



# NHS Western Isles Endowment Funds Charter

Lead Reviewer	Approval Date	Next Review Due	Review Team
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# NHS Western Isles Endowment Funds Charter

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# NHS Western Isles Endowment Funds Charter

## 1. NAME

- 1.1 The legally registered name of the charity is the Western Isles Health Board Endowment Funds. The charity has been registered since 27<sup>th</sup> September 1956.

## 2. HEADQUARTERS

The Headquarters are located in the area covered by the Health Board. The office of the Scottish Charities Regulator (OSCR) shall be advised of any change in the address of the principal office of the charity within three months of such change occurring.

The headquarters are located as follows:

37 South Beach  
Stornoway  
Isle of Lewis  
HS1 2BB

## 3. ROLE OF SCOTTISH MINISTERS

- 3.1 The charity is administered under the terms of sections [82](#), [83](#) and [84A](#) of the [National Health Service \(Scotland\) Act 1978](#). Accordingly, the Board holds the funds and property attributable to the charity on trust as a corporate Trustee. This Charter provides the overall terms of reference for the charity, and the Trustees shall uphold its requirements in the governance and management of the charity's business.
- 3.2 The members of the Board shall be appointed by the Scottish Ministers, or elected, in accordance with relevant legislation.
- 3.3 The members of the Board shall be the Trustees of the charity. However, no individual shall hold the position of Trustee if he or she meets one of the criteria for disqualification as set out in [Section 69](#) of the [Charities and Trustee Investment \(Scotland\) Act 2005](#)
- 3.4 Scottish Ministers have the authority to remove Board members in certain circumstances ([Section 77](#) of the 1978 Act), or may choose not to re-appoint any member of the Board at the end of the term of appointment. Consequently, the issue of removal of Trustees is a matter reserved to the Scottish Ministers.
- 3.5 The Trustees shall comply with the spirit of the Charities and Trustee Investment ("Scotland") Act 2005 with respect to any proposed changes to the governance or management of the charity. This may involve simply notifying the Office of the Scottish Charity Regulator ([OSCR](#)) of some matters, whilst other matters require OSCR approval.

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As the Western Isles Health Board Endowment Funds has been registered with OSCR the Trustees must comply with the requirements of the 2005 Act. The Trustees shall approve any updates to this Charter to reflect any changes.

## **4. TRUSTEES**

- 4.1 The Trustees are responsible for the general control and management of the charity.
- 4.2 The Trustees shall perform general duties as described in [Section 66](#) of the Act, and satisfy any other obligations in law required of a Trustee. The Trustees are personally accountable in law for the discharge of these duties and obligations.
- 4.3 The Trustees shall convene meetings solely to conduct the business of the charity, with distinct agendas from that of the Board.
- 4.4 In the discharge of their responsibilities, Trustees shall place the interests of the charity above all other things, including their own interests and the interests of the Board or any other organisation.

## **5 STATUTORY CONSTITUTION**

- 5.1 The founding document of the charity is the National Health Service (Scotland) Act 1978 ('the 1978 Act'). Section 82 of the National Health Service (Scotland) Act 1978 establishes the endowments to be held by the Health Board:

*All endowments vested in a Health Board by virtue of section 37 of the National Health Service (Scotland) Act 1972 are so vested free of any trust existing immediately before 1<sup>st</sup> April 1974 (hereafter in this section referred to in relation to any such endowment as "the original trust"); but all such endowments shall be held by the Health Board on trust for such purposes relating to services provided under this Act in or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.*

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*All property vested in a Health Board by virtue of section 39 of the said Act of 1972 is so vested free of any trust existing immediately before the said 1<sup>st</sup> April (hereafter in this section referred to in relation to any such property as “the original trust”) but all such property shall be held by the Health Board on trust for such purposes relating to services provided by them under this Act or to the functions of the Board with respect to research, as the Board may think fit.*

*In exercising the power conferred on them by this section in relation to any endowment or property a Health Board shall secure, so far as is reasonably practicable, that the objects of the original trust (including, in the case of an endowment, the objects of the endowment) and the observance of any conditions attaching thereto, including, in particular, conditions intended to preserve the memory of any person or class of persons, are not prejudiced by the exercise of the power.*

- 5.2 The National Health Service (Scotland) Act 1978 (‘the 1978 Act’) also sets out the basis of the “purposes relating to services under this Act”, which is of relevance to determining the charity’s purpose.

