

**Trust Board as Corporate Trustee of the Kingston Hospital Charity**

**Approving the new objects for Kingston Can**

<b>Trust Board</b>	<b>Item: 24</b>
<b>11<sup>th</sup> July 2018</b>	<b>Enclosure: T</b>
<b>Purpose of the Report:</b> To approve the new objects for the Kingston Hospital Unit Cancer Appeal (known as 'Kingston Can').	
<b>For: Information</b> <input type="checkbox"/> <b>Assurance</b> <input type="checkbox"/> <b>Discussion and input</b> <input type="checkbox"/> <b>Decision/approval</b> <input checked="" type="checkbox"/>	
<b>Sponsor (Executive Lead):</b>	Rachel Benton Director of Strategic Development
<b>Author:</b>	Rob Aldous Interim Head – Kingston Hospital Charity
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<b>Risk Implications – Link to Assurance Framework or Corporate Risk Register:</b>	None
<b>Legal Regulatory / Reputation Implications:</b>	None
<b>Link to Relevant CQC Domain:</b> <b>Safe</b> <input type="checkbox"/> <b>Effective</b> <input type="checkbox"/> <b>Caring</b> <input type="checkbox"/> <b>Responsive</b> <input type="checkbox"/> <b>Well Led</b> <input checked="" type="checkbox"/>	
<b>Link to Relevant Corporate Objective:</b>	Strategic Objectives 1: To ensure that all care is rated amongst the top 20% nationally for patient safety, clinical outcomes and patient experience
<b>Document Previously Considered By:</b>	None
<b>Recommendations &amp; Actions required by the Trust Board:</b>  The Board as Corporate Trustee is asked to <b>approve</b> the new objects for Kingston Can.	

## **Background**

Kingston Hospital Cancer Unit Appeal (known as 'Kingston Can') is a linked charity to the Kingston Hospital NHS Trust General Charitable Fund. It was established in 2000 in order to raise the funds needed to build and equip the Sir William Rous Unit which opened in 2008. Its objects at the time it was established which have remained unchanged are "*The relief of sickness by the provision of a new cancer unit at Kingston Hospital NHS Trust and the upkeep and maintenance of this unit.*" Under clause H (1)(b) of the declaration of trust, no amendment may be made to its objects without the prior written consent of the Charity Commission.

Other than the £1m committed to support the development of a new haematology day unit, in the last five years, payments in fulfilment of the current objects have been low in comparison to funds received to Kingston Can. This is primarily because of the restrictiveness of the current objects. After taking account of the £1m committed to the development of the new haematology day unit, the balance of the fund as at 31 March 2017 totalled £760k and since then a further charitable bequest has been received which is expected to amount to approximately £1m.

## **Review of Kingston Can's current objects**

Given the low expenditure over the last few years and pressing needs in other parts of the trust, the Charitable Funds Committee determined that for the funds held by Kingston Can to be effectively applied, it was necessary to widen its objects. In reaching this decision, the Trustees took account of the following considerations:

- The primary role of NHS charities is to add value and enhance services for the benefit of patients, rather than to maintain hospital buildings, which is covered by NHS funding.
- Donors who have contributed would not wish to see their donations lying dormant and would rather they were put to effective use.
- Kingston Hospital currently provides cancer services in other parts of the hospital.
- Kingston Hospital is located in an area with one of the highest life expectancies in the country. Older people are more likely to suffer from more than one condition linked to old age, such as dementia, at the same time as suffering from cancer, but these related conditions cannot currently be funded by Kingston Can.
- Under the dissolution clause for Kingston Can, if the objects are no longer suitable and effective, the funds can be transferred into the general funds of the main charity, the Kingston Hospital NHS Foundation General Charitable Fund. While this was clearly contemplated at the time it was created, the possibility of substantial future bequests means Kingston Can should be retained.

## **Proposed new objects**

At the end of 2017, an application was submitted to the Charity Commission with proposed new objects for Kingston Can (see below) that widened the class of beneficiaries to anyone with a chronic or critical illness (including but not limited to cancer) and the sick elderly as well as the means by which relief can be provided. The proposed new objects were approved by the Charity Commission on 19 April 2018.

