

CLAS CIRCULAR 2011/12 (4 JULY 2011)

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CHARITIES & CHARITY LAW	2
Risk and small charities	2
FAITH & SOCIETY	3
Equality, religion and belief.....	3
Government and faith-communities.....	4
FUNDING.....	5
Philanthropy review	5
IMMIGRATION	7
Student review - clarification for Tier 4 sponsors.....	7
ODDS & ENDS	8
Cheque-clearing - yet again.....	8
PROPERTY & PLANNING	10
Energy Performance Certificates.....	10
Non-domestic rates and the Localism Bill.....	10
TAXATION.....	11
VAT: cost-sharing exemption consultation	11

CHARITIES & CHARITY LAW

Risk and small charities

For information.

The Charity Commission has published a series of [web pages on risk designed specifically for small charities](#). The Commission poses ten questions that small charities should ask themselves to avoid problems (and some congregations are very small charities indeed):

1. Do your activities match the charitable purposes set out in your governing document?
2. Can your charity still do what it was originally set up to do?
3. Were all the trustees appointed in the way your governing document says they should be?
4. Did you check if there is someone who is not allowed to be a trustee?
5. Have you written down how the trustees will identify and deal with conflicts of interest?
6. Do you regularly look at your governing document?
7. Do you think about how to avoid the main things that could cause problems for your charity?
8. Do you have ways of checking how well your charity is doing?
9. Do you do have a plan for how you will raise and spend the charity's money?
10. Are you preparing accounts and a trustees' report showing what you have spent over the year and what you've done?

In addition, there is a page on [Simplified Risk Management for Small Charities](#) and a helpful series of [links to further information](#).

[Source: *Charity Commission What's New* - 20 June 2011]

FAITH & SOCIETY

Equality, religion and belief

For information.

A review of research evidence commissioned by the Equality and Human Rights Commission indicates that there are different perceptions about the legal protections for religion or belief and about the level of discrimination towards them. [Research Report 73: Religious discrimination in Britain - A review of research evidence, 2000-10](#) presents the findings of a team at the University of Derby under the leadership of Professor Paul Weller.

In addition, the EHRC has recently published a [Briefing Paper on religion or belief](#) by Dave Perfect, which aims to bring together the best available recent statistical data in Great Britain (ie *not* including Northern Ireland) on a range of issues relating to religion or belief. Perhaps the most telling statistic is that the latest data – for 2008 – shows that only half of all people in Great Britain stated that they belonged to the Christian religion, with the biggest single group of Christians consisting of Anglicans. This compared with two-thirds who stated that they belonged to the Christian religion in 1983.

In the accompanying [press release](#), the Commission's Chair, Trevor Phillips, is quoted as saying

"Our business is defending the believer. The law we're here to implement recognises that a religious or belief identity is, for the majority of people in Britain, an essential element of being a fulfilled human being and plays an important part in our society.

"Religion or belief is as much part of our identity as other characteristics such as race, gender, or being a parent. People should not be penalised or treated in a discriminatory way because of it.

"My worry is there are people who may feel they're being treated unfairly because of their faith and who in fact may be being treated unfairly because of their faith but for some reason feel they can't get our support in getting justice.

"We've already undertaken a number of legal cases about religion or belief discrimination, but want to do more to build a body of case law in this area. We are in the process of meeting with faith and belief groups to get a better sense of what the issues are for their members."

This drew an immediate response from the British Humanist Association's Chief Executive, Andrew Copson, who commented:

"Trevor Phillips is the head of a commission which is responsible for the legal rights and interests not just of religious people but of non-religious people too. When he suggests that having religious belief is essential in order to be fulfilled as a human

being, he is belittling them. If [he] made such divisive comments on grounds of race, saying 'it's my job to stand up for white people', he would rightly be excoriated. But somehow the fashionable sentiment that religion is good and non-religious people are hectoring and oppressive – when in fact the opposite is often the case – makes him think that this particular sort of bigotry is okay. It isn't."

[Source: *Equality and Human Rights Commission News* – 21 June 2011]

Government and faith-communities

For information.

Communities Secretary Eric Pickles has urged faith groups to make use of new powers in the Localism Bill "to end their reliance on the goodwill of local authorities alone, and strengthen their arm in playing an active and visible role in society".

In a speech to the Cinnamon Network - a faith-based charities group, Pickles outlined the Government's continued financial support and commitment to faith groups and acknowledged that they can face barriers in terms of securing funding from local authorities and endless unnecessary red tape. He said:

"In the eyes of some, being religious is seen as being 'weird'. They don't want public discussion about faith, and don't want faith to have a role in our communities. Everyone - whether religious or secular - loses out from that kind of attitude.

We need to ensure that all our faith groups have every opportunity to make their mark. To restore some common sense, give them new powers and freedoms, and remove the over-the-top bureaucracy and red tape that stands in their way. So we are changing the balance putting faith groups on surer footing with new rights to have a say and to challenge that will open the door for faith groups to get further involved in local life."