## **Section 1:** General duty of Secretary of State.

*It shall continue to be the duty of the Secretary of State to promote in Scotland a comprehensive and integrated health service designed to secure:*

*(a) improvement in the physical and mental health of the people of Scotland, and,*

*(b) the prevention, diagnosis and treatment of illness,*

*and for that purpose to provide or secure the effective provision of services in accordance with the provisions of this Act.*

## **Section 47 (2):**

*Without prejudice to the general powers and duties conferred or imposed on the Secretary of State under the Scottish Board of Health Act 1919, the Secretary of State may conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as he thinks fit.*

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## 6 PURPOSES

6.1 The purposes of the charity are:

The advancement of health, through	
Improvement in the physical and mental health of the Board's population	Prevention, diagnosis and treatment of illness
Provision of services and facilities in connection to the above	
Research into any matters relating to the causation, prevention, diagnosis or treatment of illness, or into such other matters relating to the health service as the Trustees see fit	
Provision of education and development	

6.2 Conditions attached to a donation or legacy prescribed by a donor to the charity will be observed, so far as is reasonably practicable, and consistent with the above purposes and the law.

6.3 Donations, expenditure and activities must satisfy the public benefit test applicable for a charity. Guidance is available from OSCR [here](#)

6.4 The charity's funds will only be used for the purposes described at 6.1 and 6.2.

6.5 The Board, by virtue of Section 82 of the National Health Service (Scotland) Act 1978, holds the charity's funds on trust. The Board recognises that this places legal responsibilities on its individual members as Trustees.

6.6 The Board agrees that the Trustees shall observe the following principles whilst discharging their responsibilities under this Charter and the law. This is to reduce the risk of any conflict of interest arising between the role of a Board member, and the role of a Trustee.

## 7 AGREED PRINCIPLES FOR THE USE OF ENDOWMENT FUNDS

7.1 The Trustees may issue instructions or procedures, or introduce internal control measures to implement the following principles, to support the discharge of the Trustees' responsibilities:

- The grant of Endowment Funds should not substitute for a core provision within the Board's or another statutory body's financial plans. Nor should Endowment Funds be used to cover a responsibility of the Board that is a direct requirement of health and safety, employment law or a ministerial policy direction.

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- An employee of the Board or the Trustees may only benefit from the charity, where the grant or award conferring the benefit satisfies the “public benefit” element of the charity test, as set out in the Charities and Trustee Investment (“Scotland”) Act 2005, and the guidance on [Meeting the Charity Test](#) published by OSCR. Expenditure must be aimed at improving health, or the prevention, diagnosis or treatment of illness for the Boards residents and any benefit to the employee must be necessary for (and incidental to) the realisation of that public benefit.
- The charity’s funds in totality, nor any individual fund (restricted or unrestricted) must not to go into deficit at any time.
- It is solely for the Trustees to determine how the charity is to be administered, and what expenditure is permitted, providing that all decisions are consistent with this Charter. The Trustees shall discharge their responsibilities free from any external direction.
- All charity expenditure must comply with this Charter, and have received the direct approval of the Trustees or be within the limits of any expressly delegated authority that the Trustees may have granted to an individual or committee.

## **8 GOVERNANCE AND ADMINISTRATION**

- 8.1 The Trustees shall approve Standing Orders for the conduct of Trustees’ meetings and business.
- 8.2 The Trustees will adopt the Board’s Standing Financial Instructions (SFIs) for the charity’s activities. However, the Trustees may adapt these provisions in order to best serve the requirements of the charity.
- 8.3 The Trustees shall directly approve all matters relating to the charity, unless they have expressly delegated the matter to another person or committee.
- 8.4 The Trustees will approve all policies and procedures to be applied to the administration of the charity’s activities.
- 8.5 The Trustees shall approve the arrangements for the management and administration of the charity.

