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General Church Management Information and Update

2017/01

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1) Unsafe Memorials and Headstones in Cemeteries

The House of Commons Library has published a helpful briefing note considering the issue of memorial (headstone) safety and action to address the risk of accidents caused by unstable memorials in cemeteries. The note relates exclusively to the position in England and Wales.

The issue of memorial safety was brought to a head following cases where memorials toppled over and caused injuries, sometimes fatal, to members of the public. In particular, the death of a child in Yorkshire in 2000 highlighted the problem of unstable memorials. Ministry of Justice (MoJ) guidance, published in 2009, states that, over the previous 30 years, eight people in the UK were killed when a memorial fell on them.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/326725/safety-burial-grounds.pdf

Responsibility for maintaining individual memorials generally remains primarily with those who erected them. This includes power to take any action necessary to remove a danger which arises because of the condition of a vault, tombstone or memorial. Burial authorities also have duties of care under health and safety legislation and under the principles of occupier's liability.

The MoJ guidance sets out good practice on the standard expected in the risk management of memorials in all types of burial grounds, public or private. The guidance states that the risk of any injury is extremely low and that any precautions should be proportionate to the level of risk. The guidance also recommends that operators of burial grounds should be mindful of the potential to cause distress to the bereaved, and highlights the necessity for good communication of the inspection and assessment process, in order to obtain the support of the local community.

[Source: House of Commons Library]

2) Lead Theft from Church Buildings

Responding to an Oral Question from Tom Pursglove MP, Second Church Estates Commissioner Dame Caroline Spelman has highlighted the work being done by the Cathedral and Church Buildings Division and Historic England to monitor and reduce occurrences of lead theft.

The Commissioner also directed churches to the Church Care Website, which shows that there are now ways of fixing lead, as well as marking systems for signature materials to help to deter thieves. While the Oral Question and the website relate specifically to the Church of England, the advice given is relevant for any denomination facing the same issue.

<http://www.churchcare.co.uk/>

[Source: HoC]

3) Equality and Human Rights Commission – Guidance on Religion and Belief in the Workplace

The link below leads to the EHRC website on this subject which should be of interest to all employers within the faith sector.

<https://www.equalityhumanrights.com/en/religion-or-belief>

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4) Health and Safety – IMPORTANT

At a recent seminar of the Charities' Property Association, Andrew Banks, of Stone King LLP, presented a brief overview of the key aspects of the Health and Safety at Work Act 1974 of which charity trustees need to be aware.

The new sentencing guidelines for breaches of the Act that came into operation on 1 February 2016 create the potential for large fines based on turnover and on levels of harm and culpability – *and trustees cannot insure against criminal liability*. We therefore thought it might be helpful to remind CLAS members of the basic features of the Act.

The core purpose of the Act is “securing the health, safety and welfare of persons at work [and] protecting others against risks to health or safety in connection with the activities of persons at work”. In short, Health & Safety is about protecting employees and others in contact with the organisation; but it is also about protecting the organisation itself from prosecution. The Act places several obligations on *any* employer – duties towards employees, duties towards others and duties as controllers of premises – *and there is no charity carve-out*.

Under the Act:

- employees are protected “at work”, which includes working away from the office (eg. a hospice home visit). In many instances an employee might possibly be more vulnerable when away from the normal place of work, which means that employers need to consider the less obviously-risky circumstances;

- the duty to others creates a responsibility during work activities where non-employees might be affected (visitors, members of the public, volunteers, contractors, tenants etc); and
- the duty as the controller of premises *falls on each person who to any extent has control of a building*, including non-domestic premises.

Liability under the Act may arise under three heads:

- **consent**, where activities were known about and ignored or allowed to continue;
- **connivance**, where a trustee played an active part in the activity; or
- **neglect**, where there were no systems in place to avoid the activity, or where systems were not being reviewed properly.

In the event of a breach, it is possible for the Health and Safety Executive to prosecute all trustees, though it is more likely to focus on specific people with relevant responsibilities.

For the majority of the time, most churches will probably have very few issues with H&S. But, for example, a routine job like changing lightbulbs or replacing the candles in a chandelier may involve working at height; and the Work at Height Regulations 2005, as amended, mean that churches in England, Wales and Scotland have a legal duty to provide protection for their employees and persons under their control in such circumstances. Moreover, the Health and Safety Executive regard it as good practice to provide volunteers with the same level of protection as employees: see *Working at Height* on the Ecclesiastical Insurance website.

