

FARRER&Co

Trustee Training: Roles and Responsibilities

Elizabeth Jones, Partner
Joseph Harris, Associate

17 October 2023



Schedule

09.30 - 09:35

Welcome

Farrer & Co

09:35 - 10:15

Cash and investments

Cazenove

10:15 - 10:30

**Introduction to
charity law**

Farrer & Co

10:30 - 10:55

Trustee duties

Farrer & Co

10:55 - 11:15

Break

11:15 - 11:35

Decision making

Farrer & Co

11:35 - 11:55

Trading and fundraising

Farrer & Co

11:55 - 12:45

**Accounting and financial
reporting**

Haysmacintyre

12:45 - 13:00

Q&A

13:00

Close

CAZENOVE CHARITIES



What Every Trustee Should Know

...about investing

Amelia Thornton
Portfolio Manager

Amelia.thornton@cazenovecapital.com

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Disclaimers, risk warnings and regulatory status

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Private Assets - Investors should only invest in private assets (and other illiquid and high risk assets) if they are prepared and have the ability to sustain a total loss of their investment. No representation has been or can be made as to the future performance of these investments. Whilst investment in private assets can offer the potential of higher than average returns, it also involves a corresponding higher degree of risk and is only considered appropriate for sophisticated investors who can understand, evaluate and afford to take that risk. Private Assets are more illiquid than other types of investments. Any secondary market tends to be very limited. Investors may well not be able to realise their investment prior to the relevant exit dates.

Taxation: Statements concerning taxation are based on our understanding of the taxation law in force at the time of publication, and are not intended to constitute tax advice. The levels and bases of, and reliefs from, taxation may change. You should obtain professional advice on taxation where appropriate before proceeding with any investment.

Exchange rates: Investments in overseas securities are exposed to movements in exchange rates. These changes may have an adverse effect on the value or income of investments.

Debt securities: Investments in bonds issued by borrowers with lower credit ratings may result in a greater risk of default and have a negative impact on income and capital value. Income payments may constitute a return of capital in whole or in part. Income may be achieved by foregoing future capital growth.

Emerging markets: There are additional risks associated with investment in emerging and developing markets. These include: higher volatility of markets; systems and standards affecting trading, settlement, registration and custody of securities all possibly lower than in developed markets; lack of liquidity in markets and exchanges leading to lower marketability of securities and greater price fluctuation; significant currency volatility, possibly resulting in adoption of exchange controls; lower shareholder protection or information to investors provided from the legal infrastructure and accounting, auditing and reporting standards.

Unregulated collective investment schemes: Unregulated collective investment schemes and other non-mainstream pooled investments (NMPs) are unlikely to offer a level of investor protection equivalent to that available for UK regulated investments. Such schemes may deal infrequently and may limit redemption.

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Gearing: Some of the investments we may make on your behalf could be in investment companies which use gearing as a strategy or invest in other investment companies which use gearing, such as investment trusts. The strategy which the issuer of such securities uses or proposes to use may result in movements in the price of the securities being more volatile than the movements in the price of underlying investments. Such investments may be subject to sudden and large falls in value and you may get back nothing at all if there is a sufficiently large fall.

Disclaimers, risk warnings and regulatory status

Risk warnings (continued)

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What is investment?

An investment is an asset that is purchased with the hope that it will **generate a return**, whether through production of income or capital appreciation...

... typically, investments are held for the future, not for the present day.

Generating a return

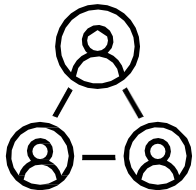
What constitutes a return?

For charities, the return of an investment can typically be measured by the following elements:



Financial:

- The **capital return** is the increase, or decrease in the capital value (price) of the investment
- The **income return** is the income received from that investment e.g. dividends
- Financial investment seeks to maximise financial returns for the appropriate level of risk



Social and environmental:

- As well as financial return, investments have an **impact on people and the planet**
- Often difficult to measure quantitatively
- Sustainable investment focuses on the social / environmental characteristics of an investment alongside the financial return

Asset Classes

Building blocks of an investment portfolio

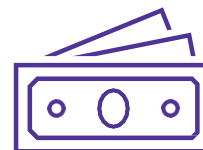
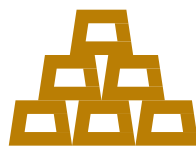


Alternative investments

A wide opportunity set

Charities are generally permitted to invest broadly, sometimes with specific constraints or requirements, but often with a view to holding assets which will help achieve the desired risk or return. Below are some assets which may be held:

- Infrastructure
- Renewable energy funds
- Absolute return
- Private assets
- Liquidity funds
- Commodities
- Social impact trusts
- Royalties



For illustration purposes, not a recommendation to sell or purchase
Source: Cazenove Capital

Why consider investing?

The challenge of protecting long-term capital from inflation...



UK inflation (CPI) is 6.3% (Aug-23) with a long-term target for the Bank of England of **2%**

- inflation erodes the capital value of cash
- charities looking to protect the “real” value of their capital should consider the following...



Low risk instruments, such as cash, have improving yields

- cash products are typically aligned to the Bank of England base rate (currently 5.25% p.a.)
- yield is the only return available on cash (no capital growth, just income)



UK Government Bonds (gilts)

- the 10 Year Gilt yield is currently **4.7%** p.a.
- investing in government bonds offers potential for some capital growth, although not without risk (2022 and so far 2023)



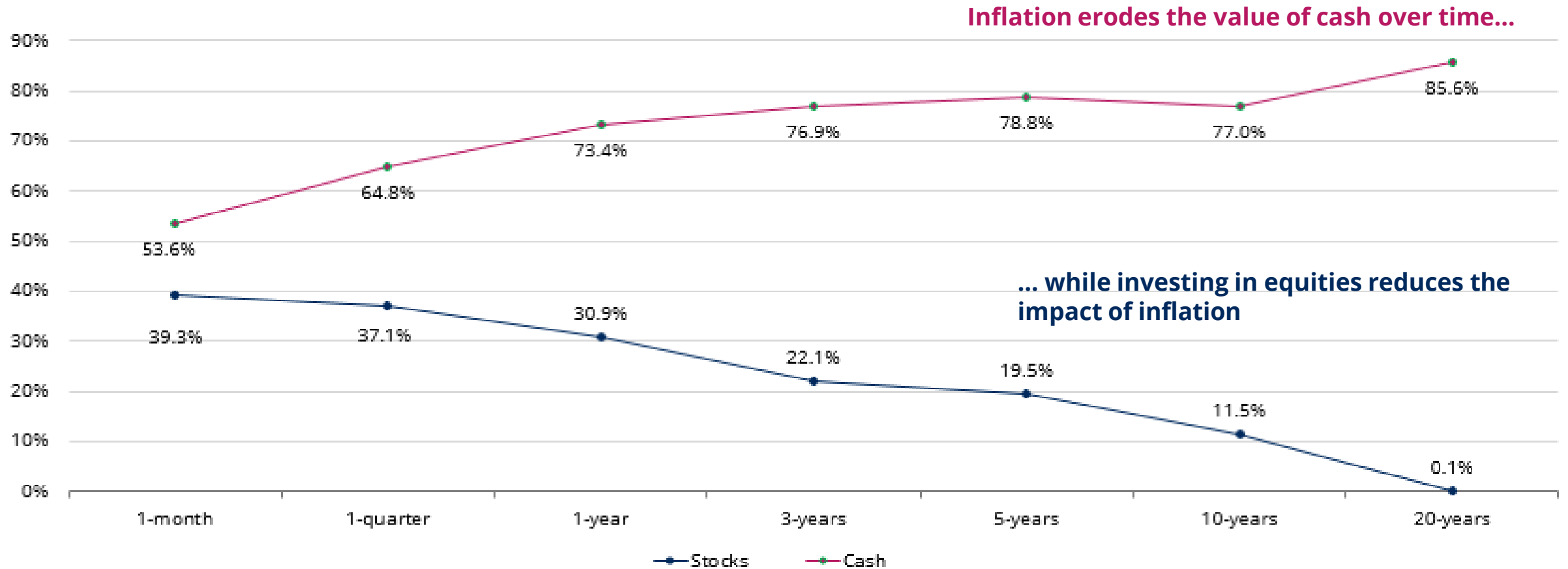
Implications

- inflation erodes the “real” capital value of cash over time
- with inflation at 6.3%, and interest rates at 5.25%, holding cash loses **-1.05%** in real terms
- cash has underperformed equities and gilts in real terms since 1925*

We need to think differently about risk in the context of purchasing power and inflation

If you can invest for the long-term... it is worth it

Percentage of time investors would have lost money in inflation-adjusted terms



Past performance is not a guide to the future and may not be repeated.

