CHURCHES' LEGISLATION ADVISORY SERVICE

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CLAS CIRCULAR

2018/09 (12 April 2018)

CHARITIES & CHARITY LAW

Alert for charities - CEO fraud

For information and possibly for action

The Charity Commission has published an alert for charities, providing information and advice to charity trustees, employees and volunteers, to help prevent CEO fraud. This involves the impersonation of a senior figure with subsequent requests for transfers of funds.

Action Fraud has reported an increase in this type of fraud, with the most recent reports involving fraudsters targeting schools, claiming to be the head teacher or principal.

The alert suggests a range of things that charities should be on the lookout for, including requests to finance departments or to staff with the authority to transfer funds, from a spoofed or similar email address to that of the subject being impersonated. It also offers advice on prevention and protection techniques, including:

- reviewing internal procedures regarding how transactions are requested and approved;
- checking email addresses and telephone numbers when transactions are requested;
- not clicking on links or opening attachments in unexpected or unusual e-mails;
- questioning details when being asked to transfer money at short notice; and
- ensuring that confidential documents are always shredded before being thrown away

If a charity has fallen victim any type of fraud, trustees should report it to Action Fraud by calling 0300 123 2040. Charities should also report fraud to the Charity Commission as a serious incident, using the dedicated e-mail address.

However unlikely the possibility might seem, churches are not immune from this type of fraud. It doesn't happen very often, but…

[Source: Charity Commission – 23 March]

EMPLOYMENT & VOLUNTEERING

New rules for Optional Remuneration Arrangements

For information and possibly for action

HMRC has published a reminder that, from **6 April 2018**, employers are now required to report all Benefits in Kind (BiKs), including those under Optional Remuneration Arrangements (OpRAs), to HMRC on form P11D, unless they are registered to voluntarily payroll benefits.

The Income Tax and employer National Insurance Contributions (NICs) advantages of BiKs have mainly been withdrawn due to new rules that took effect in April 2017. These rules will now cover all OpRAs, apart from those for cars with emissions above 75g CO_2/km, school fees and accommodation – though these will be included from **6 April 2021**.

If a BiK is provided under OpRA rules, the taxable value is now the higher of the cash foregone or the taxable value under the normal BiK rules. This applies to *all* BiKs, including those that were previously exempt, such as workplace parking. However, pensions, pension advice, childcare, cycle-to-work schemes and cars with emissions of 75g CO_2/km or less are not affected by the rules.

The closing date for employers to send P11Ds to HMRC is **6 July 2018**. General guidance and technical advice on salary sacrifice are both available online.

[Source: HMRC – 6 April]

Open University report on Apprenticeship Levy

For information

The Open University has published a report on the first year of the Apprenticeship Levy, welcoming the Levy's intent to increase investment in skills and training but highlighting barriers to uptake and areas in which the Levy could be improved.

Freedom of Information data has revealed that, while more than 50,000 organisations across the UK have contributed to the apprenticeship levy since its introduction, at a total cost of

£1.8bn, organisations in England have only withdrawn £108 million – just eight per cent of the £1.39bn they have paid in.

The report highlights a number of the concerns that employers have with the Apprenticeship Levy and its implementation. These include the time-consuming nature of the process, as well as the fact that in can take a significant amount of time to set up apprenticeship programmes, in the knowledge that, from April 2019, organisations will begin to lose unspent funds still in their accounts. Other barriers include the availability and flexibility of apprenticeship programmes, and the speed at which apprenticeship standards are being agreed, as well as the costs associated with the hiring of an apprentice that cannot be covered by Levy funds.

The Open University’s report also suggests an alternative system, which would introduce ‘modular apprenticeships’, which are tailor-made to organisations’ needs and fit alongside existing training programmes. These modular apprenticeships could allow students to pick and choose modules to build a qualification that suits their skills or training requirements. Employers could pick modules relevant to the specific organisational knowledge required, adding other soft skills or digital skills their organisation lacks. This might particularly benefit SMEs, whose needs are often quite different from the larger organisations that have generally designed the apprenticeship standards.

