

CLAS CIRCULAR

2018/02 (23 January 2018)

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It would be very helpful if members could let us know of anything that appears to indicate developments of policy or practice on the part of Government or other matters of general concern that should be pursued.

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CHARITIES & CHARITY LAW

Charities Act 2016 - remaining provisions enacted

For information

The Charities (Protection and Social Investment) Act 2016 (Commencement No. 2 and Transitional Provision) Regulations 2018 have been [published](#), bringing the remaining provisions of the Charities Act into force. The Charity Commission has also published new [guidance](#) on changes to automatic disqualification rules.

The commencement of those provisions is staggered, with section 9 (which makes provision in respect of the automatic disqualification of a charity's trustees in certain circumstances) being brought into force partially on 1 February 2018. Further guidance on how the Charity Commission assesses waiver applications has also been [published](#).

The commencement of the remaining provisions of the 2016 Act relates to the keeping of records in respect of the disqualification and removal of the trustees of charities and the consequences of participating in corporate decisions whilst disqualified.

[Source: Charity Commission – 17 January]

Charity Commission funding

For information

The Government has [decided](#) to give the Charity Commission an extra £5 million per year to help it respond to significant increases in demand on its core regulatory functions, including registration and compliance; however, the Government has emphasised that the extra funding is an interim solution while the Commission considers 'longer term, more sustainable funding models' – including a consultation on whether the largest charities should make 'a modest contribution to the Commission's enabling work, aimed at helping over half a million trustees across England and Wales manage their charities effectively and efficiently'.

The Commission is now working on detailed proposals, including whether to charge large charities. It expects to launch a consultation that will ask for charities' views on:

- *The practicalities and implications of a system for charging the largest charities:* the details are under consideration by the Commission, but it expects to consult on proposals that would see it receiving around £7.5million a year through contributions from the 2,000 largest charities on the register, namely those with annual incomes of over £5million; and
- The enabling work that charities and trustees would like to see the Commission expanding or developing.

CLAS will no doubt respond to the consultation when it appears. One's first (possibly uncharitable) thought, however, is that the Commission could do worse than to update its publication on [The Advancement of Religion for the Public Benefit](#), part of which has been withdrawn and which was last revised when Dame Suzi Leather was Chair.

[Source: Charity Commission, 23 January]

Debate on response to Charity Committee report

For information

A [debate](#) has been held in the House of Lords on the Government's [response](#) to the Lords Charities' Committee report, [Stronger Charities for a Stronger Society](#). Concerns were raised in particular over the Government's delays in both responding to the report and in appointing a new chair of the Charity Commission to succeed William Shawcross. There was also some concern that, while the response contained commitments to work with the sector to consider how to strengthen charities, there was little detail on how commitments might be monitored or on timeframes.

Responding to the debate, the Government explained that the delay in publishing the response had been due to ministerial changes, as well as wanting the response to be part of its work on the Civil Society Strategy. A new chair of the Charity Commission was to be "announced in due course". It was also noted that the Civil Society Strategy would be released later this year and would focus on three areas:

- the Government's vision for civil society and the value placed on its role in society more widely
- the challenges faced by the sector through "non-financial Governmental intervention", and

- a new framework for effective collaboration between Government and civil society

The Charity Commission has also made its [formal response](#) to the report, accepting the recommendations on improving guidance around mergers and committing to consider what changes it should make to its guidance to support the financial resilience of charities. It has also noted recent changes made to its guidance on serious incident reporting as well as highlighting its plan for looking into the need to charge charities.

[Source: House of Lords – 16 January; Charity Commission – 8 January]

Protecting charities from fraud

For information and possibly for action

The Charity Commission has updated its [guidance](#) on protecting charities from fraud, adding an infographic suggesting 10 key questions that charity trustees should make sure they have asked themselves. The questions act as a checklist of areas that trustees should ensure that they have covered, considering a range of areas:

1. Do we have regular and frank conversations with delivery partners?
2. Do we understand our financial systems and data, and what 'normal' looks like?
3. Do we conduct pre-employment screening and in-service checks on staff?
4. Do we conduct an annual fraud risk review?
5. Do we understand what fraud is and what our responsibilities are?
6. Do we promote fraud awareness and understanding?
7. Do we run process test checks and observe jobs in action?
8. Do we encourage staff and volunteers to voice concerns?
9. Do we have a response plan ready so that everyone knows what to do?
10. Do we have an anti-fraud policy and code of ethics?

[Source: Charity Commission – 22 January]

Use of funds from dormant accounts

For information and possibly for action

Minister for Civil Society Tracey Crouch has [announced](#) that £330 million from dormant bank and building society accounts will be used over the next four years to fund projects tackling a number of societal problems, including housing vulnerable people, helping disadvantaged young people into work and dealing with problem debt.

