Consultation Response

Charity Investments: Guidance and Good Practice

September 2016

Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

Our Charity Law sub-committee welcomes the opportunity to consider and respond to the OSCR consultation on draft guidance, *Charity Investments: Guidance and Good Practice*. The sub-committee has the following comments to put forward for consideration.

1. Introduction

We believe that the guidance will be helpful to charity trustees, though have some concern around the intended audience for the guidance.

The text appears to be addressed to charity trustees rather than to the two other groups ('people working in Scottish charities' and 'professionals') mentioned under **Who is this Guidance for?** We suggest a clear choice could be made to target the guidance to charity trustees only, as the persons ultimately responsible for the management of a charity's investments. Even then, within the class of charity trustees, more than one constituency can be identified, as is clear from the three case studies in section 7. Guidance suitable for charity trustees responsible for an investment portfolio 'valued at seven figures' may confuse and daunt charity trustees responsible for an endowment of £150,000. 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.

Also, it sets out that it is guidance to be used by professionals but may not currently add much by way of detailed technical comment beyond straightforward detail (though see our suggestions as against sections 4 and 5). As above, we do appreciate that OSCR is looking to produce guidance relevant to the majority of charities, and the majority are not dealing with sophisticated or complicated investment matters.

Guidance to such a diverse sector is challenging. Many charities will benefit from this guidance. Some charities, with large funds and ongoing investment strategies, may simply want to ensure that they do so in line with OSCR guidance as a regulator for the sector.

2. What is an investment?

In the second paragraph, reference is made to investments in terms of income or capital but we would note that it can be both so a small tweak may be useful.

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. There are a number of issues specific to cash holding, including consideration of interest rates available and, albeit less relevant in the current economic environment; the distribution of cash held between banks and the protections available for these funds, for instance, as highlighted by the Icelandic banking crisis. These are “investment” issues that are relevant to a section of the Scottish charity base that is likely to be broader than those with stocks and shares investments, particularly the £50k-£500k bracket. For many of these charities, the “bank” / “cash” challenge may still resonate from the 2008 crash.

Around stocks and shares, we believe that further guidance might assist around liquidating stocks and shares. There may be financial penalties for early redemption or, with fluctuations in stock market prices, stages at which liquidating holdings may be more or less prudent. This would be subject, however, to what we say below about obtaining professional advice.

3. Why have investments?

Mention could be made of capital gains as one of the prospective questions and further detail could be provided on possible restrictions on what charity trustees can do with the investments.

4. What can and should charity trustees do in relation to investments?

At 4.1, on investment powers, if the common legal forms of charity are to include Royal Charter charities, then one would expect societies registered under the Co-operative and Community Benefit Societies Act 2014 to be included. However, neither form can really be described as ‘common’ by comparison with the other forms listed.

Reference is made to the investment powers available to a trust under the Trusts (Scotland) Act 1921, though the powers under this Act are more substantial than to make ‘any kind of investment of the trust estate’. Reference is also made to the Companies Act 2006, and particularly because of the size and complexity of this legislation, it may be helpful to provide details of the sections in which the investment powers can be found. Indeed, some citation of the relevant sections of the various Acts cited may be helpful. In short, the references to the 1921 Act and the 2006 Act are very general and likely to be of little real assistance to charity trustees without further specification. There may also be other sources or guidance where the breadth of legislation is trimmed down to that applying to charities and their trustees that could be referenced,

At 4.3, on endowments, we believe that it would be helpful to include guidance on total return on investment and around restricted funds. There are differences in approach between Scotland and England and Wales, which could also be usefully highlighted particularly against the background that investment advice may be provided by professionals used to acting for charities established in England and Wales.

Though investment managers and other investors in the charitable sector may operate across the UK, it is important that guidance reflects the legal and regulatory divergence across the UK – a point both relevant to this section and to section 5 of the guidance below. For instance, Scotland does not have specific legal provision around “total return on investment” (but that express provision is not necessarily required relevant to unrestricted endowments). There is also no legal definition in Scotland of “social investment”, unlike England and Wales, as noted below.

