

CLAS CIRCULAR 2015/13 (15 June 2015)

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| | |
|---|-----------|
| CHARITIES AND CHARITY LAW..... | 2 |
| SORP: consultation on revision..... | 2 |
| Charities (Protection and Social Investment) Bill: second reading..... | 3 |
| FAITH AND SOCIETY | 4 |
| Assisted dying – again | 4 |
| <i>Who is My Neighbour?</i> – The Lords debate the House of Bishops’ pastoral letter..... | 4 |
| ODDS & ENDS..... | 10 |
| Food hygiene | 10 |
| SCOTLAND..... | 11 |
| Extension of FoI legislation | 11 |
| TAXATION | 12 |
| VAT on direct mail | 12 |
| VAT and investment management fees..... | 12 |

CHARITIES AND CHARITY LAW

SORP: consultation on revision

For information

The [Charities SORP Committee 2015](#) feeds recommendations about the content of Statement Of Recommended Practice for accounts to the Charity Commission for England and Wales and the Office of the Scottish Charity Regulator (which together are authorised by the Financial Reporting Council (FRC) as the SORP-making body for the charity sector in Great Britain). As a result of recent developments in the EU it will be opening a consultation in mid-June.

Because of changes in company accounting arising from the implementation of an EU Accounting Directive, changes are to be made to the UK-Irish Generally Accepted Accounting Practice (GAAP). The role of a SORP is to provide application guidance to GAAP. So if GAAP changes, so must the SORP. The Charities SORP [website](#) explains that there are three different matters that affect the SORPs.

1. The proposed changes to Charities SORP (FRS 102), which affect a few specific accounting treatments. These changes will be put into effect for the Charities SORP (FRS 102) via an Update Bulletin.
2. Replacement for the Charities SORP (FRSSE): Charities SORP FRSSE cannot apply for reporting periods beginning on or after 1 January 2016 because the FRSSE standard *itself* will be withdrawn and will not apply for reporting periods beginning on or after 1 January 2016. Views will be sought on the solution to replacing the Charities SORP (FRSSE).
3. A revised definition of 'larger charity' in the SORPs: views will be sought on redefining 'larger charity' as any charity with a gross income exceeding £500,000 or 500,000 Euro (Republic of Ireland only). This is important because more is asked of 'larger charities' in their reporting under the SORPs.

We will alert members when the consultation documents appear. *Civil Society* [reports](#) that proposals will include scrapping a separate SORP for small charities. We shall see.

[Source: OSCR & *Civil Society* – 4 June]

Charities (Protection and Social Investment) Bill: second reading

Members of the House of Lords debated the Charities (Protection and Social Investment) Bill for the first time on Wednesday 10 June. This debate gave members an opportunity to debate the general principles of the Bill.

Members from all sides of the House welcomed the Bill, though the Labour Peer Baroness Hayter of Kentish Town raised objections to the proposed extension of the 'right to buy' scheme to properties administered by Housing Associations, many of which are charities. This measure will feature in the Housing Bill, which yet to be introduced to Parliament.

The Liberal Democrat Peer Baroness Brinton raised the issue of the Exclusive Brethren and the Preston Down Trust. Using this case as an example, she expressed concern that the Bill did not go far enough:

“Something that concerned me from the investigation and the subsequent Charity Commission report is that—despite much detail in the report that accepted that there was detriment, harm and disbenefit— the Preston Down Trust was given charitable status. That seems quite extraordinary.”

and promised to raise the issue once again in Committee.

Several other Peers, notably Lord Hope of Craighead, who had been chair of the Joint Committee on the Draft Protection of Charities Bill under the last administration, and Lord Hodgson of Astley Abbotts, who led a review of the Charities Act 2006, expressed their concern about the implications of the Bill's anti-terrorism measures on the provision of charitable aid.

The debate can be read in full [here](#). Committee stage is scheduled to begin on Tuesday 23 June.

