



PAC-R-31

Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Tel. (01) 635 2505
Fax (01) 635 2508

Web: <http://www.hse.ie/go/rialtas>

23rd June 2011

Ms. Emer Lavelle,
Committee Secretariat
Committee of Public Accounts
Leinster House
Dublin 2



Re: CUH Foundation

Dear Ms Lavelle,

I refer to my letter to you dated the 23rd December 2010 and your letter dated the 10th December in connection with the Cork University Hospital Foundation. The internal audit report referred to has now been completed and I am enclosing a copy of same for your attention.

The Foundation is a separate legal entity and is a company limited by guarantee and is designated for charitable purposes. The governance of the Foundation has been strengthened since the audit report with the addition of a number of independent members including the Chairperson and Secretary, who now constitute a majority. The Foundation has given a full commitment to the implementation of all of the findings in the report and is also steadfast in its resolve to meeting all commitments as they fall due.

It is also important to state that whilst a number of issues were raised in the course of the audit there is no evidence to support any fraudulent activity or deliberate wrongdoing in this matter.

I trust this information is of assistance, however if you require any further information please do not hesitate to contact me.

Yours sincerely,

Ray Mitchell
Assistant National Director
Parliamentary & Regulatory Affairs



Feidhmeannacht na Seirbhíse Sláinte
Health Service Executive

Final Report

To: Michael Horgan Chair CUH Foundation
Tony McNamara CEO Cork University Hospital
Pat Healy RDO HSE South

From: Paul Hannon Assistant National Director – Internal Audit

Subject: Audit of Cork University Hospital Foundation
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Ref.: IA/SPI/2009/2

Report Prepared by: Paul Hannon Assistant National Director – Internal Audit

**Report Reviewed and
Approved by:** Michael Flynn National Director

Date Report Issued: 7th February 2011

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Executive Summary

Audit of Cork University Hospital Foundation

Audit Objectives

To review controls and procedures governing the establishment and operation of Cork University Hospital's Foundation for charitable donations. The review sought to ascertain the existence of adequate controls over the foundation designed to ensure the completeness, accuracy and validity of income and expenditure from the fund.

Key Audit Findings

Fieldwork carried out in accordance with the audit objectives found:

- The Foundation was established as a company limited by guarantee, but there was no evidence to confirm approval was given for this by the HSE;
- The Annual Return for 2007 was filed some 183 days late with the Company Registration Office (CRO). The Annual Return for 2008 due in October 2009 was received by the CRO on 5th November 2010;
- The directors of the Foundation have been exclusively senior HSE employees from 2006 until June 2010. Therefore it is possible that the HSE has effectively exerted a controlling influence over the Foundation and it could be deemed a subsidiary undertaking of the HSE;
- Significant expenditure has been incurred by the Foundation without evidence that the market has been sufficiently tested. In particular €365k was paid for management consultancy services without recourse to tendering or the receipt of written quotes. There was also no supporting documentation, such as fee notes or invoices to substantiate these payments;
- The audit has identified a shortfall in funds available to meet specific charitable fund commitments which is in the order of €162k. These commitments relate to conditions attached by donors to gifts; and
- Fundamental weaknesses were discovered in internal controls and procedures in place at the Foundation.

Management Response

Five key audit findings were identified by the Auditors. Of these four related to governance issues and have been addressed by the Foundation.

The final audit finding relates to a potential shortfall of fundings amounting to €162k. It is important to note that this is a potential shortfall only which has not materialised, as the Foundation has met all commitments as and when they arise. Particular mention was made of the garden in CUMH. This garden has been

completed and has been fully paid for by the Foundation in accordance with the benefactor's wishes. (Regional Director of Operations - HSE South).

Analysis of Key Findings for which recommendations are set out in the report

	Possible National implications	Applicable to Location Audited	Total
High		2	2
Medium	1	2	3
Low			
Total	1	4	5

Key Audit Findings - Ranking Priority – High

1. The shortfall of available funds required to meet specific charitable expenditure commitments should be addressed urgently by the Foundation (para 5.3.3 refers).
2. The Foundation should draw up a charitable fund policy which incorporates the principles outlined in paragraph 5.4.1 of the report (para 5.4.2 refers).

Key Audit Findings - Ranking Priority – Medium(N)

3. The current HSE employed directors of the Foundation should make a written disclosure to the Assistant National Director of Finance, AFS and Governance in respect of their directorships of CUH Foundation, if not already done so, in accordance with National Financial Regulations (NFR-17) (para 5.1.7 refers).

