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Public Audit and Post-Legislative Scrutiny  
Committee

22 May 2018

Dear Ms Marra

### **THE 2016/17 AUDIT OF NHS TAYSIDE**

Further to my letter of 21 May, I now enclose the Grant Thornton report on financial governance in NHS Tayside, including endowment funds.

I am copying this letter, for information, to the Convener of the Health and Sport Committee, the Auditor General and the Chief Executive, Office of the Scottish Charity Regulator.

Yours sincerely



**Paul Gray**

**An independent review by Grant Thornton UK LLP on agreed areas of  
NHS Tayside financial governance arrangements between the  
financial years 2012/13 – 2017/18**

**Final Report 21 May 2018**

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# Introduction

## Introduction

Following on from the two reviews undertaken in March 2018:

1. The Grant Thornton UK LLP independent review of the allocation of Scottish Government e-Health monies to NHS Tayside; and
2. the NHS Tayside's management review of e-Health funding transferred to NHS Tayside

The Scottish Government Health and Social Care Directorate ("SGHSCD") asked Grant Thornton UK LLP to undertake a follow up review of certain NHS Tayside arrangements, specifically as they relate to:

- Review of the controls that will be implemented by NHS Tayside in response to the review into the allocation of e-Health monies.
- Undertake a review of Board reserves and Deferred Expenditure following on from NHS Tayside's internal review of controls and reporting
- Form an independent view on the level of transparency and the effectiveness of financial governance at NHS Tayside between the financial years 2012/13 and 2017/18 with specific reference to:
  - I. The scale and use of deferred expenditure by NHS Tayside between 2012 -2018 to manage its financial position;
  - II. The extent to which the NHS Tayside Board, Finance and Resources Committee and Audit Committee were engaged in decisions regarding the year-end financial position and use of endowment fund retrospectively in 2013/14; and
  - III. The review will also take into consideration the findings and recommendations noted in relevant internal and external audit reports

We note that the Office of the Scottish Charity Regulator (OSCR) are currently undertaking an independent review in respect of the use of endowments in 2013/14 and the role of the Endowment Trustees and Endowment Fund External Auditors. Our review will not duplicate this work although they will be aligned.

## Scope

In accordance with our engagement letter dated 15 April 2018, the scope of our work was set out in a scoping document which is referenced in Appendix 1 of this report for information.

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## **Limitations of scope**

This report sets out our findings based on the work performed up to 18 May 2018. Should further information become available subsequent to the date of this report, we reserve the right to reconsider our conclusions in light of such additional information.

Our conclusions are based on documentation provided to us by NHS Tayside, interviews with members of the current NHS Tayside Finance team and the NHS Tayside Head of Internal Audit.

Recognising the period of time involved certain members of the senior leadership team and the finance team are no longer employees of NHS Tayside and therefore we could not undertake interviews with those staff and are reliant on emails, committee papers and supporting documentation to support our conclusions.

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# Overall commentary

Within our review we have identified examples where we have evidenced poor financial management and governance practices. Alongside potential indicators, in particular in 2013/14, where the culture at NHS Tayside was not fully aligned with the behaviours, expectations and guidance appropriate to those of a public sector organisation.

The use of endowments to bridge the NHS Tayside Board financial position in 2013/14 is clearly acknowledged in both the NHS Tayside financial statements and the Financial Statements of the Endowment Fund. In both instances it is acknowledged that the decision was made to support NHS Tayside in achieving its financial target of break-even. However, the decision making process related to the retrospective £3.6 million use of endowment funds was not subject to fully open and transparent governance processes.

We considered various documents to understand the timeline for the endowments decision in 2013/14. We also sought to link this decision with NHS Tayside's governance and financial reporting arrangements. Based on our review it would appear that the NHS Tayside Board historically did not have full visibility of the NHS Tayside financial position, and in particular in 2013/14 when the optimism of achieving in-year financial balance declined.

Our review identifies a number of weaknesses in NHS Tayside's financial management arrangements alongside a lack of open and transparent governance which may have evolved based on NHS Tayside's organisational culture and historic working practices.

## Leadership and culture (people)

Within the public sector and NHS Boards there is a framework of guidance which applies to management and also specific requirements that apply to Non-Executives. In Appendix 2 we have outlined certain relevant extracts from this guidance.

The guidelines are clear on the expected organisational and individual behaviours and build on core principles of honesty, openness and accountability. We have considered these principles when reviewing the arrangements and have included comment in the relevant report sections where relevant.

## Controls framework (system and processes)

NHS Boards have a series of internal controls and processes, set out in policies, financial and operating systems and working practices, which apply in practice and are designed to ensure an effective financial governance and decision making framework is established.

An effective control framework is based on a culture of openness and transparency, with leadership setting the tone for the organisation. This includes ensuring that organisation values and behaviours are demonstrated throughout the organisation and applied consistently.

A good controls framework, linked to the management of risks, considers the controls and therefore assurances over a layered framework of control:

- Line 1: Management control for example policies and procedures being applied; management decision making and escalation and line management
- Line 2: Scrutiny and Assurance of the decisions made
- Line 3: Independent assurance

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This control framework is designed to ensure decisions (aligned to risk and the failure to achieve the NHS Board's strategic objectives, including protecting against reputational damage) are considered at appropriate levels within the NHS Board and decisions are subject to scrutiny at various check points by Management, Non-Executives and independent assurance providers for example internal audit and external auditor (as appropriate to their respective role).

In the case of the decision to retrospectively apply endowment money of £3.6 million we have evidenced examples within NHS Tayside where the anticipated financial controls, particularly across management; scrutiny; and assurance were either not in place or did not operate as effectively as intended.

Below are our overall comments which are then supported within our detailed findings in the sections of the report:

- A sense that the retrospective application of endowments was the only option available, supported by the portrayal that the consequences of NHS Tayside failing to meet the financial targets would have a significant impact on the NHS Board. Although, the Board received brokerage in 2012/13 and also in 2013/14 so there is an assumption that the Board should have been aware of requesting additional brokerage was available to them
- A potential sense of urgency to find an identified solution, for example the quick turnaround time requested of the Central Legal Office advice, and the initial paper going to NHS Tayside Committee Chairs and then Trustees with the projects and expenditure determined in less than one month. This was triggered in early January when despite confidences by the Director of Finance to the Finance and Resources Committee that financial break-even would be achieved it appeared to become clear that this was not going to happen;
- A lack of clarity over NHS Tayside's overall financial position during the year due to reports which were either hard to follow in our view or only verbal updates being given according to the minutes. Based on our review of financial reports over the period this was historic, although improvements started to be made from 2015/16 onwards. In 2013/14 the financial information being reported up to the Board was typically three months out of date based on our review, although more updated finance information was available as this was submitted to the Scottish Government. In addition the practice of verbal updates to the Finance and Resources Committee would not have allowed Non-Executive Members to effectively scrutinise the position in our view and could lead to inconsistencies and misunderstanding of the actual position at a point in time.

## **Findings and recommendations**

In each section of this report we have summarised the:

- Scope of our work
- Our key observations and findings
- Where relevant recommendations for further consideration

Our work has been based on the evidence available and we draw conclusions on this basis.

# Use of endowment money to achieve the 2013/14 break-even financial position of NHS Tayside

**Scope of our work:** Our work considered the openness and transparency of the decision taken by the NHS Board in respect of using endowment money to meet NHS Board expenditure and support NHS Tayside in achieving its 2013/14 financial position. We considered the evidence available, including the timeline, to support the decisions made and what information was made available to the NHS Tayside Non-Executives to inform the decision. Internal Audit in 2013/14 produced an internal audit report on endowment arrangements and we considered this report and how internal audits work was reported.

As part of our work we reviewed the Endowment Fund Board of Trustee minutes, as they informed our understanding of the timeline and the decision making taken by the NHS Board.

We have not considered, as agreed in the scope, the nature of the £3.6million respectively endowment fund transaction and whether the funds spent met the charitable purposes of the Endowment Fund as this is one of the areas being considered by OSCR as part of their inquiry.

In January and February 2014 a decision was taken by the NHS Endowment Fund Trustees, on advice of the NHS Tayside Board to retrospectively use endowment monies to support NHS Tayside achieve its year-end financial position. The breakdown of the £3.6 million has been agreed as follows:

Title	Objective	Bid amount* £000s	Approved amount** £000s	Final charge £000s
MH Improvement programme	Patient benefit	180	180	180
Theatre Training and Education	Patient and staff benefit	94	94	94
Minor work	Patient and environment benefit	11	11	11
Children with complex disability	Patient benefit	22	22	22
Maternity services	Patient environment and staff benefit	812	776	773
Ward 2 PRI Urgent Care	Patient benefit	46	46	46
EHealth – 32 projects	Patient benefit and pioneering services	2,382	2,312	2,382
Paediatrics	Patient and environment benefit	130	130	130
<b>Total</b>		<b>3,677</b>	<b>3,641</b>	<b>3,638</b>

\*The balances were agreed to the projects approved by the Endowment Fund Board of Trustees in February 2014



We have set out below the key timeline of events in relation to the use of endowment funding. The key decision was taken in January 2014 and the Endowment Trustees approved a selection of projects in February 2014 where expenditure had been incurred by NHS Tayside of £3.6 million, and this expenditure was then met retrospectively from endowment money.

