XPS Investment

Charity Briefing

October 2023

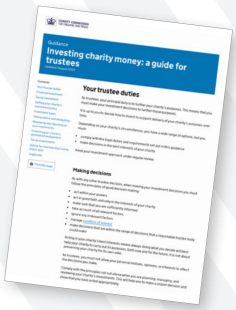
New Investment Guidance: What are the key changes?

New investment guidance for charities in England and Wales includes welcome clarification on acceptable investment approaches, as well as helpful direction on how to formulate and document your investment policy. The guidance also stresses the importance of seeking advice when reviewing investments.

Trustees of charities in England and Wales have new guidance on investment matters to digest now that the long-awaited update of 'CC14' was published by the Charity Commission in August 2023.

As many trustees will be gearing up to an autumn round of meetings, this timely article sets out the key changes in the guidance and highlights some actions that trustees and investment committees should be considering as a result.

The publication, titled '[Investing charity money: guidance for trustees (CC14)]' will, we believe, be welcomed by trustees, particularly as the Charity Commission has provided clearer and shorter guidance containing less technical jargon and more helpful practical examples than its predecessor in 2011.


Investing charity money: a guide for trustees

Your trustee duties

Making decisions

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1. Terminology

Previously vague terms such as 'ethical' and 'responsible' investment are no longer used and the confusing definitions of 'mixed motive investment' and 'programme related investment' have been effectively replaced by a clear distinction between 'financial investment' and 'social investment'.

Financial investment has been clarified as investing to make a return via income or capital growth. Examples are used to clarify that a range of approaches are acceptable, including integrating environmental, social and governance ('ESG') factors and 'negative screening' (e.g. excluding tobacco or fossil fuels) if this is aligned with the charity's purposes.

The new term **social investment** is perhaps the most helpful and directional to trustees (this being defined by the Charities Protection and Social Investment Act 2016) allowing them to make investments that further the charity's purposes or achieve a positive social impact even if they may not generate a financial return, or may involve taking on more risk.

These definitions, and range of examples, clearly reflects the recent High Court judgement on trustee investment duties (Butler-Sloss vs Charity Commission 2022) which confirmed that trustees can exclude certain investments based on non-financial considerations such as ethical or environmental factors as long as they are satisfied that their approach is in line with the charity's purposes and values.

> Charity trustees now have a great opportunity to achieve a positive social impact to further their own charity's aims and objectives. It will be important for trustees to formulate carefully their investment policy and take suitable advice to achieve this.

Alasdair Gill – Partner

Butler-Sloss Case: In a nutshell

This case was raised by two charities that were part of the Sainsburys Family Charity network – they wanted to implement an investment policy aligned with the 2016 Paris Climate Agreement (a 'Paris aligned' strategy), but they wanted the Court to clarify that this was indeed lawful, as this may (or may not) have the effect of maximising financial returns. Previous case law (e.g. the 'Bishop of Oxford' case) had been ambiguous in this regard.

Thankfully, the Judge was definitive: 'the Claimants can proceed to implement their Proposed Investment Policy and they will be acting lawfully in doing so.' This judgement has provided welcome clarity to the sector and put to bed any argument that trustees should only ever consider financial returns, and this position has been reaffirmed in the new Guidance.

XPS Viewpoint

Given that every charity is unique, we support these simplified definitions and it is clear that charity trustees have a wide range of options available to them, and they should feel more empowered to pursue investments that both look to generate return, and are aligned with the charity's purposes and values.

2. Governance

The updated guidance has clarified that all charities with invested assets should have a written policy statement – it is now a legal requirement for most charities. There are a range of aspects that the Commission expect to see in such a policy, and we set out below a brief checklist that trustees may find helpful when completing their statement.

Requirement	Included in your Policy? *Please tick*	Comment
1. Your charity's purposes and how the investments fit with these	☐	An important pre-requisite: what your charity is there for and how the investments help further your purposes.
2. Your charity's investment objectives, including any reputational and/or non-financial factors	☐	More detail on what you are expecting from your investments, such as a return target (absolute or relative to inflation?). This could also include an income target.
3. Your timeframe for the investments	☐	We would expect a medium-term timeframe for evaluating investment performance, although regular monitoring over the short term will help identify any performance or manager related issues early.
4. Your attitude to risk	☐	How much risk are the trustees prepared to take to achieve their return target? Could include quantitative metrics such as tracking error (a measure of portfolio variability).
5. How Environmental, Social and Governance (ESG) factors are considered	☐	This could relate back to the charity's purposes, and could consider issues such as climate change and biodiversity.
6. How your investments are monitored and reviewed	☐	This should reflect the trustees' actual monitoring arrangements – we suggest that quarterly monitoring is appropriate for most charities, with a more detailed independent detailed annual review.
7. Who the investment managers are, and what is their remit	☐	This is helpful but could be included in the managers' investment agreements.

XPS Viewpoint

Whilst most of these areas are not mandatory, we support the use of a clear but concise (and readable) investment policy statement that is a clear record for both trustees and other stakeholders stating why and how your assets are invested. This always makes the monitoring and review of investments, and your investment managers, much clearer and more objective. We would have liked to see more specific reference made to the monitoring of costs, which is not explicitly mentioned, and the explicit consideration of climate change and sustainability, although we recognise that 'ESG' is indeed covered.

3. Advice

Finally, the new guidance emphasies that the Charity Commission also expects trustees to take professional advice. Whilst this can be provided internally by a trustee, it is expected to be impartial. This advice needs to be considered objectively, and any conflicts of interest identified and managed carefully.

XPS Viewpoint

We accept that XPS is an 'interested party' in this area, as an advisor to charities and endowments. In our experience, whilst many charities do take advice from their investment managers, it can also be helpful for trustees to use a third-party advisor that is not directly involved in managing the portfolio, to provide both advice and oversight.

Indeed the guidance states that if an investment manager is appointed for the charity, '… you should regularly review the services they provide. This should happen independently of the manager.' Whilst some trustee boards may feel they have the expertise to complete this review themselves, a third-party advisor can often provide more objective analysis of the performance achieved, the level of risks taken, and the costs incurred.

Actions for trustees

This new guidance is clearer, and shorter than its predecessor and so we believe it will be welcomed by charities in England & Wales. It is also a reminder of the importance of good governance, and is likely to result in some actions for many boards in the months ahead. We believe it is a timely reminder for trustees to:

- **Assess** the level of investment expertise of the current trustee board;
- **Evaluate** and document your investment beliefs and objectives;
- **Examine** how the current investment portfolio aligns with the charity's social purpose;
- **Consider** a review of the Investment Policy Statement; and
- **Review** the investment oversight of the portfolio.

For further information, or for more help in a review of your investment policy, please get in touch with **Alasdair Gill** or **Fraser Weir** or speak to your usual XPS Investment contact.

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