

Charity Investment: Guidance and Good Practice

Evaluation of consultation responses

Summary

This report summarises feedback received in response to our consultation draft 'Charity Investment: Guidance and Good Practice'. The analysis is based on 11 written responses to the four questions set out in the consultation response form. Analysis of the responses identified the key themes emerging from the consultation, as well as a number of specific suggested changes.

The **key themes** arising from the feedback are:

1. Clarity around environmental social and governance (ESG) considerations
2. Risks of not investing
3. Linking what to invest in to a charity's overall strategy
4. Value of obtaining professional investment advice
5. Types of investment other than stocks and shares

Charity Investment: Guidance and Good Practice

We developed this guidance to support charity trustees of charities that hold investments. It provides assistance and support to charity trustees so that they understand how their legal duties as trustees relate to the management of investments, and some basic principles and tasks of investment management. It also supports trustees in their discussions with investment managers and other professionals by outlining commonly used terms.

Consultation

The consultation was open for six weeks, from 13 August to 21 September 2018. We asked respondents to complete a short form, which asked four questions on the draft guidance. The four questions were:

1. In your opinion, do you think the guidance is clear and easy to understand for charities of all shapes and sizes?
2. Do you think the guidance covers the key issues that charity trustees experience in relation to investments? If not, please explain what else you think it should cover.
3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

4. What other resources do you think it would be helpful for us to include on our website to help charity trustees in relation to investments?

To inform our equality impact assessment we also asked respondents whether the guidance would have an impact (positive or negative) on any of the protected characteristics groups.

During the consultation period the main landing page for the guidance was viewed 695 times and the guidance received 2,461 page views overall. There were 149 pdf downloads.

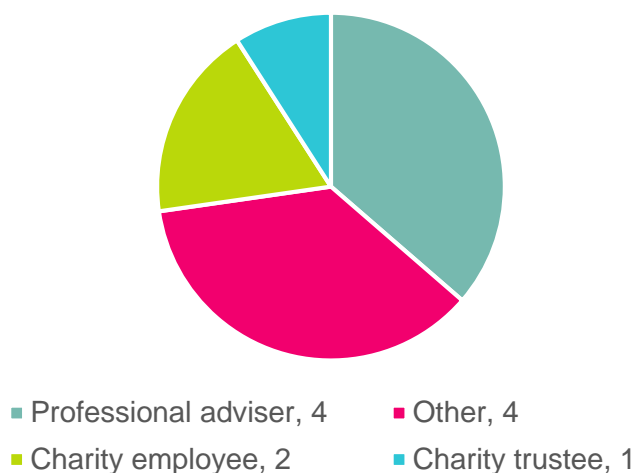
We would like to thank everyone who took the time to review the guidance and respond to the consultation.

Responses

We received 11 responses to the consultation. Although this is a small number, the quality of the responses was high, with many of the respondents providing in depth analysis of the content and highlighting relevant points. Many of the main themes identified were consistent across several responses.

Those responding as professional advisers and ‘others’, which included professional bodies, membership organisations and those responding in a personal capacity, made up the majority of respondents. Two charity employees responded, and one charity trustee. A full list of respondents is included in **annex 1**.

Consultation respondents



Analysis

Responses to the consultation questions were summarised alongside the identification of key themes. We have used quotes to provide examples and highlight the details of respondents' views and opinions. No quantitative analysis was carried out due to the small number of responses received.

Findings

Question 1

The first consultation question asked **'In your opinion, do you think the guidance is clear and easy to understand for charities of all shapes and sizes?'**

All respondents welcomed the guidance, noting it was accessible and easy to understand.

'...I found the guide clear and straightforward and easy to follow - a good model of clarity and brevity'.

University of Edinburgh

Respondents also mentioned that guidance on this topic filled a gap for charity trustees, which would help them make the best use of their resources within the Scottish regulatory framework.

However, there was some concern about the intended audience. The guidance states that it is aimed at charities trustees, charity employees and professionals who advise Scottish charities or manage their investments. Some respondents felt that the intended audience should be clarified, explaining that more detail may be needed for some areas, and that it might be of more interest to those new to these topics.