Data January 1871–March 2020. Analysis based on rolling periods. Stock market data is for S&P 500 index. Monthly cash return 1934–2020 based on 3-month Treasury bill, secondary market rate; 1920–1934 based on yields on short-term United States securities; 1871–1920 based on 1-year interest rate. 1871–1920 data only available annually so a constant return on cash has been assumed for all months during this period. Other data is monthly. Source: Federal Reserve Bank of St Louis, Robert Shiller, Schroders.

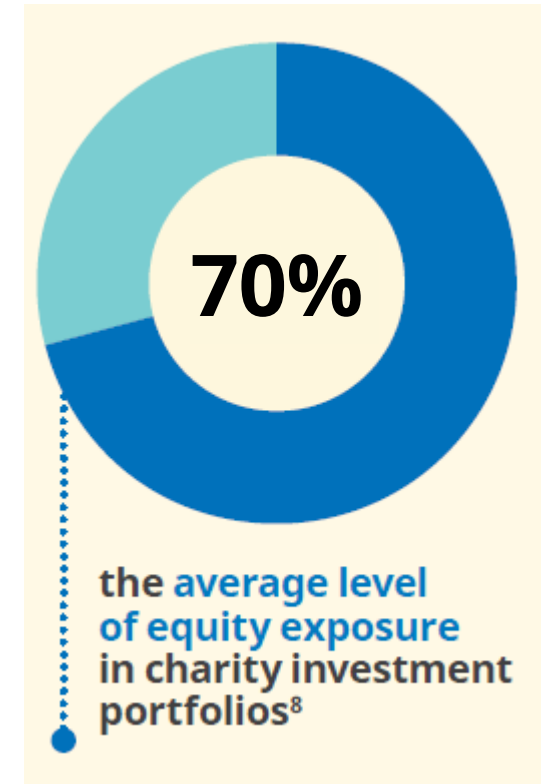
Equities – the engine of long-term returns



Long term
power of compounding

	50 years	118 years
Equities	5.6	5.1
Bonds	3.1	1.3
Cash	1.2	0.7

- Equities outperform over the longer term but are volatile
- Bonds are unlikely to repeat the performance of the last 20 years (yields are now below inflation)

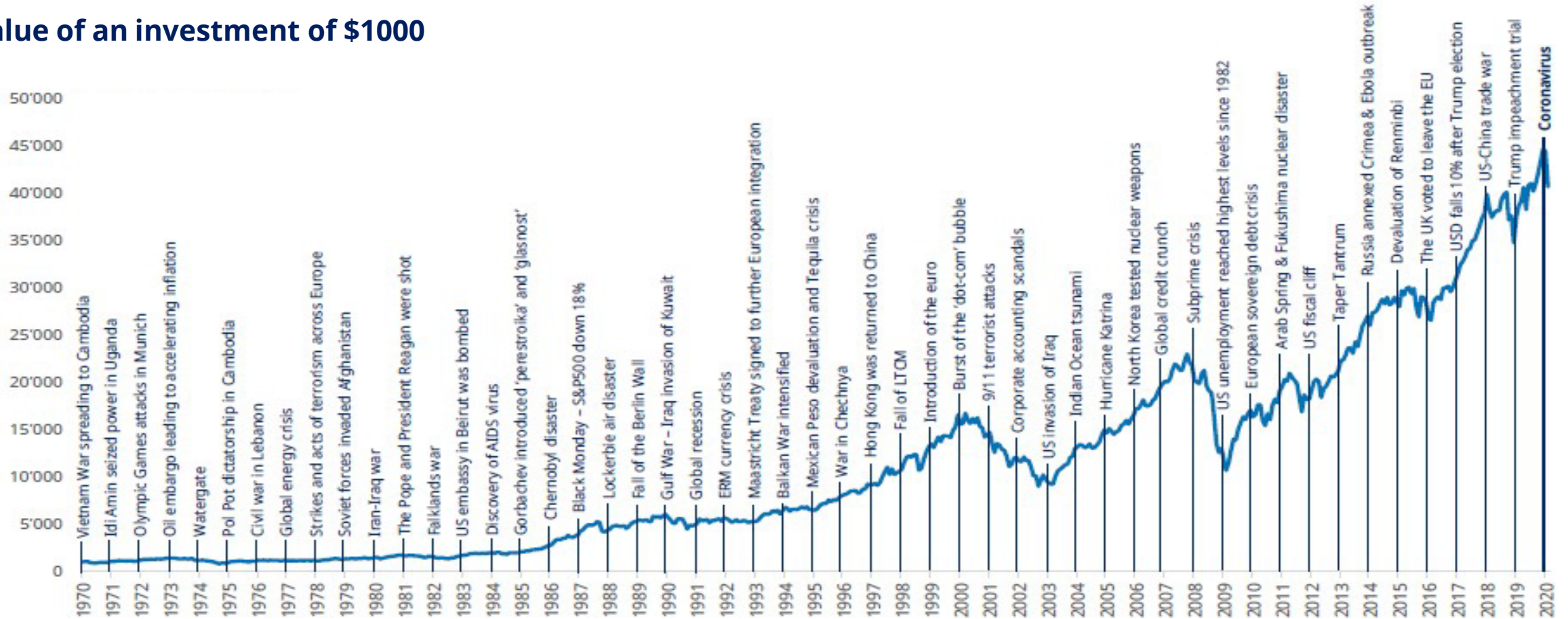


Source: Teknometry and Schroders. **Past performance is not a guide to future performance. Your capital is at risk.**
Barclays Equity Gilt Study July 2020, Schroders

Equities – not without risk

Global equities returned 7.7% per annum on average*

Value of an investment of \$1000



Source: MSCI World, Schroders, Datastream. Past performance is not a guide to future performance. The value of an investment and the income from it may go down as well as up and investors may not get back the amount originally invested.*7.7% average return from 1970-2020.



Investing for charities

What, who and how?



The journey

CC14

1st August 2023

2011
Original investment
guidance published

2016
Interim guidance on social
investments included

2020
'Listening exercise' by
the Commission

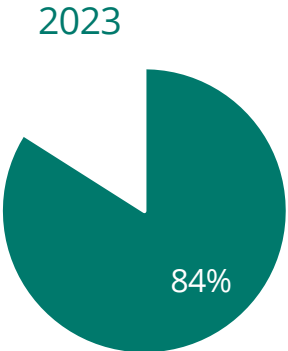
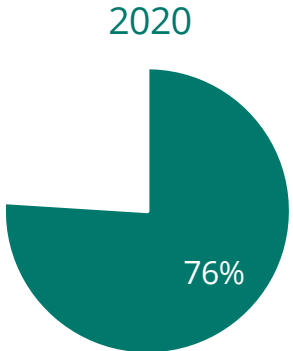
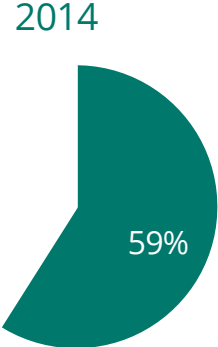
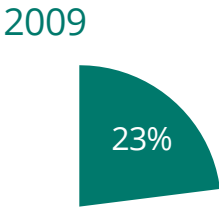
2023
User testing of
draft guidance

2021
Consultation opens

2021/2
On hold pending
Butler Sloss case

Meanwhile, charity investment practice evolves significantly....

