



Charity Trustee Guidance Consultation: evaluation report

March 2016
Scottish Charity Regulator

Charity Trustees...



... are the people in overall control and management of a charity. They are the most important resource the Scottish charity sector has.

24,000

charities on the Scottish Charity Register

175,000

charity trustees running Scottish charities

Charity Trustee Guidance

The new guidance -

1. is web-based
2. is written in clear non-technical language
3. contains examples to illustrate legal concepts.

We would like to thank everyone who responded to the consultation and attended the events.

We received many helpful suggestions and some great ideas that have informed our thinking about the final version.

Consultation

12 weeks



28 September to 18 December 2015



3,030 online views



502 pdf downloads

Responses



79 responses

=



41 online usability questionnaires

+



38 forms and written responses

Events

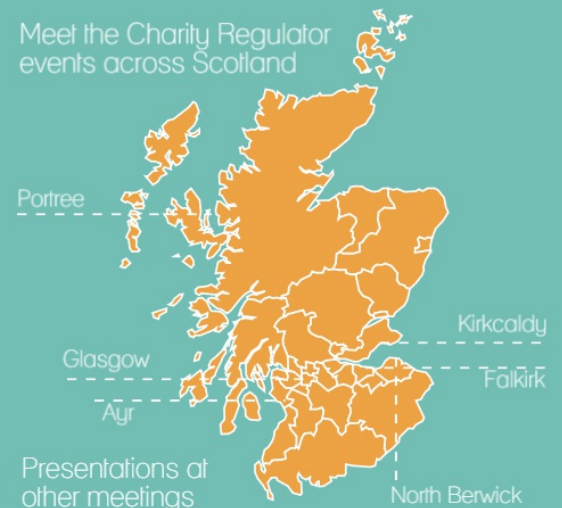
400

People discussed the draft at nine meetings and events



Six

Meet the Charity Regulator events across Scotland



Three

Presentations at other meetings

Who responded?



- Charity employee 22%
- Charity trustee 39%
- Other 14%
- Not specified 13%
- Professional advisor 11%
- Member of the public 1%

Findings



75%

Easy to navigate



87%

Helpful layout



89%

Helpful sections



93%

Helpful links



95%

Language easy to understand



95%

Overall, easy to understand

Key themes



Clarify Conflict of Interest section



Clear format - consistent use of links and icons



Balance - easy to read with level of detail required



Update the section on charity finances

Charity Trustee Guidance Consultation: evaluation report

This report summarises feedback received in response to the consultation on our draft charity trustee duties guidance.

Background - charity trustees

There are approximately 24,000 charities on the Scottish charity register. Around two thirds of charities report that they operate without any paid staff. As the people in overall control and management of charities, there are in the region of 175,000 charity trustees leading Scottish charities, with nearly half of these (73,000) involved with organisations reporting incomes under £25,000.

1. Introduction

It has been almost ten years since we first published guidance for charity trustees and we now have a wealth of experience to draw upon. The updated guidance deals with many issues that charities and the public raise with us through queries and concerns. By explaining the legal requirements in these areas and providing examples of good practice, we believe that our new guidance can help to support charity trustees in their role, and enhance public trust and confidence in the charity sector.

Key changes introduced in the draft guidance include:

- It is web-based, providing a flexible, up to date format where different sections can be easily located and accessed.
- It is written in clear non-technical language.
- It contains examples to illustrate relevant legal concepts and how they might work in practice.

1.1 Consultation

The consultation period lasted 12 weeks from 28 September to 18 December, it invited respondents to review the online guidance and complete an online usability survey, or comment on the content of the draft by completing a response form (which also contained the usability questions). A pdf version of the draft guidance was available to download. The consultation questions are included in [Annex A](#).

During the consultation period, the main landing page for the draft charity trustee guidance received 3,030 views and the pdf was downloaded 502 times.

OSCR would like to thank everyone that responded to the consultation and attended one of the meetings or events.