Date	Key events	Comments and observations
21 November 2013	<p><b>Finance and Resources Committee</b></p> <p>The Committee received an update on the financial position as at 30 September 2013.</p> <p>The report presented by the Director of Finance, highlighted an operational overspend of £2.7 million which was approximately £800,000 greater than trajectory in the Strategic Financial Plan for 2013/14. However, the Director of Finance set out that through forecast reductions in spend in the remaining five months of the year, and through targeted “slow-down” of spend by £1 million, the Board were still forecasting and reporting a year-end breakeven position.</p>	<p>This was the first report that went to Committee to indicate the financial position was no longer on track but at this stage the Director of Finance was clear that NHS Tayside were still projecting a break-even position and there was no indication in the paper or minute of an underlying financial problem.</p>
5 December 2013	<p><b>Tayside NHS Board meeting</b></p> <p>The minute of the meeting of the Finance and Resources Committee from 17 October was presented to the Board. This covered the financial position to 31 August 2013. The Board noted from the minutes the following key points:</p> <p><i>“noted performance to 31 August 2013 and the slow identification of savings in 2013/14 which was c50% of the overspend to date.”</i></p> <p>However, there was no evidence of significant risks or concern noted around ability to breakeven.</p>	<p>The financial information reported to the Board related to the minute of the meeting of the Finance and Resources Committee in October reporting the financial position as at 31 August 2013. This meant the information being presented to the Board was over 3 months out of date.</p> <p>NHS Board’s report financial position to the SGHSCD one month in arrears so on this basis more up to date information, as reported to SGHSCD would have been available.</p>
16 January 2014	<p><b>Finance and Resources Committee</b></p> <p>At the meeting on 16 January 2014, the Committee received a verbal update on the financial position as at 31 December 2013.</p> <p>It was reported that financial position was £2.6 million overspent as at 31 December 2013 which was now £1 million greater than trajectory and it was noted that <i>“progress with achievement of efficiency savings targets has continued but the planned improvements in the overall position has not materialised due to sustained pressures around both Family Health Services spend and secondary care prescribing costs”</i>.</p> <p>The Committee was informed of the forthcoming meeting with SGHSCD on 21 January 2014 <i>“around measures to be taken in terms of local initiatives and further access support to ensure a successful delivery of financial targets in 2013/14”</i>.</p>	<p>In this instance it was only a verbal update received by the Committee members where we would have expected a formal finance paper to have been presented. From reading the minute, while the Director of Finance highlights financial challenges facing the Board, there is no indication that break-even wouldn’t be achieved without certain measures, and there was no discussion on potential brokerage or endowment monies. Pressures were discussed, but did not appear to have monetary values attached. However, confidence still appeared to be in place over the year-end position.</p>

<p>20 January 2014</p>	<p><b>Draft Finance Paper for Board Development Event 23<sup>rd</sup> January</b></p> <p>We have obtained a draft paper “Revenue Forecast” that is dated 20<sup>th</sup> January 2014 that was due to be presented at the Board Development Event on 23 January. From review of the Development Event agenda we cannot see the paper and there are no recorded minutes of this meeting.</p> <p>The paper outlines the financial position at 31 December 2013, as reported to the Finance and Resources Committee on 16<sup>th</sup> January and “<i>incorporates further factors that will impact on performance during the financial quarter</i>”. The paper identifies a forecast out-turn position without intervention of £6.559 million. This incorporates £2.634 million of overspend as at 31 December 2013 with further “additional pressures” identified in quarter four totalling £3.925 million.</p> <p>The paper notes that “officers are examining various sources of funding to help address the situation”. It notes that SGHSCD has indicated only minimal central support is available and that the Chief Executive and DOF are meeting with SGHSCD “<i>to demonstrate a number of local measures to mitigate the forecast exposure</i>”. The paper also goes on to note that following a review of exchequer expenditure a number of projects had been identified that are believed to “meet the Endowment Fund criteria” and that the proposal was, subject to the Trustees retrospective approval, to fund these through the use of Endowment Funds.</p> <p>The paper was drafted in the name of the Chief Executive, Medical Director, Nurse Director, the Director of Finance and the Assistant Director of Finance, who were in post at that time.</p>	<p>As there was no minute from the Board Development Event we cannot determine whether the paper was presented. It does not appear on the Agenda.</p> <p>However, the paper does highlight that four days after the Finance and Resources Committee meeting on 16<sup>th</sup> January management had significant concerns around the Board’s ability to achieve a break-even position for the year, which does not appear to coincide with the messages to the Finance and Resources Committee on 16<sup>th</sup> of January.</p>
<p>20 January 2014</p>	<p><b>Email exchange between Chair of NHS Tayside, the Director of Finance and Chief Executive of NHS Tayside, subject: Briefing on Financial Position</b></p> <p>The email exchange involves the then Director of Finance providing a summary of the financial position of the Board to the former Chair in advance of a meeting with SGHSCD. The email references “discussions” on Friday 17 January although we have been unable to locate any record of this. The exchange outlines that the “total forecast March 2014 (overspend) c£6.5m”.</p> <p>The then Director of Finance outlined that “<i>October 2013 overspend of c£2.6m was considered manageable as Board still had £1.1m reserves and based on prior years an overspend of the balance of £1.5m has historically managed over the final 5 months in the year.</i>”</p> <p>Since then the position has moved and the envisaged downward trend did not occur. As a result the position was</p> <p>“finance Outturn at December 2013 £2.634m  TTG forecast Costs Quarter 4 £2.525m  Primary Care / Secondary Care Drugs £1.1m  Delay on Asset sales £0.3m” (Total: £6.559 million)</p>	<p>The email exchange provides a summary of the movement in financial position compared to that previously communicated to the Board.</p> <p>However it does highlight the lack of transparency in the financial monitoring reports presented to the Finance and Resources Committee that, whilst identifying risks to the outturn position, consistently between November 2013 and February 2014, forecast a breakeven position for the year.</p>

<p>21 January 2014</p>	<p><b>NHS Tayside and SGHSCD meeting</b></p> <p>On 21 January 2014, there was a meeting between NHS Tayside Chief Executive and Director of Finance and the SGHSCD around local initiatives and further access support to ensure delivery of financial targets in 2013/14.</p> <p>The Proposed variation to Tayside NHS Board Endowment Fund Policy and Procedures Report (which went to the Endowment Fund Board) stated “minimal central support” was available to the Board. There is no record to support this comment within SGHSCD records.</p>	<p>NHS Tayside and SGHSCD do not have a minute or action note from this meeting.</p>
<p>23 January 2014</p>	<p><b>Board Development Event</b></p> <p>On the Board Development Event on 23<sup>rd</sup> January 2014, members of the Finance and Resources Committee and the Standing Committee Chairs were briefed by the Director of Finance on the financial position of the Board. We understand at this point in time the identified gap was £6million.</p> <p>This meeting was not minuted and from inspection of papers we cannot find detailed financial forecasts.</p>	<p>This meeting was out-with the formal Committee structure at NHS Tayside and was two days after the SGHSCD meeting, and less than 7 days from the Finance and Resources Committee meeting where no fundamental concerns or issues were raised with the Committee by the Director of Finance.</p>
<p>24 January 2014</p>	<p><b>Central Legal Office guidance sought</b></p> <p>The Finance Manager at NHS Tayside contacted the Central Legal Office (CLO) in relation to the legality around the application of approving funding retrospectively on expenditure that has been incurred.</p> <p>This request happened <b>one hour</b> before the meeting of the Endowment Fund Board of Trustees (who were being asked to approve the decision at that meeting) and there is evidence in this email that pressure was in effect put on the CLO for a quick turn-around and a response needed that day.</p> <p>The CLO responded which referenced applicable guidance that the funds should not be used for expenditure covered by core funding but that:</p> <p><i>“The Trustees have discretion, and that the guidelines are just that”. From a legal perspective as long as “the Trustees operate within the Trust purposes, their decisions may not be challenged”.</i></p> <p>The CLO also state that <i>“As a result of the Trustees’ discretion, regulators may not be able to do much, however there are still concerns. The decision is likely to attract adverse publicity. The decision may also be open to challenge. Ultimately, in extreme cases leading to an action in damages against the Board as Trustee for breach of trust”</i> (extracted from CLO email)</p>	<p>The correspondence with the CLO was requested the same day the Trustees were being requested to make a decision, and the correspondence received from the CLO was not shared with the NHS Board or the Trustees.</p> <p>We also note the CLO advice requested was from the perspective of the NHS Board.</p> <p>Lastly work had been undertaken by the Finance team to already consider NHS Tayside expenditure which could retrospectively be paid for from endowments, which could be seen to pre-empt the decisions made by the Trustees. The list of projects is broadly similar to the final list approved by the Trustees.</p>

