

## CLAS CIRCULAR 2023/02 (26 January 2023)

### Disclaimer

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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

### Charity Commission Draft Guidance on social media

For information **and possibly for action**

The Charity Commission is consulting on new [Draft Guidance on charities' use of social media](#). In brief, if you use social media you should:

- adopt a social media policy so that you have internal controls in place that are appropriate, proportionate and are clear to everyone at the charity using social media;
- ensure that you use social media only to help you achieve [your charity's purpose](#) and in a way that is in your charity's best interests;
- comply with relevant laws and regulations;
- ensure that any campaigning or political activity that you do on social media complies with [the rules on political activity and campaigning](#); and
- ensure that your processes help you keep people safe online – read the ["Operating online"](#) section of our guidance on safeguarding.

The consultation closes at **5 pm on 14 March 2023**.

The draft guidance notes that:

'Trustees, employees or volunteers are free to post or share personal content and viewpoints on their own social media accounts. Sometimes there are risks that an individual's posts are interpreted as reflecting those of a charity. For example, a trustee, employee or volunteer could post inappropriate content:

- using a personal account where they can be associated with the charity, either through mixing both personal and professional content or because they list their workplace or role
- using an entirely personal account that could reasonably be linked to the person's role at the charity.

As a trustee you are responsible for identifying and managing risks like this, such as by being clear what your rules are, which may be set out in your social media and/or HR policies. This is not intended to prevent general personal use of social media but to help make clear when the charity may have a legitimate concern as the employer.'

According to *Civil Society*, Rosamund McCarthy Etherington of Stone King LLP has already warned that the Commission's guidance 'encroaches into the private lives of trustees, staff members and employees' and that its recommendation for trustees to set rules on workers' personal accounts 'raises fundamental issues in relation to protected philosophical beliefs under the Equality Act 2010 and Article 10 freedom of speech rights'.

[Source: Charity Commission, 17 January]

## EMPLOYMENT

### Vocation to ministry and employment law

For information

In *Professor Doreen McCalla v Lichfield Diocesan Board of Finance Inc & Anor* [\[2022\] UKET 1303655/2021](#), the claimant felt a call to ordination in the Church of England and went through its Discernment of Vocations Process between February 2016 and June 2021 – but she was rejected for training. She claimed discrimination in her treatment by the respondents and by others for whom she alleged the respondents were vicariously liable, both during the discernment process and in respect of its termination. She sued the Diocesan Board of Finance and the Bishop in his corporate capacity, claiming that she had been discriminated against in the discernment process and its termination, in breach of section 55 (2) of the Equality Act 2010.

In the tribunal, Employment Judge Algazy KC dismissed her claim. The purpose of the Discernment Process was to discern a spiritual vocation or calling by God 'and was not to be equated to a trade, occupation or a personal office within the meaning of the Equality Act'. The "services" provided to Professor McCalla by the respondents up to the point of the termination of the Discernment Process were designed to assist with the process of discernment and selection for ordination training, and even if she had been sent to a Bishops Advisory Panel, sending her would not have been "even remotely, an offer of employment or office. Indeed, it is not even an offer of ordination".

For further information, there is a long note on the case [here](#).

[Source: CLAS, 25 January]

## FAITH & SOCIETY

### Church of England Archbishops' Commission on Reimagining Care

For information

The Archbishops' Commission on Reimagining Care, launched by the Archbishops of Canterbury and York in April 2021, has published its report: [Care and Support Reimagined: a National Care Covenant for England](#).

It calls for a National Care Covenant developed through national dialogue that sets out the roles and responsibilities of government, communities, families and individuals, and it proposes three actions to realise a new vision for care and support: rethinking attitudes to care and support, rebalancing roles and responsibilities, and redesigning the social care system. Key elements of the Commission's proposed Covenant are investment in communities, a stronger role for the state, a new deal for unpaid carers, and a commitment to taking on responsibilities as actively engaged citizens. It argues that tackling negative attitudes to ageing and disability must be the starting point to reimagining care and support.

The report makes radical recommendations for redesigning the care system, with a long-term aspiration of making care and support a universal entitlement, including simplified assessment leading to a guaranteed budget, trusting people to manage their own care and decide what help they need, and independent advocacy to help people to access their rights and entitlements.

[Source: Church of England, 24 January]

### The Protect Duty: further information

For information

Further information on the proposed Protect Duty came to light at an online meeting of the Cathedral Security Group on 25 January. The Home Office made it clear that the Duty will *not* apply to places of worship with a maximum capacity (which the original statement referred to as "occupancy") of fewer than 100; however, the test at the moment seems to be *capacity* rather than *attendance* – so a place of worship with a capacity of 300 will still be in the standard tier even if its regular congregation is 25.

It will still be obliged 'to undertake low-cost, simple yet effective activities to improve protective security and preparedness. This will be achieved by accessing free awareness raising materials and development of a basic preparedness plan considering how best a location can respond to a terrorist

event in their locale.' The Duty will fall on the "responsible person(s)", but what that means for an individual place of worship is not yet clear: the minister or pastor (if there is one)? the trustees? the diocese/district/presbytery?

