

Consultation Response Form

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

Name

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
- 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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Induction process, pack contents

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

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	<input type="text" value="Chiene + Tait LLP"/>
Email address	<input type="text" value="charities@chiene.co.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text"/>

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

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The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

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2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
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- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

This provides information in a more helpful way insofar as the summary provides a quick snapshot of the overall requirements with more detail to drill into.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

These are an effective way to provide explanation in a way that users will be more familiar with nowadays. Linking, instead of giving the information as part of the main body of guidance, also keeps the guidance shorter and more succinct but lets the reader access further information if they require it.

5. Can you think of any terms that need explanation?

Yes No

Comments:

The definition of “Charity Trustee” in the Glossary talks about those “having the general control and management of the administration of the charity . . . “. It would be useful to have some examples of specific roles, other than those general roles of being part of the “committee” or “board”, which may constitute an individual being a trustee.

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

The general layout and the language used are improved from the existing guidance. In particular the clear distinction between legal duties and good practice. A helpful addition has been the “For example” boxes which highlight particular circumstances and address particular issues.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

The language used appears to be appropriate for all users.

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

It would be helpful to have a short section or paragraph explaining that trustees of charities which are also entities subject to other legislation, or who report to other Regulators, will be subject to additional duties. It would be helpful to point out the various Memorandum of Understanding's which are in place with different bodies.

We appreciate that other requirements are mentioned in various areas, for example the Charity Finances section notes that charitable companies and RSLs will need to follow the accounting requirements of other regulators, but the overarching principle that trustees may have other responsibilities because of the nature of their business or organisation could be highlighted.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

With the exception of the matter noted in question 2 above.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

The Charity Finances section could have some guidance on the following:

1. Outline of responsibilities for approval and signing of accounts.
2. Further detail and perhaps some example on the responsibilities for the review of risks affecting the charity.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Equality Impact Assessment Equality Impact Assessment (Separate document available on the [OSCR website](#))

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

- o Age
- o Disability
- o Gender reassignment
- o Marriage and civil partnership
- o Pregnancy and maternity
- o Race
- o Religion or belief

- Sex
- Sexual orientation

Comments:

We do not think the draft Guidance will have any particular or specific impact on any of the groups listed.

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	<input type="text" value="Catriona Reynolds"/>
Email address	<input type="text" value="catriona.reynolds@aandbscotland.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="SC042631"/>

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
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The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

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- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

Shadow Trustees

I am very concerned that there seems to be no mention of what was called “Shadow Trustees” in Section 2.2 of the previous guidance. It may be that a different description should be used to clarify this issue, but I think it is very important that people understand that it is not advisable to have a situation where there are people who are not trustees exercising influence and control over a charity. It is not advisable for the charity nor for the individual because they could be held to be liable even though they are not officially appointed trustees. It is very probable that there will be occasions when there are non-trustees attending board meetings (eg staff, funders, professional advisers) but it is really important that if they do that they understand their role, and that everyone else round the board room table also fully understands the role of all attendees.

Investment Powers

There doesn't seem to be any mention of Investment Powers (as covered in Section 6 of the previous guidance).

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

Financial controls (page 33): The section under “Collective Responsibility” states “All of the trustees have responsibility for the financial records, not just the treasurer.” This assumes that all charities have or require to have treasurers, which they do not. I suggest that the sentence should be adjusted to read: “...not just the Treasurer, if you have one.”

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

I would like to particularly congratulate you on the section on Conflict of Interest which tackles the issue very clearly and helps the reader to understand that it cannot be as “cut and dried” as the previous guidance indicated; namely that all you had to do was declare your conflict of interest and step back from any involvement in the matter.

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	<input type="text" value="Jackie MacKenzie, High Life Highland ?"/>
Email address	<input type="text" value="Jackie.mackenzie@highlifehighland.com or info@highlifehighland.com"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="SCO42593"/>

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

Are you responding as a:

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

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The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

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1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy - YES
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful - YES
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes X No

Comments:

The different sections with summary and detail are clear and understandable.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

Yes, it is helpful to have links to hand.

5. Can you think of any terms that need explanation?

Yes No

Comments:

No further explanation is needed.

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy - YES
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

No further comments.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

The language is clear and easy to understand.

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

All areas are covered, both those legally required and areas of good practice.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

The draft guidance should not have any impact on any of the protected characteristics groups listed.

Thank you very much for taking the time to respond.

Please [email](#) or post your response to us.

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Name

Email address

Charity number (if responding on behalf of a charity)

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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

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1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

The glossary does a good job

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Overall, there are good explanations and largely sufficient detail, however more robust examples of issues and good practice I think would be useful for the point of view of providing context. The Charity Test Guidance document has some really case studies and a similar format I think would be beneficial, so it is reassuring that these are going to be added. Perhaps even providing links to Section 33 reports where OSCR have taken action, could be useful.

Flow charts/Info graphics: the flow chart explaining the charity finance duties on page 31 is, to me at least, a little confusing – could it not be argued that acting with care and diligence is applied to the keeping of financial records, preparation of accounts as well as applying care and diligence to financial controls?

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:
 It is understandably difficult to separate compliance from good governance however I hoped that the guidance could perhaps go further and look to dispelling some of the longstanding myths of charity governance under the sections that have been put forward. By that I mean;
 There is no mention of Office bearer roles in the guidance and there is a lot of myth (still) around office bearers (particularly Chair's) that have appear to have more duty/responsibility than other trustees. Could there be a couple of sentences about office bearer roles being tasks as opposed to an extra duty/responsibility of trustees (and thus sometimes elevating their status)
 There is little on collective decision making and shared responsibility – perhaps some case studies could be used to highlight this. Furthering that, something that outlines that it is all trustees responsibility to ensure that the board of trustees work together, not just the chair.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

Conflicts of Interest (COI): this is a very tricky topic to cover as, from our experience, it is the perceived COI that cause the most havoc. I think perhaps an indication of what is 'not' a COI would help. An encouragement to look at how trustee's decisions are perceived from the outside is a good rule of them. Could this section also reiterate that SCIO's should have some form of process for dealing with COI.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments: ummm, ↑ this isn't a yes/no kind of question.

COI – more examples, particularly; LA reps, service users on the board and something about perceived conflicts of interests.

Remuneration – examples of indirect remuneration and also examples of where benefit is incurred by trustees (such as all trustees receiving a discount on a charities services by way of an incentive to join the board)

Finances/fundraising (or maybe as an example of 'operating within your purposes') – where charities have fundraised for other charitable bodies (with different purposes) or for different purposes.

We have lots, just ask!

Consultation Response Form

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

Name	<input type="text" value="Margaret Nisbet"/>
Email address	<input type="text" value="Margaret.nisbet@mvacvs.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text"/>

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: employee of a Third Sector Interface

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

- Yes - please answer A below
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- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

Yes, however concerned that the summaries are perhaps TOO brief in some cases leaving some essential info out and the more detailed sections too long – perhaps some could be further subdivided?

Bit concerned that some people will be put off by the length of (a) the overall document and (b)

the individual sections – and not read info they should.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

Yes in most cases however would like to see links to specific clauses in documents e.g. trustee section of 2005 Act instead of just linking into the beginning of the Act. Think the whole legislation will be very off-putting to some people. Slight concern re the purple re people with visual impairments (and folk with b&w printers) – reference to the fact that relevant text is bold and underlined I think would be helpful.

5. Can you think of any terms that need explanation?

Yes No

Comments:

“Waivers”

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Very useful document but feel it is rather long and involved – e.g. fine for advisers and many trustees but might be off-putting to new/potential trustees; potentially rather expensive/time consuming to print off for Committee members – would be useful to have a printable summary (but one that contains a bit more info than online summaries at present) – in my experience not all trustees have access to computers – particularly older people; and people in more deprived areas. In addition, broad band coverage varies from poor to non-existent in some areas so working through it as at present could be a very lengthy experience.

Flow diagrams – not quite so clear when printed in b&w (or if colour blind) – might be useful to use different lines e.g. different patterns of dots and/or dashes.

Note: Further to note above, I have now been using this to assist several groups and found it very useful and much better than the previous guidance – however, would (as stated above) definitely like to see a summary document that can be given to Trustees, particularly new ones – as I really don't think people will read this document cover to cover but just dip in as required – so might miss some crucial points.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

Fine for advisers and many trustees but would like to see an easy read version for people with learning disabilities; literacy issues; English as an additional language.

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

I am aware the guidance is intended to be primarily online but as commented in Section 1, clause 7, there are still likely to be considerable numbers of trustees who do not have reliable (or any) access to the internet so needs to be available on request as hard copies from OSCR as well. Any hard copy whether provided by OSCR or printed off internet needs to have highlighted items explained and/or page number of text given – currently a lot of terms rely on linking to explanations through hyperlinks.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

The model agenda and minute documents look very useful. Similar models for General Meetings would also be good.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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
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- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

Comments:

Disability: would be useful to have alternative versions e.g. large print; easy read; BSL video of summary perhaps; use of colour will not work for some visual impairments might be useful to use other highlighters in addition to colour e.g. dotted lines/boxed headings etc

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	<input type="text" value="Scottish Charity Finance Group
Executive Committee"/>
Email address	<input type="text" value="info@scfg.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="SC022533"/>

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: SCFG represents charity finance professionals working in or with charities.

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

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- Extremely easy
- X Very easy
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- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- X Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No X

Comments:

It was not always easy to determine which sections were 'summary' and which were 'detail'. Some parts that may be seen to be summary were included in detail – for example the Specific and General Duties are given in 'more detail' perhaps each of those should introduced in the summary – with explanations in detail. It should be possible for someone reading only the summary to have a good overall view of what it means to be a trustee.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

The links would be helpful, but there are issues with them at present. The colours are different in the pdf and online versions. The links do not take you only to places within this guidance – they also take you to both external websites and other OSCR guidance (this is not how the links are explained in the introduction).

The reader needs to recall where in the document he/she started as using the “back arrow” either does not work or takes the reader back to the very start of the document.

Some of the links did not work e.g. to the accounts regulations.

5. Can you think of any terms that need explanation?

Yes No

Comments:

Definition of posts of chairperson and treasurer would be useful – perhaps this is not as a link to define those terms but with some guidance on the role of these post-holders.

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Generally the guidance looks and feels less formal than previous guidance – but it does seem to be aimed specifically at trustees of very small charities.

As this is to be the main guidance document for any trustee, it should cover the role of a trustee in any charity – and for a lot of charities that means trustees are not engaged in day to day administrative duties (such as checking transactions), but an acknowledgement that in very small charities this may be required or indeed recommended .

While there needs to be a significant emphasis on the legal responsibilities (and potential consequences for failure to comply with duties) perhaps in the introduction there should be an acknowledgement of how rewarding it can be, how giving their time and sharing skills with a charity helps people in the community and that the sector would not continue to be effective without the support of people giving up their time to become trustees.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

Feels less formal and is easy to read.

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

Different committee positions – such as chairperson/treasurer/secretary. An explanation of the roles of these posts.