'The guidance may fall between two stools, as too simplistic for the large charity and too complex for the (more typical) small-to-medium charity. Large charities will already have comparatively sophisticated professional advice at their disposal and it may be that the guidance should be pitched deliberately at the small-to-medium sized charity. An alternative could be to flag up which parts of the guidance apply to all charities with investments ('the basics' or the regulatory 'must haves' from an OSCR perspective) and which, on the other hand, are intended mainly for charities with larger investment portfolios'.

Law Society of Scotland, Charity Law Committee

'The guidance provides a fundamental overview of the issues involved when boards first consider investing their charitable assets and covers the

relevant legal and governance aspects. As such, the guidance is likely to be of more use and interest to those just thinking about investing or new to the trustee role. More established charities and experienced trustees are likely to seek further guidance elsewhere to meet their more complex demands’.

ICSA: The Governance Institute

‘We question whether the audience is truly intended to include professionals working in the charity sector advising or managing investments on behalf of charities: if that is the intention, then we would suggest that the legal position is understated. There is a great deal of material which would be useful to professional advisers who wish to understand the legal underpinning of charity investment which is either glossed over or ignored in the draft...

On the other hand, as a document which is aimed at charity trustees, the draft guidance represents a useful starting point and one which we would anticipate charity trustees using as a pre-cursor to obtaining more full professional advice. If that can be said more accurately to be the audience, then the draft guidance is a useful contribution’.

Turcan Connell

Question 2

The second question received the most comprehensive responses from which we identified most of the key themes. We have outlined each of these below. It asked **‘do you think the guidance covers the key issues that charity trustees experience in relation to investments? If not, please explain what else you think it should cover’**.

Key theme one: clarity around environmental social and governance (ESG) considerations

There was considerable comment in relation to ESG factors, and the way that we had positioned these in the draft. Some mentioned that a different emphasis would help explain the role of ESG as a necessary, not optional, component of investments. Others felt it would help to explain how this differs from social investment (not financially material) and investment decisions that take into account other social, ethical and environmental factors.

‘Given the target of this guidance is lay trustees, we would favour even more clarity from the regulator that this section [section 5] specifically relates to non-financial social and environmental returns associated with investments. In other words that it is different from “social investment” for which new laws have recently been developed for charities in England and

Wales and which also generates social or environmental returns and “ESG investment” where financially material environmental, social and governance factors are considered.

...In our opinion all charities should therefore be considering financially material ESG factors. While we appreciate there is no law requiring charities to invest in such a manner, we cannot understand why investors would not wish to consider the full range of risks and opportunities relevant to their investments, and believe this is a crucial opportunity for the regulator to make that clear.

...Therefore we think “ESG investment” should be referred to not as a potential investment strategy choice, as is currently stated in the guidance, and we would welcome stronger language in the guidance that this is simply the way in which prudent charities should invest.

...Linked to this is our slight concern that negative and positive screening appear directly under “ESG investment”. This risks conflation between consideration of financially material and non-financially material factors...’.

UK Sustainable and Investment and Finance Association

...We would encourage OSCR to recognise ESG issues as being financially material and, perhaps among the suggested questions for investment managers in section 7 of the guidance, state that charity trustees should pay attention to how investment managers incorporate ESG issues in stock selection, portfolio construction, voting and stewardship activities.’

CCLA

‘...we recommend that the guidance makes a clear distinction between:

- i. the consideration of ESG issues as a necessary component of making investment decisions to manage financial risk and return in the best interests of the charity, and;
- ii. investment decisions which take ethical and other non-financial factors into account.

The incorporation of ESG factors into investment decision-making to better manage financial risk and return is not the same as ethical, social or impact investing, which seeks to combine financial return with moral and/or ethical considerations’.

United Nations-supported Principles for Responsible Investment

Key theme two: the risk of not investing

A number of respondents mentioned that although the guidance states that 'investment is never without risk, but doing nothing with the charity's money can also be a risk', we did not elaborate on this to clearly articulate why it is a risk.

