

CLAS CIRCULAR

2018/13 (15 June 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

Charity annual return 2018

For information and possibly for action

The Charity Commission has published [guidance](#) for charities on preparing to use the online charity annual return service, which will be available from this summer for 2018.

The Commission recognises that the additional questions introduced following consultation at the beginning of this year may present an additional burden for some charities. Some questions are therefore voluntary this year, in order to give charities time to put in place the necessary systems to collect the information more easily.

The key areas in which the Commission is looking for extra information are:

- Income from outside the UK - providing a breakdown of sources of income (governments, organisations, individuals etc) in each country from which a charity receives funds
- Overseas expenditure - establishing how charities transfer and monitor funds sent overseas and ensuring that the appropriate steps are taken to manage any risk
- Salary and benefits in the charity - providing a breakdown of salaries across income bands and the amount of total employee benefits for the highest paid member of staff. The details of these benefits will not be published on the public register

The guidance does not mention e-mail addresses for trustees. (Our gloss on this is that it would no doubt be very helpful if trustees were to provide e-mail addresses to the Commission – strapped for cash as it is – but it seems that a corporate e-mail address might suffice if a trustee does not have an individual one.)

[Source: Charity Commission – 6 June]

EMPLOYMENT

Employee, worker or contractor? *Pimlico Plumbers*

For information

The Supreme Court has ruled in *Pimlico Plumbers Ltd & Anor v Smith* [\[2018\] UKSC 29](#).

Pimlico Plumbers Ltd had claimed that, for the purposes of the Employment Rights Act 1996 and the Working Time Regulations 1998, Mr Smith had been working with them as a self-employed independent contractor and that he therefore had no employment rights that he could enforce against them. Mr Smith, on the other hand, claimed that for all practical purposes (and for the purposes of the Act and the Regulations) he had been an employee of Pimlico Plumbers. An Employment Tribunal held that, though Mr Smith had not been an “employee” of Pimlico, he had, however, been a “worker” for Pimlico within the meaning of section 230(3) of the Act and regulation 2(1) of the Regulations and that he had been in Pimlico’s “employment” within the meaning of section 83(2)(a) of the Equality Act 2010 – and that his claims could proceed further on that basis. Pimlico Plumbers lost appeals against that decision both in the Employment Appeal Tribunal and in the Court of Appeal.

The Supreme Court has concluded unanimously that Pimlico was *not* a client or customer of Mr Smith – for example:

“Its tight control over him was reflected in its requirements that he should wear the branded Pimlico uniform; drive its branded van, to which Pimlico applied a tracker; carry its identity card; and closely follow the administrative instructions of its control room. The severe terms as to when and how much it was obliged to pay him, on which it relied, betrayed a grip on his economy inconsistent with his being a truly independent contractor. The contract made references to ‘wages’, ‘gross misconduct’ and ‘dismissal’” [49].

The Court therefore dismissed the latest appeal. However, it did *not* rule that Pimlico could not be regarded as a client or customer of Mr Smith: what it did was to declare that, ‘on the evidence before it, the tribunal was, by a reasonable margin’ entitled to come to the conclusion that it reached’. The Court therefore dismissed the appeal and remitted Mr Smith’s substantive claims as a limb ‘worker’ for a hearing in the Employment Tribunal [50].

Comment

The judgment is not quite the revolution that some media comments may have suggested. The BBC [reports](#) Alan Lewis, employment partner at Irwin Mitchell LLP, as concluding that cases would continue to be argued on their specific facts and that this latest ruling was not necessarily a “game-changer”.

We suspect that the facts of this case are of hardly any relevance to CLAS members: we simply cannot imagine that any of them operates the same kind of system as Pimlico Plumbers. But it *does* point up the uncertainties of the current distinctions in employment law between “employees”, “workers” and “contractors” – an issue on which the Government is currently consulting and to which CLAS made a brief response.

[Source: BAILII – 13 June]

Religion or belief discrimination at work

For information

Further to the report in our last Circular that the Government was considering producing guidance on religious discrimination in the workplace, Acas has published its own [guidance](#) on religion and belief in the workplace, offering advice on how to comply with the provisions of the Equalities Act 2010 that protect employees against discrimination based on religion and belief. The guidance highlights recruitment as a key area in which employers should take care to ensure that they avoid discrimination: in particular, job advertisements should be publicised widely and should avoid unnecessary and irrelevant mentions of ‘religion’ and opportunities for training and development and promotion should be fair and non-discriminatory.