The proposed new objects = *to relieve sickness and advance the health of patients of Kingston Hospital NHS Foundation Trust who are (a) suffering from a chronic or critical illness (with a particular emphasis on those suffering from cancer) or (b) suffering from a disability or illness attributable to old age; including, but not limited to, by the provision of facilities, equipment and services and the provision of support and information to their families and carers.*

The amendments to the current objects do not exclude any of the current beneficiaries and will enable Kingston Can to provide more support to the current beneficiary class, as well as to support a wider but related beneficiary class. Equally important, widening Kingston Can's objects is a proportionate response to the changing needs of its beneficiaries, while enabling it to deliver a greater charitable impact with the available funds.

### **Next steps**

The Charitable Funds Committee at its 14 June meeting agreed that the resolution and Deed of Variation should be prepared for approval by the Board at its 11 July meeting. The Board is therefore required to:

- Pass the resolution on page 4 to approve entering into the Deed of Variation (to amend the charitable objects in the declaration of trust)
- Authorise two Non-Executive Directors to witness the affixation of the seal on the attached deed of variation – see Appendix 1.

Once completed, the change of objects will be formally filed by Bates Wells Braithwaite with the Charity Commission.

## RESOLUTION

“It is noted that:

- The Kingston Hospital NHS Foundation Trust is corporate trustee of Kingston Hospital Cancer Unit Appeal (“**Kingston Can**”).
- It is proposed to amend the charitable objects of Kingston Can.
- The corporate trustee has power to amend the objects in accordance with clause H of Kingston Can’s trust deed dated 29 June 2000.
- The Board is satisfied that the objects can no longer provide a suitable and effective use of the trust fund and has received prior consent in writing from the Charity Commission to the change of objects, as required by clause H(1).
- It was noted that approval of the proposed new objects was received from the Charity Commission in writing by an email dated 19 April 2018.

It is hereby resolved by the Board on behalf of Kingston Hospital NHS Foundation Trust as trustee of Kingston Can that:

1. The charitable objects of Kingston Can shall be amended by entering into a Deed of Variation by which the current objects are replaced with the following new objects:

*“The trustees shall hold the trust fund upon trust to apply the income, and at their discretion so far as may be permissible, the capital, to relieve sickness and advance the health of patients of Kingston Hospital NHS Foundation Trust who are (a) suffering from a chronic or critical illness (with a particular emphasis on those suffering from cancer) or (b) suffering from a disability or illness attributable to old age; including, but not limited to, by the provision of facilities, equipment and services and the provision of support and information to their families and carers.”*

2. The Deed of Variation shall be entered into by the corporate trustee by affixing the corporate seal of Kingston Hospital NHS Foundation Trust and, for this purpose, any two members of the Board are hereby authorised to attest the affixing of the seal but provided that both such Board members are Non-Executive Directors, who are not affiliated with any department of Kingston Hospital NHS Foundation Trust; and
3. Legal representatives, Bates Wells Braithwaite shall be authorised to file the Deed of Variation and any other documentation necessary to effect these amendments with the Charity Commission.”

# Appendix 1

DATED

**DEED OF VARIATION**

**RELATING TO**

**KINGSTON HOSPITAL CANCER UNIT APPEAL**

**(CHARITY NUMBER 1056510-3)**

**Made by**

**KINGSTON HOSPITAL NHS FOUNDATION TRUST**

**(as the Corporate Trustee of Kingston Hospital Cancer Unit Appeal)**



**Bates Wells Braithwaite**

10 Queen Street Place, London EC4R 1BE

[www.bwblp.com](http://www.bwblp.com)

**THIS DEED OF VARIATION is made on the                      day of                      2018**

By Kingston Hospital NHS Foundation Trust, Galsworthy Road, Kingston upon Thames, Surrey, KT2 7QB in its capacity as trustee of the Kingston Hospital Cancer Unit Appeal (registered charity number 1056510-3) ("**the Trustee**")

