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CLAS CIRCULAR
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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 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

Commission responds to consultation on AR18 questions

For information

The Charity Commission has published the Charities (Annual Return) Regulations 2018, which came into force on New Year's Day and is the outcome of its consultation on the content of the charity Annual Return for 2018. AR18 applies to charities with financial years ending from 1 January 2018 and must be completed by all charities with annual incomes of £10,000 or more, *unless they belong to one of the excepted denominations and have an annual income below £100,000*. Charities have ten months from the end of their financial year to complete the return.

CLAS responded to the consultation, noting our doubt about the need for some of the proposed new questions, including those on the amount of Gift Aid claimed; and we also emphasised the need for a period of stability once the questions to be included in AR18 had been decided. We also expressed our concern at the suggestion that all trustees should provide the Commission with an e-mail address.

The Commission has amended its proposed new question on income received from overseas. Only information about income from overseas governments or quasi-governmental bodies, charities and NGOs will be mandatory for the first year. Providing information about income from other overseas institutions and donors will be voluntary for the AR18 *and then mandatory in following years*. The Commission will also introduce a financial threshold for this information. These changes are intended to ensure that charities will be able to update their records and systems before the question areas become compulsory.

Encouragingly, the Commission has decided *not* to ask charities:

- whether they are claiming rate relief for the premises they use; and
- the amount of Gift Aid they have claimed.

However, AR18 *will* require charities to provide information about the total remuneration received by their staff members, including salary, bonuses, pension contributions, private health care and other benefits in kind. The Commission will make public how many individuals receive total packages worth upwards of £60,000 in bands (in bands of £10,000 up to £150,000, then in bands of £50,000). The Commission will also require charities to provide information about their highest-paid employee, but that information will be held for regulatory purposes rather than being made public.

The Commission has not made any further comment about the requirement for trustees to provide an e-mail address. However, given that, according to the Office for National Statistics *Statistical bulletin: Internet users in the UK: 2017*, *9 per cent of adults in the UK had never used the Internet*, any move that would make access to IT and the possession of an e-mail address necessary requirements for trusteeship is of considerable concern. We will continue to monitor developments.

[Source: Charity Commission – 3 January]

Converting a charitable company to a CIO

For information and possibly for action

The Charity Commission has published an updated version of its guide, *Change your charity structure*. Specifically, the section about converting a charitable company to a charitable incorporated organisation has been updated in line with legislative changes from January 2018. The Commission has also announced a phased timetable allowing charitable companies to convert to CIOs following legislative changes in November 2017.

The service became available on 1 January. The timetable – by income bracket – is as follows: applications will not be accepted before the specified dates.

Date	Annual income
1 January 2018	Less than £12,500
1 March 2018	Between £12,500 and £25,000
1 May 2018	Between £25,000 and £100,000
1 June 2018	Between £100,000 and £250,000
1 July 2018	Between £250,000 and £500,000
1 August 2018	Greater than £500,000

This is obviously of little relevance to church congregations – but it will be of relevance to any charitable company under church auspices that is currently contemplating conversion.

[Source: Charity Commission – 29 December 2017]

General Data Protection Regulation FAQs for charities

For information and possibly for action

The Information Commissioner's Office (ICO) has published a set of frequently asked questions about the General Data Protection Regulation (GDPR) for charities.

For the most part, the FAQs direct users to the package of tools that have already been created for small and micro organisations, including:

- *Getting ready for the GDPR* – a practical self-assessment tool
- The '12 steps to take now' checklist
- A dedicated advice line for small organisations

The ICO also notes that organisations will not need consent for postal marketing but that they will likely need consent for some calls and for texts and e-mails under e-privacy laws found in the Privacy and Electronic Communications Regulations 2003 (PECR). The ICO has published a separate Guide to PECR for more information on consent for electronic marketing.

If an organisation does not need consent under PECR then it can rely on legitimate interests for marketing activities if it can show that how it uses people's data is proportionate, has a minimal privacy impact, and that people would not be surprised or likely to object. If an organisation does rely upon consent, it will need to have received a **positive opt-in from the individual, with no pre-ticked boxes or any other method of default consent.**

[Source: ICO – 2 January]

FAITH & SOCIETY

Report on *Cathedrals and their Communities*

For information

The Department for Communities and Local Government (DCLG) has published *Cathedrals and their Communities: A report on the diverse roles of cathedrals in modern England*. It summarises the findings from the tour of all 42 Church of England cathedrals undertaken by Lord Bourne of Aberystwyth as Minister for Faith at DCLG. It makes no formal recommendations but concludes with three 'suggestions':

- '**Charging policy:** We understand why some cathedrals have charging policies in place, but it is worth considering the example of Chester who did away with charging [*and*] have reported increased profits since, or Durham Cathedral which has pledged to keep its main space free to enter. For lesser-known cathedrals, creating an active programme of events and training of staff and volunteers in welcoming people can bring more people through the door and increase income.'

- '**Using spare space:** The use of crypts and naves for events seems to be a fairly widespread practice but Sheffield cathedral has built a new space below the cathedral to help the city's homeless residents. This may not be feasible for all cathedrals but a project like this can really help turn people's lives around.'

- '**Sharing excellent ideas:** There are good networks between cathedrals, whether that's through formalised meetings and conferences or through the movement of staff from one town or city to the next. However, we suggest there's always room to build better connections both with other cathedrals, with other faith bodies and with local museums, charities and local authorities to learn about how they approach similar problems and opportunities.'

[Source: DCLG – 29 December 2017]

PROPERTY & PLANNING

Business rates in multi-occupied properties

For information and possibly for action

In *Woolway (VO) v Mazars* [2015] UKSC 53, the Supreme Court ruled that non-contiguous floors within the same office block could not be regarded as the same hereditament for the purpose of assessing and paying business rates. The Valuation Office Agency's previous approach to the meaning of 'contiguous' had been to treat two units of property as being contiguous where they were separated by a wall or floor/ceiling. Two non-contiguous properties separated by common area (such as a common corridor) would still be assessed as a single hereditament where a sufficiently strong functional connection could be shown to exist between the two parts.

In *Woolway*, the Supreme Court held that the primary test in determining what is a hereditament is the geographical nature of the property and whether those properties would form a single unit on a plan. The result was that the VOA had to change its practice: the general rule now is that two contiguous properties under the same occupation are only assessed as one *if they can be considered as a self-contained piece of property*.

The ruling was potentially important for small charities and charitable companies because many of them occupy two or three rooms or floors in multi-occupied buildings and not all of them receive 100 per cent business rate relief. DCLG has also noted that the ruling has had an adverse effect on some ratepayers, including:

- increases to the overall rateable value due to the loss of "quantum discount";
- loss of Small Business Rate Relief for ratepayers who have seen their property split into parts as a result of the decision in *Woolway*; and
- changes to rateable value due to rounding.

In the 2017 Autumn Budget, the Chancellor announced that the Government would legislate to reinstate the relevant elements of the VOA's practice prior to *Woolway*. DCLG has now issued a consultation document, *Business rates in multi-occupied properties*, which considers how the Government should capture this policy intention in legislation and how this policy intention should then be implemented.

Subject to Parliamentary approval of the Draft Bill, those businesses that have been directly impacted by the Supreme Court judgment will be able to ask the VOA to recalculate valuations

based on previous practice. They will then be able to have their bills recalculated if they so choose – and backdated. This will include those businesses that lost small business rate relief.

Responses to the consultation should be sent via e-mail before **23 February 2018**. We do not expect to respond on behalf of CLAS.

[Source: DCLG – 29 December 2017]

AND A HAPPY NEW YEAR TO ALL OUR READERS