

CLAS CIRCULAR

2018/06 (2 March 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.

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CHARITIES & CHARITY LAW

Civil Society Strategy

For information **and possibly for action**

The Minister for Sport and Civil Society has launched a [public call for evidence](#) on the Government's new civil society strategy. The deadline for responses is **22 May**. The strategy will look at four themes intended to strengthen civil society further.

Our Civil Society

This section is about the big questions of **what civil society is, how it is working well and what needs to change to strengthen it further**. It also explores how public trust in civil society can be strengthened and how we can ensure a strong role and voice for civil society in developing government policy and practice.

- What are the strengths of civil society today? You might consider its mission and motivation, services for the public, difference to quality of life or economic and/or social impact.
- How can government help to increase the impact of civil society?
- How can public trust in civil society be built and maintained?
- How can civil society be supported to have a stronger role in shaping government policy now and/or in the future?
- We interpret civil society as inclusive of all those outside of the public sector, who share the mission of building a stronger society and improving lives, regardless of traditional sector boundaries such as charity or private and for profit or not. What are the advantages of using this interpretation in developing this Strategy?
- What are the disadvantages of using this interpretation in developing this Strategy?

People

This section explores how more people can be supported to play an active role in building a stronger society through social action – which includes anything from simple acts of neighbourliness to charitable giving, volunteering, community asset ownership, civic engagement or running groups or organisations with a social mission. This section includes **general questions** on how to enable more people to take action on issues that matter to them and questions on how, in particular, to enable more young people to participate.

Partnership

This section explores the best ways to work in partnership across sectors. The Government is particularly interested in unlocking the full potential of the private sector and public-sector institutions (including local government, town and parish councils) to work with civil society to create social good and have a positive impact across society. It includes general questions on working in partnership and particular questions on youth provision, the funding and financing environment, new investment models and responsible business.

Place

This section looks at how to enable service providers, voluntary and community organisations, businesses (including social enterprises) and public-sector institutions to work together to improve the places they care about: in particular, how to build stronger, more resilient communities and stronger local public services. It includes questions on devolution, localism, public services and public service mutuals.

There is a full list of detailed questions in the consultation document: the above is just a taster.

It is highly unlikely that CLAS will submit a response, but individual members may well wish to do so.

[Source: DCMS – 27 February]

EMPLOYMENT

Apprenticeship Levy

For information

From April 2017, charities or alternatively, entities connected to another charity or company with a collective annual pay bill of more than £3m have had to pay the Apprenticeship Levy.

The Charity Finance Group and Grant Thornton UK LLP have produced a helpful [Apprenticeship Levy Guide](#) with case-studies and context.

[Source: Charity Finance Group – 28 February]

FAITH & SOCIETY

Ecumenical Marriage Bill [*Lords*]

For information

The House of Lords has given a [second reading](#) to the [Ecumenical Marriage Bill, HL Bill 21 of 2017–19](#), introduced by Lord Deben. There is some useful background [here](#). The Bill would permit the Church of England (if it so wishes) to allow clergy from other denominations to conduct marriages in C of E churches. This would bring the position in to line with other permitted services, including communion services and funeral rites.

It should be noted that it is a convention in the Lords than Bills are given a second reading without division. Speaking in the second reading debate on behalf of the Church of England, the Bishop of Winchester expressed the Church's opposition to the Bill, who pointed out that

'There is a long-standing constitutional convention, with which noble Lords will be very familiar, that the Church of England makes its own legislation by synodical process. That legislation comes before Parliament for approval, having first been considered by the Ecclesiastical Committee. This Bill represents a departure from that convention.'

We suspect that the Bill is unlikely to make much further progress.

[Source: Lords *Hansard* – 23 February]

FUNDING

Fundraising guidance and the GDPR

For information

The Institute of Fundraising and the Fundraising Regulator have [published](#) joint guidance on the GDPR which is intended to 'fully equip fundraisers' ahead of the commencement of the General Data Protection Regulation on 25 May 2018. The guidance, which has been 'reviewed and co-badged' by the Information Commissioner's Office, has been broken down into six four-page reports intended for easy consumption:

1. [GDPR and Charitable Fundraising - an introduction.](#)
2. [GDPR Spotlight on Fundraising.](#)
3. [GDPR Spotlight on Community Fundraising.](#)
4. [GDPR Spotlight on Corporate Fundraising.](#)

The reports also identify 'which personal data is likely to be used in each case' and give general definitions of lawful processing means such as 'consent' and 'legitimate interest'.

[Source: Fundraising Regulator – 27 February]

PROPERTY & PLANNING

CCTV in churches

For information

We do not normally report the decisions of church courts of any denomination, but a recent decision of the Commissary Court of Canterbury may be of wider interest beyond the Church of England.