**WHEREAS**

- (A) This deed is supplemental to a declaration of trust dated 29 June 2000 ("**the Trust Deed**") made by "the Trustee of the Kingston Hospital NHS Trust General Charitable Fund", which establishes a charitable trust now known as Kingston Hospital Cancer Unit Appeal, registered charity number 1056510-3 ("**the Charity**") and a Resolution dated October 4 2000 by which the name of the Charity was amended from its original name of the Sir William Rous Cancer Appeal Fund to its current name.
- (B) The Charity is a linked charity to Kingston Hospital NHS Foundation Trust General Charitable Fund ("**the General Fund**") (registered charity number 1056510), of which the Trustee is the present and sole trustee. As the Trust Deed provides at clause B that the trustee of the Charity is the trustee of the General Fund, the Trustee is therefore the present and sole trustee of the Charity.
- (C) The current objects of the Charity, as set out in clause C of the Trust Deed, are: *for the relief of sickness by the provision of a new cancer unit at Kingston Hospital NHS Trust and the upkeep and maintenance of this unit* (the "**Current Objects**").
- (D) By clause H(1) of the Trust Deed, the Trustee may amend the provisions of the Trust Deed but provided that the Trustee may only amend the charitable objects of the Charity if, in accordance with clause H(1)(a), it appears to the Trustee that the objects can no longer provide a suitable and effective use of the trust fund and, in accordance with clause H(1)(b), the Trustee has received prior consent in writing from the Charity Commission.
- (E) The Trustee, being satisfied that the Current Objects are no longer suitable and effective, sought the consent of the Charity Commission to its proposed amendment of the Current Objects by a letter of 18<sup>th</sup> December 2017 which set out the proposed new objects. Such consent was received, in writing, by an email from the Charity Commission dated 19 April 2018.
- (F) In accordance with clause H(2) of the Trust Deed, amendments to the Trust Deed must be made by the Trustee by deed. By clause 42 of the Trustee's constitution, it enters into a deed by the affixation of its common seal under authority of its Board of Directors.
- (G) The Trustee's Board of Directors, at a quorate meeting held on 11 July 2018, resolved, on behalf of the Trustee as trustee of the Charity, that the Current Objects of the Trust Deed be amended to the new objects as set out in this Deed of Variation and further resolved that any two members of the Board of Directors (provided that both Board members are Non-Executive Directors, who are not affiliated with any department of Kingston Hospital NHS Foundation Trust) be authorised to execute this Deed by attesting the affixation of the common seal, on behalf of the Trustee.

NOW THIS DEED WITNESSES as follows:

**1. Definitions and interpretation**

1.1 In this Deed unless the context requires otherwise:

1.1.1 'this Deed' means this deed of variation; and

1.1.2 'the Trust Deed' has the meaning given to it in Recital A.

**2. Amendment of the Trust Deed**

2.1 The objects of the Charity, as set out in Clause C of the Trust Deed, shall be amended by deleting the current Clause C and replacing it with the following:

“The trustees shall hold the trust fund upon trust to apply the income, and at their discretion so far as may be permissible, the capital, to relieve sickness and advance the health of patients of Kingston Hospital NHS Foundation Trust who are (a) suffering from a chronic or critical illness (with a particular emphasis on those suffering from cancer) or (b) suffering from a disability or illness attributable to old age; including, but not limited to, by the provision of facilities, equipment and services and the provision of support and information to their families and carers.”

**3. Modification of the terms of the Trust Deed**

3.1 The Trust Deed shall from the date of this Deed be read and construed as if they contained the modifications effected by this Deed, but will in all other respects continue in full force and effect on its terms immediately prior to the execution of this Deed.

The common seal of **KINGSTON HOSPITAL** )  
**NHS FOUNDATION TRUST** was affixed in )  
the presence of: )

Witness' name .....

Witness' signature .....

Witness' occupation .....

Witness' address .....

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Witness' name .....

Witness' signature .....

Witness occupation .....

Witness' address .....

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