

## **CLAS CIRCULAR 2017/09 (30 March 2017)**

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## CHARITIES & CHARITY LAW

### Charity Commission: charging for registration

For information

The Charity Commission has published a [letter](#) sent to the Lords Select Committee on Charities as written evidence, making it clear that HM Treasury has given the Commission permission to begin consulting on different options for funding the charity regulator. The Commission plans to launch a consultation "shortly" – but see below for the Lords Committee's response.

[Source: Charity Commission – 16 March]

### Charity Commission: charity finance guidance updated

For information

The Charity Commission has published an updated version of its guidance article [Charity finances: trustee essentials \(CC25\)](#). The guidance sets out how charity trustees should manage their charity's finances and other assets, enabling it to succeed in delivering its charitable aims.

In short, trustees should satisfy themselves that they have:

- realistic funding plans and strategies
- effective management controls and systems
- planned for their charity's assets and resources to be used in the best possible way for their beneficiaries

While the substance of the guidance has not changed, the Commission has attempted to make it both more accessible and more readable. The section on fundraising duties also now links to the Fundraising Regulator's standards of fundraising practice.

Alongside this, the Commission has also updated [Charity governance, finance and resilience: 15 questions trustees should ask](#).

**Comment:** In addition to the above, probably the absolute basic minimum reading for a new trustee (apart from the obvious things like the charity's governing document) is [The essential trustee: what you need to know, what you need to do \(CC3\)](#), last updated in July 2015.

*We cannot emphasise too strongly that unregistered charities are just as much bound by charity law as registered ones; and every trustee should at least be familiar with the basics.*

[Source: Charity Commission – 16 March]

## House of Lords Select Committee on Charities

For information

The Report of the House of Lords Select Committee on Charities, [Stronger charities for a stronger society](#), was published on 26 March: you can access all the Committee's documents [here](#). The committee received 184 written submissions and took oral evidence from 52 witnesses. It also visited the Charity Commission and held three roundtable events outside London. The Committee made 42 concrete recommendations, some of which are more obviously relevant to religious charities than others.

### The recommendations

What appear to be the most important recommendations for religious charities are as follows: references in brackets are to paragraph numbers in the Report.

#### *Trusteeship, trustee skills and training*

1. The Committee was clearly concerned about trustee training and recommended that the charity sector's infrastructure bodies should review the training opportunities for trustees, identify shortcomings in provision – particularly for small charities – and take action to address them. They could help charities by publishing collated information about available training. (97)

2. The Committee welcomed the fact that the [draft Charity Governance Code](#) called for appropriately-resourced inductions for all new trustees. Smaller charities would benefit from free access to a template induction process and the Committee suggested that grant-making bodies should consider applications to develop a best practice template. (98 & 99)

#### *Board diversity and turnover*

4 & 5. The Office for Civil Society should work with other departments and business leaders to develop a new initiative to promote trusteeship to employees and employers and encourage greater

participation and diversity. Employers should be encouraged to give greater recognition to trustee roles in recruitment and progression of their staff (107) and the Government should hold a public consultation on a statutory duty to allow employees of organisations over a certain size to take a limited amount of time off work to perform trustee roles. (108)

6. There should be a time limit for individuals to serve as trustees and a maximum term of office, as proposed for the revised Governance Code. The materials and draft articles of association provided by the Charity Commission should include a suggestion of time limits (113) – though that might not be appropriate for family trusts. (114) Charities should, in any case, regularly review the operation of their boards and the tenure of their trustees and chair to ensure that their governance is sufficiently robust. For large charities, this should be an annual occurrence. (115)

7. The Charity Commission should look at issues of diversity in its *own* board and be mindful of the example it sets to the sector: in future, it should explicitly seek to recruit individuals with a range of skills, charity experiences and characteristics such as age, gender, ethnicity and geography: “We expect to see the results of this approach in the next set of board appointments.” (119) (There were some fairly [sharp exchanges](#) on the issue of diversity when the Chair of the Commission, William Shawcross, gave oral evidence to the Committee.)

#### *Executive leadership and payment of trustees*

9. The Governance Code should reflect the importance maintaining a clear separation between executive and trustee roles and responsibilities. (134) The voluntary principle is important: *trustees should not normally be paid except in highly exceptional circumstances* and any payment must be explained and justified in the charity’s annual report. (139) Trustees should, however, be able to claim relevant expenses. (140)

#### *Transparency, accountability and impact*

11. The Governance Code Steering Group should make best practice suggestions for governance reporting by charities: that might involve charities including in their annual report a statement that they follow the Governance Code (or a similar specialist governance code) and report any resulting actions taken over the year. (163)

12. All charities should seek an independent evaluation of their impact on their beneficiaries – though the form of that evaluation may vary considerably, depending on the size of the charity and the type of work it is engaged in. (174)

#### *A revitalised role for grants*

23. The Committee recognises the significantly reduced funding available to local authorities but, nevertheless, recommends that local authorities should bear grant funding in mind as part of their financial planning and maintain or revive grants wherever possible. (268)