<p>24 January 2014</p>	<p><b>Extraordinary Meeting of the Endowment Fund Board of Trustees</b></p> <p>On 24<sup>th</sup> January, at the extraordinary meeting of the Fund Board of Trustees, received a report prepared by the Assistant Director of Finance on the “Proposed Variation to Tayside NHS Board Endowment Fund Policy and Procedures”. This is the same draft paper we noted on 20<sup>th</sup> of January, with only the Assistant Director of Finance’s name on it.</p> <p>The purpose of the report was to advise Trustees of the current revenue forecast of the NHS Board and to seek approval for temporary variation to Tayside NHS Board Endowment Fund Policy and Procedures.</p> <p>At the meeting the Director of Finance informed the Trustees that during the briefing with the NHS Tayside standing Committee Chairs (23<sup>rd</sup> of January), it was agreed to look at temporarily suspending the retrospective element within the endowment fund’s policy and procedures “to allow certain application to come forward for consideration by the Endowment Advisory Group (EAD), and/or Board of Trustees”.</p> <p>The Director of Finance advised the Trustees that the Assistant Director of Finance and the Endowment Team had conducted work around OSCR, Central Legal Office (CLO) and National Guidelines and that there were “no conflicts”.</p> <p>One Trustee commented that “the news had been completely unexpected, especially given there had been a Board of Trustees and Finance and Resources Committee meetings just last week”</p> <p>There were concerns raised by Trustees surrounding the potential reputational and legislative risks of the proposals as evidenced in the minutes.</p> <p>Verbal assurances were provided by the Assistant Director of Finance that “the charitable purpose of the Endowment Fund is within the legal framework of the Health Service Act 1978, and the definition is as broad as ‘for advancement of health’, which means the Endowment Fund can fund anything it can as long as it is for health advancement”.</p> <p>The Director of Finance provided verbal assurances that anything being put forward “would be appropriate and relevant for endowment funding”.</p> <p>The Chairman advised that “the reality was if the clause was not suspended (to allow retrospective approval), the Chief Executive and Director of Finance would have to put together massive cuts package, and the content of that would be damaging”</p> <p>The Trustees agreed the temporary variation in the Endowment fund’s Policy and Procedures to allow retrospective applications to be considered.</p>	<p>We do not consider that the legal advice received from the CLO was fully disclosed to the Trustees.</p> <p>In addition, we understand that there was no correspondence with the Scottish Government or OSCR, and we did not locate any evidence of correspondence during our review.</p> <p>The meeting referred to on the 23<sup>rd</sup> with the Standing Committee Chairs sets out the decision was taken at this meeting. This is not a formal committee of the NHS Board and therefore would highlight that they don’t have this decision making power.</p> <p>Overall, there should have been greater communication and dialogue with Trustees around the nature of guidance received, and the guidance should have been a complete picture to allow them to make an informed decision.</p>
<p>4 February 2014</p>	<p><b>Tayside NHS Board Endowment Trust Advisory Group</b></p> <p>Less than two weeks from the initial decision to allow retrospective application of funds, at the meeting of the Tayside NHS Board Endowment Trust Advisory Group on 4 February, 2014, a number of funding application requests were submitted for consideration by the Group.</p> <p>Through consideration of the various proposals, the Group agreed to recommend to the Board of Trustees funding allocations to NHS Tayside for the application of funds (of £3.6 million).</p>	<p>At this meeting reports were prepared and presented to the members of the group outlining the case for the expenditure to be met from Endowment Funds. The Endowment Advisory Group approved the majority of the applications, and this approval totalled the £3.6 million requested by the NHS Board to support NHS Tayside achieve break-even.</p>

<p>19 February 2014</p>	<p><b>Further correspondence with the CLO</b></p> <p>On 19<sup>th</sup> February, the Finance Manager, wrote again to CLO asking OSCRs powers in relation to the Endowment fund on the hypothetical scenario that the Trustees were to approve expenditure which OSCR subsequently found to be inappropriate. Also in the event that OSCR were of the view expenditure was in support of core activity “what could they do about it.”</p> <p>The CLO provided a response highlighting the potential actions and sanctions that OSCR could pursue in the event that the trustees were found to be acting inappropriately or the charity no longer meets the charitable test.</p>	<p>The subsequent correspondence with the CLO was not formally communicated with the Trustees.</p> <p>The nature of the communication suggests that management had concerns around the potential for future legal challenge however this does not appear to be formally communicated to the Trustees. This advice was also requested less than 24 hours before the Endowment Fund Board approved the retrospective £3.6 million.</p> <p>At this point OSCR were not contacted, and they were asking the CLO to pre-empt/Judge potential advice from OSCR.</p>
<p>20 February 2014</p>	<p><b>NHS Board Endowment Trust Board of Trustees and Finance and Resources Committee</b></p> <p>The Board of Trustees considered the recommended funding applications for approval. These were considered and subsequently approved.</p> <p>At the meeting of the Finance and Resources Committee on 20<sup>th</sup> February (immediately after the Endowment Trustee meeting), the financial report to 31 January was presented.</p> <p>While the overspend to date had slightly reduced the figures continued to report an overspend as due to timing did not account for the retrospective funding from endowment funds.</p> <p>However, the forecast outturn remained breakeven and we noted no reference either in the finance paper or minute to retrospective application of endowment funds.</p>	<p>There is a lack of clarity in the financial monitoring position reported to the Finance and Resources Committee members of the Board and that communicated to Trustees. While we recognising there was a timing issue, this disconnect represents a clear example where the lines of governance were blurred between that of Trustees and that as Board members at NHS Tayside.</p> <p>We note that the NHS Board Endowment Trust Board meeting ran directly into the Finance and Resources Committee meeting which could have blurred the lines in respect of responsibilities.</p>
<p>27 February 2014</p>	<p><b>NHS Tayside NHS Board meeting</b></p> <p>The Committee noted the Finance and Resources Committee from 21 November 2013. The Board noted the contents of the paper including financial challenges identified within it.</p>	<p>The financial information reported to the Board related to the minute of the meeting of the Finance and Resources Committee in November 2013 and was therefore 3 months out of date.</p>
<p>13 March 2014</p>	<p><b>Finance and Resources Committee</b></p> <p>The committee were verbally informed of the financial position as at 28 February 2014.</p> <p>Following the approval of Endowment funding of £3.6 million (including £2.7 million retrospectively), and through agreed brokerage with Scottish Government of £2.85 million, the Board were on track to breakeven for the year.</p>	<p>There was limited challenge or scrutiny documented around the underlying financial position and how it was being achieved.</p>

<p>March 2014</p>	<p><b>Internal Audit Endowments Report</b></p> <p>Internal Audit meeting with Endowment’s team identified that there had been agreement to retrospectively review funding applications for endowment funds. Between March and May we understand there were various meetings between Chief Internal Auditor (CIA), and NHS Tayside Director of Finance.</p> <p>We understand it was agreed that as external audit were reviewing the transactions, they would be excluded from the internal audit review. This is the reason stated for this in the final endowments internal audit report.</p>	<p>There is no clarity as to which external auditors, internal audit were referring – the Endowment Fund External Auditors or the NHS Tayside External Auditors. This lack of clarity also flowed through in the Audit Committee meetings when the term external audit was used interchangeably.</p>
<p>5 May 2014</p>	<p>The CIA met with the Director of Finance to discuss the cover report for the “Internal Audit Annual Report to the Endowment Advisory Group”. The cover paper contained references to significant concerns around the advice provided to Trustees and the assurance provided. However the CIA agreed to remove these references given they had agreed to remove the retrospective application of endowment funds from the scope of the internal audit review.</p>	<p>The changes to the cover report significantly change the tone and message of internal audit and may have been then interpreted differently by the Trustees.</p>
<p>3 June 2014</p>	<p><b>Endowment Advisory Group</b></p> <p>The group received the copy of the final Internal Audit annual report and the Endowment Fund report. The cover paper for the Annual report had been amended to remove referenced concerns around the advice provided to the Trustees.</p>	<p>The Internal Audit Report on endowment arrangements goes to the Endowment Advisory Group but we would have expected this go to the Endowment Fund Board of Trustees. We also note it went to the NHS Tayside Audit Committee on 17 June.</p>
<p>17 June 2014</p>	<p><b>NHS Tayside Audit Committee</b></p> <p>On the 17<sup>th</sup> June the draft financial statements and NHS Tayside’s Board’s External Audit report on the Audit of the Board was presented to the Board’s Audit Committee. Both the financial statements and the audits report made reference to the retrospective application of endowment funds (factual reference to what had occurred). However there was limited debate or discussion documented in the minutes of the meeting.</p> <p>The financial statements of the Fund and external audit report of the Funds auditor, MMG Archbold CA, were presented to the Audit Committee of the Board. The financial statements included specific reference to the retrospective application of the endowment funds within the published financial statements.</p> <p>Within the financial statements of NHS Tayside there is specific reference within the governance statement:</p> <p><i>In February 2014 the Board of Trustees of the Tayside NHS Board Endowment Fund approved a number of submissions for funding totalling £3.64m, of which £2.71m was retrospective spend. The content of all the bids were agreed by Trustees to be within the normal criteria for funding and in line with the charitable purpose of the Fund.</i></p>	<p>No significant issues were noted in relation to the retrospective application of endowment funds at the Board’s Audit Committee.</p> <p>We note that the external Audit Report for the Endowment Fund is presented by the Assistant Director of Finance (Governance &amp; Corporate Finance) where we would have expected this to have been presented by the independent auditor.</p> <p>We note the wording in the governance statement (opposite) states 2.7 million was retrospectively applied but based on the analysis we have seen and the review of the papers the correct value of retrospective spend is £3.6million. It is unclear based on the records where £2.7million arose from.</p>

