

CLAS CIRCULAR 2017/05 (10 February 2017)

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CHARITIES & CHARITY LAW

Charity Commission to withdraw 'Hallmarks of an Effective Charity'

For information

The Charity Commission has decided to withdraw its publication *The Hallmarks of an Effective Charity* (CC10) and instead refer people to the Charity Governance Code, which is jointly owned by NCVO, Acevo, SCC, ICSA and WCVA.

A [new version](#) of the Code was published for consultation last year, outlining a number of updates to the sector's best practice standard. In its response to the consultation, the Commission [said this](#):

"The Commission does not aspire to own or enforce it, or pronounce on what it should say. We intend to continue to endorse and promote it as the standard of good governance practice to which all charities should aspire (unless some other code takes precedence), following and applying its principles proportionately to their circumstances. In line with this we propose to withdraw our publication *The Hallmarks of an Effective Charity* (CC10). We propose instead to refer charities to the Code as setting out relevant standards of good practice. We will consider further how we can take account of charities' consideration and application of the Code in our regulatory interactions with them and in the requirements and expectations for reporting."

The review process was led by Rosie Chapman, who was the Commission's Director of Policy and Effectiveness until May 2011. The consultation closed on 3 February. CLAS did not submit a response.

[Source: Charity Commission – 2 February]

EMPLOYMENT

No change to employment status of volunteers

For information

On 31 January, Daniel Zeichner (Cambridge) (Lab) asked the Secretary of State for Education, "if she will amend the Equality Act 2010, or bring forward new legislation, to protect volunteers from encountering discrimination in the workplace".

In her reply on 7 February, Caroline Dinenage, Parliamentary Under Secretary of State for Women, Equalities and Early Years said:

"Volunteers are not covered by the Equality Act 2010 because they do not meet the definition of an employee under the Act, a position confirmed by the Supreme Court in the case of [X v Mid Sussex Citizens Advice Bureau \[2012\]](#). We have no plans to change this."

Given the amount of church work undertaken by volunteers – and in the charity sector more widely – that is extremely reassuring.

[Source: Commons *Hansard* – 7 February]

NORTHERN IRELAND

CCNI warns charities over social media activity during election

For information

We have already reported that the Charity Commission for Northern Ireland warned charities about the dangers of straying into party-political activities during the Assembly election campaign and that they should “do nothing that undermines their independence and neutrality when it comes to party politics”.

Nevertheless, some charities have not been so careful about what they have said on Twitter and Facebook; and CCNI has followed this up with a further warning. The Commission’s Head of Compliance and Enquiries, Myles McKeown, said:

“Despite the Commission reiterating that charities are forbidden from aligning with any political party or attacking another, some social media activity has given the Commission cause for concern. The Commission has contacted charity trustees reminding them of their responsibility to remain independent.

“While many charities engage politicians to communicate their views on policy if they feel it can advance their charitable purpose, there are clear lines that should not be crossed.

“The public rightly perceive the charity sector as independent and issue-focused and charities should do nothing that undermines their independence and neutrality when it comes to party politics.”

[Source: CCNI – 2 February]

PROPERTY

Bats in churches

For information

Natural England has [announced](#) that the Heritage Lottery Fund has approved the development stage and initial funding of £3.8million for the 5-year "Bats in Churches" partnership project. According to the announcement, the project will:

- trial and perfect new techniques to enable bats and church congregations to live together;
- build up professional expertise and volunteer skill to share the best solutions with hundreds more churches; and
- bring together church communities and bat enthusiasts to create a shared understanding and appreciation of England's historic places of worship and our rare flying mammals.

Natural England's Chairman, Andrew Sells, said that the project will "provide help and support to places of worship across England where large bat populations can sometimes have a negative impact on historic buildings and the communities who use them". Deborah Lamb, Deputy Chief Executive of Historic England said:

"We welcome every opportunity to help congregations that work hard to care for church buildings, providing public space for community activity and a wonderful treasury of historic monuments, brasses, woodwork and craftsmanship. This project will offer practical help to those coping with the additional challenge of living with bats and encourage volunteers who are interested in bats to discover more about local churches."

It is to be hoped that the results will provide some useful general lessons for all denominations – including those that do not accept HLF funding on grounds of principle.

[Source: Natural England – 8 February]

Community Infrastructure Levy review

At the moment, for information

The independent Community Infrastructure Levy Review team appointed by the Government has published its report: [A new approach to developer contributions](#).