% of charities with an investment policy reflecting mission and aims



Source: Cazenove Capital, ACF, Charity investment surveys. Population may not be consistent but sample size of over 120 gives representative picture.



Guidance

Investing charity money: a guide for trustees

Updated 1 August 2023

Contents

[Your trustee duties](#)

[Financial investment](#)

[Social investment](#)

[Setting your charity's investment policy](#)

[Investment types](#)

[Taking advice and delegating](#)

[Reviewing and reporting on your investments](#)

[Investing your charity's permanent endowment](#)

[Tax on investments](#)

[Advice for charities that mainly invest cash](#)

[Legal note](#)

Your trustee duties

As trustees, your principal duty is to further your charity's purposes. This means that you must make your investment decisions to further those purposes.

It is up to you to decide how to invest to support delivery of your charity's purposes over time.

Depending on your charity's circumstances, you have a wide range of options, but you must:

- comply with the legal duties and requirements set out in this guidance
- make decisions in the best interests of your charity

Keep your investment approach under regular review.

Charity Investment Practice

Ongoing evolution...



Google: Cazenove Charities
for more information

Reminders and highlights

General trustee duties

Decision making Trustees must:

- ✓ act within your powers
- ✓ act in good faith and only in the interests of your charity
- ✓ make sure that you are sufficiently informed
- ✓ take account of all relevant factors
- ✓ ignore any irrelevant factors
- ✓ manage conflicts of interest
- ✓ make decisions that are within the range of decisions that a reasonable trustee body could make

Duty of care Trustees:

- ✓ must use reasonable care and skill, making use of your skills and experience and taking advice when necessary
- ✓ should give enough time, thought and energy to your role. For example by preparing for, attending and actively participating in all trustees' meetings

In practice

Investment policy statement

- ✓ What, if anything, your charity's governing document says about how you must invest
- ✓ Your charity's **investment objectives**, including any relevant reputational and other non-financial factors
- ✓ Any sectors or organisations which you consider are **in conflict** with your charity's purposes
- ✓ Your **timeframe** for investment - short, medium or long-term
- ✓ **Liquidity**: How easily or often you need access to your charity's money
- ✓ Your charity's attitude to **risk**
- ✓ Your approach, if any, to **ESG** factors and to your **engagement** with the companies you invest in
- ✓ How you **monitor and review** your investments, including key benchmarks
- ✓ Who your investment advisers and managers are, their responsibility and remit, and how you work with them

We also recommend that a charity investment policy contains a statement on responsible investment approach and how the investment policy aligns with the charity's values and aims

New Charity Investment Guidance



CHARITY COMMISSION
FOR ENGLAND AND WALES

Empowering trustees to make investment decisions in the best interests of their charity

Key messages

- 1. Focus on how an investment furthers your charitable purpose*
- 2. Carry out a balancing exercise when considering investments and document your decision making*
- 3. Reflect this in a carefully thought out investment policy – ensuring you take professional advice*

Suggested actions for trustees

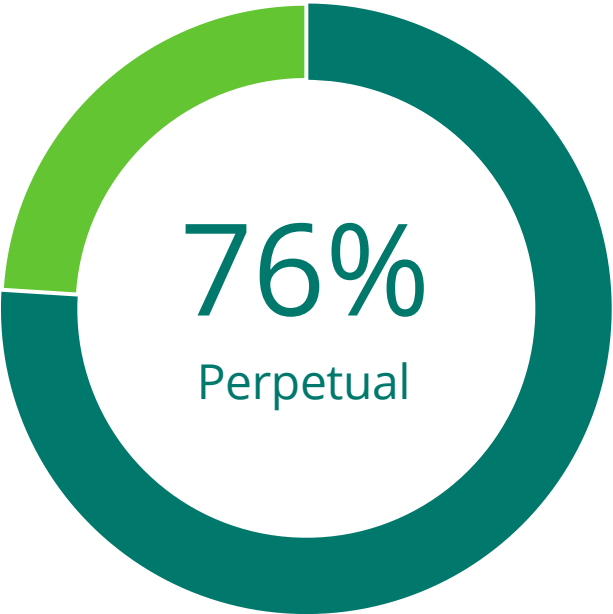
- 1. Brief Trustees on CC14*
- 2. At a board meeting, review investment policy and decision making process against the guidance*
- 3. Minute the discussion*

“the Commission is unlikely to have concerns about your investment decisions or policy if you can show that you have:
complied with your trustee duties and your governing document; considered and balanced relevant factors, taken
advice and reached a reasonable decision.”

Charity Investment Trends

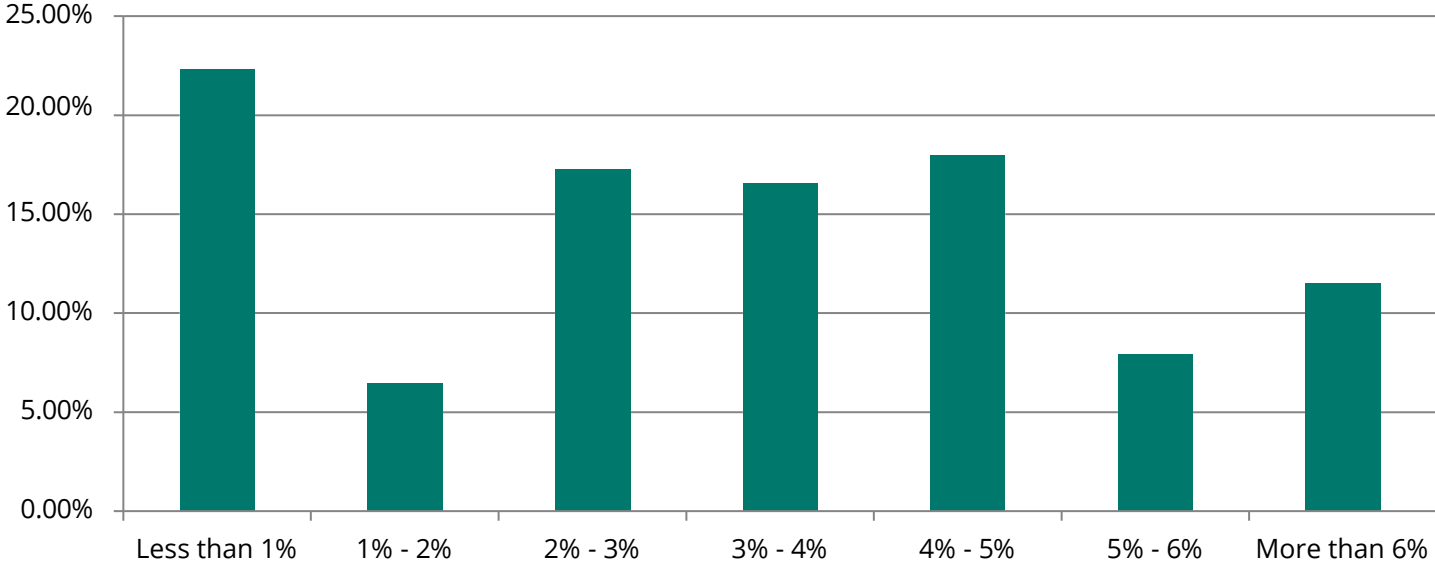
What do charities want from their investments?