<p>24</p> <p>June 2014</p>	<p><b>Endowment Board of Trustees</b></p> <p>The financial statements of the Trust are audited by MMG Archibald CA. The auditor is responsible for expressing an opinion that the financial statements represent a true and fair view of the Fund's financial performance and position.</p> <p>The financial statements of the Trust were approved by the Trustees at the meeting on 24<sup>th</sup> June. The financial statements disclosure the retrospective application of £2.7 million to projects that Tayside Health Board had commented. The external auditor issued an unqualified opinion. Within their Audit Findings Report, the external auditor referenced the Endowment Fund audit report issued by NHS Tayside's internal auditors, and recommended that "<i>The Trustees must be mindful of the distinction between their duties and responsibilities towards the trust and NHS Board</i>".</p>	<p>While we understand Internal Audit raised concerns around the retrospective application of funding, this was excluded from the scope of their work on the basis it was being reviewed by external audit. External audit (Endowment Fund) commented on the application but apart from reiterating the concerns around clarity of roles and responsibilities as Trustees and Board members, no concerns were raised.</p> <p>We note that the Internal Audit Annual Opinion on their work related to Endowments did not go to this Committee but went to the Advisory group instead. Usual governance practice is for the Head of Internal Audit Opinion to go to the Board of Trustees as part of the information pack before the Trustees sign the financial statements.</p>
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### Our key findings in respect of the use of endowments:

Based on our work we would highlight the following:

- Reports presented to the Finance and Resource Committee were either verbal or difficult to follow and understand, and maintained in our view an overly positive outlook. From looking at the Finance and Resources Committee papers after the decision was taken on endowments it is difficult to see reference to the £3.6million and how it contributed to the overall year-end position.
- The SGHSCD and NHS Tayside Director of Finance met in January 2014 to as part of the routine monitoring of the NHS Tayside financial position. However, there is no minute or action note retained to evidence the discussions

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- We have reviewed the monthly finance returns to SGHSCD (numbers and narrative) in 2013/14 and in particular the period January 2014 to end of March 2014. SGHSCD Finance returns are one month behind it terms of reporting for example the January 2014 finance return to SGHSCD was dated 19 February 2014. In the paper that went to the Trustees of the Endowment Fund on 24 January 2014 it is indicated that NHS Tayside were forecasting an overspend unless measures were taken of £6.559 million. However, the SGHSCD finance return for January only indicates an overspend position of £2.068 million. There is no mention in this return of the intended use of endowment money. In the February SGHSCD return an overspend of £0.787million is referenced with a forecast of break-even acknowledging the agreed brokerage from SGHSCD of £2.85million. There is no mention in the February return of the use of endowments, with the February return being submitted to SGHSCD on 19 March 2014 when the transactions had already taken place. Lastly the March 2014 SGHSCD return, dated 17 April 2014 shows an overall underspend for the year of £0.029 million and again no mention of how the use of endowment money has supported the achievement of this position.
  - The decision making process, including the steps to determine why using endowment money in this way was considered to be an option cannot be explicitly seen in the documentation. In particular by February 2014 the financial position of the Board was such that it would not break-even with the use of endowment funds alone, and ultimately brokerage of £2.8million was received.
  - We understand the decision in respect of endowment funds was taken by the then Chair of the Board, the Director of Finance and in a meeting with the Chairs of the Standing Committees. This was not a formal constituted meeting and there were no minutes or papers to support the discussion and decision.
  - The then Chair of the Board is reported in the minutes as stating “The Chairman advised that the reality was if the clause was not suspended, the Chief Executive and Director of Finance would have to put together massive cuts package, and the content of that would be damaging”.
  - Recorded in the minutes of the extraordinary meeting of Tayside NHS Board endowment Fund Board of Trustees held on 24 January we note it is recorded that “The Director of Finance advised Trustees that the Assistant Director of Finance and the Endowment Team had conducted work around OSCR, CLO and the national guidelines to ensure there were no conflicts”. This work was not presented to the Trustees for consideration and during our work we did not find any evidence that OSCR had been consulted. The minute of this meeting is set out in Appendix 3 for information.
  - As reflected in the minutes verbal assurances were provided by the Director of Finance, the Chairman and the Assistant Director of Finance but it is unclear on what basis these assurances were being provided – from the point of view of the NHS Board or the perspective of the Trustees and what information the individuals had sought to allow them to provide the respective assurances.



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- The NHS Tayside finance team requested a quick turnaround from the Central Legal Office of legal advice related to the decision taken by the NHS Board (on the day of the meeting to agree the approach to use endowment money on 24 January 2014).
  - The CLO advice obtained was never shared in its entirety with the Trustees or NHS Board. Certain sections were extracted by Management and presented to Trustees in the form of frequently asked questions in April 2014 but this was only extracts.
  - The request to the CLO for advice on 24 January listed out possible projects and discussed a potential of £5million coming from endowments retrospectively. The email mentioned retrospective approval via suspending the Endowment Fund policy but did not ask for specific advice related to the suspension of policy.
  - The CLO were further contacted on 5 June 2014 by the Assistant Director of Finance. This was a phone call followed up by an email as a file note. In this correspondence the CLO acknowledge they were not aware of the suspension in policy to allow retrospective funding and had not provided previous advice in respect of this. The Assistant Director of Finance notes external audit concerns but it is unclear which external auditor were raising concerns. Based on review of the NHS Tayside external audit report and the External Audit report for the Endowment Fund (separate auditors) no significant concerns are raised or discussions around the subject highlighted and we are unclear if they were provided with the CLO June advice.
  - From our review of the Finance and Resources Committee, Audit Committee and Endowment Trust Fund Committee minutes we note concerns were raised, and on a number of occasions recurring concerns. Whilst recorded in the minutes, they were not tracked in matters arising for formal update and closure at future meetings, and many went unaddressed or further verbal assurances were provided by Management.
  - As the Trustees were all NHS Board Members we did note that the differing responsibilities become blurred over the period of time. There is no discussion of the retrospective approval of endowments within the NHS Board, and no wider discussions or linkage with this to the overall financial sustainability of NHS Tayside. There is no evidence in the formal minute that the NHS Board approved the use of endowment money to support the achievement of NHS Tayside's financial performance.
  - The use of endowments as one source of supporting the achievement of break-even in year is not subsequently acknowledged in a transparent way in the future finance papers presented to Finance and Resources following the decision taken in January 2014.

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- The covering papers used in the Audit Committee, the Finance and Resources Committee and the Board do not identify or draw the Committee's attention to key changes or areas for consideration. For example the use of endowment money was not in the first draft of NHS Tayside's Governance Statement (late April 2014). It subsequently appeared in the final draft at the Audit Committee on 17 June 2014 yet the cover paper mentions minor typing changes but not the inclusion of this disclosure.
  - SGHSCD received the final signed copy of the financial statements at the end of June 2014. However, we have been unable to identify any evidence that demonstrates the use of endowments was raised and discussed with SGHSCD
  - The NHS Tayside' Board's External Auditors identifies the use of endowment money to support the achievement financial break-even in 2013/14 within the executive summary of their Annual Report to those charged with Governance and the Auditor General for Scotland. This is a factual statement extracted from the wording in the NHS Tayside's Corporate Governance Statement. There is no further commentary on this, and no associated action identified.

### **Internal Audit – Endowment Report**

As agreed in our scope we considered the Endowments report produced by Internal Audit during 2013/14.

Internal Audit as part of the 2013/14 internal audit plan included a planned review of endowments.

The Chief Internal Auditor (CIA) was made aware of the retrospective application of the endowment funds in March 2014. As the transactions were being reviewed specifically by the Trust's Endowment Fund external auditors as part of their audit of the financial statements, these were excluded from the scope of the internal audit review as agreed between the CIA and the Director of Finance.

While the scope of the work had excluded the retrospective application of endowment fund transactions, Internal Audit included in their initial draft covering report to their Endowment Fund Annual Audit Report for the year that the group should be aware of limitations in the assurances provided to the Group during the year from management, particularly around the CLO guidance received.