Around £280m will be allocated to initiatives across England, including around £135m to meet existing funding commitments to Big Society Capital (BSC), which will fund stable and long-term accommodation for vulnerable groups, such as homeless people and those suffering with mental health issues. BSC also intends to leverage private co-investment, to maximise the impact of these funds.

Around £50m will be distributed by the Big Lottery Fund in Scotland, Wales and Northern Ireland. Each devolved administration will then decide how these funds are used.

[Source: DCMS – 4 January]

FAITH & SOCIETY

Reuse of graves

For information

The issues of the reuse of graves and of burial law more generally came up in a Written Answer on 23 January when the Ministry of Justice answered a Written Question [122416] from Nicky Morgan (Conservative, Loughborough) asking what representations the Secretary of State has received from (a) the Burial and Cremation Advisory Group and (b) other stakeholders on the reuse of graves; and whether his Department plans to continue to review the matter of such reuse. The answer was as follows:

"We continue to keep the issue of burial space under review and to maintain a dialogue about it with the Burial and Cremation Advisory Group - an expert group which meets twice yearly and is chaired by the Ministry of Justice - and other stakeholders.

In addition, as part of its 13th Programme of Law Reform, the Law Commission will be undertaking a project to consider the modernisation and streamlining of burial and cremation law, with a view to putting forward a legal framework for the future."

The re-use of grave spaces is an issue on which CLAS has made representations on various occasions in the past. We imagine that the Law Commission will be calling for evidence when it begins its project on burial and cremation law and we shall certainly respond.

[Source: Commons *Hansard*, 23 January]

Understanding Spiritual Abuse in Christian Communities

For information

Bournemouth University has published a report of a [study](#) published on behalf of the Churches Child Protection Advisory Service (CCPAS), looking into the growing awareness of and interest in spiritual abuse in faith communities as a subject.

The report notes a lack of research in the area and no universally agreed definition of the term as the primary reasons for the project. The aim of the study is therefore to investigate current levels of knowledge and awareness of spiritual abuse in the Christian faith in the UK, to

provide evidence to inform understanding and to develop effective responses, policy and practice.

Key characteristics of spiritual abuse identified were coercion and control, manipulation and pressuring of individuals, control through the misuse of religious texts and scripture and providing a 'divine' rationale for behaviour. It was also clear that this abuse could go both ways, with leaders also experiencing spiritual abuse from those they are leading.

It was also noted that only 33% of respondents stated their Church or Christian organisation had a safeguarding policy that included spiritual abuse and only 24% of respondents had received training on how to deal with it.

The Church of England has also [published](#) the findings of the Bishop's Disciplinary Tribunal for the Diocese of Oxford in the matter of a complaint under the [Clergy Discipline Measure 2003](#) against The Reverend Timothy Davis, Vicar of Christ Church Abingdon, in respect of the mentoring he provided to a 15/16 year old schoolboy whose family were members of his congregation.

[Source: CCPAS – 19 January]

ODDS & ENDS

Cabinet reshuffle

For information

As part of the [Cabinet reshuffle](#) earlier this month, Matt Hancock MP has been confirmed as Secretary of State for Digital, Culture, Media and Sport, replacing Karen Bradley MP. Tracey Crouch MP remains as Parliamentary Under Secretary of State for Sport and Civil Society.

Andrew Jones MP has been appointed Vice-Chairman at Conservative Campaign Headquarters and is being replaced as Exchequer Secretary to the Treasury (the role which currently has ministerial responsibility for charity taxation) by Robert Jenrick MP.

DCLG has been [renamed](#) the Ministry of Housing, Communities and Local Government (MHCLG), to reflect the addition of housing as a key priority for the department – though why it is now a Ministry instead of a Department escapes us. Sajid Javid MP remains in post, as Secretary of State for Housing, Communities and Local Government. Dominic Raab MP has been appointed as Minister of State for Housing to replace Alok Sharma MP, who has moved to the Department for Work and Pensions.

[Source: HM Government – 9 January]

Cathedrals Working Group draft report

For information

At least some of the non-Anglican members of CLAS in England may possibly be interested in the newly-published [draft report](#) of the Cathedrals Working Group, which appeared on 17 January. The Report's main recommendations are as follows:

Mission and ecclesiology

There are many ways to improve relationships and joint-working between cathedrals, bishops, dioceses and National Church Institutions [21].

Governance

The responsibilities and accountabilities of various cathedral bodies and roles are unclear or ambiguous under the current governance arrangements set out in the Cathedrals Measure. This should be addressed as follows:

- retaining Chapter as the governing body, but with enhanced membership and a majority of 'non-executive' members, at least two-thirds of whom would be laity;
- retaining the Dean as chair of Chapter;
- a clear separation of governance and management, involving the establishment of a Senior Executive Team to oversee day-to-day cathedral operations;
- strengthening the Chapter's engagement with finance, audit and risk management activities;
- establishing a quinquennial assurance review of processes and controls;
- enabling the diocesan bishop to appoint a senior independent lay member to sit on Chapter as Vice-Chair;
- removing the confusion over the role and expectations made of Cathedral Councils by reorienting their focus around stakeholder engagement and removing any legislative function; and
- registering cathedrals with the Charity Commission by bringing them under the terms of the Charities Act [22].

