

3. Trustees and Governance

3.1 Charity and Clinical Governance

This section outlines the governance responsibilities for air ambulances. The governance responsibilities and accountabilities for the NHS are clearly laid down for all NHS and Foundation Trusts. The best practice suggested in this section will allow charities to meet their own governance responsibilities whilst ensuring that these are compatible with the NHS.

Governance refers to the general management of the organisation and the legal framework with which the organisation must comply. Anyone who exercises powers in relation to the governance of a charity must act solely in the interests of the charity. Governance responsibilities and requirements for NHS organisations are clearly laid down and must be followed by NHS organisations. With regard to charities, the governance responsibilities will depend on the type of charity they are and their relationship with the NHS Ambulance Service(s). The responsibility and accountability for governance will depend on the role that the charity plays – from funding to providing the service.

	Grant Giving Charity		Provider/Operator Charity	
	Responsibility	Authority	Responsibility	Authority
Governance	Can't delegate	Unlikely to delegate	Can't delegate	Unlikely to delegate
Clinical Governance	None	None	Can't delegate*	Can delegate or integrate
Operational Management	None	None	Can't delegate*	Can delegate or integrate

* For charities leasing/owning the aircraft but not directing clinical staff, their clinical governance and operational management responsibilities will be limited to issues around equipment.

Governance arrangements are the responsibility of the Trustees and cannot be the responsibility of another organisation such as the host Ambulance Service that engages with the charity. Critical to this position was a letter from the Charity Commission (4/12/07) which stated that 'charities must exist for charitable purposes, not just to carry out another body's policies or instructions. Trustees must have freedom to decide how to use the charity's funds and assets to further its charitable purposes. The Trustees must be informed by, but must not be directed by, the Ambulance Service.'

This has significant implications for the role of Trustees within the charity as well as the relationship between firstly Ambulance Services and Air Ambulance Charities and secondly, Air Ambulance Charities and contractors. There is a need for absolute clarity around the roles and responsibilities of the Trustees and their partner organisations.



In the future charities will be expected to provide greater detail as to how they meet the public benefit requirement. Not only are the Government and donors increasingly demanding evidence that money is being used effectively by charities, but competition between charitable organisations for funding and contracts is also on the rise. Being able to provide evidence and demonstrate effectiveness is becoming a key priority for the third sector generally.

3.2 Trustees

3.2.1 Responsibilities of Trustees

Charity Trustees are the people who serve on the governing body of a charity and are responsible for controlling the management and administration of the charity. Trustees have ultimate responsibility for directing the affairs of a charity, and ensuring that it is solvent, well-run, and delivering the charitable purpose for which it has been set up. Charity trustees must:

- ensure that they carry out their charity's aims for the Public Benefit
- have regard to guidance the Charity Commission publishes on Public Benefit when they exercise any powers or duties
- report on their charity's Public Benefit in their Trustees Annual Report.



Failure to meet the public benefit reporting requirement means that the charity trustees are failing in their statutory duty under the Charity Act. If the trustees act imprudently, or are otherwise in breach of the law or the governing document, they may be personally responsible for liabilities incurred by the charity, or for making good any loss to the charity. Since trustees act collectively in running a charity, they will usually be collectively responsible to meet any such liability.

The role and responsibility of a charity trustee is onerous, without financial reward and carries responsibilities that cannot, without consultation, be left to others. As the role of air ambulances extends i.e. inter-hospital transfers, night operations and improved levels of clinical care, trustees have a responsibility to ensure that key decisions are made about the future of their organisations

3.2.2 Joint Responsibility and Joint/Several Liability

Trustees are jointly responsible for the activities of the charity and must act together. No trustee acting alone can bind his fellow trustees, unless specifically authorized to do so. This does not mean that board decisions must be unanimous; in that case the majority bind the minority.

3.2.3 Trustees' Discretion

The trustees of a charity are bound to exercise their own discretion in deciding who will benefit from the charity, precisely what facilities or services should be made available, and when and on what terms the public (or particular sections of the public) should be able to use the charity's facilities or services. Trustees can surrender their discretion to make those decisions only if they have power to delegate them (for example, under the charity's governing document). Where trustees are authorised to delegate, the person who makes the decision has the same duty as the trustees to take into account only considerations that are relevant to the pursuit of the charity's purpose.

In the case of continuing decisions (such as the selection of individuals for benefit), allowing the decision to be made by an individual or body with no delegated authority or fiduciary duty to the charity amounts to a surrender of discretion. Trustees must not only avoid surrendering their discretion without proper authority but they must also avoid fettering their discretion (except where the interests of the charity require them to do so).

3.2.4 Delegation

Trustees are required to act in person and decisions affecting the charity must be made by the trustees acting together. Trustees are, however, permitted to delegate a wide range of tasks, provided they give clear instruction which define:

- the tasks which are being delegated and the results that the trustees expect
- the limits of the authority which the delegate may exercise on the trustees' behalf
- the types of decisions that can be made by delegates in the course of their work and the types that must be referred back to the trustees
- how and at what intervals the delegates are to report progress to the trustees
- where day to day management and operations are delegated to staff, the board of trustees still remains ultimately responsible for all the charity's activities.

3.2.5 Conflict of Interest

Where there is a relationship between a charity and an authority, a trustee who is an officer of that authority is placed in a position of potential conflict between duty to the charity and loyalty to the authority. Consideration should be given to any trustees who serve on the charity boards that have a direct and corresponding relationship with partner organizations such as a co-located Ambulance Service Trust. Where there is a trustee with a potential conflict of interest, the charity must clearly state the way in which any potential conflicts will be declared and dealt with.