Key Audit Findings - Ranking Priority – Medium

4. All statutory requirements set out by the Companies Registration Office should be complied with by the Foundation (para 5.1.4 refers).
5. The Foundation should consider adopting the HSE Procurement Policy for future planned expenditure (para 5.2.7 refers).

Management Comment

Management comments were received by the CEO of Cork University Hospital, who is also a Board member of the Foundation, and the Regional Director of Operations - HSE South. These comments are incorporated in the body of the report and in the Executive Summary above.

Audit Opinion

The overall assessment of the control environment is considered by the auditors to be inadequate due to the absence of an effective internal control framework at the Foundation.

Management need to address the funding shortfall as a matter of urgency, and adopt a charitable fund policy which will improve controls over the completeness and accuracy of income and also the appropriateness of expenditure, including value for money. The overall governance of the Foundation might also be improved by encouraging greater openness and transparency.

Implementation of the recommendations contained in this report should assist the Foundation by improving overall governance arrangements, there-by helping to build confidence in the organisation for both current and future stakeholders and potential donors.

Acknowledgement

Internal Audit wishes to formally acknowledge the co-operation and courtesy afforded to them by the management and staff at Cork University Hospital.

Paul Hannon
Assistant National Director – Internal Audit

7th February 2011

Date



MAIN REPORT

Audit of Cork University Hospital Foundation

Ref.: IA/SPI/2009/2

1. Introduction

This Audit was carried out in accordance with a request from the former National Director of the National Hospitals Office.

2. Background

The Cork University Hospital (CUH) Foundation was established in 2006 as a company limited by guarantee and is designated for charitable tax status. The foundation was primarily created to provide a facility for donors to make financial contributions that would enable CUH undertake projects and/ or equipment purchases in addition to items funded by the HSE. The audit was planned to commence in the Summer of 2009, however the audit was delayed at the request of CUH until the external audit of the Foundation was complete in May 2010.

3. Audit Scope and Audit Methodology

The audit consisted of a review of controls and procedures designed to ensure the completeness, accuracy and validity of income and expenditure from the fund. Expenditure was reviewed to assess its appropriateness in terms of compliance with donors' wishes and value for money. The audit also examined controls designed to ensure the completeness and accuracy of accounting records maintained for the foundation.

4. Ranking of Audit Findings

The main findings, control weaknesses noted or suggested areas for improvement are ranked as high, medium or low and are dealt with in order of priority in Section 5 - Key Findings, Risks and Recommendations.

The rankings used are described below:

High Identifies a control area which poses a key risk to the organisation and/or its service users and clients (e.g. strategic, operational, financial (including VFM) or reputational) which may have serious implications for achievement of the organisation's objectives and which should be addressed immediately to reduce the risk to an acceptable level.

Medium Identifies a weakness in control which, while its implications are not as serious as the above, or the control itself not as fundamental to the operation of the system, nevertheless represents a risk to the HSE and needs to be addressed in order to reduce that risk to an acceptable level. These should be dealt with in the short term.

Low Identifies a procedure or control that needs improvement in order to operate in a more effective way and should be addressed in the short to medium term.

Some risks identified will have implications for the HSE nationally and therefore require consideration on a broader basis. Any risks identified that may have national implications will be denoted with an **(N)** e.g. High (N), Medium (N) and Low (N).

5. Key Findings, Potential Implications and Recommendations

5.1 Establishment of the Foundation

5.1.1 As part of the initial fieldwork for this review Internal Audit sought assurance that the establishment of the Foundation had been appropriate and properly approved. A review of company secretarial correspondence revealed a request was made to the local Hospital Network Manager in December 2005 seeking the approval of the HSE to the establishment of the Foundation. No response confirming this approval could be found. Management at CUH sought legal advice in 2005 on how best to establish the Foundation and advice was received from a solicitor at Comyn Kelleher and Tobin that this could best be achieved through the formation of a company limited by guarantee. The Memorandum and Articles of Association were drafted to ensure the Foundation would act to supplement the work of the HSE rather than to reduce the need for public funding. A second Objects clause was

added to enable generous philanthropic donors to attach conditions to gifts, there-by further restricting the scope of Trustees. The Foundation was incorporated with effect from 12th January 2006, and it was listed as exempt from tax by the Revenue Commissioners in May 2007.

