

## **CLAS CIRCULAR 2018/21 (16 October 2018)**

### **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

### Charity Commission: reliability of charity financial information

For information

In a [review](#) of the accounts of a sample of charities, the Charity Commission found that 38 per cent of charities with annual incomes below £25,000 were submitting inaccurate data: for charities with incomes over £25,000, income and expenditure figures were 90 per cent accurate.

Larger charities with incomes over £500,000 must provide more information; and in this sample the Commission found a 95 per cent accuracy rate for their balance sheet figures – but income and expenditure analyses were still just over 80 per cent accurate.

The Commission concludes that many charities simply give the job of completing their annual return figures to someone with insufficient knowledge of their organisation's accounts – which results in errors.

[Source: Charity Commission – 26 September]

## EMPLOYMENT

### Modern slavery

For information

In the UK alone it is estimated that modern slavery costs up to £4.3 billion a year. The UK introduced the Modern Slavery Act in 2015, the first of its kind anywhere. It was announced in July 2018 that the Government has commissioned an independent review of the act to ensure this legislation remains world leading as this crime evolves.

The UK has now [developed](#), alongside the US, Canada, New Zealand and Australia, principles for nations to adopt to tackle modern slavery in global supply chains. By working together, the Government believes that the UK and its partners can use their \$600 billion of purchasing power as a lever to prevent forced labour in both the public and private sector. Announced at the UN General Assembly, the UK is encouraging other countries to adopt the four key principles:

1. Governments should take steps to prevent and address human trafficking in government procurement practices.
2. Governments should encourage the private sector to prevent and address human trafficking in its supply chains.
3. Governments should advance responsible recruitment policies and practices.
4. Governments should strive for harmonisation.

[Source: Home Office – 26 September]

### Modern slavery Debate in Westminster

For information

There was a well-attended debate in Westminster Hall with the motion [‘this House has considered tackling modern-day slavery’](#) initiated by Gareth Snell, MP for Stoke-on-Trent Central. The discussion covered many of the organisations and individuals who have championed the cause of ending modern day slavery within the United Kingdom. Indeed Maggie Throup, MP for Erewash, was quick to praise the work of the former Bishop of Derby Alastair Redfern who spoke on this issue at the CLAS meeting in September.

The Minister for Women, Victoria Atkins, was questioned over the continued vacancy of the position of Independent Anti-Slavery Commissioner following the resignation of Kevin Hyland in May. Assurances were given that his successor is being sought.

The debate also discussed the [Modern Slavery \(Victim Support\) Bill](#), due for its second reading in the Commons on 23 November this year, with Mr Snell and others urging the Government to adopt the Bill.

In related news, a drug dealer [has been convicted](#) under the Modern Slavery Act in the first case of its kind. Zakaria Mohammed, 21, trafficked teenagers as part of the so-called 'county lines' networks. Charity groups have told the BBC that although this is landmark case the authorities must be more diligent in finding those responsible as the problem of child trafficking is far larger than many of us are aware.

[Source: Westminster Hall Debate – 09 October]

### Race Disparity Audit

For information

The Government has [announced](#) that it intends to take further action to make employers adopt fair employment practices. In particular this is to be focussed on ensuring that those from a minority background do as well as they are able in terms of recruitment and progression. This is to further develop the Government's response to the [Race Disparity Audit report](#) published in May.

Four specific plans of action have been put forward:

- The Government is inviting employers to sign up to a Race at Work Charter which details effective practices to support fairness at work.
- It is also setting new ambitions in key public sectors to increase the proportion of senior leaders who come from an ethnic minority background.
- The Government is taking action, through public procurement, to encourage its suppliers to adopt fair employment practices.
- It is consulting on how mandatory ethnicity pay reporting can best drive action without placing undue burdens on business.

A [consultation on ethnicity pay reporting](#) has been published and is due to close in January 2019. This may mean that businesses are required to publish their ethnicity pay gap.