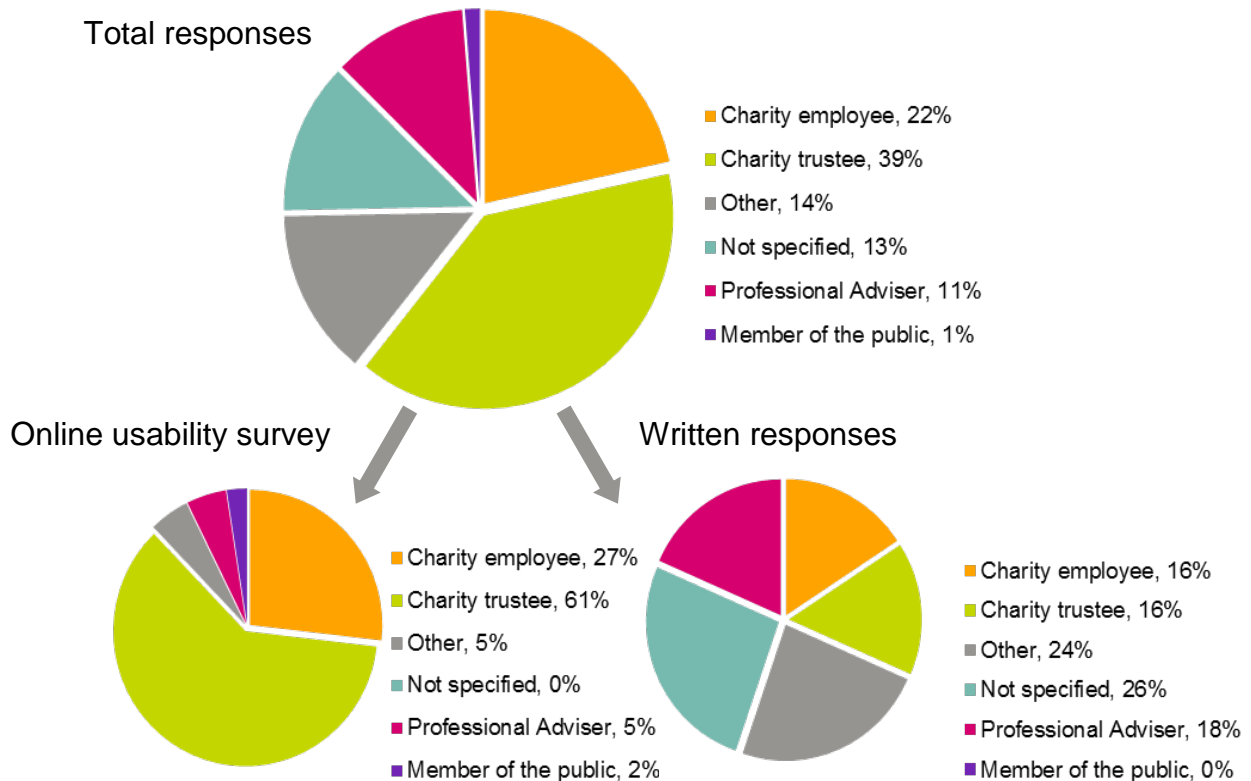
In total we received 79 responses to the consultation. By the end of the consultation period 41 online usability questionnaires had been completed and 38 written responses had been received. The written responses included emailed comments (10), completed response forms (17), and more substantive written responses with a response form (5) and without a response form (6).

1.2 Respondents

The breakdown of respondents is shown below. Feedback from those directly involved in running a charity made up the majority of the responses received, with 39% of responses from charity trustees and 22% from charity employees. The 'other' category (which made up 14% of responses) included responses on behalf of a board, the Chair of organisations, umbrella bodies and Third Sector Interface (TSI) support organisations.

Most of the online usability questionnaires were completed by charity trustees (61%), with 27% completed by charity employees. The proportion of written responses received from charity trustees was lower, at 16%. Professional advisers provided 18% of written responses.

Not all respondents stated who they were responding as or on behalf of (10 of the 79 responses did not select a category). In most cases, the respondents that did not provide this information had submitted email comments or more substantive written responses without a response form.



1.3 Events and meetings

In addition to the online survey and written responses, comments were gathered at a total of nine meetings and events over the consultation period. Around 400 people discussed the draft guidance at one of six Meet the Charity Regulator Events held across Scotland, or at three other events/meetings where the draft guidance was discussed.

Notes were taken on participants' responses to a selection of consultation questions at each of the events. The views expressed have not been attributed to individuals but have been grouped and included in the key themes analysis.

1.4 Analysis

The usability questionnaire was available as an online survey and also included in the formal response form. This allowed a straightforward analysis of the quantitative results. The yes/no questions on the content of the draft guidance that formed the second part of the response form also provided a simple way to assess overall opinion.

Valuable and detailed feedback was provided in the response to the consultation. All comments, suggestions and opinions were noted by the guidance team and where possible, many specific corrections, clarifications and changes have been made.

The consultation focused on the usability of the online format and the content of the draft, but specific points were also made in relation to particular sections of the draft. From the analysis of the responses it was possible to identify a number of clear key themes, which are explored in this evaluation.