[Source: House of Lords *Hansard* – 10 June]

FAITH AND SOCIETY

Assisted dying – again

For information

As members will no doubt be aware, Lord Falconer has announced his intention of reintroducing his Assisted Dying Bill; but since he came 21st in the ballot for private Peers' bills we suggested in our last Circular that his bill was unlikely to make much progress in the current session of Parliament.

We evidently spoke too soon. Rob Marris, Labour Member for Wolverhampton South West, came *top* of the Commons ballot for private Members' bills and has decided to introduce an Assisted Dying Bill himself (presumably similar to or identical with Lord Falconer's bill). It is set down for second reading on 11 September.

[Source: legislation.gov.uk – 26 May]

***Who is My Neighbour?* – The Lords debate the House of Bishops' pastoral letter**

For information

Given that the last meeting of CLAS discussed the pastoral letters by the House of Bishops and the Catholic Bishops Conference of England and Wales, I thought that the following summary of last Thursday's debate in the House of Lords might be helpful. It's long, but not nearly as long as the *Hansard*!

The Bishop of St Albans moved a [motion](#) in the Lords as follows:

“That this House takes note of the role played by civil society, in the light of the pastoral letter from the Church of England's House of Bishops, *Who is my neighbour?*”

He expressed concern for the growth in voter apathy, the decline of volunteering and donations to charity and a general decrease in the nation's wellbeing and levels of happiness. Those were some of the issues raised in [Who Is My Neighbour?](#) The House of Bishops had deliberately, and he believed successfully, avoided a party political stance; and it was not his intention to attack the Government or, indeed, any political party. But alongside voter disillusionment and apathy there was also widespread concern among politicians, social commentators and community leaders alike over the

gradual weakening of civil society, which was matched by growing levels of loneliness and isolation, especially among the elderly.

He attributed that to a more general decline in “neighbourliness”, argued for a “return to the principles of subsidiarity and solidarity that undergirded and predated the Big Society agenda of the 2010 election campaign” and highlighted the positive impact of increased social capital and the role the Church played in supporting it. He was convinced that there was urgent work to be done to establish a new politics that sought the common good and the role that churches, charities and voluntary organisations could play in moving society in that direction. In conclusion,

“The question I am asking today is: what can we do to encourage the development of more intermediate institutions, which are the places where we are most likely to build bridging social capital? The acceptance of the imperative to devolve power leaves us with questions of how we ensure the presence of strong communities that can accept this power and use it for the common good. Thus, intermediate institutions play a foundational role, as neighbourhoods are built on institutions that are strong enough to enable people to move away from the language of ‘I’ and ‘me’ to the language of ‘us’ and ‘we’.”

Lord Griffiths of Fforestfach (Con) agreed that the report was a genuine attempt to set out a moral vision based on the Christian faith and one to which, he hoped, people of other faiths and of no faith would, be able to subscribe. It was not in any way a political statement by the Church, nor did it support any political party. He very much welcomed its endorsement of civil society: freedom and the rule of law were fundamental to our way of life and a market economy was, he believed, key to our prosperity, but human flourishing was about more than consumer choice, free markets or globalisation. The Big Society was not about replacing government with *laissez-faire* or about a political programme but about the moral responsibility of individuals and communities to act for the common good when they are provided with the opportunity to do so. He believed that the Church did have something to add to what a government welfare department or organisation might do: witness the efforts of the Archbishop of Canterbury to promote credit unions and the success of church schools in providing more than simply a technical education.

But we could not address the issue of civil society, which was really about the redistribution of income, without addressing the issue of the creation of income. *Who Is My Neighbour?* was inspired by the parable of the Good Samaritan. Society, let alone government, could not meet needs without the resources to do so and “the first resource is the income which comes from a job”. If, as the report claimed, the Christian faith was a world view it had to be comprehensive and address wealth creation as well as wealth redistribution.

Lord Griffiths of Burry Port (Lab) said he was “a prime beneficiary of all the provisions of the welfare state, having enjoyed national assistance, national health, education and all the rest of it”. But the unintended consequence had been to diminish the perceived need for voluntary activity in community action and work. It was important to recreate the voluntary sector because there would be a lot more work for it to do.

