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CLAS CIRCULAR
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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

Gift Aid research

For information

HMRC has published research showing that one-third of eligible donors to UK charities did not add Gift Aid to their donations when they could have done so. HMRC and the Government calculate that the resulting loss of Gift Aid payments to charities is worth nearly an extra £600 million a year. HMRC has also written to 50,000 charities to promote the Gift Aid Small Donations Scheme.

As a follow-up to the research it has been suggested that there should be a sector-wide Gift Aid awareness day on 4 October 2018. The Minister has also called on charities to be more open about the amount of Gift Aid that is claimed, arguing that that would aid transparency and improve awareness of the value of the Scheme.

Comment

The problem, it seems to us, is that it's not *charities* that need to know about Gift Aid because they already do: it's the *donors* who need to understand its importance. We do realise that almost all CLAS members operate Gift Aid and Gift Aid Small Donation schemes – but it appears that there's still a lot more education to be done.

[Source: HMRC – 19 March]

The Friends of Blencathra: Charity Commission case report

For information and possibly for action

You start a charity to raise funds to buy a mountain in the Lake District – but when you don't raise enough, what do you do with the money? That was the issue at the heart of the recent Charity Commission case report on The Friends of Blencathra.

In brief, Blencathra was put up for sale in 2014 with a guide price of £1.75m and a local community group decided to try to buy it for the public benefit. The group established a charity, but there were doubts about whether the trustees could raise the purchase price and

their subsequent plans to manage the mountain. Blencathra was then taken off the market – *and a number of donors asked for their money back*.

At the request of the Charity Commission, the charity submitted overdue accounts: it had a balance of approximately £240,000 at 31 May 2015 – significantly lower than the £1.75m guide price – and in September 2016, the trustees confirmed that they no longer saw any prospect of a successful purchase.

The Commission gave the trustees regulatory advice on the implications of that decision and the precise legal framework within which they had to deal with the funds they held. The charity's funds comprised:

- restricted funds raised before the group's charity registration application and solicited on trust for the specific purpose of buying the mountain; and
- unrestricted funds that solicited after the charity's objects were formally widened during the registration application, explicitly on the basis that they were to be applied 'for the objects of the charity' or similar.

The Commission advised that unrestricted funds could be applied in furtherance of the charity's objects or distributed to similar charities, *but that restricted funds arising from the appeal to buy the mountain before the charity's formal establishment had to be dealt with as a 'failed appeal' in accordance with the Commission's guidance*.

To cut a long story short, the charity returned £166,426 worth of donations, less a £6 administration charge per donation, for verified claims from individuals. The charity also received disclaim notifications totalling £21,013.

Comment

Appeals sometimes fail to reach their targets. If a charity is fundraising for a particular project – particularly such as the purchase of a property which may or may not fall through or a restoration project that may turn out to be unfeasible – *the trustees should make it crystal-clear when soliciting donations exactly what they intend to do with the donations should their plan fail*. That, says the Commission, gives charities the power to use the funds in another way, if necessary, avoids the potentially complex and resource-intensive process of returning donations and ensures that charitable causes benefit as much as possible.

If the purpose for which restricted funds have been raised cannot be achieved, the appeal is said to have 'failed'; and donors are entitled to be asked if they wish to have their donations returned or used for other similar purposes. The Commission can provide advice on the legal framework regarding a failed appeal, but *it is the trustees' responsibility to decide if the appeal's original purpose can no longer be met and to initiate the failed appeal process*. The

process includes giving public notice to enable donors to decide individually what is to happens to their donations.

Applying residual restricted funds requires the Commission's formal authorisation via a cy-près scheme: trustees cannot merely decide for themselves.

More information on dealing with a failed appeal is available in *Charity fundraising: a guide to trustee duties (CC20)*. There is also a very useful guide by Stewardship: *Financial appeals: guidance to avoid common pitfalls and failed appeals*.

[Source: Charity Commission – 13 March]

FAITH & SOCIETY

The Seal of the Confessional?

For information

The issue of the seal of the confessional came up at various points during the latest IICSA hearings on the Church of England and the Church in Wales. A relatively recent summary of the development of the legislation is given in Dr Colin Podmore's '*The Seal of the Confessional in the Church of England: Historical, Legal and Liturgical Perspectives*', a lecture he gave on 14 November 2016.