There is nothing on the guidance about the HMRC requirement for a trustee to be ‘a fit and proper person’.

Information about ‘Shadow Trustees’ has been removed, perhaps some guidance on influence of others should be included, and that trustees need to make their own decisions without undue external influence.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

P7 “**How many Trustees should you have**” - states that the Governing document may set a **quorum** This statement may be misleading – A quorum just means the number that must be present for decision making it does not determine the **number of trustees you should have**. The information given in answer to the question should mention that there is likely to be a clause in governing document that states a minimum and/or maximum number of trustees that can be on the committee/board etc.

The financial controls section gives quite a lot of detail – but not as much as the CC8 document to which OSCR has previously directed trustees. Perhaps it would be better to continue to direct readers to that guidance rather than put in a limited amount of guidance here, Some of the detail given is out of date (such as banks not offering dual authorisation – this is relatively standard now)

Some sections, such as separation of duties, appear to be written from the perspective that the finance function is undertaken by trustees (i.e. segregation of duties within trustees themselves). That may be the case for very small charities, but for larger charities (even not so large) it may be that certain items (i.e. of a certain size) should go up to trustees, but the notion that several trustees are involved in day to day finance is actually quite worrying.

As mentioned before, this guidance should be written from the point of view of any trustee – and guidance should avoid giving specific detail that is not appropriate for all charities.

The new guidance no longer highlights with shading "Examples of good practice" - suggest new draft does the same.

The guidance in relation to “**Acting in a manner consistent with the charity’s purposes**” should be clearer about what that means. It does not necessarily mean understanding the governing document or following rules in the governing document. This should be defined in terms of understanding the charitable purposes, what can be done to achieve those purposes and ensuring that the charity is furthering or supporting the purposes.

No mention is made that using the charities resources (spending its money or using its assets) on the wrong purposes is a serious matter.

There perhaps needs to be further information about following the rest of the charity's governing document – but that is not the same as acting in a manner consistent with the charity's purposes.

In the section “**You must act with care and diligence**” some additional guidance may be appropriate to say that trustees need to give enough time to their role as a trustee; that they need to comply with any restrictions on how funds can be spent; not take inappropriate risks (for example: taking special care when investing or borrowing should perhaps be stated as guidance before giving the example of a high risk investment)

The guidance contains a statement that it is OK to use the charity's money to get advice, but no guidance on ensuring the board/committee has the mix of skills and level of knowledge and understanding required by their charity.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No X N/A

Comments:

Specimen Trustee Meeting Agenda and set of Minutes that bring out elements of what would be best practice.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

Additional comments:

Overall the committee felt that while the document was well written and easy to read, it did suffer from the “one document fits all” problem, and in places felt like a half-way house between an introductory guidance document for all trustees and overly specific ‘good practice’ guidance which may only be appropriate for very small charities.

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

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
- 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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

See our detailed paper

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

See our detailed paper

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

See our detailed paper

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

See our detailed paper

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

See our detailed paper

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

See our detailed paper

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

See our detailed paper

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

Thank you very much for taking the time to respond.

Please [email](#) or post your response to us.



CHARITY LAW ASSOCIATION RESPONSE TO OSCR CONSULTATION ON CHARITY TRUSTEE GUIDANCE

Introduction

The Charity Law Association is a professional body for lawyers and other professional advisers to the charity sector, and for academics working in this area, with over 970 members principally in the UK.

The members of this working party were:-

Simon Mackintosh, Turcan Connell
Robin Fallas, MacRoberts
Sheena Parikh, Salvation Army
Sue Daniels, Insight
Natalie Johnson, Wrigleys
Linda Barlow, Adviser to co-operatives, social enterprises and charities
Marie Livingstone, Barnardo's

The working party reflects a range of experience of regulation in both Scotland and England and Wales (and of reviewing equivalent Charity Commission guidance), and particularly reflects experience with large and cross border charities, but is in no sense confined to that type of charity.

The views expressed are those of the members of the working party and not the Charity Law Association as a whole.

The Working Party welcomes the issue of this draft guidance and has offered a range of comments which it is hoped will lead to an improvement in the final issued version. We would be very happy to discuss any of our comments with the team dealing with the drafting.

We felt in particular that there were some additional areas which required more in-depth treatment, either within this draft guidance or in separate guidance. These are as follows:-

- 1 There would be merit in covering the responsibilities associated with specific roles such as the Chair of the board/organisation, and the treasurer – within the context of overall collective responsibility.
- 2 Guidance is needed on options for charity trustees (and others) if duties are not being met – for example under the Serious Incident Reporting, or equivalent regime.
- 3 Trustee responsibilities – compliance with the law of charities and of the type of entity under which the charity is established is part only of the package of trustee responsibilities. There are also, by way of example, responsibilities to staff, volunteers, beneficiaries, for historic buildings, for health and safety and for risk and compliance. The

role of the board in managing the CEO, and in establishing clearly different responsibilities, needs to be clear to trustees. It may be that these topics need to be the subject of entirely separate guidance, but if that is not planned then some reference to these non-charity law responsibilities should be included within the guidance.

SECTION: INTRODUCTION

1. General comments

- 1.1 It may make it easier for people to read, navigate and refer to the guidance if the sections were numbered – both with "headline" numbers and within each section. This is particularly relevant for the paper version, but may also be helpful for the electronic version.
- 1.2 On the online version, it would be helpful if the purple menu at the side were always visible to save having to scroll back to the top of the page to click on something else.
- 1.3 A wide variety of people will be accessing the paper document. It is likely that many people will be reading a black and white version of the printed guide. It may be worth giving using underlining or italics rather than (or as well as) colour to draw people's attention to items in the glossary.
- 1.4 Having the "Legal Duty"/"Good Practice" icons is helpful, but it is not always clear how far down the page they apply. For example, does the "Legal Duty" icon on page 9 apply just to section 1 or to section 2 as well?
- 1.5 It may be that using a table format in some sections (e.g. the trustee duties section) makes the document easier to read for lay trustees – this might also make it clearer whether the item in question is a legal requirement/duty or good practice.
- 1.6 Having the sources of help, advice and best practice at the bottom of every page of the online version is fine, and may be helpful to some people, but it is not helpful in the paper version of the form. It appears 7 times in the paper form, which makes the document longer than it needs to be, as well as appearing repetitive. It would be better to have this once at the end (and possibly it could be referred to in the index to make it easier to find).
- 1.7 The guidance says that OSCR is responsible for regulating "Scottish charities and their charity trustees". This is true, but OSCR is also responsible for regulating non-Scottish charities which are registered with OSCR. The guidance should be amended (here and elsewhere) to reflect the fact that not all charities affected by the guidance/regulated by OSCR are Scottish charities – "charities which are registered with OSCR" might be a more accurate/helpful description.
- 1.8 It would be helpful for OSCR to be clear as to the weight given to good practice. The Charity Commission do this in CC3 The Essential Trustee: what you need to know, what you need to do.
- 1.9 It would be helpful if the paper version of the index were to be expanded with main features identified in bold and sub-headings identified in normal font. This would assist when referring back to key sections.
- 1.10 Page 6 is blank and should be removed.

- 1.11 Cross-referencing using page numbers and website addresses in full may assist with navigating the paper version. E.g. page 8 (paper version) – where should the reader go to find the Inquiry Policy? (We do appreciate that website locations/addresses may change from time to time.)
- 1.12 It may be helpful to refer to the relevant sections of the 2005 Act when referencing what the 2005 Act says, although we do appreciate that this guidance is intended for lay trustees.

SECTION: CHARITY TRUSTEE DUTIES

2. Introduction

- 2.1 The opening paragraph in the **summary** may seem a bit abrupt to some readers. Could it be made more encouraging?
- 2.2 It may be worth flagging that some charities will need to have regard to the guidance of other regulators too (e.g. charities in England and Wales are likely to be regulated by the Charity Commission; companies need to comply with company legislation).
- 2.3 **Who are the charity trustees?** It may be worth referring to "governors" and "members of the board/committee" as well. Other jurisdictions may impose other requirements e.g. in England, you would need to be aged 18+ before you could be a trustee of an unincorporated association, so charities which operate in other jurisdictions may need to have regard to this (e.g. an English charity seeking to register in Scotland).
- 2.4 **Who can't be a charity trustee?** It may be worth giving an example in the second paragraph e.g. some charities require that trustees are elected from the membership or that they have particular qualifications (e.g. school charities may require a certain number of trustees to be parents of pupils at the school). Page 5 – consider cross-referring to HMRC's "fit and proper persons" test.
- 2.5 **Waivers** – some people felt that it might be helpful to have an example of when a waiver might be granted.
- 2.6 **What does being a charity trustee mean?** It might be helpful to say what it does mean before saying what it doesn't mean.
- 2.7 **All charity trustees share responsibility** – consider including the Treasurer as well as the Chair, as accounting responsibilities are often delegated to the Treasurer.
- 2.8 **How many charity trustees should you have?** It may be appropriate to refer to the exceptions here (e.g. where one charity is the sole trustee of another or where a local authority is the sole trustee). We also felt that it would be appropriate for the guidance to cover corporate trustees.

- 2.9 **What happens if you fail in your duties?** It feels quite negative to have this section before we have even been told what the duties are. It would seem more appropriate to have this later on in the document, perhaps at the end of the section on trustees' duties.
3. **Your duties**
- 3.1 **Summary** – the third paragraph overlaps with the "What happens if you fail in your duties?" sections.
- 3.2 **Diagram** – some people may find this visual representation helpful. Others may not, as it does not really add anything to the text. It would be more helpful to have a combined diagram to include the "specific duties" rather than the separate diagrams on pages 9 and 14. It would be helpful if the text followed the same order as the diagram.
- 3.3 **You must act in the interests of the charity** – sometimes a trustee's interests and those of the charity may appear to align, but there would still be a conflict of interest to be managed and potential reputational risk. The paragraph at the bottom of page 9 does not deal with this very well.
- 3.4 **Good practice (page 10)** – the policy must tie in with the legal provisions.
- 3.5 **2.1 You must operate in a manner consistent with the charity's purpose** – practically speaking, how do OSCR suggest the trustees make sure that the other charity trustees and people working at the charity follow the rules in the governing document?!
- 3.6 **Good practice** – what might the induction include?
- 3.7 The fifth bullet point under 2.1 – it might be helpful to include a link to the investment guidance as this question crops up quite a lot in practice.
- 3.8 **Page 11** – Some people felt that the last bullet point should be stronger in encouraging people to take professional advice where appropriate.
- 3.9 **Page 12** – good practice – bullet point 4 – it would seem better practice to check the governing document *before* doing anything new. Bullet point 6 should acknowledge that not all charities will have employees.
- 3.10 **Specific duties for all trustees – Specific duty 1** (should cross-refer to specific duty 2 – need OSCR consent for some changes).
- 3.11 **Page 16 (diagram)** – It would be helpful to include something in the flowchart about appealing decisions.
- 3.12 We note that OSCR is waiting until the fundraising system has been reviewed before updating the guidance on **specific duty 4**.

