise from breach of trust as a trustee. “*

 “*A trustee, including a former trustee, should be able to recover charges properly incurred that arise from their role as trustee from the charitable assets, including the costs of successfully defending litigation.  Trustees can obtain consider insurance for such an eventuality, which may be provided through the charity.  Transferring trustees may wish to consider discussing such indemnifying insurance with the receiving trustees as any such arrangements are outside the scope of the SI process.”*

To summarise this, where there is a claim for breach of Trust, a trustee should normally be able to recover the costs of defending litigation etc. from the fund. In this case the fund will have been transferred to ORHCF so that recourse would not be available to Oxford Health NHS FT as the outgoing Trustee. The Board should therefore consider whether some alternative protection should be put in place.

**Approach to Dealing with Potential Liabilities**

There are four possible ways of dealing with the issue of potential liabilities:

1. Decide that the issue prevents proceeding with the transfer of the fund, but that it should be dealt with in future by making individual specific grants. The advice of the Charitable Funds Department remains that this is a cumbersome way of proceeding.
2. Run-off insurance could be purchased and charged to the fund. This would protect the outgoing trustee against a claim. However, given that the fund in question is only £28k, and that the real chance of any claim is very low, it is likely that run-off insurance would be expensive in relation to the real level of risk.
3. An indemnity could be obtained from ORHCF to meet any claim falling on Oxford Health NHS FT in relation to this fund pre-transfer up to a limit of £25k. However, discussions the Charitable Funds Department have had with solicitors suggest that this is not an advisable way forwards. The advice received was that: drafting such indemnities is tricky (and hence would involve legal costs which would have to be borne by the fund); negotiating indemnities is not straightforward; and in any case claiming under such an indemnity is rarely simple. The advice received was that the efforts involved were unlikely to be commensurate with a risk which at maximum is £28k.
4. The remaining approach would be for the Board to review the likelihood of any claim and on a considered view approve the transfer recognising that there is an element of remote and strictly finite risk.

**Assessment of Risk for Outstanding Claims**

The Charitable Funds Department have reviewed their knowledge of the fund and are not aware of any potential claim, and consider that, given the nature of transactions on the fund, the likelihood of any claim arising is very low.

It should be noted that if the funds are not transferred the degree of protection this offers to the Trustee is limited to the current balance of the fund, i.e. £28k, and that it is understood that should the funds have been transferred any liability would fall not on the Oxford Health Charitable Funds, but on the Trustee, i.e. Oxford Health NHS FT.

Given that the likelihood of any claim is very small, and that £28k is not a material figure in the context of Oxford Health NHS FT, it is recommended that the Board should proceed with authorising the transfer without requiring either run-off insurance or an indemnity to be in place.

**Transfer Arrangements**

The transfer has to be approved by both the Board of Oxford Health NHS FT (as corporate Trustee) and the Board of Trustees of ORHCF.

There is no specific form of words required to do this. However, the Board should approve the schedule attached as Appendix 1 to this paper and the supporting statement set out in Appendix 2 and authorise the Chair of the Trust to sign these.

**Conflict of Interest**

It should be noted that the Charitable Funds Department has a potential conflict of interest in this matter, as it advises Oxford Health NHS FT, ORHCF and the OUH NHS Trust on charity matters. Accordingly, the contents of this paper have been discussed with the Oxford Health NHS FT Trust Secretary prior to completion. The issues to be considered are clearly set out and alternative courses of action available to the Board are identified.

**Recommendation**

The Board are recommended to approve the schedule set out as Appendix 1 to this paper and the supporting statement set out in Appendix 2 and to authorise the Chair of Oxford Health NHS FT to sign the schedule.

Philip Bonnier
Project Manager: Charitable Funds Department
22nd April 2014

Appendix 1:

**SCHEDULE OF TRUST PROPERTY**

Trust Property transferring from **Oxford Health NHS Foundation Trust**

To **the trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006**

By Order made under section 213 of the National Health Service Act 2006

The trust property to transfer is that which is described in annex A as transferring to **trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006** and which at 31 March 2013 was valued at £28,738.

We the undersigned certify that this schedule and annex A have been completed to the best of our knowledge and belief. We accept that all transactions between the 31 March 2013 and the coming into force of the transfer order will be reflected in the final balances. We agree that any retrospective adjustment to the value due to audit or other causes is included.

Transferring body

**Oxford Health NHS Foundation Trust**

Chair / CE signature Date:

Receiving Body

**The trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006**

Chair/ CE signature Date:

**ANNEX A**

Trust Property transferring from **Oxford Health NHS Foundation Trust**

To **the trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006**

**By Order made under section 213 Schedule 4 to the National Health Service Act 2006**

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| **Funds**1 | **Balance at 31st March 2013** | **Funds transferred to****the trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006** | **Proportion of fund** |
|  |  |  |  |
|  | **£** | **£** | **%** |
|  |  |  |  |
| **Restricted income funds** | 440,374 |  | 0 |
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| **Unrestricted income funds** | 1,240,262 | 28,738 | 2.32% |
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| **Endowment funds** | 0 |  |  |
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| **TOTAL**  | 1,680,636 | 28,738 | 1.71% |

**Appendix 2**

Statement in support of transfer

|  |  |
| --- | --- |
| **NHS body/charity:** | **Oxford Health NHS Foundation Trust** |
| **Name:** |  |
| **Role:** |  |

Transferring body: Oxford Health NHS Foundation Trust

Receiving body : Trustees appointed for the Oxford University Hospitals National Health Service Trust under paragraph 10 of Schedule 4 to the National Health Service Act 2006

Statement

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| --- |
| Oxford Health NHS Foundation Trust wishes to transfer the Contraception and Sexual Health Fund to the Trustees appointed for the Oxford University Hospitals National Health Service Trust.**Reason for transfer**The fund exists to support the work of the Contraception and Sexual Health Service in Oxfordshire, which was transferred from Oxford Health NHS Foundation Trust to Oxford University Hospitals NHS Trust from 1st April 2014. The staff of the service are now employed by the latter Trust, and in order to achieve effective management of the fund to support the Contraception and Sexual Health Service, the fund should be transferred.**Approval of transfer**The transfer was considered by the Charitable Funds Committee of Oxford Health NHS Foundation Trust on 9th April 2014 and approved by the Board of the Foundation Trust on 30th April 2014.Consideration was given to the option of Oxford Health NHS Foundation Trust continuing as trustee of the fund and dispensing grants to support the Contraception and Sexual Health Service as and when required. However, it was considered that this would be a more cumbersome and less effective mechanism than transferring the fund.**Details of Consultation**The service was put out to tender by the commissioners and that tender was won by Oxford University Hospitals NHS Trust. Therefore there was no consultation to be done by Oxford Health NHS Foundation Trust. |