<http://www.ecclesiastical.com/churchmatters/churchguidance/churchhealthandsafety/working-at-height/index.aspx>

To minimise the risk of problems arising:

- you should have adequate systems in place and be aware that H&S regulations will almost certainly apply to your church in some capacity;
- you should have a clear policy on what degrees of responsibility will apply to different individuals;
- once an H&S policy is in place, you should make sure that it is regularly reviewed and kept firmly before the trustees *as a priority* – for example, by appointing a trustee with specific responsibility for H&S reporting; and
- you should have your H&S policy audited regularly and, if necessary consider seeking specialist advice.

There is a lot of helpful advice on the Ecclesiastical Insurance website.

<http://www.ecclesiastical.com/churchmatters/churchguidance/churchhealthandsafety/index.aspx>

[Source: CLAS]

5) Employment Status of Volunteers

On 31 January, Daniel Zeichner (Cambridge) (Lab) asked the Secretary of State for Education, "if she will amend the Equality Act 2010, or bring forward new legislation, to protect volunteers from encountering discrimination in the workplace".

In her reply on 7 February, Caroline Dinenage, Parliamentary Under Secretary of State for Women, Equalities and Early Years said:

"Volunteers are not covered by the Equality Act 2010 because they do not meet the definition of an employee under the Act, a position confirmed by the Supreme Court in the case of *X v Mid Sussex Citizens Advice Bureau* [2012]. We have no plans to change this."

Given the amount of church work undertaken by volunteers – and in the charity sector more widely – that is extremely reassuring.

[Source: Commons *Hansard*]

6) Bats in Churches

Natural England has announced that the Heritage Lottery Fund has approved the development stage and initial funding of £3.8million for the 5-year "Bats in Churches" partnership project. According to the announcement, the project will:

- trial and perfect new techniques to enable bats and church congregations to live together;
- build up professional expertise and volunteer skill to share the best solutions with hundreds more churches; and
- bring together church communities and bat enthusiasts to create a shared understanding and appreciation of England's historic places of worship and our rare flying mammals.

Natural England's Chairman, Andrew Sells, said that the project will "provide help and support to places of worship across England where large bat populations can sometimes have a negative impact on historic buildings and the communities who use them". Deborah Lamb, Deputy Chief Executive of Historic England said:

"We welcome every opportunity to help congregations that work hard to care for church buildings, providing public space for community activity and a wonderful treasury of historic monuments, brasses, woodwork and craftsmanship. This project will offer practical help to those coping with the additional challenge of living with bats and encourage volunteers who are interested in bats to discover more about local churches." It is to be hoped that the results will provide some useful general lessons for all denominations – including those that do not accept HLF funding on grounds of principle.

[Source: Natural England]

7) OSCR- Being a Charity in Scotland

OSCR has unveiled *Being a Charity in Scotland*. It uses simple graphics and straightforward language to help those who run Scottish charities to understand their responsibilities. The guide is intended for charity trustees of existing charities or people working in charities, especially smaller ones, for people who want to set up a charity and for professionals who advise charities and organisations that want to become charities.

The new guide combines and condenses *Meeting the Charity Test: Guidance* and *Guidance and good practice for Charity Trustees*. It sets out the key points charities that need to know about Scottish charity law. Within it there are links to detailed guidance pages contained on OSCR's website and it also has information on other organisations that can provide help and advice to charities.

<http://www.oscr.org.uk/charities/guidance/being-a-charity-in-scotland>

[Source: OSCR]

8) Gift Aid – Tax paid by Donors

HMRC is very keen to ensure that Gift Aid donors are paying enough tax to cover their donations, having come under pressure from the National Audit Office and the Commons Public Accounts Committee to take steps to reduce the amount of Gift Aid claimed incorrectly. *Donors therefore need to know if they can or cannot make charitable donations with Gift Aid added.*

The tax landscape has changed; and HMRC estimates that around 50% of adults in the UK no longer pay any income tax *at all* – up from around 42% only a few years back – for various reasons:

- the increase in the personal allowance from £6,475 in 2010/11 to £11,000 in 2016/17 (with a promise of further increases to £12,500 before the end of the current Parliament in 2020);
- the fact that pension contributions can act further to reduce taxable income;
- the increasing popularity of ISAs, from which investment income is tax free;
- the introduction from 2016/17 of allowances under which the first £5,000 of dividend income is not taxed; and
- the introduction from 2016/17 of a tax-free allowance for basic rate taxpayers on savings interest of up to £1,000.