He reminded the House of the duty of care enunciated by Lord Atkin in *Donoghue v Stevenson*, which concluded that there was a duty not only between the manufacturer and the client but also between the manufacturer and the end-user. *Who is my neighbour?*, the duty of care and the issue of negligence were questions for British society as a whole; and no-one should attack the Church for raising them in a general way.

Baroness Barker (LD) said that all political parties were struggling with the fact that the drivers and determinants of economic development were becoming increasingly global, while the effects of economic change were disproportionately local. In many ways the document echoed the [Call to Action for the Common Good](#) issued by the Carnegie UK Trust, which identified some principles which they thought should govern public policy: investing in tomorrow, everyone 'doing their bit' and a move away from narrow functional or commercial transactions between individuals towards partnership for the common good. However, she regretted that there was no mention of the lesbian, gay and transgender community: to lesbian, gay and transgender Christians that was hurtful.

Baroness Neuberger (LD) especially commended what was said in the letter about power, identity and minorities. Neighbourliness and hospitality were by no means only Christian concepts: Old Testament texts about loving your neighbour and welcoming the stranger because you were strangers in the land of Egypt applied to Jews, Christians, Muslims and plenty of others. 'You shall love your neighbour as yourself' came from Leviticus.

Many fleeing Nazism had come to the UK because of the hospitality of civil society — Christians, Jews, non-believers, ordinary working British people, and the voluntary and civil society groups working together — and some 70,000 or more had been saved and welcomed. She did not believe that, in the end, we would be able to refuse to take any of the thousands of desperate people fleeing oppressive regimes in places such as Africa. She hoped that the Government would make new migrants welcome and "tackle the vile language that defines immigrants as a problem and allows 'asylum seeker' to be a term of abuse in the playgrounds of Britain".

Baroness Royall of Blaisdon (Lab) declared that the present system of politics was broken. Huge swathes of the population neither joined political parties nor voted. The lack of participation by the young meant that Governments focused more on policies for older people, so that young people found voting even more irrelevant. We needed to embrace community politics, working with and for communities, listening and engaging not lecturing, and focusing on the common good. Active citizenship and volunteering were good for the individuals concerned and for the people and communities they sought to help: a win-win situation. But much more needed to be done to ensure that the quality of volunteering made the experience worthwhile for all concerned.

Funding was needed to train and support volunteers. Volunteering must always provide added value and never be a means of displacing paid jobs. The Government had to invest in volunteering to ensure that citizens had the time and resources to engage in community life: the pastoral letter was

absolutely right to say that “a modern nation, where ties of kindred and neighbourliness are often very weak, requires state-sponsored action to underpin the welfare of each citizen”.

In passing, she noted that vast new housing estates without shops, cafés, doctors' surgeries or community facilities were simply not acceptable. Like credit unions and other intermediate institutions, housing associations had a strong unifying potential, serving poor people and others, but also wanting to benefit the wider community.

The Bishop of Rochester said that pastoral letter had not been written to provide soundbites. There was some quite nuanced argument: it sought to move beyond the rather sterile language of right and left and private provision and public provision and lead towards something richer and more inclusive.

Reference had been made to familiar projects such as food banks and shelters for the homeless. He mentioned some of the initiatives for the creative use of church buildings: post offices, community hubs, Internet cafés and the like. The Church had also been active in campaigning on payday loans promoting credit unions and working with schools to educate young children about financial management and budgeting. But there was a challenge, not least to the Churches, about how we could use our land and buildings for the benefit of our society through the provision of affordable and social housing.

Lord [John] Patten (Con) concentrated on three problems facing what he described as “big charity”. He was critical of raising money from individuals using direct-mail bombardment, direct texting campaigns and insidious forms of cold-calling and welcomed the Fundraising Standards Board seeking to introduce new guidelines about good and bad practice. He also criticised third-party marketers purporting to be fundraisers, aka “chuggers”. Thirdly, he was critical of the level of some chief executive pay-levels.

