

# CLAS CIRCULAR

## 2017/28 (12 December 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

### Charitable fundraising websites - Westminster Hall debate

For information

Mary Robinson MP (*Con, Cheadle*) secured a [Westminster Hall debate](#) on 28 November 2017 to consider charitable fundraising websites and associated charges.

She noted in particular that traditional means of donation, such as cheques or bank transfers, had become less frequent and charities had increasingly moved to using charitable websites and online platforms. This new way of raising funds came at a cost, however, as "most online giving platforms charge charities an administration or transaction fee for processing each donation". She criticised JustGiving, where £25,000 of a donation of £400,000 for Grenfell survivors was taken in processing fees.

Minister for Civil Society Tracey Crouch agreed that "fundraising must be undertaken responsibly by all if public trust is to be maintained." She also noted that the Fundraising Regulator had taken major steps to strengthen regulation and ensure that the public were protected from poor practices. She suggested that effective self-regulation rather than Government intervention could meet the public's expectations. The Fundraising Regulator and the Charity Commission had further confirmed their commitment to transparency on fees and charges and had agreed to disseminate clear and consistent public advice.

[Source: House of Commons – 28 November]

### Charity Commission publishes new safeguarding strategy

For information **and possibly for action**

The Charity Commission has published a new [safeguarding strategy](#), highlighting it as a key governance priority for all charities. It has also noted that safeguarding goes beyond protecting groups traditionally considered to be vulnerable – namely, children and adults at risk – to ensuring that *no one who comes into contact with a charity* suffers distress or harm.

The new strategy is clear that safeguarding covers preventing physical abuse but also means protecting people from harm more generally, including neglect, emotional abuse, exploitation, radicalisation, and the consequences of the misuse of personal data.

Where a charity funds other organisations, such as overseas partners, that work with children or adults at risk, its trustees should carry out appropriate due diligence so that they can be confident that their partner has in place appropriate safeguarding policies and procedures. The Commission has also reminded trustees that *they remain ultimately responsible for safeguarding*, even if some aspects of it are delegated to staff.

[Source: Charity Commission – 6 December]

### Responses to Charity Commission Annual Return consultation

For information

*Civil Society* [reports](#) that the charity sector as a whole has expressed concern that the Charity Commission's proposals for its 2018 Annual Return could produce a "significant administrative burden" and questioned its reasons for wanting more information. The Commission says that it has received 271 responses to [its consultation](#) and has engaged with a further 70 charities as part of targeted user-testing of the new system.

NCVO and Acevo both questioned the need for charities to submit information in their Annual Return that is already in the public domain in the form of Trustees' Annual Reports and Accounts and suggested that their members did not trust the Commission's reasons for seeking the information. The Charity Finance Group said that feedback from its members suggested that the proposed new questions would make the Annual Return much more burdensome for charities, particularly for those that have more complex financial structures, such as those that work overseas or deliver public services.

The Commission intends to publish a full analysis of consultation responses before the end of February 2018; it expects to make the new annual return available during the first half of 2018.

**Comment:** CLAS duly responded to the consultation. We were doubtful about the need for some of the proposed new questions; and we also emphasised the need for a period of stability once the questions to be included in AR18 had been decided.

But perhaps the proposal that caused us most disquiet was that all trustees should provide the Commission with an e-mail address. Nowhere in current charity law is an e-mail address a necessary precondition to service as a charity trustee. What about those trustees who either

prefer not to use IT or simply cannot get the hang of it? According to the Office for National Statistics, about 9 per cent of the population does not use computers: are they to be excluded?

[Source: *Civil Society* – 27 November]

## EMPLOYMENT

### Employment status and holiday pay

For information

In *Conley King v The Sash Window Workshop Ltd and Richard Dollar* (C-214/16) the Court of Justice of the EU has [concluded](#) that where an individual has been mis-categorised as self-employed instead of as a worker, then the associated holiday pay compensation must cover loss for all holiday, untaken or unpaid, over the whole of the engagement. International law firm McDermott Will & Emery have published a helpful [blog post](#) on the case and its potential repercussions.

As previously reported, Mr King worked for The Sash Window Workshop ('SWWL') on the basis of a 'self-employed commission-only contract' from 1999 until he retired in 2012. Under that contract, Mr King was paid on a commission-only basis. When he took annual leave, it was unpaid. Upon termination of his employment relationship, Mr King sought to recover payment for his annual leave for the entire period of his engagement. SWWL rejected the claim made by Mr King who therefore made a claim to the Employment Tribunal.