'Within section 3, 'Why have investments?', it might be helpful to be explicit about why 'doing nothing with the charity's money can also be a risk'. The key reason is of course that cash loses its real spending power over time as a result of inflation. While this loss can be justified for funds which are destined for expenditure (including designated and restricted funds), it does not represent good stewardship of long term free reserves'.

CCLA

'...the document should cover the balance between the risks of investing and not investing assets. While leaving sums in a low interest account may be safe, it may not always be in the best interests of the charity'.

ICSA

'We also think that to refer to risk attached to not investing money, but without articulating why that is a risk, is to assume too much knowledge on the part of the reader'.

Turcan Connell

Key theme three: linking what to invest in to a charity's overall strategy

There was support for additional information to be included in section 5 to reflect that social investment is a growing area in Scotland (Law Society of Scotland, Charity Law Committee) and to define the term 'financial return' (Richard Hyder).

However, respondents identified some ambiguity when it came to information contained in the section 5.2 'Choosing what to invest in', and decisions around the type of investments to make.

Section 5.2... 'Confuses 'what to invest in' and 'linking your investments to the charity's overall strategy'. 'What to invest in' should be expanded to include the types of investments and their broad characteristics and include an explanation of 'Traditional Investments' or 'Mainstream Investments' for more balance.

'Good to include ESG/negative screening/positive screening but the wording and emphasis of this section may be read that these are the main

(or only) methods of investment. Add these under separate section that covers 'linking your investments to the charity's overall strategy'.

Richard Hyder

'The title of section 5.2 is slightly misleading. This section outlines ethical and responsible investment considerations in financial investments, whereas its current title, 'Choosing what to invest in' suggests consideration of asset types, stock selection etc'.

CCLA

Some respondents suggested that the guidance should consider how different charities might assess ethical aspects of types and areas of investment -

'There may be some benefit in covering ethical investment concerns from the perspectives of different charities. For example, a charity working with animals may wish to establish an ethical investment policy that does not include products that have been tested on animals, but will consider arms manufacturers. Conversely, an international aid and development charity may not wish to invest in arms manufacturers but is content to be part of a group with shares in pharmaceutical companies'.

ICSA

The one area we would like to see added regarding ethical investments (page 13) is recognition that trustees should consider whether a particular *company or organisation* fits with the charity's purposes or activities, rather than simply considering whether a sector is in conflict with the charity's purposes. For example, there may be a company with a very poor record on staff terms and conditions or gender pay gap which the charity may not wish to be associated with, even though there is nothing unethical about the sector in which that company operates'.

ENABLE Scotland

Key theme four: the value of obtaining professional advice

At different stages of their responses, several of the respondents mentioned the value of obtaining professional advice and of building relationships with an investment manager.

'...the guidance should place more emphasis on the value that an investment manager with a close engagement to the Charity can bring.'

Aberlour Child Care Trust

On section 7 'Implementing your investment policy' –

'In our view, this section understates the need for charity trustees to obtain professional advice in relation to their investments and the opening three or four paragraphs could be changed subtly to give better emphasis to the value to be attached to obtaining professional advice. This could include advice in developing an investment policy statement in the first place and not simply the mechanics of investing per se'.

Turcan Connell

'We believe that professional advice is valuable at the stage of developing an investment policy, not only at the stage of implementation...

... If the main constituency for the guidance is the charity trustees of small-to-medium sized charities, a much more definite indication is needed of when – and on what – obtaining professional advice is appropriate'.

Law Society of Scotland, Charity Law Committee

[Points to include in the guidance]

- Using a suitably qualified IFA to assist the charity in the selection of an Investment Manager.
- It is good practice to have the investment manager's performance reviewed by an IFA every couple of years.

Edinburgh and Lothian Trust Fund

Key theme five: other forms of investment

Some of the respondents felt that the guidance covered too narrow a range of investments, focusing largely on stocks and shares, with little reference to other forms of investment. They suggested specifying that the focus of the guidance was stock and shares, or that we provide further detail on other types of investment, such as property and dealing with cash investments, as this might be more relevant to a larger number of Scottish charities.