[Source: Open University – 6 April]

FUNDING

Work and Pensions Committee report on European Social Fund

For information

The Work and Pensions Select Committee has published a report of its inquiry into the future of the European Social Fund (ESF), suggesting that a failure by the Government to immediately replace the ESF after Brexit would be "disastrous". The fund provides around £500m worth of employment and skills support annually to disadvantaged communities in the UK, much of which goes to voluntary sector organisations.

The Directory of Social Change has estimated that UK charities stand to lose around £250m a year from European funding streams, including the ESF, once the UK leaves the European Union. The Government has pledged to create a UK Shared Prosperity Fund to replace the ESF, but the Committee describes the future of this fund as "uncertain" and says there is "still much detailed design work to be done" on it.

The Committee has also called for the Government to create a new arm's-length body to integrate existing funding streams so that programmes can effectively meet all of their participants' needs, while retaining a separate fund within the UKSPF for employment support for disadvantaged groups and communities.

[Source: Work and Pensions Select Committee – 4 April]

ODDS & ENDS

Education in out-of-school settings: the Government's response

For information

Members will no doubt recall that the Department for Education ran a call for evidence on out-of-school education settings between November 2015 and January 2016, inviting interested education providers, local authorities, other organisations and individuals to comment on its (tentative) proposals for Ofsted inspection of out-of-school education settings.

CLAS responded to the call for evidence. We said that the member denominations were just as concerned as DfE that children in Sunday schools, church choirs, uniformed organisations and suchlike should not be exposed to harm. However, we pointed out that the DfE's tentative definition of "intensive education" as "where a child attends a setting for more than between 6 to 8 hours per week" might possibly catch, for example, intensive choir-practices before a major festival. We also questioned whether Ofsted was the most appropriate body to carry out inspections. In short, we urged the Government to think more carefully about the proposal.

In February, Amanda Spielman, HM Chief Inspector of Education, Children's Services and Skills, made a speech at the conference of the Church of England Foundation for Education Leadership in which she observed *inter alia* that it was

> "… a matter of regret that the Church has resisted changes in the law to allow Ofsted to inspect these settings. This is not about infringing religious freedom: no one is proposing a troop of inspectors turning up at Sunday schools. Instead, it is about ensuring that the small minority of settings that promote extremism are not able to evade scrutiny."

But be that as it may, the Government has now published its analysis of and response to the consultation. It says that:

> "It is clear from the responses and representations received to our call for evidence that there was broad support for [its] overarching aim, and the objective of enabling action to be taken in out-of-school settings where there are concerns. It is equally clear that we must ensure that we do not undermine the valuable contribution that many settings are making, by placing unnecessary regulatory burdens on them, or limiting parents' choices on how to educate their children."

It notes that:

> "We want those settings already doing a good job to be able to continue doing just that, providing our children and young people with valuable learning opportunities, whilst addressing concerns about settings which are not appropriately safeguarding and promoting the welfare of children. […]
>
> "We want to ensure any future system of regulation that we may introduce appropriately targets the small minority of settings which may be exposing children to harmful practices, without causing undue burdens on the sector as a whole. We believe it is equally important that we ensure any future system carefully takes into account the differences within such a diverse sector, where settings vary considerably in terms of their characteristics, and types of activity and education they offer. This system should ultimately build on and complement existing legal powers to ensure that any new regulation adds the most value, making the current safeguarding regime more effective."

Therefore:

> "… we have decided not to pursue the model proposed in our call for evidence but instead intend to develop further the evidence base for a national approach, including future legislation where gaps in existing powers are identified."

The Government proposes to develop the evidence base to design and roll out a national approach and to identify any gaps in existing powers with a view to legislation, "when opportunity allows". It will also consult on a voluntary code of practice later this year to set out clear standards for providers explaining what they need to do in order to run a safe setting. Finally, it will work with local authorities to provide more guidance for parents to support them in making informed choices when considering out-of-school settings for their children; and what they can do if they have any concerns.

All of which looks like a much more satisfactory approach.

[Source: DfE – 10 April]

ICO fees and processing special category data

For information and for action

Victoria Hordern, Head of Data Privacy at Bates Wells Braithwaite, has published a briefing, highlighting that charities and their subsidiaries should act promptly to avoid a possible Information Commissioner Office (ICO) fee of £2,900 being levied later this year.