At the conclusion of those proceedings, the Employment Tribunal found, crucially, that Mr King was a 'worker' within the meaning of the UK legislation transposing the Working Time Directive and that he was entitled to payment in lieu of leave.

The CJEU found that Mr King had been prevented from taking holiday because SWWL had denied him the right to take it. It would be inequitable to allow it to benefit from that wrong. As a result, Mr King's right to paid leave had continued to accrue and was carried over until he could exercise the right to take paid holiday, or until the termination of his engagement.

Where such a situation arises because of sickness, the Court of Justice has previously held that national law may limit the period during which holiday accrues. However, in Mr King's case, which did not involve illness, the putative employer financially benefitted from depriving him of the right to paid leave. It did not matter that SWWL genuinely thought that Mr King was self-employed. As such, an employer which does not allow a worker to take paid leave "must bear the consequences". There should be no restriction on the carry-over of holiday where the employer has been unjustly enriched to the detriment of the worker.

The McDermott Will & Emery blog post also notes some significant results of this ruling, namely that if an organisation engages any self-employed contractor who is really a worker, then there is the potential for a claim like Mr King's to be made. Even if an organisation does pay for holiday, but isn't paying the proper amount, then it should also take note of the CJEU's

focus on the employer's culpability. If the employer has unjustly enriched itself, then it should not get the benefit of any restriction on the amount of compensation payable.

[Source: CJEU & McDermott Will & Emery – 29 November]

## FAITH & SOCIETY

### Cohabitation, unregistered weddings and opposite-sex civil partnerships

For information

The issues of rights for cohabiting couples, no-fault divorce, unregistered weddings and the possibility of opposite-sex civil partnerships have been very much in the news. The number of unmarried couples living together has more than doubled in recent years, from 1.5 million in 1996 to 3.3 million in 2017, and the President of the Supreme Court, Lady Hale, has recently voiced support for the introduction of no-fault divorce in England and Wales and for new legal rights for unmarried couples. Resolution (formerly known as the Solicitors Family Law Association) recently published the results of a ComRes survey which found, among other things, that two-thirds of people in cohabiting relationships are unaware that there is no such thing as “common-law marriage” in England and Wales. (Not, it should be said, for want of family lawyers pointing out that fact *ad nauseam*.)

Coincidentally, in *Smith v Lancashire Teaching Hospitals NHS Trust & Ors* [\[2017\] EWCA Civ 1916](#), the Court of Appeal heard a challenge to the current regime of bereavement damages under section 1A of the Fatal Accidents Act 1976 and held that the unmarried cohabiting partner of a man who had died in a fatal accident was entitled to damages. Ms Smith had argued that the refusal to give her damages breached Article 8 ECHR (respect for private and family life): the Court of Appeal rejected the counter-argument that “family life” ceased to exist on the death of one of the cohabitants.

As to unregistered weddings, a Channel 4 documentary, *The Truth About Muslim Marriage*, looked at the incidence of unregistered *nikah* marriages in the Muslim community and, in effect, called for the reform of marriage law in England and Wales along the lines of the law in Scotland and Northern Ireland: registering celebrants rather than buildings. The conclusions of the programme were by no means unchallenged, but there is certainly evidence that some couples have married in what they thought was a ceremony valid in secular law only to find later on that their marriage had not been registered.

Finally, there were press reports – though how accurate, who knows? – that the Government is inclined to support Tim Loughton’s forthcoming private Member’s bill in the Commons which, *inter alia*, would introduce opposite-sex civil partnerships in England and Wales.

[Source: CLAS Summary – 7 December]

**Faith leaders give evidence on Citizenship and Civic Engagement**

For information

Giving evidence to the House of [Lords Citizenship and Civic Engagement Committee](#), Chief Rabbi Ephraim Mirvis and Cardinal Vincent Nichols talked about the religious aspect of civic engagement, looking in particular at what faith communities contribute to society and at the meaning of "fundamental British values".

On the current state of civic engagement in the UK, the Chief Rabbi suggested that a new societal divide was being created, outside of traditional political divisions, by a "them-and-us mindset". This led people to choose between individual and universal values, which was unhealthy for society. Cardinal Nichols suggested that civic engagement was seen at its best during emergencies, but that divides were exacerbated when people felt that their contribution was not wanted (for example, in the labour market). He said that the "level of long-term volunteering was not great" and that the country lacked "an over-arching narrative" of what it meant "to be part of this society".