5. What else should you think about before investing?

We believe that this section of the guidance would merit additional detail. Around social investments, this is a developing area in Scotland, in which practice is changing and expanding. The position of social investments in England and Wales under the Charities (Protection and Social Investment) Act 2016, is noted in the guidance, but it would be helpful if this were clarified, either as an approach that OSCR endorse, or where OSCR might differ in approach. There is guidance from HMRC in this area, which would could be referenced in the document and, overall, further guidance would assist, whether labelled as best practice or included on the basis of “in this context, you may find the following helpful”.

6. Discussing your charity’s investment policy

We note the various questions suggested around a charity's investment policy, though, as noted in our comments above, it is unclear who the intended audience is for these considerations. We would suggest at question 4, this should be termed as income 'and/or' capital. At question 6, reference should be made to positive screening. And at question 11, the question of how often a survey report is conducted may not be pertinent.

7. Implementing your investment policy

We believe that professional advice is valuable at the stage of developing an investment policy, not only at the stage of implementation. We suggest, however, that further thought be given to the treatment in the guidance of professional advice generally. 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. For trusts, a framework is provided by the Trusts (Scotland) Act 1921, ss 4A, which by analogy could be applied to charities constituted in other forms. Likewise, clear guidance is needed on delegation of investment management (see the 1921 Act, s 4C).

Including case studies in the guidance is a helpful step, though we believe that these could be better framed, particularly explaining where and why these particular examples constitute best practice. Our views around which audience the guidance is directed towards may suggest some focus around examples.

We hope that these comments are helpful in finalising the guidance on investment powers and if we can assist further, please do contact us.

OSCR
Scottish Charity Regulator

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	Heather Lamont
Email address	Heather.Lamont@ccla.co.uk
Charity number (if responding on behalf of a charity)	

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a: Professional Adviser – charity specialist fund manager

- ☐ Charity trustee
- ☐ Charity volunteer
- ☐ Charity employee
- ☐ Professional Adviser
- ☐ Member of the public
- ☐ Other, please specify:

Do you agree to your response being made available to the public? **YES**

- ☐ Yes - please answer A below **YES**
- ☐ No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes): **Response, name and address**

- ☐ Yes, make my response, name and address all available
- ☐ Yes, make my response available, but not my name or address
- ☐ Yes, make my response and name available, but not my address

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments:
CCLA exists to meet the needs of charities of all shapes and sizes and we are one of the largest managers of charitable investment funds in the UK. We were founded in 1958 as a mutually-owned fund manager to enable this specialist investor group to access cost-effective professional investment expertise. All our resources are dedicated to delivering strong investment returns and managing investment risk, including reputational risk, for non-profit organisations. We welcome all guidance which aims to help trustees make the best use of their organisations' resources and reminds them of the legal and regulatory framework within which they should do so. We are pleased to note the accessible language in which the draft guidance is expressed.

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.

Comments:
There are a couple of areas to which we think greater emphasis could usefully be given, and we have also included reference in this section to points where we think the guidance would benefit from minor redrafting.

a. 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.
b. Section 3 should also emphasise that investment is not just something for large organisations to consider, or for those whose trustees have investment expertise. Cost effective access to well-diversified portfolios is available to small as well as large charities, for example through common investment funds and other pooled vehicles which are designed specifically to meet the needs of different charity investors. The Charity Commission refers to these in CC14, and a similar reference in OSCR's guidance would help to reassure trustees of Scottish charities that considering long term investments as part of their financial strategy is consistent with their obligations as trustees.