Time horizon



76% of charity investors aiming for perpetuity
19% describe themselves as 'open ended'
5% as 'spend out'

Spending

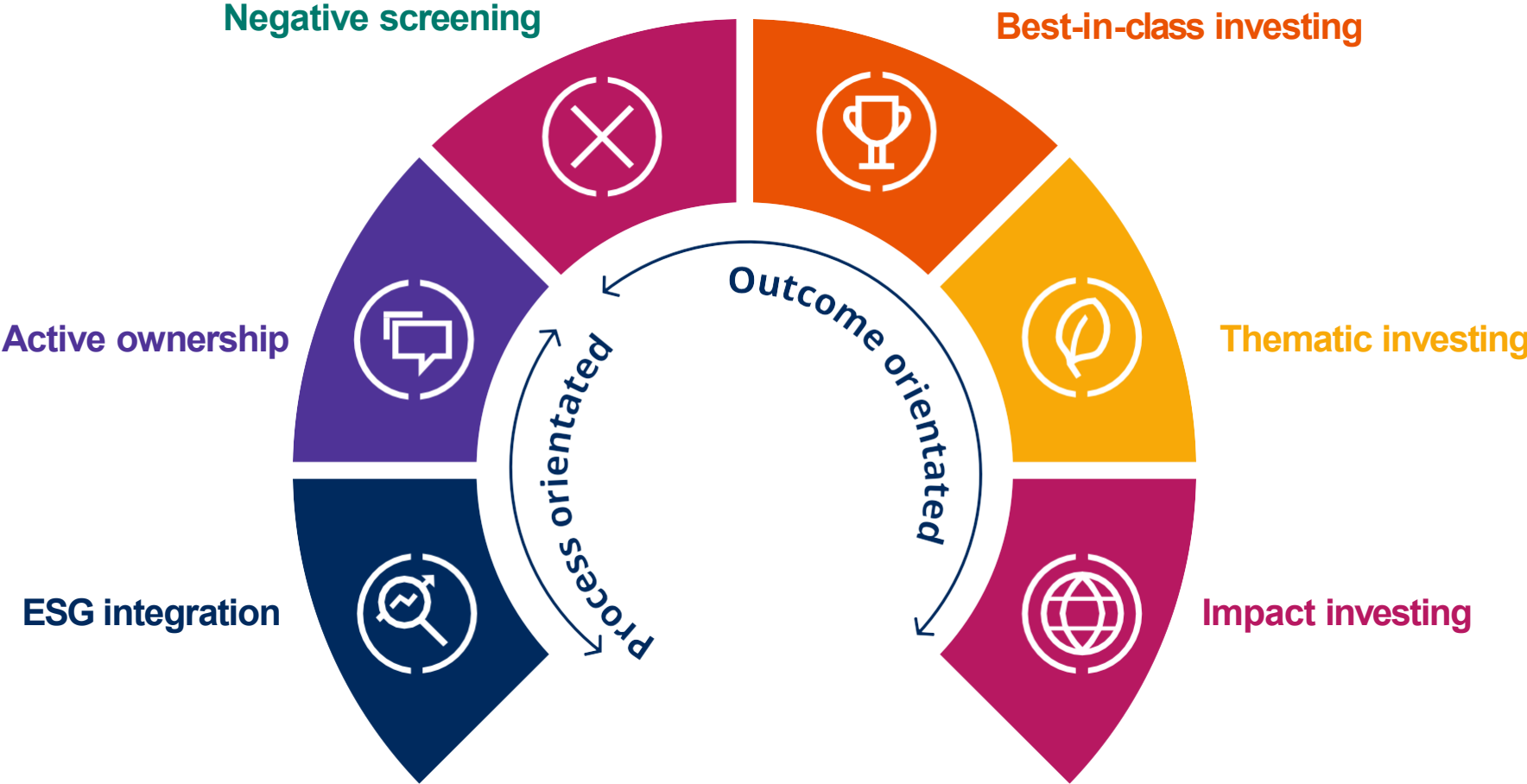


Sustainability



Sustainable investment

A broad spectrum of approaches



Source: Schroders

Be aware of your responsibilities as trustees...

The risk of these issues can be mitigated by a well thought-out investment policy

Comic Relief money invested in arms and tobacco shares

By Declan Lawn
BBC Panorama

10 December 2013

f t e Share



Extracts from Panorama - All in a Good Cause

Church of England ends Wonga investment

11 July 2014

f t e Share



The Church of England has ended its investment in the payday lender Wonga.

The move ends an embarrassing situation for the Archbishop of Canterbury, Justin Welby, who last year pledged to try to put Wonga out of business by helping credit unions compete with it.

It later emerged that the Church had indirectly staked about £75,000 in Wonga through an investment fund.

National Trust has £30m invested in fossil fuels

Exclusive: investments in oil, gas and mining companies held indirectly via portfolio fund



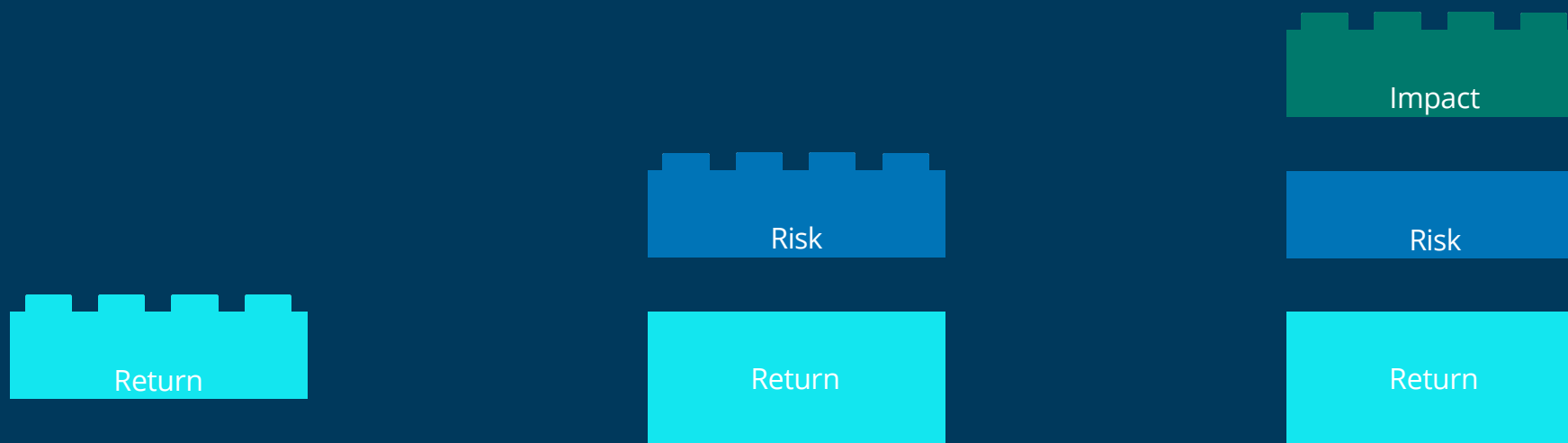
The National Trust is being criticised by MPs. Photograph: Alamy

The National Trust has invested tens of millions of pounds in oil, gas and mining firms - despite the conservation charity pledging to cut down its own use of fossil fuels and warning about the impact of climate change.

An investigation by the Guardian has found that the trust - which aims to "nurse the environment back to health" - has more than £30m of investments in oil, gas and mining companies, including BP and Shell, held indirectly via a portfolio fund.

Asset Management 3.0

Evolution towards three key dimensions of investing



Asset Management 1.0
Growth of professionally managed
mutual funds

Asset Management 2.0
Development of risk models
and quantitative strategies

Asset Management 3.0
Impact as the third
dimension of investing

Now there is a new dimension to investing. Investors must understand the cost of a company's entire activities – they must value their stocks based on “impact-adjusted profits”

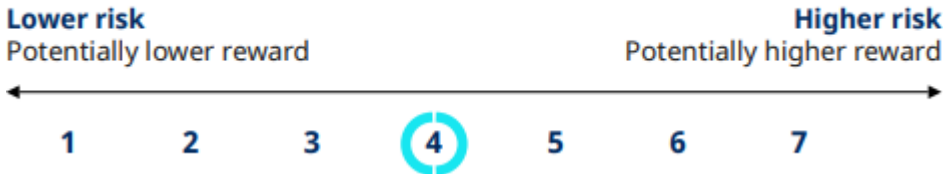
Source: Schroders.