- 3.13 **Specific duty 5** – point 1 is not comprehensive. For example, it does not include the need to include working names, and the statement that it is a charity if the words "charity" or "charitable" is not included in the name. It might be helpful to include invoices in the list as well. The legal requirement is for these details to be on the home web page – the website alone will not necessarily meet the legal requirement. [See Documents (Scotland) Regulations 2007, 2008 and 2011.] The relevant link is on the next page (page 18), which is an unhelpful layout.

SECTION: GOVERNING DOCUMENTS AND MEETINGS

- 4.1 The governing documents section on page 20 needs to be less generic and steered more so that the emphasis on "your charity's governing document." Perhaps:

Your charity's governing document

A charity's governing document is the written statement that sets out its purpose, structure and describes how it will operate. The trustees must make sure that the charity complies with its governing document, which usually contains key information about:

- What the charity exists to do (its objects)
- What powers it has to further its objects
- Who the trustees are, how many trustees there should be and how they are appointed and removed;
- Whether the charity has any members and if so who can be a member
- Rules about trustees' and members' (if any) meetings, how they are arranged and conducted and how decisions are made and record, etc;
- How to change the governing document; and
- How to close the charity down.

The name given to your charity's governing document will depend on its legal form. The range of legal forms for charities are:

[insert table]

*** with added provision – Community Benefit Society – Rules***

In this section it would be useful to point towards the model SCVO governing documents rather than at the end of the section - <http://www.scvo.org.uk/setting-up-a-charity/write-your-constitution/>

- 4.2 Page 21 – in the section "can you change your governing document?"
Is there a requirement to check any amendments with the CCE&W and CCNI if you are a cross border charity before applying to OSCR to make changes?
Also, although the "Legal Duty" symbol is present the text needs to make it explicit that the trustees have a general duty under the 2005 Act to comply with the provisions set out in the governing document of how it can be changed.

- 4.3 Page 21 – What should a governing document say about meetings?

There is a general point to make here that there should be a stronger emphasis on the fact that a charity's governing document must clearly set out the types of meeting that should be held and administered and that Trustees should check the

governing document first and follow the principles set out in it – and review and amend if practice doesn't correspond with what is written down.

Page 21 – Types of meeting – the Companies Act 2006 now doesn't make a distinction between types of members' meetings and the fact that the use of EGM dates the document. Going forward, charitable company articles will probably not refer to EGMs.

Page 21 – Quorum – consideration should be given to reducing the quorum if it is too high and a check of the provisions of the charity's governing document should be made before making the assumption that it permits electronic options for holding meetings.

Page 21 – The example given, although is a good one, the repercussion of not gaining prior consent needs to be less "fluffy." Failure to gain consent from OSCR is a breach of s66 of the 2005 Act and as such a breach of the trustees' legal duty so needs to be stated here.

Page 22 – Meetings – a general point, we do not feel this section delineates very well between general/members' and trustees' meetings. It needs to separate out the business of each type of meeting and then (if necessary) include some general principles of good practice for all types of meetings and where possible pointing to guidance - <http://www.scvo.org.uk/running-your-organisation/trustees-boards-committees/meetings/>

– first line – would argue that "shared responsibility" should be "collective responsibility" and "and members" should be included in between "trustees" and "informed" in the same paragraph. Also, does the last line of this paragraph read better as, "If you don't, the trustees will be acting in accordance with their general trustee duties and any decisions made could be invalid." There should probably be a "legal duty" tick here too.

Page 22 – What should the governing document say about meetings? – second bullet point – for consistency "board meetings" should be replaced with "trustee meetings" and again in bullet point four.

4.4 Page 22 - bullet point 8 – dealing with conflicts of interest is a general duty and so there should probably be a "legal duty" tick here. Also, as OSCR is prepared to offer minutes templates etc, we recommend that there is a link to drawing up a conflict of interest policy or guidance as this is where many charities come unstuck. Perhaps similar to the guidance produced by CCE&W - <https://www.gov.uk/government/publications/conflicts-of-interest-a-guide-for-charity-trustees-cc29/conflicts-of-interest-a-guide-for-charity-trustees#annex-d-drawing-up-a-conflicts-of-interest-policy>

4.5 Page 23 – "What else do you need to think about for meetings?" – first bullet point – needs to be reworded to "Make sure everyone who is eligible to attend knows about the meeting...."

Page 23 – “Quorum” – this is not particularly clear that a quorum does depend on the individual charity’s governing document and the type of meeting. The second paragraph is particularly misleading – “if you are having trouble always getting enough trustees to form a quorum [for a members’ meeting or a trustees’ meeting] then you may need to....” The section in square brackets would make it clearer.

- 4.6 Page 23 – box NOTE – need to add the following – “A society’s governing document is the Rules. For more information on societies, see the Financial Conduct Authority’s website.”
- 4.7 Page 24 – “Sources of help, advice and best practice” section doesn’t seem to be the same in the pdf version as on the electronic version on the website. The term “conflict of interest” is on the pdf version but missing from the electronic version.

SECTION: CONFLICT OF INTEREST

5 Introductory comments

- 5.1 As general guidance, we felt that this section was helpful, with some good examples, but sections of the drafting do need some tightening and reordering of some material would be helpful. Greater clarity is needed on the distinctions between legal requirements and best practice. It would be helpful to set out the duty and repercussions at an early point.

The guidance should be extended to cover how to handle conflicts in the course of a meeting; and the very common conflict of someone being a trustee of a charity and director of a trading subsidiary.

We wondered whether OSCR might in fact wish to do separate guidance on this general conflict topic, possibly linked with the rules on remuneration. This would be very helpful.

Specific comments

We recognise that this section is trying to summarise for the lay audience a complex area based on several different sources of law, but found the layout confusing and feel that improvements should be made as follows:-

- 5.2 The explanation of conflict of interest in the glossary at the end is incomplete. It starts by describing a situation of personal benefit only. This should be extended to include institutional conflicts and conflicts of loyalty. As drafted the lay reader, for whom this is intended, could take conflict of interest to mean simply personal financial benefit. It does not include duties to other charities or to an appointing body.

We think it important to state clearly at the outset that having a conflict of interest is not of itself bad, handling it properly is the key issue.

It is important to get the first sentence of the summary right because this sets the framework for the whole of this section. This implies that a conflict of interests only arises where the trustee cannot put the interests of the charity before those of some other entity. In fact, the conflict is in existence before that stage is reached. It is possible to have a conflict of interest but to handle it properly by putting the interests of the charity first.

- 5.3 Somewhere the guidance needs to make clear the specific rules relating to an “appointment conflict of interest” as per Section 66 of the Act and a more general conflict of interest under, for example, trust or company law and inherent in the general duty to act in the best interests of the charity. A table of duties would help.
- 5.4 On page 25 we were rather lost by the “legal duty” symbols. The second type of conflict of interest explained is as much a matter of legal duty as the first – it simply arises under the general law rather than the 2005 Act.
- 5.5 On page 26 under the heading “What is a conflict of interest?” we found the first paragraph slightly repetitive of the summary and might be better merged into the summary.
- 5.6 Use of “good practice” and “legal duty” symbols on this page should be reviewed.
- 5.7 The first paragraph also assumes difficulty or impossibility in making an impartial decision, whereas with proper handling and application of a charity’s rules on conflict of interest, a decision can in fact be taken.
- 5.8 We are not quite clear what guidance you are seeking to give in the second paragraph starting “it is important.....” and this needs to be tightened up.

What should you do if there is a conflict of interest?

- 5.9 In this section we think that mention of the responsibility of the charity’s chair to ensure that these issues are properly handled should be included.
- 5.10 Under the “manage” paragraph (page 27), there is specific statutory provision on how to handle an “appointment conflict” under Section 66 of the 2005 Act and this should be included either here or under a specific separate section in relation to those particular rules.
- 5.11 Under “learn” (page 24), the third bullet point, the duty on trustees is to take reasonably practicable steps to ensure that a trustee in serious or persistent breach is removed as a trustee. That is not quite the same as requiring Trustees to “make sure” that a governing document has power to remove.

When should the charity trustee withdraw from a meeting?

- 5.12 The first paragraph of this guidance is not in line with the 2005 Act which envisages the possibility of the trustee being able to put the interests of the charity before

the interests of the appointing body. It is only if they are unable to do so that they must disclose and refrain from participation.

The first sentence of this paragraph is also wrong – it is not consistent with Section 66 of the Act, and nor is it consistent with earlier parts of the guidance.

While your example of a board made up mainly of service users is a powerful one there is a slight risk that the lay reader would think that this is a desirable governance arrangement, which it is not.

What to do if another charity trustee has a conflict of interest?

- 5.13 In addition to the collective responsibility points we think that duties of the chair should be covered here.

Trading companies

- 5.14 It is common for some trustees to be directors of a trading subsidiary and guidance on their conflicts should be included.

SECTION: CHARITY FINANCES

- 6 Generally this section is clear and should be helpful to the lay trustees at whom it is aimed. The online version is particularly easy to use and navigate.

General comments

- 6.1 The working group felt this section could perhaps link back more strongly to relevant duties.
- 6.2 Noting that OSCR consulted earlier in the year on serious incident reporting; once OSCR has decided on its SIR policy, it would be helpful to reference that here.

Specific areas

- 6.3 In *what financial information do you need to submit*, under *annual return* (p33 in PDF version) where there is reference to the level of income of the charity, it might be helpful to link to guidance on the annual return and income threshold limits.
- 6.4 In the same section (p33 in PDF version), it might be helpful to clarify that items 2,3 and 4 in the list (statement of accounts, trustees' annual report and an external scrutiny report) will usually be included in one document.
- 6.5 In the same section (p33 in the PDF version), the box highlighting that certain types of organisation will also have to follow the requirements of other regulators is helpful. A similar approach could usefully be taken in various other parts of the guidance e.g. in *your duties* under *specific duty 2 – making changes to your charity*.

In the Note box on page 33 reference should also be made to registered Societies and the Charity Commission for Northern Ireland.

- 6.6 Under *Financial controls and what areas do you need to consider – collective responsibility* (p34 in the PDF), this feels a little light on the need for all trustees to have a grasp of the finances, especially for larger charities.
- 6.7 *Separation of duties* – it would be useful to clarify that this doesn't just apply to trustees so, e.g., if a charity has other volunteers or paid staff undertaking these duties, the same principle of separation of duties applies.
- 6.8 *Controls over cash* – in terms of donation mechanisms, this section could usefully refer to other methods, e.g., online giving, text to donate. It currently just refers to bank transfers or cheque.
- 6.9 *Cheque payments* – suggest clarify it is two *alternate* signatories – currently could read as if cheques *have* to be signed by two people (which itself might be valid for higher levels of payment as a control mechanism).
- 6.10 *Sources of help, advice and best practice* – beside the reference to the Charity Commission for England and Wales's guidance re internal financial controls, it might be helpful to clarify the status of this guidance for Scottish charities.