This report presents the results of the usability questionnaire (section A), followed by the questions on content (section B). The key themes identified are also examined.

Quotes have been used to provide examples and highlight the details of respondents' views throughout.

2. Findings

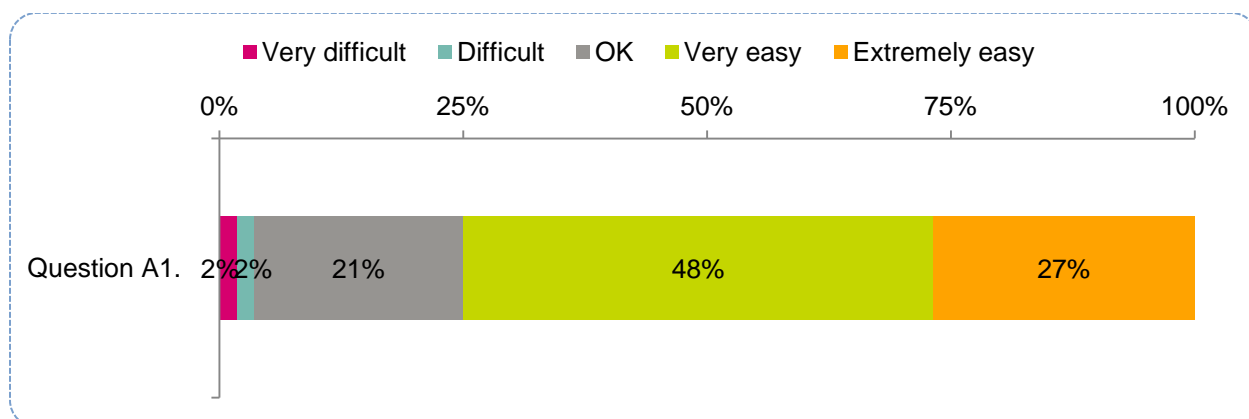
A. The response to the usability questions

Feedback in relation to the usability of the online draft guidance was generally very positive, with many relevant and helpful suggestions made to improve the final version of the guidance.

A1. Ease of navigation

When asked if the guidance was easy to navigate, 75% said the guidance was either very or extremely easy to navigate, with a further 21% saying it was OK.

Chart A1. Is the draft guidance easy to navigate? (56 responses)



Some of the respondents commented that when following links in the guidance that they would prefer the online version to link back to the section they were reading. Another respondent found the online draft difficult to navigate, expressing concern that screen reader software might not work well and that printing the pdf made it very repetitive.

On the navigation and format, some respondents mentioned numbering sections, or changing the structure to follow the Charities and Trustee Investment (Scotland) Act 2005 (the 2005 Act):

‘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.’

The working party of the Charity Law Association

‘One possible alternative approach to the overall structure would be to tie it more closely to the terms and structure of the 2005 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.’

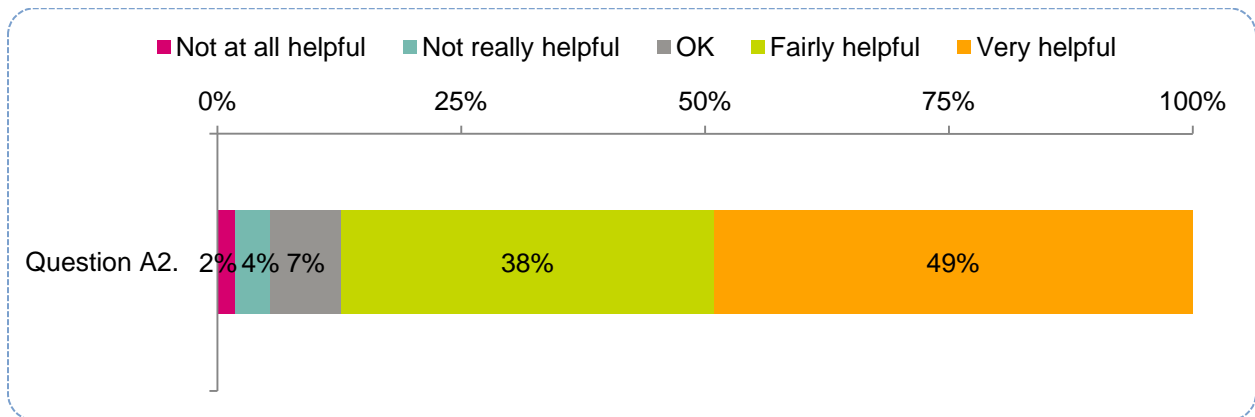
The Law Society of Scotland, Charity Law Sub-Committee

A further helpful suggestion was to add a search facility that would help with navigation and encourage use of the online version.

