



## HOW CHARITIES APPROACH INVESTING IN LINE WITH THEIR PURPOSE AND VALUES

Issued 31 March 2020

ICAEW welcomes the opportunity to comment on the ICAEW draft response to the blog “*How do charities approach investing in line with their purpose and values*” published by the Charity Commission on 15 January 2020, a copy of which is available from this [link](#).

Ethical investment is a topical issue and we support efforts to encourage charities to consider their options. When Charity Commission guidance on the subject is updated, we hope that it will take account of the diverse nature of charities and distinguish between matters that trustees are required to consider as a matter of law or regulation and those that are more aspirational in nature.

This response of 31 March 2020 reflects consultation with our Charity Committee and was in substance prepared before the deadline for responses was extended because of COVID-19. As the consultation is an informal blog, we have not consulted more extensively or wanted to avail ourselves of more time to do so. The Charity Committee includes auditors and independent examiners of charities of all sizes (including a substantial portion of the largest UK charities) and members from charities themselves.

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## Context of our response

1. Ethical investment is a topical issue and we support efforts to encourage charities to consider their options in appropriate cases.
2. The blog does not say where it is intended to lead, but we understand that the Commission plans to update its guidance CC14 (interim update 2016) and assume that responses to the blog may help it do so.
3. Our comments are made in that light and are therefore relatively informal and selective in the expectation that there would be a formal consultation on any update of CC14 (when we would be happy to comment more fully).

## Terminology

4. Terminology used in the sector on this subject is not consistent and this can be unhelpful for trustees of charities who may struggle to understand their options.
5. ACEVO's 2014 report *Good With Money* highlighted some of the difficulties, particularly regarding the Charity Commission's use of the term 'mixed motive investment'. The landscape has changed since then with the Charities (Protection and Social Investment) Act 2016, but it is questionable whether the terminology used in the Act has done much to alleviate this concern. References in the blog variously to 'responsible investment' and sustainable or ethical investments will require consideration in that context.
6. While we understand the desire to use easily accessible language, expressions such as 'charities are driven to make the world a better place' may be unhelpful where the subject concerns the distinction between the objects of a charity (which may be narrow) and the scope for charities to make investments which may be for wider social purposes (but still focused). Also, not all charities (or people) share the same view of what would make the world a better place.
7. For instance, a Christian charity may think earning interest from banks is acceptable where an Islamic charity might consider it to be usury.
8. Similarly, the blog refers to public expectations or 'mood' as if this should determine a charity's (or the Charity Commission's) course of action. The public mood is difficult to assess, may blow with the wind and the public are accountable to no-one. We suggest that the role of the public should always be put in the context of the specific responsibilities of trustees concerned, for instance, in assessing:
  - whether the charity provides a public benefit (as required under the Charities Act)
  - the impact their investment decisions may have on donors or potential donors (the public)
  - the impact social trends might have on the value of their investments.

## Taking account of diverse nature of charities and CC19 (building resilience)

9. The blog makes no distinction between large and small charities, but it is important that charities with limited resource are not distracted by concerns that may be of little, if any, relevance to them.

10. Other differences in nature or characteristics also need to be considered. For instance, a charitable foundation will have different levels of funds available for investment and investment priorities to a charity that provides services. The ability of each of them to invest sustainably may differ as a result, as might their attitude to sustainable investment.
11. Many charities, particularly smaller ones, have minimal reserves and their priority may be to preserve liquidity and capital.
12. In the context of the current situation with COVID-19, some charities are thinking about whether they may need to divest from their investment portfolios to support cash flow needs and focusing on the charity's survival.
13. CC19 acknowledges that it may be appropriate for charities to hold reserves in an account with a bank or building society. While there may be individual cases where a charity might have an ethical reason not to use a given deposit taker to hold its deposits, we suggest that it would be unhelpful for most charities to devote resource to compare ethical practices of different UK deposit takers. The UK banking regulatory regime should ensure that authorised deposit takers are sufficiently ethical for general purposes.