Peter Harrison, Schroders plc CEO, January 2021

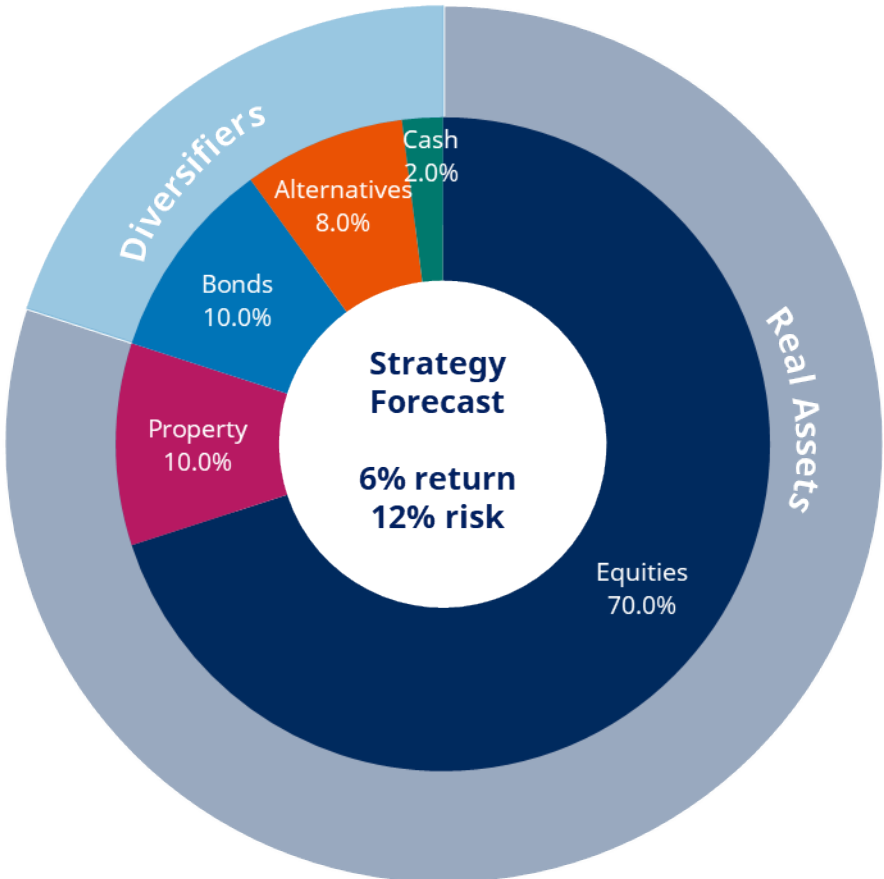
Charity Sustainable Multi-Asset Fund

- Targeting an annualised return of **inflation (CPI) plus 4%** over rolling ten-year periods¹
- A **sustainable cash distribution** to fund charitable expenditure
 - Targets **4% p.a.** total return distribution
- **Sustainable investment policy**, with screening aligned with common charity concerns
- **A solution for risk, return and reputation** – aligned to UN Sustainable Development Goals

Risk and reward profile



Long-term Asset Allocation



Return analysis is based on market forecasts, we would expect to outperform these through active asset allocation and fund selection

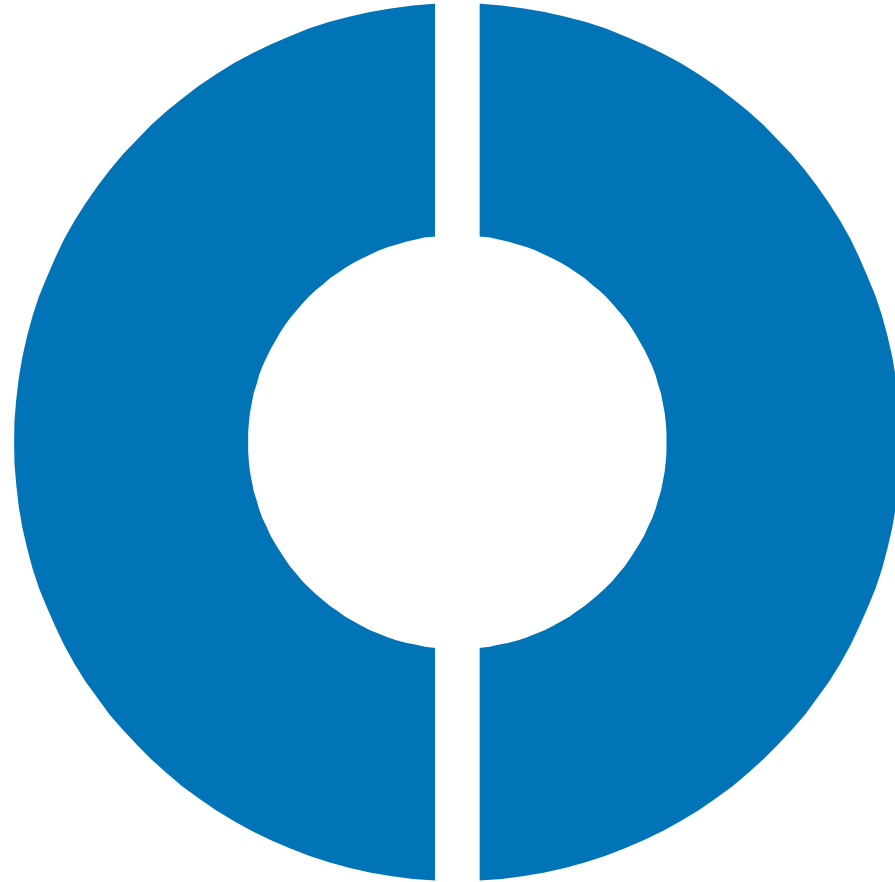
Estimated risk and return data is based on our own analysis. Risk, return or yield characteristics of the above portfolios or constituent asset classes are not guaranteed to be achieved in the future. We define risk as standard deviation of annual returns. Our forecasts assume an average rate of inflation (CPI) of 2% per annum. This analysis is based on broad market forecasts. Risk and return assumptions are shown in the appendix. ¹The target return is not guaranteed and your capital is at risk

What, who and how?

Conclusions



1. **Liquidity needs** – how much to spend and how much to save? – this will help determine risk profile
2. **Risk and Return profile** – do these align and what are your investment goals?
3. **Time horizon** – matching organisational, investment and governance time horizons
4. **Sustainable investment** – aligning investment with mission and aims



Questions?

Introduction to charity law



What we will cover

1

Introduction to charity law

2

**The role of the Charity
Commission**



Introduction to charity law

Charities must comply with:

- Charity law
- The law of their legal structure

- All laws applicable to the charity's activities which might include:
 - Data protection law
 - Employment law
 - Health and safety law
 - Property law

What is a charity?

