

CLAS CIRCULAR 2019/13 (4 September 2019)

Disclaimer

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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 AND CHARITY LAW

Charity Commission: updated guidance on accounts

**For information and possibly for
action**

In Charity Commission has updated its guidance on [Independent examination of charity accounts: guidance for trustees \(CC31\)](#). The updated guidance explains what independent examination involves, how to select an independent examiner for your charity and what you need to do to prepare for an independent examination. The updated guidance is much shorter than the previous version and focuses on the key things that trustees need to know about independent examination. The Commission has also published a report on related party transactions: [Accounts monitoring review: reporting of related party transactions in charity accounts](#).

The updated guidance is accompanied by a very worrying report on auditors' and independent examiners' compliance with their responsibilities: [Auditors' and independent examiners' compliance with their responsibilities](#).

The Commission assessed a sample of 296 charities' accounts for FY 2017 against a new external scrutiny benchmark to determine whether a minimum standard of scrutiny by auditors and independent examiners had been met. The results were disappointing: overall, 46 per cent of the accounts failed to meet the benchmark, with standards worse for smaller charities. The Commission's identified failings included 77 cases of incomplete reporting of related party transactions.

[Source: Charity Commission, 6 August]

EMPLOYMENT

Part-time working and holiday pay: update

For information

In our last Circular, we noted the Court of Appeal's judgment in *The Harpur Trust v Brazel* [\[2019\] EWCA Civ 1402](#), in which the Court of Appeal held that a music teacher engaged on a term-time only zero-hours contract was entitled to 5.6 weeks' holiday per year, even though she did not work for the whole year. The key issue was whether term-time only workers (or others who only work for part of the year on permanent contracts) can have their holiday entitlement pro-rated to reflect the number of weeks that they actually work each year, and – separately – how their pay should be calculated. The Court held that pro-rating holiday entitlement was not permitted under the Working Time Regulations 1998:

‘there is ... no requirement as a matter of EU law to give effect to the *pro rata* principle or, more particularly, to pro-rate the entitlement of part-year workers to that of full-year workers’ [69].

Further:

‘On any natural construction the WTR make no provision for pro-rating. They simply require ... the straightforward exercise of identifying a week's pay in accordance ... and multiplying that figure by 5.6. Attempting to build in a pro-rating requirement or an accrual system would not ... be an exercise in construction ... *but the substitution of an entirely different scheme*’ [73: emphasis added].

So the minimum requirement could not be applied *pro rata* to reflect the number of weeks that Ms Brazel actually worked, nor could the Trust apply a 12.07% 'formula' for working out her holiday entitlement. And as to the issue of pay, the Court ruled that workers should receive their 'normal pay' when they take a holiday.

The judgment – and our comment that *any employer that pro-rates holiday entitlement and holiday pay for those employees should stop doing so* – caused some consternation, for which we apologise.

In a recent article published in *Lexology*, [‘Annual leave entitlement for atypical workers’](#), a group of employment law specialists at Dentons LLP, come to the following conclusions on the effect of the judgment:

‘Take-away points

Whilst it may be arguable that to build in the requirement to prorate or accrue leave goes beyond an exercise in interpretation or construction of the WTR, it is nonetheless a method which has been

used by employers for some time to manage the adjustment of annual leave entitlements to reflect part-time working arrangements.

Employers are recommended to take stock of the range of part-time working arrangements that they currently have in place. Where employers have a large body of workers who do not work part of the year, it may be worth calculating the differential. They may find that, with the reporting of this decision, such employees start to make unlawful deductions arguments. Where employees receive an enhancement on their statutory leave entitlement, it may be that they receive more than the statutory entitlement whichever calculation method is applied. However, employers should check the position and be ready to answer the question about their calculation methods (and employees' entitlements) where they are challenged.

Although the Court of Appeal was clear that its findings applied in respect of individuals on permanent contracts, there may be instances of employees with more casual working arrangements making similar challenges.' [my emphasis]

[Sources: BAILII, 6 August: *Lexology*, 29 August]

FAITH & SOCIETY

Gambling inquiries

**For information and possibly for
action**

Two current inquiries might be of interest to CLAS members. Charles White who is working with the Bishop of St Albans on gambling regulation, has asked the Churches' parliamentary affairs people to circulate the following message:

'The Mission and Public Affairs Division of the Church of England is making a submission to the House of Lords' Select Committee on the Social and Economic Impact of the Gambling Industry. It would be incredibly beneficial for this Committee to hear from all stakeholders, especially faith groups and denominations. We all are familiar with the problems related to gambling facing our society. Could I encourage you to make a submission on behalf of your denomination as making sure our voice has been heard by the Committee is a useful step in guaranteeing future reforms?

I have been advised the Committee is very keen on hearing clear, evidence-based (whether experts-by-experience or academic-based), recommendations for reform. The call for evidence was launched this summer and the deadline for submissions on Friday 6 September 2019, although I know the Committee are prepared to grant extensions if requested.

