

CLAS CIRCULAR

2017/21 (4 September 2017)

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 & CHARITY LAW

Demonstrating a charity's "public benefit"

For information

The Charity Commission has published the [report](#) of its programme of post-registration monitoring of Plymouth Brethren Christian Church (PBCC) Gospel Hall Trusts. Over 100 Gospel Hall Trusts have recently registered as charities; the Commission committed to monitoring a sample to ensure that they were complying with their governing documents, including a Deed of Variation (DoV). The monitoring programme began with the Preston Down Trust, as the first charity registered, the results of which can be found in a separate [Case Report](#).

According to the report, the Commission did not identify any significant regulatory issues relating to the charities' compliance with their governing documents and saw sufficient evidence of each charity's engagement with the wider community to demonstrate public benefit.

As part of its work, the Commission spoke to a number of individuals who were concerned about the treatment of former members at Gospel Hall Trusts. The Commission accepted that trustees of Gospel Hall Trusts were not responsible for the behaviour of individual members, who had personal choices in their dealings with their own family members and others. However, the Commission's report was clear that it expected the trustees to ensure that each charity's DoV was readily available to members and that regular discussions were had with them about its provisions. The Commission has also provided PBCC and the Gospel Hall Trusts with regulatory advice and guidance in relation to improvements required in their policies and practices.

This report serves as a reminder that trustees must ensure that their charity is carrying out its purposes for the public benefit, having particular regard for the Commission's [guidance](#) on the topic. Public benefit is not something trustees only need to think about when a charity is registered, but from the moment it has been set up. For this reason, it is extremely important that *every charity trustee knows exactly what their charity's purposes are*.

Trustees must also make sure that their charity complies with its governing document and that they manage their charity's resources responsibly, to avoid exposing the charity's assets to undue risk.

[Source: Charity Commission – 29 August]

Charity Commission 2017 Annual Return service & consultation on 2018 Annual Return

For information and possibly for action

The Charity Commission's annual return service for 2017 is [now available](#). All registered charities in England and Wales have a legal responsibility to prepare and send an annual return to the Charity Commission.

What a charity is required to submit depends on its annual income. If a charity's income is:

- under £10,000, then the charity need only submit its income and expenditure figures;
- between £10,001 and £25,000, then the charity must complete an annual return form; or
- more than £25,000, then the charity must submit an annual return form with a set of annual accounts, as well as an independent examiners' or audit report and a trustees' annual report (TAR).

The Commission has also published a [guide](#) to accounting essentials for charities in order to help trustees understand the type of accounts that their charity has to prepare, and whether they are obliged to have an audit or may have an independent examination instead. The Commission also advises that there will be a high demand for the new annual return service: to avoid any problems logging in, *charities should aim to use it outside peak hours (10am to 3pm)*.

The Commission has also announced a [consultation on next year's annual return](#). The consultation is the second part of a two-year project reviewing the key information that the Commission collects from charities and displays on the Register of Charities. Its intention is to shift to a more dynamic annual return that is better targeted and easier to use for charities. Smaller charities with simpler operating structures will answer fewer questions; larger and more complex charities will be required to answer more.

The consultation also proposes adding some new questions and removing others. The intention of the proposed changes is to help ensure that the questions reflect the priority risk areas in the Commission's strategic plan and help it tackle new regulatory risks as they emerge. The Commission also hopes that they will strengthen the sector's accountability and provide the kind of information that the public and others expect to be able to see.

For each new question, the Commission has considered how the information will help meet a regulatory aim and further its statutory function. However, it is also mindful of the need not

to create an undue additional burden on charities. It believes that further changes made to the service itself, in line with the improvements across its digital services generally, will mean that the annual return will be easy to use and intuitive for all charities, regardless of their size and structure.

The Commission is keen to hear both from charities that complete the annual return, from users of the online Register and from those with an interest in the information that the Commission collects and publishes about charities. Responses can be submitted via an online survey and supplementary information can be provided by e-mail. The deadline for responses is **5pm on Friday 24 November 2017**.

CLAS will almost certainly be making a general response and it would be extremely helpful if any members intending to respond could share their submissions with us.

There will also be other opportunities and methods for giving feedback, including round table discussions with interested parties and user-testing of the proposed questions. The Commission will publish details of these through the consultation period.

