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Charity fundraising and the NHS

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CHARITY FUNDRAISING AND THE NHS

Every year thousands of pounds are raised by charity fundraisers, some of whom are paid and some voluntary. Appeals for improvements to local health services take many different forms and continue to play a major part in the various activities responsible for raising this money. However, the interface between health services funded by charitable donations, and NHS provision, is not always clear.

CHCs have, in the past, expressed concern at the range and, seemingly increasing, number of collections and appeals which are conducted on behalf of the National Health Service. Although these appeals are generally in aid of a specific cause (such as a major new piece of equipment or specialty unit at the local hospital), their purpose sometimes seems to be vague and information to the public is often limited. Slogans currently used by some fundraisers refer vaguely to *"helping support the NHS"* but give very few details about the final destination of any proceeds.

Few would disagree with the principle that charitable institutions should be able to appeal effectively to the public and that they should make use of professional services where this is justified and cost-effective. However, there is undoubtedly a need to regulate this kind of arrangement and this is one of the aims of the Charities Act 1992 and its subsequent regulations which should come into full force by the end of the year.

ACHCEW has been asked to clarify the legal situation with regard to fundraising on behalf of the NHS, to suggest why certain practices may or may not be acceptable and explain what CHCs should be aware of when dealing both with fundraisers and members of the public. Whereas this briefing is in no way intended to be comprehensive, it highlights the implications of recent/future legislative changes and attempts to answer some of the more commonly asked questions.

THE POSITION AND PURPOSE OF NHS FUNDRAISING

How many Charitable Bodies are within the NHS?

The situation regarding the number of hospitals and trusts which have within them a registered charitable body was set out in a parliamentary answer from the Home Office Minister, Peter Lloyd, on 14 January 1994:

"The Charity Commissioners are currently conducting a review of such bodies for the purpose of updating the register of charities and precise figures are not available at present."

"The great majority of NHS trusts are trustees of charitable funds which have been transferred to them from health authorities. There are also 26 groups of special trustees responsible for funds attached to teaching hospitals. In some cases, a single NHS trust may administer as many as 100 different charitable funds." (Hansard 14/1/94, Col 342).

Most fundraising in the NHS is carried out in order to improve existing hospital facilities and, in order to facilitate this, considerable scope is granted to NHS bodies which are not generally perceived by the public as being as being charitable institutions. Both health authorities and NHS trusts are permitted to conduct fundraising activities through the statutory powers originally granted to health authorities under section 5 of the Health Services Act 1980. The type of activities

authorised by the Act include:

"... public appeals or collections and competitions, entertainments, bazaars, sales of produce or other goods and similar activities and the activities may involve the use of land, premises or other property held by or for the benefit of the health authority ... "[s.5, ss.(3)]

The role, however, of charitable donations within a statutorily-funded body such as the NHS is not entirely clear. The Charity Commission is of the view that donations should not be used for purposes where the costs would have otherwise been met by public funds. Charitable donations should rather be used in situations where constraints in public funding have led to "gaps" in service provision.

There would seem to be a multitude of different interpretations that this sort of guidance could lead to - particularly in view of the current debate about the rationing of health care. Despite this, charitable donations have, indeed, in the past been used to fund the "extras" (rather than the core services) in the NHS. This has included research into medical technology and new treatments, and welfare services for both patients and staff.

The Charity Commission produced a list outlining how they suggest charities "for the relief of sickness" could put their funds to good use **providing they do not overlap with NHS provision, that there is a clear need and that the benefits would not have been available from any other sources.** Included on the list are:

Services

*bathing
foot care
hair washing
respite care
help in the home
adaptations to homes of disabled people
laundering
meals on wheels
nursing aid
physiotherapy in the home
child minding
help for relatives/friends to visit patients*

Items

*bedding
clothing
food for special diets
fuel
heating appliances
medical or other aids
specially adapted chairs
nursing requisites or comforts
televisions or TV licences
washing machines (for soiled
clothing and bed linen)*

Several health authorities have used their charitable status to establish links with other charities in order to raise considerable sums of money for special projects: in the past these have included special baby care units and hydrotherapy pools. In many areas, the League of Hospital Friends associated with a particular hospital also provide a source of income from fundraising. This is commonly used to purchase new furniture or equipment or new facilities such as day rooms.

Both health authorities and trusts have the power to receive and administer funds directly where they are responsible for launching a campaign for a particular purpose. In some cases, however, it is more appropriate for them to establish a separate charitable structure to handle the appeal. This structure takes one of three forms:

- 1) a Charitable Company - both a company limited by guarantee and a

registered charity, this has a separate legal identity which protects the members' liability in the event of difficulty;

2) a Charitable Trust established by deed - governed by the terms of its own deed. The members are not protected as they are above;

3) an Unincorporated Association - governed by the terms of its written constitution, again the members are not protected as in a charitable company. This structure can be suitable for groups such as a Hospital League of Friends.

PUBLIC COLLECTIONS

Section 65 of the **Charities Act 1992** defines a charitable appeal as:

"... an appeal to members of the public to give money or other property (whether for consideration or otherwise) which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes ..."

