

## **CLAS CIRCULAR**

### **2018/03 (6 February 2018)**

#### **Disclaimer**

**CLAS is not qualified to advise on the legal and technical problems of members and does not undertake to do so. Though we take every care to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertakes any liability for any error or omission in the information supplied.**

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

### Charity trustees removed following investigation

For information

The Charity Commission has [removed](#) two trustees and disqualified an individual from trusteeship as part of its investigation into the charity Peacetrail. The inquiry report details a series of problems, including a failure to account for at least £92,110 – nearly 50% of the charity's total expenditure.

The Commission opened the investigation on 31 March 2016 and found self-authorized salary payments to the charity's CEO, unmanaged conflicts of interest and a lack of due diligence or monitoring of those the charity worked with. The inquiry concluded that the trustees had failed to exercise control over the charity's finances or oversee the CEO; and the Commission made orders under section 79(4) of the Charities Act 2011 to remove two individuals as trustees of the charity. These individuals are now disqualified from acting as trustee of any other charity unless they obtain a waiver from the Commission or the courts.

The inquiry was also concerned by the conduct and role of the charity's CEO within the charity. The Commission therefore used its powers under section 181A of the Charities Act 2011 to disqualify the CEO from being a charity trustee or holding a senior management position within a charity for 4 years and 6 months. The disqualification came into effect on 18 January 2018.

The charity was a Charitable Incorporated Organisation; it has been dissolved in accordance with the Charitable Incorporated Organisations (Insolvency and Dissolutions) Regulations 2012 and removed from the Register of Charities on 31 October 2017.

This report serves as another reminder that, among other things, trustees are under a legal duty to ensure that their charity's funds are applied solely and reasonably in furtherance of its objects. They must also be able clearly to demonstrate that this is the case.

[Source: Charity Commission – 29 January]

## Donations from the Presidents Club

**For information and possibly for action**

Following the closing down of the Presidents Club charitable trust, the Charity Commission has [published](#) advice to charities that have received donations from the Presidents Club and may be unsure what to do with them.

It is up to a charity's trustees to decide whether they should refuse a donation. They must make this decision on the basis of the best interests of the charity. That will include weighing up any issues around how the funds were raised, which may include reputational concerns, against the financial impact on the charity of turning the donation down. Different charities may legitimately come to different decisions, and trustees can approach the Commission for advice if they are unsure about their approach.

[Source: Charity Commission – 26 January]

## New Charity Commission Chair

**For information**

The Government has [announced](#) that its preferred candidate to be the next chair of the Charity Commission is Baroness Stowell of Beeston. Bs Stowell was Leader of the House of Lords and the Lord Privy Seal until July 2016. She is a trustee of Crimestoppers and of an education charity, the Transformation Trust. If appointed she will resign her party membership and the Conservative whip in the House of Lords and become an independent peer.

There will be a pre-appointment hearing by the Digital, Culture, Media and Sport Select Committee on 20 February: the Committee will then produce a report saying whether or not it supports the appointment - but the Government is not obliged follow the recommendation of the Committee.

### ***Comment***

The announcement has met with mixed reactions. It was welcomed by the NCVO: ACEVO, however, while conceding that Bs Stowell had 'a wealth of experience across a number of different areas, including regulatory experience at the BBC Trust', was much more doubtful:

'The chair and board of the Charity Commission must be, and be seen to be, independent from government and party politics. While we appreciate that Baroness Stowell is resigning the Conservative party whip and her party membership, we are disappointed that the sector's calls for a politically neutral Commission chair have not been met'.

[Source: Charity Commission – 26 January]

### Trustee automatic disqualification waiver

**For information and possibly for action**

The Charity Commission has published a [waiver application form](#) for trustees affected by new [automatic disqualification](#) rules, due to come into force under the Charities Act 2016 on 1 August 2018.

The new rules add to current regulations that cover automatic disqualification for trustees. After 1 August 2018, the rules will also apply to some senior manager positions (chief executives and finance directors - and those in equivalent roles).

New reasons for disqualification include being in contempt of court, being named under particular anti-terrorism legislation or being on the sex offenders register.

The Commission has also published guidance to help both [individuals](#) and [charities](#) understand whether they will be affected by the automatic disqualification rules, as well as highlighting the [criteria](#) on which the Commission will base any decision to accept a waiver application.

[Source: Charity Commission – 2 February]

## FAITH & SOCIETY

### Civil Partnerships, Marriages and Deaths (Registration Etc.) Bill

For information

The [Civil Partnerships, Marriages and Deaths \(Registration Etc.\) Bill](#) was [read a second time](#) on 2 February with qualified Government support: the Member in charge of the bill, Tim Loughton, had evidently come to an agreement with the Home Office about amendments to be tabled in committee. The House of Commons Library has also published an [analysis](#) of the Bill.