[Source: Charity Commission – 25 August & 1 September]

EMPLOYMENT

Employment status and entitlement to statutory holiday pay

For information

The issue of whether or not a person is an 'employee', a 'worker' or self-employed has come up again in *King v The Sash Window Workshop Ltd*. Mr King worked as a self-employed, commission-only salesman for The Sash Window Workshop Ltd (SWW) from 1999 until 2012. He was offered an employment contract by SWW in 2008 which would have given him the right to paid annual leave but chose to remain self-employed under a contract which made no provision for paid holiday. He took varying amounts of unpaid holiday each year. Throughout his engagement, Mr King was never provided with any opportunity to take paid annual leave, nor did he request it.

In October 2012, SWW terminated Mr King's contract. He then claimed that he should have been treated as a worker, not as self-employed, and sought compensation for pay in lieu of accrued but untaken annual leave for his entire engagement with SWW. The case ultimately reached the Court of Appeal, which decided to ask the European Court of Justice whether Mr King should be paid in lieu for all his untaken annual leave even though he had never asked to take it.

The questions referred by the Court of Appeal were as follows:

(1) If there is a dispute between a worker and employer as to whether the worker is entitled to annual leave with pay pursuant to article 7 of Directive 2003/88 (1), is it compatible with EU law, and in particular the principle of effective remedy, if the worker has to take leave first before being able to establish whether he is entitled to be paid?

(2) If the worker does not take all or some of the annual leave to which he is entitled in the leave year when any right should be exercised, in circumstances where he would have done so but for the fact that the employer refuses to pay him for any period of leave he takes, can the worker claim that he is prevented from exercising his right to paid leave such that the right carries over until he has the opportunity to exercise it?

(3) If the right carries over, does it do so indefinitely or is there a limited period for exercising the carried-over right by analogy with the limitations imposed where the worker is unable to exercise the right to leave in the relevant leave year because of sickness?

(4) If there is no statutory or contractual provision specifying a carry-over period, is the court obliged to impose a limit to the carry-over period in order to ensure that the application of the Regulations does not distort the purpose behind article 7?

(5) If so, is a period of 18 months following the end of the holiday year in which the leave accrued compatible with the article 7 right?'

Advocate General Tanchev issued his [Opinion](#) in the case of *C King v The Sash Window Workshop Ltd & Richard Dollar* in June, proposing that the ECJ answer the questions referred by the Court of Appeal as follows:

'(1) If there is a dispute between a worker and employer as to whether the worker is entitled to annual leave with pay pursuant to Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, *it is incompatible with EU law, and in particular the principle of an effective remedy, if the worker has to take leave first before being able to establish whether he is entitled to be paid.*

(2) If a worker does not take all or some of the annual leave to which he is entitled in the leave year when any right should be exercised, in circumstances where he would have done so but for the fact that the employer refuses to pay him for any period of leave he takes, *the worker can claim that he is prevented from exercising his right to paid leave such that the right carries over until he has had such opportunity to exercise it.*

(3) Upon termination of the employment relationship, pursuant to Article 7(2) of Directive 2003/88, a worker is entitled to an allowance in lieu of paid annual leave that has not been taken up until the date on which the employer made available to the worker an adequate facility for the exercise of the right to paid annual leave...'

The Advocate General's Opinion is not binding on the ECJ. However, it is clear from recent cases such as *Autoclenz* and *Uber* (which is currently awaiting an appeal hearing) that there are potentially large numbers of people working in the gig economy who have been treated by companies as self-employed when in fact they may be workers or employees. If the ECJ agrees with the Advocate General's opinion, there could be significant financial and administrative consequences for those companies under EU law. As to Mr King's case, however, once the ECJ has ruled, *the Court of Appeal will decide whether his claim should succeed on its facts.*

[Source: ECJ – 21 August]

Pension re-enrolment

For information and possibly for action

Stewardship has posted a helpful [note](#) on its blog about pension re-enrolment. It points out that, by now, most churches will now have completed and dealt with auto-enrolment and will be providing a pension scheme to all their eligible employees from March 2018 at the latest. BUT:

“If you are responsible for auto-enrolment then you will also be responsible for re-enrolment. Re-enrolment is a process which you need to complete every three years whereby you are required to re-enrol certain staff into a pension scheme again that may have previously left or opted out of a scheme.