The call for evidence is made up of 19 questions, and the full details are [here](#). I would be happy to assist with any questions should you have any or about the process of making a submission.

Thank you very much,

Charles White'

Charles can be contacted at charles.white@churchofengland.org.

Secondly, the Gambling Commission has opened a [consultation on gambling with credit cards](#). It closes on **6 November**.

[Sources: Church of England and Gambling Commission – April]

Marriage registration in England and Wales: follow-up

For information

In our last Circular, we noted that the Faculty Office, the Church of England and the Church in Wales had issued a [joint statement](#) on forthcoming changes to the system of marriage registration in England and Wales and said that we would be contacting the General Register Office to ask for clarification of the reported proposals.

The GRO has replied as follows:

‘Thank you for your letter of 13 August regarding proposed regulations to be made under the Civil Partnerships, Marriages and Deaths (Registration etc) Act 2019.

The Act which received Royal assent on 26 March 2019 enables the modernisation of marriage registration in England and Wales for the first time since 1837. It provides for registration in a central electronic register, which will facilitate the updating of the marriage entry to include ‘mother’s names’ in the marriage entry instead of just the father’s name as is currently the case.

Since the Act was passed we have engaged various religious groups via the Faith, Race and Integration team at the Ministry of Housing, Communities and Local Government. In particular we reached out to the Catholic Bishop’s Conference of England and Wales, Board of Deputies of British Jews, Chief Rabbi’s Office, the Society of Friends, Sikh Council UK, Hindu umbrella bodies, Muslim faith groups and the Secretary General of the Free Churches Group. We informed those groups about the proposed change and sought their view on some of the detail which will be required in secondary legislation. We have engaged with the Church of England and the Church in Wales separately as there are additional considerations in relation to those marriages solemnized on the authority of ecclesiastical preliminaries.

We are working on the processes, systems and secondary legislation that is required in order to introduce the marriage schedule system as soon as possible. We will be engaging further and an implementation date for the changes will be announced in due course along with the arrangements to support authorised persons through the change period.

I hope this information is helpful.

Yours sincerely’

[Source: GRO – 16 April]

FUNDING

Grant funding for voluntary sector to support UK nationals living in EU and EEA

**For information and possibly for
action**

The Government is providing up to £3 million in grant funding for charities and other voluntary organisations to explain to UK nationals living in the EU or EEA about the need to register or apply for residency and support them as they complete their applications.

Over one million UK nationals live in EU and EFTA countries and the Government wants to support those who may find it harder to complete all the paperwork – focusing in particular on pensioners or disabled people, those living in remote areas or with mobility difficulties, and those needing assistance with language translation or interpretation. It intends to make grant funding available: up to £1,500,000 in the current financial year (2019/20) and, subject to a review of the Fund's effectiveness and continued demand, up to £1,500,000 for FY2020/21. Grants will be awarded to voluntary and community sector organisations and there will be one level of grant award: £90,000 and above, inclusive of irreclaimable VAT.

Organisations working with people who might be affected and who might require additional support can apply for project funding from the FCO from **19 September** at gov.uk/fco.

The FCO will be holding teleconferences to provide bidders with a fuller understanding of the fund and an opportunity to ask questions on the bidding process. Interested organisations can sign up at the links below:

- [Teleconference - 9 September](#)
- [Teleconference - 12 September](#)
- [Teleconference - 16 September](#)

Organisations are also invited to complete an online questionnaire to provide feedback on the UK National Support Fund strategy before the open competition is launched. There is a link to this questionnaire and to further information about the UK National Support Fund [here](#).

[Source: FCO – 30 August]

PROPERTY & PLANNING

Right to Rent: Commons Library briefing

For information

Members who rent unoccupied residential property intended for church-workers, short-term may be interested in a briefing from the House of Commons Library.

The Library has published a [Briefing Paper](#) on the Right to Rent checks that must be carried out by private landlords/agents in England. The checks were introduced by the Immigration Act 2014 and breaches may, in some circumstances, amount to a criminal offence after changes introduced by the Immigration Act 2016 on 1 December 2016.

[Source: House of Commons Library – 28 August]

'Slips and trips' at historic properties

For information

In a joint project, Ecclesiastical and researchers at the Health and Safety Laboratory have produced a series of guides to help manage slips and trips at historic premises.

The guides offer solutions to problems that may arise relating to building design, inspection and maintenance, the environment and contamination, cleaning, and how people interact with the historic premises. It also provides a snapshot of the law on slips and trips.

The full piece can be read [here](#).

[Source: Ecclesiastical Insurance – 26 July]

SAFEGUARDING

Charity Commission: inquiry into Birmingham Diocesan Trust

For information

The Charity Commission has published a [regulatory report](#) into safeguarding by the Birmingham Diocesan Trust.

The objects of the Trust are focused on the advancement or maintenance of the Roman Catholic religion in the Roman Catholic Diocese of Birmingham. On 21 December 2018 the Commission opened a statutory inquiry into the charity under section 46 of the Charities Act 2011, after it had been selected as a case study by IICSA: it has now published its report.

