

CLAS CIRCULAR

2018/05 (21 February 2018)

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.

| | |
|--|-----------|
| CHARITIES & CHARITY LAW | 2 |
| Charity Commission and Oxfam | 2 |
| Draft guidance for charities working with non-charitable organisations | 3 |
| Guidance for charities working internationally | 4 |
| EMPLOYMENT | 5 |
| Employment of church workers - February 2018..... | 5 |
| FUNDING | 6 |
| Code of Fundraising Practice updated | 6 |
| PROPERTY & PLANNING | 7 |
| Using church spires to increase digital connectivity | 7 |
| SAFEGUARDING | 9 |
| The charity regulators on safeguarding..... | 9 |
| WALES | 12 |
| Planning framework review | 12 |

CHARITIES & CHARITY LAW

Charity Commission and Oxfam

For information

The Charity Commission has published a [formal statement](#) in response to concerns raised in the media regarding Oxfam. It has also subsequently [opened](#) a statutory investigation into the charity.

The Commission notes that in August 2011 Oxfam informed it about an ongoing internal investigation into allegations of misconduct by staff members involved in their Haiti programme. The report explained that, while the misconduct related to members of staff, it stated there had been no allegations, or evidence, of any abuse of beneficiaries, nor did it mention any crimes involving minors.

The Commission has written to Oxfam as a matter of urgency to establish greater clarity on the matter. This information will be considered as part of an [ongoing case](#) regarding the charity's approach to safeguarding.

This inquiry serves as a reminder to charities of how important it is that trustees create a culture within their charity that prioritises safeguarding, so that it is safe for those affected to come forward and report incidents and concerns with the assurance they will be handled sensitively and properly. The Commission is also reminding charities of the importance of engaging with the regulator frankly and openly. It notes that it must fully understand any allegations that have been made against a charity or its trustees, to ensure that it can have confidence in the charity's approach to safeguarding.

The House of Commons Digital, Culture, Media and Sport Committee has also opened an [inquiry](#) into the Charity Commission and Oxfam. The inquiry will hold its first oral evidence session on 20 February 2018.

[Source: Charity Commission – 10 February]

Draft guidance for charities working with non-charitable organisations

For information and possibly for action

The Charity Commission has published [draft guidance](#) for charities on properly managing their relationships with connected non-charitable organisations. Alongside the guidance are an infographic summarising basic duties and principles and a checklist of actions and decisions. Each of these documents is open for consultation until **15 May 2018**; feedback should be submitted using the [online survey](#).

The new guidance for trustees is closely based on their core duties as set out in the Commission's existing guidance. It notes in particular that, while it is common for charities to have close connections with non-charities (for example, trading subsidiaries or charities established by commercial businesses), and that this is not a concern in principle, *trustees must manage these relationships properly in order to fulfil their legal duties and maintain public trust and confidence*. It is vital that the public be able easily to distinguish between the charity and the connected non-charitable organisation, particularly where they share a very similar name, for example.

The draft guidance reminds charities that trustees must, among other things:

- actively manage their relationship with any non-charitable organisation in compliance with their legal duties and the law
- preserve the charity's separation and independence from the non-charitable organisation
- manage the risks arising from the charity's association and/or work with the non-charitable organisation
- make decisions in accordance with their legal duties
- identify and avoid conflicts of interests and loyalty in respect of the non-charitable organisation when making decisions
- be accountable about the relationship, for example by complying with all relevant accounting and reporting requirements

The Commission has also clarified that this guidance is for charities that have connections with one or more non-charitable organisation; that is, where the relationship has been created or is being maintained through deliberately having one or more of the following:

- the same people (trustees/directors) involved at the charity and the non-charitable organisation
- shared names, branding, websites, and/or premises
- regular funding flowing from one organisation to the other
- shared aims or purposes
- shared staff

It is not aimed at charities that work together with other organisations to which they have no formal connection.

[Source: Charity Commission – 13 February]

Guidance for charities working internationally

For information **and possibly for action**

The Charity Commission has published several pieces of guidance that are of particular importance to charities that operate internationally. This includes the Compliance Toolkit.

The Commission now hopes to assess whether the guidance meets the needs of charities, is easy to follow and, in particular, whether it helps charities working in high-risk areas or carrying out higher risk activities. It is encouraging charities that use this guidance to complete a short [survey](#) before **25 March 2018**.

[Source: Charity Commission – 9 February]

EMPLOYMENT

Employment of church workers - February 2018

For information

CLAS has published an updated version of its [note on the employment of church workers](#), which is intended as a convenient summary of the current case-law. The document now includes an Appendix detailing the changes made at this updating.