A2. Layout

The majority of responses found the online layout helpful, with 87% saying that it was either very or fairly helpful, and only 6% saying it was either not really or not at all helpful. A further 7% said the layout was OK.

Chart A2. Is the layout of the web-based draft guidance helpful? (55 responses)



Feedback in relation to the layout was generally favourable:

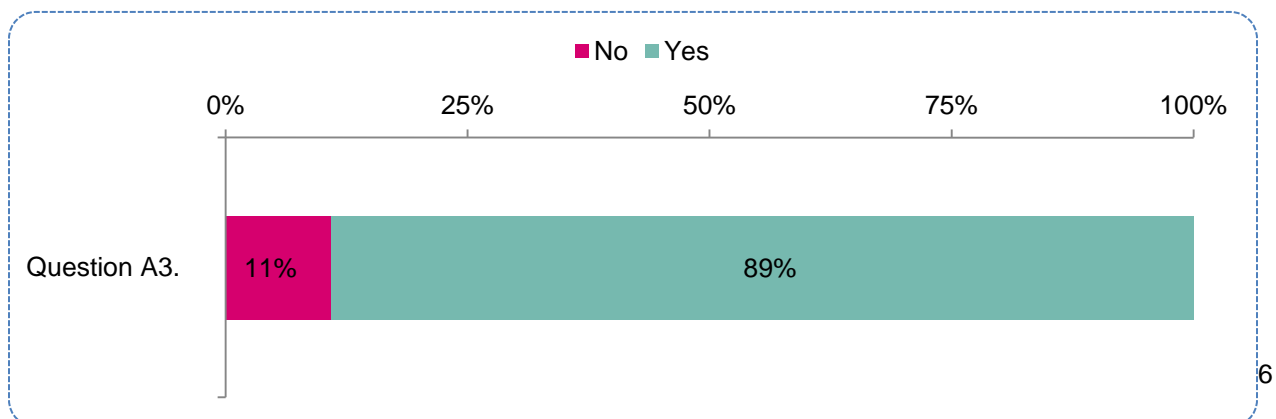
‘The general layout and the language used are improved from the existing guidance. In particular the clear distinction between legal duties and good practice. A helpful addition has been the “For example” boxes which highlight particular circumstances and address particular issues.’

Chiene +Tait LLP

A3. Structure of sections (summary and more detail)

The structure of the guidance, showing a summary followed by more detail was positively received, with 89% saying the different sections of the draft guidance were helpful.

Chart A3. Are the different sections (summary and more detail) of the draft guidance useful? (55 responses)



Many of the comments reflected the quantitative results and were supportive of summary and detail sections:

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

High Life Highland

‘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.’

Euan Morrison, Professional Advisor

Other respondents were less keen on the structure with a number commenting that the draft became repetitive. Another theme that emerged when analysing feedback on the structure of the sections was differing opinions on the overall level of detail the guidance should contain and how suitable the level of detail was for the intended audience(s) – this will be explored in the key themes analysis later in the report. It was clear from the feedback that for some topics it will be difficult to balance the summary and detailed sections with essential and comprehensive information:

‘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 charity trustee.’

Scottish Charity Finance Group

A4. Links to explanation terms

Overall, 93% found the purple links to the explanation of terms helpful, although some felt they required further development.

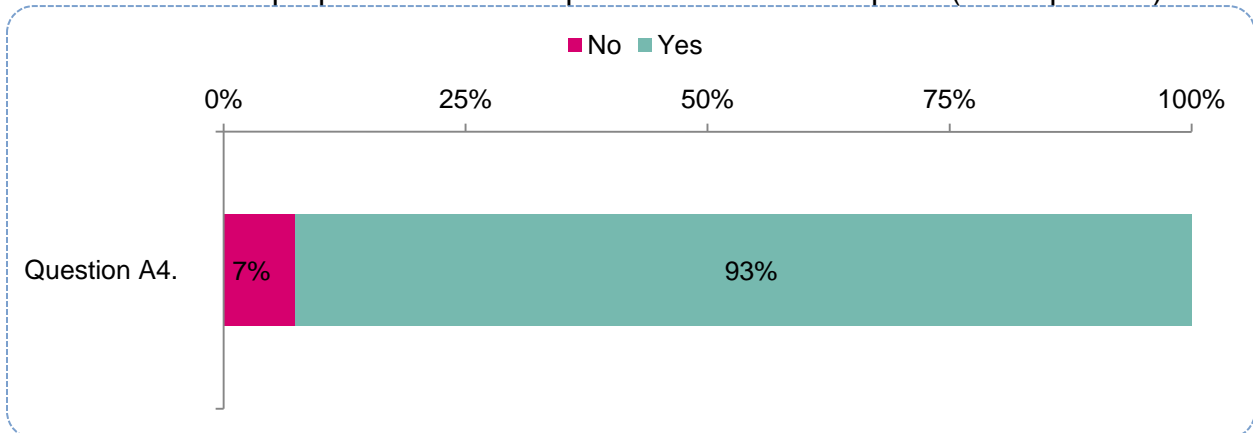
‘These are an effective way to provide explanation in a way that users will be more familiar with nowadays. Linking, instead of giving the information as part of the main body of guidance, also keeps the guidance shorter and more succinct but lets the reader access further information if they require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