- 5.1.2 As part of fieldwork Internal Audit carried out a company search to ascertain the composition of directors, and to confirm that Annual Returns had been filed correctly with the Company Registration Office (CRO). The latest Annual Return was filed with the CRO on 29th April 2009 and related to the year to 30th September 2008. Attached to this Annual Return were the financial statements for the year ended 31st December 2007. Given that the CRO require an Annual Return to be filed not later than 28 days after the Annual Return Date (in this case 30th September) the Annual Return for 2008 was approximately 183 days late.
- 5.1.3 An Annual Return should also have been filed with the CRO in October 2009 together with financial statements for the year ended 31st December 2008. At an initial meeting with the Foundation's Administrator on the 13th May 2010 Internal Audit were provided with a set of financial statements for the year ended 31st December 2008 which were dated 19th April 2010. These financial statements had *not* been filed with the CRO along with the Annual Return for 2009, on the completion of audit fieldwork in June 2010.

5.1.4 Internal Audit recommends that all statutory requirements set out by the Companies Registration Office be complied with by the Foundation. This would include the filing of an Annual Return with up to date financial statements within 28 days of the Annual Return Date. (Medium Risk-Local)

Management Response:-

The Foundation's external auditors have now completed their audit of the 2008 accounts which have been signed off by the board as required under the Companies Acts. The accounts have been submitted to the Companies Registration Office as required without any conditions and this matter of full compliance with its statutory responsibilities needs to be reflected in your report. The establishment of a newly structured board which fully meets best governance principles empowers the Foundation to ensure that in future all its statutory responsibilities

including the filing of accounts will be done in accordance with the Companies Acts. (CEO Cork University Hospital)

Internal Audit Comment:-

Audit can confirm that the 2008 Financial Statements and the 2009 Annual Return were filed with the Companies Registration Office on the 5th November 2010.

- 5.1.5 The company search carried out also revealed that the directors of the company have been exclusively senior employees of the HSE from 2006 up to the date of fieldwork (June 2010). A change of directors occurred in February and April 2008 when two HSE employees resigned from the Board, one of them being the previous Company Secretary and Administrator. An additional director was appointed in June 2009 when a hospital consultant joined the Board, and in June 2010 eight additional external directors were appointed.
- 5.1.6 As the directors of the Foundation have been exclusively senior HSE employees from the establishment of the Foundation in 2006 until June 2010, there may be an issue regarding effective control of the Foundation by the HSE. If the directors of the Foundation in their role as HSE employees exercised control or jurisdiction over the governance of the Foundation then this could constitute a “controlling influence” as defined by the Companies Acts 1963 – 2009, thus deeming the Foundation a subsidiary undertaking of the HSE. HSE staff members who hold positions of appointed officers, directors or Board members of any charitable body connected with the HSE are required to make an annual written disclosure to the Assistant National Director of Finance, Annual Financial Statements (AFS) and Governance, in accordance with National Financial Regulations (NFR-17). Internal Audit could find no evidence to suggest this undertaking had been made by the HSE directors of the Foundation.

5.1.7 Internal Audit recommends that the current HSE employed directors of the Foundation make a written disclosure to the Assistant National Director of Finance, AFS and Governance in respect of their directorships of CUH Foundation, if not already done so, in accordance with NFR-17. This will enable an assessment to be carried out of the degree of controlling influence the HSE may have over the Foundation. (Medium Risk-National)

Management Response:-

I can confirm that members of the board of the Foundation have each completed the necessary documentation in relation to directorships and in accordance with good governance practice, the structure of the board has changed such that a majority of the members are now external to the HSE and I attach a list of board members for your information. (CEO Cork University Hospital)

Internal Audit Comment:-

Notification of an additional eight directors was received by the Company's Registration Office in October and November 2010 with effect from the 17th June 2010.

5.1.8 A review of the final 2008 Audited Accounts produced by the External Auditors Moore Stephens Nathans in October 2010 highlighted the following:-

- Eight new directors (most of which were external to the HSE) were appointed in June 2010;
- The External Auditor's Report stated that:-
 - a) Proper books of account had been kept by the company; and
 - b) A qualified audit opinion was given arising from a limitation in audit scope over the completeness of donated income. This is common with many other charities of a similar size and organisation and effectively reduces the scope of audit work to donations recorded in the accounting records of the company.
- The Accounts showed a loss of €104,130 for the year and retained members' funds of €126,133 as at 31st December 2008;
- Note 12 to the Accounts states that "there are outstanding monies in respect of ring fenced donations received. It is the intention of the Foundation to

honour all outstanding amounts as they fall due.” From fieldwork undertaken by Internal Audit it is estimated that this amount is in the order of €162k. A breakdown of the main restricted funds is given below:-

	€k
Maternity Courtyard Garden	66
Paediatrics	188
Others	<u>34</u>
	<u>288</u>

When the available retained members’ funds of €126k are deducted from the above restricted funds a shortfall of €162k arises.