In May 2016, in preparation for the IICSA hearing, the charity commissioned several reviews of its safeguarding procedures, including an audit by the Social Care Institute for Excellence (SCIE), which reported in October 2018. The reviews highlighted serious concerns with the charity's safeguarding policies, procedures and governance. Following the November 2018 IICSA hearing, IICSA published its report on the charity on 20 June 2019.

Following receipt of the SCIE report, the trustees appointed an interim Head of Safeguarding Transformation in November 2018 and set up a Safeguarding Response Group to make recommendations to trustees on improvements required. The Commission engaged with the charity and its advisers to obtain further information on safeguarding governance issues and was concerned about the time it took to respond to the Commission's questions and concerns. After making further enquiries, the Commission was told that as a result of the serious safeguarding concerns raised by the interim Head of Safeguarding Transformation, the charity had taken some action; however, the trustees were unable to provide the Commission with sufficient assurance that all live risks were being managed as promptly and robustly as should be expected. The Commission continued to have serious concerns regarding safeguarding governance and whether the trustees had sufficient grip of the required remedial actions and were addressing these in a timely way.

The Commission launched its investigation in December 2018, after the trustees were unable to reassure it that they were managing risks to the charity's beneficiaries promptly or robustly enough.

The report points to serious shortcomings in the charity's safeguarding governance in the past, of which the trustees "appeared to be either insufficiently aware" or which they "did not adequately address with the pace or in the way expected". It also finds that the charity's approach to safeguarding "fell short of the culture and environment expected of a charity of this nature", that safeguarding was not sufficiently prioritised by the trustees and that safeguarding risks were not adequately managed. Further, the trustees' initial response to safeguarding concerns highlighted prior to the Commission's investigation lacked urgency.

Problems identified by the investigation include chaotic record keeping, including keeping of files relating to members of the charity's congregations who had served sentences for sexual offences and should have been monitored under Safeguarding Agreements, and a historic lack of safeguarding skills and experience among trustees and within the charity.

The Trust has now taken significant action to improve safeguarding: it has reviewed and updated all Safeguarding Agreements and recruited new staff with the necessary skills and experience. However, the Commission has made clear that further improvements are required and has issued the trustees with an Order under Section 84 of the Charities Act 2011. Among other things, it requires the trustees to identify, implement and maintain a new safeguarding case management system, to develop and implement a strategy for monitoring safeguarding in parishes, and to develop an action plan for improving the culture on safeguarding throughout the charity's operations, including to ensure that it "feels safe for people to criticise or discuss safeguarding matters within the charity".

The Commission will be monitoring and assessing the Trust's compliance with its Order.

[Source: Charity Commission – 3 September]

Diocese of Chichester final report

For information

Yvonne and David Shemmings have published their final report into failings in safeguarding by the Diocese of Chichester: [Sexual Abuse by Clergymen in the Diocese of Chichester 'You Can't Say No To God'](#). The report was commissioned by the Diocese in 2017, following a recommendation made by IICSA. The tone of the report is summed up by this extract from their introduction:

"Hearing from those involved about what happened in this Diocese – as well as in others – over many years, has affected us both (and we have both worked in the field of child protection and safeguarding, between us now for over 50 years). To learn, repeatedly, about the effects and sequelae of what happened to survivors into their adulthood was in one sense humbling but, at another, devastating. That these events could have happened within a set of religious beliefs based on love, peace and non-violence is particularly hard to reconcile."

[Source: Church of England – 22 August]

Positions of trust within faith settings

For information

Members may be interested to learn that the All-Party Parliamentary Group on Safeguarding in Faith Settings has [launched](#) an inquiry on whether there should be a change in legislation relating to “Positions of Trust” within faith settings. The inquiry will produce a report on the need for changes to be made to “positions of trust” within the terms of the Sexual Offences Act 2003 to ensure that faith settings are sufficiently within the scope of the legislation to give young people better protection from harm. The report will be published in November 2019.

In the first instance, the APPG is inviting written submissions. A limited number of those submitting written evidence will then be invited to attend an open session of the group to give oral evidence to support their written submissions. The evidence session will be held at the Houses of Parliament on **Tuesday 22 October**. Those submitting evidence will be advised if their evidence is to be used within the report prior to publication.

Written evidence should be submitted prior to the meeting by email to appg@thirtyoneeight.org, no later than **5pm on Friday 20 September**, so that submissions can be collated and invitations for oral evidence can be made.

[Source: APPG on Safeguarding in Faith Settings – 15 August]

SCOTLAND

Consultation: Financial Redress for Historical Child Abuse in Care

**For information and possibly for
action**

The Scottish Government published a [consultation](#) proposing a statutory financial redress scheme for survivors of historical child abuse in care.

The consultation paper is in two parts: part one includes questions about the detailed design of the statutory financial redress scheme and part two includes wider questions related to the implementation of the statutory scheme and elements of a package of reparation, including acknowledgement, apology and support.

The consultation will close on **25 November**.

[Source: Scottish Government – 2 September]