On dress-codes, Acas recommends thorough consultations with staff and recognised trades unions and that employers should be flexible and reasonable wherever possible: appearance restrictions or requirements must be for good business reasons that are proportionate, appropriate and necessary – and they should be explained to staff.

[Source: Acas website – May]

Research Briefing on the introduction of IR35 in the private sector

For information

The House of Commons Library has published a [research briefing](#) on the introduction of the IR35 legislation, which is aimed at tackling tax avoidance through the exploitation of Personal Service Companies (PSCs).

The briefing gives a detailed explanation of IR35 and history from its introduction in 1999 to the 2018 Government's commitment to "carefully consult on how to tackle non-compliance in the private sector, drawing on the experience of the public sector reforms."

Of particular note to charities is the section on off-payroll working rules, as outlined in Finance Act 2000. Specifically, this covers "any engagement where an individual provides services under a contract between a client and an intermediary and, but for the presence of the intermediary, that person would be considered the client's employee for tax purposes. In these cases, the intermediary is required to account for tax on the payment made by the client in the same way as employee earnings."

HMRC has also published an additional [technical annex](#) to its IR35 research project, undertaken by IFF Research and published last month, providing more information about the methodology of the survey used by the research body and about the qualitative follow-up interviews.

[Source: House of Commons – 13 June; HMRC – 14 June]

The Charity workforce in post-Brexit Britain

For information

The Institute for Public Policy Research (IPPR) has published a [report](#), highlighting that over 80 per cent of EU nationals currently working in the charity sector would be ineligible to work in the UK, if the same rules that apply to non-EU nationals were applied to them.

The report also notes that EU workers tend to be higher paid than their UK and non-EU counterparts, and are largely concentrated in social work, residential care, education and membership organisations, tending also to be younger and more highly qualified.

It also makes a number of recommendations, including:

- free movement rights for current EU nationals
- a "quasi-alignment" with the EU's free movement of people, which would enable people to continue to come to the UK but would also give the UK the right to introduce controls when needed
- a Trusted Sponsor Scheme (if a visa system is implemented), allowing employers to recruit a wider array of workers
- a skills and training strategy for the charity sector

- urgent reform of the Apprenticeship Levy, to be made into a “Skills Levy” applying to more employers but funding a wider range of opportunities
- or, greater flexibility in the Apprenticeship Levy so that charities can transfer all their unspent levy funds to other charities, protecting investment in the sector

Parliamentary Under Secretary of State for Sport, Tourism and Heritage Tracey Crouch has subsequently responded to a [written question](#) from Shadow Minister for Civil Society Steve Reed on the future of EU nationals working in the charity sector in the UK.

Mr Steve Reed: “To ask the Secretary of State for Digital, Culture, Media and Sport, what discussions he has had with the Secretary of State for Exiting the European Union on the future of non-UK EU nationals working in the UK charity sector.”

Tracey Crouch: “Ministers and officials continue to work closely with counterparts in the Department for Exiting the European Union to discuss the charity sector’s views on Brexit, including the future of non-UK EU nationals working in the sector. Government has secured an agreement with the EU that will guarantee the status of EU nationals living in the EU, reached and set out in the Withdrawal Agreement text. This provides EU nationals, including those working in the charity sector, with certainty about their rights going forward.”

[Source: IPPR – 7 June; House of Commons – 14 June]

FAITH & SOCIETY

Blasphemy law in Ireland

For information

Members with congregations in the Republic of Ireland may be interested to know that the Government has approved the holding of a referendum to remove the offence of blasphemy from the Irish Constitution. Part of Article 40.6.1 of the Constitution of Ireland states that "The publication or utterance of blasphemous, seditious, or indecent matter is an offence which shall be punishable in accordance with law" and an amendment to what became the [Defamation Act 2009](#) created a new indictable offence of "publication or utterance of blasphemous matter" with a maximum fine of €25,000.

The Referendum is expected to take place in October, possibly on the same day as the Presidential election.

[Source: Radio-Telefís Éireann – 13 June]

Regulation for funeral plan providers

For information

HM Treasury has published a [consultation](#) aimed at helping the Government design a new self-regulatory framework for the funeral plan sector, which the Government believes does not currently treat all customers fairly. In particular, the call for evidence is seeking views on:

- how the pre-paid funeral plan market currently operates, particularly with respect to the types of business models in the sector both with respect to provision and distribution;
- the potential risk of consumer detriment under the current regulatory framework, and if present, where this risk is most acute;
- HM Treasury's initial policy proposal to amend current legislation to allow for additional regulation of the sector by the FCA.