Euan Morrison, Professional Advisor

‘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).’

Scottish Charity Finance Group

Chart A4. Are the purple links to the explanation of terms helpful? (54 responses)



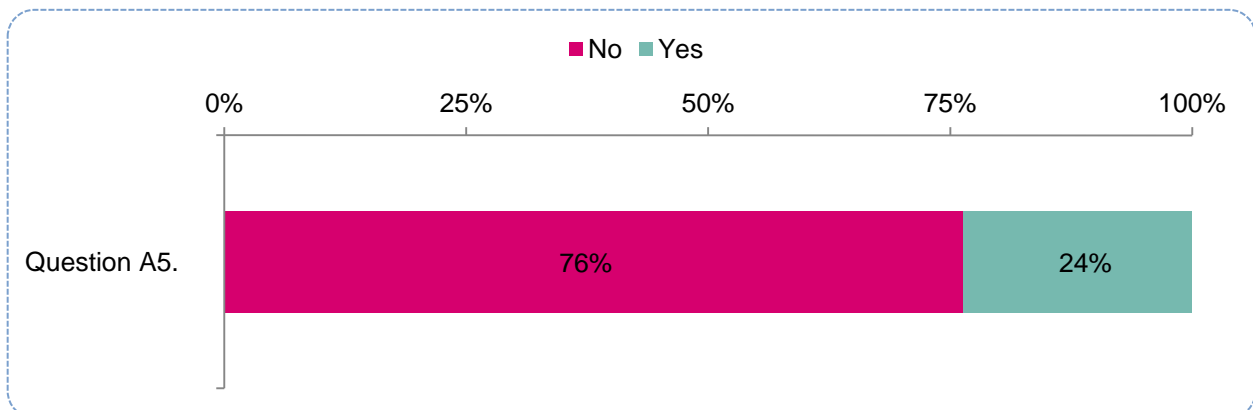
A number of helpful comments were made in relation to the links:

- Make them bold type and or underlined, to address issues of the colour appearing different in the online and pdf versions.
- The light blue terms should behave as links, or the colour should be removed.
- After clicking on a link the reader should be able to return to the section of the guidance they were reading using the browser back button.
- Links to the 2005 Act should direct reader to the specific section.
- Ensure that glossary links in the pdf behave in the same way as the online version.
- Alert readers to when a link is to an external site.

A5. Suggestions for additional terms to explain

Around a quarter of respondents suggested other terms for explanation, which included 'waiver', 'financial statement' 'SCIO', 'OSCR', 'disbenefit', 'consent', 'governing document', 'legal form', and descriptions of other board or committee positions such as 'chairperson' and 'treasurer'. The terms 'mismanagement and misconduct' and 'care and diligence' were also mentioned.

Chart A5. Can you think of any terms that need explanation? (55 responses)



In addition to suggesting specific terms to add to the glossary, there was an appetite from some for a more in depth explanation of ‘charity trustee(s)’, and how the term ‘you’ is used in the guidance.

‘...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)...’

The Law Society of Scotland, Charity Law Sub-Committee

‘The term “you” is used in the guidance with three different meanings – “you the individual charity trustee, “you the body of charity 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...’

Richard Hellewell, Charity trustee, Royal Blind

Another area where a number of respondents felt further explanation was required was use of the term ‘quorum’.