*Fundraising*

24. Given the sector's concern about the voluntary levy to fund the Fundraising Regulator, the Regulator should continually monitor the impact of the levy, particularly on small- and medium-sized charities, and make changes if appropriate. (276)

25. The Committee welcomed the Government's changes to Gift Aid but recommended further work on possible improvements to help charities maximise the value of Gift Aid and minimise bureaucracy. (283)

26. The Office for Civil Society and HMRC should ensure that the needs of charities are kept in mind in relation to future changes to VAT and the National Living Wage. (284)

*Volunteers*

29. The Office for Civil Society should work with other Government departments, the public sector and businesses to encourage greater flexibility for employees to take time off for charitable work. (312)

*Mergers and closures*

30 & 31. The Committee welcomed the Law Commission's work on the legal and technical barriers to charity mergers. The Law Commission is to publish a draft Charities Bill in the summer with proposals for the reform of charity law in England & Wales; and the Committee called on the Government to bring forward the Law Commission Bill at the earliest opportunity. (344) It also recommended that the Charity Commission should consider what support and guidance it can offer to charities seeking to merge, suggesting that a merger should not be seen as a sign of failure. (345)

*The role of charity advocacy*

37. The Government should implement Lord Hodgson of Astley Abbotts' proposals for a review of the rules set out in the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014, (488) The Committee welcomed the Government's decision not to proceed with a restrictive anti-advocacy clause in public sector grant agreements. (492)

*Impact on charities of Brexit*

39. The Office for Civil Society should undertake an audit of the potential impact of Brexit on charities – including the impact of the loss of funding and research collaboration – and report by the end of 2017.

*Regulation of the sector*

41. The Committee recognises the resource pressures that have led the Charity Commission to consider charging charities an annual fee to be on the register but believes that any charging model must not unduly burden small charities. (530) It also warns that, if charging is mishandled, there will

be significant risks for the strength of the charity sector, its relationship with the Regulator, and overall public confidence and trust in charities. (532): “Because of these issues, we have grave concerns about the Commission proceeding with any proposal to charge charities.” (533)

42. The Treasury should maintain adequate direct funding of the Charity Commission, *irrespective of any proposal to charge charities*. (Paragraph 535: emphasis added)

### Comment

The Committee's recommendations about training trustees should be taken to heart by all charities. More generally as to governance, calls for diversity and a suitable range of skills within a charitable trust are very appropriate in the case of a large charity – but religious charities must often take what they can get. If no-one in a congregation has any accountancy skills or any acquaintance with charity law, it is difficult to see how that kind of expertise can be brought in. (Or *bought* in: but the Committee – quite rightly, in my view – has set its face against routine payment of trustees.) Similarly, in an ageing congregation there simply might be few younger people with the time to devote to trusteeship. Properly and conscientiously performed – as it should be – the role of a trustee is becoming increasingly onerous. The Charity Commission is constantly wringing its hands about the difficulty of attracting new trustees: unfortunately, there is little that it can realistically be done to lighten the load.

The charging issue remains problematical. Given that the Commission's funding has been so drastically reduced, it has to find the money from *somewhere*. On the other hand, because of its budget constraints it has increasingly had to concentrate on regulation at the expense of advice and support. The Lords Committee has expressed “grave concerns” at the prospect of charging: it remains to be seen what will happen.

[Source: House of Lords Charities Committee – 26 March]

## EMPLOYMENT

### Checking employment status

**For information and possibly for action**

HMRC has opened a new [service](#) for checking if you, or a worker on a specific engagement, should be classed as employed or self-employed for income tax and NICs purposes. The tool, which is still in its Beta development stage, will give you HMRC's view on whether a worker should pay tax through PAYE for an engagement. HMRC will stand by the result given unless a compliance check finds the information provided isn't accurate.

The service was also designed to provide clarity on whether the intermediaries legislation (also known as IR35) applies to a specific engagement. This follows changes (due to come into force in April) which shift the responsibility from the worker to the engager for making sure that off-payroll workers in the public sector pay the correct income tax and NICs. While we do not expect this change to affect many churches, it has been noted that the definition of "public sector", which matches that used in the Freedom of Information Act 2000 (and the Freedom of Information Act (Scotland) 2002), has caught more charities than expected. *CLAS would be keen to hear from you if you have found that this definition will extend to your organisation and how this legislative change will affect you.*

[Source: HMRC – 2 March]

### Dismissing a minister of religion

**For information**

In a recent hearing in the Chancery Division, *Celestial Church of Christ, Edward Street Parish (A Charity) v Lawson* [\[2017\] EWHC 97 \(Ch\)](#), the employment status of a minister of religion arose once again: in this case, coloured by a factional dispute within the congregation.