The Charity Commission under *source of help, advice and best practice* reads awkwardly – Currently:

The Charity Commission for England and Wales have produced detailed guidance on internal financial controls that are applicable to Scottish charities.

Should be:

The Charity Commission for England and Wales has produced detailed guidance on internal financial controls that is applicable to Scottish charities]

It would be preferable to say, though, that this represents good or best practice for Scottish charities, and specify which parts of it to refer to because this simple reference is potentially confusing.

SECTION: PUBLICISING THAT YOU ARE A CHARITY

Summary

- 7 There perhaps should be an explanation of the Regulations in the glossary as opposed the end of the section. Instead of the word being in blue it should be in purple (if colours are used).

Suggested wording-

“Regulations: This means The Charities References in Documents (Scotland) Regulations 2007 and The Charities References in Documents (Scotland) Amendment Regulations 2008: these Regulations sets out requirements for charities entered in the Scottish Charity Register and outlines the information which must be stated on certain documents”.

More detail

7.1 Include the following points for further explanation:

- All charities entered in the Scottish Charity Register, including those that are registered as charities in another jurisdiction must publicise that they are a charity.
- The Regulations apply regardless of where the documents are issued.
- Charities which are registered in other jurisdictions, or subject to another regulator, will need to comply with the requirements under the 2005 Act and the Regulations in addition to their obligations/requirements under their home territories/regulator.

What you need to tell people?

7.2 More clarity on the 4th bullet point.

Suggested wording from the 2005 Act -

“a charity that does not contain the word ‘charity’ or ‘charitable’ must also state on certain [external documents](#) the fact that it is a charity. For example, a charity entered in the Scottish Charity Register can use one of the following terms:

- charity
- charitable body
- registered charity
- charity registered in Scotland

charities that are established under the law of Scotland, or which are managed or controlled wholly or mainly from Scotland, can use one of the following terms:

- Scottish charity
- Registered Scottish charity”

The first example of Monkstown After School refers to it being a Scottish Charity. From the 2005 Act as highlighted above the description “Scottish Charity” is for those charities that are established under the law of Scotland etc. This is not clear from the example.

Which external documents need to have these details?

7.3 Include the following in the list:

- and document which solicits money or other property for the benefit of the charity- (this wording can perhaps replace number 4 on the list)
- promissory notes, endorsements and orders for money or goods

7.4 It may also be helpful to include examples and next to the list especially for those that are less obvious.

- all your external letters and emails (including correspondence sent by solicitors or other professionals on behalf of a charity, correspondence between parent and subsidiary charities)
- adverts, notices, and official publications (posters, advertisements in newspapers or magazines, charity information booklets, flyers, hand-outs)
- any document which solicits money or other property (printed collection materials/leaflets)
- promissory notes etc (purchase orders, loan agreements)
- bills the charity issues (bills submitted for payment by or from the charity)
- contracts (includes tickets for events which contain the T & C)

In addition to the above requirements, it is good practice to put charity details on:

7.5 Include compliments slips and interim accounting information

What happens if you don't put the charity details on documents?

Typo- states regulations - needs to be Regulations

7.6 Additional comments - whether OSCR should draw attention to where the required information should be placed- i.e it is good practice to place the information in a noticeable place- and give examples such as the first page of the statement of account.

Charitable companies

7.7 Perhaps, include The Companies (Registrar, Languages and Trading Disclosures) Regulations 2006 and The Companies (Trading Disclosures) Regulations 2008 in blue (perhaps referred to as [Company Regulations](#)).

Suggested wording in the glossary

- "The Company Regulations requires companies to state certain information on documents and correspondence they produce. They apply throughout the United Kingdom".

7.8 More detail is required for further information required:

Suggested wording: "In addition to charity law and company law...

- A charity which is also a company must include its name on all websites and electronic versions of letters, order forms, notices and official publications, invoices, receipts, cheques and letters of credit.
- All letters, emails, order forms and websites of the company must state:
 - the company's place of registration and its registered company number;
 - the address of its registered office; and
 - if the name does not include the word 'limited', the fact that it is a limited company".

SECTION: REMUNERATION

8 Summary section:

Overall, we thought the section on remuneration was well set out and readable.

- 8.1 We suggest that the opening sentence reads to reflect, at the front end, that the 2005 Act sets out the **conditions** under which charity trustees may be remunerated (given the act is structured as 'no remuneration *unless...*').
- 8.2 We suggest 'interests' should be used instead of 'needs' (tracking s67 wording and correlating to the clear and well understood 'best interests' duty on charity trustees under section 66).
- 8.3 We suggest the reference to reclaiming expenses might benefit from being stated as '*reasonable out of pocket expenses*' (which is generally a common and understood phrase).

More detail section:

- 8.4 Regarding the first paragraph, the Act doesn't focus on payment/paying trustees. The two clear descriptions are: (i) remuneration for services provided to/on behalf of the charity by a charity trustee, and (ii) remuneration for services provided to/on behalf of the charity by a person connected to a charity trustee. The first sentence doesn't quite reflect this as it is. If this were clear, examples that then follow (perhaps expanded as noted in the following bullet) and the approach of then moving to talk in terms of "payment" ought to flow quite nicely.
- 8.5 Alongside the example of out-of-pocket expenses, might it be useful to put in a brief example of each strand of "remuneration". For example, as things stand there is no "boxed" example of remuneration via a charity trustee providing a service or any example of remuneration in the form of straight-forward remuneration of a connected person.
- 8.6 The connected person section departs from what is set out in s68 and should be amended (though we appreciate OSCR does not wish to narrate the legislative

provision word for word). For example, the bullet on "immediate family of *spouse*" departs from s68(2)(b). Separately, "Cohabitee" is not the same terminology as what appears in s68(2)(a) but we appreciate that this may be deemed a reasonable "shortening" by OSCR. However, 'body corporate' and 'institution' are used alongside company and partnership within s68 and are not mentioned.

- 8.7 We suggest the "rules on paying charity trustees" section could be tweaked to better correlate with s67. OSCR may wish to start with the second and third bullet. The content of the first bullet could then be added alongside that referring to the "interests" of the charity, to cover the requirement that the charity considers the **maximum amount** also to be 'reasonable'.

There are then examples that don't sit in an examples box – it might be useful if they did (and see point above relevant to clear examples, ideally beside one another of the forms of remuneration and out-of-pocket expenses).

- 8.8 The example of indirect payment seems unusual (though we defer to OSCR experience of this arising as an issue) and a little difficult to fathom)), might OSCR wish to drop or choose a different example – particularly as the Act does not have a particularly great focus on direct/indirect.
- 8.9 We assume that OSCR, as and when it does further more specific guidance around trading subsidiaries, might provide guidance relevant to remuneration at trading subsidiary level at that stage (but does not wish to get drawn into specifics in this general guidance document). Another such scenario that may be of practical interest could equally be treatment of a payment to a connected person of a Trustee as a beneficiary (as distinct from payment for providing a service - and which might interlink with / usefully also be contextualised/distinguished relevant to the section on "what else do you need to consider about payments section").
- 8.10 There seems to be an element of repetition in, after the exemptions section, (within the pdf full version) setting out 'conditions for paying a connected person'. However, OSCR may take the view that this is a consequence of the design/accessibility of the online version (which people will access in bite-sized chunks).
- 8.11 Should the section on "what happens if you want to pay....." simply refer back to the requirement to meet the conditions that have been set out (as a shortened (2 bullets) list of considerations is all that appears here) before going on to make the important point about recording of considerations / compliance with the s67 rules/conditions.
- 8.12 The reference in bold to **misconduct** for allowing excessive payment is not mirrored generally by reference to **misconduct** for failing to comply with each of the rules/conditions (other than at the very end of the remuneration section). Query whether this could distort perceived importance?

Consultation Response Form

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

Name	<input type="text" value="Katie Hay"/>
Email address	<input type="text" value="katiehay@lawscot.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text"/>

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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Fairly easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

Navigation

The committee would suggest that ease of navigation could possibly be improved by a clear explanation in the introduction of the overall structure of the Guidance. In the draft, the structure shows up in the “Contents” (PDF version, p 2) and in the menu on the top left of the screen (web-based version). Although the “Introduction” and “Your duties”/“Charity Trustee Duties” clearly belong at the beginning and the “Glossary” at the end, the order chosen for the

intervening items needs some explanation. Likewise, further thought might be given to the relationship between these items and the specific duties dealt with in the “Specific duties for all trustees” sub-section of the “Your duties”/“Charity Trustee Duties” section. There is some overlap but it is not clear why *some* specific duties have been selected for fuller treatment in sections of their own, but not others.

One possible alternative approach to the overall structure would be to tie it more closely to the terms and structure of the 2005 Act. It is of course accepted that the guidance is not written primarily for legal advisers, but it will be used by lawyers as well as non-lawyers, it concerns duties which arise under the Act, and is issued by OSCR in pursuance of its functions under the Act. From this perspective, a logical structure for the guidance might be (1) an introduction setting out its scope (as determined by OSCR’s power to issue guidance), (2) a full treatment of the concept of “charity trustees” under the Act, (3) an account of the general duties of charity trustees set out in section 66 of the 2005 Act (as in the draft Guidance), followed by (4) treatment of the specific duties arising expressly or by implication under the Act, set out in the order in which they appear in the Act. The Act itself has an internal logic which would then be mirrored in the guidance. This is not the only possible approach, but whatever structure is adopted in the final Guidance should have an identifiable internal logic which should be clearly explained in the Introduction.

Web-based layout

A clear overall structure would assist the user to navigate the web-based version of the Guidance in particular. It is a significant attraction of this version that it provides easy access to a wealth of further resources, but there is an associated risk that the user may be daunted by the amount of detailed information available, and lose sight of the wood for the trees unless the Guidance is set within an easily understood overall framework.

Structure of different sections

See further below under Q7.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

The committee’s view is that the Glossary is potentially a key component of the Guidance, and there is considerable scope for tightening up the definitions/explanations in the draft. As noted above, the committee appreciates that the Guidance is intended primarily for non-lawyers; but the minimum requirements for a glossary in this context must be that (a) it is legally accurate and (b) it leaves no room for misunderstandings. Some examples of potentially misleading entries in the draft Glossary are:

Charity Trustee: “charity trustees” are defined in the 2005 Act as “*the* persons having the general control and management of the administration of a charity” (our emphasis). The “the” omitted in the Glossary makes a difference: charity trustees are the people who *collectively*

have the general control and management of the administration of the body concerned.

A separate point is that (for example) a director of a company which is registered as a charity is a charity trustee *by virtue of* being a director and having, along with the other directors, the general control and management of the administration of the company, and therefore of the charity. It is misleading, therefore, to say simply that such a charity trustee “can also be known as” a director. The explanation is incomplete without highlighting the connection between the individual’s capacities as (1) a director under company law and (2) a charity trustee under the 2005 Act.

