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Charity Commission for England and Wales

30 March 2020
By email

Dear Charity Commission,

Views on charities and responsible investing
On behalf of The Chartered Governance Institute (the Institute) I am pleased to provide feedback on the charity sector's approach to responsible investing.

The Institute is the international professional body for governance, with more than 125 years' experience and with members in all sectors. Our purpose is defined in our Royal Charter as 'leadership in the effective governance and efficient administration of commerce, industry and public affairs' and we work with regulators and policy-makers to champion high standards of governance, providing qualifications, training and guidance.

We are the professional membership and qualifying body supporting chartered secretaries and governance, risk and compliance professionals in all sectors of the UK economy. Members are educated in a range of topics including finance, company law, administration and governance, which enables them to add value to any organisation.

The Institute has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and governance issues. The breadth and experience of our membership enables the Institute to access a variety of applied experience in order to provide insights into effective practices across a range of organisations. Our wealth of expertise and experience has informed our response.

General comments
The issues highlighted in the Charity Commission blog of 15 January 2020 are ones that continue to present challenges for many charity trustees. The nuanced tensions between investment return maximisation and the growing sentiment to deliver social change with charitable resources continues to present real challenges for trustees.

Even where the choice is fairly straightforward between income maximisation and supporting investments that are in tune with an entity's values and further its charitable objects, there can be difficulties with the wider public's expectations of charities, especially around reputational matters and organisations being seen to 'live their values'.

The growth in ESG (environmental, social/sustainability and governance issues) in other sectors will eventually take hold in the charity (and other) sectors. While some in the charity sector might be quite active in social investing, the ESG industry is about more than just investments. It includes approaches that encompass the UNDPs Sustainable Development goals (amongst others) and aims to promote more sustainable business activities across the entirety of an organisation's operations. This is likely to cover working conditions in third party contractors, resource use, and climate-related activities. ESG is not going to disappear and the public's expectations of charities are unlikely to diminish because of out-dated approaches to the appropriate use of charitable assets.

That is not so say that charitable assets should be diverted to non-charitable activities. There needs to be clearer guidance from the Commission on what it is and is not appropriate for trustees to consider

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when agreeing a responsible investment. That guidance needs to cover government legislation and initiatives related to ESG matters, such as modern anti-slavery requirements and net-zero carbon targets. While legal requirements will sometimes mandate a particular option, where the law regarding the use of charitable resources is not clear more aspirational ESG targets can present difficult choices.

The operational environment for charities has changed since the Harries v Church Commissioners for England judgement of 1991. The public is more demanding of charities to not just be charities but to act in a charitable manner. Recent media coverage of safeguarding failures and controversial investment choices have led to the sector understanding that reputation protection is not the over-riding principle. The public's expectation is much more fluid, but demanding, when it feels that a charity does not deliver on its wider social responsibilities. Revised guidance should be introduced to reflect the changing demands of a range of stakeholders, the emerging ESG industry in the sector, and increased options to invest with a view to do good rather than solely make money, to help trustees fulfil their legal duties while doing no harm.

The role and responsibility of trustees has become more onerous in recent times, and some volunteers are struggling to cope with their responsibilities to different stakeholders. This is one area where the regulator could ease the load and make the role simpler for those currently struggling with the income maximisation and social change dichotomy.

I trust the above comments help with the development of the Commission's guidance on this topic to make it easier for trustees to navigate the complexities of charity law and the growing demand for more social investing in the sector. Should you require any clarification or have questions, please do not hesitate to contact me directly.

Yours sincerely,

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