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CLAS CIRCULAR 2009/11 (16 July 2009)

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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 every care is taken to provide a service of high quality, neither CLAS, the Secretary nor the Governors undertake 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.

CHARITIES AND CHARITY LAW

Public benefit: Charity Commission assessments

The Charity Commission has published its first public benefit assessment reports on a range of charities: five independent schools, three care-homes and four religious charities.

- [Highfield Priory School Ltd](#)
- [The Manchester Grammar School Foundation](#)
- [Manor House School Trust Ltd](#) (which operates Moyles Court School)
- [Pangbourne College Ltd](#)
- [S. Anselm's School Trust Ltd](#)
- [Cornwall Old People's Housing Society](#)
- [Penylan House Jewish Retirement & Nursing Home Cardiff](#)
- [The Rest Bay Convalescent Hotel](#)
- [Church Mission Society](#)
- [London Sri Murugan Temple](#)
- [Tara Mahayana Buddhist Centre](#)
- [United Christian Broadcasters Ltd](#)

The charities chosen covered a range of sizes, locations and types of activity. Information-gathering included a questionnaire to each charity, office-based research by Commission staff and a visit to each charity. The Commission then analysed the information using the criteria set out in its statutory guidance on public benefit.

The four **religious charities** passed the Commission's assessment, though in the case of the *Sri Murugan Temple* the Commission recommends that the trustees should complete their review of the charity's governing document as a whole so that it reflects more accurately the charity's aims and practice. In the case of the *Tara Mahayana Buddhist Centre*, the Report concludes that:

There are no required actions which the trustees must take in relation to this assessment, although we will provide separate advice and guidance about managing the conflict of interest that arises as a result of two of the trustees residing at the Centre.

As a matter of good practice, we recommend that the charity advertises that it has a discounts policy in relation to the fees for its study course to ensure people in poverty are aware of this.

The absence of a church congregation as a sample is presumably explained by the fact that the vast majority of them are only just going through the process of registering or are still exempt.

As regards the **care homes**, the Commission concludes that *Penylan House Jewish Retirement and Nursing Home* is spending too small a proportion of its incomes and reserves on ensuring that people who cannot afford its full fees had an opportunity to benefit. The *Rest Bay Convalescent Hotel* was deemed to be acting as a provider of holidays rather than, as its objects state, a convalescent home: 'the provision of holidays for the elderly is not (unless specifically catering for a charitable need) a charitable purpose'.

Though church schools are not normally the concern of CLAS, some members may be interested in the Commission's conclusions on the **independent schools**.

The *Manchester Grammar School Foundation* passed the test unequivocally. In the case of *Pangbourne College*, the Commission concludes that the College is a charity and is operating for the public benefit, but that there are steps that need to be taken in order to demonstrate that they are meeting key good practice requirements in the Commission's public benefit guidance:

- the governors should publicise more clearly details of means-tested awards, the extent of the discount available and what types of assistance are available;
- the governors should review the scope for extending the impact of the bursary programme by increasing the relative number of higher percentage awards; and
- the trustees should keep under review the extent to which the opportunities to benefit are taken up by people who are unable to afford the fees, including people in poverty.

In the case of *Manor House School Trust Ltd*, the Commission concludes that the Trust is a charity and is operating for the public benefit, but that in order to demonstrate that they are meeting key good practice requirements in the Commission's public benefit guidance, the trustees should:

- publicise more clearly details of means-tested awards, the extent of the discount available and what types of assistance are available;
- review the scope for extending the impact of its bursary programme by increasing the relative number of higher percentage awards; and
- keep under review the extent to which the opportunities to benefit are taken up by people who are unable to afford the fees, including people in poverty.

The Commission intends to review the trustees' progress with these recommendations within eighteen months of the report.

In the case of *Highfield Priory School Ltd*, the Commission concludes that it is capable of being charitable, subject to the public benefit requirement being met; however, sub-principles 2b (in relation to fees) and 2c (people in poverty not to be excluded from the opportunity to benefit) are not currently met and that the governance provisions in relation to conflicts of interest must be revised in order to be able to conclude that sub-principle 2d can be met.