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## Appendix 1

### **STANDING ORDERS FOR THE MEETINGS OF THE TRUSTEES OF THE WESTERN ISLES HEALTH BOARD ENDOWMENT FUNDS**

#### **General**

- 1.1 These Standing Orders are for the regulation of the conduct and proceedings of the Western Isles Health Board Endowment Funds. The Standing Orders cover the meetings of the Trustees, and any committees or sub-committees that the Trustees may establish.
- 1.2 Any statutory provision or regulation shall have precedence if it is in conflict with these Standing Orders.
- 1.3 Any one or more of these Standing Orders may be suspended on duly seconded motion, incorporating the reason for suspension, if carried by a majority of the Trustees present.
- 1.4 Any one or more of these Standing Orders may be varied or revoked at a meeting of the Trustees by a majority of Trustees present and voting, provided the agenda for the meeting at which the proposal is to be considered clearly states the extent of the proposed repeal, addition or amendment.
- 1.5 In these Standing Orders, references to the male gender shall apply equally to the female gender.
- 1.6 A copy of these Standing Orders shall be provided to all Trustees on appointment.

#### **Trustees**

- 2.1 The Trustees are set out in the Western Isles Health Board Endowment Funds Charter.



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## **Chair**

- 3.1 The Chair and Vice Chair of NHS Western Isles shall hold the position of Chair and Vice Chair of the Western Isles Health Board Endowment Funds Committee.
- 3.2 The duty of the person presiding at a meeting of the Trustees is to ensure that the Charter and these Standing Orders are observed, to preserve order, to ensure all of the Trustees have an opportunity to contribute and are treated fairly and with respect, and to determine all questions of order and competence. The ruling of the person presiding shall be final and shall not be open to question or discussion.
- 3.3 The Chair may resign office at any time on giving notice to the Scottish Ministers and shall hold office in accordance with appointment by Scottish Ministers unless he / she is disqualified.

## **Secretary**

- 4.1 The Trustees shall agree a secretary to the committee. The committee secretarial support may be commissioned as a service from NHS Western Isles.

## **Resignation and Removal of Members**

- 5.1 A Trustee may resign office at any time during the period of appointment by giving notice in writing to the Scottish Ministers to this effect.
- 5.2 If the Scottish Ministers consider that it is not in the interests of the health service that a member of the Board should continue to hold that office they may forthwith terminate that person's appointment. Any individual whose appointment to the Board is terminated will automatically cease to be a Trustee.
- 5.3 Where any Trustee becomes disqualified in terms of Section 69 of the Charities and Trustee Investment ("Scotland") Act 2005 that Trustee shall immediately cease to be a Trustee.

## **Ordinary Meetings**

- 6.1 The Trustees shall meet at least twice a year and meetings of the Trustees, unless otherwise determined in relation to any particular meeting, shall be held on a date, time and venue determined by the Trustees or the Chair and specified in the notice calling the meeting.

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- 6.2 Subject to Standing Order 6.6 below, the nominated secretary shall convene meetings of the Trustees by issuing to each Trustee, not less than 5 clear days before the meeting, a notice detailing the place, time and business to be transacted at the meeting, together with copies of all relevant papers (where available at the time of issue of the agenda).
- 6.3 Meetings of the Trustees can be conducted using any suitable technology in order to enable members to participate remotely.
- 6.4 A meeting shall be conducted in accordance with 6.3 above only on the direction of the Chair, or in the absence of the Chair or Vice Chair.
- 6.5 Any notice of meeting shall be delivered electronically to each Trustee.
- 6.6 Inadvertent lack of service of the notice on any Trustee shall not affect the validity of a meeting.

## **Decision Reserved to Trustees' Meetings**

- 7.1 The following matters can only be approved at a Trustees' meeting:
- Any strategy relevant to the charity.
  - Any policy or procedure pertinent to the system of governance and control to be applied to the charity's activities including the policies relating to acceptance of donations and approach to investment. These policies are set out as appendices 2 and 3.
  - The annual accounts, report, and any required returns to OSCR.
  - The terms of reference of any committee to be established by the Trustees in order to discharge their responsibilities and manage the activities of the charity.
  - The arrangements for management and administration of the charity's activities.
  - The appointment of external auditors, and agreement of their fees.
  - The appointment of investment advisors or changes to the investment arrangements for the funds.
  - Any proposal for expenditure on a single item over £1,000 not covered by the approved annual budget or any expenditure from the General Fund.