3.3 Governance Arrangements and Responsibilities

Trustees should ensure that they have established appropriate arrangements to satisfy themselves that the Charity is meeting its objects. These arrangements include:

- financial systems to meet the requirements of the Charity Commission and charity law with regard to raising monies and making grants
- a proper process to enable the Charity to make grants
- systems to assure the Board that the Charity's funds are being used for the purposes for which they were intended
- service level agreements with all relevant parties which are monitored
- best practice is followed when procuring equipment and supplies
- annual accounts and other returns required under charity and company law
- procedures to delegate authority in line with the Charity's purpose and objects.

The auditors should have direct access to the chair of the trustees if they request it. It is best practice in the NHS and private sector for a sub-committee of the Board to be established to oversee the financial governance responsibilities. In this case the auditors should have direct access to the chair of the Audit Committee.

A service-providing charity should also ensure that arrangements are in place to effectively discharge their clinical governance and risk management responsibilities, including:

- multidisciplinary governance, audit and research
- health and safety
- training, education and professional development;
- clinical risk and incident reporting
- standard operating procedures (clinical and operational).

The Medical Director should be the lead director with responsibility for clinical governance.



The trustees of a grant-giving charity should ensure that they receive quarterly reports from the local Ambulance Service committee's governance committee, to assure themselves that the funds granted to the local Ambulance Service(s) are being used for the purposes for which they were intended. The Medical Director of the local Ambulance Service(s) should report at least once a year to the Trustee Board.



Service-providing charities should appoint a Finance Director, a Medical Director and an Operations Director, reporting directly to the Chief Executive/Director of the Charity and through him/her to the Board.

A grant-giving charity should appoint suitable officers to ensure financial scrutiny. Trustees should agree with the local Ambulance Service(s) what the Medical, Operations and financial officers' responsibilities are in assuring the trustees that grants made by the Charity are being used for the purposes for which they were intended.

Person specifications for the three Director posts are given in Appendix A.

3.4 Relationship With Third Parties

3.4.1 Principles

If another authority, including a government authority, has been given powers under a charity's governing document, it is bound to exercise those powers solely in the interests of the charity.

It is the duty of all Air Ambulance Charities to ensure that their constitutional documents have clear objects and powers of delegation; that Memorandums of Understanding and Service Level Agreements are in place; that the Charity takes independent advice (as recommended by the Charity Commission); and to ensure that all such documents are in the best interests of the charity and its beneficiaries.

The Air Ambulance Charity will have operational and business arrangements with a number of third parties. The trustees should agree principles, codes of conduct, policies and procedures upon which such relationships should be conducted. It is particularly important that:

- the requirements of the Charities Commission are fully met with regard to allocation and use of funds and that the allocation and use meets the objectives of the charity
- formal delegation of authority and lines of communication and accountability have been agreed in light of the Public Benefit reporting requirements within the Charities Act
- a dedicated link person is identified in both parties. This identified person will be responsible for the maintenance of communications between the parties and the dissemination of information to the appropriate person or department within their organisation.

3.4.2 Aircraft Operators

This document does not seek to prescribe the level of service provision of the operator as minimum operational facilities and pilot qualifications are specified elsewhere. It is advisable that the minimum level of operational performance and pilot qualifications / experience be laid down in the negotiated contracts.

Procurement of aircraft and/or accompanying services from aircraft operators should be conducted within the charities' best working practices.

Regular contract review meetings should be held with all interested parties.

3.4.3 NHS Ambulance Services

There must be a close relationship between each Air Ambulance Service and its local Ambulance Service(s). There should be a written agreement between the Charity and Trust Board of the host Ambulance Service which indicates where responsibility for the different aspects of management and governance lies. It should take the form of a written Operating or Service Level Agreement (SLA).

Where an Air Ambulance Service serves more than one NHS Ambulance Service Trust (or vice versa), one organisation should be identified to take the lead on governance matters. The relationship should be reflected through joint Clinical Governance Committee meetings, sharing of best practice, lessons learnt from complaints and problematic inquests, patient feedback and suggested changes to standard operating procedures.

Each helicopter contract that is held by an NHS Trust has an obligatory liability for that trust, not the funding charity. Consequently if the charity fails to provide sufficient funds by way of grant then the trust is wholly responsible for contractual payments and trusts could find themselves funding part (if not all) of the contract/s they hold. Since a grant is not a contract, a charity is under no obligation to provide full cost recovery for any service, nor can a trust impose a debt of grant on a giving charity if the grant fails to cover the costs incurred. In extreme circumstances, the Ambulance Service could find itself encumbered with the full cost of the HEMS operation or else be in breach of contract with the helicopter contractor. On no account should an Ambulance Service invoice a charity for a charge it incurs on a contract the trust holds.

A grant-giving charity is not accountable to an NHS Trust for its financial performance. However a trust, in receipt of a grant payment, must account to the charity for its disbursement and application in line with the charity's objects. Failure to do so could result in a reduced or rejected grant application or in the case of a service provider, a reduction in service or charges levied on inappropriate use of the charity's resource. Alternatively if the charity holds the contract for the aircraft, the trust incurs no financial liability should the charity fail to raise sufficient funds.

3.5 Comparative Performance Measures

In order to support the identification and development of good practice, comparative performance measures should be developed.

Examples include:

- Response Times (including call connect time to airbase contact time and airbase call receipt to airborne time); accuracy of HEMS v Air Ambulance classification identification by tasking authority; response time for Air Ambulance classifications; alerting destination hospitals; aircraft availability; and dispatch audits
- Clinical Performance including hospital feedback to ensure patients are being taken to the most suitable treatments centres; and data submission to, and information from, UK Trauma Audit Research Network (TARN)
 - Efficiency Indicators such as aborted or stood down missions; ratio of primary to secondary responses; percent of missions which are transfers; leasing costs; and spend per mission.