It cannot be emphasised too strongly that employment issues are extremely complex and can only be judged case by case, on the facts.

[Source: CLAS – 19 February]

FUNDING

Code of Fundraising Practice updated

For information

The Fundraising Regulator has [published](#) changes to the Code of Fundraising Practice, to bring rules into line with the General Data Protection Regulation (GDPR), which comes into force from 25 May 2018.

The updated guidance contains three new sections: on personal information, fundraising and content of fundraising communications and direct mail. The changes are intended:

- to ensure that the terminology used in both the Code and GDPR is consistent;
- to emphasise that any activity involving personal data (including wealth screening, data matching, teleappealing and reuse of public information) falls under processing and that data protection rules apply;
- to add and expand definitions for key terms, including “processing”, “consent” and “legitimate interest”; and
- to increase the number of links from the Code to existing guidance by the ICO, the Fundraising Regulator and other relevant bodies.

The revisions also highlight those areas that may be subject to further change once the Data Protection Bill, which has passed through the House of Lords and is due to have its second reading in the Commons, is enacted and once the ICO reviews its Privacy and Electronic Communications Regulations (PECR).

[Source: Fundraising Regulator – 15 February]

PROPERTY & PLANNING

Using church spires to increase digital connectivity

For information

The Church of England has signed an [accord](#) with the Department for Digital, Culture, Media and Sport (DCMS) setting out how churches and other church properties could host new digital infrastructure. The accord notes that:

“The [National Church Institutions] and HMG recognise that a modern telecommunications infrastructure is vital for a vibrant economy and inclusive society. By working together with mobile and broadband providers, we believe that we can help deliver improved connectivity, particularly in rural areas, and thereby bring about important practical benefits to congregations, local communities, local businesses and visitors alike.

We recognise that it may be possible to use some Church of England churches and other Church-held buildings or land to host digital infrastructure. This Accord recognises that, consistent with the long-standing role played by church buildings as a focus of community cohesion and spirit, by encouraging the wider use of such assets we can help improve connectivity and its consequential benefits to those areas where coverage does not currently exist, or where it is of poorer quality.”

However, it also states that:

“Individual parishes, and others with responsibility for Church buildings and land, will need to consider all the factors concerned with using Church land or buildings to host digital connectivity infrastructure. This Accord encourages them to do so within the context of their own priorities for mission, relevant planning controls, and their legal obligations both as an organisation and relating to the care of Church property, and appropriate guidance provided by the Church Buildings Council and Historic England. This recognises that the Church comprises a number of autonomous entities and office holders with different legal obligations and that the property may also be subject to third party agreements. Such entities may also have their own aspirations for the use and development of their properties in support of the Church’s mission. Similarly, dioceses will, through their Diocesan Advisory Committees, need to balance the identified benefits of telecoms provision in the particular circumstances of the parish with other relevant factors.”

Also of relevance (and not only to members of the Church of England) is advice published in September 2017 by Historic England (HE) on what it needs to know in order to assess a proposal to install telecommunications equipment in a listed place of worship. 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. *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 covers:

- *The information that Historic England requires in order to offer relevant advice.*
- *Issues that will be of particular concern.*
- *The impact of the installation on the outside of the building.*
- *The impacts of the installation inside the building.*
- *Access to the equipment and the rest of the building.*
- *Safety issues.*
- *Possible archaeological implications.*

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

[Source: DCMS – 18 February]

SAFEGUARDING

The charity regulators on safeguarding

For information and possibly for action

England and Wales

The Charity Commission for England and Wales has [announced](#) various measures to help ensure that charities learn the wider lessons from recent safeguarding revelations involving Oxfam and other charities and to strengthen public trust and confidence the sector, including a second summit on safeguarding for charities and umbrella bodies working in the UK, to be co-chaired by the Minister for Civil Society, Tracey Crouch MP.

The Commission is establishing a taskforce, including staff from across the Commission, to deal with the increased volume of safeguarding serious incident reports which it is already experiencing since the Oxfam story first appeared. The team will also undertake proactive work to ensure prompt and full reporting of serious safeguarding incidents and give advice to charities reporting safeguarding incidents on appropriate actions. In addition, the team will undertake what the Commission describes as a 'deep dive' of existing serious incident reporting records to ensure that any gaps in full and frank disclosure are identified and that necessary follow up actions, for charities or for the Commission, have been completed.

The Commission says that it will intervene in serious cases where it is concerned that trustees are not fulfilling their legal duties. It is also reissuing its previous alert to all charities emphasising the importance of full and frank disclosure.