- Within the jurisdiction of the High Court for England and Wales
- With exclusively charitable purposes that are for the public benefit

Legal Structures

- Charitable Incorporated Organisations (CIOs)
- Companies
- Royal Charter bodies
- Trusts
- Unincorporated Associations
- Community Benefit Societies
- Others

Charitable purposes

- Within the 13 descriptions of purposes set out in the Charities Act 2011
- For the public benefit
- Charity law allows scope for development in those purposes capable of being charitable where they are analogous to recognised charitable purposes – e.g. the Charity Bank but not the Temple of the Jedi Order
- Charitable purposes vs activities – LGB Alliance / Mermaids



The Charity Commission

- Keeps the Register of Charities
- Regulates registered charities, and exempt charities to some extent
- Has very wide powers - to open investigations and statutory inquiries, call for documents, freeze bank accounts and restrict asset sales, and disqualify trustees
- Issues guidance – “comply or explain” approach
- May issue Official Warnings
- Has concurrent jurisdiction with the High Court in many areas
- Orders have the same effect as a Court Order



CHARITY COMMISSION
FOR ENGLAND AND WALES

Duties of charity trustees



What we will cover

1

Duties of trustees

2

Personal liability

3

Public benefit



Duties of charity trustees

Overriding duty:

At all times, to act in the best interests of the charity (i.e. in the way that a trustee believes is likely to further the charity's purposes most effectively)

Standard of Care:

To exercise such care and skill as is reasonable in the circumstances, having regard in particular:

- to any special knowledge or experience that s/he has or holds her/himself out as having, and
- if s/he acts as trustee in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession



Duties of charity trustees (continued)

Subsidiary duties in brief

- To act within the charity's constitution and the law
- To have regard to the Charity Commission's guidance on public benefit (and more generally)
- To apply the assets of the charity for the purposes in the constitution
- To exercise proper stewardship over the charity's assets and the running of the charity
- To avoid and/or deal appropriately with conflicts of interest
- Unless authorised, to act without remuneration or benefits other than the reimbursement of out-of-pocket expenses
- To take professional advice when necessary

Duties of charity trustees (continued)

**For
directors of
charitable
companies
(Companies
Act 2006)**

To act within their powers

To promote the success of the company

To exercise independent judgment

To exercise reasonable care, skill and diligence

To avoid conflicts of interest

Not to accept benefits from third parties

To declare interests in proposed transactions or arrangements

Duties of charity trustees (continued)

Delegation

- To chair and staff
- To committees and groups
- Delegation of functions not responsibility

- Best practice:
 - In writing, with clear terms of reference including reporting obligations (with the CEO usually reporting directly to the Board)

- Can't delegate:
 - Setting the budget
 - Major policy decisions

Personal liability

Unincorporated charities (unincorporated associations and charitable trusts):

- Trustees liable and would be sued in their personal capacities, subject to a right to recover from the charity up to the value of the charity's assets

Corporate charities (CIOs and charitable companies):

- Separate legal personality (protecting trustees and members)
- Limited liability status (protecting members)

All trustees:

- Can be liable for breaches of trust resulting in a loss to the charity, BUT
- Unlikely to be required to compensate the charity if they have acted honestly and reasonably

Exposure – current and future trustees (if they knew or ought to have known about the breach of trust)

D&O / Trustee Indemnity Insurance available, but can be limited in scope

Public benefit

- A key concept in charity law
- Three parts to the formal statutory guidance:
 - PB1: The public benefit requirement
 - PB2: Running a charity
 - PB3: Reporting
- Further explanatory material (does not form part of statutory guidance)
- In summary, for a purpose to be for the public benefit it must satisfy:
 - the **benefit** aspect
 - the **public** aspect

Public benefit (continued)

- Duty to “have regard” to the guidance – this means that you must:
 - Be aware of the guidance
 - Take it into account when making a decision to which the guidance is relevant
 - Have good reasons if you want to depart from the guidance
- Politics and the public benefit requirement.

To satisfy the **benefit** aspect:

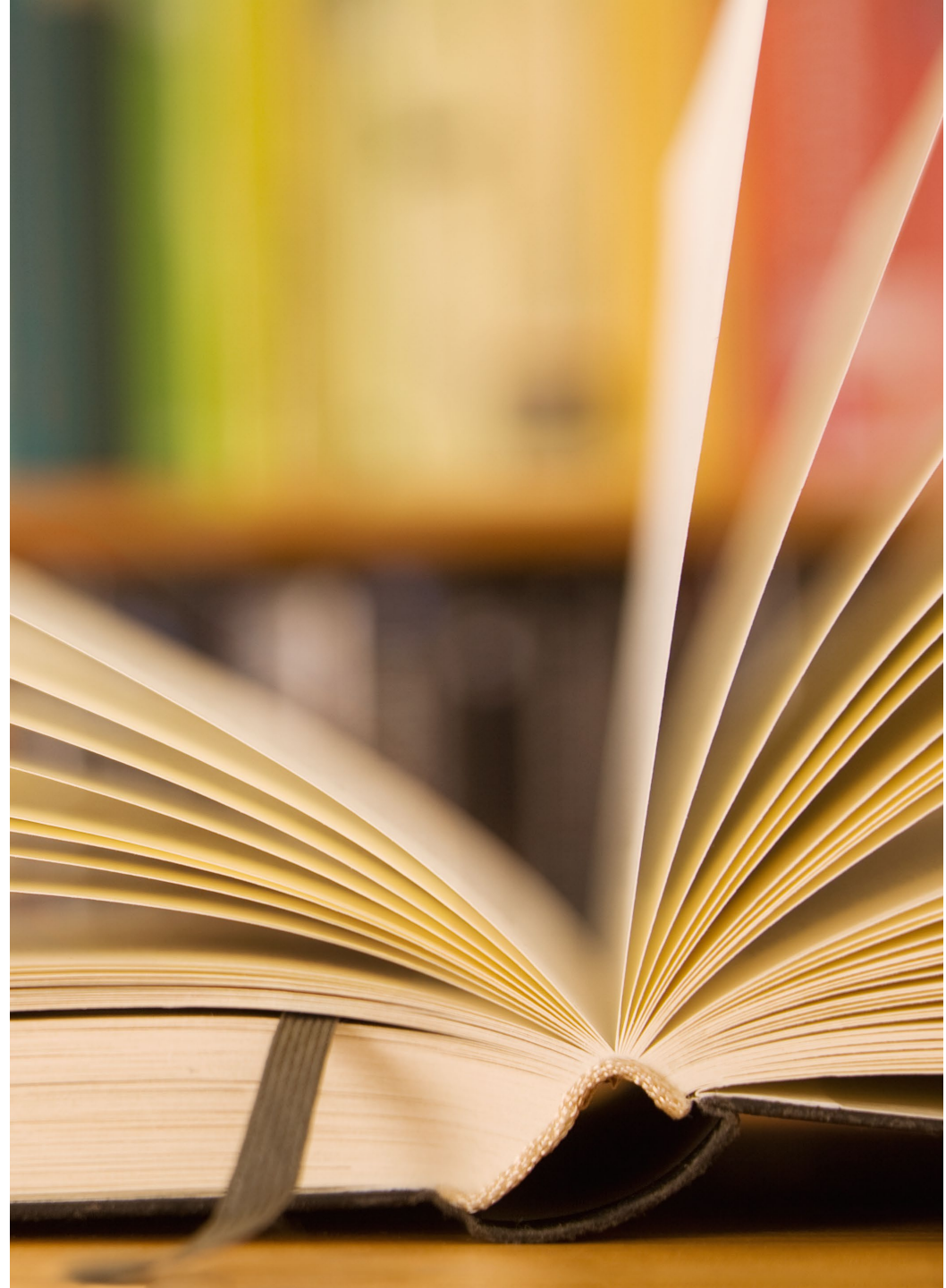
- a purpose must be beneficial
- any detriment or harm must not outweigh the benefit

To satisfy the **public** aspect:

- the purpose must benefit the general public/a sufficient section of the public
- must not give rise to more than incidental personal benefit

Further reading on trustee duties

- **Charity Commission guidance CC3:**
- [The essential trustee: what you need to know, what you need to do - GOV.UK \(www.gov.uk\)](#)
- **NCVO – The legal duties of trustees:**
- [The legal duties of trustees | NCVO](#)



Decision making by charity trustees



What we will cover

1

Who makes the decisions

2

Who can't make the decisions

3

How are decisions taken

4

Making the “right” decision and what happens if you get it wrong



Who makes the decisions



Trustees (or those to whom they have properly delegated authority)



Members

- Changes to the governing document
- Change of name
- Removal of directors / trustees



Matters requiring the consent of the Charity Commission

- Alterations to:
 - Objects
 - Trustee benefit provisions
 - Dissolution clause

Who can't make the decisions

Trustees with
conflicts of interest
or loyalty



The chair (unless
acting pursuant to
properly delegated
authority)



A committee or
group without
delegated
authority



Conflicts of interest / loyalty

- Any situation where a trustee's personal interests or loyalties could, or could be seen to, prevent the trustee from making a decision only in the charity's best interests.
- Must be identified and managed in line with the governing document and any conflicts policy.
- Declaration of conflicts as a standing item on the agenda of every board meeting.
- **Failure to manage conflicts a key reason for regulatory intervention.**



How are decisions taken?

