

CLAS CIRCULAR 2015/20 (21 October 2015)

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CHARITY LAW

Campaigning by charities

For information

Civil Society [reports](#) that Rob Wilson, the Minister for Civil Society, has supported the right of charities to campaign. In a letter to Andrew Purkis after Purkis's public lecture at Cass Business School on the history of charitable campaigning, though Wilson reiterated the frequent warnings that charities should not stray into party politics, he wrote:

"It is not the government's intention to prevent charities from supporting, engaging or influencing public policy. Campaigning is a legitimate and valuable activity of civil society and we support the charity sector's right to campaign. I have always been clear that it is important that charities can campaign to support their charitable purpose. As long as they do so within the rules, I welcome it. I have no doubt that charities will continue to play an important role in campaigning to support their charitable purposes, and that in years to come there will be many more examples of charities influencing and contributing to changes in public policy."

In short: campaigning by charities is fine, so long as they do so within the guidelines laid down by the Charity Commission in [CC9: Speaking out: guidance on campaigning and political activity by charities](#).

[Source: *Civil Society* – 13 October]

Charity Commission guidance on whistleblowing rights for charity employees

For information

The Charity Commission has released [guidance](#) for charity employees on whistleblowing, notably that they can report concerns about certain categories of serious wrongdoing at their charity.

Employees have some protection in law under the Public Interest Disclosure Act from detrimental treatment or victimisation from their employer if, in the public interest, they report concerns about serious wrongdoing at their charity to the commission, provided that the concerns they report meet the conditions in the Act for a 'protected disclosure'.

The Act protects most employees in the charity sector who report concerns about certain serious matters about their employer to the commission. The Act does not apply to:

- genuinely self-employed professionals (other than in the NHS);
- voluntary workers (because they aren't *employees*): this includes charity trustees, who should report concerns via [serious incident reporting](#).

The Commission asks that whistleblowing reports be made in writing via the dedicated whistleblowing [email address](#).

[Source: Charity Commission website – 12 October]

EMPLOYMENT

EHRC review of equality and human rights law relating to religion or belief

For information

On 5 October the Equality and Human Rights Commission published a [Review of equality and human rights law relating to religion or belief](#) by Peter Edge and Lucy Vickers of Oxford Brookes University. Their study reviews the interpretation and effectiveness of the current domestic legislative framework on religion or belief under equality and human rights law. It suggests that there are a number of areas that may require further consideration:

- The definition of "belief", particularly in equality legislation, merits further assessment. The broad definition currently being applied by the courts is unclear, particularly for belief systems which are based upon scientific evidence. This results in apparent inconsistencies between judgments, particularly at Employment Tribunal level. Additionally, the relationship between "religion" and "belief" is also unclear.
- The impact on domestic law of some specific issues that have been tested at European level remains unclear. For example, despite the ECtHR judgment in *Eweida & Ors v United Kingdom*, (the British Airways cross case) it remains uncertain whether or not an individual bringing a claim will need to find a group of individuals who share his or her beliefs and, if so, what the size of that group should be.
- The primary focus of the case law to date has been on the relationship of the religious employee and his or her employer. The positions of the religious *employer* and of the religious service provider have been relatively unexplored in the case law, but have the potential to be a significant area.
- The existing Equality Act exceptions on the basis of religion or belief may be too narrow or too wide.
- It would be helpful to assess the extent to which a duty to accommodate religion or belief might be beneficial to employees and employers.

On this last point, the authors point out that the position of employees who have religious objections to carrying out part of their duties, or to carrying them out in a particular way, is currently approached through the indirect discrimination model, under which a range of factors can be taken into account in determining whether or not a response is proportionate. They note that Canada and the United States deal with similar issues through a duty of reasonable accommodation of religion or belief and that there have been calls for such a duty to be adopted in Great Britain.

They suggest that an alternative to both the indirect discrimination model and the duty of reasonable accommodation might be to introduce a mechanism similar to the current right of employees to request flexible working. The proposed mechanism would cover issues of religion or belief in the workplace that are not covered by the existing right to request, such as dress codes and uniforms. They also note that different views are held about whether or not that would be beneficial for employees and employers.