From 25 May 2018, a new charging structure is being introduced by the ICO. Under this new structure, charities may be liable to pay a default annual fee of £2,900 unless either:

- the ICO is likely to know from information it already holds that the organisation is a charity; or
- the charity provides information to the ICO to evidence its charitable status

Charities satisfying the ICO of their charitable status will be eligible to pay a reduced fee of £40 or could be wholly exempt from the charging structure.

Victoria Hordern has also published a technical piece for Data Protection Leader on what organisations need to be aware of when processing special category data under the GDPR.

[Source: BWB – 4 April]

SCOTLAND

OSCR guide on charities and trading

For information

The Office of the Scottish Charity Regulator (OSCR) has published its *Charities and Trading Guide*. The guide contains information on the different types of charity trading, trading subsidiaries and charity trustee duties in relation to trading.

It is aimed at charity trustees, and people working with trustees. It will also be useful to organisations applying for charitable status that intend to carry out trading activities.

In addition to understanding the information in the guide, the OSCR also recommends that charity trustees take the appropriate level of advice before undertaking trading activity. The guide suggests a number of potential sources of support.

[Source: OSCR – 26 March]

TAXATION

Income tax: self-assessment for ministers of religion

For information or for action

HMRC has issued its annual updated supplementary pages SA102M (ministers of religion) for self-assessments for the tax year 6 April 2017 to 5 April 2018, together with accompanying notes. Unless HMRC receives a paper tax return by 31 October 2018 a late filing penalty will apply. The deadline for electronic filing, on the other hand, is 31 January 2019; however, HMRC does not supply its own software to enable ministers of religion to file online.

While we do not normally advertise commercial services, Simple Tax offers custom software for the completion of SA102M here: £15 with the discount code MORST2018.

HMRC has also published a reminder of all of the tax changes coming into effect from the beginning of the new tax year:

- **The National Living Wage is rising to £7.83/hour** for those aged 25 and over and not in their first year of an apprenticeship. Those under 25 and apprentices also benefit from rises in the Minimum Wage
- **The Personal Tax Allowance will increase to £11,850**, meaning that individuals will not have to pay income tax on any earnings below that amount.
- **The State Pension will go up by 3 per cent**, which works out as an average increase of £3.65/week for those in retirement.
- **Fuel duty will remain frozen** at 57.95 pence per litre.

[Source: HMRC – 6 April]

WALES

Tackling Business Rates avoidance in Wales

For information or for action

The Welsh Government has opened a consultation to discuss proposals aimed at tackling the avoidance of business rates payments in Wales. The consultation focuses on a number of areas, including:

- measures that may improve the provision of information to aid compliance, improving accuracy and transparency;
- exploring how the Welsh Government reduces avoidance that relates to broader policy that is not devolved; and
- measures that may encourage joint working between local authorities and government agencies to improve intelligence and investigative activity.

The consultation also includes specific sections exploring the extent to which avoidance activities might be associated with charitable relief and whether any changes could be made to the rates charged on unoccupied properties, including eligibility for exemptions and exploring whether the level of relief fits its intended purpose.

The section on avoidance and charitable relief suggests that it is clear that in some cases mandatory charitable relief is claimed disingenuously: charities are approached and encouraged to lease an empty property from an owner at minimal or nominal rate in return for a charitable donation and agreement to vacate the property at very short notice, thereby effectively relieving landlords of the requirement to pay full non-domestic rates.

The section on unoccupied properties highlights the exemption from paying business rates on empty property where that property is likely to be wholly or mainly used for charitable purposes when next used, suggesting that it may no longer be operating as it was originally intended. It calls for views about whether the exemption should remain, be removed, or whether local authorities should be given discretionary powers to grant the exemption.

There does not appear to be any suggestion that mandatory or discretionary charitable reliefs should be removed wholesale. Responses should be sent in via e-mail, before **27 June 2018**. We are still pondering if it would be appropriate for CLAS to submit a response.

[Source: Welsh Government – 5 April]