[Source: Written Statement HLWS963 – 11 October]

## FAITH & SOCIETY

### Civil partnership

For information

**England & Wales:** During the Conservative Party conference, the Prime Minister announced that civil partnership will be extended to opposite sex couples. The Government has evidently concluded that the simplest way to comply with the judgment in *R (Steinfeld and Keidan) v Secretary of State for International Development* [\[2018\] UKSC 32](#) is to concede the point. The BBC subsequently [picked up](#) the story.

**Scotland:** Meanwhile, the Scottish Government is [consulting](#) on the future of civil partnership in Scotland. The consultation document notes the declaration in *Steinfeld* that the Civil Partnership Act 2004 is incompatible with the ECHR to the extent that it does not permit an opposite sex couple to enter into one; and because Scottish ministers must not act in a way that contravenes Convention Rights, the Government has concluded that legislation is needed to deal with the incompatibility identified by the Supreme Court.

Ministers are seeking views on two options: either to close civil partnership to new relationships from a specific date in the future or to make civil partnership available to opposite sex couples. In the Government's view, either option would be effective in ending the discrimination in the current law.

The consultation document notes [2.06] that matters relating to civil partnership, marriage and cohabitation are devolved and that the Scottish Parliament can make provision on who can marry or enter a civil partnership, the formation and ending of a civil partnership or marriage and the rights and responsibilities of spouses, civil partners and cohabitants in devolved areas (eg, on financial provision when the relationship comes to an end); however, some matters, such as most issues in relation to pensions and benefits, are reserved to the United Kingdom Parliament [2.07].

The Scottish consultation closes on **21 December**, following which, the Scottish Government intends to legislate, either by introducing a Bill into the Scottish Parliament, by making an Order under the Convention Rights (Compliance) (Scotland) Act 2001 or by way of a Bill at Westminster with a corresponding legislative consent motion at Holyrood [1.05].

Presumably, the intention of option 3 is to deal with pensions and benefits issues as part of a single package; moreover, the Prime Minister's intention might well be to amend the 2004 Act across the board so as to bring the law in Great Britain into line with the law in Northern Ireland after *Smyth*.

[Source: Law & Religion UK – 2 October]

## Government publishes updated Hate Crime Action Plan

For information

Home Secretary Sajid Javid and Housing, Communities and Local Government Secretary James Brokenshire have published the Government's [updated Hate Crime Action Plan](#).

The documents set out the Government's plan of actions to deal with hate crime until 2020. The action plan applies to England and Wales only.

It outlines actions the government will take to:

- prevent hate crime
- respond to hate crime
- increase reporting of hate crimes
- improve support for victims
- build an understanding of hate crime

The updated action plan is accompanied by a [thematic review of the current evidence](#) as well as an [oversight of the work](#), both completed and in progress, carried out as part of the 2016-2020 action plan.

Though racially motivated hate crimes made up 78% of recorded cases, abuse on the grounds of religion still accounted for around 7%. Figures suggest an increase in reported hate crimes although the report argues that this is in part due to better reporting and a series of campaigns, from groups such as [Tell MAMA](#), encouraging victims to come forward. It does recognise, however, that spikes in reports are evident around certain 'trigger events' such as the EU referendum and terror attacks.

[Source: Home Office – 16 October]

## FUNDING

### Gift Aid, coffee mornings and bake sales

For information

A [press release](#) from HM Treasury highlights steps that charities should take to ensure that fundraising at coffee mornings and bake sales can be eligible for Gift Aid.

Gift Aid can be claimed on charitable donations from taxpayers, *but not when the money is given in exchange for goods*. It is feared that many charity bake sales could be missing the opportunity to claim Gift Aid because they charge directly for the items they are selling.

On the day of Macmillan's Coffee Morning, which last year raised over £27 million to help support people living with cancer, the Exchequer Secretary to the Treasury, Robert Jenrick, said that he was clarifying the Gift Aid rules for anyone running a coffee morning:

“If you ask people to make a donation and offer them a coffee or cake, you could be making 25 per cent more on the funds you raise.”

