

CLAS CIRCULAR

2017/22 (14 September 2017)

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

Charity Commission: updated guidance for independent examiners

For information **and possibly for action**

The Charity Commission has published updated [guidance](#) for independent examiners assessing charity accounts, which includes three new Directions that *must* be followed,

The revised Directions aim to take into account the balance between extending the role of the examiner and the potential increase in the regulatory burden on charities. They consider both the implications for the role of the examiner and the need to maintain public trust and confidence in charities. The three new Directions are:

- to check for any conflicts of interest that may prevent the examiner from carrying out the independent examination;
- to check that related party transactions in SORP accounts are properly disclosed; and
- to check whether the trustees have considered the charity's financial circumstances when preparing the accounts, and – for SORP accounts – whether the trustees have made an assessment of the charity's position as a going concern.

The new requirements are mandatory for independent examiner reports signed and dated on or after **1 December 2017**. This is to allow time for examiners to familiarise themselves with the guidance.

The Commission has also published a [summary](#) of the responses to its consultation in 2016.

[Source: Charity Commission – 4 September]

Full-time social action review

For information

The Department for Digital, Culture, Media and Sport has commissioned Steve Holliday, former chief executive of National Grid plc, to chair an independent Full-Time Social Action review. This review will consider what the voluntary sector, industry and Government can do to support full-time volunteering. The review will work with a variety of stakeholders to develop recommendations, including consultation with the voluntary sector, young people, employment and regulatory experts, economists and parliamentarians.

The review has published a [call for evidence](#) on the current opportunities available, the current status of full-time volunteers, the impact of full-time social action on young people and their communities, the barriers facing participants and providers, and how the UK compares to other countries' provision of full-time social action opportunities. The review is particularly interested in hearing from young people, whether they undertake social action on a full-time or part-time basis, or not at all, as well as from organisations which offer opportunities and/or benefit from social action by young people.

Evidence should be submitted via [email](#), before **13 October 2017**. Submissions should be limited to no more than 500 words. This is not a matter on which CLAS can usefully offer a corporate view, but individual members may wish to contribute.

[Source: DCMS – 7 September]

Law Commission project report: technical issues in charity law

For information

The Law Commission has published the final [report](#) of its project on technical issues in charity law, which makes various recommendations aimed at removing unnecessary bureaucracy from charities whilst ensuring proper protections for the public. The Report makes 43 recommendations and includes a draft Bill that would give these proposals legislative effect. It also contains helpful background detail on each of the proposals as well as incorporating evidence supplied by consultees, including CLAS.

CLAS responded to the original consultation phase of this project in July 2015 and members of CLAS were also involved in responses to the supplementary consultation and a series of consultation meetings with the Law Commission team, including the lead Commissioner, Professor Nicholas Hopkins.

Members will recall that the project was not a full review of charity law and related only to selected technical issues. As such, those issues did not include a number of controversial matters which have recently had a high profile such as the law of public benefit, the charitable status of independent schools, or fundraising practices.

For charities, recommendations include:

- giving charities more flexibility to obtain tailored advice when they sell land, and removing unnecessary administrative burdens
- changes to the law to help charities amend their governing documents more easily with Charity Commission oversight where appropriate

- increased flexibility to use their permanent endowment, with checks in place to ensure its protection in the long term
- removing legal barriers to charities merging, when a merger is in their best interests
- giving trustees advance assurance that litigation costs in the Charity Tribunal can be paid from the charity's funds

For the Charity Commission recommendations include:

- bringing in a single set of criteria to decide changes to a charity's purposes
- increased powers to prevent charities using misleading names
- the ability to confirm that trustees were properly appointed

We intend to circulate in due course a more detailed summary of the report, its recommendations and how they match up to CLAS's consultation response. In the meantime, we would encourage members to read the document, and Chapter 7 in particular, in detail.