In the case of *S Anselm's School Trust Ltd*, the Commission concludes that it is a charity but that it is not currently operating for the public benefit, because although the governors are taking steps to address sub-principles 2b and 2c, they have not adequately demonstrated that the charity is currently operating for the public benefit.

The charities are not permitted to appeal against the Commission's rulings at this stage, but they will be able to appeal to the Charity Tribunal against any use by the Commission of its regulatory powers. However, as Farrer & Co point out, the Commission is not suggesting that any of them is not in fact a charity or that any should be removed from the register: instead, they are being required to accept the Commission's findings and agree a plan to address perceived shortcomings.

Comment: The four religious charities passed the test with little difficulty. Within a wider religious context, however, there may conceivably be problems in proving public benefit for religious groups running (eg) holiday homes. If, as noted above, 'the provision of holidays for the elderly is not (unless specifically catering for a charitable need) a charitable purpose', the same must apply *a fortiori* to the provision of holidays generally. ***Paul Ridout, of Farrer & Co (a Professional Member of CLAS) has kindly supplied the following comment:***

The assessment of the [Rest Bay Convalescent Hotel](#) found, among other things, that the Hotel was providing holiday accommodation for elderly people, regardless of whether they were convalescing or otherwise in need in a charitable sense. In the case of the Hotel, the issue was that the trustees were operating their charity in a way that did not necessarily further its stated purposes and this made it impossible for the Commission to reach any conclusions as to public benefit.

The Commission pointed out in its report that the provision of holidays for the elderly was not a charitable purpose unless it was specifically catering for a charitable need. This, without doubt, is an accurate statement of the existing law but the immediate significance of this for religious charities running convalescent or holiday-type accommodation is clear. Where accommodation is offered that could be characterised as a holiday, trustees will need to be satisfied either that the provision of accommodation is a means of advancing religion or otherwise that the accommodation is being provided as a means of meeting a charitable need, perhaps to assist with convalescence or to meet particular needs associated with old age or social disadvantage. Any organisation that provides accommodation without it being a means of advancing religion or of meeting some other charitable need falling within its charitable purposes may to review its operations in the light of its charitable purposes and in the light of the Commission's report.

The Commission's [supplementary guidance on public benefit and charities for the advancement of religion](#) (published in December 2009) showed the Commission taking a very flexible approach to the ways in which religious charities can deliver public benefit through a variety of activities. If people staying at a charity's premises are clearly engaged in some form of programme of religious instruction or practice, this will be recognised as delivering benefit to the public by virtue of the fact that those people will return to society to practise their religious beliefs. Furthermore, paragraph D2 of the supplementary guidance recognises the public benefit that can be achieved by *'contributing to followers' or adherents' good mental and physical health; aiding the prevention of ill-health, speeding recovery and fostering composure in the face of ill-health'*.

This rather generous view of charities for the advancement of religion seems not to be available for charities whose objects are not expressly religious and these are the organisations more likely to encounter difficulties. In some cases, there may be a religious motivation or ethos that underpins the charity's operations but no direct reference to the advancement of religion. In these cases, trustees may need to consider whether their charity's objects should be amended to clarify that the advancement of religion is in fact a central aim; alternatively, they may need to take steps to ensure that accommodation is provided as a means of addressing identified charitable needs.

EMPLOYMENT

Clergy terms and conditions: update

Circular 2009/10 mentioned the fact that the Department for Business Innovation & Skills was seeking information, via a letter from the Minister, on 'relevant developments in your own faith group since the [statement of good practice](#) was issued' by the DTI Clergy Working Group in 1967.

We understand that the major churches have in fact been contacted independently. The issue is on the radar of the Free Churches' Group and the Scottish Churches Committee, so the smaller churches should be aware of the situation. Individual responses can be sent to Shelley Torey, Employment Relations, Bay 482, Department for Business Innovation & Skills, 1 Victoria Street, London SW1H 0ET; it would be helpful if CLAS could be copied into responses.