c. We welcome the references to non-financial factors such as ethical screening, and the possibility of social/environmental returns in addition to financial returns as a motivation for investing. Trustees do indeed need to assess the reputational risks which may make certain ethical screens appropriate for their organisation, and whether social or mixed-motive investment represents the best use of their resources alongside or instead of financial investment.
   With regard to ESG investment, however, by limiting its comments on this topic to the section about linking the charity's values with its portfolio (section 5.2) the draft does not adequately reflect the importance of ESG considerations and the associated risks to performance for all investing charities.
   The financial materiality of ESG risks is recognised in guidance issued by government and regulatory bodies to other investors within the United Kingdom, for example in the requirements of pension funds' statements of investment principles and in the Charity Commission's CC14 which states that charity trustees should 'have regard to other factors that will influence the level of return, such as the environmental and social impact of the companies invested in and the quality of their governance'.
   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. CC14, for example, notes that investment managers of charity assets 'should vote and engage [with investee companies] as a matter of course'.
d. We welcome the guidance's openness to charities' using their investment assets to support their charitable mission through social and mixed-motive investing. However, we would encourage OSCR to clarify that a charity may wish to incorporate values-based decisions within a purely 'financial investment' strategy.
   For instance, we see no conflict between charities choosing to adopt ethical restrictions – as a method of protecting their reputation by avoiding business activities that conflict with their charitable aims – and maximising financial returns. The experience of investors in CCLA's own funds, which have different ethical policies to meet the needs of different investor groups, is that intelligently applied ethical criteria need not be damaging to financial returns. Similarly, strategies such as voting or engaging with an investee company to achieve a change in practice that is in line with the charity's mission – do not necessarily require the charity to adopt an explicit mixed 'financial and social/environmental investment' approach.
e. 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. That is in fact the topic covered by section 5 of CC14, 'Deciding what to invest in', and a link to that section might be useful at this point in the OSCR guidance.
f. The guidance could do more to help trustees understand investment management costs and how these can impact on returns. Currently the only reference to costs is in section 7 under the suggested questions for investment managers. Instead of referring to the 'total fee', a reference to 'total investment management costs, from the manager

and other parties' would be more helpful in capturing the often-significant costs of third party funds selected by the portfolio manager.

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments:

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?

Comments:

Generally it would be helpful to include links to other sources of information at relevant points in the text, not just in the introduction the guidance. And wherever possible, to the relevant section of the publication or website in the link – for example, to a specific section of CC14 or SCVO's website, not just to the home page.

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

OFFICE OF THE SCOTTISH CHARITY REGULATOR

RESPONSE TO CONSULTATION DRAFT
CHARITY INVESTMENTS: GUIDANCE AND GOOD PRACTICE

We make the following response to the consultation on OSCR's draft guidance on charity investments. These comments are of a general nature in relation to the guidance overall, except where we have referred to specific sections below.

As an initial comment, we would wish to say how much we welcome Scottish-specific guidance on charity investments. The draft as it stands is clear in style and tone and the publication is, we believe, a welcome addition to the suite of guidance which OSCR has published since it was established.

The focus on investment policy statements in particular is welcomed. While it is acknowledged that investment policy statements are not legal requirements in Scotland, they appear to us to represent good practice and can be useful documents for charities of all sizes where there is a degree of investment activity taking place. Those sections of the draft guidance are therefore especially welcome.

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. The flow of cases on ethical investment, for example, including the *Bishop of Oxford*, *Martin* and *Scargill* cases, would be worthy of some degree of comment in guidance intended for professionals.

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.

Section 2 – What is an investment?

We think that the last of the four bullet points at the end of this section would benefit from a simple example (for example, income from renting out land or a building).

Section 3 – Why have investments?

We do not think that the guidance should assume that the reader will have any knowledge of investment, particularly if lay charity trustees may be expected to be major users of the guidance. Thus, to say that "we all know that financial markets can go up and down" may be assuming knowledge which some lay trustees do not have (even if, to a professional user, the statement will be an obvious truth). We also think that to refer to risk attached to <u>not</u> investing money, but without articulating why that is a risk, is to assume too much knowledge on the part of the reader.