Similarly, the trustee of a public trust which is registered as a charity is a charity trustee under the 2005 Act by virtue of being a trustee of the trust under the law of trusts. In this context, there is scope for confusion if “trustee” is used as a short version of “charity trustee”, as it is in many places in the draft Guidance, and the safer approach is to use the full term “charity trustee” in all cases where the statutory meaning of the expression is intended, and to use “trustee” only in the strict legal sense of the trustee of a trust. The Glossary is the ideal place to highlight such distinctions.

Disbenefit: the draft Guidance states that the explanation offered in the Glossary – “the opposite of benefit and ... equivalent to detriment or harm” – is “*set out* in section 8(2)(ii) of the 2005 Act” (our emphasis). In fact, the Act provides no definition or explanation of the word.

Mismanagement or misconduct: section 106 of the 2005 Act states that “misconduct” *includes* mismanagement. For the purposes of the Act, therefore, mismanagement is a species of misconduct and cannot logically be presented as an alternative. That point aside, the Glossary defines the content of “misconduct”, but this is the only place where reference is made to “significant loss or harm to the charity”. This phrase could perhaps be elaborated upon: where does it come from, and what exactly is it intended to cover?

Quorum, etc

Other definitions, such as “Quorum” might benefit from fine-tuning: e.g., “Quorum” can of course be applicable to members’ meetings so the reference to charity trustees (only) in this context may be misleading.

A further point is that there is a tendency for the definitions/explanations given in the Glossary to stray into the provision of advice. The entry for “Conflict of interest (policy)” is an example. Advice is perhaps better confined to the main body of the Guidance, leaving the Glossary to deal strictly with the meaning of terms.

To the non-lawyer these may appear minor and even pedantic points, but there is a risk that for legal advisers and charity trustees from a professional background such inaccuracies could undermine confidence in the quality of the Guidance.

A possible pattern for glossary entries might be to start with the legal definition of the term where there is one (whether in the 2005 Act or elsewhere), and to follow it with a plain-English definition and (if necessary) a further plain-English explanation, possibly using an example or examples. Where there is no authoritative definition of a key term (as in the case of “disbenefit”), that should be made clear, so the user is aware of the purely “common sense” status of the definition/explanation offered in the Guidance.

5. Can you think of any terms that need explanation?

Yes No

Comments:

As noted above, it is the committee's view that the term "charity trustees" needs a fully accurate definition/explanation in the Glossary. Given the centrality of the concept to the Guidance, however, it also needs to be fully explained in the text (more fully than in the draft Introduction under "Who are the charity trustees?"). The explanation should highlight the importance of the underlying legal form of a body registered as a charity, and the duties associated with the legal form (for example under company or trust law). There is, certainly, overlap between the duties relating to legal form and those imposed on charity trustees under the 2005 Act, but these different sets of duties are not identical and that should be made clear. The special case of the SCIO should also be addressed: here of course there is no distinction between duties associated with legal form and duties under the 2005 Act – but this should be explained. (If this change is made to the draft Introduction, some adjustment will also be needed to the "Governing documents" sub-section of the "Governing documents and meetings" section.)

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
 Quite easy
 Quite difficult
 Very difficult
 Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Overall, the committee views this guidance as a useful document, giving more in the way of practical steer than the current guidance on charity trustee duties (and it is certainly more user-friendly); also, the practical examples are helpful.

The use of symbols to distinguish between legal duties and good practice is welcomed, but there are elements flagged as legal duties which probably fall more into the "good practice"

category, for example there is a reference under “specific duties” to “taking control of how your charity fundraises”; depending on how one interprets “taking control”, that may be an over-statement of the position regarding charity trustee duties. It is also not always clear where the application of the symbol to the relevant text 'stops', and that could also present a misleading picture.

Although, again, the committee is well aware that the main constituency of the Guidance will be non-lawyers, it is still surprising that fuller reference is not made to the 2005 Act, which is (as noted) the source of both the charity trustee duties under discussion and OSCR’s powers to enforce them and give guidance on them. With this in mind, the committee suggests as a possible development of the structure for the individual sections/sub-sections of the Guidance, over and above the “summary” and “more detail” pattern in the draft, the following:

- The relevant 2005 Act provision
- Plain English explanation
- Mandatory legal duties arising from the provision
- Associated good practice
- Examples

The Guidance in its current form could be quite intimidating (even just because of its length), particularly for smaller charities; it would be helpful if a shorter easy-read version were made available at the same time. We understand OSCR does intend to produce a shorter version once the longer version is finalised, and that is to be welcomed. It would be helpful if the easy-read version could be made available in a printable PDF form which could be read as a stand-alone document without reliance on links to other resources. It is likely that there are still many charity trustees who feel more comfortable with the printed word than with text on a screen.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

Yes; however, the committee has some misgivings over whether, in attempting to achieve a user-friendly document, there has been a tendency to take too much of a broad-brush approach in outlining the legal position – with the effect that the document is in danger of being misleading in a number of areas. The committee fully understands the difficulty of balancing the need for guidance which is accessible to all charity trustees and achieving legal accuracy to the standard expected by legal advisers and charity trustees from a professional background. There is a tension between the two which can perhaps never be fully resolved, but the committee’s view is that the final version of the Guidance needs a clearer focus on legal accuracy while seeking to maintain full accessibility.

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

See above. On one view, the Guidance is perhaps too narrow in that it focuses solely on charity trustee duties under the 2005 Act and misses the opportunity to make greater mention of the importance of charity trustee involvement in, for example, risk management. It may be, however, that OSCR regards its remit as being to provide guidance as limited by the definition of its functions in section 1 of the 2005 Act, which do not (by contrast with the Charity Commission's functions) include a function of "encouraging and facilitating the better administration of charities" generally. If so, the intended scope and limited remit of the Guidance should be made clear. Even so, the committee feels that fuller reference could still be properly made (as suggested above) to the concurrent duties relating to the underlying legal form of a charity, as well as to the various duties which can arise from a charity's activities, such as carrying out Disclosure Scotland checks where the charity works with vulnerable people. This is done obliquely in the draft Guidance under "Who can't be a charity trustee?" in the Introduction, but a *direct* reference to these, and other activity-related, duties would be preferable.

Some linkages with other areas of concern directly relevant to charity trustees' duties would also be helpful, for example the introduction of the notifiable events reporting regime, the HMRC fit and proper persons requirements, the principles regarding investment etc.

A further specific point to note is that the Guidance as drafted cannot be taken to apply in full, without appropriate qualification, to the charity trustees of designated religious charities – this should be made clear in the Introduction.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

The use of "you"/ "the charity"/ "the charity trustees" throughout the Guidance needs to be carefully checked on a line-by-line basis. In some cases "you" refers to matters which the charity is legally responsible for, while in other cases it refers to matters for which the charity trustees (or an individual charity trustee) is/are responsible. This is an important distinction; a prospective charity trustee who is concerned about taking on duties that will apply to him/her personally – and worried about the extent to which he/she will have direct control over what may happen on a day-to-day basis in the course of the charity's operations (see also comments below on "making sure that..." formulations) – needs to be clear about what his/her own duties are, as distinct from those that fall upon the charity.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

Charities need to recruit and retain good charity trustees and so the tone of the Guidance could perhaps be more encouraging. It needs to be borne in mind that there are charity trustees (and prospective charity trustees) who are nervous and risk-averse as regards legal duties; while we do appreciate the importance of making sure that charity trustees – and prospective charity trustees – take their duties seriously, it is important that the right balance is struck.

The use of phrases such as charity trustees “being responsible for...” or “making sure that...” could cause concern to less confident charity trustees, as it may suggest automatic personal liability if something does go wrong.

A further example is in the introduction, where there is a statement to the effect that the charity trustees “are responsible for complying with the law”; while that has some validity in the sense that the governing organ of any corporate body would be expected to have a degree of oversight and control as regards compliance by that body with its legal obligations, a nervous charity trustee might interpret that as meaning that he/she would automatically be personally exposed to court proceedings, formal investigations by statutory agencies and the like – which, in the context of a large-scale charity with complex operations, could be an intimidating prospect. Again, one needs to consider the impact of other statements in the Guidance from that perspective eg the statement under “What does being a charity trustee mean” to the effect that “Being a charity trustee does mean you are *fully responsible* [our emphasis] for how your charity is run and what it does”.

There is also a statement (under “Who can’t be a charity trustee”) to the effect that it is “...the responsibility of all the trustees to *make sure* [our emphasis] that none of them is disqualified”. Again, a cautious charity trustee might take that to mean that he/she had a personal duty to carry out an investigation into the background of each and every new charity trustee. The sentence that follows that statement – with the reference to *knowing* that a fellow charity trustee is disqualified – is, of course, a more accurate outline of the legal position.

There are several references to a failure to comply with the duties **being** misconduct and that OSCR has power to take action against charity trustees in such cases without any further explanation of what that action might be. We think the kind of action OSCR can take needs to be explained, ideally along with some comforting words (and possibly a case study) to demonstrate that OSCR will approach things in a pragmatic way if charity trustees have acted in good faith. Also there is no mention of the reference in the 2005 Act itself to OSCR excusing a charity trustee who acted honestly and reasonably in relation to the misconduct (section 31(10)); mention of that reference might again help to produce a more balanced picture.

More fundamentally, it would be important to build in some material which explains how and to what extent liability might attach (at a practical level) to charity trustees in relation to matters

for which they are responsible (and possibly with some commentary on management of those risks, including indemnity insurance).

The conflict-of-interest material is not entirely in line with the legislation, and would benefit from fine-tuning in various areas; for example it is incorrect to say that when a charity trustee is aware of a conflict of interest, that means they are unable to put the interests of the charity first. Leaving aside wider principles of governance, the 2005 Act itself recognises that a charity trustee *can* put the interests of the charity first, where there is a conflict that involves a body which appointed him/her as a charity trustee; it is only where there is another duty which prevents him/her from doing so, that he/she is required by the 2005 Act to withdraw from participation in the decision.

Beyond that, the sentence in the draft Guidance which follows that statement contradicts it, by saying that it “may also be appropriate..... to withdraw from discussions” in other circumstances of conflict of interest. Also, the case study that follows that statement in the guidance shows a good example of where charity trustees *do* vote on a decision where they have a conflict of interest, and this is regarded as acceptable.

There is material within the conflict-of-interest section which suggests that a finding of misconduct in the administration of a charity could be made in relation to the other charity trustees if they failed to remove a charity trustee who had persistently breached his/her obligations regarding conflict of interest. Firstly, the specific duty under the 2005 Act relating to conflict of interest focuses solely on a situation where there is a conflict of interest involving a person responsible for the appointment of that particular charity trustee (which is a very small sub-set of the situations where conflict of interest can arise); that is a significant point, as the duty on charity trustees as regards addressing breach of duty by a fellow charity trustee refers to breach of obligations *under the 2005 Act*, not breaches of more general principles of good practice in governance round conflict of interest (we appreciate that an alternative argument would be that the charity trustee had breached the general duty to act in the interests of the charity, but that would be much more difficult to demonstrate if the only ground for claiming that was that he/she had a conflict of interest). Secondly, in many cases the constitution will not provide a mechanism for charity trustees to remove one of their number.