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The original draft covering report included the following wording:

***“MATTER OF CONCERN...***

*The minutes of the extraordinary meeting on 24 January 2014 state that the Assistant Director of Finance and the Endowment Team had conducted work around OSCR, Central Legal Office (CLO) and the National guidelines to ensure there were no conflicts.' It is also clear from the minutes that at least one member had requested and relied on these assurances. We have been informed by the Assistant Director of Finance (Governance and Corporate Finance) that, in fact, no work was undertaken on OSCR. On the day of the Board of Trustees meeting, the Board did seek CLO advice on the proposals to be put to the Board of Trustees that day. Our concern is that the level of assurance that could be drawn from the CLO e-mail received in response was undoubtedly insufficient to be able to ensure that there was no such conflicts and furthermore, the CLO advice clearly indicated that there were, potentially, areas of conflict with national guidance.*

*In this respect, we are not content that the assurances provided to the Board of Trustees on 24<sup>th</sup> January 2014 were accurate or complete.”*

This was subsequently amended within the final cover report removing the matter of concern paragraphs and was replaced with the words below, which significantly reduced the tone of concern:

*“Internal Audit consider that whilst action was taken to address CLO concerns, the exact nature of CLO advice and the intended response to it should have been presented to the Board of Trustees on the 24 January, although we acknowledge the time constraints arising from the sequence of the Extraordinary Board of Trustee meeting on 24 January 2014 and Endowment Advisory Group (EAG) on 4 February 2014.*

*Following discussions between management and Internal Audit on 24 March 2014, further information was sought by management from CLO and distributed on 1 April 2014 to Trustees, who confirmed that that they were satisfied with the information provided.”*

The Trustees did not see the original wording drafted by the CIA as this was removed following discussions between the CIA and the NHS Tayside Director of Finance.

The CIA informed us that the Director of Finance and Assistant Director of Finance put pressure on him to amend the covering paper. At a meeting on 5 May 2014, to discuss the Internal Audit annual audit report, there were alleged threats made including those of the potential removal of FTF as internal auditors or the removal of him as CIA.

We are unable to substantiate these allegations, but note there were changes between the draft and final versions of the Internal Audit Endowment Annual Report covering paper (as shown above). These changes impact on the emphasis and we believe reduce the concerns initially raised.

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We also understand the concerns of the CIA were not raised formally with the Accountable Officer or Chair of the Audit Committee.

## **Recommendations**

Based on our work on endowments we would make the following recommendations for future consideration:

### **NHS Tayside**

1. Linked to the wider organisational cultural change programme and focus on leadership, Management should ensure that internal audit play a pivotal role in supporting cultural change, and that their input and recommendations are valued and actioned by Management. Internal audit can support the culture in terms of openness and transparency and continuous improvement if given the profile within NHS Tayside and the strong leadership of the internal audit service.
2. In 2013/14 the NHS Tayside Board only received the Finance and Resources Committee minutes, the Annual Financial Statements and an annual report by the Committee chair. Due to timings information the Board did see was often up to three months out of date. Finance reports, which are clear and easy to understand by a non-finance person should be presented on a timely basis to the Board to allow the NHS Board effective insight and scrutiny of the position. The information provided to the NHS Board should be reconcile to the finance position reported to SGHSCD. This will also allow the NHS Board to better link finances, operational performance and workforce matters.
3. There is an opportunity for the leadership team at NHS Tayside and the NHS Tayside Board to further set out the culture it expects to be in place and demonstrated across NHS Tayside, including continuing to encouraging open and honest conversations based on the promotion of doing the right thing and the wider NHS in Scotland values
4. The NHS Board should explore what additional training and support is needed to support the Non-Executive Members in their role to ensure effective scrutiny and leadership, including ensuring their voice is heard and acted on by management.

### **Scottish Government Health and Social Care Directorate**

1. The SGHSCD should continue to promote an open and transparent culture within the Accountable Officer Group and the Director of Finance group to ensure the continued identification of any early issues and resolution in an upfront way supporting the wider NHS Scotland transformation agenda. SGHSCD could also review the information required in the monthly finance returns to ensure it fully meets their needs and is also easy to follow and understand, in particular tracking movements from month to month

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## OSCR considerations

There are a number of observations we have made which may be further considered within the OSCR review and so therefore have not raised any recommendations but we would highlight:

- Within the NHS Board meeting minutes there is no declaration of interests from Non-Executives in respect of outlining their role and responsibility as Trustees of the Endowment Fund so it is unclear how potential conflicts of interest are managed.
- In most cases the meeting of the Endowment Fund Committee preceded a meeting of the NHS Board. Whilst we recognise this was a practical arrangement taking into account Non-Executives time it did contribute to the differing lines of responsibility and governance being blurred. In addition, a time constraint on the meeting of the Endowment Fund at times was noted as another session was planned in, so in one case the meeting of the Endowment Fund was restricted to 45 minutes for what looked a sizeable agenda and may be an example of the NHS Board reducing time to consider endowment decisions.
- The advice requested and provided by the CLO was requested by the Assistant Director of Finance on behalf of the NHS Board and not necessarily from the perspective of the Trustees and discharging their responsibilities
- Internal Audit undertook an internal audit review of endowment arrangements in 2014, and they did this in their capacity as NHS Board Internal Auditors and were not directly appointed internal auditors of the Endowment Fund. This could give risk to a potential conflict and it was unclear how this was managed or addressed

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## NHS Tayside's financial reporting and governance arrangements

**Scope of our work:** Our work considered NHS Tayside's financial governance arrangements, in particular considering the clarity of reporting of the ongoing financial position to the Finance and Resources Committee and the NHS Board in 2013/14.

Linked to financial governance, we have considered the work of internal audit in relation to the Board's financial management arrangements and how internal audit reports were reported, and the how the implementation of the agreed internal audit actions were monitored.

In addition, we considered the revised controls established by Management relating to the historic deferred expenditure position and how this balance had been assessed and is now supported by financial plans, alongside tighter controls to reduce the risk of the situation with eHealth funds occurring in the future.

All NHS Boards are set a revenue resource limit (RRL) by the SGHSCD at the start of the year. The RRL is not income it is an operating expenditure target set by SGHSCD and represents an amount which the NHS Board can spend up to, but should not exceed, in order to meet the statutory target of financial break-even at year end.

During the course of any financial year, NHS Tayside, along with all other NHS Boards, will receive a number of financial allocations from SGHSCD in addition to the baseline RRL set at the start of the financial year. These additional RRL allocations typically have certain health policy priorities/outcomes attached to them for the NHS Board to deliver.

Depending on when in the financial year the additional RRL is received it can be difficult to incur the expenditure to match the allocation in-year and therefore the expenditure may not be incurred. Where this happens the expenditure is deferred to the following year, with the associated expenditure being built into the financial plan for therefore recognising the Board's planned commitment to incur the expenditure.

Historically NHS Tayside's financial plan has factored in assumptions over the level of deferred spend. In effect earmarked commitments are being used as a form of internal financial flexibility, with the deferred commitments requiring to be funded from allocations made in the following year.

The practice of deferring expenditure relating to SGHSCD allocations has been a recurring feature of the NHS Tayside budget setting process. It is acknowledged in the NHS Tayside Assurance and Advisory Group Staging Report June 2017 that without this approach to deferred expenditure and other non-recurring savings, NHS Tayside would have required additional financial support from SGHSCD.

NHS Tayside's financial strategy did include year on year planned reductions in the levels of deferred expenditure. However, whilst there was a reduction between 2012/13 and 2017/18, the level of reduction was consistently behind the plan established by NHS Tayside.

The table below shows the impact over time that the built up deferred expenditure balances have had on NHS Tayside's underlying financial position (excluding any adjustments for the eHealth monies NHS Tayside were holding).

**Table 1: Underlying financial performance:**

	Deferred Expenditure balance* (£ million)	Original plan* (£ million)	Brokerage in year*** (£ million)	Surplus / (deficit) against RRL (£ million)
31 March 2012	27.2	24.7	nil	0.2
31 March 2013	26.6	24.5	2.25	0.274
31 March 2014	25.6	23.5	2.85	Nil
31 March 2015	25.2	22.5	14.2	0.058
31 March 2016	25.7	22.5	5.0	0.145
31 March 2017	22.5	23.5	13.2	0.1
31 March 2018	15.676	16.5	12.1**	Nil

\*Source: NHS Tayside Finance and Resources Committee papers 2012 – 2018

\*\*Unaudited forecast

\*\*\*Brokerage received in year

## Our key findings

- From our review of the papers submitted to the Finance and Resources Committee during 2013/14 and up until the end of 2016/17 this financial management approach to “deferred expenditure” is not as open and transparent as it could have been.
- Up until the recent exercise to analyse what the deferred expenditure balance is made up of, it was not clear exactly what RRL allocation was deferred, and what the future expenditure commitment was and whether this committee reflected a national NHS priority or a local NHS Tayside priority.
- The Finance and Resource Committee papers make reference to deferred expenditure. However, what is not in the papers is what this balance is made up of and therefore the ability to scrutinise or consider whether this is genuine deferred expenditure due to a legitimate timing difference or that the balance is being used to manage the delivery of the financial targets in-year.
- When deferred expenditure has an associated risk attached to it, the risk around the high balance is flagged as being SGHSCD may reduce allocations towards the year-end limiting NHS Tayside's ability to defer spend into future years. Taking a step back, the actual risk is more likely to be that financially they would be unable to deliver the savings needed in year to achieve financial balance and they were carrying forward balances which meant they started the new financial year automatically significantly overspent with no clear savings plans.