### **Distinctions between legal requirements and reputational issues**

14. The blog is no doubt right in saying that the law is clear that charities can take ethical and other non-financial considerations into account, but that is not the same as saying that it is clear from the law how trustees should act in any given case or, indeed, that the law is easily understood. We don't believe that it is easy and that is why guidance such as CC14 has an important role to play.
15. We suggest that charities should generally put meeting their declared objectives as a top priority; it is, after all, what the charity is for and various legal duties stem from this.
16. This may lead a given charity to adopt a particular investment policy, for instance, for cancer charities to avoid tobacco investments.
17. It does not, however, mean that the charity should avoid other investments that might be considered unethical by some sectors of the public or special interest groups. The charity will need to consider various factors in that context, including the impact on its reputation and income should it antagonise its donors or potential donors and the potential risks, returns and liquidity of any investment (as it is legally required to do).

### **Role of investment manager and committees**

18. The blog comments on rates of return from various sectors of investment. We think it will be important for the role of investment managers to be considered in that context (although the ultimate responsibility of the trustees for setting policy and strategy should not be overlooked).
19. Similarly, where a charity has an investment committee, it is important that it is taking direction from the board of trustees on matters such as ethical investment strategy.

20. We query the relevance or helpfulness of citing performance figures in the context of a debate about the principles that apply, because performance will inevitably vary from time to time and past performance is not guarantee of future performance.
21. Rather, the Charity Commission might focus on the case of a charity that deliberately chooses to make an investment because it believes it is 'ethical' (whether or not aligned to its objectives), knowing or believing that it will make a worse financial return than another type of investment.
22. The blog implies that there is a clear distinction between an investment that is ethical and one that is not and that charities have a binary choice to choose an ethical route or not. We suggest that this is insufficiently nuanced; a charity may choose to adopt a balanced approach. One might argue that investment in a UK all share index fund would contain a reasonable mix and that it will become more ethical over time (in response to the public mood if that mood is as suggested).

### **Role of pension funds**

23. In some cases, a charity will be the sponsor of a defined benefit pension scheme or participate in a master trust scheme. The scheme assets might be substantially greater than the investment assets of the charity itself.
24. Pensions schemes are required to take account of the financial aspects of ESG considerations and to provide information on the extent to which they take account of non-financial (eg, ethical) considerations. Further measures are proposed in the Pensions Bill.
25. While there is a good deal of overlap, the pension scheme will not typically be driven by the same charitable objectives as the charity itself and investment strategy may diverge as a result.
26. The Charity Commission may wish to consider the implications for charities in those cases (for instance, reputational risk should a pension scheme legitimately invest in companies that the charity would not have invested in).
27. It may also wish to consider the extent to which the scheme and charity might have interests in common, for instance, the information available from investee companies and funds or Investment Managers needed to enable them (as investors) to make better informed investment decisions, their stewardship of the assets, and their accountability and transparency.

### **Positive engagement**

28. Much of the debate has focused on divestment from specific sectors such as extractive industries, tobacco, alcohol, gambling and pornography. However, the Charity Commission may wish to consider whether this is the best way to bring about change or whether investors might engage more actively with the companies in which they invest, for instance, to help extractive industries adapt to more sustainable models.
29. Some issues arising are political in nature, and it may be that a charity does not wish to be associated with a specific industry (for instance, pornography) regardless of whether

investment policies will make any difference and regardless of potential returns. Government action would be required to change public behaviours (and even that might be ineffective).

### **Good regulation**

30. This, and many other considerations arising, are not solely charity sector issues. While charities may be motivated to 'do good' rather than make profit, it is important that expectations of charities are realistic in the context of the wider economic infrastructure.
31. The blog says that the Charity Commission won't be telling charities what to do, but the tone of the blog is likely to leave readers with the impression that the Commission believes they need to change behaviour. The Commission should be sensitive to the weight that may be attributed to its opinions or preferences and that lack of clarity may be unhelpful to trustees who need to ensure that they comply with binding law and regulation as a priority.
32. We believe that it would be helpful for the Charity Commission to update its guidance relevant to the subject. This could usefully involve a review not only of CC14 but also all other related guidance (eg, CC19).