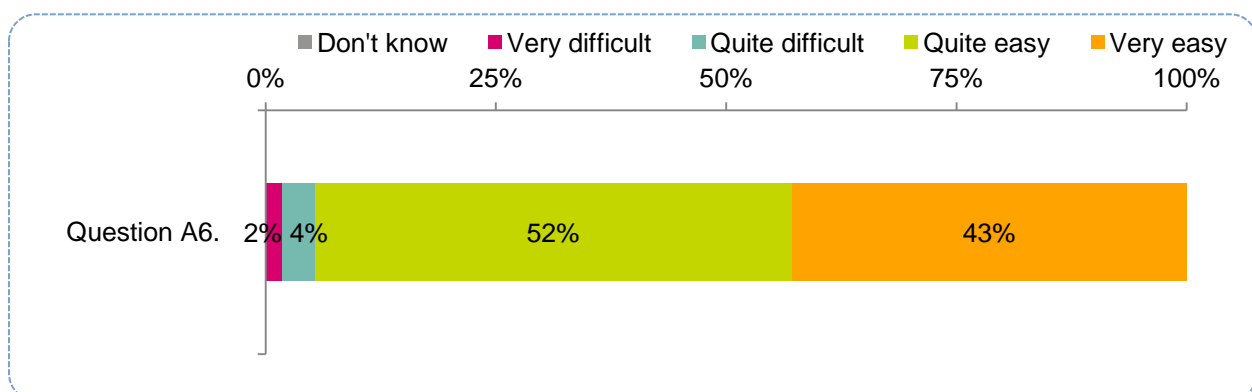
‘Other definitions, such as “Quorum” might benefit from fine-tuning: e.g., “Quorum” can of course be applicable to members’ meetings so the reference to charity trustees (only) in this context may be misleading.’

The Law Society of Scotland, Charity Law Sub-Committee

A6. Overall understanding

Encouragingly, 95% (of 56 respondents) found the draft guidance either quite easy or very easy to understand. This compares to 62% of respondents who rated our documentation easy to understand when carrying out representative research in our charity survey in 2014¹.

Chart A6. Overall, how easy or difficult did you find the draft guidance to understand?



Although overall feedback on the draft guidance was good and it was rated easy to understand, some felt that the length of the document could be daunting.

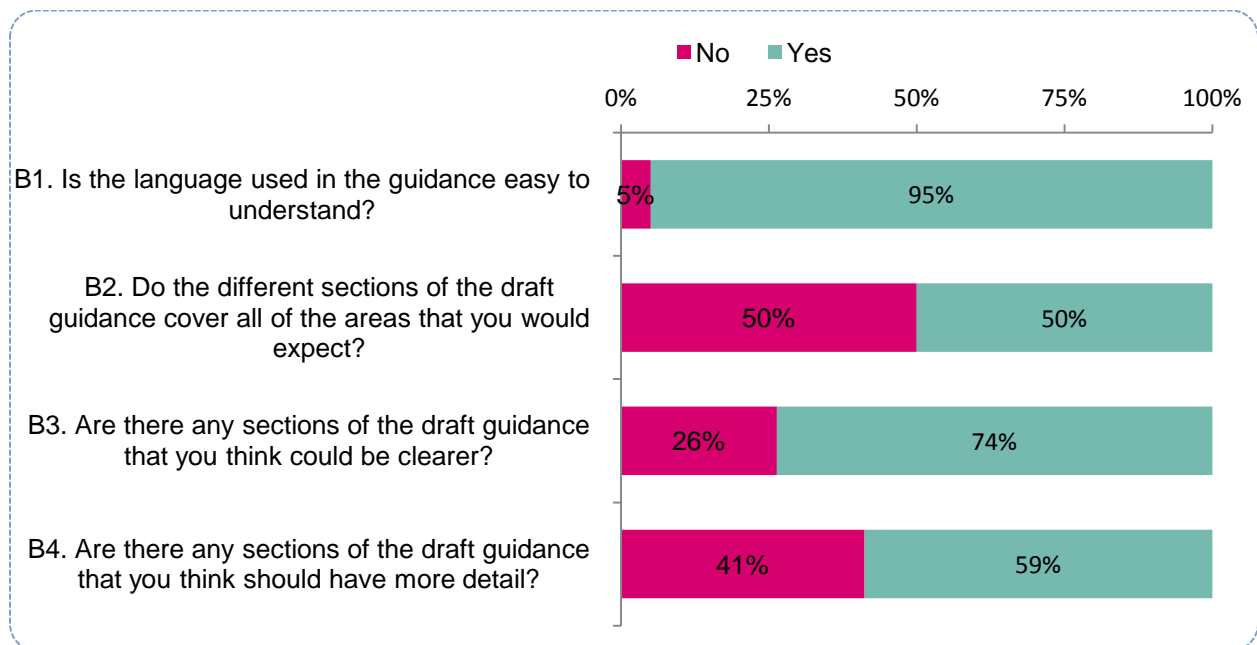
'The reason we have checked the "Quite difficult" box about is because we feel that the guidance overall is too long. At 50 pages long is not particularly accessible for charity trustees and does not encourage them to read it. Bear in mind this is one of the many guidance documents that they will need 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.'