One of the witnesses at the Inquiry was The Revd Dr Rupert Bursell, a retired Crown Court judge and a diocesan chancellor who probably knows more about the current law on this than anyone. Dr Bursell expressed his belief that there should be no seal of the confessional in relation to child sexual abuse and that the Church of England ought to amend its Canon so that, at the very least, it does not apply to the sexual abuse of children. Other witnesses, including Lord (Rowan) Williams and the Bishop of Chichester, viewed the position differently.

A formal change in the secular law, were it to happen, would obviously have implications for the other Anglican Churches in the UK and for the Roman Catholic and Orthodox Churches. But – presumably – *all* Churches regard communications between their clergy and their adherents as in some sense confidential, even if they do not practise formal sacramental confession and absolution.

All this is merely for information – but it needs watching.

[Source: CLAS summary – 21 March]

ODDS & ENDS

Guidance from the Baptist Union on data protection

For information and possibly for action

The Baptist Union of Great Britain has published new guidance for its member congregations on data protection in light of the new Data Protection Act and the GDPR. It begins:

"The subject of Data Protection is one which churches should not ignore irrespective of their size or the amount of personal information they hold or process. It is important, however, to see this as a way of ensuring that we, as churches, are helping to protect individuals against the unfair use of their personal information rather than something we have been told we 'have to do'."

While the exact details may vary, for denominations with a different internal structure from that of the Baptist Church, the guidance may still be a valuable resource for other Churches as they consider what steps they need to take on data protection.

[Source: Baptist Union of Great Britain – 4 March]

PROPERTY & PLANNING

Draft National Planning Policy Framework published

For information and possibly for action

Housing, Communities and Local Government Secretary Sajid Javid has made an oral statement in the House of Commons on the launch of a new draft National Planning Policy Framework (NPPF). The Framework incorporates policy proposals previously consulted on in the Housing White Paper and the consultation on Planning for the right homes in the right places – responses to which the Government has also now published.

The aim of the new NPPF is to provide a comprehensive approach for planners, developers and councils to build more homes, more quickly, in the places people want to live. It places a significant emphasis on maximising the use of land, strengthening protections for the Green Belt and ensuring that granted planning permission actually translates into the development of homes. It also ensures that councils and developers be required to work with community groups, to ensure that those affected by new developments have a say in their outcome.

Proposals in the draft NPPF focus on a number of key areas:

- **Responsibility of Local Authorities and developers** - a new housing delivery test will be set, focused on the numbers of homes actually built, rather than numbers planned for. Developers will need to ensure they deliver on affordable housing and required infrastructure commitments.

- **Maximising land use** - greater freedom will be given to Local Authorities to use brownfield land to build homes. Use of redundant retail or industrial space for houses will be encouraged, as will extending upwards on existing blocks of flats and houses to maximise land density.

- **Strong environmental protection -** developments will be encouraged to result in a net gain to the environment where possible and protection for ancient woodland will be increased.

- **Building the right homes** - this will mean developing more affordable homes, including sites dedicated for first time buyers, build-to-rent homes with family-friendly tenancies, guaranteed affordable homes for key workers and adapted homes for older people.

- **Higher quality and design -** new quality standards will be introduced, so that well-designed homes are built in places people want to live in.

- **Transparency of the planning process -** a new standardised approach to assessing housing need will be introduced with new measures to make the system of developer contributions clearer, simpler and more robust.

Consultation on the NPPF is open until **10 May 2018**; responses can be made via the online survey or via e-mail, using the appropriate response form.

Reforming Community Infrastructure Levy and other developer contributions

MHCLG has also published a consultation into proposals for reforming developer contributions, including the Community Infrastructure Levy (CIL) and s106 obligations. This consultation is part of the Government's plans to increase housing delivery in the UK, while ensuring the necessary level of infrastructure to support these new developments.

In February last year, the Government published the results of its independent review into CIL and its relationship with planning obligations. The Review found that the system of developer contributions was not as fast, simple, certain or transparent as originally intended. It also suggested that this was in part caused by the significant number of exemptions to CIL that had been established. It recommended replacing the CIL with a system including "no or very few exemptions".

