

Draft Charity Test Guidance  
OSCR  
2<sup>nd</sup> Floor  
Quadrant House  
Riverside Drive  
Dundee  
DD1 4NY

26 May 2015

Dear Sir,

### **Draft Charity Test Guidance**

On behalf of ICSA I am pleased to respond to your draft charity test guidance.

ICSA is the professional body qualifying and supporting Chartered Secretaries, corporate 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.

ICSA has an extensive pedigree in the governance arena, advising governments and regulators on company law, charity law and corporate governance. The breadth and experience of our membership enables ICSA to access a variety of applied experience in order to provide pragmatic insights into effective practices across a range of organisations. A significant number of our members are involved in the charitable sector and all will be familiar with the legal requirement for charitable organisations to meet the charity test and the need for trustees to understand what that means in practical terms. Our members' wealth of expertise and experience, along with a detailed understanding of charity legislation and regulation, has informed our response to this consultation.

### **General comments**

In general the draft guidance is clear about the message it is trying to articulate and the audience it is trying to reach: providing details to trustees, and their advisers, as to the approach taken by the regulator when applying the charity test. The description of each charitable purpose, activities to fulfil them and case studies provides a varied approach to help readers understand the technical issues at hand when meeting the charity test. Due care, however, should be taken to inform readers that fulfilling charitable objects can be achieved in many more ways than those listed in the document. It would not be beneficial if the guidance inadvertently impacted on a new, or existing, charity's ability to be innovative and creative in the way it sought to achieve its objects, while meeting legal requirements.



We felt there is a tendency within the earlier part of the document to assume that those reading the guidance are seeking to establish and register a new charity. Ideally, the guidance ought to be equally applicable to an existing charity, and its trustees, seeking to continue to meet the charity test and to trustees wishing to amend their charity's governing document – specifically the objects clauses. In the latter part of the guidance (p57 onwards), the document speaks to established charities in the first instance and those seeking registration in parenthesis. This makes the document a little inconsistent to readers and could be remedied quite easily for the benefit of the guidance and readers.

While the introduction states that the guidance is not about how to become a charity the sub-headings 'Charitable purposes and how to write them' and 'How to write charitable purposes' gives the impression that the guidance is very much aimed at those establishing a new charity or seeking to amend the objects in their existing governing document. This leads to some confusion as to the overall purpose of the guidance and detracts from the key message the regulator seeks to convey. The guidance will be of interest to all trustees, regardless of the organisational maturity of the charity, and details the approach taken by the regulator in interpreting and implementing the charity test. The scope and language of the document should bear this in mind throughout if it is to reach as many trustees, and their advisers, as possible.

Within the guidance there is information as to how an organisation can appeal a decision not to register it as a charity (p7). The document states that this must be done within a specific number of days (21 days for refusal and 28 days for an appeal). It would be helpful to clarify if that means working days or not. The frequency of trustee meetings and the lack of resources available to trustees suggest that 21 calendar days will not be sufficient to discuss, resolve and make changes to the governing document.

ICSA appreciates the opportunity to comment on OSCR's thinking in developing charity test guidance for charities operating in Scotland. Should further information or clarification be required, please do not hesitate to contact me.

Yours faithfully,

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