What you need to do:

1. **Choose your own re-enrolment date:** The date you need to do this is approximately three years after your original staging date. It is approximate because, unlike your staging date, you are able to choose your own re-enrolment date as long as it falls either three months before or three months after the third anniversary of your automatic enrolment staging date.
2. **Assess your staff:** Once you have selected your date you will then need to assess certain staff to work out if you need to put them back into a pension scheme. You must assess anyone who asked to leave or opted out of the pension scheme, left a scheme after the opt out period, or stayed in the pension scheme but chose to reduce the level of pension contributions to below the minimum level.

You do not have to assess anyone who is already in the pension scheme, is aged 21 or under, or is at the state pension age or over.

Anyone who has left the pension scheme more than 12 months before your re-enrolment date and meets the age criteria must be re-enrolled into a pension scheme again.

You have a choice on those that have left within 12 months of your re-enrolment date as to whether you put them in again or not.

3. **Write to staff that you've re-enrolled:** Just like when you first went over to the new pension regulations on your staging date, you will need to write to those you are putting into a scheme, and then...

4. **Complete a re-declaration of compliance with The Pensions Regulator:** The deadline for the re-declaration of compliance is to complete within the first five months of the third anniversary of your staging date.”

There is more information about pension re-enrolment on The Pensions Regulator’s website:

www.thepensionsregulator.gov.uk.

[Source: Stewardship – 30 August]

ODDS & ENDS

Preparing for the GDPR

For information and for action

Amy Wren has posted a very helpful guide on the Farrer & Co *WorkLife* website about coping with the General Data Protection Regulation: [GDPR - Get Data Protection Ready: here's what to do...](#) Her post is well worth reading in full, but the main points are as follows:

1. **Carry out a mini-audit** of your current data processing systems, procedures and policies.

Questions you might want to ask include:

- What kind of information do you hold on your employees?
 - Where does it come from?
 - What do you use it for?
 - Do you share it with others?
 - Are employees fully aware of what you are doing with their data?
2. **Review your contracts** and forms you use for employees, consultants and job applicants etc to identify which may need amending to ensure compliance with the GDPR. You should also consider the wording of your information collection forms (for example, flexible working requests, staff surveys, subject access requests, personal information and benefit forms etc), job application forms and contracts with third parties (for example, benefits or training providers) to check if there is a data security aspect that needs reviewing.
 3. **Consider your legal basis for processing**, identify which of the legal grounds for processing apply to each of your processing activities and, where applicable, update your privacy notices to explain that. "The one which employers will particularly need to look at is consent." If your employment contracts currently include a broad consent clause, you should consider whether you wish to continue relying on it. Where individual consent is still appropriate or required in certain situations (for example, medical reports or use of likeness in media etc), it should be contained in a standalone document, *with a clear and specific explanation for the reason for processing and the*

individual's right to withdraw consent. An individual's employment or benefits should not be made conditional on them giving consent.

4. **Work on your policies and procedures** – the GDPR goes further than the additional individual rights granted: you may also need to consider its impact on other policies and procedures, for example, IT policies, CCTV, absence policies and bullying policies etc. In addition, you need a *published* procedure:
 - detecting, handling and reporting data breaches;
 - responding to subject access requests within the new, shorter timescales;
 - deleting or amending employee data; and
 - enabling employees to withdraw their consent to data processing.
5. **Record keeping** will be critical.
6. **Identify a compliance lead and raise awareness** – even though the GDPR does not *oblige* you to have a Data Protection Officer, someone within your organisation will have to take responsibility for data protection *and know their stuff* – whatever their job title. Your management team needs to be aware that this is a significant compliance issue which requires careful attention and resources. You will need to raise staff awareness of the implications of the GDPR; all staff will need to understand their individual responsibilities and those with management responsibilities may need additional training.
7. **ICO guidance** – keep on top of both existing and new [guidance issued by the Information Commissioner's Office](#) (ICO) on its website. The ICO has already issued a helpful [Overview](#) explaining key terms as well as an updated document, [12 steps to take now](#) and draft [guidance on consent](#).
8. **Privacy impact assessments** – under the GDPR you must plan around privacy impact from the outset of projects and in some situations a privacy impact assessment will be mandatory. Even if it is not, it is best practice to conduct a privacy impact assessment before embarking on any new major projects or policy changes.

Comment: CLAS members hold an immense amount of data that will come under the aegis of the GDPR, such as membership records, stewardship records and personal data on those with particular congregational responsibilities such as youth leaders. We suspect that compliance is not going to be extremely onerous: it merely requires planning and forethought. But it is better to start earlier than later, and it would be a good idea to start planning *now*.