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- Any proposed changes to the Charter of the Board Endowment Fund.
- Any proposal to rationalise the number of separately identified ward funds and stewards.

To ensure the Trustees have adequate background information to decide on matters above, they will receive at least annually the following information in addition to documents specifically mentioned above:

- An annual report on the funds investments and their performance.
- A list of all funds under separate stewardship, including a full statement of the objective for any separately identified fund over £1,000.

- 7.2 The Trustees may not delegate their responsibilities; however, they can delegate necessary functions for the conduct of their business (other than that described at 7.1) to Committees or to individual officers or individual stewards.
- 7.3 The Trustees may delegate responsibility for matters including urgent decisions to the Chair for action. In such circumstances, this action should be homologated at the next ordinary meeting of the Trustees.
- 7.4 The Trustees will approve the Endowment Funds Operating Procedures that sets out the respective responsibilities and authority of individuals acting on the Trustees' behalf.
- 7.5 The Trustees may, from time to time, request reports on any matter or may decide to reserve any particular decision for a meeting of the Trustees.

## **Special Meetings**

- 8.1 The Chair of the Western Isles Health Board Endowment Funds Committee may call a special meeting at any time so long as at least 3 days' notice is given.
- 8.2 The Chair of the Western Isles Health Board Endowment Funds Committee shall call a special meeting on receipt of a requisition in writing for that purpose which specifies the business to be transacted at the meeting and is signed by one third of the Trustees.
- 8.3 In the case of a requisition meeting, the meeting shall be held within 14 days of receipt of the requisition and no business shall be transacted at the meeting other than that specified in the requisition.

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- 8.4 If the Chair refuses to call a meeting of the Western Isles Health Board Endowment Funds Committee after a requisition for that purpose, or if, without so refusing, does not call a meeting within 7 days after such a requisition has been presented, those Trustees who presented the requisition may forthwith call a meeting by signing the notice calling the meeting providing that no business shall be transacted at the meeting other than that specified on the requisition.

### **Conduct of Meetings**

- 8.6 A meeting of the Western Isles Health Board Endowment Funds Committee shall be deemed to have been held when a quorum of at least one third of the Trustees are present, of whom at least two of those present are Non Executive Directors of NHS Western Isles. In the event of this quorum not being reached, it shall be deemed that the meeting has not taken place, and consequently no Trustees business shall be transacted or minuted. The Chair may set a time limit to permit the required number of Trustees to be present before formally abandoning the proceedings. If a Trustee leaves during a meeting, with no intention of returning, and this has the effect of removing the quorum, the meeting will concluded.
- 8.7 In the event of a Western Isles Health Board Endowment Funds Committee meeting not proceeding due to quorum not being reached, the Chair shall record the circumstances and report them to the next meeting.
- 8.8 No business will be transacted at any meeting of the Trustees other than that specified in the agenda except on grounds of urgency and with the consent of the majority of the Trustees present. Any request for the consideration of an additional item of business shall be raised at the start of the meeting and consent of the majority of Trustees for the inclusion must be obtained at that time.
- 8.9 With prior agreement, the Chair may propose that certain minor items of business may be conducted electronically. This may include the distribution of reports purely for noting (not for approval) and the approval of uncontentious items of expenditure over £1,000. The Trustees must be afforded the same access to papers as they would for an ordinary meeting, electronic comments and approvals may be received any time during the notice period (which should not be less than five days) and must be shared with all Trustees. Quorum will be the same as for an ordinary meeting and the Chair shall judge the outcome of the decision based on comments received.
- 8.10 All acts of, and all questions coming and arising before, the Trustees shall be done and decided by a majority of the Trustees present and voting at a meeting of the Trustees. Majority agreement may be reached by consensus without a formal vote.

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Where there is doubt, the Trustees shall formally vote by a show of hands, or by ballot, or any other method determined by the person presiding at the meeting.