The ECHR responded to the review as follows:

"The Commission will now begin work on its concluding report setting out its own views on these issues. The Commission's role is to promote and enforce the laws that protect everyone's right to be treated with fairness, dignity and respect. So we will take as our starting point the premise that services provided to the public should be available to everyone equally without discrimination, and that enabling employees to express their religion or belief should not cause a detriment to other employees or service users."

[Source: EHRC Press Release – 5 October]

Parental leave to be extended to working grandparents

For information

At the Conservative Party conference George Osborne, [announced](#) that he proposes to extend the system of flexible parental leave to working grandparents so that they can take time off to help care for their grandchildren. The policy is designed to encourage more people to stay in the workplace for longer rather than having to decide to give up their jobs if they want to support their families in the first year of a grandchild's life. It will also allow more working parents to return to work more quickly should they wish to do so, since they will have the option of sharing part of their parental leave entitlement with one of their parents. The Chancellor said that the new policy will not increase the *overall* amount of time that a family can take off work to support a new child; but it will give them more flexibility to decide which family member takes the leave.

Parents will be able to share up to 50 weeks of leave and up to 37 weeks of parental leave pay, currently £139.58 a week or 90 per cent of average weekly earnings, whichever is lower, with a nominated working grandparent. Leave must be taken by the child's first birthday; and any remaining time will then be lost. *The Government will consult on the proposed change in the law in the first half of 2016.*

[Source: Conservative Party – 4 October]

FUNDING

Unethical charity fundraising

For information

Though we are sure that no member of CLAS would do such a thing, you may be interested to know that, following the [Etherington report](#) into charity fundraising, Rob Wilson, Minister for Civil Society [has announced](#) that, in future:

- large charities could be forced to sign up to a new fundraising watchdog;
- if large charities fail appropriately to safeguard their supporters, the Government will have new powers to intervene and regulate charity fundraising;
- the new watchdog will require charities to have the explicit consent of all donors, *past and present*, before any data can be shared.

The new regulator will oblige large charities to adhere to a strict code of good practice, which includes protecting the identity of those donors. Anyone who is inundated with online fundraising marketing material from charities will be able to press “reset” and stop receiving the material.

Rob Wilson commented on the changes:

"Charitable giving is one of the most decent and generous attributes of a civilised society – and we need to rebuild people's faith in the big charities. Those who give to charity should know their donation is going to further a worthy cause and this trust will never be abused."

[Source: Government press release – 3 October]

ODDS & ENDS

Coroners and Justice Act 2009: post-implementation review of coroner reforms

For information

When the last Government implemented the coroner reforms in the Coroner and Justice Act 2009 it undertook to review their impact after they had been in place for 18 months. The new Government has now, launched the post-implementation review.

The aims of the 2009 Act were:

- to put the needs of bereaved people at the heart of the coroner service;
- for coroner services to be locally delivered within a framework of national standards; and
- to put in place a more efficient system of investigations and inquests.

The review seeks to find out whether the reforms are operating as expected and whether there have been any unintended consequences. Responses can be made online [here](#).

We suspect that this issue is too technical for a CLAS response but we have not made up our minds on that; however, we should be very interested to see responses of individual CLAS members.

[Source: CLAS Summary – 28 September]

Counter-extremism strategy: a summary

For information

The Government introduced a new [counter-extremism strategy](#) on 19 October. The Government had previously introduced a new statutory Prevent duty in order that all local authorities, schools, universities and colleges, NHS Trusts and Foundation Trusts, police, probation services and prisons should be clear that they must take action to prevent people being drawn into terrorism [38].

According to the new announcement, the counter-extremism strategy builds on that work; but it also recognises that the need to go further:

“We must counter the ideology of non-violent and violent extremists alike. We must continue our efforts to tackle neo-Nazi as well as Islamist extremism and respond better to

the growing problems of hate crime in our communities. Just as important is addressing the underlying problem of segregated and isolated communities that can provide an environment in which extremism can take root" [39].