'We note that the types of investment referred to include buildings from which rental income is received, though buildings are not referred to again later in the guidance. A similar point can be made for other areas noted here. In short, the remainder of the guidance mainly relates to stocks, shares and the like. If maintaining the current approach, OSCR may wish to note that the main focus of the guidance is investment in the form of stocks and shares but point readers in the direction of Charity Commission

guidance (trading subsidiaries and investments in them), Charity Commission and HMRC (buildings / loans generally etc).

There is also mention of cash as one of the types of investment. This is not expanded upon later in the guidance, though we believe that it would be helpful if the document did so...'

Law Society of Scotland, Charity Law Committee

'Referring to a 'portfolio of stocks and shares' (Section 2 and glossary) may appear to be clear but it does not reflect the many other asset classes that may be included in a diversified investment portfolio. For example, bonds and other fixed interest, property, gold and other commodities, other investment types. Perhaps refer to this as "*investment portfolio*" and in the glossary elaborate on the various asset classes this may include'.

Richard Hyder

On dealing with different types of investment, respondents felt that more information on the considerations for charity trustees when liquidating stocks and shares would also be helpful.

Specific and technical changes

In addition to the key themes, the consultation responses suggested a number of changes relating to specific inclusions/exclusions.

Two respondents also felt that referring to entire pieces of legislation within the guidance was unsatisfactory, and it would be more helpful to make explicit references to the relevant sections.

We have carefully considered each of the specific suggestions and technical changes and we will update the final draft where it is appropriate.

- **The suggested changes considered are shown in [annex 2](#).**

Question 3

The third consultation question referred to examples of charity investment and asked **'do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website'?**

A small number of possible case studies were proposed, and respondents offered to help refine these options. One response suggested that we structure case studies to explain why they are examples of good practice.

Question 4

The final question asked ‘**what other resources do you think it would be helpful for us to include on our website to help charity trustees in relation to investments**’?

A number of the respondents referred to the Charity Commission for England and Wales publication ‘**Charities and investment matters: a guide for trustees (CC14)**’ The responses mentioned that it is helpful as it is more directing and includes information on common investment funds and other pooled vehicles that meet the needs of different investors. There was also a suggestion that the draft include information setting out the role of an investment manager in a similar way to the CC14.

In addition to this, they suggested:

- Signposting and references to information on compliance and good governance practice
- Trustee board resources - exercises etc. to promote awareness and understanding of the guidance.
- Explaining the consequences of not following good practice for trustees
- Best practice on ESG
- Good practice from the PRI organisation
- 'Investing in a Time of Climate Change' guide.
- Template/model Investment Policy and
- Model for Selecting and investment manager from a range of tenders
- A reference to OSCR’s guidance on the reorganisation of endowments.

Responses also mentioned that if we were referring to guidance such as CC14 or SCVO’s guidance it would be helpful to specify the relevant sections.

In addition to the materials above one of the respondents suggested that links to workshops or seminars, or a video webinar would be valuable.

Equality Impact Assessment

Finally, the consultation asked ‘do you think the draft guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?’

Most suggested that there would be no impact. One respondent said there was potential for positive impacts and one requested an easy ready format.

Next steps

The consultation responses have been incredibly helpful in informing our thinking and we have made a number of changes to the final guidance resulting from the feedback received.

Annex 1. Consultation respondents

Aberlour Child Care Trust

CCLA

Edinburgh and Lothian Trust Fund

ENABLE Scotland

Richard Hyder

ICSA: The Governance Institute

Law Society of Scotland - Charity Law Committee

Turcan Connell

UK Sustainable Investment Finance Association

United Nations-supported Principles for Responsible Investment (UN PRI)