Replying to the debate, the Parliamentary Under-Secretary of State for the Home Department, Victoria Atkins, said that the Government would table amendments to Clause 2 (reform of civil partnership) to require the Government

“to undertake a further review of the operation of civil partnerships, and to bring forward proposals for how the law ought to be changed so that the difference in treatment in the current system is resolved. The amendment will go further than the current marker clause in the Bill before the House, in that it will require the Government to report to Parliament and to include a full public consultation”.

As to opposite-sex civil partnerships, she explained that it was not a simple matter of changing a sentence in the Civil Partnership Act 2004: it was not just about eligibility but also about the rights that would flow from any changes: “For example, the rules for the dissolution of civil partnerships and divorce in the case of marriage are different for same-sex and opposite-sex partners.”

The work to which the Government was committing had four elements:

- to continue its existing work on assessing the relative take-up of civil partnership and marriage among same-sex couples;
- to consider whether phasing out civil partnerships for same-sex couples was the best way forward and, because the Government wanted to approach the issue sensitively and delicately and understanding how that would affect same-sex couples who continue to opt for a civil partnership and who do not wish to convert their civil partnership into a marriage, to undertake research with same-sex couples “to understand their motivations for forming and remaining in a civil partnership, and what they may do if the evidence drives us to remove them”;

- to survey the demand for civil partnership among opposite-sex unmarried couples: previous consultations did not suggest that there was a significant demand for opposite-sex civil partnerships; and
- to review what had happened in other countries faced with similar choices.

She hoped to have “a proportionate amount of data” by September 2019.

As to marriage certification, the Government fully supported the correction of the anomaly under which mothers' names were not recorded. In addition:

“The Long Title of the Bill refers to only mothers being added to certificates. We need to ensure that when the marriage entry is updated it allows for all the different family circumstances in society today—for example, same-sex parents.”

She thanked Tim Loughton for agreeing to amend Clause 1 of his Bill in Committee to insert the provisions of the [Registration of Marriage \(No. 2\) Bill](#) (introduced in the Lords by the Bishop of St Albans and in the Commons by Dame Caroline Spelman) in its place.

As to registering stillbirths, Clause 3 would provide for the Government to review the issue and whether the current law on registration of stillbirths should be changed to allow for the registration of pregnancy loss before 24 weeks' gestation. As part of this review, the Government would seek views and evidence from all interested parties.

As to coroners' investigations into stillbirths, the Government agreed wholeheartedly with the need to look at the role that coroners could play. Currently, under the Coroners and Justice Act 2009, coroners did not have jurisdiction to investigate when a baby did not show signs of life independently of its mother. The Government thought it important to carry out a review and produce a report in that area before making any changes:

‘There are important and sensitive issues to explore, such as the question of how far into a pregnancy coronial involvement should be triggered, and the potential role of other factors, such as violence to the mother or medical negligence. We need to hear a wide range of views, including those of coroners, including the chief coroner, medical professionals, researchers in the field and, of course, bereaved parents and the organisations that support them.’

She said that the Government was pleased to be able to support the Bill.

[Source: House of Commons – 2 February]

**Out-of-school education settings and Ofsted**

For information

On 1 February, Amanda Spielman, HM Chief Inspector of Education, Children's Services and Skills, gave a [speech](#) at the conference of the Church of England Foundation for Education Leadership, in the course of which she was critical of those who had raised concerns about Ofsted's proposal (which was made before she became HMCI) to inspect informal out-of-school educational settings:

'... it is a matter of regret that the Church has resisted changes in the law to allow Ofsted to inspect these settings. This is not about infringing religious freedom: no one is proposing a troop of inspectors turning up at Sunday schools. Instead, it is about ensuring that the small minority of settings that promote extremism are not able to evade scrutiny. If we are to protect many of the tenets that the Church holds dear, we need the power to tackle those trying to use education to undermine them.'

CLAS was one of the organisations that raised concerns. The target of the original proposal appeared to be informal, after-school *madrassas* and (possibly) Ultra-Orthodox Jewish schools of the kind highlighted in the recent [report](#) by the London Borough of Hackney's Children and Young People's Scrutiny Commission. However, in order to comply with equality and human rights legislation the proposal had to be drafted in general terms and, on a very careful reading, it appeared - rightly or wrongly - that it would catch activities such as a series of intensive choir-practices in the week before a major service – hence our response.

*Everyone* supports rigorous safeguarding: the problem is where to draw the line. Perhaps it might prove possible to devise a more-focused inspection scheme for out-of-school education settings.

[Source: Ofsted – 1 February]

**Sharia law in England and Wales: report of the independent review**

For information

On 1 February, the Home Office published the [report](#) of the independent review chaired by Professor Mona Siddiqui into the application of *sharia* law by *sharia* councils in England and

Wales. In brief, the report makes three recommendations: for legislative change, for awareness campaigns and for regulation.