Cardinal Nichols went on to highlight the effective partnerships maintained between the Roman Catholic Church and the Government, particularly in relation to education, but noted the fact that many Catholic charities avoided Government funding in order better to promote the ethos of their work without the issue of conflicting values. Both speakers agreed that religion was an "enormous resource" for society and that it should be acknowledged as such.

When asked whether the original list of "fundamental British values" that came from Ofsted needed to be expanded, and how a consensus could be achieved for a new list, neither suggested that the list needed expanding, though Cardinal Nicholas noted that he would like to see freedom of religious expression included, rather than simple religious tolerance. The Chief Rabbi suggested that, rather than expanding the list, it would be better for it to include a small number of headline values which were easy for people to understand and would allow them to come to a deeper understanding on their own. Neither speaker had any issue with the term "fundamental", so long as it did not lead to "fundamentalism", and both felt that including the term "British" helped maintain an important link to the country's history and way of life.

[Source: CLAS Summary – 7 December]

## ODDS & ENDS

### ICO Guide to the GDPR published

**For information and possibly for action**

The Information Commissioner's Office (ICO) has published its new "[Guide to the General Data Protection Regulation](#)", which includes expanded sections on using consent to process personal data, contracts and possible liabilities.

The Guide to the GDPR explains the provisions of the GDPR to help organisations comply with its requirements. It is for those who have day-to-day responsibility for data protection. The ICO describes the Guide as a "living" document, which is still being expanded in key areas.

It replaces the "Overview of GDPR" document and includes links to relevant sections of the GDPR itself, to other ICO guidance and to guidance produced by the EU's Article 29 Working Party. The Working Party includes representatives of the data protection authorities from each EU member state, and the ICO is the UK's representative. The new Guide also complements the ICO's previously published documents - the [GDPR: 12 Steps to take now](#) and the [Getting ready for GDPR checklist](#).

[Source: ICO – 27 November]

## PROPERTY & PLANNING

### Government to consult on Housing Ombudsman

For information

Member Churches who are involved with the provision of social housing may be interested in the Government's [announcement](#) that it will look at a number of options to improve consumer redress across the housing sector. Speaking to an audience of housing professionals in London, Secretary of State for Communities and Local Government Sajid Javid set out the Department's further plans for "fixing the broken housing market".

In his speech, the Communities Secretary included reference to tenants of charities, whose current regulator in the case of any property issues is the Charity Commission. He noted that housing was a highly specialised area and that it fell well outside the Commission's usual remit, leaving both the Commission and charity tenants unable to properly deal with complaints.

Because of this, and a number of other loopholes in the system, the Government has announced that it will be consulting on the creation of a new Housing Ombudsman as part of its plans to reform the leasehold market and tackle abuses. The Housing Ombudsman would be a single, transparent and accountable body with a remit covering the whole of the housing sector – including both private and social landlords and the providers of new-build homes.

[Source: DCLG – 29 November]

## TAXATION

### Spring Statement 2018

For information

Chancellor of the Exchequer Philip Hammond has announced that the Government will publish next year's Spring Statement on **Tuesday 13 March 2017**. The Government has also published [guidance](#) on the new Budget timetable and the tax policy making process.

[Source: HM Treasury – 6 December]

### Welsh tax devolution

For information

HMRC has published a [reminder](#) of the changes due to take place, with the Welsh Government to become responsible for Stamp Duty Land Tax, Landfill Tax and rates of Income Tax.

From 1 April 2018, **land transaction tax** (LTT) will replace Stamp Duty Land Tax (SDLT). LTT will be collected by the [Welsh Revenue Authority](#), which has published relevant rates and bands [here](#). HMRC will not accept SDLT returns for land transactions in Wales with an effective date of transaction on or after 1 April 2018. Those planning to purchase land or property in Wales on or after 1 April 2018 should ask their conveyancer or solicitor about arrangements for LTT.

From 1 April 2018, **landfill disposals tax** will replace landfill tax in Wales. This will be administered by the Welsh Revenue Authority and will be payable by landfill operators in Wales.

From 6 April 2019, **Welsh rates of income tax** will be introduced and revenue from the Welsh rates of income tax will go to the Welsh Government, though it will continue to be collected by HMRC. Individuals should make sure that HMRC holds the correct address for them.

[Source: HMRC – 8 December]