

CLAS CIRCULAR 2018/16 (9 August 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

Annual Return 2018: questions

For information

The Charity Commission for England and Wales has published what is presumed to be the final version of the questions to be included in the 2018 Annual Return for registered charities.

The trustees of charities excepted from registration with the Commission – which includes a considerable number of church congregations – are not required to submit an annual return; but an increasing number find that they must do so because when an excepted charity's annual income exceeds £100,000 it loses its excepted status. If you are a registered charity and will have to make a return, you can see the updated list of questions [here](#).

[Source: Charity Commission – 3 August]

Automatic disqualification of charity trustees

For action

The Charities (Protection and Social Investment) Act 2016 extended automatic disqualification to more circumstances and a wider range of people. Once a person is automatically disqualified, that person *cannot* be a charity trustee: *no regulatory intervention is required on the part of the Charity Commission*.

The new rules on the automatic disqualification of trustees and senior managers came into operation on **1 August** and in January 2018 the Charity Commission published [guidance on the new rules on the automatic disqualification of trustees and senior managers](#). It should be emphasised that the rules apply to trustee and senior manager positions at *all* charities based in England and Wales, *whether or not they are registered with the Commission*. The Commission's guidance on seeking a waiver is [here](#).

In addition, the NCVO has recently published its own very helpful [guidance](#) about how the rules operate. The NCVO guidance suggests that charities should *already* have systems in place to check that trustees are not disqualified, on appointment and at reasonable intervals thereafter. Existing trustees should be asked to confirm that they are not disqualified under either the previous or the

new rules. Pre-appointment checks and periodic confirmation will now also need to be in place for relevant senior managers.

The question we cannot avoid asking ourselves is whether CLAS members are sufficiently aware of automatic disqualification – let alone of the new rules.

[Source: NCVO – 31 July]

Civil Society Strategy published

For information

The Government has [published](#) its Civil Society Strategy which sets out plans to work with Civil Society over the next few years. The Strategy focuses on creating 'social value' through five foundations of social value: people, places, the social sector, the private sector, and the public sector.

To support charities and social enterprises the Government has said it will:

- Enhance the confidence of charities and social enterprises to speak in public debates through renewing the Government's commitment to the Compact and working with civil society, the Electoral Commission and the Charity Commission to explore non-legislative steps to strengthen civil society's confidence and speaking out
- Convene a cross-government group to work with civil society to establish principles of effective involvement in the policy-making process
- Create a simpler relationship between the social enterprise sector and Government through a new regular forum created by DCMS to coordinate relations with Government
- Work with civil society stakeholders and the Charity Commission to agree on joint action to open up trusteeship to people of more diverse backgrounds
- Work with the Charity Commission and UK Community Foundations to release £20 million from inactive charitable trusts over the next two years to help community organisations
- Build a stronger more effective sector through working with partners to enable the social sector to adopt the opportunities of digital.

On the social sector's involvement in the public sector the Government plans to:

- Extend the current support for public sector teams aspiring to form mutual with other social sector organisations that wish to deliver public services
- Broaden the range of funding options for community initiatives including a revival of grant-funding
- Focus on the use of public spending to generate social value in addition to the goods and services it purchases and increase social value commissioning. This includes improving the use of the Public Services (Social Value) Act 2012

- Look at the potential for the use of social value in grants as well as contracts and the Government will explore the suggestion that the Social Value Act should be applied to other areas of public decision-making such as planning and community asset transfer.

Other commitments made by the Government include:

- The introduction of a Place Based Social Action programme in partnership with the Big Lottery Fund to “help communities collaborate with local private and public sector organisations to create a shared vision for the place they live and work in”
- Funding for the training of 3500 community organisers by 2020 “to listen to the concerns of the community, connect people and motivate them to come up with the answers to the problems they face”
- A new Innovation in Democracy Programme to pilot participatory democracy approaches to support people to participate in decision-making that affects their communities
- To improve guidance to help communities to take ownership of local assets such as community buildings
- To work with partners to develop new models of community funding by bringing together different forms of funding such as social impact investment, charitable funding and corporate investment starting with Big Society Capital and Access (The Foundation for Social Investment) to devote £35 million of dormant assets funding.
- To undertake a review of the Social Investment Tax Relief in 2019.

[Source: DCMS – 9 August]

Charities that are connected with non-charitable organisations consultation

For information

The Charity Commission has published a [summary of the responses](#) to its consultation on its [draft guidance on charities that are connected with non-charitable organisations: maintaining your charity's separation and independence](#).