Directory of Social Change

B. The response to the content questions

The results from the quantitative questions are shown in Chart B1, with additional feedback below. While many of the substantive written responses provided answers to the content questions, they also submitted feedback on the different sections of the draft guidance, including specific technical changes, suggestions and preferences on format, structure and appearance. Some of this information is used to illustrate the feedback in relation to the content questions, but it is also taken into account in the key themes analysis (next section).

Chart B1. Content questions (quantitative results)



B1. Is the language used in the guidance easy to understand?

On the content of the draft guidance, 95% (of 20 responses) agreed that the language used was easy to understand, and many of the comments supported this:

‘The language is clear and easy to understand.’

Jackie Mackenzie, High Life Highland

When exploring the detailed responses there were some concerns that the length and content of the document would not be suitable for all charity trustees:

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

Midlothian Voluntary Action

While other respondents felt that the guidance should be more detailed to fulfil the requirements of charity trustees of larger charities. Again, this will also be addressed in the key themes section of this report as feedback on this topic was received in different areas of the consultation.

‘... 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.’

The Law Society of Scotland, Charity Law Sub-Committee

B2. Do the different sections of the draft guidance cover all of the areas that you would expect?

When asked if the guidance covered all of the areas expected, 50% (of 20 responses) replied that it did. A wide range of topics were suggested for additional areas the guidance could cover. These included:

- Charity trustee recruitment
- Shadow charity trustees
- Seeking consent and the powers of a governing document
- Winding up a charity

- Investment powers
- Differences that apply to designated religious bodies
- Introduction to the notifiable events process

Several of the responses mentioned including more information on other board or committee roles, such as the chair and treasurer:

‘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 charity trustees.’

Edinburgh Voluntary Organisations Council

Another theme that emerged was the intended scope of the guidance, the relationship between charity legislation and other legal requirements and responsibilities that would apply.

‘... 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 the charity 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 charity 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.’

The working party of the Charity Law Association

‘In general the draft guidance is clear about the message it is trying to articulate and the audience it is trying to reach: providing details to charity trustees, and their advisers, as to the duties and responsibilities of charity trustees in Scotland. The description and examples of each identified duty could be seen to be aimed at an audience with very little knowledge of charity trusteeship. ICSA therefore urges the regulator to think about revising existing guidance on specific charity trustee duties to ensure that those with a better understanding and experience of charity trusteeship are also provided with appropriately detailed and technical guidance that sits between this draft and the legislation itself.’

Institute of Chartered Secretaries and Administrators

B3. Are there any sections of the draft guidance you think could be clearer?

When asked for feedback in relation to the clarity of the content, 74% (of 19 responses) commented that there were some areas that could be clearer. Some respondents felt that it would be helpful explain what is meant by some of the terms used in the legislation around the charity trustees' general duties. For example what would be 'reasonable' when acting with 'care and diligence', and what is meant by 'good faith' when acting with 'in a manner which is consistent' with the charity's purposes.

'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.'

Scottish Charity Finance Group

B4. Are there any sections of the draft guidance that you think should have more detail?

Suggestions were made by 59% (of 17 responses) of areas where more detail would be helpful, with one suggestion being that more in depth guidance was needed on what happens if charity trustees fail in their duties, and on a similar topic, the consequences of not following good practice.

'...Does a failure to follow good practice constitute misconduct and a failure on the part of charity 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 charity trustees would be well advised to follow it. ...We think it would be best to point out that charity 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.

Directory of Social Change

Other topics also mentioned in more detailed responses included charity finances and conflict of interest.

B5. Examples for case studies and good practice

Many suggestions were made regarding topics for case studies and examples of good and bad practice. The most commonly requested were examples to illustrate situations where there is a conflict of interest, including registers of interest and a conflict of

interest policy. More generally, materials to assist with charity trustee inductions, examples of meeting agendas and minutes were also welcomed.

3. Key themes

3.1 Conflict of interest - Taking into account feedback from the response forms, usability questionnaire, written responses and events, the section that received comments from most respondents was conflict of interest.