1. **Legislative change:** The report proposes amendments to the Marriage Act 1949 and the Matrimonial Causes Act 1973 to ensure that civil marriages are conducted before or at the same time as Islamic marriage ceremonies, bringing Islamic marriage into line with Christian and Jewish marriage in the eyes of the law. **The offences section of the Marriage Act 1949 would be amended to provide that the celebrant of any marriage, including Islamic marriages, would face penalties should he or she fail to ensure that the marriage was also civilly registered.** It would become a legal requirement for Muslim couples to register their marriage under the civil law before or at the same time as their Islamic ceremony. It also proposes minor amendments to legislation on divorce through changes to the Matrimonial Causes Act 1973.
2. **Awareness campaigns:** The panel believes that, on the evidence, cultural change is required within Muslim communities so that they acknowledge women's rights in civil law, especially in areas of marriage and divorce. Awareness campaigns, educational programmes and other such measures should be put in place to educate and inform women of their rights and responsibilities, including the legal protection that civilly-registered marriages provide.

There is also a need to ensure that *sharia* councils operate within the law and comply with best practice, non-discriminatory processes and existing regulatory structures. In particular, the panel believes that a clear message must be sent that an arbitration that applies *sharia* law in respect of financial remedies and/or child arrangements would fall foul of the Arbitration Act and its underlying protection.

3. **Regulation:** The previous two recommendations aim gradually to reduce the use and need for *sharia* councils. However, a majority of the review panel sees the need, in the meantime, for a further recommendation on how to prevent discrimination in the immediate and medium term. The recommendation of regulation is not unanimously supported; one member of the panel is not in agreement; and the dissentient's reasons are detailed in the report.

Recommendation 3 proposes the creation of a body that would set up the process for councils to regulate themselves by designing a code of practice for *sharia* councils to accept and implement. There would be a one-off cost to the Government of establishing that body but, subsequently, the system would be self-regulatory. The body would include both *sharia* council panel members and specialist family law expertise. The report notes that none of the *sharia* councils was opposed to some form of regulation and some positively welcomed it.

[Source: Home Office – 1 February]

## ODDS & ENDS

### Code of Fundraising Practice consultation

For information **and possibly for action**

The Fundraising Regulator has launched a [consultation](#) on the Code of Fundraising Practice that will aim to improve standards in relation to complaints handling, online fundraising platforms and TPS Assured Certification. The consultation is formed of three parts:

- the first two parts invite feedback on specific issues raised by the sector in relation to complaints handling and the TPS Assured Certification. The deadline for response on these is **28 February 2018**
- the third part of the consultation proposes to introduce a new section to the Code for online fundraising platforms and aims to ensure that these platforms provide adequate and clear good practice guidance to individuals setting up a fundraising page on their site. The deadline for response on this part is **14 March 2018**.

These changes come as a result of engagement between the Fundraising Regulator and many of the fundraising platforms, and with the Financial Conduct Authority. All have recognised the need for regulation following a sharp rise in the use of fundraising platforms over the past few years by members of the public wanting to raise money for charitable causes.

[Source: Fundraising Regulator – 2 February]

### European Commission GDPR guidance

For information **and possibly for action**

The European Commission has published further [guidance](#) aimed at facilitating the smooth application of the General Data Protection Regulation, when it comes into force on **25 May 2018**. This includes an online tool to help citizens, businesses (in particular SMEs) and other organisations comply with the new rules.

[Source: European Commission – 24 January]

## PROPERTY & PLANNING

### Charity Property Matters 2018

For information **and possibly for action**

The Charity Commission is encouraging charities to respond to the Ethical Property Foundation's bi-annual [Charity Property Matters survey](#), which has now been published. The survey is run in partnership with the Charity Commission and aims to help shape the sector's understanding of the role of property for charities.

[Source: Charity Commission – 25 January]

### EU Directive on the energy performance of buildings

For information

EU ambassadors have [confirmed](#) the political agreement reached between the Estonian presidency and the European Parliament in December 2017 on a revised Directive on the energy performance of buildings. Given that buildings account for around 40 per cent of the total energy consumption in Europe, the EU hopes that this will represent a major step towards fulfilling its 2020 and 2030 energy efficiency targets.

The Directive intends to improve energy efficiency in buildings and encourage building renovation, with the longer-term goal of decarbonising the existing European building stock, much of which is energy inefficient. It also promotes cost-effective renovation works, introduces a smartness indicator for buildings, simplifies the inspections of heating and air conditioning systems and aims to promote electro-mobility by creating parking spaces for electric vehicles.

After formal approval of the regulation by the Council and the Parliament, the Directive will be published in the Official Journal of the EU, and it will enter into force twenty days later. However, the transposition period for this legislation is 20 months. Given that this is beyond the UK's window for departure from the EU, it remains to be seen exactly to what extent this legislation will be transposed into UK law.

[Source: European Council – 31 January]