Lord Judd (Lab) was content to with measures to strengthen regulation of charities but warned against over-regulation.

Baroness Butler-Sloss (CB) spoke about the Commission on Religion and Belief, which she chaired. Its terms of reference were to examine how ideas of “Britishness” and national identity might be inclusive of a range of religions and beliefs and influence people's self-understanding, and to explore how shared understandings of the common good might contribute to greater levels of mutual trust, collective action and a more harmonious society. The question, *Who is my neighbour?* had many answers, “from the global community to the village square”.

Multiculturalism had been interpreted in many places and agencies as meaning that, so long as English laws were not broken, each religious, and usually ethnic, group could live in its own community with its own language, rather than English, side by side with other communities but not communicating with them. That had led to forms of ghettoism in certain places and even, from time to time, forced marriage and honour killings:

“... to try to create wider communities is in no way a failure to respect the personal identity and culture of other people. Anti-Semitic and anti-Muslim demonstrations are of course entirely unacceptable, but they are the open manifestation of those who are not prepared to be tolerant of others, to try to understand or to try to create dialogue.”

Everyone – not just children – needed to be educated in religious literacy in order to learn the culture of other communities and to celebrate diversity.

Lord Cormack (Con) suggested drawing of a charter by the main world faiths as a means of underlining what commonality lay between them and stressed the importance of citizenship.

Baroness Uddin (Non-Affiliated) spoke of the Big Society and suggested that it had had only mixed success, citing the failure of the personal independence payment system and the rise of food banks as examples of continuing social injustice.

Lord Anderson of Swansea (Lab): said that we had to avoid the politician's temptation to agree with everyone, to take the easy way out and to avoid values by relying on focus groups. He drew attention to the migration pressures in the Mediterranean: the moral response is easy in the short term but, having saved them from drowning, was it then moral to wash our hands of them and say that they must be the responsibility of Italy or Malta? It was obviously not moral to have an open-door policy: but there lay the key moral dilemma of where to draw the line.

Baroness Prashar (CB) quoted William Beveridge:

“an abundance of voluntary action outside the citizen's home both individually and collectively, for bettering his own and his fellows' lives, are the distinguishing marks of a truly free society”.

She drew attention to the community foundations, started in the 1980s. There were now 48 of them and they needed to be better known. They were about local engagement and inclusiveness, the very thinking that underpinned the sentiments of *Who Is My Neighbour?*. Mark Carney had said that they were helping to deliver a more inclusive capitalism, one in which individual virtue and collective prosperity could flourish and she asked whether the Government was minded to do something for them.

For the Opposition, **Lord Kennedy of Southwark (Lab):** said that the letter was a challenge to all, particularly those engaged in party politics. Calling for a new politics was nothing new; but the pastoral letter was something different. He did not believe that change would happen overnight but he was optimistic about what could be achieved. He agreed with the proposition that it was wrong to assert that that religion and politics could not mix. The Church could offer a different perspective, leadership and pressure, setting out what needed to be done.

He agreed that the vast majority of politicians and candidates entered politics with a passion to improve the lives of their fellow men and women. People engaged in wider civil society for similar

reasons. But it surprised him to read that, according to the polls, the vast majority believed that it made no difference who was in power.

Parties increasingly targeted smaller groups of voters in a select number of constituencies, and others got less attention. The adversarial nature of politics produced an adversarial approach to ideas that might not always produce the right or best outcomes. It presented civil society in general with an opportunity and challenge to present ideas and solutions to problems in a way that could be embraced across the political spectrum.

Devolution in Scotland, Wales and Northern Ireland had not been accompanied by devolution in England. Devolving power to the most appropriate level could re-engage people in the decision-making process and better decisions could be made. Bridging social capital was an important part of this process.