University of Edinburgh

Annex 2. Specific changes suggested

No.	Section	Page	Topic	Suggestion
1.	2	4	Range of assets...	Add example to last bullet point e.g. income from renting out land or a building. & Generally add explanation to more of the bullet points.
2.	2	4	Second paragraph	Ref to investment as income or capital, but can be both so suggest tweak to 'and/or'
3.	2	4	Portfolio of stocks and shares	Portfolio of stocks and shares does not reflect the other asset classes that may be included in a diversified investment portfolio. E.g. bonds and other fixed interest, property, gold and other commodities, other investment types (see glossary too).
4.	2	4	List of range of assets	Buildings with rental income mentioned here, but not again, with a similar situation for other areas. Should the guidance explicitly state it is focused on stocks & shares? Cash also not mentioned – it should be.
5.	2	4	Capital growth	Reflect that there could also be capital loss (see glossary also).
6.	3	4	Why have investments?	'We all know that financial markets can go up and down...' assumes knowledge. Change to 'Financial markets can go up and down...'
7.	3	4/5	Questions...	Mention capital gains and restrictions on what charity trustees can do with investments
8.	4.1	6	Default investment powers	Add chapter or section numbers. Add reference to the amendments to the Trusts (Scotland) Act 1921 under the CTI(S)A 2005.

				<p>Trusts (Scotland) Act 1921, powers more substantial than to make ‘any kind of investment of the trust estate’.</p> <p>Are there other sources of guidance that could be referred to that summarise this info?</p>
9.	4.1	6	Legal forms	Royal Charter charities are not common. If these are included then Ben Comms should be (but also not common).
10.	4.2	7	Trustee duties	There could be clearer headings to show trustees’ duty to invest under the 2005 Act.
11.	4.2	7	Trustee duties	After ‘For example:’ point out that a high-risk investment could have potentially large losses.
12.	4.2	8	Charity trustees should make sure that...	...the nature of the investment is not inconsistent with the charity’s objectives E.g. a cancer charity would not invest in tobacco companies.
13.	4.2	7	Trustee duties	Trustees should declare any conflict of interest in making initial and ongoing investment decisions and in setting and reviewing the investment policy E.g. family members
14.	4.2	7	Trustee duties	Emphasise the importance of trustees understanding investment so they can be informed customers and able to scrutinize /discuss e.g. undertaking training, reading events, groups etc
15.	4.3	9	Endowments that can be changed	Refer to OSCR’s guidance on reorganisation schemes for restricted funds to emphasise that there are circumstances in which endowments may be capable of amendment.
16.	4.3	8	Endowments	Include guidance on total return on investment around restricted funds. There are differences between E&W and Scotland (prof advisers may be more used to the E&W situation).

				Scotland does not have specific legal provision around “total return on investment”
17.	5	9-11	Social investments	<p>Social investment in E&W - is this an approach OSCR would endorse, or would our approach differ?</p> <p>Refer to HMRC guidance on this.</p>
18.	5.1	9	Social and environmental returns (non-financial returns)	Consider alternative description for the title which aligns with “ Growing a Culture of Social Impact Investing in the UK ”
19.	5.2	10	Title is misleading	Currently ‘Choosing what to invest in’ outlines ethical and responsible considerations but implies assets types, stock selection etc. Clarify/change.
20.	5.2	10	Investment methods	Align with common definitions used within responsible investment.
21.	6	11-14	Reporting on investments under the charities SORP	Mention this with a cross reference to section 8
22.	6	13	Question 4	Change to income and/or capital
23.	6	13	Question 6	Refer to positive screening
24.	6	13	Question 6	In addition to whether any sectors are in conflict with the charity’s purpose, whether a company or organisation fits.
25.	6	14	Question 11	How often a survey report is conducted may not be pertinent
26.	7	16	Professional advice...	... is valuable at the stage of developing an investment policy as well as at implementation
27.	7	16		‘What total fee...’ refer to ‘What total investment management cost’
28.	7	16	Questions for investment managers	Add ‘How do you incorporate ESG into stock selection, portfolio construction, voting and stewardship activities?’ or similar
29.	7	16	Reasons for periodic review...	Include two further reasons (1) to review the performance of the investment manager (return on investment and customer service), and

				(2) to ensure that the contract remains good value for money compared with charges made by other investment companies. A sensible interval between reviews would be 5 years.
30.	9	21	Social return	Try to define in glossary, or include example in section 7.
31.	9	21	Glossary	Expand to include all terms in bold
32.	10	22	Reputation (point 4)	Drop this (reputation isn't an asset in investment terms) or pick up on some reputational aspect of investment duties.