Formal meetings

- Collective responsibility
- Quorum requirements

Electronic meetings

- Ability to hear, speak, be heard and vote in real time
- Power in the governing document

Written resolution

- Power in the governing document
- Informal means of taking decisions in writing, e.g. by email
- Often not appropriate for critical decisions



What do trustees need to take into account?

In line with the objects?
Will it deliver sufficient
public benefit?

- Check the objects and the public benefit guidance

Within the powers available?

- Check governing document and applicable legislation

All factors which are relevant
to the decision:

- Cost/benefit
- Risks
- Alternative options
- Professional advice

Ignore all factors which it is
not appropriate for you to
take into account:

- Personal connections
- Third parties' wishes (e.g. nominating body or corporate sponsor)

What if you get it wrong?

- Financial loss to the charity
- Complaints (e.g. from funders, beneficiaries or members of the public)
- Charity Commission review, investigation or (in rare cases) a statutory inquiry
- Personal liability (in rare cases of bad faith on the part of trustees)
- **A reassuring tale - Garden Bridge Trust**



Making the “right” decision

Key principles

- Good faith, informed and evidence-based decision making
- Exercising the proper standard of care
- Sufficient oversight and critical challenge amongst the Board
- Within the range of decisions that a reasonable trustee body could have made

Recording decisions

- Vital to record decision-making process and to retain the minutes with the charity’s records
- Record-keeping particularly critical where a decision is inconsistent with Charity Commission guidance

Trading and fundraising



What we will cover

1

Defining trading

2

Charity law and tax rules on trading

3

Use of a trading subsidiary

4

Charity fundraising



Defining trading

- No statutory definition
- “Badges of trade”
- Generally considered not to include, for example:
 - Sale of investment assets
 - Sale of assets used for charitable purposes
 - Letting of land and buildings where no services are provided to the user
- HMRC guidance (BIM20000) refers to

“operations of a commercial kind by which the trader provides to customers for reward some kind of goods or services.”
- Tax legislation divides trade between “primary purpose trading” and “non-primary purpose trading”.

Trading pursued by charities

Primary purpose trading

- Trading in the course of carrying out a primary purpose of the charity, e.g. an independent school charging fees or a theatre charging a fee for entry

Non-primary purpose trading

- Trading which is not primary purpose and which is carried on with the main or sole aim to raise funds

Ancillary trading

- A trade that is ancillary to a primary purpose trade, and which legally is treated as part of the primary purpose trade, e.g. sales at a restaurant within a theatre or concert hall which is not open to the general public

Trustee decision-making on trading

Trustee duties in a trading context are to:

- Apply the charity's assets only for the charity's purposes
- Protect the charity's assets
- Take proper advice
- Avoid or deal appropriately with actual, potential or perceived conflicts of interest

Only primary purpose or ancillary trading is permitted, so ask yourself:

- Why are we carrying out this trade?
- Does the trade further our charitable purposes? Nb. It is not enough that the proceeds of trade will be applied to your charity's purposes.
- Is the private benefit that may accrue through the trade reasonable, necessary and in the charity's interests?

Taxation

Income tax (for charitable trusts) and corporation tax (for corporate charities)

- General exemption applies to primary purpose and ancillary trading (provided that any profits are applied solely to the purposes of the charity)
- Small scale trading exemption
- Certain fundraising events are exempt
- Some capital receipts (e.g. overage payments on the development of land by a third party) may be subject to tax under anti-avoidance provisions – take professional advice if in any doubt
- No exemption for non-primary purpose trading

VAT

- No general exemption from VAT for trading activity (but note specific VAT exemptions or zero-rating, e.g. for educational services or the sale of donated goods)
- Professional advice likely to be required

Use of a subsidiary trading company

Why use a subsidiary?

- Charity law limitations on trading
- Isolating risk
- Tax planning

Structures

- Company limited by shares (most common)
- Community Interest Company

No subsidy permitted by the parent charity

- Equity finance
- Loan finance
- Social investment

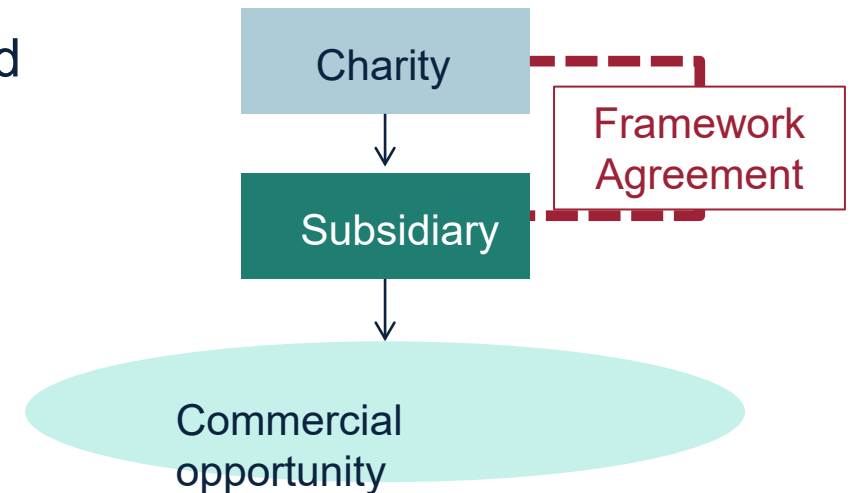
Use of a subsidiary trading company (continued)

Profit shedding

- Donation to parent charity under the Gift Aid regime, reducing taxable profits to nil (but note potential mismatch between accounting and taxable profits)
- Deed of Covenant
- Donation to be made within nine months of financial year end

Contractual relationship between parent and subsidiary

Framework agreement to record the terms on which services will be provided, to include IP licences, resource sharing provisions and (where applicable) a licence to use premises.



Use of a subsidiary trading company (continued)

Governance

- Charity Commission recommends at least one director of a trading subsidiary is independent (i.e. not a trustee or an employee of the parent charity)
- Clear reporting framework between parent and subsidiary
- Charity Commission guidance for oversight and review of a trading subsidiary suggests you should:
 - Check the performance of the trading subsidiary
 - Regularly check on any financial support you provide (if applicable)
 - Putting the interests of the charity first
 - Be prepared to assert your charity's rights as shareholder
 - Identify and properly address any conflicts of interest

Fundraising

How?

- Campaigns
- Public collections
- Charity shops
- Lotteries
- Events
- Professional fundraisers

From whom?