Lord Bridges of Headley, Parliamentary Secretary, Cabinet Office (Con), replying for the Government, noted that this was not a new problem. Throughout history, what some people hailed as progress, others had seen as unwanted, corrosive and unsettling change, and for each generation the pace of change seemed to accelerate and, with it, the sense of dislocation.

He did not wish not for a moment want to belittle the concerns of the Bishop of St Albans, but wished somewhat to redress the balance. There were good examples of the parties coming together; and 3 million more adults volunteered last year compared to 2009-10. The National Citizen Service had seen 130,000 participants. The Community Organisers programme had trained over 6,000 organisers to work in hundreds of communities. Giving had increased since 2009-10 and was now worth about £11 billion a year.

“So we should pay great tribute to the civil society sector, which over the past few years has remained resilient through difficult times. Supported by nearly £200 million of investment from government, huge numbers of organisations have had to transform themselves to be able to continue to deliver effectively in very different and fast-changing economic and social environments.”

Motion agreed.

[Source: Lords *Hansard* 11 June]

ODDS & ENDS

Food hygiene

For information

In 2012, in response to a request from members, we compiled a checklist for organisers of occasional events such as harvest suppers and church fêtes. It included the following:

DIY Catering: If you decide to do your own catering the Appointed Person should hold a Food Hygiene Certificate.

That was the advice that we had had from the Food Standards Agency at the time: however, life has moved on and the Agency has updated its advice. It says this on its website:

“I’m a volunteer that sells food at charity events. Do I need a food hygiene certificate?”

No. Food hygiene certificates are not a legal requirement. If you are selling or handling food at a charity event, you need to do so safely but a qualification is not essential.

To help make sure any food you make, handle and sell is safe, you should check out the practical hygiene advice for caterers at the link below, or contact your nearest local authority environmental health team.”

We are currently in the process of updating the checklist and will circulate it shortly.

[Source: *FSA Website* – 11 June 2015]

SCOTLAND

Extension of FoI legislation

For information **and possibly for action**

The Scottish Government has opened a consultation into the extension of Freedom of Information legislation to include private contractors fulfilling public contracts. This would bring under the scope of the legislation contractors operating private prisons, providers of secure accommodation for children, grant-aided schools and independent special schools.

The consultation paper is available [here](#). The consultation takes the form of an online survey, which closes on **4 September 2015**.

Though the proposed extension is unlikely to affect any members of CLAS directly, the invitation to respond also includes the following:

“In addition to the organisations discussed in this paper, we would welcome suggestions as to what other bodies – whether individually or collectively - should be considered in any future consultation.”

On that basis, at least some members might wish to send in a precautionary response.

[Source: *Scottish Government* – 11 June 2015]

TAXATION

VAT on direct mail

For information and possibly for action

HMRC has published updated versions of [VAT Notice: 701/10 zero-rating of books and other forms of printed matter](#) and [VAT Notice 700/24: postage and delivery charges](#) which clarifies HMRC's position on the treatment of direct mail. HMRC has confirmed that the transitional period during which the retrospective concession applies will still end on **31 July 2015**.

[Source: *HMRC VAT Notice* – 9 June 2015]

VAT and investment management fees

The [Upper Tribunal \(\[2015\] UKUT 0305 TCC\)](#) has dismissed an appeal by HMRC against the [First Tier Tribunal decision \(\[2013\] UKFTT 444 \(TC\)\)](#) in the University of Cambridge case, finding that the managers of the Cambridge University Endowment Fund were entitled to recover the VAT incurred on fund management fees.

In accordance with its partial exemption special method (PESM) the University could treat these management fees as overhead expenditure, and therefore recover the VAT as residual input tax. This was because the investment activity was not an economic activity in its own right, and instead generated income that facilitated and supported the overall operation of the university. HMRC's 'burden of cost' argument was not successful.

Any taxpayers with similar investment activities who have been denied the recovery of VAT on related fund management fees, solely on the ground that the investment activity does not constitute an economic activity, may wish to revisit the position and consider whether there is scope for making a retrospective claim.

[Source: EY bulletin – 16 June 2015]