8.11 In the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

8.12 A motion, which contradicts a previous decision of the Trustees, shall not be competent within six months of the date of such decision unless:

- At the time the original motion was passed it was noted as provisional and subject to amendment within six months; or
- The need for the change comes from a new legal requirement, a newly introduced, or a clarification of a, legal point that was not available at the time of the original decision.
- If a decision is rescinded, it shall not affect or prejudice any action, proceeding or liability that may have been competently done or undertaken before such a decision was rescinded.

## Minutes

10.1 The names of Trustees and other persons present at a Western Isles Health Board Endowment Funds Committee meeting shall be recorded in the minutes of the meeting.

10.2 Minutes of the proceedings of meetings of the Western Isles Health Board Endowment Funds Committee and decisions thereof shall be drawn up by the secretary and be submitted to the next meeting to be approved as factually accurate.

## Order of Debate

11.1 Any motion or amendment will, if required by the Chair, be produced in writing, and after being seconded, shall not be withdrawn without the leave of the Trustees. No motion or amendment shall be spoken upon, except by the mover, until it has been seconded.

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- 11.2 After debate, the mover of any original motion shall have the right to reply. In replying he shall not introduce any new matter, but shall confine himself strictly to answering previous observations and, immediately after his reply, the question shall be put by the Chair without further debate.
- 11.3 Any Trustee in seconding a motion or an amendment may reserve his speech for a later period of the debate.
- 11.4 When more than one amendment is proposed, the Chair of the meeting shall decide the order in which amendments are put to the vote. All amendments carried shall be incorporated in the original motion, which shall be put to the meeting as a substantive motion.
- 11.5 A motion to adjourn any debate on any question or for the closure of a debate shall be moved and seconded and put to the meeting without discussion. Unless otherwise specified in the motion, an adjournment of any debate shall be to the next meeting.

## Adjournment of Meetings

- 12.1 A meeting of the Western Isles Health Board Endowment Funds Committee may be adjourned by a motion, which shall be moved and seconded and be put to the meeting without discussion. If such a motion is carried, the meeting shall be adjourned until the next scheduled meeting or to such day, time and place as may be specified in the motion.

## Declaration of Interests and Register of Interests

- 13.1 Trustees shall observe all their obligations under the Charities and Trustee Investment (Scotland) Act 2005. All Trustees must put the interests of the charity before their own personal interests or other duty they may have, or any other person or organisation.
- 13.2 The Trustees shall follow the process established for members of the Board, for compliance with the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000](#).

Any interests registered or declared as a consequence of observing the associated Code of Conduct, shall be used for the application of these Standing Orders.

- 13.3 As all NHS Board members are Trustees, there is no requirement for a separate register of interests.

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- 13.4 Any Trustee who has a clear and substantial interest in a matter under consideration by the Trustees or committee should declare that interest at any meeting where the matter is to be discussed, whether that interest is already recorded in the Trustees' register of interests. Such declarations should make clear the interest and whether it is of an either direct or indirect financial nature.
- 13.5 Where such an interest is of a direct or indirect financial nature, the members involved should withdraw from any meeting and not speak, participate in or otherwise seek to influence any decision taken by the Trustees or committee relating to the matter under discussion.
- 13.6 Trustees who are also principals or other employees of bodies which receive funds from the charity (other than the NHS Board) may participate in general discussions and decisions regarding such bodies, but should withdraw and not participate in any discussion or decision which relates principally to the particular institution with which they are associated. The Chair should take particular care to ensure that no possible conflict of interest in this area is allowed to arise.
- 13.7 Where a Trustee has an interest that is not financial but which is relevant to the Trustees' business, that interest should be declared. Where the interest is substantial, the member involved should withdraw from the discussions and decisions relating to that interest. Where an interest arises from membership of a public body and is not of a financial nature, full participation in the discussion and decision is permitted.
- 13.8 In all cases, Trustees' interests covers also the interests of any related parties, including family members or members of the same household who may be expected to influence, or be influenced by, Trustees.
- 13.9 In all circumstances, Trustees should ask themselves whether members of the public, knowing the facts of the situation, could reasonably conclude that the interest involved might influence the approach taken to the actions of the Trustees. If so, the interest is sufficient to oblige the Trustee to withdraw.
- 13.10 In case of doubt as to whether any interest or matter should be the subject of a notice or declaration under the Code, Trustees should err on the side of caution and submit a notice/make a declaration or seek guidance from the nominated secretary as to whether a notice/declaration should be made.