Other charities

Local authorities / Central government

Individuals

Businesses (including by way of sponsorship and commercial participation)

Fundraising from other charities and government bodies

Grants

- Common means of fundraising for many operating charities
- Distinction between “true” grants and contracts for services – what is the recipient required to provide in return for the grant? Note the VAT implications
- Grant agreement key terms and conditions:
 - Project details
 - Reporting conditions
 - Grantor’s right to monitor grant expenditure
 - Termination provisions and claw back

Fundraising from individuals

- Legacies
- Appeals (e.g. disaster appeals)
 - Appeal terms
 - What happens if target not met?
 - Special trusts
- Donor advised funds
- Targeted fundraising
 - Regulated area – Institute of Fundraising (Code of Fundraising Practice), The Fundraising Regulator, Charity Commission (CC20)
 - Donors' data
 - Potential for reputational damage



Fundraising from individuals - Tax

- Importance of Gift Aid for charity income and individual tax planning
- Administration and use of intermediaries
- Donor benefit and tainted donation rules - permitted limits
- Gift Aid in the context of tax avoidance - The Cup Trust



Fundraising from businesses

- **Sponsorship**

- Payment of money in return for specified benefits – generally by the inclusion of the sponsor’s name and logo on the charity’s website / literature, at events and on merchandise
- IP licensing
- Donation vs sponsorship (VAT implications)

- **Corporate donations (e.g. “Charity of the Year” arrangements)**

- Should the donor be permitted to use the charity’s name and logo to promote the fundraising drive?
- IP licensing – appropriate fee?
- Potential VAT implications

- **Commercial participation**

- A particular form of fundraising where the charity works together with the business
- Compliance with statutory formalities
- Solicitation statements

- **Gifts in kind**

- Equipment
- Staff and resources
- Often appropriate in the corporate foundation context



Further reading on fundraising

- **Charity Commission guidance CC20:**
[Charity fundraising: a guide to trustee duties](https://www.gov.uk/guidance/charity-fundraising-a-guide-to-trustee-duties)
- GOV.UK (www.gov.uk)
- **Fundraising Regulator's Code of Fundraising Practice:**
[Code Fundraising Practice October 2019.PDF](https://www.fundraisingregulator.org.uk/Code-Fundraising-Practice-October-2019.PDF)
(fundraisingregulator.org.uk)
- **HMRC Vat Notice 701/41 (Sponsorship) and Internal Manual VATSCO6317 (Contracts vs Grants)**
- **Gambling Commission guidance on Society Lotteries:**
[Society lotteries](https://www.gamblingcommission.gov.uk/society-lotteries) (gamblingcommission.gov.uk)



Q&A and how to find out more

- Who's got a question?
- Sign up to our **Charities mailings** to receive quarterly updates: <https://www.farrer.co.uk/subscribe/>
- Please get in touch with your specific charity law questions or training needs. We would be happy to help.



Elizabeth Jones

020 3375 7138

elizabeth.jones@farrer.co.uk



Joseph Harris

020 3375 7088

joseph.harris@farrer.co.uk





haysmacintyre

Accounting and financial reporting

Tom Brain

tbrain@haysmacintyre.com

17 October 2023



Financial matters

External reporting

- Trustees' annual report and accounts
- Fund accounting

Internal financial reporting

- Financial control
- Financial modelling
- Financial policies and fraud risk
- Year end accounts and audit, going concern
- Other matters





External reporting: trustees' annual report and accounts

- Trustees are ultimately responsible for the finances
- Accounts are approved by the Board of Trustees
- Legal requirements : Charities Act, Companies Act and other regulations
- Statement Of Recommended Practice ('SORP')
- Who receives the accounts?
- What is the purpose of the statutory accounts – compliance document or is it more?



Trustees report

- Reference and administration details
- Structure, Governance and Management
- Objectives and Activities
- Achievements and performance
 - Strategic review
 - Operational and financial
 - Reserves policy
 - Investment policy
- Plans for the Future

Order is not mandated – use to your advantage.





Annual accounts

- Statement of Financial Activities ('SOFA')
 - Analysis of income headings
 - Analysis of expenditure by activity – Public benefit
- Balance sheet – snapshot of financial health/financial position
- Cash flow statement – “larger” charities only
- Accounting policies – treatment of material items
- Notes – lots of disclosure



Fund accounting

- Fundamental difference for charity accounting
- Unrestricted funds
- Restricted Funds
- Endowment Funds:
 - Permanent
 - Expendable
- Conduit Funds





Reserves

- What is your reserves policy?
- How do you calculate your reserves?
- What is the right reserves policy?
- What do you disclose?
- Tips:
 - Clarity of purpose
 - Future intentions
 - Known commitments
 - Use designations



Reserves policy example

		£	£
Fixed Assets			2,500,000
Debtors		200,000	
Cash		300,000	

		500,000	
Creditors		(250,000)	

			250,000
Total			2,750,000
Unrestricted Funds			2,600,000
Restricted Funds			150,000
Total			2,750,000



Reserves policy example - designations

		£	£
Fixed Assets			2,500,000
Debtors		200,000	
Cash		300,000	

		500,000	
Creditors		(250,000)	

			250,000
Total			2,750,000
Unrestricted Funds:			
Designated Funds			2,500,000
General Funds			100,000
Restricted			150,000
			2,750,000





Financial monitoring - the here and now

What should you receive:

- Income and expenditure (by key activities)
- Outturn for the year
- Balance sheet information
- Funds analysis – RF v UF
- Cash flow forecast linking to reserves
- Pensions costs – cash flow impact
- Specific KPIs for your charity





Steps in building a financial model

Design the model

- Identify key drivers, inputs and assumptions – membership numbers, pupil numbers, funding applications, investment returns, fundraising model
- What do stakeholders want? Changing attitude – are you having to adapt what you deliver? Virtual tech?

Build the model

- Build in sensitivities – ensure easy to flex
- Don't forget to itemise project funding from the normal funding streams. Separately identify the costs. If there is no funding, do costs drop out or are they already committed?





Steps in building a financial model

Test the model

- Build in checks – test the model against actual results as you go. Management accounts, regular monitoring by trustees

Present the model

- How presented for different stakeholders? Staff, owners, beneficiaries, sponsors?
- Explain key assumptions – narrative is vital to understanding
- Present summary sheets for users – different users, different needs...





Financial policies and procedures

- Financial systems and procedures – how do you gain comfort over them?
- Changes during/post-pandemic?
- Operations/Financial procedures manual – do you have one?
- Do you have the basics – look at CC8 internal financial controls for charities





Financial risks

- Fraud and IT security
 - How could fraud be carried out?
 - What are your vulnerabilities
- Single person finance department – who monitors controls?
- Segregation of duties – can you build additional comfort?
- BACS and bank accounts controls/mandates
- Credit cards
- Financial sustainability of trading subsidiaries



Year end accounts

- Do you need an audit?
- What are trustees' duties/responsibilities?
- What is standard practice for liaison?
- Going concern – 'crystal ball' accounting – but requires Trustee confirmation
- What information do you need to approve the accounts
 - Cash flows for 12 months
 - Forecasts for 12 months
 - Assumptions and sensitivity analysis



Going concern – auditors' considerations

Requirements:

- Evaluate the **method used by management/trustees** to assess whether the charity is a going concern
- Evaluate the **relevance and reliability of the underlying data**
- Evaluate the **assumptions**
- Evaluate management's/trustees' **plans for future actions**
- Consider **additional facts or information** which may be available since the assessment was made
- Focus on availability of unrestricted funds



Sensitivity analysis

- Impact of changing one variable at a time
- Assessment of variables – e.g. impact on cash, reserves. Set limits for decision making

Key steps:

- Identify the variables and assumptions
 - Vary between organisations
- Identify which assumptions are key
- Stress testing and reverse stress-testing



Current climate

- It's still difficult!
- Regular engagement with senior management is key
- Challenge the information you receive from management
- Seek professional advice
- Document decisions carefully and clearly





Q&A



haysmacintyre

haysmacintyre
10 Queen Street Place
London EC4R 1AG
T 020 7969 5500
F 020 7969 5600
E marketing@haysmacintyre.com

www.haysmacintyre.com
[@haysmacintyre](https://twitter.com/haysmacintyre)

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