#### Background

The Celestial Church of Christ was founded by the Revd Samuel Oshoffa in the Republic of Benin in 1947 and incorporated in Nigeria in 1958; its present constitution dates from 1980 [2]. After the death of Oshoffa and his successor, the Revd Alexander Bada, there was a dispute over the succession, however, *the claimant Parish had at all times regarded Emmanuel Oshoffa as the Pastor and spiritual head of the Church* [2]. The Parish was founded in 1990 and Mr Lawson became deputy Shepherd (ie

pastor) of the Parish in 2007, appointed by Emmanuel Oshoffa by letter dated 11 November 2011, confirmed by a further letter dated 11 February 2012.

The Parish's written constitution refers to two governing bodies: the Parochial Committee and the Trustees. On 8 May 2013, the elders wrote to Pastor Oshoffa referring to a "deteriorating state of affairs" and on 1 September 2013 seven members of the Parochial Committee Executive and eight members of the Elders' Council wrote to him again, stating that they had lost confidence in Mr Lawson and asking him to call a new Shepherd to the Parish [4]. In September 2013, a Parochial Committee Executives' Meeting voted unanimously to suspend Mr Lawson for four weeks to investigate various allegations against him and asked the Trustees to consider his suspension. The Trustees subsequently suspended Mr Lawson [5]. Subsequently, Mr Lawson's suspension was extended; but 93 members of the Parish wrote to Mr Lawson asserting their support and stating that they had passed a vote of no confidence in the current Parochial Committee and had dissolved it with immediate effect [6].

In the subsequent action, the claimants asserted that they had the power to remove Mr Lawson even without Pastor Oshoffa's consent [22].

### **The judgment**

The principal issue was the true meaning and effect of the governing constitution of the Parish, which HHJ Hodge QC, sitting as a judge of the High Court, described as "an unsatisfactory document in many respects ... In particular, it assumes the roles of a shepherd in charge and/or a Pastor's representative without articulating any express mechanism for their appointment or removal *and without identifying who the Pastor is*" [19: emphasis added].

HHJ Hodge concluded as follows:

- the provisions of the worldwide constitution of the Celestial Church could not override the governing constitution of the Parish [29].
- the ultimate power of appointment and dismissal was vested in the Parochial Committee without the need to look to the authority of the Pastor under the worldwide constitution [29].
- Absent any express provision, the Parish's constitution did not empower the Pastor to remove the Shepherd or Pastor's representative as a member of the Parish [29].
- the defendant was a charity trustee because of his appointment and continuing role as Shepherd: he would automatically cease to be a trustee when his role was terminated [30].
- following *Preston v President of the Methodist Conference* [2013] UKSC 29, Mr Lawson was an officer and not an employee of the Parish and his remuneration was properly to be viewed as stipend rather than salary [34].



In short, given that there had been two opposing factions in the Parish:

“those in the majority on the Parochial Committee were opposed to his continuing role in the church; and they were the democratically elected body seised by the constitution of the Parish with the duty of resolving the stalemate within the Parish. This could not be left to elders from other congregations of the Celestial Church or to the Pastor. It was for the Parochial Committee to do the best they could in the circumstances. On the evidence, I am satisfied that this is what they sought to do in what they considered to be the best interests of the Parish *and in accordance with, and in the furtherance of, its charitable objects*” [38: emphasis added].

HHJ Hodge found that Mr Lawson had ceased to be a trustee, member or officer of the Parish. Moreover, even if he had not done so,

“I would have exercised the court’s jurisdiction to remove the defendant as a charity trustee on the basis that this was necessary for the furtherance of the Parish’s charitable objectives ... I am satisfied that the court’s equitable jurisdiction over charities extends to the removal of a person (such as the defendant) who, although not a trustee in the strict sense, satisfies the statutory definition of a charity trustee within the meaning and for the purposes of section 177 of the Charities Act 2011” [39: emphasis added].

Claim dismissed.

### **Comment**

If nothing else, the case highlights two very basic points of charity law:

- trustees are bound by the terms of the charity’s governing document; and
- the overriding duty of trustees is to act in accordance with charity law and in furtherance of the charity’s objects.

[Source: CLAS Summary – 17 March]

## PROPERTY

### Buildings security

For information **and possibly for action**

Ecclesiastical Insurance has produced what appear to be updated [Guidance notes: CHURCH – SECURITY](#) on protecting churches from theft, vandalism and arson. Churches that insure with Ecclesiastical will no doubt be aware of them already: those that do not may still find them useful.

[Source: Ecclesiastical Insurance]

## TAXATION

### Tax software for SA10M

**For information**

As clergy will be aware, although we have frequently asked them to do so, HMRC does not provide software for completing the Minister of Religion - SA102M section of the self-assessment return.

Philip J Cooke, Honorary Taxation Adviser to the Baptist Union of Great Britain, negotiated a concessionary rate of £12 for Baptist ministers for [SimpleTax software](#), which enables users to complete SA102M electronically.

SimpleTax is prepared to offer the concessionary rate to all those who need to complete SA102M, whether Baptists or not. You can try it here: <http://l.gosimpletax.com/ministers-of-religion-tax-return/>. The discount code is **MORST2017**.

[Source: SimpleTax]