Section 4.1 – Investment powers

The statutory references in the table in section 4.1 are too brief to be of meaningful use to readers of the guidance. Where Acts of Parliament/Acts of the Scottish Parliament are referred to, chapter or section numbers may be useful. In relation to the Trusts (Scotland) Act 1921, an explicit reference to the amendments to that Act under CTI(S)A 2005 would be helpful. In general terms, clearer pointers to relevant parts of legislation should be considered.

Section 4.3 – Endowments

It may be helpful at the end of this section to cross-refer to OSCR guidance on reorganisation schemes for restricted funds, in order to emphasise that there are circumstances in which endowments may be capable of amendment. This would also help to link to the wider suite of OSCR guidance which is available.

Section 6 – Investment policy statements

If charity trustees are going to disclose the existence of their investment policies in terms of the Charity SORP, then it might be expected that they would review their investment policies/investment policy statements on an annual basis. Even if a longer term basis for review is fixed, we think it might be useful somewhere in section 6 to refer even in the briefest terms to reporting under the Charity SORP, probably by a short cross-reference to section 8 of the guidance.

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.

The worked examples refer to social return: we believe the guidance would benefit from a meaningful example of what a social return actually is, either as a standalone paragraph, or by including a definition and example within the glossary at section 9.

Section 10 – Top 10 key points

Point 4 refers to the charity's reputation as an asset. We ourselves often encourage our charity clients to consider their reputation to be one of their most precious assets and it is pleasing to see this reflected here: but it is not really an asset which is subject to a standard investment approach. On balance, we think that this could be dropped and reduce the list to a top 9 key points – or else pick up some reputational aspect of investment duties in order to maintain consistency with the guidance theme as a whole.

Turcan Connell
21 September 2018

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	ENABLE Scotland
Email address	
Charity number (if responding on behalf of a charity)	SC009024

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a:

- ☐ Charity trustee
- ☐ Charity volunteer
- ☒ Charity employee
- ☐ Professional Adviser
- ☐ Member of the public
- ☐ Other, please specify:

Do you agree to your response being made available to the public?

- ☒ Yes - please answer A below
- ☐ No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

- ☐ Yes, make my response, name and address all available
- ☐ Yes, make my response available, but not my name or address
- ☒ Yes, make my response and name available, but not my address

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments:
Yes, we feel this document is very well presented and uses plain language, graphics and tables to convey information in a clear and accessible manner. We welcome the list of “top 10 key points” on page 22, which it should be easy for trustees to familiarise themselves with, and we feel the Guidance is presented in such a way that should allow volunteers and trustees to take on and understand all the information it contains.

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.

Comments:
We feel this Guidance covers most of the key issues. 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.

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments:
We do not have a case study we would be able to share. However, we agree that the inclusion of case studies would be very helpful.

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?

Comments:
We feel case studies or examples would be very useful to illustrate the issues and considerations involved for trustees. Where appropriate, some examples of the consequences of not following good practice around investments may be helpful in emphasising the importance of this guidance to trustees.

We would also like to see the website include information guides, resources and exercises that can be used with trustees in board meetings or development sessions to promote awareness and understanding of this Guidance.

The website should also include information and links to any workshops or seminars that might be available on this subject. A video webinar may also be a useful resource to engage trustees with this Guidance.

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:
Consideration should be given to producing a version of this Guidance in easy read format to ensure any trustee who has a learning disability has equal access to this information.

ICSA: The Governance Institute

Saffron House
6–10 Kirby Street
London EC1N 8TS

020 7580 4741
info@icsa.org.uk
icsa.org.uk

By email

13 September 2018

Dear Sir/Madam,

ICSA response to OSCR's consultation draft: Charity investments - guidance and good practice

On behalf of ICSA, I am pleased to respond to your consultation on the above document. ICSA: The Governance Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables ICSA to access their practical knowledge in order to provide insights into effective practices across a range of organisations. This, together with detailed understanding of charity and company legislation and regulation, has informed our response.