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- 13.11 Where the Code requires an interest to be registered, or an amendment to be made to an existing interest, this shall be notified to the nominated secretary by giving notice in writing using the standard form available from the nominated secretary within one month of the interest or change arising. The nominated secretary will write to Trustees every year to request them to formally review their declaration.
- 13.12 Trustees shall make a declaration of any gifts or hospitality received in their capacity as a Trustee. Such declarations shall be made to the nominated secretary, and they shall be made available for public inspection at all reasonable times at the Principal Offices of the Board.

### **Suspension of Trustees**

- 14.1 Any Trustee who disregards the authority of the Chair, obstructs the meeting, or conducts himself offensively shall be suspended for the remainder of the meeting, if a motion (which shall be determined without discussion) for his suspension is carried. Any person so suspended shall leave the meeting immediately and shall not return without the consent of the meeting. If a person so suspended refuses, when required by the Chair, to leave the meeting, he may immediately be removed from the meeting by any person authorised by the Chair to do so.

### **Admission of Public and Press**

- 15.1 Meetings of the Trustees shall not be open to the public and press unless the Trustees decide otherwise in respect of a particular meeting.



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## Appendix 2

### **POLICY ON ACCEPTANCE OF DONATIONS**

Trustees should recognise that the acceptance of donations is an extremely sensitive area. It is essential that, when accepting donations, consideration is given to the charity's ability to fulfil the wishes of the donor as well as any potential impact on the charity's reputation.

#### **Acceptable**

The following donations are considered acceptable provided they are in keeping with the objectives of the Western Isles Health Board Endowment Funds.

- From patients, relatives or visitors of patients.
- From charitable organisations.
- From members of the public.
- From employees.
- From local authorities.
- From the business community.
- From special fundraising activities approved by the Trustees.

#### **Unacceptable**

The following donations are unacceptable:

- From organisations where any association could bring the NHS into disrepute, including any organisation which would be excluded for investment as per the committee's ethical standards.
- From any organisation that may seek to gain publicity or use, the fact of a donation in any advertising campaign that is not consistent with the aims and values of the NHS endowment fund.
- Any donation where it would appear that the NHS is endorsing or promoting any particular medicinal or other product.
- Any donation in contradiction of NHS Western Isles mission, objectives and values.

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## Guidance

The following guidance on donations is given:

- Consideration must be given to donations from existing or future suppliers to the NHS. Such donations may be acceptable but it should be made clear that any such arrangements are completely separate from normal commercial transactions.
- Special attention should be given to donations from patients or relatives. In particular, nothing should be done which might appear to either put pressure on or offer inducements to patients or their relatives to contribute.
- Donations should not be accepted from a commercial organisation during any tender negotiating process.
- Donors should be encouraged to donate funds on as general a basis as possible in order to maximise the flexibility and the benefits that can be derived from their deployment.
- There needs to be appropriate consideration as to whether any specific wishes of the donor are consistent with the charitable purposes of the fund or are for a purpose, which the Trustees are likely to support or are for a Board service, or facility, which the Board is likely to be able to deliver.
- If the Trustees deem a donation unacceptable, it will be returned to the donor.

Where there are revenue implications on donations over £5k, these must be agreed in advance with the Finance department before the contribution is accepted.

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## Appendix 3

### **INVESTMENT POLICY**

The assets of the Western Isles Health Board Endowment Funds will be invested, within ethical parameters to provide a balance between long term growth, security, availability and maximisation of annual income.

Decisions on investment policy and the types of investment to acquire and retain are complex and require the services of independent investment advisers.

At all times the annual budget of the Western Isles Health Board Endowment Funds shall be set at such a level that the fund would be able to absorb both the annual expenditure commitment and any foreseeable level of fluctuation within the financial markets.

The Western Isles Health Board Endowment Funds Committee should consider a report from the investment adviser annually.

The Trustees shall periodically consider whether a change to the investment arrangements would be in the interests of the charity.

As part of the preparation for the annual accounts, there will be a reconciliation of the balance in the year end valuation summaries produced by the investment adviser and the balances in the Western Isles Health Board Endowment Funds financial statements.