On that second point, it might be worth including a little more detail to refer to typical provisions in constitutions (and the statutory power to remove a director under company law) allowing members to remove a charity trustee – such that the duty on the other charity trustees would be to initiate that process, albeit removal would rest on a resolution by the members rather than a resolution by the charity trustees. Incidentally, there is an inaccurate reference (under “Good practice”, within the section headed “2 You must act in the interests of the charity”) to the “charity” having the power in its governing document to remove charity trustees if they are in breach of their duties; the charity, as a corporate body (or, for that matter if it were an unincorporated body) would never have the power to remove one of its own charity trustees – that power would have to sit with the members or with the governing organ of the charity.

There are further technical issues which we would highlight for further consideration:

P9 – The Companies Act 2006 includes a provision to the effect that all clauses formerly set out in a company’s memorandum of association will be deemed to be included in their articles of association, and the memorandum of association for all companies incorporated after the

relevant provisions came into force contains only a statement by the subscribers that they wish to form the company. Arguably, therefore, we should refer only to “articles of association” in signposting people to where they can find the charity’s purposes if it is a company; against that, there will be a large number of charitable companies that have not overhauled their constitutions, and where the document that they should be looking for will indeed be headed “memorandum of association”. Possibly a footnote may be appropriate here.

P10 – While the point about higher duty of care is probably correct, as compared with eg the duty on the director of a non-charitable company, the suggestion that “You have a higher duty of care over the charity’s affairs than you do over your own” is perhaps slightly misleading. In the example given below that statement, someone who is investing his/her own money is under no duty of care at all. Also, if you were to use duty of care in the sense of the duty owed to the public under wider principles of law, an individual operating a care services business as a sole trader is arguably under a higher duty of care than in a case where he/she serves on the board of a charity that provides care services. That ties in with a wider question: which is *who* the duty of care under the 2005 Act is actually owed *to*. The 2005 Act makes it clear that one potential consequence of breach of the duty of care in the 2005 Act is action by OSCR – but it is a moot point whether the existence of that duty of care under the 2005 Act would give a charity/a group of beneficiaries/ an individual member of the public/ a major donor the right to pursue a charity trustee who had been in breach, and if so, what remedies would be available. Again, that links with our earlier comments about the scope of the Guidance

PP10, 11 – Again, in line with our earlier comments, we would highlight the suggestion that all the charity trustees must “know” what assets the charity has (that is clearly unrealistic at a detailed level, in a large-scale charity); the suggestion that as charity trustees you must “make sure” that the charity has enough money to pay staff and other costs; and the statement that you are responsible for “making sure” your charity complies with any relevant laws.

P11 – It is very uncommon for charity constitutions – or indeed codes of conduct – to include rules that say what happens if the charity trustees cannot agree with each other, beyond the basic principle that if a vote is taken, the majority view will prevail or if there is a tie (in the absence of a casting vote being available to the chairperson of the meeting), the status quo will prevail.

P19 – See comments above regarding reference to “Memorandum and articles of association”. Also, in relation to a trust, it would probably be as well to include a reference to “Declaration of trust” as well as “Trust Deed”.

P21 – The reference to removal of charity trustees is perhaps not appropriate in the context of a list of matters relating to meetings; there may be special procedures for removal of charity trustees, but it looks slightly odd under that heading.

P22 – Case law in relation to participation in meetings via video-links etc is evolving. We would suggest that the statement should use the word “should”, rather than “must” in relation to stating this in the governing document. Also, there is a further reference here to “Memorandum and Articles of Association” – see earlier comments.

P26 – Often the constitution will state that it is for the chairperson of a meeting to give a definitive ruling on whether a charity trustee with a conflict of interest can or cannot vote; that should perhaps be made clear, given that the word “you” might suggest that the charity

trustees as a whole will always make that determination.

P34 – The reference to issuing receipts for donations is of course appropriate as a general statement – but conflicts with the practicalities of street collections etc.

P37 - We are not convinced that the reference to “indirect payment” is appropriate; that expression is not used in the legislation, and those using the Guidance would probably find it easier to understand the principles by reference to the straightforward idea of linking family members in this context; a reference to “indirect payment” might suggest that the focus was on whether another charity trustee might actually receive all or a proportion of the payment. As a general point, the material relating to remuneration does not drill into the detail of the legislation in this area, though we do appreciate that a full analysis would increase the length and complexity of the Guidance.

Within the remuneration section, the wording used to cover off 'connected persons'/ s68 of the 2005 Act, ends up departing from what is set out in s68. This would benefit from a quick review and update (for example, no current reference to institution/body corporate). Also, the boxed example for indirect payment seems a little convoluted and other, perhaps more useful examples given in the text are not boxed (where it might be helpful if they were).

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Comments:

Further to our comment above about charity trustee liability, it might be helpful (and reassuring for potential charity trustees) for the Guidance to include anonymised case studies of accidental breaches and their outcomes (actions by OSCR).

We would also suggest bringing in case studies to illustrate some of the issues that are difficult to include in the body of the Guidance itself, namely problems that are not legal but practical, for example how to deal with a chairperson with a difficult personality.

Consultation Response Form

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

Name	<input type="text" value="Ciaran Price"/>
Email address	<input type="text" value="cprice@dsc.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="800517 (Directory of Social Change)"/>

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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

The summaries are kept brief which is useful.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

Extremely useful

5. Can you think of any terms that need explanation?

Yes No

Comments:

We welcome OSCRs approach to defining Legal Duty and Good Practice and what a charity trustee 'must' and 'should' do which is not overly prescriptive.

Where the Commission specifies something as a legal duty, it is clear that OSCR expects trustees to abide by the law. The consequences for not doing so are also clear in that OSCR has the "power to take action against charity trustees, where appropriate".

The significance of the good practice guidance offered by the Commission may be unclear to trustees, however. What are the consequences of not following good practice? Is the Commission's good practice guidance optional? If trustees do not follow the Commission's good practice guidance what powers will the Commission use? Does a failure to follow good practice constitute misconduct and a failure on the part of trustees to abide by their legal duty to act in the interests of the charity?

The good practice guidance offered here is extremely helpful and trustees would be well advised to follow it. However we are concerned that the importance of following it is not being fully communicated. This guidance would be greatly improved if the Commission can draft something explaining what it expects from trustees with regard to good practice. It is important to do this in a way which does not conflate good practice with legal duty and in a way which is not prescriptive, maintaining the principal of trustee's discretion to make independent decisions.

We think it would be best to point out that trustees need to consider that by following good practice guidance they will be in a better position to govern well and within their legal duties. Failing to follow good practice may well put them at risk of breaking the law, and importantly harming the charities ability to help its beneficiaries.

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

The reason we have checked the "Quite difficult" box about is because we feel that the guidance overall is too long. At 50 pages long is not particularly accessible for trustees and does not encourage them to read it. Bear in mind this is one of the many guidance documents that they will need to be familiar with. Good work could be done to cut down the size and make it more readable by addressing unnecessary repetition.

The introduction, for instance, goes into a lot of detail which is repeated throughout the guidance and could potentially be shortened.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

We found the language very accessible and easy to understand

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

Unless we have overlooked it, there does not seem to be guidance on how a board can recruit new trustees and how appointments begin and end. This is quite an important area that should be covered.

Other than this the guidance seems comprehensive

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

As discussed in Section A(5) above, the “What happens if you fail in your duties?” section of the introduction needs to be clearer in relation to following good practice.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

As discussed in Section A(5) above, more detail could be given with regard to the consequences of not following good practice guidance. This could be elaborated on in the introduction.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Examples of conflicts of interest would be helpful

It should be borne in mind that the guidance is already 50 pages long, excluding sections on fundraising regulation and these proposed case studies. Based on our experience, OSCR will find getting this new guidance taken up by trustees to be challenging. It will be necessary to actively promote the document after publication. This task will be significantly easier, and therefore the guidance will be more effective, if it is shorter.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

We cannot see any reason for concern here.

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	<input type="text" value="SCOTTISH CHURCHES COMMITTEE"/>
Email address	<input type="text" value="jwilson@churchofscotland.org.uk"/>
Charity number (if responding on behalf of a charity)	<input type="text" value="-"/>

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: - Umbrella body for Christian denominations.

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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

In some places, the guidance appears contradictory – see the Committee's detailed comments

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

The promised practical examples will make some aspects of the guidance easier for "lay" readers.

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

It would be helpful to include a reference to designated religious body status and the effect of this.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

See the Committee's detailed comments annexed.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

Misconduct – what it is and what it is not and what OSCR’s approach will be if it makes a finding that a breach of duty has occurred.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

Thank you very much for taking the time to respond.

Please [email](#) or post your response to us.



The Scottish Churches Committee welcomes the opportunity to respond to the consultation on OSCR's revised guidance on Charity Trustees' Duties with reference to the *pro forma* questionnaire on the draft Guidance. In addition, the Committee would make the following more detailed comments on particular sections of the text:-

1. In the introduction, it would be more precise to say "a charity registered in Scotland" rather than a charity in Scotland as there are Church of Scotland congregations in England.
2. Where the words of the Act are clear, better to use them e.g. definition of charity trustees on pages 3 and 4 and glossary of terms differs from statutory wording.
3. Need legal duty icon re minimum age of charitable company trustee and disqualifications and good practice icon on page 5 re trustee declaration etc.
4. "Fully responsible for how your charity is run and what it does". Rather intimidating statement. Arguably could go beyond the legal position. Trustees acting honestly and reasonably – unlikely to be treated as misconduct.
5. Page 7 No prior text relating to "these duties" and what they are.
6. Page 9 The legal duty icon should appear opposite section 2.
7. Page 10 section 2.1 – context of duty being "to seek in good faith..." does not seem to be mentioned. In the bullet point immediately above "good practice" at the foot of the page, the wording should perhaps read..."you *must* make sure". Good practice icon missing at foot.
8. Page 11 procedures "to deal with risk" – suggests elimination of risk – impossible. Better to say "mitigate" or perhaps "reduce" risk".
9. Page 12 staff and volunteers being treated properly and fairly. A legal duty? – seems to go beyond compliance with employment law (section 66(3)) and that is already covered by the last bullet.
10. Page 14 – define or explain DRC – perhaps include in glossary and set out how compliance regime differs.
11. Page 15 – some of the text seems to be missing
12. Page 16 – chart helpful.
13. Page 17 – link meantime to information about Public Collections. The legal duty icon ought also to appear opposite specific duty 5.
14. Page 18 "publicly available" – helpful to confirm that this includes on charity's website – what if person says no online access.
15. "Our response will be proportionate..." It would be helpful to add some examples of differing responses.
16. Page 20 – small companies may no longer have a memorandum, just articles. The same point arises in the box at the foot of page 23.