Rather than replacing the CIL regime, however, 0the consultation aims instead to give Local Planning Authorities (LPAs) more flexibility in their approach to CIL, as well as considering limiting the use of s106 agreements to an extent. This should mean that organisations already benefiting from the charity exemption from CIL will continue to do so.

Proposals in the consultation include:

- allowing LPAs to set CIL charging schedules with figures based on the existing use of land, so that the practical uplift in land value caused by any development is accounted for.

- reducing the amount of consultation required to be undertaken by the LPA when setting CIL, by allowing it to draft a 'statement of engagement' setting out how it has sought an appropriate level of engagement.

- lifting the current pooling restriction on s106 contributions for LPAs implementing CIL, as well as for LPAs not implementing CIL because it is not a viable option. The restriction would therefore act as an incentive to those LPAs not implementing CIL but where viability is not an issue.

- removing the need for LPAs to have a regulation 123 infrastructure list. This would be replaced with an infrastructure funding statement, setting out how spending of any forecasted income from both CIL and s106 contributions for the next five years will be prioritised.
- clarifying how CIL is charged for planning permissions which are amended or varied.
- indexing CIL for residential development to the House Prices Index (HPI) rather than building costs.
- enabling combined or joint authorities to set up a Strategic Infrastructure Tariff, based on the system currently used in London. Any SIT would also include the same exemptions as for CIL, which will mean equivalent charity relief.

While not currently a proposal, the Government has also undertaken to look at whether developer contributions should be set at national level, making them non-negotiable.

Responses to the consultation should be made either via the online survey, or via e-mail using a response form, by **10 May 2018**.

[Source: MHCLG – 5 March]

SAFEGUARDING

Joint commitment on improving safeguarding standards

For information

NGOs, DFID, the Charity Commission and safeguarding experts made a joint statement after the Safeguarding Summit on 5 March 2018 and, given the controversy surrounding Oxfam in particular, we thought it worth reproducing in full:

"On 5 March 2018, the UK Department for International Development (DFID) and the Charity Commission co-hosted, with support from the international development network Bond, a Safeguarding Summit with UK international development charities, regulatory bodies, and Government and independent safeguarding experts.

The Summit addressed the safeguarding prevention and response failures that have led to sexual exploitation and abuse within the UK international development sector.

We commit to always putting beneficiaries first, to concrete steps to improve the effectiveness of safeguards, to meet our duties and responsibilities and to lead a system-wide process of improving standards and restoring trust.

We commit to improving the standards and delivery of safeguards, including a culture of zero tolerance to sexual exploitation and abuse in all we do. We all agree to meet these five commitments.

We will demonstrate accountability to beneficiaries and survivors, including staff and volunteers, prioritising those who have suffered and survived exploitation, abuse and violence, and design systems of accountability and transparency that have beneficiaries at their centre.

We will demonstrate a step change in shifting organisational culture to tackle power imbalances and gender inequality; policies alone are not enough to prevent abuse. The responsibility lies with Board and management, not survivors to tackle all forms of sexism and discrimination and hold individuals to account.

We will ensure that safeguards are integrated throughout the employment cycle so that we ensure strong checks are in place at the start of employment and regular training and performance management - reinforced by strong codes of conduct and standards - throughout the career.

We will ensure full accountability through rigorous reporting and complaints mechanisms, for any misconduct that occurs under the banner of our organisations, including by sub-contractors and partners. We will pursue all reported misconduct to the fullest extent, for our own staff, in our own organisational procedures and refer to regulatory authorities in the UK and overseas. We will work together to share relevant information on staff and volunteers who have committed acts which breach standards of conduct.

We will ensure that concerns are heard and acted on, through a whistleblowing process which protects anonymity and safety and that will ensure that ways of reporting are actively promoted.

This is rightly a demanding set of actions. While it will take time for everyone to raise their standards to those of the best, and change the culture, we must ensure the collective challenge starts today. In addition, we will take forth actions agreed at the summit, and further explore how safeguarding can be strengthened in all settings including in emergency, humanitarian and conflict.