The Commission also intends to use independent experts on safeguarding, both in the international context and in the UK, to advise and support the work of the taskforce, the investigations team leading the Oxfam inquiry, and the two charity summits.

The Commission says that it continues to work closely with other government departments, including DfID, law enforcement, the Disclosure and Barring Service, and other agencies with specific safeguarding responsibilities such as the Care Quality Commission and social services, to ensure that each accesses the right expertise and shares information appropriately in order to strengthen the work across government to identify and respond to concerns about safeguarding in charities.

The Chief Executive of the Charity Commission, Helen Stephenson, has also said she wants the organisation to review the way in which it communicates with informants who raise serious regulatory concerns that result in regulatory action.

Key recent work on safeguarding by the Commission includes:

- [Annual report on compliance case work](#) (February 2018) highlighting the growing case work involving safeguarding issues and reminding charities to prioritise safeguarding in their charities.
- [Safeguarding strategy](#) (updated December 2017) making it clear that safeguarding is a key governance priority for *all* charities, not just those working with groups traditionally considered vulnerable and stating that charities must “provide a safe and trusted environment which safeguards anyone who comes into contact with it including beneficiaries, staff and volunteers”.
- [Safeguarding alert](#) (December 2017) warning charities to report incidents now if they have failed to in the past and to review their safeguarding policy and procedures if they have not done so in the last 12 months.
- [Safeguarding alert](#) (October 2017) to newly-registered veterans’ charities, following a proactive case-working project which highlighted concerns around safeguarding in some newly-registered military charities.
- [Guidance on reporting serious incidents](#) (updated September 2017) which followed a consultation with charities and highlights the Commission concerns that charities continue to underreport incidents.

Northern Ireland

The Charity Commission for Northern Ireland (CCNI) has issued an [alert](#) to trustees of all charities which have indicated that they work with children and vulnerable adults, reminding them that they are required to have appropriate policies in place for working with vulnerable beneficiaries, and robust controls to ensure these policies are effective. Trustees must inform the CCNI annually through their monitoring return that they are satisfied that effective safeguarding is in place.

The CCNI has also noted that, for charity trustees working overseas, there may be greater risks in relation to the protection of vulnerable beneficiaries. Trustees have been advised to revisit their policies to ensure they are sufficient, and that controls in place are effective. Charity trustees must be aware of the reporting requirements to the relevant regulator and have procedures in place for employees and volunteers to follow.

If a serious incident occurs involving vulnerable beneficiaries, the CCNI expects charity trustees to [report](#) it immediately, describing what has happened and explaining how it is being managed. Incidents should be reported to the CCNI even if the trustees have already reported them to the Police Service of Northern Ireland, donors or another regulator.

Scotland

The Office of the Scottish Charity Regulator (OSCR) has published a similar [notice](#), regarding safeguarding and notifiable events. Because of the importance of these two topics, the OSCR is encouraging charity trustees to make sure that these topics are Agenda Items at their next meeting. It has suggested a list of key actions for trustees to take:

- Know what you have to do – trustees must follow charity law but there may be other specific statutory duties because of the type of work your charity does.
- Assess your safeguarding risks and address them where necessary.
- Be confident that the steps you put in place are relevant to the size and work of your charity.
- Make sure your charity's policies and procedures are effectively applied in practice throughout the organisation and you are confident that they will continue to be followed in the future.
- Review your safeguarding policies and procedures at least once every 12 months. If there are gaps, make sure that any new policies or procedures are in line with the charity's purposes and the law.
- Encourage a safe environment so that volunteers, staff and beneficiaries feel that they can speak up when they think something is going wrong.
- Be decisive with any action you have to take – procrastinating can be viewed as complacency.
- Be transparent when incidents do occur and learn if things go wrong.
- Ensure that serious incidents are reported to OSCR and other relevant bodies.

[Source: Charity Commission – 17 February; CCNI – 13 February; OSCR – 14 February]

WALES

Planning framework review

For information **and possibly for action**

The Welsh Government has announced review of *Planning Policy Wales* (PPW), which since 2002 has been the single national land-use planning policy document for Wales. Legislative changes brought about by the Planning (Wales) Act, Well-being of Future Generations (Wales) Act and Environment (Wales) Act have meant that the Welsh Government feels a need to ensure that PPW remains up to date and assist planners, at all levels and sectors.

The Government has extensively reworked PPW to put placemaking at the heart of planning policy in a number of key areas, including housing, energy, the environment and transport and is consulting on the revision. The consultation version of Edition 10 of PPW is available [here](#). The consultation ends on **18 May**.

It should be noted that this is a separate exercise from the Law Commission's consultation on planning law which ends on **1 March**.

[Source: Cytûn – 16 February]