Research commissioned by the Cinnamon Network on the Churches' [current involvement in local social action](#) revealed that churches and their congregations contributed significant time as well as money to their communities. The 284 churches involved in the sample delivered a total of 439,000 hours of volunteer service in the last 12 months: an average of 1,925 per church on average. They contributed £1,234,000 to finance social action work, or £7,568 per church, spent on an average of 3.3 projects. Projecting these figures against population and church going for the UK gives an estimate of 72 million hours of volunteering for Church-led initiatives over 12 months.

[Source: *DCLG News* - 16 June 2011]

FUNDING

Philanthropy review

For information.

The Philanthropy Review, a sector-led inquiry into giving and philanthropy chaired by Thomas Hughes-Hallett, Chief Executive of Marie Curie Cancer Care, announced its [recommendations](#) on 21 June, as follows:

1. Recommendation to leaders in business, the public sector and charities to introduce payroll giving schemes in their organisations.
2. Recommendation to banks and building societies to introduce charity bank accounts that are integrated with customers' personal bank accounts. Accenture is working on a report for the Review which is due out in about a month and which (the Review hopes) will make the commercial case for charity bank accounts so that banks have an incentive to introduce them.
3. Recommendation to the Government to raise the Gift Aid cap on small cash donations from £5000 to £50000 by 2015 and eventually to abolish it altogether.
4. Recommendation to the Government to introduce a device to enable people to give "lifetime legacies" by settling a sum on charitable remainder trusts.
5. Recommendation to the Government to extend tax relief from gifts of shares and land to the gift of any asset.
6. Recommendation to the Government to allow full tax deduction on gifts of cash as an alternative to Gift Aid – the donor would choose for each donation.
7. Recommendation to those involved in research and information-gathering about giving levels and trends: encouragement for Government, academics and umbrella bodies to collaborate better and to share information and data.
8. Recommendation to the Government to commit £1m a year for the rest of this Parliament to match funding for initiatives to educate schoolchildren about giving and philanthropy.
9. Recommendation for a national "Give More" campaign in 2012 to transform the way society thinks about giving.

Comment: The Review makes an interesting contribution to the wider debate on encouraging philanthropy; however, some of its recommendations are by no means uncontroversial, either within Government or across the sector itself.

Perhaps the most difficult issue is the proposal that the Gift Aid cap on the concession on small cash donations (which was primarily aimed at loose collections in churches) should be raised from £5,000 to £50,000 by 2015 and eventually abolished altogether. This raises various points.

- First, the small cash donations concessions announced in Budget 2011 is not in place yet and will not be introduced until 2013.
- Secondly, the proposal is perhaps over-ambitious, given that it is very unlikely that the Treasury would contemplate a tenfold increase in the limit at a time of such severe economic stringency.
- Thirdly, the proposal to abolish the Gift Aid cap altogether would totally destroy the audit trail for Gift Aid and break the link between tax paid and tax reclaimed.

The last is our most serious criticism. It would change the nature of Gift Aid entirely – from tax foregone to public expenditure – and once Gift Aid claims were charged to public expenditure they would be at the mercy of any future Chancellor who wanted to reduce public spending. The Listed Places of Worship Grant Scheme is precisely in point: because it returned VAT by way of matching grant it was *always* treated as public spending – and, as we found to our cost, when times became tough it was capped.

[Source: *LMSC Summary* - 22 June 2011]

IMMIGRATION

Student review - clarification for Tier 4 sponsors

For information.

The UK Border Agency has produced a document clarifying aspects of the current review of the student immigration system, in response to queries from sponsors. [Implementing the Student Review – Frequently Asked Questions](#) answers some queries by sponsors in the following areas:

- educational oversight and accreditation;
- Highly Trusted Sponsor status;
- the interim limit;
- contact details for enquiries about the sponsorship management system;
- post-study work;
- immigration officers' discretion to refuse;
- dependants;
- maintenance and low-risk countries; an
- academic progression.

[Source: *UK Border Agency News* - 28 June 2011]

ODDS & ENDS

Cheque-clearing - yet again

For information.

The cheque-clearing saga continues to unfold. On 15 June during Cabinet Office Questions Civil Society Minister Nick Hurd was asked about the cheque-abolition issue, which Stuart Andrew (Pudsey) (Con) suggested was a “giving barrier for many people”. Hurd replied that “the matter is under review by the Government. It has been stated that cheques need to be replaced by some form of paper-based system”.

This is the first we have heard that the cheque-clearing issue is under review *by the Government* rather than by the Payments Council. Coupled with recent statements that Ministers expect there to be a paper-based facility for transactions if and when cheques are phased out, it would appear that the Government is beginning to take a much closer interest in the issue than hitherto – and getting cold feet about abolition.

The House of Commons Treasury Committee then reopened its inquiry into the ending of cheque-clearing – to which CLAS submitted written evidence. In advance of the hearing Mark Hoban, the Financial Secretary to the Treasury, had written to the Chairman of the Committee, Andrew Tyrie, in terms that were rather critical of the exercise so far:

“The [Payments Council’s] announcement was made without an assessment of the costs and benefits, or a plan or timetable for managing the process, or an indication of what alternative payment instruments might need to be created. These things are only now being developed. The result has been to create a great deal of uncertainty and alarm across the country, particularly among those for whom other existing forms of payment may be unsuitable - elderly or housebound people, schools, clubs and charities, rural communities, small businesses, and others...