Responses to specific questions

In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

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.

The first case study is useful, but does give the impression that the board 'rubber stamped' the recommendation of the committee. This contradicts paragraphs on page 11 regarding the collective responsibility of boards in decision making.

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.

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 a pharmaceutical companies.

Further information should be included to cover those trustees who may have relevant and professional experience relating to investments and how that experience and expertise could impact the charity and the individual trustee.

Finally, 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.

Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

ICSA is not a charity and therefore does not have any relevant case studies it could share.

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?

As with other aspects of the role of trustees, the importance of good governance and compliance is paramount to the success and sustainability of a charity. Signposts and references to good governance practice and guidance on other websites would be beneficial for all trustees looking to improve their understanding and effectiveness.

I hope that these comments are helpful and contribute to your deliberations on the development of this guidance. Should you wish to discuss them further or require any clarification, please feel free to contact me.

Yours sincerely,

Louise Thomson FCIS
Head of Policy, Not for Profit
ICSA: The Governance Institute

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	Joan Fraser
Email address	
Charity number (if responding on behalf of a charity)	SC031561

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a:

☒ Charity trustee

☐ Charity volunteer

☐ Charity employee

☐ Professional Adviser

☐ Member of the public

☐ Other, please specify:

Do you agree to your response being made available to the public?

☒ Yes - please answer A below

☐ No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

☐ Yes, make my response, name and address all available

☐ Yes, make my response available, but not my name or address

☒ Yes, make my response and name available, but not my address

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments:
Yes.

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.

Comments:
The guidance should also cover the following:

- In 4.2 on page 8, reference should also be made to ensuring 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
- In the last para of 7 at the bottom of page 16, include two other reason for periodic review: (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 when compared with charges made by other investment managers. It would also be helpful to suggest that a sensible interval between reviews of the contract would be 5 years.
- Other points to be included in the guidance are:
    - Trustees should declare any conflict of interest in making initial and ongoing investment decisions and in setting and reviewing the investment policy. For example, if a family member of a trustee works for a company in whose shares the charity is considering investing or including in positive screening
    - 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.
- Expand the Glossary to include all of the terms referenced in bold elsewhere in the document
- It would be helpful to emphasise the importance of Trustees understanding investment so that they can be informed customers and able to scrutinise/discuss the investment managers decisions/proposals. Some possible actions are: undertaking training,

reading widely, attending information events put on by various investment managers and becoming a member of an association for grant making trusts such as Scottish Grantmakers and/or Association of Charitable Foundations.

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments:
No

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?

Comments:
Templates/model documents for:
- Investment Policy
- Selecting an investment manager from a range of tenders

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:
No impact

Thank you very much for taking the time to respond.

Please email or post your response to us.

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	Richard Hyder
Email address	
Charity number (if responding on behalf of a charity)	

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a:

☐ Charity trustee

☐ Charity volunteer

☐ Charity employee

☐ Professional Adviser

☐ Member of the public

x **Other, please specify: answering in personal capacity as professional adviser with trustee experience (including member of investment committee)**

Do you agree to your response being made available to the public?

x **Yes - please answer A below**

☐ No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

☐ Yes, make my response, name and address all available

☐ Yes, make my response available, but not my name or address

x **Yes, make my response and name available, but not my address**

OSCR
Scottish Charity Regulator

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments:
The guidance is generally clear and easy to understand. However, in trying to be concise which is admirable (and it is considerably shorter than CC14) it skims over various topics too quickly and would benefit from more detailed explanations and more in depth content to make it more balanced and helpful.

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.

Comments: These cover specific comments and more general observations

<u>In section 2:</u>
In second paragraph where it mentions "Capital Growth" (and elsewhere such as in the Glossary) it should be made clear that there is also a possibility that the value of investments can fall as well as rise and that there could also be a capital loss.

