

## Update on legal developments for NHS charities

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**CATEGORY:**

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The Charity Commission has recently published specific guidance for trustees of NHS charities on the management of their charitable funds, with a view to maintaining their independence. The guidance applies to all trustees of such funds, whether they are NHS Foundation Trusts and NHS Trusts acting as corporate trustees or individual bodies of trustees, but is of particular relevance to corporate trustees.

### Background

This guidance arises out of discussions between HM Treasury, the Charity Commission and the Association of NHS Charities of a particular accounting issue.

International Accounting Standard 27 requires the preparation of consolidated accounts for a group of entities under the “control” of a parent. Control is defined as “the power to govern the financial and operating policies of an entity so as to obtain benefit from its activities”. This led some to conclude that NHS charitable funds would need to be consolidated with the other funds of the NHS body with which they are associated; in particular, Monitor in June 2009 told NHS Foundation Trusts that “consolidation of NHS charitable funds which are governed by a corporate trustee is very likely to be necessary under IAS 27”. HM Treasury, however, confirmed that International Public Sector Accounting Standard 6 is relevant in this circumstance. This states that “a trustee whose relationship with a trust does not extend beyond the normal responsibilities of a trustee would not be considered to control the trust”.

From this, the Charity Commission concluded that where an NHS corporate trustee is carrying out its normal responsibilities and obligations as trustee of the charity/charities it manages, then consolidation is unsupported by any reasoned implication of international accounting standards and is wholly inappropriate.

### Implications for trustees

The trustees of NHS charities need to operate in furtherance of their charitable purposes, independently of the interests of the NHS body. The Commission refers trustees to its separate guidance: “NHS charities and independence, indicators and evidence”. Key indicators of independence are that the charity must make its decisions autonomously from outside consideration and on the basis of factors relevant to the charity’s objects. Conflicts of interest and loyalty must be actively managed and avoided. It must be able to demonstrate these facts: for example, through maintaining adequate meeting minutes and conflicts of interest policies.

Where trustees have considered the Commission’s briefing and concluded that the charity is run solely in the interests of its beneficiaries and is not obliged to act at the behest of the NHS body, they can reasonably conclude that consolidation should not apply. If the NHS Body or its auditor disregards this conclusion and consolidates the charitable funds, the Commission needs to be informed only if the NHS body then seeks to direct the charity for its own benefit, in which case a serious incident report needs to be made by the trustees to the Commission.

If trustees compromise their independence by administering an NHS charity directly in the interests of an NHS body, the Commission will regard this as a breach of duty and require it to be remedied and reported in the accounts.

If corporate trustees of NHS charities consider that an independent trustee body would be a more appropriate form of trusteeship, they should contact the Department of Health (or Department for Health and Social Services in Wales), but avoiding the consolidation of accounts would not be a sufficient reason in itself for such a change.

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