This includes most of the public appeals made to the public on behalf of the NHS whether for general purposes or in aid of a special appeal. Public collection usually take one of the following two forms:

1. "Street" Collections

Charitable collections which are conducted in public places (typically in shopping areas, public concourses within stations, town squares etc) are subject to the local regulations of the appropriate district council or relevant London Borough (the Common Council for the City of London is also empowered to make regulations within its own boundaries). The Acts which refer to the power for these local regulations to be made are the **Charities Act 1992** and the **Police, Factories, etc. (Miscellaneous Provisions) Act 1916**. (The latter Act will remain the primary legislation and will be the guide which local authorities will continue to use until Part 2 of the Charities Act comes into force).

The relevant authority must be consulted and a permit obtained before any attempt is made to raise funds in the area for which it has responsibility. It is an offence to act in contravention of these regulations and any complaints or enquiries about the legality of street collections should be made to the authority referred to above which has the power to withdraw the permit completely, attach conditions to its issue or vary any existing conditions where necessary.

Although local regulations will of course vary from place to place, they will all set out certain conditions which must be fulfilled before a street collection can take place (ie before any money can be collected or any articles sold for charitable and other purposes). Some authorities are known to be extremely restrictive in issuing permits for street collections; obstructions to the public and any hindrance caused to traffic flow are certainly considerations with regard to major collections. For smaller collections, rules may regulate the distance between collectors or stipulate that the public must not be annoyed or inconvenienced in any way. Numbered and sealed collecting boxes may also be a mandatory requirement.

If collections are made on a non-voluntary basis, any commission or remuneration

will have to be declared to the local authority (or Police in metropolitan areas) and licences may be withdrawn if this is felt to be too high.

There are certain exceptions to the law which allow collections to be made in the following places without the requirements of a permit:

- * inside buildings (this does not, however, exclude public concourses as mentioned above).
- * places of worship and churchyards
- * places which members of the public have to pay to enter
- * places where the public are admitted solely for purposes related to the collection
- * during the course of a public meeting

(Collections from unattended collecting boxes are also exempt from the requirements of a permit.)

Those collections which are technically made on private property but which are aimed at members of the public who happen to be passing (eg a collector standing within a privately-owned shop front which adjoins a busy public pavement) are still considered, by the Charity Commissioners, to be street collections in principle and as such would normally require a permit. However, it is important to clarify all details with the relevant local authority.

2. "House-to-House" Collections

The **Charities Act 1992** also deals with house-to-house collections for charitable purposes, along with the **House-to-House Collections Act 1939**. As with street collections above, a "collection for charitable purposes" includes inducements to purchase articles on the basis that part of the proceeds will be used for charitable purposes. Again, a permit is required from the district council or relevant London Borough for a fixed period of time and each collector must carry:

- * a certificate of authority
 - * a prescribed badge
 - * a numbered collecting box (or receipt book) sealed and clearly marked with the purpose of the collection
-] signed by the collector

The badge should be worn at all times and the certificate produced on demand. Each collector also has a duty to refrain from causing a nuisance, must not stay once requested to leave and must return the boxes to the promoter of the collection with the seals unbroken.

(N.B. Before 1992, where the local police were satisfied that a collection was to be carried out speedily and was restricted to the immediate local area, a police certificate was sometimes granted rendering the requirements above - numbered collecting boxes, badges etc - unnecessary. It is no longer possible for such certificates to be issued in place of a local authority permit.)

When collections are being conducted throughout the country (or throughout a

large part of it), the Charity Commissioners (as opposed to the Home Office as before) will have the power to grant an exemption from obtaining a licence once Part 3 of the Charities Act comes into force. The present qualification for an exemption certificate is to have collected in approximately 70 separate areas for two years previously.

SPECIAL APPEALS

The Charity Commission states that the public must not be misled into thinking that they are giving to a certain project when the money will in fact go into the general funds of the charity. The Commission goes on to stress that the purpose for which funds are sought must be clearly stated so that the public knows precisely for what they are contributing.

District health authorities are authorised to apply or spend charitable trust funds for all or any purposes relating to the NHS - it is not necessary (under the NHS Act 1977) for the particular purpose to relate to health service provision made by that particular authority. However, it is a requirement that the purposes for which any particular fund is to be applied should be apparent either from the written instrument regulating that fund or, failing that, from the appeal literature. The district health authority is required to promote these purposes and no others in the use of its funds. (Where these purposes are now the responsibility of a trust,

There are separate regulations dealing with lotteries, competitions and gaming. Further information on these is available in the Charity Commissioners' booklet *Fundraising and Charities* or the NCVO publication *But is it Legal?: Fundraising and the Law* (see below for details).

PROFESSIONAL FUNDRAISERS

One of the important changes brought about by the Charities Act will be the introduction of rules to govern the activities of those people (other than staff) who are paid to raise money for a charity.

These professional fundraisers will be required to have a written contract with, and the full consent of, the charity on whose behalf they are collecting. Professional fundraisers will also be required to give out certain information about the charity for whom they are collecting and the way in which they are being paid by that charity.

Where professional fundraisers are used, the Charity Commissioners have stressed that:

- * donations should always be paid directly into an account in the charity's name - never to the commercial fundraising organisation;
- * if the fundraiser is being paid by commission, this fact and the proportion of donations which will go direct to the charity should be made known to the public;
- * the practice of showing only the net proceeds of a fundraising activity should be particularly avoided.

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