CHURCHES' LEGISLATION ADVISORY SERVICE

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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 accepts 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.

CLAS HOUSEKEEPING

Review of the CLAS website

For action

We are in the process of reviewing the CLAS website and have posted a survey calling for views on its current setup, how it is being used and how it could be improved to provide a better service to the membership. *We would very much value your input*.

CHARITIES & CHARITY LAW

Challenging wills: *Ilott v Blue Cross*

For information

The UK Supreme Court has just made a ruling – on a challenge to a will – that should be of more general interest to charities and Churches. In brief, the testator, Mrs Jackson, disinherited her estranged daughter, Mrs Ilott, and left the vast bulk of her estate to three charities: The Blue Cross, the RSPB and the RSPCA. Mrs Ilott challenged the will and the District Court awarded her £50,000 from her mother's estate, relying on its powers under ss 1 & 2 of the Inheritance (Provision for Family and Dependants) Act 1975. On appeal, however, the Court of Appeal increased the award to £143,000 to enable her to buy a house, the reasonable costs of the house purchase, and cash payments up to a maximum of £20,000 – probably about £165,000 in total.

The three charities appealed to the Supreme Court, which allowed the charities' appeal and restored the original award of the District Court of £50,000.

Comment: Quite apart from the issue of what is known to academic lawyers as the principle of testamentary freedom, the case illustrates a difficult problem for charity trustees: how far should they go in defending a challenge to a will under which their charity is a beneficiary? Trustees have an overriding duty to act in the best interests of the charity; and it is often a very fine judgment as to whether those interests are best served by maintaining a challenge all the way to the Supreme Court or by conceding and not incurring further legal costs. There is no simple answer: but the amount at stake in the *Ilott* case was quite large and the trustees of the three charities probably thought that there was an important principle at stake that needed to be clarified at the highest level.

Please note: the law of succession in Scotland is quite different from the law in England & Wales.

[Source: UKSC – 15 March]

Fundraising Regulator opens registration for non-levy-paying charities

For information

The Fundraising Regulator has opened its registration system for *registered* charities in England and Wales who do not contribute to its annual levy. Smaller charities can now apply to register voluntarily with the Regulator: registration will cost charities £50 annually and each registered organisation will

receive a registration pack within seven working days of payment being processed. It should be noted that *non-registered charities* (ie, charities that are not registered with the Charity Commission) will be invited to register with the Fundraising Regulator from April 2017. Charities that spend £100,000 or more on fundraising have already been asked to pay a levy and those that have done so have been registered. As part of registering, charities will then be able to use the Fundraising Regulator's "Registered With" badge on their website and marketing materials.

Registration is not relevant to CLAS *qua* CLAS because it is funded by its members' subscriptions, not by public appeals. *However*, church congregations do fundraise – and may possibly think about registering with the Fundraising Regulator if they are registered with the Charity Commission. As to whether or not they should do so, however, we would not presume to advise.

[Source: Fundraising Regulator – 13 March]

HMRC's 'fit and proper persons' declaration and guidance

For information

HMRC has updated its 'fit and proper persons' declaration and help sheet for managers of charities and Community Amateur Sports Clubs claiming tax relief. The updated guidance makes it clear that anyone involved in a disputed tax avoidance scheme could be caught by the rules. For a charity to satisfy the 'management condition' its managers must be 'fit and proper persons'. There is no definition in the legislation of a 'fit and proper person'; and the guidance explains how HMRC applies the test to people who have the general control and management of the administration of the charity. HMRC assumes that all people appointed by charities are fit and proper persons unless HMRC holds information to show otherwise.

HMRC states that, provided charities take appropriate steps in appointing personnel, they may assume that they meet the management condition at all times unless HMRC considers it necessary to make further enquiries. HMRC officials have also confirmed to the Charity Tax Group that existing charity managers who have signed the old declaration do not need to submit an updated one: the update applies only new appointments. The new guidance also gives a useful overview of the distinction between tax avoidance and tax planning – which is helpful, because concerns have been expressed that the previous guidance could have inadvertently caught tax advisers who are volunteer 'charity managers' and was unclear about their obligations and eligibility.

The Church of England's parish resources website has a helpful note on Gift Aid and the 'fit and proper person' test. *Mutatis mutandis*, it could probably be adapted for other denominations if necessary.

