

## Investing as charity trustees

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Last summer, the Charity Commission released much awaited updated guidance for charity trustees to consider when investing charity money. The Commission guidance followed the much publicised case *Butler-Sloss -v- The Charity Commission* which was heard in 2022 and with a judgement released in April 2023.

The new guidance provides a useful outline of charity trustee duties and how they should deal with decision making as to investing charity funds. The guidance discards previously used terms such as “programme-related” and “mixed-motive” investments as the Commission considered that the activities that were described by those terms are likely to be covered by the definition of “social investment”.

Under the new guidance, the starting point for charity trustees when considering their investment approach must be to comply with any rules set out in their governing document, to act in the best interests of their charity at all times, and to comply with all of their other trustee duties. However, taking those points into account, the guidance provides a helpful outline as to how charity trustees might want to consider their investment approach. These include considering the following approaches:-

1. Aiming only for the best financial return for the charity, within the level of risk you have set as charity trustees
2. Alongside the financial returns your charity is aiming for, adopting more diverse investment strategies such as:-
  - 2.1 avoiding investments that conflict with your charity’s purposes (such as a charity set up to help people suffering from alcohol addiction not investing in companies which produce alcoholic drinks);
  - 2.2 avoiding investments that could reduce support for your charity or harm its reputation;

2.3 avoiding or making investments in companies because of their practice on environmental social and governance; and/or

2.4 using the charity's shareholder vote, or other opportunities that come with the investment, to influence practices at companies that the charity has invested in

The Commission's guidance as to the approaches at 2.3 and 2.4 outlines that these approaches could be in your charity's best interest if they could act to protect or enhance the financial value of your investments over time or because they will support delivery of your charity's purposes more directly.

3. Investing in Social Investments – this is where charity trustees use money or property with a view to both achieving their charity's purposes directly through the investment and making a financial return. There are specific duties that apply to charity trustees when making Social Investments.

Whichever approach charity trustees take, all decisions should be considered in detail, appropriate professional advice taken and the consideration of all these factors should be documented in the charity's records. Charity trustees should also monitor ongoing investment performance, adopt an appropriate benchmark (to measure performance) and review and, as necessary, update their investment approach and policy regularly.

There is also some helpful guidance for charities who hold permanent endowment funds. By way of summary, if charity trustees have adopted a total return approach to the investment of its permanent endowment, then trustees can resolve to use some of that total return to make social investments that may provide negative or uncertain financial returns. Charity trustees should consider this guidance, and all associated guidance, carefully. In particular, trustees should give detailed consideration as to whether the investment they want to make would fall under the charity law definition of social investment to ensure that they operate within the rules that apply under that investment regime.

If your charity needs advice as to any of the above, including advice as to wider charity trustee duties, investing as charity trustees or your charity's total return policy, please contact our Charities Team.



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