The result is that it is becoming increasingly possible for a donor – particularly a donor in part-time work – to sign a Gift Aid declaration without giving any consideration to whether or not s/he is actually paying sufficient tax to cover the donation.

We strongly urge church treasurers and Gift Aid officers to remind donors of the rules. Someone who donates under Gift Aid and pays insufficient tax is personally liable for the shortfall.

[This is a shortened version of an article by Kevin Russell, of Stewardship: Have you paid enough tax to 'cover' your Gift Aid donations?, which you are encouraged to read in full.)
<https://www.charitytaxgroup.org.uk/commentary/paid-enough-tax-cover-gift-aid-donations/>

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

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. It could probably be adapted for other Churches if necessary.

<https://www.gov.uk/government/publications/charities-fit-and-proper-persons-test/guidance-on-the-fit-and-proper-persons-test>

<http://www.parishresources.org.uk/wp-content/uploads/9-Gift-Aid-Fit-and-Proper-Persons.pdf>

[Source: HMRC]

10) Scotland – Trustees' Annual Reporting Obligations

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.

Non-compliance with charity law does no good at all for a charity's wider reputation.

<http://www.oscr.org.uk/news/scottish-charities-need-to-report-on-time-to-give-the-public-confidence>

[Source: OSCR]

11) Charity Commission: Charity Finance Guidance

The Charity Commission has published an updated version of its guidance article *Charity finances: trustee essentials* (CC25). The guidance sets out how charity trustees should manage their charity's finances and other assets, enabling it to succeed in delivering its charitable aims.

In short, trustees should satisfy themselves that they have:

- realistic funding plans and strategies
- effective management controls and systems
- planned for their charity's assets and resources to be used in the best possible way for their beneficiaries

While the substance of the guidance has not changed, the Commission has attempted to make it both more accessible and more readable. The section on fundraising duties also now links to the Fundraising Regulator's standards of fundraising practice.

Alongside this, the Commission has also updated *Charity governance, finance and resilience: 15 questions trustees should ask*

Comment: In addition to the above, probably the absolute basic minimum reading for a new trustee (apart from the obvious things like the charity's governing document) is *The essential trustee: what you need to know, what you need to do* (CC3), last updated in July 2015.

We cannot emphasise too strongly that unregistered charities are just as much bound by charity law as registered ones; and every trustee should at least be familiar with the basics.

<https://www.gov.uk/government/publications/managing-charity-assets-and-resources-cc25>

<https://www.gov.uk/government/publications/charity-trustee-meetings-15-questions-you-should-ask/charity-trustee-meetings-15-questions-you-should-ask>

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570398/CC3.pdf

[Source: Charity Commission]

12) Buildings Security

Ecclesiastical Insurance has produced what appear to be updated *Guidance notes: CHURCH – SECURITY* on protecting churches from theft, vandalism and arson. Churches that insure with Ecclesiastical will no doubt be aware of them already: those that do not may still find them useful.

<http://www.ecclesiastical.com/churchmatters/images/pdf%20-%20church%20insurance%20guidance%20notes%20-%20security.pdf>

[Source: Ecclesiastical Insurance]

13) Faith, Health and Wellbeing

A joint new report from FaithAction and Local Government Association (LGA)'s begins on the basis that: "At this time of severely constrained finance for local government and the NHS it is essential that we do all we can to harness the skills and assets in our local communities to improve health and wellbeing." Read more at <http://www.faithaction.net/portal/evidence/working-with-faith-groups/>

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14) Assets Not Burdens – Using Church Property to Accelerate Mission

A new report from the Centre for Theology and Community presents findings of in depth research into how Churches use their buildings. It is an ecumenical study that shows that although Churches serve their local communities, it also highlights how underused Church buildings are and the need for better management of these assets.

It is an interesting read.

The research has been designed and delivered independently by the Centre for Theology & Community (CTC) and has been grant funded by Allchurches Trust Ltd.

<http://www.theology-centre.org.uk/wp-content/uploads/2013/04/CTC-Research-6-Assets-not-Burdens-Feb2017.pdf>

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