The Commission received a total of 57 responses (including from CLAS) and the feedback suggested that production of a single source of guidance on this issue would be useful. The Commission says that, in the light of the responses, it will decide which changes to content or design best address the consultation feedback, with an emphasis on the following common themes highlighted by respondents:

- the tone - and some of the content - of the current draft puts too much emphasis on the risks of charities' connections with non-charities - there should be more focus on the benefits;
- the current draft guidance is too long for busy volunteer trustees – a more concise version, together with a further developed version of the useful 'at-a-glance summary' would work better;

- where the draft summarises the Commission's lead guidance on related topics such as Campaigning and Political activity guidance for charities (CC9) and Grant funding an organisation that isn't a charity, the paraphrasing produces a result that is not consistent with the lead guidance;
- the draft guidance appears to introduce an expectation that the charity should be visibly separate from the non-charity, in branding and other terms - the basis of this is not clear and charities need more information about what they are expected to do in practice;
- the practical parts of the guidance, whilst welcomed by many respondents, could (as currently drafted) have the effect of imposing a disproportionate regulatory burden on some charities;
- the scope of the guidance needs to be clearer;
- design and content could better recognise the different types of common structures and relationships covered by the guidance, and address them more directly; and
- the guidance is, in parts, impractical to implement for charities with wholly owned trading subsidiary companies. The CLAS response had highlighted that cathedrals and major churches, for example, run cafés and bookshops operated by wholly-owned subsidiary trading companies, the draft *Guidance* appeared to be unduly onerous and was seeking to address a non-problem.

The Commission has said that it will run some further limited engagement to test its developing approach and aims to publish the final guidance later this year. If you would like to be involved in the further engagement, e-mail guidanceandpractice@charitycommission.gsi.gov.uk with a reference to 'Further engagement/charities connected with non-charitable organisations'.

[Source: Charity Commission – 9 August]

EMPLOYMENT

Unison seeks permission to appeal *Mencap* case

For information

Unison – which represents many of the workers affected by the ‘sleep-in’ case, *Royal Mencap Society v Tomlinson-Blake* [\[2018\] EWCA Civ 1641](#) – has [announced](#) that it has sought permission to appeal against the Court of Appeal’s decision that care workers’ sleep-in shifts do not count as work time and do need to be paid for in line with the National Minimum Wage.

Permission to appeal is granted or refused by a panel of Supreme Court Justices and is by no means a foregone conclusion – but watch this space.

[Source: Unison – 8 August]

FUNDING

Gift Aid declarations and the GDPR

For information

HMRC has [updated](#) its Gift Aid guidance to include information about requirements relevant to the GDPR. In particular, a new section states:

"A charity may want to add more information and notes of its own on a declaration form. For example, the inclusion of any General Data Protection Regulations (GDPR) that the charity feel is needed. HMRC has no objection to this or to the inclusion of a declaration in other documents, such as standing order mandates, provided the statutory requirements for a Gift Aid declaration are met."

[Source: HMRC – 2 August]

National Churches Trust Annual Review

For information

The National Churches Trust (NCT) has highlighted a significant rise in demand for grant funding in its [annual review](#). The NCT received 480 applications for grant funding, a rise of 26% on applications in 2016, but only awarded grants to 230 applicants. Despite a £300,000 rise in grants awarded from 2016, the report says that NCT are struggling to keep up with the increased demand for funding.

The CEO of NCT, Claire Walker, [said](#) that climate change was having a "serious impact" on the demand for grant funding, with heavy rainfall damaging gutters and drains and causing damage to timber, as well as the extreme weather changes making churches more vulnerable to pests such as termites.

The Review also pointed to two new grants programmes made available in 2017: maintenance grants, supported by the Pilgrims trust, and project development grants designed to cover the costs of the early planning stage. It also highlighted the national launch of [MaintenanceBooker](#), the online booking system funded by Ecclesiastical Insurance to book accredited contractors for maintenance.

[Source: National Churches Trust 29 June, *Church Times* 3 August]

NORTHERN IRELAND

Draft Modern Slavery Strategy

For information

The Department of Justice has launched a [consultation](#) on its *Draft Northern Ireland Modern Slavery Strategy 2018-2019*. The Department is seeking views and comments from individuals and organisations to help inform how it fights against human trafficking and exploitation. The draft strategy builds on previous efforts and sets out a work-programme for the future. It has been developed through engagement with a wide range of statutory and civil society partners across Northern Ireland.