The issue of a development levy to fund new infrastructure has a very long history. The Community Infrastructure Levy (CIL) was introduced by the Planning Act 2008 and was brought into force on 6 April 2010 by the Community Infrastructure Levy Regulations 2010. The initial proposal was for a blanket charge; and CLAS fought a long and ultimately successful campaign in conjunction with the Charities' Property Association for a charity carve-out. Under the current law, there is mandatory charitable relief where a charity owns a material interest if the development is to be used wholly or mainly for a charitable purpose. If the development is left unoccupied, it is still eligible for charitable relief. (There is no mandatory relief if that part of development to be used for charitable purposes will not be occupied or under the control of a charity, or if the material interest is owned jointly by a charity and a non-charity, or if the relief would constitute a State Aid under EU rules.)

By common consent, CIL has been fairly unsuccessful in raising revenue; and the Review recommends replacing it with a hybrid Local Infrastructure Tariff for larger developments, alongside a possible new Strategic Infrastructure Tariff, and more rigorous use of agreements under s 106 Town and Country Planning Act 1990 – a mechanism that local authorities have traditionally used as a lever to make developers contribute to infrastructure enhancements.

Unfortunately, only three bodies from the charity sector submitted evidence in defence of the exemption – ourselves, the Charities' Property Association and the Charity Tax Group – and the Review has recommended that there be “no (or very few) exemptions”. So it appears that we are going to have to make the argument for the charity exemption all over again.

To that end, Bishop Alastair and the chairs of the CPA and the CTG have put out a press statement, as follows:

“While we welcome efforts to improve and simplify the current CIL rules, we are very disappointed that the Review team has not made a firm commitment to introducing an equivalent charity exemption of any successor tax. Charities should not be penalised because the Community Infrastructure Levy has not generated the anticipated financial returns and the rationale for an exemption remains valid. Charities should not be taxed for development of land for charitable purposes (including social housing) or when leasing land to other charities and the original CIL campaign group will be seeking urgent assurances from the Government that a charity exemption will be included if a Local Infrastructure Tariff is introduced”.

The change will require primary legislation and we are at a very early stage in the process: it is even possible that the Government will decide not to proceed with all the recommendations of the Review. However, we shall be keeping a very careful eye on the situation and will keep you informed of progress.

[Source: DCLG – 8 February]

Land Registry consultation on digitalisation

For information and possibly for action

The Land Registry has opened a [consultation](#) on proposed changes to the Land Registration Rules 2003, to allow it to offer customers digital alternatives to paper conveyancing and registration. It also includes other amendments, which reflect how the Registry has modernised and simplified its services through digital transformation.

By the Registry's own admission, this is not meant to be a radical review of the Rules - it feels that would not be appropriate while the Law Commission is reviewing the Land Registration Act 2002 as part of its Twelfth Programme of Work. The proposed rule amendments are the minimum necessary, pending the outcome of the Law Commission's work, in order for the Registry to pursue its Business Strategy.

The purpose of the proposed changes to the Land Registration Rules 2003 is to:

- allow for fully digital conveyancing documents with e-signatures for land transactions and land registration, and to revoke existing rules allowing only for limited digital mortgages
- revoke the Land Registration (Proper Office) Order 2013 and make consequential amendments to the Rules
- allow for the introduction of new statutory services identified as beneficial to users through user research
- allow for more flexibility as to when the Land Registry is open for business and open to the public
- make some minor improvements in the Rules
- correct some clerical errors

It is worth noting that the consultation paper makes clear that this will allow (but not require) all dispositions that must be registered to be carried out using digital documents with digital signatures.

We are assessing the need for CLAS to make a response to this consultation, and would be grateful if any members that feel that these proposals would cause them trouble would get in touch with us, giving details.

The consultation closes on **5 April 2017**; those who wish to make their own response can do so by downloading the consultation form available [online](#). This should be filled in and submitted via [email](#), and we would ask that you copy your responses to us, in order to help frame any response CLAS might make.

[Source: Land Registry – 9 February]

SCOTLAND

Charitable status of private schools

For information

CLAS members that operate schools outside the public sector may be interested to know that Deputy First Minister John Swinney has responded to a [written question](#) from Ross Greer MSP on their charitable status as follows:

John Swinney: "The Scottish Government does not have any plans to review the charitable status of independent schools at present.

"The Office of the Scottish Charities Regulator (OSCR) is responsible for determining charitable status in Scotland in accordance with the Charities and Trustee Investment (Scotland) Act 2005. To be granted charitable status an organisation must meet the 'charity test'; this means that a body must have wholly charitable purposes and be able to demonstrate that it will provide public benefit in furtherance of those purposes. Independent schools must meet OSCR requirements in order to obtain charitable status.

"As part of its role, OSCR also has a duty to ensure that charities entered in the Scottish Charity Register continue to meet the charity test and since 2007 have reviewed the charitable status of 52 schools.

"The Charities and Trustee Investment (Scotland) Act 2005 is reviewed regularly as part of the Scottish Government's formal and informal engagement with OSCR."

[Source: Scottish Parliament – 8 February]