[Source: HM Treasury – 1 October]

## NORTHERN IRELAND

### CCNI: proposed action for charities that have failed basic compliance checks

For information **and possibly for action**

CCNI is seeking views on the action that it proposes to take when the accounts and reports of registered charities fail basic compliance testing on annual monitoring returns (AMRs) submitted by registered charities under the annual reporting programme. The aim is to ensure that the information submitted complies with the fundamental requirements of charity legislation.

When an AMR fails a basic compliance check, the Commission contacts the charity trustees to advise where they have not complied with their legal obligations and to provide regulatory advice which must be complied with.

The Commission carries out basic compliance checks on a proportion of AMRs submitted. Not all returns are checked; as this is a manual check, the proportion of checks conducted is reliant on resources.

In order to improve compliance levels and keep the public informed, the Commission proposes indicating on a charity's register entry whether it has been subject to a basic compliance check. Any charity which fails a basic compliance check will be provided with guidance by the Commission. Where a charity fails to comply with the regulatory guidance provided, the Commission proposes to change the entry on the register of charities to read: **Failed**.

The consultation is seeking views on that proposal and ends on **21 November**. Further details [here](#).

[Source: CCNI – 2 October]

## ODDS & ENDS

### *Ashers Baking*

For information

The Supreme Court handed down judgment in *Lee v Ashers Baking Company Ltd & Ors (Northern Ireland)* [\[2018\] UKSC 49](#).

As readers will know, to mark the International Day Against Homophobia and Transphobia in May 2014, Gareth Lee ordered a cake from Ashers Baking bearing the slogan "Support Gay Marriage" and a picture of the Sesame Street puppets Bert and Ernie. Ashers initially accepted his order but Mrs Karen McArthur subsequently telephoned him to say that his order could not be fulfilled because Ashers was "a Christian business and, in hindsight, she should not have taken the order": she apologised and refunded his money. Both Belfast County Court and the Northern Ireland Court of Appeal held that Ashers had discriminated directly against Mr Lee on grounds of sexual orientation by refusing to make the cake and, further, that the relevant Northern Ireland legislation was not incompatible with Articles 9, 10 or 14 ECHR.

Ashers Baking and the McArthurs appealed; their appeal was heard together with two associated references by the Attorney General for Northern Ireland on procedural devolution issues.

The Supreme Court's judgment, though unanimous, was in two parts: Lady Hale PSC gave judgment on the discrimination issue, while the judgment on the procedural/devolution issues was given by Lord Mance. What follows concentrates on the discrimination issue.

In the opinion of Lady Hale, the substantive question before the Court was

"whether it is unlawful discrimination, either on grounds of sexual orientation, or on grounds of religious belief or political opinion, for a bakery to refuse to supply a cake iced with the message 'support gay marriage' because of the sincere religious belief of its owners that gay marriage is inconsistent with Biblical teaching and therefore unacceptable to God. If the *prima facie* answer to either question is 'yes', then questions arise as to the rights of the bakery and its owners to freedom of religion and freedom of expression, under articles 9 and 10 of the European Convention on Human Rights, and what difference, if any, those rights might make to that *prima facie* answer." [1].

She decided that it was not, on several grounds:

- people of all sexual orientations supported gay marriage and that it was not a proxy for any particular sexual orientation [25];

- the message on the cake was not solely for the benefit gay or bisexual people: “It could also accrue to the benefit of the children, the parents, the families and friends of gay people who wished to show their commitment to one another in marriage...” [33];
- there had been no associative discrimination because “In a nutshell, the objection was to the message and not to any particular person or persons” [34]; and
- the less favourable treatment complained of “was afforded to the message, not to the man” and Ashers had been quite prepared to serve Mr Lee in other ways [47].