In *Re St Mary Chartham* [2017] ECC Can 1, the court considered a faculty application to install two CCTV cameras, with a recorder located in the vestry, to enable the church to be left open during the day. The camera used to monitor the entrance would permit detailed facial recognition; the other, with a wide-angle lens, would cover most of the remainder of the church. Both would have low light capability, and the recorder would run continuously but overwrite the recordings made after a month.

The Commissary General, Morag Ellis QC, granted the faculty with two conditions:

- that the installation should ensure that any parts of the church set aside for private prayer and so forth are avoided from the scope of the lens and that the cameras should be switched off during services; and
- that there should be a suitable person responsible for the machinery and data held in it, for notice to be given of the use of the cameras and of the person to contact in the event of complaints or questions.

Comment

The first condition points up the tension between surveillance for reasons of security and the privacy of worshippers.

The problem seems to be that there is something of an internal contradiction in the Home Office [Surveillance Camera Code of Practice](#) issued under the Protection of Freedoms Act 2012. The purpose of CCTV systems – obviously – is to monitor buildings in the interests of security: however, as the Commissary General point out at para 2.6 of her judgment, the second of the Code's guiding principles is that 'The use of a surveillance camera system must take into account its effect on individuals and their privacy, with regular reviews to ensure its use remains justified'. So, on the one hand, you install a CCTV system to make sure that you can keep an eye on potential trouble-makers but, on the other, you need to respect the privacy of said potential trouble-makers.

In short, the Camera Code of Practice appears to be trying to reconcile the need for security monitoring with the right to privacy – and not quite managing to do so. Perhaps it is an unresolvable problem – but it is something that churches that are thinking about installing CCTV systems need to bear in mind.

[Source: CLAS summary – 1 March]

SAFEGUARDING

Charity Commission guidance on protection of vulnerable groups

For information **and possibly for action**

The Charity Commission has updated its [guidance](#) for charity trustees on the protection of vulnerable groups. Member Churches will all have their own safeguarding policies; however, the Charity Commission guidance is mandatory, as follows.

“Safeguarding is a key governance priority for all charities, not just those working with groups traditionally considered at risk. You should proactively safeguard and promote the well-being and welfare of your beneficiaries (the people the charity is set up to help).

You must take reasonable steps to make sure that beneficiaries and others who come into contact with the charity do not come to harm. You can find out more about safeguarding in charities by reading:

- [Charity Commission strategy for dealing with safeguarding issues](#)
- [Safeguarding children and young people](#)

Criminal record checks

There are legal restrictions under safeguarding legislation on who can be involved in working with children and adults at risk. Charities have a responsibility to:

- make sure that trustees, employees and volunteers are suitable to work with children and adults at risk
- request appropriate checks from the [Disclosure and Barring Service where the role is eligible](#)
- check that the individuals are legally able to act in the position, read [annex 1 of the Charity Commission safeguarding strategy](#).

There are additional legal restrictions under charity law on who can be a trustee which are explained in the following guidance:

- [finding new trustees \(CC30\)](#)
- [automatic disqualification rules: guidance for charities](#)

Safeguards to protect your beneficiaries and others who come into contact with your charity

You must put safeguards in place to protect those who come into contact with your charity. These include, but are not limited to:

- making all trustees, employees and volunteers aware of what abuse is and how to spot it
- having a clear system of reporting concerns as soon as abuse is identified or suspected
- responding to abuse or allegations of abuse rapidly and carrying out investigations confidentially
- preventing harm and abuse with a rigorous recruitment and interview process

How to respond to safeguarding incidents

To comply with your legal duties as a charity trustee, you must react responsibly to reports of safeguarding risks and incidents of abuse, and take steps to make sure that people working in the charity know how to deal with these.

As a trustee you should also make a [serious incident report to the Charity Commission](#). If you fail to report a serious incident that subsequently comes to light, the Commission may consider this to be mismanagement, for example, where the trustees have failed to manage the risks properly and breached their legal duties. This could prompt regulatory action, particularly if further abuse or damage has arisen following the initial incident.

Paid charity employees and advisers can [report suspected wrongdoing as a whistleblower](#).

Any person is able to [complain about a charity](#) to the Police, Fundraising Regulator and the Charity Commission.”

[Source: Charity Commission – 1 March]

SCOTLAND

OSCR updates fundraising guidance

For information and possibly for action

OSCR has published updated [guidance](#) that highlights the duties of charity trustees under the Charities and Trustee Investment (Scotland) Act 2005 and how they might apply to fundraising.

It contains information on:

- Scotland's system of fundraising self-regulation and OSCR's role;
- charity trustee duties;
- fundraising with third-party organisations; and
- public collections and exempt promoters.

The guidance has been published following a 12-week consultation on its content. In addition to this new guidance, the OSCR has also updated its technical guide on the [Charities and Benevolent Fundraising \(Scotland\) Regulations 2009](#) to reflect some of the changes in policy since it was first published.

[Source: OSCR – 21 February]