Leadership and management

Good governance only works effectively if it is supported by a clear and robust management structure. Many of the strategic, operational and financial challenges in cathedrals stem from issues around management focus and effectiveness. We propose addressing these as follows:

- all cathedral clergy and staff will come under the Dean's authority;
- ministerial Development Review requirements for deans and residentiary canons will be revised and updated to ensure that the management structure and processes operate effectively;
- chapters will establish a Nominations and Development committee, with a significant brief to review and address the skills and experience necessary for effective governance and management; and

- proper attention should be given to appointment, induction, training and development of Chapter and staff members [23].

Finance

Without robust financial management, the sustainability of cathedrals is at risk. Detailed recommendations include:

- prioritising the recruitment and retention of a suitably qualified Chief Financial Officer and supporting staff;
- establishing a central support service for cathedrals to access skills that they may not have in-house;
- establishing, at a minimum, a Finance, Audit and Risk committee with an appropriately qualified independent chair: where local circumstances and resources permit, it would be best practice to have an Audit and Risk Committee separate from the Finance Committee;
- creating robust internal and external reporting structures;
- selecting auditors from a nationally-endorsed panel; and
- a range of changes to the funding streams from the Church Commissioners in the interests of flexibility, simplification, fairness and innovation [24].

Buildings

Major buildings projects play a large part in the life of many cathedrals but represent the largest episodic financial risk that cathedrals face. Before embarking on major projects, Chapters need to ensure:

- that they have carried out a skills audit and gap analysis;
- that they have established effective project governance and management structures; and
- that they have access to high-quality advice [26].

Collaboration between cathedrals and the National Church Institutions is valued and necessary. Work needs to be done at national level to assess the overall national repair and maintenance liabilities of cathedrals. Government should be approached to begin a dialogue about state contribution to a national UK cathedral fabric fund [27].

Safeguarding

While progress has been made in the past few years, the Working Group remains concerned that the cathedral sector as a whole is lagging behind the rest of the Church on safeguarding. It endorses the proposed 'whole church' approach to safeguarding being led by the National Safeguarding Team and expects cathedrals to work jointly with their diocese in order to achieve it. There remain failings in safeguarding practice for cathedrals that must be addressed as a matter of urgency [28].

The Group is carrying out an open consultation on this draft and is seeking feedback via an [online consultation](#). The consultation closes at **5pm on Wednesday 28 February**.

[Source: Cathedrals Working Group – 17 January]

Legal basis for processing data under GDPR

For information

Alison Johnston from the Information Commissioner's Office (ICO) has published a [blog](#) for the OSCR regarding the GDPR and an organisation's legal basis for processing personal data. The blog notes that the current Data Protection Act 1998 has already established specific conditions or purposes for processing data and that under the GDPR and the new Data Protection Bill these conditions will persist, though they will be referred to as 'legal bases' rather than 'conditions' for processing.

The blog goes on to note that the real change is really the 'accountability principle', which requires organisations to document their legal bases for processing information as part of their evidence of compliance. Under GDPR, individuals have an increased right to be informed about the use of their personal data. Organisations must be clear and transparent about how and why they are using personal information.

[Source: OSCR – 11 January]

PROPERTY & PLANNING

Church bells, noise and planning law

For information

The issue of perceived noise nuisance from church bells came up in a [Commons Written Answer](#), as follows:

Craig Mackinlay: To ask the Secretary of State for Communities and Local Government, what steps his Department has taken within planning and other guidance to local authorities to support the continued ringing of church bells and traditional chimes.

Dominic Raab: We are standing up for England's churches [*presumably some unfortunate civil servant had to write this drive!*]. National planning policy already sets out that businesses should not have unreasonable restrictions put on them because of changes in nearby land uses since they were established. We are minded to amend the National Planning Policy Framework (NPPF) to give greater emphasis to this matter, by setting out that planning policies and decisions should take account of existing businesses and other organisations, such as churches, community pubs and music venues, when locating new development nearby.

We consulted on proposals for this as part of the Housing White Paper published on 7 February 2017 and we intend to publish a revised draft NPPF for consultation as early as possible in 2018. At that stage we will host a round-table with representatives from the sector to invite their input into this important matter.

We continue to work with other departments, to ensure local authorities support existing businesses, organisations or activities that are an integral part of local communities, at the same time as supporting new housing and local growth."

In addition to planning provisions, ringing church bells is subject to potential liability for nuisance at common law and under the Environmental Protection Act 1990. In respect of the Church of England, it is also subject to canon law; the Opinion of the Legal Advisory Commission of the General Synod on the issue, last revised in 2008, is available [here](#).

[Source: House of Commons – 15 January]