Following is the text, for those who did not receive the original letter:

23 June 2009

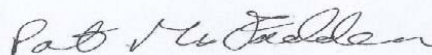
Dear Mr Derek Taylor-Thompson

As you may be aware, a number of faith groups came together at the request of the DTI (now the Department for Business, Innovation and Skills) to form the Clergy Working Group following responses to the Department's Employment Status Review (launched in 2002). My predecessor, Jim Fitzpatrick, chaired the Group and I would like to extend my thanks to all those who participated in the discussions.

A Statement of good practice was produced as a result of these discussions. The statement represented minimum standards to which faith groups should aim to achieve, on a voluntary basis, in a variety of areas – terms and conditions of work; resolving disputes; development and personnel support; and information and consultation – a copy is attached for ease of reference.

In a statement to Parliament in March 2007, Jim Fitzpatrick said we would review, in two years time, what progress had been made. I would now like to take the opportunity to ask you to report back to me on relevant developments in your own faith group since the statement of good practice was issued. Individuals should also be made aware that they may also contact BIS direct, on a non-attributable basis, about progress. Based on the information and evidence provided, BIS will consider if any further action is appropriate.

I would be grateful if you could send responses by the end of September to Shelley Torey, Employment Relations, Bay 482, 1 Victoria Street, London SW1H 0ET.



PAT MCFADDEN

FAITH & SOCIETY

Equality Bill

The Equality Bill has now completed its committee stage. The latest version of the Bill (mercifully shorn of its Explanatory Notes) is available [here](#). The Bill, as amended, still revokes the Employment Equality (Religion or Belief) Regulations 2003 (SI/2003/1660) which, readers will recall, was the principal concern expressed to the committee on the Bill by William Fittall and Richard Kornicki when they gave evidence before it.

The exception in Schedule 23 to the Bill remains. For convenience, it is reproduced below in full:

Organisations relating to religion or belief

2. (1) This paragraph applies to an organisation the purpose of which is—
 - (a) to practise a religion or belief,
 - (b) to advance a religion or belief,
 - (c) to teach the practice or principles of a religion or belief,
 - (d) to enable persons of a religion or belief to receive any benefit, or to engage in any activity, within the framework of that religion or belief, or
 - (e) to foster or maintain good relations between persons of different religions or beliefs.
- (2) This paragraph does not apply to an organisation whose sole or main purpose is commercial.
- (3) The organisation does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
 - (a) membership of the organisation;
 - (b) participation in activities undertaken by the organisation or on its behalf or under its auspices;
 - (c) the provision of goods, facilities or services in the course of activities undertaken by the organisation or on its behalf or under its auspices;
 - (d) the use or disposal of premises owned or controlled by the organisation.
- (4) A person does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by doing anything mentioned in sub-paragraph (3) on behalf of or under the auspices of the organisation.
- (5) A minister does not contravene Part 3, 4 or 7, so far as relating to religion or belief or sexual orientation, only by restricting—
 - (a) participation in activities carried on in the performance of the minister's functions in connection with or in respect of the organisation;
 - (b) the provision of goods, facilities or services in the course of activities carried on in the performance of the minister's functions in connection with or in respect of the organisation.
- (6) Sub-paragraphs (3) to (5) permit a restriction relating to religion or belief only if it is imposed—
 - (a) because of the purpose of the organisation, or
 - (b) to avoid causing offence, on grounds of the religion or belief to which the organisation relates, to persons of that religion or belief.