The consultation is open until **18 October**.

[Source: Department of Justice website – 31 July]

ODDS & ENDS

Commons inquiry into enforcement of the Equality Act 2010

For information

The House of Commons Women and Equalities Committee has launched an [inquiry](#) into the enforcement of the Equality Act 2010. The Committee says that its work in a range of areas has shown that individuals have difficulties enforcing their rights under the Act and has questioned the effectiveness of the Equality and Human Rights Commission.

The Committee is calling for written evidence on:

- How easy it is for people to understand and enforce their rights under the Equality Act.
- How well enforcement action under the Equality Act works as a mechanism for achieving widescale change.
- How effective and accessible tribunals and other legal means of redress under the Equality Act are, and what changes would improve those processes.
- How effective current remedies for findings of discrimination are in achieving change, and what alternative or additional penalties should be available.
- The effectiveness of the Equality and Human Rights Commission as an enforcement body.
- Whether there are other models of enforcement, in the UK or other countries, that could be a more effective means of achieving widespread compliance with the Equality Act 2010, either overall or in specific sectors.

Submissions should be made using the Committee's [written submission form](#). The deadline is **Friday 5 October**.

[Source: House of Commons – 30 July]

Pictures on the Internet and copyright

For information

The Court of Justice of the EU has ruled that you cannot post a photograph on a website that was freely accessible on another website without the further authorisation by the original author.

In *Land Nordrhein-Westfalen v Dirk Renckhoff* [2018] CJEU Case C-161/17, Mr Renckhoff had authorised a travel website to publish one of his photographs. A pupil at a secondary school in North Rhein-Westphalia then downloaded it from the travel website and it was republished on the school website and Mt Renckhoff sued the Regional Government in its capacity as the education authority.

The Court of Justice was asked for a ruling by the German Federal Court of Justice on whether the EU Copyright Directive allowed posting a photograph on a website without the consent of the copyright-holder when it had been previously published on *another* website with permission and without any restrictions preventing it from being downloaded. The CJEU ruled that though it's OK to provide a hyperlink to a photograph on another website, if you re-use the actual photograph itself without permission you will breach the author's copyright.

Which support what we have said in previous circulars: *someone, somewhere, must own the copyright of almost every picture on the Internet; and if you repost someone else's picture on your own website without permission, you will be in breach of that person's copyright.* Either take your own picture and upload it or use a stock photograph from a site like Wikimedia Commons.

[Source: CJEU – 7 August]

PROPERTY & PLANNING

First World War Centenary Cathedral Repairs Fund evaluation

For information

The First World War Centenary Cathedral Repairs Fund was established in 2014 by DCMS to support urgent repairs to listed Church of England and Roman Catholic cathedrals in England to keep them weatherproof, safe and open to the public and to prevent further deterioration. The aim was to ensure that the cathedrals would be in an appropriate condition to host First World War commemoration events. The first round of funding was announced in 2014 and totalled £20 million, with a further £20 million announced in March 2016. The largest number of projects (approximately a third) were for roof repairs. Many were for repairs to external masonry, with other projects covered including guttering, heating, sound system, electrical and window refurbishment.

In December 2017, ERS Ltd was appointed to evaluate the Fund's outcomes. Its report, [*First World War Centenary Cathedral Repairs Fund Evaluation: Final Report, July 2018*](#), concludes that, overall, the Fund was successful in achieving its aims and met a funding need that could not be met elsewhere. Many respondents saw it as a success in safeguarding their existing activity while also sparking greater interest from the public in the heritage of the buildings. The key challenge for the projects had been the timeframe for delivery, not only because the timescales themselves were tight but also because of issues such as unforeseen snags with the repair works themselves and the problems inherent in delivering projects during winter weather.

[Source: Church of England – 17 July]

SCOTLAND

OSCR to consider charging for regulation

For information

OSCR has [published](#) its annual report and accounts for 2017-2018. In it, OSCR suggests that, because of insufficient funds, it may consider charging a levy on charities because its budget has remained static, while costs are expected to increase with the lifting of the public sector pay cap. OSCR's commitment to publishing all of its services online also has resource implications. In addition, demand for the service rose significantly on the previous year, with the number of concerns about charities from external sources almost doubling in 2017-2018.

OSCR has said that it "will wait with interest the outcome of the Charity Commission for England and Wales consultation on a range of stakeholder-charging models".

[Source: OSCR – 31 July]