Whilst I accept that a complex system that is designed to process more than 4 billion cheques a year may become unsustainable at significantly lower volumes, there seems to have been no assessment of whether a redesign to accommodate lower volumes may be more cost effective than developing new alternatives. The clearing system, as well as being costly, can also be slow and I have received numerous representations asking the Government to intervene on this point already.”

Crucially, he concluded like this:

“Any alternative system should replicate the flexibility and ease of use of cheques, whilst improving processing times, and be cost effective. It will need to have been tested in practice, and be widely available, widely acceptable and widely adopted by users who do not currently have a suitable alternative. Until this is demonstrated, *I do*

not believe that there is a credible and coherent case for abolishing cheques [our emphasis].

The Government is keenly monitoring the progress of the cheque replacement programme and is considering whether it may need to intervene to protect vulnerable individuals and businesses if there is any threat that cheques may be withdrawn without suitable alternatives being put in place for all.”

Shortly afterwards, the Payments Council had an extremely torrid time when its witnesses appeared before the Committee on 15 June – as can be seen from the [uncorrected transcript](#). The Committee put the representatives of the Council under severe pressure to concede that the proposals on ending cheque-clearing were generally ill-conceived and merely being dictated by the clearing banks. Richard North, Chair of the Council, agreed with the conclusion of the Financial Secretary to the Treasury, Mark Hoban, and said that “Until we have in place a paper-based solution that has the flexibility and ease of use of cheques, then no, we should not be abolishing cheques”.

So it looks very much as if cheques are going to be replaced by a paper-based system for transactions after all.

[Sources: HC Deb 15 Jun 2011 c 761: Civil Society - 16 June 2011: *House of Commons Treasury Committee Evidence* – 22 June 2011]

PROPERTY & PLANNING

Energy Performance Certificates

For information.

It appears that the Government has abandoned attempts to introduce changes to the rules on Energy Performance Certificates on 1 July. *Letting Agents Today* reported that a senior official at the Department of Communities and Local Government announced on 20 June that introduction of new regulations had been delayed which means that all the EPC changes are now likely to be introduced on 1 October – always provided that the necessary statutory instruments can be laid before Parliament prior to the summer recess.

Currently, letting agents, landlords and estate agents are allowed to start marketing a property without an EPC provided that one is ordered, with the expectation that the EPC will be in place within 28 days; however, the existing regulations do not say what would happen if an EPC had not materialised in that time. The new regulations will give agents (both sales and lettings) and landlords seven days to procure an EPC from when marketing starts and a further 21 days if, for some reason, an EPC has not been procured. Under the new regime, after 28 days Trading Standards will be able to take action. In addition, the EPC, not just the graphs, will have to be attached to all particulars for both sales and rental properties.

[Source: *CLAS Summary* 23 June 2011 – courtesy of Sheila Duncan]

Non-domestic rates and the Localism Bill

For information.

In [the debate on Clause 39 of the Localism Bill](#) in the House of Lords on 28 June the Minister, Lord Shutt of Greetland, gave a firm assurance in response to a probing speech by the Bishop of Birmingham that the terms of the Clause were not meant to disturb the present criteria for granting charities discretionary relief from non-domestic rates.

“The message,” said Shutt, “is that there is to be no change in relief for charities. Whether it is mandatory or discretionary, the answer is, ‘No change’. There is no element of change in this provision”. He did, however, admit that the drafting was “a bit convoluted” – which was something of an understatement.

[Source: HL Deb (2011) cc 1724 – 1732]

TAXATION

VAT: cost-sharing exemption consultation

For information – but you may wish to respond individually

Under the EU VAT Cost Sharing Exemption, businesses and organisations making VAT-exempt and/or non-business supplies may form groups in order to make cost savings and economies of scale. Once formed, the groups are relieved of a VAT charge on their supplies if all the conditions of the exemption are met.

HMRC has launched a [consultation](#) to examine how the European VAT cost-sharing exemption might be used by UK businesses and organisations and a framework for its possible implementation. This follows from the statement in the March 2011 Budget. If implemented, the exemption could remove the VAT charge preventing institutions such as universities and charities from gaining efficiencies by sharing costs with each other.

The consultation will end on **30 September 2011**. Responses can be sent by e-mail to david.bond2@hmrc.gsi.gov.uk or to David Bond, HMRC VAT Directorate Team, VAT Projects, 3C/10, 100 Parliament Street, London SW1A 2BQ.

This is potentially extremely important for church charities that wish to combine back-office services such as IT, payroll and human resources. The slowness in domestic implementation has been a source of considerable frustration to the charity sector generally; and CLAS will be submitting a response asking HMRC to get on with it. In addition, member Churches might wish to respond individually.

[Source: *HMRC What's New* - 28 June 2011]