[Source: Law Commission & CLAS – 14 September]

EMPLOYMENT

Monitoring employees' use of the internet and e-mail

For information

In *Bărbulescu v Romania* [2017] ECHR 742, the Grand Chamber of the European Court of Human Rights (ECtHR) has held that the decision of a private company to dismiss an employee after monitoring his electronic communications and accessing their contents violated his rights under Article 8 ECHR (right to respect for private and family life, the home and correspondence).

As previously reported ([Circular 2016/01](#)), at his employers' request Mr Bărbulescu had created a Yahoo Messenger account for the purpose of responding to clients' enquiries. In July 2007, he was summoned by his employer and told that his Yahoo Messenger communications had been monitored and that there was evidence that he had used the internet for personal purposes and he was sacked. His challenge to his employer's decision before the domestic courts was unsuccessful: the domestic courts accepted the employer's argument that company resources should not be used for personal purposes and that monitoring Mr Bărbulescu's communications had been the only method of establishing whether there had been a disciplinary breach.

However, the Grand Chamber confirmed that Article 8 was applicable in Mr Bărbulescu's case, primarily because Mr Bărbulescu had not been informed *in advance* of the extent and nature of his employer's monitoring and the national courts had not carried out a sufficient assessment of whether there had been legitimate reasons to justify monitoring his communications.

Comment: The critical point is that if an employer is to forbid employees from using the internet or a work e-mail address for private purposes, *it must make that absolutely crystal clear to its employees in advance of taking action*. It cannot merely snoop on employees, then discipline them without warning.

[Source: ECtHR – 5 September]

PROPERTY & PLANNING

Hackitt Review of Building and Fire Safety Regulations

For information and possibly for action

The Independent Review of Building and Fire Safety Regulations has published its full [terms of reference](#) and a [call for evidence](#). The Review aims to make recommendations to ensure a sufficiently robust framework of building, housing and fire safety legislation, to provide further assurance to residents that the buildings they live in are safe and will remain so. Those who wish to respond to the call for evidence should do so via [email](#), before **13 October 2017**. The call for evidence considers a number of key questions, including:

- To what extent are the current building, housing and fire safety legislation and associated guidance clear and understood by those who need to follow them?
- Are the roles, responsibilities & accountabilities of different individuals at each key stage of the building process clear, effective and timely?
- What evidence is there that those with responsibility for assessing and demonstrating compliance are appropriately trained and accredited and are adequately resourced to perform their role effectively? If gaps exist how can they be addressed and what would be the benefits of doing so?
- Is the current checking and inspection regime adequately backed up through enforcement and sanctions?
- Does the way building components are safety checked, certified and marketed in relation to building regulations requirements need to change?

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. This will include addressing whether the Government's large-scale cladding system testing programme identified any potential systemic failures.

While the Review will cover the regulatory system for *all* buildings, it will have a specific focus on multi-occupancy high rise residential 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 – 12 September]

Listed Places of Worship Grant Scheme

For information

The Church of England's Church Buildings Council has received written confirmation from the Heritage Minister, John Glen MP, that following the General Election the Listed Places of Worship Grant Scheme will continue at its current levels **until March 2020**.

There are no changes planned to the eligibility criteria or application process. More information on applying can be found on the Scheme's dedicated [website](#).

[Source: Church Buildings Council – 11 September]

Non-domestic smart metering

For information

The Department for Business, Energy and Industrial Strategy (BEIS) has recently published a [consultation](#) seeking views and evidence on new non-domestic smart metering policy proposals. The policy proposals are designed to give non-domestic consumers access to the benefits of smart meters, while at the same time recognising the diverse nature of these energy users and the need for proportionate regulation.

This consultation also invites views on the draft legal text required to implement the removal of the Data Communications Company (DCC) opt-out. As set out in the [government response](#) to the April 2016 further consultation, most non-domestic suppliers will be required to become DCC Users by 31 August 2018 and to enrol SMETS2 meters with the DCC.

While the consultation does not contain anything specific in relation to churches or charities, the Government has committed itself to ensuring that every home and small business in the country is offered a smart meter by the end of 2020. This will almost certainly include churches, given that they are certainly "non-domestic".

CLAS would be interested to know whether any members intend to respond to this consultation and would value being sent any submissions made. The deadline for responses is **19 October 2017**.