The call for evidence does not appear to be focusing on any costs relating to churches in respect of funerals, focusing rather on crematoria and funeral directors. Specifically, it notes that

“there has been a shortage of burial plots in the UK for a number of years, due to land/planning issues and constraints on the re-use of burial plots, and this has been one of the drivers behind the growth of crematoria services. We are therefore not proposing to consider burial fees or cemeteries in the market study.”

[Source: HM Treasury – 1 June]

ODDS & ENDS

Charity fined for data protection breach

For information

The Information Commissioner's Office (ICO) has [fined](#) the British and Foreign Bible Society £100,000 after cyber hackers gained access to the personal data of more than 400,000 supporters. The ICO found that, although the Society was the victim of a criminal act, it had failed to take appropriate technical and organisational steps to protect its supporters' personal data. Supporter details were kept on an insufficiently secured internal network. A service account established on the network, which was configured in such a way as to provide inappropriate remote access rights, was only secured with an easy-to-guess password. Some payment card and bank account details were placed at risk for some of the charity's supporters.

[Source: ICO – 8 June]

GDPR for small charities and clubs

For information

Responding to an [oral question](#) from Lord Brabazon of Tara, Parliamentary Under-Secretary of State for Digital, Culture, Media and Sport Lord Ashton of Hyde has reiterated that the Government has no plans to exempt small charities and clubs from reporting requirements under the General Data Protection Regulation, which came into force in the UK on 25 May 2018.

Lord Brabazon of Tara: "To ask Her Majesty's Government for what purpose small clubs and charities have to comply with the General Data Protection Regulation, which came into force on 25 May."

Lord Ashton of Hyde: "My Lords, clubs and charities which handle personal data will need to comply with the general data protection regulation in the Data Protection Act 2018 because people have the right to expect organisations of all sizes to keep their data safe and secure and not to misuse it. Small clubs and charities may also process sensitive personal data, such as medical records or children's data. It is especially important that this is kept safe and secure

and used appropriately. To assist smaller organisations, which may have more limited access to legal resources, the Information Commissioner's Office has published a range of user-friendly material on the GDPR on its website and set up a dedicated phone line for small businesses and charities."

To coincide with the entry into force of the General Data Protection Regulation (GDPR), the Department for Digital, Culture, Media and Sport (DCMS) published [guidance](#) on the impact of the Data Protection Act 2018, which implements the requirements of the GDPR. Specifically, the Act:

- Provides a comprehensive framework for data protection in the UK, with stronger sanctions for malpractice
- Sets new standards for protecting general data, in accordance with the GDPR, giving people more control over use of their data, and providing them with new rights to move or delete personal data
- Preserves existing exemptions that have worked well in the Data Protection Act 1998
- Ensures that the data protection framework is tailored to the needs of the UK's criminal justice agencies and intelligence services

[Source: House of Lords – 5 June]

PROPERTY & PLANNING

Church of England faculty jurisdiction rules: consultation

For information

The Church of England is consulting on the operation of the [Faculty Jurisdiction Rules 2015](#).

The Rules were introduced with the intention of simplifying faculty procedures and reducing the burden of administration in areas where it was not serving a useful purpose. They introduced [two lists](#) of works that could be undertaken either without a faculty [List A] or, in some cases, following approval by the Archdeacon [List B]. The Rule Committee is now considering revisions to the two Lists. The main interest of the revision will be to increase simplification by adding items to List A and List B. The Committee believes that there is also scope for simplification of the Rules more generally.

There are links to the Rules and the associated statutory guidance [here](#) and the online survey is [here](#). The consultation will end on **Monday 6 August**.

The responses will be considered and summarised for consideration by the Rule Committee between November 2018 and February 2019, following which, amended Faculty Rules will go to General Synod for consideration in July 2019.

[Source: ChurchCare – 6 June]

Historic England advice on places of worship

For information

Historic England has updated some of its places of worship advice webpages. [Making changes to places of worship](#) and [New and additional uses for places of worship](#) offer advice, guiding principles and sources of further information for those planning to make changes to historic places of worship or who are considering new or additional uses. They replace the English Heritage publications *New Work to Historic Places of Worship* and *New Uses for Former Places of Worship*, which are shortly to be archived.

[Source: Historic England – 21 May]