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- Based on our review of the monthly monitoring returns to the SGHSCD it is difficult to see the deferred expenditure balance reflected. Deferred expenditure is reflected in the narrative within the monthly returns but there is not an outline of what this is (same as the finding related to the internal NHS Tayside finance reporting) and it is in the narrative not the number tables.
  - Based on our review we note that NHS Tayside consistently reported to the Finance and Resources Committee (and these minutes were reported to the NHS Board) and within SGHSCD returns that they would achieve in-year financial break-even. Over time the areas of where the Board were overspending did change but it appeared that Management maintained an optimistic attitude that the financial position would be achieved.
  - We understand from speaking to the NHS Tayside Finance team that historically expenditure was always lower in the last three months of the financial year, and the forecasts assumed this would happen. If expenditure forecasts are inaccurately forecasted in the last 3 months of the year the Board would have limited options to recover that position. This may be the reason RRL allocations were continually deferred to mitigate/minimise this risk but as the individuals are no longer working for NHS Tayside we are unable to explore this.
  - From our review of the Finance papers, in particular those in 2013/14 we noticed some large movements between budget and forecast expenditure, and the overspends in places differ from months to month making it difficult to track what has actually happened between months.
  - The overall quality of the finance papers presented to the Finance and Resource Committee up until 2015/16 were poor. Often updates appeared to be verbal and from reading the papers that were presented we note: they were lengthy, confusing and hard to follow, particularly if you were of a non-finance background; they throughout the year presented a positive position even when certain aspects of the Board's activities were overspending, and the treatment of deferred expenditure, in particular that this was planned to achieve financial forecasts is not articulated or visible.
  - "On Board – A guide for Board Members of public bodies in Scotland" In section 3.7 sets out the role of Board committee. This sets out "It is very important, however, that it is not merely the minutes of Board Committees that are reported to the Board. The Board cannot be expected to understand the issues dealt with by the Board Committee from the minutes alone". The NHS Tayside Board received the Annual Financial Statements, the Finance and Resources Committee minutes and an annual report from the Chair of the Finance and Resources Committee. Although performance papers were presented to the Board these were operational performance, and we note that the Board did not see the finance papers. Without seeing the finance papers and only the minutes it would be difficult for the NHS Tayside Board to understand the Board's financial position and the means in which the financial position was being managed.



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- Throughout 2013/14 there appears to be inconsistent financial performance information being reported to the Finance and Resources Committee, the Endowment Board of Trustees and within SGHSCD. Effectively the position reported to the Committee and SGHSCD appears to be overly optimistic and did not fully reflect management's assessment of the underlying financial position.

### **Financial management and the role of Internal Audit**

Over the period 2012/13 to 2017/18 Internal Audit undertook certain internal audit reviews related to NHS Tayside's financial management arrangements and did identify to management and the Audit Committee areas of risk and recommendations. In particular we would note:

- Financial Planning issued in November 2013 was categorised as "satisfactory" with only minor control weaknesses. The report highlighted the following risk "The NHS Tayside Strategic Financial Plan contains £25.5 million for 2013/14 from non-recurring funds from deferred spend". The report outlines two risks to NHS Tayside in this approach – SGHSCD may reclaim the money and/or the SGHSCD may require NHS Tayside to spend the money more quickly reducing the ability to carry forward in future years resulting in an immediate cash shortfall. The report notes that this risk is not accurately reflected in DATIX (the system used to record operational and strategic risks). This report was reported to the Audit Committee but we cannot evidence of how this action was implemented by management and the Audit Committee updated on the implementation of the action.
- An Interim internal audit report was produced in 2015/16 around financial planning. This report highlights "The draft financial framework 2016/17 to 2020/21 shows that committed earmarks will be used to offset overspends and unidentified savings meaning that NHS Tayside is spending less on these areas than specifically allocated by the Scottish Government". The report cross references to the previous Action in November 2013 as still being relevant. In three years it appears the action was still outstanding.
- In 2016/17 a follow up of financial planning and management was issued in March 2017. This report raises the same concerns reflected in the previous two reports.

Based on our review of the NHS Tayside Audit Committee arrangements we would highlight the following findings:

- There was a lack of a robust mechanism for following up on management's implementation of agreed internal audit recommendations. Internal audit follow up reports were limited, presented by management (based on the cover paper) and did not demonstrate how the action being closed had been independently validated and legitimately actioned.
- The quality of the management response to internal audit recommendations was variable and often just stated "agreed". It was therefore difficult to determine what action management were taking, and the follow up was also difficult.
- Typically internal audit reports were lengthy although there have been improvements over the time period we reviewed. This in our view would make it difficult for Committee members to easily identify the key areas of internal audit concern, and therefore the priority for them to focus on. The internal audit assessment over the grading of the report was based on the review's objectives which meant a number of differing gradings as opposed to one overall grading.

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- Cover papers for internal audit reports were in the name of the Assistant Director of Finance. This may have given the impression internal audit reported to the Assistant Director of Finance rather than as an independent source of assurance

## **NHS Tayside External Audit Reports**

Auditors of public bodies across Scotland are required to conduct their audits in accordance with Audit Scotland's Code of Practice (the Code) and International Standards of Auditing (ISAs).

The relevant Audit Scotland Code of Practice covering the period of our review were issued in May 2011 and updated in May 2016.

The Code provides a framework for public audit in Scotland and the principles which auditors should adopt in carrying out their work. It sets out requirements of auditors in relation to the audit of the financial statements as well as wider responsibilities of auditors of public sector bodies, including financial management and governance arrangements.

The Code of Audit Practice in 2011 sets out that "Auditors should have regard to audited bodies': financial performance in the period under audit; compliance with any statutory financial requirements and financial targets; ability to meet known or contingent statutory and other financial obligations; responses to developments which may have an impact on their financial position; and, financial plans for future periods."

Based on our review of the NHS Tayside External Audit reports we note commentary across these wider scope areas. As relevant to the scope of our review we highlight:

- In each year the NHS Tayside external auditor comments on NHS Tayside's overall governance arrangements focused on the NHS Tayside code of corporate governance. In 2012/13 the report provides an overview of each of the NHS Tayside standing committees although we note this did not include the Finance and Resources Committee.
- In 2012 the External Audit Report concludes: "We have assessed the Board's overall governance arrangements including a review of Board and Key Committee structures and minutes, financial reporting to the Board, and risk management. We consider that appropriate arrangements and reporting are in place".
- On an annual basis the External Auditor concludes that the systems of internal control are appropriate and the governance arrangements in place are appropriate
- Commentary is included in the reports on NHS Tayside's financial management arrangements and future financial sustainability. There is no reference in 2012/13 to the large deferred expenditure balance of £27 million, although certain financial pressures are noted. In 2013/14 financial pressures are identified but there is no specific action identified for management in the action plan, and this is not specifically related to deferred expenditure.
- There is no explicit mention on the quality of the financial information reported to the NHS Tayside Finance and Resources Committee.
- The 2014/15 report includes a specific recommendation related to financial sustainability within the Action plan, and management have reflected a response.

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In addition to the NHS Tayside External Audit Reports, we note that NHS Tayside has been subject to a number of Section 22 Reports by the Auditor General for Scotland and the future financial sustainability of NHS Tayside well documented.

### **Current position on deferred expenditure**

Following on from the eHealth report the Strategic Director of Finance and the NHS Tayside Finance team have gained an understanding of what the total deferred expenditure balance consists of as at 31 March 2018.

This is split out, linked to the associated health priorities whether these are national priorities or those determined locally and understood how the expenditure will be incurred in 2018/19.

Plans are now in place to substantially reduce the balance, and this is now fully transparent in the NHS Tayside finance reports and savings plans. Based on what we have reviewed we are satisfied that the future controls and reporting address the risks previously highlighted.

In addition there have been improvements made to the finance papers. These are shorter, easier to understand and do include deferred expenditure analysis.

The Finance and Resources Committee is now a Finance and Performance Committee which better links the financial performance of NHS Tayside to operational delivery, performance and NHS Tayside workforce.

### **Update on eHealth Controls**

Management have implemented a range of controls and revised processes to address the issues identified in our e-Health funding review.

The revised arrangements are in the process of being implemented and therefore we are unable to provide an opinion on the operating effectiveness of these controls.

However, we consider the design of these controls to be sufficiently robust to address the issues identified. In particular, revised controls include:

- A revised financial reporting format which builds in RRL reporting
- Segregation of duties within the Finance team
- An understanding of the deferred expenditure balance to ensure no other areas similar to eHealth are within that balance

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## Recommendations

Based on our work on financial management and governance we make the following recommendations:

### NHS Tayside

1. Committee cover papers should only include the author of the paper and the author should be appropriate to the subject matter being considered, and approved by them. It may be helpful to clearly state on the cover paper the assurances the paper and Management are providing to non-executives and on what rationale and how this relates to the strategic objectives of the NHS Board.
2. The revised financial reporting adopted going forward is easier to read and understand particularly for those of a non-financial background. Management should continue to review this, focused on clearly articulating the financial performance and reflecting an honest assessment of the associated risks of delivery. The newly constituted finance and Performance Committee will allow finance to be more effectively linked to operational performance.
3. To continue the role out of ownership and accountability for managing budgets to budget holders and supporting them in monitoring the position. In particular, the analysis of the “deferred expenditure” and the NHS Board’s planned actions to clearly commit the associated expenditure in 2018/19 will support the reduction of this balance and it is now more clearly reported and understood.
4. Finance should undertake a review of how in particular it forecasts ahead the likely financial position and how robust this is, and is there a consistent approach so month on month information is comparable and that the Board members can take confidence in the forecasting. Accurate forecasting will ensure sound financial decisions are taken and potential areas of overspending captured earlier in the year.
5. A more robust recommendation tracker should be introduced for internal audit and external audit recommendations. All recommendations should be captured, progress against the recommendation agreed implementation date reported and action evidenced to close off actions once complete. This will be a key responsibility for the Audit Committee, in particular following up on why recommendations have not been implemented and overseeing their delivery.
6. There is an opportunity to further review and refresh the internal audit reporting style and overall assurance ratings applied in NHS Tayside to ensure that key messages and prioritisation of action is clear, and the reports are easy to understand and that the more significant messages are not lost in narrative. This will also support the Audit Committee in discharging their role in respect of governance and scrutiny.