The intention is to publish the legislation in draft, to be scrutinised by the Commons Home Affairs Committee, and the likelihood is that it will be given Royal Assent some time in 2025 and (probably) come into force some time in 2026.

The Government does seem to have got the message about proportionality, but we will continue to monitor the situation very carefully indeed, and to make representations as necessary.

[Source: CLAS, 25 January]

### **Marriage and Civil Partnership (Minimum Age): a reminder**

**For information**

The Marriage and Civil Partnership (Minimum Age) Act 2022 was given Royal Assent on 28 April 2022 and in August the Ministry of Justice announced that it would be brought into effect on Monday 27 February 2023. From **26 February**, 16- and 17-year-olds will no longer be able to marry or enter a civil partnership in England and Wales under any circumstances, including with parental or judicial consent.

[Source: CLAS, 25 January]

## ODDS & ENDS

### Voter ID

For information **and possibly for action**

It may be helpful for members to be aware that applications opened on 6 January for a new form of free ID that can be used at elections. Ahead of a new voter ID requirement, the UK Government has opened the online portal for the ID – the Voter Authority Certificate – and local authorities will begin processing applications.

Applications can be submitted through the online portal: <https://www.gov.uk/apply-for-photo-id-voter-authority-certificate>. Paper application forms are also available from local authorities. Applicants must be registered to vote and will need to provide their date of birth, National Insurance number and a photograph with their application.

Local elections are taking place across England on 4 May, and those intending to vote at a polling station will need to show photo ID to receive a ballot paper. The deadline to apply for a certificate before the May elections is **5pm on Tuesday 25 April**.

Voters who have an accepted form of ID do not need to apply for a certificate. Accepted forms of ID are:

- a UK, European Economic Area (EEA) or Commonwealth passport;
- a UK, EEA or Commonwealth drivers' licence; and
- some concessionary travel passes, such as an older person's bus pass or an Oyster 60+ card.

Voters will be able to use expired ID if they are still recognisable from the photograph.

[Source: Electoral Commission, 16 January]

## PROPERTY & PLANNING

### Guide on acquiring and managing property

For information

Possibly of interest: with the support of the Garfield Weston foundation, the Ethical Property Foundation has launched a free guide for anyone in the charity sector planning to acquire and manage property.

[The Weston Property manual](#) contains 12 sections that range from tips on basic mistakes to avoid to a jargon buster for commercial property. The blurb states that it aims to enable charities to “engage with both property and property professionals with knowledge and confidence”.

[Source: *Civil Society*, 17 January]

### New fire safety regulations come into force in England

For information **and possibly for action**

The [Fire Safety \(England\) Regulations 2022](#) have come into force. They impose requirements for “responsible persons” of mid- and high-rise blocks of flats to provide information to fire and rescue services to assist them with operational planning and provide additional safety measures. In all multi-occupied residential buildings, residents should now be provided with fire safety instructions and information on fire doors.

In high-rise residential buildings, responsible persons will be required to:

- provide their local fire and rescue service with up-to-date electronic building plans and information on the design and materials of their external wall;
- undertake monthly checks of firefighting lifts, evacuation lifts and other key pieces of firefighting equipment; and
- install a secure information box and wayfinding signage.

In mid-rise residential buildings (over 11 metres), responsible persons will be required to undertake annual checks of flat entrance doors and quarterly checks of all fire doors in the common parts.

[Source: Home Office, 23 January]

## SCOTLAND

### Register of Controlled Interest in Land

For information

Churches based outside Scotland that have Scottish congregations and/or property may be unaware of the impending Register of Controlled Interest in Land under the [Land Reform \(Scotland\) Act 2016](#).

The Scottish Churches are suggesting that the new Register has been set up in such a way as to create unmanageable administrative burdens for local congregations. The Register will impact particularly on the Church of Scotland, the Scottish Episcopal Church and the United Reformed Church, but will obviously affect everyone to a greater or lesser degree.

They have been engaging with the Scottish Government and have proposed alternative arrangements to ensure that the policy aim of achieving transparency is met, while also recognising the unique legal structure of congregations. They argue – unsuccessfully, it appears – that they depend heavily on local volunteers and that the Register will have a hugely disproportionate impact on them. Scottish Ministers have failed to recognise the position of the Churches and have not responded to their suggestions.

We have been here before in England and Wales, where the Government proposed compulsory land registration some years ago. It was pointed out at the time that many mediaeval churches do not have deeds, either because the deeds never existed in the first place or because they were lost, and that compulsion was going to cost immense amounts of money and time – and to no obvious purpose, given that there was no intention of (eg) selling cathedrals for redevelopment. In the end, compulsory registration was not pursued further. [*With thanks to David Bradwell.*]

[Source: Church of Scotland, 23 January]