For those of us who are membership bodies, we commit to communicating and promoting this statement to our members. We commit to offering our members support to raise safeguarding standards through advice, information and training. We will be commending these commitments to our membership for adoption by their Boards.

We will monitor progress on these commitments for review at a wider Safeguarding Conference to be held later in 2018.

We commit to a set of immediate actions that we will take individually and jointly and will publish these from our organisations within two weeks.

We commit to define and propose implementable solutions on the following through a set of working groups which will report to DFID, charity regulators in the UK, relevant devolved authorities and the sector and be presented at the Safeguarding Conference in Autumn this year.

We commit to ensuring that these groups and conclusions go beyond those represented today, to represent the involvement, perspectives and experience of the full breadth of charities working on international development.

- Working group 1: Accountability to beneficiaries and survivors
- Working group 2: A step change in shifting organisational culture
- Working group 3: Safeguards throughout the employment cycle
- Working group 4: Rigorous reporting and complaints mechanisms

- Working group 5: Ensure that concerns are heard and acted on.

Where we are involved in funding, regulating, scrutinising or providing expert advice to charities involved in delivering international development, we are committed to supporting them, providing a proper framework, and holding them to account in order to achieve these objectives."

The signatories included a wide range of relief and overseas aid and development charities. There is a full list here. Secretary of State for International Development Penny Mordaunt has also made published a written statement on the outcome of the Safeguarding Summit, which can be read here.

[Source: DfID – 20 March]

TAXATION

Charity Tax Commission call for evidence

For information and possibly for action

The NCVO's Charity Tax Commission has published a call for evidence, seeking views from anyone with relevant knowledge, expertise or experience of the system of charitable tax reliefs in the UK. Rather than ask specific questions, the call for evidence sets out the individual tax reliefs from which charities benefit, providing space to comment on each one.

The Commission is particularly keen to receive thoughts about

- the effectiveness of current reliefs
- whether the existing system could be improved in order for charities to better serve their beneficiaries
- how the tax system can help to create an operating environment in which charities can maximise the public benefit they generate.

The Commission is also asking that submissions demonstrate how ideas for reform keep within the current fiscal settlement by indicating what other areas of charity tax relief or spending might be de-prioritised in order to provide expenditure in other areas. The NCVO Secretariat will be arranging meetings with stakeholders during the call for evidence period and will also host open sessions for interested parties in different parts of the UK.

Response forms should be submitted via e-mail by **5pm on 6 July 2018**.

Inevitably, this is a consultation to which CLAS will have to make some kind of response. It would be extremely helpful if any CLAS member responding individually could let us have a copy.

[Source: NCVO – 15 March]

Spring Statement 2018

For information

The Chancellor delivered the 2018 Spring Statement on 13 March, giving an update on the overall health of the economy and the Office for Budget Responsibility (OBR) forecasts, highlighting progress made since the 2017 Autumn Budget and opening a number of consultations.

The following reminders may be of relevance to charities:

- From April 2018 the National Living Wage will rise to £7.83/hour. The annual tax-free personal allowance will also rise to £11,850
- Business Rates revaluations will take place every three years, rather than every five years, from the next revaluation, which has been brought forward to 2021

As expected, the Government has published a call for evidence on the VAT registration threshold, the design of which the Government believes may be dis-incentivising small businesses from improving their productivity. Responses should be submitted online or via e-mail, before **5 June 2018.**

The Government has also published a consultation, seeking views on how the tax system could be used to encourage the responsible use of plastic.

[Source: HM Treasury – 13 March]

Tax treatment of payments in lieu of notice

For information and possibly for action

The tax treatment of payments in lieu of notice paid on termination of employment will be changing with effect from 6 April 2018.

Currently, payments in lieu of notice are subject to tax and National Insurance Contribution deductions if they are contractual (or customarily paid on termination). However, they are currently payable tax-free if they are non-contractual and therefore essentially being paid as damages for loss of notice and breach of contract.

From 6 April 2018, all such payments will be treated as taxable "earnings", irrespective of whether they are contractual or non-contractual, and will be subject to tax and National Insurance contributions.

There is more detail on BWB's *Employment Insights*.

[Source: BWB – 4 March]