5.2 Expenditure from the Foundation

5.2.1 At the initial meeting with the new Administrator for the Foundation Internal Audit were provided with the records which had been made available to the External Auditors for the purposes of the annual statutory audit. These records included the following:-

- Minutes of meetings;
- Some correspondence which supported a debt owed to the Foundation for €100k by the HSE in the form of an innovation grant;
- Cheque stubs and lodgement books;
- Bank statements; and
- Cash book details and bank reconciliations.

5.2.2 A review of the cash book revealed the Foundation’s bank account was approximately €6,400 overdrawn at the end of December 2008. Examination of payments from the account revealed a total of approximately €445k of expenditure had been incurred in 2008. Approximately €193k was lodged as income during the year. The main items of expenditure included in the €445k are summarised as follows:-

	€k
• Management Consultancy Services	365
• Courtyard garden for Cork University Maternity Hospital	56

5.2.3 Management explained that the €365k paid for management consultancy was in relation to the procurement of the services of an Epidemiologist to

undertake two research projects. There was no supporting documentation made available to Internal Audit in relation to this expenditure (e.g fee notes or invoices). The projects were described as:-

- Strategy Towards Optimisation Based on Data – The Emergency Department at Cork University Hospital; and
- Strategy Towards Optimisation Based on Data – Inpatient Services at Cork University Hospital

5.2.4 These research projects resulted in two separate reports issued in May and October 2009. The purpose of the research was to collect, analyse and present data contained in various I.T systems present within CUH (for example the Patient Administration System and the Hospital In-Patient Enquiry System). The aim of the projects was to analysis this data and make recommendations on how resources could be used more efficiently at the hospital. Examination of the records made available to the External Auditors revealed minutes of a Foundation meeting held on the 9th October 2006 where approval was given to procure the services of the Epidemiologist and “pay costs in the order of €265k over a defined time period” for this work.

5.2.5 The payments made in connection with Cork University Maternity Hospital (CUMH) were for the design and creation of a courtyard garden at the maternity hospital. Internal Audit were able to locate invoices and supporting documentation for this expenditure which had not initially been available to the External Auditors. An amount of approximately €32k was paid from the Foundation to a garden design company in relation to detailed plans for the garden.

5.2.6 Neither of the above projects were procured in accordance with the HSE procurement policy. In respect of the CUMH garden Internal Audit obtained correspondence which suggested that an individual made a significant donation in 2007 specifically for a garden at the hospital, and that the involvement of a specific garden design company was discussed and agreed with the donor at the time. In relation to the payments for management consultancy Internal Audit reviewed correspondence from the current Company Secretary of the Foundation in February 2008 which seemed to indicate his view that the Foundation was “mandated to contract with whomsoever it wishedand the procurement rules of the HSE did not

apply.” Internal Audit could find no evidence to suggest that written quotations were sought or tenders invited from interested parties for this work.

5.2.7 Internal Audit recommends that the Foundation should adopt the HSE Procurement Policy for future planned expenditure. This will help demonstrate a commitment to obtaining value for money from charitable fund expenditure to both existing and potential donors. (Medium Risk-local)

Management Response:-

The board accepts the recommendation contained in your report that it should adopt the HSE policy on procurement in order to improve competitiveness and obtain value for money. It notes the provisions of this policy and will be implementing these with immediate effect. (CEO Cork University Hospital)

5.2.8 Internal Audit understands that detailed plans were provided by the garden design company upon receipt of the final invoice payment (made by the HSE in July 2009). Expenditure incurred to date on the project consists of €39,726 in garden design fees (€8,142 of which was paid by the HSE) €24,106 for garden fixtures, and expenses of €522. This would leave a balance of approximately €66k from the original donation of €130k to complete the garden in accordance with the design plans.