[Source: HMRC – 9 March]

HEALTH & SAFETY

Working at height and liability for accidents

For information

On 3 March, the Court of Appeal handed down judgment in *Casson v Hudson & Anor* [2017] EWCA Civ 125, in relation to a claim for damages following a fall from a ladder while painting a church hall. The case highlights the potential liabilities faced by those responsible for church buildings in relation to persons undertaking work on premises for which they are responsible. Mr Casson was a serving prisoner at HMP Kirkham and was assigned to the Mereside Community Centre whilst undertaking resettlement day release during 2008/9. He was subsequently transferred to the church hall as a general handyman. He accepted that he had been told not to use ladders, and that he had read and signed a placement memorandum of understanding that stated, *inter alia*, that he was not permitted to use ladders; however, he used one regardless and in December 2009, he fell from near the top of a 15-rung metal ladder that belonged to the Respondents.

The Liverpool County Court dismissed the claim in its entirety on the ground that Mr Casson had not been the Respondent's employee. On appeal, however, Mr Casson did not challenge the decision that he was not employed by the Respondents; his appeal was limited to a claim for breach of statutory duty under The Provision and Use of Work Equipment Regulations 1998 (often referred to as " the PUWER Regulations").

In the Court of Appeal, Lord Justice David Richards stated that, in order to engage the duties to provide information, instructions and training and to ensure that the ladder was suitable for the purpose for which it is used (Regulations 8,9 and 4), the Respondents would have to be a person who had control to any extent of either "a person at work who uses or supervises or manages the use of work equipment" or "the way in which work equipment is used at work" and in either case "to the extent of such control'. Mr Casson, however, had not been instructed to do any painting but did so on his own initiative: nor had he been given permission to use the ladder – indeed was forbidden to do so. Appeal dismissed.

Comment: In general, the liability of those responsible for church buildings extends to those over whom they exercise control or for whom they have vicarious liability; however, the PUWER Regulations focus on *the equipment used*, such as the ladder in this case. The aim of the Regulations is to ensure that all equipment is suitable for its intended purpose, regularly maintained, only used by people who have received adequate training and inspected by a competent worker. Guidance on the application of the regulations is provided by the HSE and in RoSPA's *Dummies Guide to PUWER*.

As regards the more general issues associated with "working at height", in 2014 the Health and Safety Executive (HSE) completely revised its guidance. Though no changes were made to the Work at Height Regulations 2005, the new guidance set out "in clear, simple terms what to do and what not to do – and debunking common myths that can confuse and mislead employers".

Finally, don't forget that, under the Regulations, "work at height" means work *in any place*, including a place at or below ground level, *and* includes having to get in and out of such a place while at work by using something other than a staircase in a permanent workplace – eg, having to use a ladder to get down into a cellar or undercroft.

[Source: *BAILII* – 3 March]

SCOTLAND

Trustees' annual reporting obligations

For information

Every year, every charity registered in Scotland has to provide annual information by completing an online Annual Return and uploading or sending a statement of accounts, a Trustees' annual report and an external scrutiny report

OSCR has published a reminder for Scots charities of the importance of complying with their annual reporting duties. There can be legitimate reasons for a charity not submitting on time; however, OSCR reports that when it has contacted a non-compliant charity, the underlying reason for failure to file is often that the charity has not given reporting the requisite level of importance.

If a charity does not provide the OSCR with the required information, the following could apply:

- under section 45 of the Charities and Trustee Investment (Scotland) Act 2005, OSCR can appoint an accountant to prepare the accounts at the trustees expense;
- funding for the charity may not be granted; and
- it may affect some of the benefits that charitable status brings, for instance rates relief on a property or a water exemption.

To which we might add, non-compliance with charity law does no good at all for a charity's wider reputation.

[Source: OSCR – 8 March]

TAXATION

Government u-turn on rise in self-employed NICs

For information

In the Spring Budget published last week, Chancellor Philip Hammond announced that, alongside the abolition of Class 2 NICs recommended by his predecessor, Class 4 NICs for self-employed people would be increased from 9% to 11% by the end of the Parliament. This announcement was met immediate negative press, not only because of the cost burden to a increasingly large portion of the population, but because it had been stated in the Conservative election manifesto that NICs would not be increased.

The Chancellor has now published a letter to all MPs ahead of a Statement to be made in Parliament today (15 March), which states clearly that the Government will not proceed with the Class 4 NICs measures set out in the Budget: "There will be no increases to NICs rates in this Parliament". The Chancellor still believes that the current differences in benefit entitlement no longer justify the scale of difference in the level of total NICs paid in respect of employees and the self-employed.

The letter also states that the Government will still be going ahead with the abolition of Class 2 NICs, so those organisations that will be affected by this should continue to prepare for the change.

[Source: HM Treasury – 15 March]