There should be more explanation on each of the bullet points at the end of Section 2: e.g. portfolio (of stocks and share); a building; cash; right to income from some other asset.

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.

<u>In section 3</u>:
Line 7 "*We all know that financial markets can go up and down….."* If this is aimed at all trustees there may be some that do not know this so suggest this is reworded, perhaps instead starting "F*inancial markets can go up and down….."*

Line 8: It states "*…but doing nothing with the charity's money can also be a risk.*" It would be helpful for an explanation why this would be a risk i.e. explanation of inflation/purchasing power.

Generally there is too little reference to cash and cash deposits.

<u>Section 4</u>
Section 4.2 is reasonably clear on the General Duties of trustees, but there could be clearer headings to show the trustees' Duty to Invest under the 2005 Act.

On p.7 , section 4.2, after "For example:" also refer to the fact that a high risk investment could have potentially large losses.

<u>Section 5</u>:
Not much mention of risks in the paper so perhaps this is a place to include the risks a charity should consider when thinking of making investments: e.g. capital (permanent loss and volatility), liquidity, market, counterparty valuation, tax, currency etc

This section completely misses out an explanation of "financial returns". Include a new section to cover this.

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'.

In this section it is perhaps worth including a reminder that trustees must act in the interests of the charity and not their own personal views or interests.

<u>Section 5 Myth Busting</u>
Charity legal experts can better comment on this but the wording and interpretation needs to be careful.

<u>Investment policy statement</u>
There should be a separate section on 'Time Horizon' and this be taken out of section 4.

In section 8 (Performance assessment) rather than just refer to 'benchmarks' suggest this is change to "benchmarks or investment objective"

<u>Section 7:</u>
Good to include case studies but having 2 out of 3 case studies focussing on portfolios with ethical criteria does not reflect the wider picture where portfolios where there are no ethical criteria are still in the majority.

<u>General</u>
Good to include reference to social and environmental returns but overall the balance of the document could be improved as there is more emphasis on this area.

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments:
Happy to share example if required.

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?

Comments:

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability

- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:
No direct impact on any of these.

Thank you very much for taking the time to respond.

Please email or post your response to us.

OSCR
Scottish Charity Regulator

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	Dave Gorman
Email address	dave.gorman@ed.ac.uk
Charity number (if responding on behalf of a charity)	SC005336

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a:

☐ Charity trustee

☐ Charity volunteer

☐ Charity employee

☐ Professional Adviser

☐ Member of the public

☒ Other, please specify: Professional lead for responsible investment

Do you agree to your response being made available to the public?

☒ Yes - please answer A below

☐ No, not at all - your response will be treated as **confidential**

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

☒ Yes, make my response, name and address all available

☐ Yes, make my response available, but not my name or address

☐ Yes, make my response and name available, but not my address

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments:

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

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.

Comments:

Yes, from the distinction between legal duties and good practice, to simple advice about the types of investments and advice on the purposes of investment.

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments:

Yes- University of Edinburgh.

The University is the largest University in Scotland with a turnover approaching £1bn and a student and staff community of 50,000. We hold the third largest endowment of any UK university and are ranked as one of the leading University's in the world. The University is committed to making impact for society and to making a 'significant, sustainable and socially responsible contribution to the world.

The University seeks to translate that commitment into all of its activities including investments and our combined endowment and treasury funds approach £1bn. We

have a long-standing responsible investment policy and have undertaken each of the three approaches suggested in the guidance. Firstly, we are committed to ESG integration and are signatories to the Principles for Responsible Investment (as are our investment managers). Secondly, we have undertaken negative screening (and won't invest in tobacco, controversial weapons and fossil fuels). Thirdly, we undertaken positive investments in low carbon and renewables, and are committed to significant social investments. For example, in 2017 we investment £1.5m with the Big Issue Invest.