17. Page 22 – slightly strange statement – “Meetings are often the best way to make decisions and keep all trustees informed”. Surely the trustees should be meeting regularly – even if say by video conferencing? 1st bullet – why “board” meetings rather than trustee?
18. Page 23 – 2nd last bullet as well as noting decisions add “and brief reasons for them”.
19. Page 24 – see comment 14.
20. Page 27 – there appears to be an inconsistency which readers may find confusing between the third bullet point on this page under “Manage” (which implies that a trustee with a conflict of interest could in some circumstances continue to be involved in discussions or decisions) and the penultimate paragraph on page 28 which suggests that a trustee must withdraw from any discussion or decision. (The paragraph immediately under the box on page 29 also suggests that a trustee with a conflict might still be able to take part in discussions/decisions). This needs to be teased out – perhaps with examples to clarify when one course or another would be appropriate.
21. Page 29 – example at top: A gain “A board....” are” rather than “is”. Further typo “the trustees who is in serious or persistent breach”
22. Page 30 – “this is misconduct. A bit confusing as on the previous page it states “this could be considered mismanagement or misconduct.”
23. Page 40 – first bullet: would read better as “...policy which ensures that any payments.....comply with the conditions.....”
24. Page 44 - “this is a breach of your general duties and may amount to misconduct” This contrasts to other references to breach of duty where it states it is misconduct e.g. further down the same page and on pages such as page 41.
25. Definitions “care and diligence” – a very high level of care (?) and thoroughness. Is that very helpful and legally correct?
26. In the glossary at the end of the document, the first sentence of the definition of "quorum" does not read properly.

The Scottish Churches Committee is an inter-denominational body on which are represented the main Christian denominations in Scotland, namely the Church of Scotland, the Roman Catholic Church in Scotland, the Scottish Episcopal Church, the Associated Presbyterian Churches, the Baptist Union, the Free Church of Scotland, the Free Presbyterian Church, the Methodist Church, the United Free Church of Scotland, the United Reformed Church (Scottish Synod) and the Salvation Army. The Committee also maintains links with the Scottish Council of Jewish Communities.

Consultation Response Form

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

Name	<input type="text" value="Richard Hellewell"/>
Email address	<input type="text" value="Richard.hellewell@royalblind.org"/>
Charity number (if responding on behalf of a charity)	<input type="text"/>

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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

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1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

I read the printed out version only, hence I have no comments on web useability.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

Less sure about the blue ones, though. Perhaps some of the blue ones could helpfully be converted to purple and given a link. Others seem unnecessary.

5. Can you think of any terms that need explanation?

Yes x No

Comments:

“You”, “valid” (I refer to these in the content questionnaire).

Sections about “accounts” might usefully also introduce the term “financial statements” so that people know that this is the same thing.

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- x Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

1. The title "Charity Trustee Guidance" is ok, but the sub-heading "Charity Trustee Duties" adds little. I would observe that the guidance is actually about three things, and I would suggest replacing the sub-title accordingly with something on the lines of "Trustee duties, governance practice and other legal requirements affecting charities in general"
2. I think there is a need to be somewhat clearer about the legal force of the different bits of guidance. There should be a standard use of words running through the document that distinguishes throughout between:
 - a. Legal and statutory duties of a trustee
 - b. Legal requirements of a charity
 - c. Other important practice, breach of which is likely to lead to OSCR action
 - d. Good practice for larger charities
 - e. Good practice for all charities

The use of “must” and “should” should have a standard meaning throughout. Regulator’s procedures should be distinguished clearly from duty (for example in specific duty 2).

3. I found the first two sentences of the introduction a little odd in tone. The observation on focus is really a statement of a condition of charitable status. I think the introduction could usefully say something more positive about the role of charity trustees, that the trustees effectively “are” the charity, that OSCR’s light touch approach to regulation relies on its ability to trust charity trustees to be the guardians of good practice and something maybe about Scotland’s history of philanthropy combined with rectitude.
4. How to use the guidance para 1, “other” is redundant, as OSCR is not an organisation in the charity sector.
5. Para 3 “different” is redundant
6. Who are the trustees – “the 2005 Act says you are” is a strange thing to say to a reader who may or may not be a trustee.
7. The term “you” is used in the guidance with three different meanings – “you the individual trustee, “you the body of trustees” and “you the charity”. There is a need in each section to be as clear as possible what the “you” in that section means. In the first few sections it is mostly the first definition, but in the specific duties section it is I think mostly the second, and in some of the later sections, such as publicising, it’s more like the third.
8. General duty 2 Good practice last bullet is a misfit with the bullet list in which it sits. It belongs better in the preceding paragraph.
9. The example in 2.2 is too sketchy and effectively gives an over-rigid direction to charities. High risk can mean many things, and a portfolio that balances higher risk and lower risk elements can be quite appropriate where the charity is financially secure. It depends what one means by “high risk”, “large” etc.
10. I don’t think that saying that charity can spend money on advice needs an example. People know what paying for advice is. However, the point does need some clarification as it’s not clear whether it’s saying an individual trustee can spend charity money on getting advised personally on what the charity is doing, or just saying that the trustees as a body can.
11. The content about general duty 2.3 has been put in the later section about conflicts of interest to an extent that the main section is left very bare indeed. What is left is a rather narrow example that doesn’t help without the context of the more detailed follow-up section.
12. The graphic on the first page of Specific Duties meaninglessly links the five duties in a circle. There is no inherent order to the duties or any factor that links each directly to two others.
13. Specific duty 2 has a different name in the subsection heading from the one given in the

graphic.

14. Specific duty flowchart “no” route refers in blue to “reorganisation pages” without locating or linking
15. Specific duty flowchart bottom left “if given” is redundant, as you’re only at that box if consent has been given.
16. Specific duty 4 “fundraises” is not a good verb. “Raises money and asks for support” would be better maybe?
17. The section on unreasonable requests needs a thorough review. The opening section’s second sentence would be clearer if it said something like “It is important to understand that the assumed or stated reason for the request being made cannot create a valid reason not to fulfil the request. Likewise, the identity of the requester has no bearing on your duty to provide them.”
18. The first bullet seems in error. A person in Edinburgh requesting accounts from a charity in Stornoway should not expect to be told that the accounts are on a table in the Stornoway public library and as such the request is unreasonable.
19. The fifth bullet – there is nothing unreasonable that I can see about CD format – see my point 2 above. However it might pose an unreasonable expense for a very small charity, which would be fair enough.
20. Unreasonable request, final paragraph, I suggest “possible” to replace “appropriate”.
21. Governing documents and Meetings: Good practice section in several places includes “should” which is probably not the appropriate word in a section that is only recommending good practice.
22. The example in “can you change your governing document” is not really an example, and should be formatted instead as an ordinary paragraph.
23. The first paragraph under “what should a governing document say about meetings” is a little vague, and ought to mention the option of some of the more detailed rules being put in “standing orders” rather than into the governing document itself, particularly for those charities for which changing the governing document is a cumbersome or expensive process.
24. The section on Quorum would be much more understandable if there was clarity as to what “valid” means. It should be acceptable for a meeting that is inquorate to make simple operational decisions for later ratification at a quorate meeting. The only problems really arise if an inquorate meeting wanted to authorise a major payment or a contract for which a delegated authority had not been established, or approve something like the annual report and accounts.
25. At the end of the Governing documents and meetings section, some Charity Commission guidelines are cited. This could give rise to some confusion.

26. Some of the content in the Conflict of Interest section is repetitious
27. In the Conflicts of Interest section under “manage”, the fifth bullet is a bit obscure. I think this is about still being quorate if a number of the trustees present have the same conflict. If that’s what it means, could it say so?
28. Under “learn”, only the first bullet is really appropriately placed in that section. The second bullet and the concluding paragraph are really “manage” points. See next point about the third.
29. The third bullet under “learn” appears to be a direction to all charity trustees to revise their governing document to include reference to the 2005 Act. This is not proportionate regulation.
30. “When should a charity trustee withdraw” should from the outset make clear this is not solely the decision of the trustee with the interest. It is up to all the trustees to speak up if they identify that another trustee has a conflict, and the chair should require that the conflicted trustee withdraw. The point is covered later, but it needs to be much more up-front. This aspect could helpfully be included in the “manage” section.
31. The example of service users voting on an increase in service fees is a much more interesting and debatable point than the draft text allows. If the interested trustees withdrawing would not leave a quorum present, there are a number of considerations prior to the last resort that the example (surprisingly) recommends. The obvious one is to adjourn or defer the decision until it can be made by a quorum.
32. In the “what should you do” section, last paragraph, it is not clear which breach is referred to. Is it the failure to withdraw, or is it the failure of another trustee to say that they know that another trustee is conflicted?
33. The section on charity finances, in, for example, the “what do I need to include” section refers the reader to OSCR’s guide to the regulations. Why not refer the reader directly to the regs themselves?
34. The external scrutiny section in the second paragraph, uses the term “turnover”, which is not really the correct term for a charity. It ought to say “total income”.
35. In the box headed “Note: Charitable Companies.....Social Landlords” it may be helpful to replace “the” with “your”. Reference is made to “our accounts guidance”. Is that the same thing as “our guide to the accounts regulations” cited a few paragraphs earlier?
36. In the example under rules on paying trustees, I suggest deleting “immediate family. The ...” and replacing with “related to each other. Neither of the ...”
37. Exemptions, immediately following this example, are misleadingly placed in a box, breaking up the flow. It is not clear what “these conditions” means.
38. The subsections “what are the conditions...” and “what happens if...” both contain repetition.

39. In the last paragraph under “what is a reasonable amount?” – appears to whom to be excessive? There may have been a breach or that to make the payment would be a breach.
40. Good practice first bullet – grammatical glitches present
41. The section on honorarium payments is not clear as to whether this is about honorarium payments by the charity to people who are its trustees, or honoraria more generally.
42. I disagree that honoraria are either one off or unexpected. Most honoraria I have come across have been long standing and regular.
43. The point about honoraria paid to admin staff is a strange one in the context of a guideline on trustee duties. Oddly specific?
44. The first sentence under Trustee Indemnity Insurance implies that a charity can only provide indemnity insurance if it covers every trustee. I do not recall having seen that anywhere before.
45. First sentence after the orange box “these duties” – which duties?
46. Publicising that you are a charity – Summary “This page” – when printed out, this section is three pages long.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

1. General duty 2.1 would be improved by saying more about the implications of operating ultra vires, especially under company law where a contract can be null and void if not within the company’s objects, or under trust law whereby the donor/benefactor or the intended beneficiary may have remedies. This is not just a nicety so that the regulator knows what you do, but has serious potential legal and financial implications.
2. Specific duty 5 would be improved with the addition of a “good practice” section, one item in which should be publication of the annual report and accounts on the web. Another would be about accessible formats and languages.
3. The section on meetings would benefit greatly from having a good practice section. There are many things that could be included, but formality and minuting are both important, and agreement of the correctness of the minutes by a quorate meeting. Informal decisions being brought to a formal meeting for ratification. The importance of good chairing to clarify the decisions that have been made. Recognition that less formality may be possible in a very small charity but that it should not be disregarded

completely, and so on.