As to the issue of Convention rights, she noted that rights under Articles 9 and 10 might be limited or restricted in accordance with the law where the limitation was necessary in a democratic society and pursued a legitimate aim:

“The bakery could not refuse to provide a cake – or any other of their products – to Mr Lee because he was a gay man or because he supported gay marriage. *But that important fact does not amount to a justification for something completely different – obliging them to supply a cake iced with a message with which they profoundly disagreed.* In my view, they would be entitled to refuse to do that whatever the message conveyed by the icing on the cake – support for living in sin, support for a particular political party, support for a particular religious denomination.” [55: emphasis added].

Nor did she believe that the Fair Employment and Treatment (Northern Ireland) Order had to be read or given effect “in such a way as to compel providers of goods, facilities and services to express a message with which they disagree, unless justification is shown for doing so” [56].

Appeal allowed.

[Source: CLAS note – 11 October]

## TAXATION

### Autumn Budget 2018

For information

The Chancellor has announced – by Tweet – that the Budget will be presented on **Monday 29 October**.

[Source: HM Treasury – 26 September]

### Charities SORP (FRS 102) Update Bulletin

For information

A second [SORP update bulletin](#) has been published that keeps the SORP up to date with changes to UK-Irish accounting standards that come into effect from 1 January 2019. The update bulletin, detailing the amendments to the statement of recommended practices for charities preparing their accounts in accordance with the Financial Reporting Standard applicable in the UK and Republic of Ireland, has been published by the Charity Commission and OSCR.

It is important to note that changes to do with providing comparatives came into effect from the date the bulletin was published: **5 October 2018**. Full guides on downloading the SORPs, including one on [choosing the right SORP](#), can be found on the Charities' SORP [website](#).

[Source: Charities' SORP Committee – 8 October]

### HMRC and telephone compliance checks

For information

HMRC has updated its [guidance on genuine contact vs phishing scams](#) to include a new section entitled 'compliance interventions for midsized businesses, charities or public bodies'. This confirms that charities and other bodies may be genuinely contacted by HMRC via telephone regarding compliance checks.

The updated guidance also details measures that bodies can take to confirm that a call is genuine, such as asking the caller to send an e-mail confirming their identity and corroborating their address with the prescribed format. The e-mail address should have their name and end in @hmrc.gsi.gov.uk.

You can also call the relevant general enquiry helpline to check requests for:

- [VAT](#) for businesses;
- tax for [employers](#); and
- [Corporation Tax](#) for limited companies.

When you call, you will need to have one of the following:

- your VAT registration number;
- your employer reference; and
- your 10-digit Unique Tax Reference

Please note: when contacting you to arrange telephone interviews, HMRC may also ask for business records to be sent either by post or electronically by a secure platform.

[Source: HMRC – 3 October]

### **VAT: ten bear traps for the charity sector**

**For information**

*Charity Financials* has posted an extremely helpful article by Bill Lewis of BWB on [common mistakes the charities make with VAT](#). In short:

1. Wrongly attributing an income stream as grant funding when it is in fact a fee for the provision of services.
2. Because corporate donors rarely make a donation to a charity but, instead, usually require something in return such as recognition they are the donor using their corporate logo – which makes the payment liable to VAT: “This may not be a problem for the supporter, but if VAT is an issue to them consider separate payments of sponsorship subject to VAT and VAT free donations.”
3. VAT is due on supplies of services between the charity and its trading subsidiary, unless the two are in a VAT group.
4. Fundraising is only exempt from VAT provided it falls within the fundraising VAT exemption.

5. Education is not always VAT exempt.
6. The VAT exemption for certain medical services and education services only applies where the services themselves are delivered: supplies of agency staff are subject to VAT because the agency is providing people and not VAT exempt services.
7. VAT can only be recovered on costs to the extent the charity makes VAT taxable supplies.
8. The VAT zero rate on charity advertising costs only applies on advertising in general media: individual specific advertising is subject to VAT.
9. If a contract does not specifically say the price is inclusive of VAT, you can expect to be charged VAT on top unless the service falls within a VAT exemption.
10. Don't forget the VAT reverse charge.

***Well worth reading in full.***

[Source: *Charity Financials* / Bates Wells & Braithwaite – 4 October]