5.3 Income Received by the Foundation

5.3.1 As outlined above the External Auditors were initially unable to locate supporting documentation associated with approximately €190k worth of turnover for the year. As part of this review Internal Audit were able to locate supporting documentation for approximately €144k of income, which was made available to the External Auditors. Some of the documentation reviewed indicated that specific conditions were attached to the donations. Where this is the case the Foundation is obliged to honour these conditions and is therefore restricted as to how it spends these funds.

5.3.2 Internal Audit examined supporting documentation for all material donations made to the Foundation since its inception. Donations made with specific conditions attached were extracted. A similar review of all payments was also

carried out and these were matched to specific donations where applicable. The resulting reconciliation showed that the Foundation has specific purpose commitments totalling approximately €288k to donors. When this is matched to available reserves of €126k outlined in note 10 to the Financial Statements, there is a shortfall of approximately €162k. As outlined above the bank balance on the Foundation's bank account was approximately €6.4k overdrawn at the end of December 2008. The bank statement for November 2009 shows this overdrawn balance had increased to €6.6k.

5.3.3 Internal Audit recommends that the shortfall of available funds required to meet specific charitable expenditure commitments be addressed urgently by the Foundation. (High risk-Local)

Management Response:-

The board of the Foundation is absolutely steadfast in its resolve to meeting any commitments that arise and has already done so in respect of a high profile project to develop a garden in the Cork University Maternity Hospital complex. In regard to this specific project, work is due to be completed in the coming weeks and will be paid for by the Foundation reflecting in full the funding given to it by the benefactor. In respect of the decision made by the Foundation to engage in consultancy in 2008 it is important to note that this was done in the expectation of future revenue streams that did not materialise at the required rate and this is an important learning point for the board. (CEO Cork University Hospital)

5.4 Governance and Internal Control

5.4.1 Audit fieldwork carried out at the Foundation has highlighted fundamental weaknesses in internal controls and procedures. In order to address these weaknesses management should consider adopting a charitable fund policy based on best international practice. Such a policy would incorporate the following principles:-

- A statement on what is considered to be a charitable donation, in what circumstances it is acceptable to receive a donation and guidance on fundraising;

- Guidance on how to spend charitable funds so that expenditure is in accordance with the terms of legacies, wishes of donors and fund raisers;
- Procedures for authorising expenditure and supporting the procurement decision (i.e market testing);
- The requirement for adequate supporting documentation (usually invoices – except in exceptional circumstances) for all payments from charitable funds;
- Adequate accounting records are maintained including regular bank reconciliations and memorandum accounts for specific purpose funds;
- Procedures for the safe investment of surplus charitable funds;
- Controls and procedures for the receipt of donations designed to give assurance over their completeness and accuracy (e.g the issue of receipts and acknowledgement letters); and
- The appointment of individual charitable fund managers for material specific purpose funds (such as Paediatrics) and the regular dissemination of management information to these managers.

5.4.2 Internal Audit recommends that the Foundation draw up a charitable fund policy which incorporates guidance on the principles outlined above. (High risk-Local)

Management Response:-

The board accepts the benefits of adopting a charitable fund policy that reflects the provisions of the HSE policy on the accounting treatment of funds that are either solicited by the Foundation or that are donated in an unsolicited manner by benefactors. In this regard a draft charitable fund policy has been developed and will be approved by the board at its next meeting. It is important to note that both the external audit and your audit confirm that no funds were misappropriated and this is a particularly important conclusion given the nature of media speculation and comment in recent weeks. The Foundation has full exempt status and is registered with the Revenue Commissioners as a CHY1 and CHY2 charity. (CEO Cork University Hospital)

- 5.4.3 The overall governance of the Foundation might also be improved by encouraging greater openness and transparency. This could be achieved by holding information sessions for stakeholders and potential donors, which could incorporate information on funds under management and significant

spending plans. This may serve to build confidence in the Foundation and so increase future potential income.

6. Conclusion

- 6.1 The audit has identified a shortfall in funds available to meet specific charitable fund commitments which is in the order of €162k. These commitments relate to conditions which were attached by donors to donations made to the Foundation. This shortfall needs to be addressed urgently to ensure the conditions attached to donations already received can be complied with. It is noted in the Audited Accounts that the Foundation intends to honour all outstanding amounts as they fall due. Significant expenditure has been incurred by the Foundation without evidence that the market has been sufficiently tested. Management need to consider adopting a procurement policy to help demonstrate a commitment to value for money from charitable fund expenditure. The adoption of a charitable fund policy will improve the overall governance of the Foundation and lay the groundwork for an improved internal control framework.