4. More good practice on this, possibly for the quorum section, would be the conduct of meetings by email to make urgent decisions, which can be effective but only if the effect is to confirm a consensus. The result of an emailed meeting should be called by the chair, not by a member of staff, and the outcome should be minuted and recorded at the next actual meeting.
5. There could be more good practice on conflicts of interest, recommending that trustees, especially those chairing meetings, act on the prudent side, and should not assume that a conflict should be ignored simply because the trustee with the conflict has a history of integrity.
6. Some discussion about the conflicted position of service user trustees would be helpful, also re trade union appointees.
7. The content about service user trustees could usefully discuss the important distinction between the interests of the charity and the interests of its present and potential future beneficiaries.
8. In the remuneration section, more detail, the example box is not really an example, but a main paragraph. The point should also be made here that the accounting regs require disclosure of expenses paid to trustees.
9. If the honoraria section is not only about payments to trustees, there should be reference to employment law, tax law, payroll law and minimum wage legislation.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

1. General duties 2.1 operating outwith the formal objects. OSCR must have plenty of interesting examples of mission drift. One example might be an instance where a donation comes with conditions or stipulations about what the money can be spent on, some of which fall outwith the objects. Another, as a discussion point, might be where the donation's requirements are within the technical objects but accepting it significantly alters the charity's priorities and strategy.
2. The examples under conflicts of interest could be added to usefully. The first example is also true in the negative, ie a charity trustee might risk loss from a decision.

3. There could indeed be rather more examples than in this draft, and each one should tell more of a story. The ones in this draft are mostly very sketchy.
4. Also, in general, there could be more good practice advice. Try to have both good practice advice and actual examples in every section. Why not use people with direct experience of running charities to write the examples, to make them more real.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

One point, negative.

Disability – see my point 19 about accounts in CD format being judged an “unreasonable” request

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

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
- 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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to section B on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- x Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- x Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes x No

Comments: The current draft provides an easy to read and visually accessible document, which provides a very useful initial introduction to those involved in this area of work. We are content that it strikes the right tone and level of detail.

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments: This does help those unfamiliar with particular terminology to navigate and understand the guidance.

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments: It might be helpful to highlight in bold anything that states "you must do".

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments: It is not always clear what the legal duty/Good Practice sign is referring to, for example on page 10, the Good Practice sign is missing from the bottom of the page.

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments: In connection with specific duty 5 on page 17, it may be helpful to be more specific and include fundraising/event posters in the list of examples.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments: We consider that it is important to use as many case studies as possible, particularly where the duties are opaque, for example acting with “care and diligence”.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the [OSCR website](#))

6. 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 further comment

Consultation Response Form

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

Name	<input type="text" value="Susan Murray"/>
Email address	<input type="text" value="[REDACTED]"/>
Charity number (if responding on behalf of a charity)	<input type="text"/>

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

Are you responding as a:

- Charity trustee, and past employee of TSI trained by EVOC in Charity Law

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

- Yes - please answer A below

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 and name available, but not my address

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

Very easy

2. Is the layout of the web-based draft guidance helpful?

Very helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes

Comments:

4. Are the purple links to the explanation of terms helpful?

Yes

Comments:

Makes it easy to clarify things which may not be fully remembered

5. Can you think of any terms that need explanation?

No

Comments:

Did not see any term that needed an explanation which was not included as links

6. Overall, how easy or difficult did you find the draft guidance to understand?

Quite easy

7. Any other comments you wish to make about the overall look and feel of the guidance?

No

Comments:

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes

Comments:

There are places where it can be hard to understand the relationship between the charity's constitution/Articles of Association and the Act. E.g. Making changes to your Charity – the constitution/AofA may specifically say that the charity can change its name but, in fact, this needs permission from OSCR. So the Act appears to over-ride the constitution/AofA. But for Remuneration the Act has specific rules, but these only apply when permitted by the constitution/AofA.

Perhaps the guidance could be clearer about the relationship between the constitution/AofA and the Act 2005/Companies Act 2006? I do not include SCIO constitutions here because, in my experience, the relationship is more direct and clearer.

It can be difficult for charity trustees to know when to follow the Act 2005 and when only the constitution/AofA must be followed. Think the guidance needs to emphasise more that both, and the Companies Act 2006, need to be taken into account.

In my opinion the main advantage of a charity becoming a SCIO vs a charitable company limited by guarantee is that there is only one Act applicable and only one place to go for guidance.

3. Are there any sections of the draft guidance that you think could be clearer?

Yes

Comments:

As Q2

4. Are there any sections of the draft guidance that you think should have more detail?

Yes

Comments:

On page 41/42 What do you need to tell people?

In my experience working in a TSI people did not understand that a Scottish Charitable Incorporated Organisation (a new term for a new legal entity) is a charity [which is incorporated].

In addition the acronym SCIO is not well understood, although some were familiar with the term SCIO (skeeoh).

As a result I always advised trustees of SCIOs to include the details as

Rebound is a Scottish Charitable Incorporated Organisation (SCIO)

Scottish Charity No: SC039421

The reason for including the 'Scottish Charity No: is that if the reader understands the 'Incorporated' and checks out the number then SC039421 is also a Scottish Company number companycheck.co.uk/company/SC039421/M--A-SHAW-LIMITED

M. & A. SHAW LIMITED. **SC039421**. Registered Address: 136 Wellington Street, Glasgow

The use of

Rebound is a Scottish Charitable Incorporated Organisation (SCIO)

Scottish Charity No: SC039421

not only informs the reader but also teaches them that a SCIO is a Scottish charity.

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes

Comments:

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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:

The clear statement that all trustees are equal will have a positive impact on protected characteristics.

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

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 / Independent Examiner
- 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

The Charity Trustee Guidance: content questions and response form

Section A: Usability questionnaire

Please complete this section on the usability of the web-based draft guidance. If you do not wish to complete the usability questionnaire, please go to [section B](#) on the content of the draft guidance.

You can view the web-based draft guidance here: [Charity Trustee Guidance](#).

1. Is the draft guidance easy to navigate?

- Extremely easy
- Very easy
- OK
- Difficult
- Very difficult

2. Is the layout of the web-based draft guidance helpful?

- Very helpful
- Fairly helpful
- OK
- Not really helpful
- Not at all helpful

3. Are the different sections (summary and more detail) of the draft guidance useful?

Yes No

Comments:

4. Are the purple links to the explanation of terms helpful?

Yes No

Comments:

5. Can you think of any terms that need explanation?

Yes No

Comments:

6. Overall, how easy or difficult did you find the draft guidance to understand?

- Very easy
- Quite easy
- Quite difficult
- Very difficult
- Don't know

7. Any other comments you wish to make about the overall look and feel of the guidance?

Yes No

Comments:

Section B: content questionnaire

1. Is the language used in the guidance easy to understand?

Yes No

Comments:

2. Do the different sections of the draft guidance cover all of the areas that you would expect? Please explain if you think there are other areas the guidance should cover.

Yes No

Comments:

See additional comments below

3. Are there any sections of the draft guidance that you think could be clearer?

Yes No

Comments:

See additional comments below

4. Are there any sections of the draft guidance that you think should have more detail?

Yes No

Comments:

See additional comments below

5. We will include case studies and examples in the final guidance. What areas of the trustee duties do you think it would be helpful to have examples on?

Yes No

Comments:

(Anonymised) real examples of the consequences of what went wrong where trustees failed in their basic duties.

Equality Impact Assessment Equality Impact Assessment (Separate document available on the OSCR [website](#))

6. 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 either way that I can see.

General Comments

Overall, the guidance is well written, well thought out, and straight-forward to follow. It ought to be “mandatory” reading for all charity trustees.

In one sense, the length of the document concerns me. Not because it contains unnecessary material, but a document of 50 pages will be seen by some as being “too complicated” for them and will thus not be read. Maybe some form of short summary document, with references to this one, might be helpful, particularly for small charities.

Getting the new guidance through to the people who most need to read it, probably those in very small charities, will be very challenging. One of the charities for which I act as examiner created a new constitution over a year ago. When I asked if OSCR consent had been obtained (as there were some minor wording changes to the objects), the treasurer responded with – “no-one told me I had to do that”. That treasurer had never looked at the OSCR website. This is not unusual with small local community charities.

Specific Comments

Page 5 – second bullet point. Would it not be clearer to refer to a “Protection of Vulnerable Groups” check?

Page 7 – last section. Would it not be appropriate to include ACIE (Association of Charity Independent Examiners) in the list of potential sources of help?

Page 14 – last paragraph. Would it not be wise to include the maximum time allowed for notification? E.g. “as soon as possible but in any event no later than three months after...”

Page 16 – bottom box on left side. The “(if given)” is not necessary as that is the condition from the box above.

Page 19 – third bullet point. Would it not be appropriate to add ACIE here?

Page 22 – third last bullet (retention of records). Given that records of meetings may contain financial decisions, should this not state as a minimum, the “current year plus 6” rule?

Page 23 – first bullet. Suggest adding “suitable meeting place” (plus refreshments if appropriate). If the venue is unsuitable, the meeting will not likely be effective.

Page 26 – second paragraph under “what is a conflict”. Add either “it” or “the conflict” to the end of the sentence.

Page 35 – Financial Controls. Compared to the rest of the guidance, this section is weak.

- Suggest adding regular checks (at least monthly) of the charity’s cash book to the balance of cash held (if any) and reconciling to bank statements. It concerns me greatly, as an Independent Examiner, to receive books which have clearly not been reconciled to the bank at all during the year (and do not reconcile at the year end, sometimes by a substantial amount due to errors or omissions). It may help to provide an example of a bank reconciliation statement.
- Cheque payments. Would it not be better to refer to “withdrawals” or “cheques and withdrawals” rather than just cheques, so as to include savings or building society accounts as well as any other instructions passed to the bank?
- Internet Banking. I cannot agree with what is suggested here. If withdrawals are subject to two signatures, then any internet banking arrangement **must** also be subject to dual authority. Simply because a charity’s bank cannot provide this facility is not justification to ignore the terms of the governing document. “Reviewing the bank statement” is not a sufficient alternative as money could be long gone by the time the statement arrives. As an examiner, I have been involved with two charities with single authority on internet banking, where funds had been “borrowed”. Fortunately full recovery was eventually made, but it was a very difficult time for the charities concerned. As well as protecting against error or fraud, having online dual authority reduces the risk of loss through internet fraud, as a fraudster would require two sets of access codes in order to steal funds.
- The only solution, if one bank cannot provide dual authority on internet banking, is to change to a bank that can. The guidance is correct in that many banks do not provide a dual authority facility as part of their core online service. The only “High Street” Bank to do so is Bank of Scotland/Lloyds Banking Group. However, their service has an operational weakness which greatly increases the possibility of fraud/theft by a single user. I would therefore recommend using one of the specialist charity banks: Unity, CAF, Charity Bank, Tridos etc.

Page 44 – Details on documents. When they were introduced, existing charities at that time were given six months in order to comply with the 2007 regulations. It seems absurd that all new charities, with the exception of SCIOs, still have that concession. For the purposes of the guidance would it not be better to say “without delay, but in any event no later than six months”?

Thank you very much for taking the time to respond.

Please [email](#) or post your response to us.