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?

Comments:

Perhaps consider good practice from the PRI organisation or other 'best practice' integration of ESG. Mercer have produced a useful guide to 'Investing in a Time of Climate Change'.

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:

There is potential for any of the above to be positively impacted if investments are considered in a responsible manner, particularly if social investments are considered.

Consultation Response Form

Please help us to analyse the responses to our consultation by completing this form.

Name	Ian Black
Email address	ian.black@aberlour.org.uk
Charity number (if responding on behalf of a charity)	

Choose **one** of the categories which best describes you or the organisation you represent.

Are you responding as a:

Charity employee

Do you agree to your response being made available to the public?

Yes

A. Where confidentiality is not requested, we will make your response available to the public on the following basis (please tick only one of the boxes):

Yes, make my response, name and address all available

Draft Charity Investments: Guidance and Good Practice: content questions and response form

1. In your opinion do you think the guidance is clear and easy to understand for charities of all shapes and sizes?

Comments: **Yes**

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.

Comments: **Yes, but the guidance should place more emphasis on the value that an investment manager with a close engagement to the Charity can bring.**

3. Do you have a case study relating to charity investments that you are happy to share, for possible inclusion on our website?

Comments: **Yes.**

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?

Comments: **Links and emphasis on the insight provided by the more directing guidance provided in England & Wales by the Charity Commission in CC14 - https://www.gov.uk/government/publications/charities-and-investment-matters-a-guide-for-trustees-cc14/charities-and-investment-matters-a-guide-for-trustees**

Equality Impact Assessment Equality Impact Assessment

Do you think the draft Guidance will have an impact (positive or negative) on any of the protected characteristic groups listed? If so, how?

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:

No negative impacts anticipated.

Thank you very much for taking the time to respond.

Please email or post your response to us.

RESPONSE TO THE SCOTTISH CHARITY REGULATOR'S (OSCR) CONSULTATION ON CHARITY INVESTMENT GUIDANCE AND GOOD PRACTICE

INTRODUCTION

The United Nations-supported Principles for Responsible Investment (PRI) is the world's leading initiative on responsible investment. The PRI has over 2100 signatories (pension funds, insurers, investment managers and service providers) globally with approximately US $80 trillion in assets under management.

Over 300 PRI signatories are based in the UK, 50 of which are asset owners (including 12 foundations and endowments). They manage assets worth approximately £927 billion. The PRI currently has 16 signatories based in Scotland, eight of which are asset owners representing £255 billion of assets.

Signatories to the PRI commit to the six Principles of responsible investment. Responsible investment explicitly acknowledges the relevance to investors of environmental, social and governance (ESG) factors in investment decision-making, for the long-term health and stability of financial markets.

The PRI welcomes the opportunity to contribute evidence to the Scottish Charity Regulator's (OSCR) consultation on guidance and good practice for charity investments, which aims to support trustees of charities with investments.

SUMMARY OF PRI'S POSITION

We welcome the OSCR's guidance for Scottish charity trustees regarding rules and responsibilities associated with investing their assets, however, 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.

Specifically we recommend that the OSCR:

1. Amend SORP (FRS 102) section 1.47 to remove the word "ethical" and to also replace the clause which suggest consideration of ESG factors is an optional consideration in the investment policy. An example of alternative wording might be: *the financial review should also explain: where the charity holds material financial investments, and how it takes environmental, social and governance considerations into account in its investment policy."* Section 8 of the guidance should be likewise updated. These changes would be well-aligned with recent amendments made to the Investment Regulations on the investment duties for trustees of occupational pension funds in the UK.[1]

2. Remove the guidance wording *"social and environmental returns (non-financial returns)"* in section 5.1, and consider how it can best leverage and align with social impact investment opportunities identified in the report "Growing a Culture of Social Impact investing in the UK."

