

# **CLAS CIRCULAR**

## **2017/12 (26 April 2017)**

### **Disclaimer**

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## CLAS HOUSEKEEPING

### Review of the CLAS website

**For action**

A reminder that we are currently in the process of reviewing the CLAS website and have posted a [survey](#) calling for views on its current setup, how it is being used and how it could be improved to provide a better service to the membership. *We would very much value your input.*

## CHARITIES & CHARITY LAW

### Charity accounts and proof of 'public benefit'

For information **and possibly for action**

The Charity Commission has published the [findings](#) of its work to scrutinise charity accounts, concluding that 54 per cent of those reviewed did not meet the 'public benefit' reporting requirement.

The Commission analysed a random sample of 107 charity accounts against two criteria:

- how charities are reporting on the public benefit requirement
- whether the accounts meet readers' needs

The Commission found that **58** charities did not meet the public benefit reporting requirement. Of these, 13 failed the requirement as they did not describe the difference that their charity had made; 21 did not include the statement that they had complied with the public benefit requirements and read the Commission's guidance; and 24 did not do either.

The report also includes an example case study from the sample, demonstrating how trustees can explain succinctly and clearly how their work benefits the public and the difference that they make.

The Commission also examined whether the charities' accounts met basic user needs, based on a range of criteria, including whether the annual report explained the activities the charity had carried out during the year to meet its purposes and whether the accounts had been appropriately scrutinised in an audit or independent examination. 25 per cent of those reviewed did not meet the basic standard, for example because the accounts were inconsistent or not transparent.

[Source: Charity Commission – 21 April]

## EMPLOYMENT

### Consultation on the operation of multi-employer pension schemes

For information **and possibly for action**

*Sheila Duncan has brought the following to our attention.*

The Department for Work and Pensions (DWP) has launched a [consultation on the draft Occupational Pension Schemes \(Employer Debt\) \(Amendment\) Regulations 2017](#): in short, the proposals would allow employers in multi-employer schemes to defer their cessation debt. [The consultation](#) opened to submissions on 21 April and closes on **18 May 2017**.

Currently, when an employer no longer has an active member in a multi-employer defined benefit (DB) scheme, that situation automatically triggers a statutory debt under section 75 of the Pensions Act 1995 (a 'section 75 debt'), which is calculated as the employer's share of the difference between the value of the scheme assets and its liabilities on a buyout basis. This often includes 'orphan liabilities' from past employers that have gone bust or left the scheme. The calculation, which often results in a significant debt, has caused huge financial distress for employers in these schemes: it can sometimes bankrupt individual employers and has been a particular headache for charities.

The Government has proposed that a deferred debt arrangement be introduced which would allow an employer in a multi-employer defined benefit (DB) scheme to delay paying an employer debt when it ceases to employ an active member.

The DWP's proposal could reduce the burden on employers because it will allow employers who cease to have an active member to fund the scheme solely on a technical provisions basis and continue to be treated as an 'employer' in relation to that scheme. This proposal would be subject to a number of conditions, including:

- that it satisfies a funding test,
- that the trustees or scheme managers provide consent, and
- that the scheme is not in a Pension Protection Fund (PPF) assessment period.

The new regulations would also not apply where employers were restructuring.

Charity Finance Group policy and research manager Anjelica Finnegan gave the proposal, which follows on from a consultation last year, a cautious welcome. She said that it was a "significant step forward" and should be made a default option:

"In theory, [this proposal] should free charities from the current catch-22 where they can neither afford to exit a multi-employer scheme nor to remain in the scheme. But the devil will be in the detail. For example, it'll be important to have safeguards in place to prevent scheme trustees triggering a section 75 debt at an artificial point in future. While these regulations are a significant step forward, they won't mandate scheme trustees to use the deferred debt arrangement and I would urge the DWP to promote this as the default option for charities looking to close their multi-employer scheme."

The draft regulations also include situations where this deferred arrangement could come to an end, including where the deferred employer employs a new active member, an insolvency event is triggered, the scheme winds up, or the deferred employer restructures. Trustees of the scheme could also service notice to the deferred employer if they deem it not to have met its obligations.

This is not something on which CLAS can make a corporate response, not least because we lack the necessary technical expertise to do so. However, CLAS members who are part of a multi-employer scheme should look very carefully at the consultation document.

[Source: CLAS Summary – 25 April]