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## Scottish Government Health and Social Care Directorate

1. There is an opportunity to review the RRL process, in particular the timing of allocations during the year and whether allocations that do arise during the year relating to specific health outcomes/priorities could be notified from the outset of the year as this could give greater clarity to NHS Board's over the absolute expenditure limit they need to manage to in-year. We note that following the eHealth report SGHSCD have brought allocations forward to a September deadline and plan to improve narrative on allocations. These revised procedures will be reviewed by Scottish Government Internal Audit IN June 2018
2. Where RRL allocations are received in-year, particularly in the latter half of the year, SGHSCD should consider how they would prefer NHS Boards to record this, where expenditure does not occur within the same financial year, in particular how this is reported to the NHS Board but also SGHSCD for monitoring purposes. This could lead to greater clarity in respective NHS Board's medium term financial plans on the reliance on non-recurring means to achieve financial sustainability.
3. Currently if an NHS Board is failing to manage expenditure in year to the limit set by SGHSCD (RRL) brokerage is provided. An alternative would be to not provide brokerage, this would result in the NHS Board recording a deficit in the financial statements, and would increase the transparency when reading the accounts of the underlying financial position of the NHS Board, whilst still managing the NHS in Scotland within the budget determined.

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## Appendix 1: Scope of the review

### Background

Following on from the independent review of eHealth monies in respect of NHS Tayside, NHS National Services Scotland and the Scottish Government a potential issue has been identified within NHS Tayside in respect of the use of endowment funds in 2013/14 to support the Board's year-end financial position and the achievement of statutory targets. In light of this, the Scottish Government Health and Social Care Directorate has asked Grant Thornton UK LLP to undertake an independent review of certain NHS Tayside arrangements as set out in this scope. We note that OSCR in their role as Charity Regulator for Scotland are also undertaking an independent review in respect of the use of endowments in 2013/14 and our review will not duplicate this work, although they will be closely aligned.

### Scope

The overarching focus of our work will be to consider the NHS Tayside's Board's governance and financial management arrangements, including the assurance framework, related to endowments in 2013/14. We will focus on the decisions taken by the NHS Board in their role as NHS Board Non-Executives. The role of the Endowment Trustees will be considered by OSCR.

We will specifically cover:

- The clarity of reporting of the NHS Tayside financial position during 2013/14 to the relevant Committee and the Board, including the openness and transparency of the decisions taken by the NHS Board in respect of endowment funds and the link to the Board's financial position.
- The evidence available (minutes, board papers, emails, guidance, advice) to support the decision making process and how information was made available to the NHS Board to inform their decision making
- The timeline for events, including who was involved and when, and the advice and guidance sought during 2013/14 and how that guidance/advice was acted on
- The work of internal audit in respect of endowments including iterations between draft and final report stage, the advice of internal audit and how this was considered and the subsequent follow up of internal audit recommendations. We will also consider internal audit reporting lines.
- Based on the timeframe, what were the various assurance framework "check-points" and how did the wider system of internal controls operate in this instance

In addition to the above, we will consider the planned financial control enhancements at NHS Tayside following the eHealth work, to mitigate future risk in this area at NHS Tayside. We will also consider the analysis of deferred expenditure undertaken by the

finance team, and the future controls around reporting in this area alongside the risk assessment of the balances and how they are supported by financial plans.

## Appendix 2: Public Sector principles and codes of conduct

Within the Public Sector, and also specifically in the NHS in Scotland there are a number of overarching public life principles that apply throughout, and are accepted ethical principles and behaviours. It is expected that everyone working in the public sector adhere to these principles, and there are also additional considerations if you are a Non-Executive member of the Board or in a senior leadership role.

### The 7 principles of public life (Nolan)

Principle	Definition
Selflessness	Holders of office should act solely in terms of the public interest
Integrity	Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships
Objectivity	Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
Accountability	Holders of public officer are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this
Openness	Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so
Honesty	Holders of public office should be truthful
Leadership	Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour whenever it occurs.

### NHS Board Non-Executive Appointment

On appointment to an NHS Board the appointment letter states:

“All members must abide by the principles of collective responsibility and are expected to bring an impartial judgement to bear on the business of the Board”

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## **NHS Tayside Section B Members Code of Conduct**

NHS Tayside have in place in Section in its code of conduct for Members of the NHS Tayside Board and its committees which all Non-Executive Board members are made aware of. The code states that “as a member of the NHS Tayside Board it is your responsibility to make sure you know you are familiar with, and your actions comply with, the provisions of this code of conduct”

This code in section 2 outlines the Nolan principles, and also cross references to the Scottish Government Publication “On Board – A guide for Board members of public bodies in Scotland”

Section 5 outlines declaration of interests and in particular 5.5 “As a member of the Tayside NHS Board you might serve on other bodies. In relation to service on Board’s and management committees of limited liability companies, public bodies, societies, and other organisations, you must decide, in the particular circumstances surrounding any matter, whether to declare an interest. Only if you believe that, in the particular circumstances, the nature of the interest is so remote or without significant, should it not be declared.”



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## Appendix 3: Approved minute of the NHS Tayside Endowment Fund Board of Trustees 24 January 2014

Minute of the Extraordinary Meeting Tayside NHS Board Endowment Fund Board of Trustees, held on **Friday, 24 January, 2014**, at 1.30pm, in the Seminar Room, Kings Cross Hospital.

### Present

<b>Name</b>	<b>Designation</b>
Dr A Cowie	Non Executive Member, NHS Tayside
Mr D Cross	Non Executive Member, NHS Tayside
Mrs L Dunion	Non Executive Member, NHS Tayside
Mrs J Golden	Employee Director, NHS Tayside
Cllr K Lynn	Non Executive Member, NHS Tayside
Y Cllr M Landsburgh	Non Executive Member, NHS Tayside
Mr I McDonald	Director of Finance, NHS Tayside
Dr M McGuire	Nursing Director, NHS Tayside
Ms L McLay	Chief Executive
Councillor G Middleton	Non Executive Member, NHS Tayside
Mrs A Rogers	Non Executive Member, NHS Tayside
Dr A Russell	Medical Director, NHS Tayside
Mrs S Tunstall-James	Non Executive Member, NHS Tayside
Mr S Watson	Chairman, NHS Tayside

### Apologies:-

Cllr D Doogan	Non Executive Member, NHS Tayside
Mr S Hay	Non Executive Member, NHS Tayside
Mr M Hussain	Non Executive Member, NHS Tayside
Mr H Robertson	Non Executive Member, NHS Tayside
Dr D Walker	Director of Public Health, NHS Tayside

### In Attendance:-

Mr D Carson	Assistant Director of Finance – Governance & Corporate Finance
Mrs J Duncan	Communications Manager, NHS Tayside
Ms M Dunning	Board Secretary, NHS Tayside
Miss A Stibbles	PA to Associate Director of Finance
Mr G Wilson	Finance Manager, NHS Tayside

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## Mr S Watson in the Chair

## Action

1.

### APOLOGIES

Apologies were noted as above.

2..

### DECLARATION OF INTERESTS

There were no declarations of interest.

3..

### PROPOSED VARIATION TO TAYSIDE NHS BOARD ENDOWMENT FUND POLICY & PROCEDURES

Mr McDonald advised Trustees that he had met with the Standing Committee Chairs Thursday morning to brief them on the financial position of Tayside NHS Board. Following discussion with the relevant Chairs, it was agreed to look at temporarily suspending the retrospective element within the Policy and Procedures, to allow certain applications to come forward for consideration by Endowment Advisory Group (EAG), and/or Board of Trustees. He confirmed health board procedures and the new national guidelines had been looked at, and there was no conflict which would prevent this happening. *Dr Cowie joined the meeting* Mr McDonald advised Trustees that Mr Carson and the Endowment Team had conducted work around OSCR, Central Legal Office (CLO) and the National guidelines to ensure there were no conflicts.

Mr Carson advised Trustees that the charitable purpose of the Endowment Fund is within the legal framework of the Health Service Act 1978, and the definition is as broad as “for advancement of health”, which means the Endowment Fund can fund anything it can as long as it is for health advancement. Trustees further noted that the Endowment Fund is not accountable to OSCR, but the guidelines are observed. The National Guidelines were recently finalised following a review by a National Steering Group chaired by Mr Paul James, Director of Finance in NHS Glasgow. Trustees noted there are a couple of issues that require to be looked at, mainly tax implications with HMRC, but there is nothing to suggest that we are out of step with the procedures and technical issues contained within the report.