[Source: Farrer & Co – 25 August]

PROPERTY & PLANNING

Telecommunications equipment in listed places of worship

For information

Historic England (HE) has published [advice](#), prepared by Diana Evans, on its involvement with proposals to install telecommunications equipment in churches. It explains HE's role, what information it needs before it can offer informed advice and the key issues about which it might be concerned. HE would normally expect the church's architect or surveyor to be involved in assessing and advising on the proposals to ensure that appropriate methods and materials are used, damage to historic fabric is avoided and access is either maintained or improved.

HE is the statutory adviser to local authorities and the five listed denominations in accordance with the Town & Country Planning Act 1990 and the Ecclesiastical Exemption Order 2010. Therefore, if an installation will make changes to historic fabric that could affect the character or significance of a listed building, *HE must be consulted* – whether a congregation is seeking permission through its denominational advisory body or through the local authority.

The advice is as follows:

“What do we need to see to offer you relevant advice?”

Before offering any advice we need some basic information so we can understand the proposals and the impact on the building. You can provide this information in paper or digital format. Once we have all the relevant details we aim to provide advice on applications within 21 days. Every case is assessed on its merits.

- Statements of Significance and Need. Remember that our guidance on making changes to historic churches states ‘the more harm the proposed changes are likely to cause to the significance of the building, the more they will require justification in terms of the public benefits they will bring.’
- The specification for the installation, including drawings showing location of any equipment, cable routes, access, etc.
- A plan of the church and churchyard, showing (depending on the nature of the installation) routes for cables, position of cabinets and any trenching.
- Photographs of the equipment, with an indication of size.

- Photographs of the church from the inside, marked to show where equipment will be located.
- Photographs of the church from the outside, marked to show the impact of any external equipment, eg antenna or dishes.

What issues will be of particular concern to us? What will be the impact of the installation on the outside of the building?

- Antennae, dishes or boxes may have an impact on the appearance or setting of the building. They may also change its setting in the wider landscape, which is an important part of the building's significance. Further guidance on setting can be found [here](#).
- Is it possible to minimise the impact, so that key views of the building are not spoiled, eg by lowering the height of equipment?
- If it is necessary to remove louvres then we expect that the installer will seek out the best possible alternative in the light of the contribution that these make to the significance of the building.
- Details of proposals for storage in a safe and secure location should be provided. Photographs of the original louvres in place before being removed will help when they are reinstated when the equipment is taken away or technology changes.

What are the impacts of the installation inside the building?

- What impact will fixings, fittings, cables and control equipment have on the interior of the building?
- Is it possible to minimise the impact so that historic fabric is not damaged?
- Will the work require the insertion of new steel beams to support cabinets?
- Where will the cable runs be routed and how will they be secured?

Access to the equipment and the rest of the building

- Will the equipment make it more difficult to access the roof, bells or bellframe for maintenance and repairs?
- Does the installer expect to keep the area locked to prevent unauthorised access to its equipment?

Safety

- Is the structure of the building, where the equipment is to be installed, strong enough to take the additional weight?
- Will the roof covering be breached by wires, creating a leak hazard, or how will the installation avoid this?
- Will fixings for antenna or other equipment avoid breaching the lead or blocking drains?

Archaeology

- Are there any archaeological implications, especially in cases where external cabinets are to be installed outside the church itself?"

Further information can be found on the websites of the [Church Buildings Council](#) and the [Society for the Protection of Ancient Buildings](#).

[Source: Historic England – 11 August]

Independent review of building regulations and fire safety

For information

The [terms of reference](#) for the Independent Review of Building Regulations and Fire Safety have been published. The Review is being led by Dame Judith Hackitt and aims urgently to assess the effectiveness of current building and fire safety regulations and related compliance and enforcement issues, with a focus on multi-occupancy high-rise residential buildings. It will include addressing whether the Government's large-scale cladding system testing programme has identified any potential systemic failures.

The Review's two key priorities are to develop a more robust regulatory system for the future and provide further assurance to residents that the buildings they live in are safe and remain safe. Though its specific focus is on residential tower-blocks, the Review will cover the regulatory system for *all* buildings. The Review will report jointly to Communities Secretary Sajid Javid and Home Secretary Amber Rudd. An interim report will be submitted in autumn 2017 and a final report submitted in spring 2018.

[Source: DCLG – 30 August]