CHURCHES' LEGISLATION ADVISORY SERVICE

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CLAS CIRCULAR
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FAITH & SOCIETY

Incense as a psychoactive substance?

For information and possibly for action

The Psychoactive Substances Bill, which started in the House of Lords, is awaiting second reading in the Commons. During proceedings in the Lords, in relation to a series of amendments to limit the scope of the proposed blanket ban to synthetic psychoactive substances, Baroness Hamwee argued that the Bill as drafted risked criminalising the use of innocuous botanicals such as perfumes, *incense* and herbal remedies. She was concerned about the possible unintended consequences of the generalised term "psychoactive substances" used in the Bill: "We do not want to criminalise priests. The more vigorously the priest swings the censer, the more incense is let loose into the body of the church" [HL Deb (2015-16) 14 July 2015 c 469]. In response, the Minister in charge, Lord Bates, made no reference to the point.

We cannot for one moment believe that the Government intends to make the use of incense in religious worship illegal; however, unintended consequences are exactly that – unintended.

The Commons Home Affairs Committee has subsequently announced a short inquiry into "New psychoactive substances" which will inform the Commons stages of the passage of the Bill, due in the autumn. One of the issues that the inquiry will be looking at is which groups will be particularly affected by a ban on psychoactive substances. In view of the possibility that the ecclesiastical use of incense may fall within its ambit as an unintended consequence of the Bill's poor drafting, members who may be affected may wish to make a written submission advocating the inclusion of a specific exemption in Schedule 1 to the Bill. But in any event, CLAS will be submitting a memorandum to the Committee on the point.

The closing date for submissions is Wednesday 2 September: written submissions can be made online at http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/psychoactive-substances/commons-written-submission-form/.

[Source: Home Affairs Committee – 22 July]

FUNDING

Challenges to wills by charities

For information

In *Ilott v Mitson & Ors* [2015] EWCA Civ 797 the appellant, Mrs Ilott, was the 46-year-old estranged daughter of Mrs Melita Jackson, who died in 2004 leaving a will under which, apart from £5,000 for the BBC Benevolent Fund, she left her entire estate to be divided between The Blue Cross, the RSPB and the RSPCA and cut off her daughter without the proverbial penny. Mrs Ilott challenged the will and in 2007 she was awarded £50,000. She thought it was not enough; but in 2014 Parker J dismissed her appeal from that order. The issues in the latest appeal were whether or not the original order should be set aside for error and, if so, whether the Court of Appeal make a fresh order for Mrs Ilott's maintenance. The Court of Appeal concluded unanimously that it should do so:

> "… this is a case where the court can and should make reasonable financial provision out of the deceased's estate for the appellant's maintenance so that her living expenses are relieved without affecting the state benefits on which she relies" [45, per Arden LJ].

It awarded her £143,000 to buy the house that she and her husband lived in and a capital sum not exceeding £20,000 to purchase an annuity to supplement her income.

Comment

The case has evoked mixed reactions. The three animal charities made a joint statement in which they said that they were "surprised and disappointed". Their solicitor said that it was a "worrying decision for anyone who values having the freedom to choose who will receive their property when they die". To which the short answer is that testators in England and Wales have not had that freedom, untrammelled, for the last forty years: see the Inheritance (Provision for Family and Dependants) Act 1975. (And they have never had such freedom in Scotland, where the law of succession is very different.) So any talk of a "landmark judgment" is a wild exaggeration.

For charities that rely heavily on legacies for their income, however, it raises the issue of the extent to which they should resist such challenges and how far they should take proceedings. It seems to us that there are two conflicting issues here: on the one hand, charities – churches included – need legacy income while, on the other, there may be a reputational risk for the sector if charities are perceived as challenging wills too vigorously. And it is a very difficult balance to strike.

[Source: BAILII judgment – 27 July 2015]

NCVO review of fundraising self-regulation

For information

Members may be interested to learn that The National Council for Voluntary Organisations (NCVO) has opened a review, chaired by CEO Sir Stuart Etherington, into fundraising self-regulation in the charity sector. *The review is not an open one, so charities cannot send in feedback without first being approached by the review's panel.* It is expected to report by **21 September 2015**.

Its purpose is to analyse the effectiveness of the current self-regulatory system for fundraising and make recommendations and proposals to ministers, to ensure an effective system of self-regulation protecting the interests of the public and maintaining public confidence. It will consider:

- the structure of self-regulation, and the relationship between standard-setting (including the Code of Fundraising Practice), enforcement and operational management;
- the operation of the self-regulatory system and the current self-regulatory bodies (Fundraising Standards Board, Public Fundraising Regulatory Association, Institute of Fundraising);
- the scope of regulation itself (who is regulated; who is not) and sanctions;
- the responsibilities of charity chief executives and trustees;
- the role of third-party fundraisers and their relationship with charities; and
- the relationship between the fundraising sector and the public.

Though obviously aimed at the activities of secular charities, CLAS has an obvious interest in the review inasmuch as church congregations raise money from their members and some church charities make wider appeals for funds. William Shawcross, Chair of the Charity Commission for England & Wales, told *The Times* that if the self-regulation of fundraising cannot be sorted out satisfactorily, the Commission could do it if given the necessary extra resources:

> "We must await Stuart Etherington's report, but if he concludes that self-regulation by charities cannot work, then government would have to consider whether the Charity Commission should regulate fundraising … That would need legislation and extra resources but we could do it if we had to. However, I hope that … charities can put their own house in order".

[Source: *Civil Society News* – 3 August 2014]

PROPERTY & PLANNING

Construction (Design and Management) Regulations 2015

For information

There has been a degree of concern about possible unintended consequences for church congregations as a result of the latest regulations on health & safety in relation to building projects: the Construction (Design and Management) Regulations 2015, which came into force on **6 April 2015**.

The National Churches' Trust and the Historic Religious Buildings Alliance have now produced an extremely helpful brief – *Health and Safety on your building site: Construction (Design and Management) (CDM) Regulations 2015* – which ***anyone about to start a project, however small, is strongly encouraged to read***.

In brief, the CDM Regulations

- apply to any project involving more than one contractor (eg an electrician and a stonemason);
- apply only to construction work;
- apply not just to new build but also to projects such as renewing roofs and rainwater goods, stone repairs and repointing significant areas of brickwork; but
- do *not* apply to DIY and maintenance.

The Regulations require the appointment of a "principal designer" to ensure that they are implemented fully and correctly. The principal designer will need to have *both* the relevant design skills *and* competence in health & safety issues. An architect or a quantity surveyor could undertake the principal designer role – *but he or she will have to fulfil the two functions*.

The NCT/HRBA brief states that:

> "for any project that falls within the CDM regulations, you must appoint a principal designer to manage Health and Safety issues on your behalf and to ensure that the principal contractor understands and fulfils his Health and Safety obligations.
>
> Large firms of architects will have principal designers on staff, and their services will be provided as part of the package when you engage the architect. In many cases, though, you will be responsible for appointing someone from another firm. Your architect will be able to advise on this.

If you do not appoint a principal designer and make sure your contractor complies with Health and Safety requirements, then you or your project manager will be liable.

For clients, *the big difference is that they have a legal responsibility which previously only rested with the appointed professionals*" [emphasis added].

Comment: it seems as if the effect of the new Regulations is not going to be as draconian as might first have appeared: if a group of parishioners gets together to repaint the church kitchen, the CDM Regulations do not apply. But that certainly does not absolve people from being careful and taking sensible precautions when (eg) using ladders.

[Source: NCT/HRBA – 3 August]