Some were concerned that for a complex topic, the information provided in the draft was too simple, and that it could be misleading. Some were also disappointed that the information contained in the previous guidance on shadow charity trustees had been removed. Respondents suggested more clarity around when a charity trustee must withdraw from discussions and decision making, and in what situations it would be considered misconduct if charity trustees fail to act on a conflict of interest.

Feedback indicated that the definition of conflict of interest should be expanded to include different types of conflict, not only personal benefit, and that additional examples of good practice or case studies would help in this area.

3.2 Format and structure – Many respondents mentioned improvements to the format, order and structure of the guidance and a number of these suggestions have been incorporated into the final version. As reported earlier, clearer numbering of sections was suggested, as was following the structure and order of the 2005 Act. The importance of providing a downloadable pdf in addition to the online version was also clear. Respondents were keen that the online and pdf versions should be consistent in appearance and functionality, including use of coloured links and icons.

3.3 Level of detail and target audience – The draft guidance received positive comments in relation to being easy to read and to understand, and many of the consultation responses recognised that the guidance is aimed at a wide audience. However some felt that the language was over-simplified and applied only to very small charities. A number of respondents stated that the guidance did not cater for those with more experience and that the charity trustees of larger charities should be provided with suitably detailed guidance. Others stated that where the wording of the 2005 Act was clear, it should be used, especially in the glossary and to clearly identify the legal duties of charity trustees. However, these views were in contrast to a smaller number of respondents who felt that the language used could be daunting for new charity trustees.

3.4 Charity Finance – A number of detailed responses suggested changes to the charity finance section. Some respondents felt that this section assumed that the charity trustees would carry out finance functions, which is not always the case.

Recommendations were also made to update the guidance on internet banking stating that if withdrawals are subject to two signatures, then dual authority must apply to internet banking arrangements (even if this means moving to a bank that offers this facility).

3.5 Other legislation and responsibilities – In addition to the points made above in relation to the level of detail and intended audience for the guidance, some respondents felt that there was also ambiguity in the scope of the guidance, and whether it should include the wider legislative requirements and responsibilities of charity trustees that are outwith the 2005 Act. Examples raised in the responses included the requirements of company law, the HMRC Fit and Proper Persons test and obligations for charities to carry out Protection of Vulnerable Groups disclosure checks on charity trustees.

3.6 Positive role of charity trustees – It was clear from the responses that people felt the guidance should acknowledge and emphasise the positive role and value of charity trustees. While it is important that charity trustees take their duties seriously, it is also crucial that the tone of the guidance does not discourage charity trustees from taking on rewarding and essential roles.

3.7 Equality Impact Assessment

The online usability survey and content questionnaire asked respondents whether they thought the draft guidance would have any impact (positive or negative) on any of the protected characteristic groups. Some thought that guidance would have a positive impact, while other said it would have no impact. In their responses, suggestions were made including making alternative version available in easy read format, large print, British Sign Language or community languages as required. One respondent advised caution in only pursuing online guidance, while others provided helpful alternatives to using colour which can be problematic for those with visual impairments – including the use of boxes and dotted lines to highlight text.

4. Changes made and next steps

In making changes to the Guidance, we have carefully considered all the comments provided during the consultation. Some comments related to other areas of charity law and were not specifically about the charity trustee duties. Others related to very particular circumstances which we felt were not appropriate for general Guidance.

Many of the comments received did inform our thinking about the final draft and the main changes are listed below:

Changes made to the final guidance	
1	More positive introduction
2	Clarification of scope of the guidance and the intended audience
3	Legal notes section added
4	Clarification of OSCR's powers and mitigations for misconduct
5	Structure of pdf and online
6	Placing of legal duty and good practice icons
7	Use of purple and blue links
8	Online keyword search function
9	Templates and supporting documents
10	Listing additional legal forms
11	Charity trustee liability insurance added
12	Glossary pop up

Next steps
Produce an interactive pdf and printed version of the guidance
Produce a shorter 'easy read brief' guide to charity trustee duties
Complete the section on Fundraising once the future of self-regulation in Scotland has been determined
Provide additional case studies
Produce specific shorter guidance on: <ul style="list-style-type: none"> • Charity investments • Reserves policy • Trading and subsidiaries

Annex A. Consultation questions

Strand A. Usability questions	
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?	
Strand 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 charity trustee duties do you think it would be helpful to have examples on?	Yes/No/Comments
Equality Impact Assessment	
<p>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?</p> <ul style="list-style-type: none"> • Age • Disability • Gender reassignment • Marriage and civil partnership • Pregnancy and maternity • Race • Religion or belief • Sex • Sexual orientation 	