3. Align section 5.2 of the guidance on methods used to select investments with common definitions and practices used within responsible investment. For example, we believe that considering ESG factors is relevant for all investment decision-making, rather than an optional method. In addition, we recommend using PRI's practical guide to equity investing to enhance the guidance on ESG integration (including negative and positive screening).

4. Include a statement in the guidance charity trustees should seek disclosure from investment managers acting on their behalf on how they integrate ESG issues in stock selection, portfolio construction, voting and stewardship activities. This addition would be aligned with the Charity Commission's CC14 guidance which states that investment managers of charity assets *"should vote and engage [with investee companies] as a matter of course."*

For further details, please contact policy@unpri.org.

[1] See the government's response to the Department for Work and Pensions consultation on clarifying and strengthening trustees' investment duties (September 2018).

UKSIF
UK Sustainable Investment and Finance Association

David Robb
Chief Executive
Office of the Scottish Charity Regulator
Quadrant House
9 Riverside Dr
Dundee DD1 4NY

Dear Mr Robb,

Thank you for the opportunity to respond to OSCR's public consultation, *Charity Investments: Guidance and Good Practice*. I am responding in my capacity as Chief Executive of the UK Sustainable Investment and Finance Association (UKSIF). For some time we have been calling on the Charity Commission to publish similar advice relating to ESG and ethical investment, and we welcome OSCR leading the way in the UK on this issue.

UKSIF is the membership network for sustainable and responsible financial services in the UK. We act as the voice of the responsible investment sector and promote long-term investment aimed at sustainable economic development, enhancing quality of life and safeguarding the environment. Our members include many of the UK's largest pension funds, banks, insurance firms and asset managers, all of whom are committed to long-term sustainable economic growth.

Our comments focus specifically Chapter 5 where we feel more clarity would be helpful. We welcome the reference to non-financial returns on investments in paragraph 5.1. Adequate guidance on this from regulators has been lacking for some years. Linking the additional social and environmental returns to a charity's purpose can be extremely useful in helping to explain how it meets its objective and it is right the regulator makes this clear.

Given the target of this guidance is lay trustees, we would favour even more clarity from the regulator that this section 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.

Paragraph 5.2 outlines "ESG investment", which we take to mean consideration of financially material ESG factors, as well as negative screening and positive screening. You helpfully outline that this is where investors consider ESG risks to enhance financial returns although we would also include the financial opportunities associated with ESG factors. We appreciate this may be included to make clear that just because a charity chooses to invest through an ESG lens, this does not mean they necessarily screen out investments which may run contrary to their purpose. 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.

We think that, just as supporters of a charity could become alienated where investments run contrary to a charity's purpose, supporters would be equally concerned with a charity which through poor financial returns may limit its ability to meet its charitable purpose in the future. Therefore we

UKSIF
UK Sustainable Investment and Finance Association

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. In England and Wales this is something that was found to be a source of confusion and a key obstacle for *pension scheme* trustees trying to understand their investment duties.

The materiality of ESG factors is something that has been recognised by many other institutions which now require their regulated asset-owner bodies to act where a factor is material to their investments. These include, among others, DCLG for LGPS schemes, TPR for trust-based pension schemes, and most recently DWP have laid new regulations to clarify that pension scheme trustees are required to consider all financially material factors. We also expect a consultation on similar provisions for contract-based pension schemes from the FCA in Q1 2019. Once again, the point is that consideration of all financially material risk and opportunities, including those stemming from ESG factors, has become quasi-mandatory for other types of asset owner in the UK. It would be disappointing if the regulator missed this opportunity to encourage charities to ensure this is their default approach to investment and we would welcome stronger language that reflects this.

Overall we thoroughly welcome this new guidance for charity investors which is timely and reflect the Scottish regulator taking the lead on these important issues. I hope our comments are clear, but if you have any comments please feel free to contact me via fergus.moffatt@uksif.org.

Yours sincerely,

Simon Howard
Chief Executive
UK Sustainable Investment and Finance Association