- (7) Sub-paragraphs (3) to (5) permit a restriction relating to sexual orientation only if it is imposed—
- (a) because it is necessary to comply with the doctrine of the organisation, or
 - (b) to avoid conflict with strongly held convictions within sub-paragraph (9).
- (8) In sub-paragraph (5), the reference to a minister is a reference to a minister of religion, or other person, who—
- (a) performs functions in connection with a religion or belief to which the organisation relates, and
 - (b) holds an office or appointment in, or is accredited, approved or recognised for the purposes of the organisation.
- (9) The strongly held convictions are—
- (a) in the case of a religion, the strongly held religious convictions of a significant number of the religion's followers;
 - (b) in the case of a belief, the strongly held convictions relating to the belief of a significant number of the belief's followers.
- (10) This paragraph does not permit anything which is prohibited by section 28, so far as relating to sexual orientation, if it is done—
- (a) on behalf of a public authority, and
 - (b) under the terms of a contract between the organisation and the public authority.
- (11) In the application of this paragraph in relation to sexual orientation, sub-paragraph (1)(e) must be ignored.
- (12) In the application of this paragraph in relation to sexual orientation, in sub-paragraph (3)(d), "disposal" does not include disposal of an interest in premises by way of sale if the interest being disposed of is—
- (a) the entirety of the organisation's interest in the premises, or
 - (b) the entirety of the interest in respect of which the organisation has power of disposal.
- (13) In this paragraph—
- (a) "disposal" is to be construed in accordance with section 36;
 - (b) "public authority" has the meaning given in section 146(1).

[Source: *Parliament website* – 14 July 2009]

ODDS & ENDS

Digital dividend update: Channel 69

Adrian Pickering informs up that the latest Ofcom report states that Channel 69 is going to cease to be available for radio-microphone use with effect from **1 January 2012**. There is a possibility that there may be a short extension to this, but the loss is now a certainty.

The replacement is Channel 38, but Channel 69 equipment cannot work on Channel 38 without (almost) full replacement. Adrian suggests that, for static use, Channels 69 and 38 are not a good choices. When moving or buying new equipment he suggests that churches should seriously consider using the remaining 'white space' channel frequencies instead.

At the moment, he is considering the detail of the Ofcom report.

WATER

Lobby of Parliament

The St Swithun's Day lobby of Parliament organised by the Scout Association duly took place. The Churches were represented by the Bishop of Southwell & Nottingham as Chairman of CLAS. The lobby was addressed by the responsible Minister, Huw Irranca-Davies, and by the Chairman of Ofwat, Philip Fletcher.

At the meeting Irranca-Davies admitted that the introduction of the new charging system for surface-water drainage in the North-West of England had gone 'badly, badly wrong'. Speaking to the media afterwards, he said: 'I promised the Cubs and Scouts I met today that this will be fixed. We're waiting for proposals from United Utilities and Ofwat in the next couple of weeks on what they're going to do. If those proposals are not fair and reasonable then I want to make it absolutely clear that I can and will fix this myself.'

On the previous day Irranca-Davies had said this to the *Water '09* Conference:

We all agree that something is clearly wrong if Scout groups, churches and community organisations face huge hikes in their water bills. I look forward to an update from Cub Scouts from around the country about the impact that high water bills are having on their local pack. They have been consistent campaigners in helping us to make sure water companies have a fair charging scheme.

As we have repeatedly made clear, some companies have been charging people in a way that doesn't meet the guidance and is not fair and equitable. Following meetings with ministers, United Utilities placed a year-long moratorium on these charges. And I could not be more clear that Ofwat and water companies must resolve the issue.

We expect to see proposals from United Utilities very soon on how they plan to tackle the problem in the longer term. If I don't think these proposals - or the proposals of any other water company currently charging in a similar way - are fair or equitable, as our current guidance specifies it must be, I want to make very clear that I will take further action. The quickest way to do this would be through specific guidance dealing with this problem. The alternative – legislation – would clearly take longer. And I'm determined the Scouts and other organisations are not met with huge bills this year or next so I hope that water companies will come up an acceptable solution without the need for anything else.

Any group or organisation who feels that their bill is wrong should contact Ofwat who have agreed to take it up with the water company on their behalf.

[Sources: Defra News Release – 14 July 2009: CLAS]