[Source: BEIS – 31 August]

Scared of heights?

For information

Jo Ord, of Farrer & Co, has posted an extremely helpful [article](#) on the Working at Height Regulations 2005, looking at some of the key considerations for those with responsibility for people working at height, from changing a light-bulb (not an uncommon event in churches) to extensive roof refurbishments. "Working from height" includes any work undertaken where there is the risk of falling to a lower level and can therefore include work at ground level over an opening in the floor or work on fragile surfaces over a void. The distances involved do not need to be great, because a relatively short fall can result in injury. *We encourage everyone to read the article in full*, but the main points are these:

Under the Regulations, employers must ensure that work is properly planned, supervised and carried out by competent people with the necessary skills, knowledge and experience to do the job. Equipment should be appropriate and well maintained. Crucially, *procedures and policies should be understood and put into practice by staff at all levels*.

The Regulations advise a three-tier approach to working from height:

1. **Avoid:** avoid working at height whenever possible;
2. **Prevent:** if working at height cannot be avoided, take all reasonable steps to prevent a fall; and
3. **Minimise:** where falls cannot be prevented, minimise the distance and consequences of any fall.

Working with ladders is *not* forbidden under the Regulations: in many instances, ladders offer a sensible, practical and safe way of working. But employers must follow the avoid/prevent/minimise procedure and think hard about the equipment and the manner in which the tasks are to be performed:

- Is the ladder properly maintained?
- Is the ground suitable for work from a ladder? Is the ground level and flat?
- Has the person doing the work been trained?

Working at height can be dangerous, regardless of the steps taken by an employer to mitigate risk. However, the HSE recognises that this work can be necessary and seeks to give sensible and practical [guidance](#) to ensure that those performing tasks at height are safe. *Compliance with the Regulations is mandatory and employers must take their responsibilities seriously*.

The British Safety Council publishes a useful [guide](#) to Working at Height.

[Source: Farrer & Co – 7 September]

SCOTLAND

Making churches more energy efficient

For information

Scottish Minister for Business, Innovation and Energy Paul Wheelhouse MSP has responded to a [written question](#) by Gordon Lindhurst MSP (*Con, Lothian*) asking what support the Scottish Government provides for churches to make their buildings more energy-efficient:

“Paul Wheelhouse: The Scottish Government is committed to supporting organisations across Scotland to improve the energy efficiency of their buildings. We provide support to churches and other organisations to achieve this through three main sources.

Firstly, Resource Efficient Scotland (RES) offers an Advice and Support Service which, between April 2013 - 2016, delivered one-to-one support to over 2,300 organisations and identified a potential £39 million in annual cost savings and an estimated 2,820 GWh of lifetime energy savings. We also provide organisations with loans of up to £100,000 for the installation of resource efficiency measures and renewable energy technologies through the RES SME Loans Scheme. The scheme has financed over 800 projects since 2008, resulting in estimated heat and electricity energy savings of 319 GWh and financial savings of over £35 million. Further information can be obtained [here](#), or by phoning 0808 808 2268.

Secondly, the Climate Challenge Fund supports communities across Scotland to take action on climate change and make the move to low carbon living. This includes energy efficiency renovations to community buildings such as churches and church halls, alongside community engagement projects to reduce emissions. Since 2008, the Scottish Government has made 986 awards valued at £85.8 million to 622 communities. More information is available [here](#).

Thirdly, the Scottish Government's Communities and Renewable Energy Scheme offers advice and funding to support a range of organisations, including charities and third sector organisations, to develop renewable energy projects. Further information and contact details can be found [here](#). Churches may also wish to contact the Green Network for Business, which consists of organisations who have implemented resource efficiency or renewables measures and are open to visits and contact from others who are considering such action. Network members can be found [here](#).”

[Source: Scottish Parliament – 30 August]

TAXATION

Autumn Budget

For information

The Chancellor has announced that the Autumn Budget will be presented to the Commons on **22 November** – St Cecilia's Day.

[Source: HM Treasury – 12 September]