

CLAS CIRCULAR

2018/04 (8 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

Importance of safeguarding for charities

For information

The Charity Commission has published [Tackling Abuse and Mismanagement](#), the annual report of its compliance case-work. The report highlights, in particular, that safeguarding concerns are an increasing feature of regulatory compliance case-work with charities and suggests that safeguarding should be a priority for all charities, not just those working with groups traditionally considered to be "at risk".

In 2016-17, safeguarding concerns featured in 302 regulatory compliance cases, up from 163 in 2015-16. Disclosures with other agencies that have safeguarding responsibilities have increased by 30 per cent and six statutory inquiries featured safeguarding concerns. On top of this, over half of the serious incidents reported to the Commission by charity trustees related to safeguarding concerns.

The Commission has recently updated its [strategy on safeguarding in charities](#), which reminds trustees that they should proactively safeguard and promote the welfare of their charity's beneficiaries and take reasonable steps to ensure that their beneficiaries, or others who come into contact with their charity, do not come to any harm as a result of their interaction.

[Source: Charity Commission – 5 February]

EMPLOYMENT & VOLUNTEERING

Government response to the Taylor Review

For information **and possibly for action**

The Department for Business, Energy & Industrial Strategy has [responded](#) to [Good work: the Taylor review of modern working practices](#) published last year, which investigated the impact of modern working practices on the world of work.

The Taylor Review found that the strength of the UK's labour market was built on flexibility but that a clearer focus was needed on quality of work as well as the quantity of jobs. The Government agrees with the Review that:

'it should be easier for individuals and businesses to determine whether someone is an employee, a worker, or self-employed, and is committed to improving clarity and certainty in this area. This will include consideration of legislative options'.

As well as responding, the Government has also published a [consultation on employment status](#) seeking detailed views and further input on the review's recommendations. Responses should be made using the relevant [form](#) before **1 June 2018**.

The Government's detailed response

The Government plans to go further than the Review's proposals in some instances, including:

- enforcing vulnerable workers' holiday and sick pay for the first time;
- a list of day-one rights including holiday and sick pay entitlements and a new right to a payslip for all workers, including casual and zero-hour workers; and
- a right for *all* workers, not just zero-hour and agency workers, to request a contract with more predictable and secure working conditions.

In addition, the Government will:

- take further action to ensure that unpaid interns are not doing the jobs of a workers – principally, in the first instance, by raising awareness – but 'If this approach does not work, the Government will review the existing policy and legal framework and will consider what other action can be taken';
- simplify the enforcement process for employment tribunal awards and introduce a new 'naming and shaming' scheme for employers who fail to pay;

- quadruple employment tribunal fines to £20,000 for employers showing malice, spite or gross oversight and consider increasing penalties for employers who have previously lost similar cases
- provide all 1.2 million agency workers with a clear breakdown of who pays them and any costs or charges deducted from their wages;
- ask the Low Pay Commission to consider the impact of higher minimum wage rates for workers on zero-hour contracts; and
- consider repealing laws allowing agencies to employ workers on cheaper rates.

The Government also intends:

- to define 'working time' for flexible workers who find jobs through apps or online so that they know when they should be being paid;
- to launch a task force with business to promote awareness and take-up of the right to request flexible working;
- to publicise workplace rights for new and expectant mothers; and
- to launch a new campaign to encourage more working parents to share childcare through Shared Parental Leave.

Comment

As members will know, unless they have contracts of employment clergy have traditionally been regarded as office-holders; and any major reform of the law arising from the Government's statement that 'it should be easier for individuals and businesses to determine whether someone is an employee, a worker, or self-employed' may have implications for the status of office-holders. On the other hand, any regular reader of our Circulars will realise that we share the Taylor Review's concerns about the current lack of clarity about employment status. We would also welcome a much clearer definition – or, failing that, clearer guidance – about the precise status of 'interns': a term that has no defined meaning in employment law.

We shall read the consultation document carefully before deciding whether or not to respond on behalf of CLAS. In that connexion, it would be enormously helpful if any CLAS member submitting a response could let us see it.

[Source: BEIS – 7 February]

Holliday Review of full-time volunteering publishes report

For information

The Holliday Review, which considered what the voluntary sector, industry and Government could do to support full-time social action (FTSA, defined as 16 hours a week or more, for 6 months or more), has [published](#) its final report. The report has concluded that, while it is clear that committed forms of social action over an extended period play a critical role in developing young people's life chances, the available evidence base was not strong enough to recommend any formal legislative change or provision of a clearer legal status for FTSA.

Nonetheless, there is a role for the Government in supporting the private sector, statutory services and civil society in their efforts to embed FTSA as part of UK culture. The report recommends that the Government should:

1. **Establish a Ministerial Group** to bring together the interests of all Government Departments in optimising the value of FTSA.
2. **Work with the Department for Work and Pensions** to ensure that social action is accessible to all.
3. **Work with the Department for Education** fully to understand the role of FTSA in engaging those young people furthest away from the labour market.
4. **Reinforce best practice via the Civil Society Strategy** which is due to be published later this year.
5. **Work with The Careers and Enterprise Company** to include FTSA as part of its toolkit of opportunities when Enterprise Advisors are working with young people
6. **Have the National Citizen Service operate as a broker and quality assurance body for FTSA opportunities**, ensuring that young people are recognised and well supported to take part in high-impact social action.
7. **Develop an improved evidence base** with more research and wider evidence to be gathered on the impact of FTSA programmes in the UK.

The report also makes some recommendations to the private sector, that employers should also consider changing their recruitment practices to recognise the skills that young people have developed through social action and, supported by the CIPD, to draw up guidelines.

[Source: DCMS – 6 February 2018]

FAITH & SOCIETY

'Cab rank' rule for coronial investigations to be reviewed

For information

According to a [report](#) in the *Law Society Gazette*, in a High Court judgment handed down on 2 February Mr Justice Holman granted an application by the Adath Yisroel Burial Society to seek a judicial review of the policy of the Senior Coroner for Inner North London, Mary Hassell, in applying the 'cab rank' rule to her investigations and refusing to prioritise Jewish and Muslim burials. Adath Yisroel had criticised 'unnecessary bureaucratic delays' in releasing bodies for burial because, under Jewish (and Islamic) law, the deceased must be buried on the day of death or as soon as possible afterwards. Ms Hassell's response had been that no death would be prioritised over any other because of the religion of the deceased or the family and that a 'cab rank' rule was the fairest way in which to proceed.

In purely religious and pastoral terms this is obviously of primary concern to the United Synagogue and the wider Jewish community: however, it is of more general interest to CLAS because it raises the broader issue of the independence – and efficiency – of coroners.

At the moment, under the reforms in the Coroners and Justice Act 2009 coroners are appointed by the relevant local authority in charge of the area for which the senior coroner has responsibility: senior coroner appointments are subject to the consent of the Lord Chancellor. Since July 2013, the coroner service has been overseen by the [Chief Coroner of England and Wales](#), currently HHJ Mark Lucraft QC. The latest annual report by the Chief Coroner 'supports calls for a national service. There is much to be gained from such a move in terms of standardisation, consistency and implementation of reform'.

According to the *Law Society Gazette* report, in granting the application Holman J said: 'This claim clearly raises issues of considerable importance to the Jewish and Muslim communities' and added that any final decision of the judicial review must apply to the whole of England and Wales. We shall be following the proceedings with interest.

[Source: *Law Society Gazette* – 3 February]