Mr Carson advised the grey area is what is core and what is non-core. Going by the policy, anything covered by exchequer should not be coming out of endowments, but there are various “shades of grey”. Trustees noted that NHS Tayside is looking to fund items that meet the endowment criteria and which can therefore be appropriately funded from endowments,. Bids are currently being put together, which will have General Manager support, and a temporary lifting of the retrospective barrier within the Policy and Procedures would allow these bids to be considered.

The Chairman clarified that by suspending the retrospective element in the Policy and Procedures, this allows NHS Tayside to look at a number of projects that have gone through exchequer in the past year, and pick out the elements of spend that can be met appropriately from endowment funds. Trustees noted that the Committee Chairs had been briefed on this, and had come away with a recommendation to go down this road. He stressed this was only in relation to the retrospective element, and was not about changing the Policy and Procedures.

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Cllr Middleton noted the bids would only relate to the financial year 2013/14, but was keen to learn how long the temporary suspension would last. She acknowledged it was deemed legal to do this, but felt uncomfortable that it was being considered.

Trustees noted that Mr McDonald provided assurance as Director of Finance that anything being put forward would be appropriate and relevant for endowment funding. He added that this temporary suspension being sought would be only for the month of February, and would not go beyond this, but in future bids would be worked up prospectively, should they meet endowment funding criteria, and be submitted for consideration.

Mrs Dunion advised she was present at the meeting yesterday. She remarked that the news had been completely unexpected, especially given there had been Board of Trustees and Finance & Resources Committee meetings just last week. She was still concerned that we may yet still fall foul of OSCR, but noted that we observe the guidelines, but are not constrained. She referred to an incident in Shetland Council, where it had been deemed that the Trustees had acted in the interest of Shetland Council and not in the interest of their endowment fund. She further advised that she had spoken with the Chairman and Mr McDonald with regard to her concerns, and wished the assurances received to be explicitly minuted. Mrs Dunion commented on the potential reputation risk to NHS Tayside, and that if a journalist was to look at this, the potential headline could be NHS Tayside are dipping into endowment funds in order to balance the books, and she felt very robust communications PR work would be required. Mrs Duncan acknowledged that if this was made public, everything from the past would be dredged up, and advised that there would need to be very robust lines for how decisions were made, referring to guidelines, and ensuring we are covered by OSCR and CLO. She further advised that in terms of publicity for endowments, communications tended to more reactive than proactive. Trustees noted there are now dedicated Health Reporters attached to some newspapers, who are looking at F&R papers more closely and are reporting on them. One possible way forward was to do a “what your donations and legacies have raised over the past 12 months”, which would generate good press coverage. There was obviously a risk attached to this, but it may be a good way to thank the public at the end of the financial year.

Trustees noted that any retrospective bids would be scrutinised in the usual way that all bids are when presented to EAG, and it may well be that not all are approved or recommended for approval. Further noted that in this instance, the F&R template would be used for these papers.

Cllr Middleton advised she felt Trustees could be as proactive as possible, but it still did not get away from the fact that funding had initially been provided from exchequer, and it was now coming from endowments. She felt it better to say nothing, but have the lines ready if the situation arose.

Mr Cross recognised this was just the first stage in a process, and advised he was supportive but that by no means did it mean bids would automatically be approved. He noted that reliance would be placed on EAG to scrutinise all bids. Referring to the financial position, he wished to have an understanding of how NHS Tayside has got to this position in the first place, and an assurance that it will not be repeated, and that steps will already be taken to ensure savings are in place for next year.

Mrs Golden felt Trustees had to ask what the reputational risk would be if we did not suspend the clause, and what was the alternative for the Board. She noted that this year would be the first year of consolidated accounts, and if she were a member of the public, would be asking why she had to wait so long for “x, y and z” when there is a lot of money sitting there. Mrs Dunning reminded Trustees that they were meeting as Trustees, and not as Board Members.

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The Chairman advised that the reality was if the clause was not suspended, the Chief Executive and Director of Finance would have to put together massive cuts package, and the content of that would be damaging.

Mrs Rogers pointed out that the use of aged funds has often been discussed at EAG, and how funds have not been used as quickly as they should be. This may be a way of addressing that issue, as donors expect their donations to be used. She advised that as long as funds were being used as per the criteria, etc. she would be supportive of this.

Trustees:-

- noted and accepted the current position of Tayside NHS Board, and agreed a temporary variation in the Endowment Fund's Policy and Procedures to allow retrospective applications to be considered.

Trustees further noted:-

- Finance colleagues have advised that the Health Service Act 1978 states that the endowment funds are for the advancement of health;
- the relationship with OSCR, but that the Endowment Fund was not accountable to OSCR;
- the criteria for endowment funds will not be changed;
- there is a clear understanding that the temporary suspension of retrospective bids covers expenditure only in the current financial year, and
- specific proposals will be brought forward to EAG/Board of Trustees for consideration.

Mr McDonald advised that the tax issue with HMRC is the delay factor in bringing the National Guidelines to Board of Trustees, but agreed to bring a paper, with the guidelines attached, to the next meeting of Trustees.

The meeting closed at 2.05pm.

## Appendix 4: Roles and responsibilities

Set out below, for additional context to the reader, is an explanation of the roles/remits set out in this report:

Role	Description/Requirements
Accountable Officer	<p>Under Section 15 of the Public Finance and Accountability (Scotland) Act, 2000, the Principal Accountable Officer (PAO) of the Scottish Government appoints the Accountable Officer of Tayside Health Board. The accountable officer is responsible for:</p> <ul style="list-style-type: none"> <li>• the propriety and regularity of financial transactions under their control;</li> <li>• for the economical, efficient and effective use of resources placed at the Board's disposal; and</li> <li>• Safeguarding the assets of the Board.</li> </ul>
Board responsibilities	<p>The role of the Board and its members (Senior Management and Non-Executive members) is to provide strategic leadership, direction, support and guidance for the organisation and promote commitment to its core values, policies and objectives.</p>
Endowment Fund Trustees	<p>Trustees of the Endowment Fund have specific responsibilities in relation to their role as trustees of the fund. In particular, Trustees are required to act in accordance with the Trust deed of the Endowment fund and within the framework of charity law</p>
Endowment Fund External Auditors	<p>The External Auditors of the Fund are appointed by the Trustees. The appointment process is independent of Audit Scotland and the auditors work does not fall under the remit of Auditor General for Scotland.</p> <p>The appointed auditors of the fund are MMG Archbold CA. The auditor is appointed under section 44(1) (c) of the Charities and Trustee Investment (Scotland) Act 2005 and is responsible for the audit and to express an opinion on the financial statements.</p>
NHS Tayside Board External Auditors	<p>The external auditors' responsibilities in relation to the audit of the financial statements and relevant sections of the Remuneration report of NHS Tayside are to give an opinion on:</p> <ul style="list-style-type: none"> <li>• whether they give a true and fair view of the financial position of the Board and its expenditure and income for the period in question;</li> <li>• whether they were prepared properly in accordance with relevant legislation, applicable accounting standards and other reporting requirements;</li> <li>• whether the information which comprises the annual report included with the financial statements is</li> </ul>

	<p>consistent with the financial statements; and</p> <ul style="list-style-type: none"> <li>• whether expenditure and receipts have been incurred and applied in accordance with guidance from Scottish Ministers (the regularity opinion).</li> </ul> <p>External Audit work is undertaken in accordance with International Standards of Auditing (ISA's).</p> <p>In accordance with Audit Scotland's Code of Audit Practice (relevant versions are dated 2011 and 2016) require auditors' responsibilities to extend beyond that of the audit of the financial statements. Auditors are required to consider and report on health board's use of resources, financial management, financial sustainability and transparency and governance arrangements.</p>
Internal Audit	<p>As set out in the Scottish Government On Board publication:</p> <p>Internal Audit is an internal appraisal service, established by the management of an organisation, which reviews the internal control system. It should objectively examine, evaluate and report on the adequacy of internal control as a contribution to the proper, economic, efficient and effective use of resources. To achieve full effectiveness, the scope of the internal audit service should provide an unrestricted range of coverage of the organisation's operations.</p> <p>The internal auditors should have sufficient authority to allow them access to such assets, records and personnel as are necessary for the proper fulfilment of their responsibilities and report to the Board where they feel it is necessary.</p> <p>Internal audit are independent of management and their work is undertaken and complies with Public Sector Internal Audit Standards. Their plans are risk based and focused on controls and processes rather than individual financial transactions.</p>

Our review covered the period 2012/13 to 2017/18 and over this time different individuals were in post, and this is noted below for information:

Accountable Officer was Lesley McLay from December 2013 onwards

The Chairman was Sandy Watson, OBE up until 2015

From 2015 onwards the Chairman was Professor John Connell

The Director of Finance up until 2015 was Iain McDonald and after that Lindsey Bedford

The Assistant Director of Finance up until 2015 was David Carson

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