Following is a summary of the main points

To deal with the broad challenge of extremism the Government will focus on four areas:

- Countering extremism.
- Building a partnership with all those opposed to extremism.
- Disrupting extremists.
- Building a more cohesive society [40].

The strategy focuses on extremism at home but recognises that the flow of people, ideology and money is increasingly international. Building a more robust international response to counter extremism and strengthening international bodies will be a key priority for UK diplomatic missions, working through international institutions such as the United Nations, the Commonwealth and the European Union and through government and civil society partners. In particular, this will include steps to:

- counter extremist ideology;
- build partnerships with all those opposed to extremism; and
- disrupt extremists.

The Government will work with international partners to support implementation of the United Nations Secretary General's Action Plan on Preventing Violent Extremism; and aid programmes will address the underlying drivers, enablers and narratives of extremism, particularly through efforts to build stability and security overseas [44 & 45].

The Home Office's Extremism Analysis Unit will work closely with academics and universities, commissioning and part-funding research and with the FCO and DFID [46 & 47].

The Government will commission an independent review to understand the extent to which *shari'a* is being misused or applied in a way which is incompatible with the law. This is expected to provide an initial report to the Home Secretary in 2016 [48].

The Government will therefore carry out a full review to ensure all institutions are safeguarded from the risk posed by entryism, to report in 2016 and look across the public sector, including schools, further and higher education colleges, local authorities, the NHS and the civil service [49].

Work to counter the ideology will continue to challenge the extremist argument, confront the underlying weakness of the extremist ideology, promote a positive alternative and support vulnerable young people [59].

The Government will implement a counter-ideology campaign focused on contesting the online space, strengthening our institutions, supporting individuals at particular risk of radicalisation and building a partnership with all those opposed to extremism [60].

A fundamental shift in the scale and nature of the response is required to match the huge increase in extremists' use of the internet. Therefore, the Government will continue to:

- support a network of credible commentators to challenge the extremists and put forward mainstream views online;
- train a wide range of civil society groups to help them build and maintain a compelling online presence;
- run a national programme to make young people more resilient to the risks of radicalisation online and provide schools and teachers with more support to address the risk posed by online radicalisation; and
- build awareness in civil society groups and the public to empower internet users to report extremist content [65].

The new Prevent duty ensures that specified institutions have a responsibility to prevent people being drawn into terrorism when carrying out their day-to-day functions: the Government will keep the list of institutions under review and expand it if necessary [69].

To address concerns about supplementary schools, the Department for Education will introduce a new system to enable intervention in unregulated education settings that teach children intensively. *This intervention will apply if there are concerns about the safety or welfare of the children attending them, including from extremism.* This will provide for the registration of settings so that they can be inspected and will introduce appropriate sanctions to protect children [74].

The Protection of Charities and Social Investment Bill will create a new power for the Commission to disqualify a trustee for wider reasons, including where their conduct – *past or present* – would damage the public's trust and confidence in charities [79 to 81].

The Government will review rules on citizenship [104]

The Government will introduce new powers to ban extremist organisations that promote hatred and draw people into extremism, restrict the harmful activities of the most dangerous extremist individuals and restrict access to premises repeatedly used to support extremism [112].

In order to help parents protect their children from radicalisation, the Government has set up a scheme under which parents can cancel the passport of a child at risk of travelling overseas to join a

terrorist group [118]. It also proposes to strengthen the role of the Disclosure and Barring Service (DBS) to enable employers to identify extremists and stop them working with children and other vulnerable groups. The Government will review eligibility for DBS services to ensure that they cover the full range of activity where vulnerable people and young people are at risk from extremists [119].

Specifically in relation to faith communities:

“The Department for Communities and Local Government is therefore commissioning a new programme of support to help faith institutions to establish strong governance. The programme aims to strengthen and support places of worship of all faiths in order to improve governance, increase their capacity to engage with women and young people, challenge intolerance and develop resilience to extremism. The programme will provide training on key issues alongside support for faith institutions facing specific challenges [86].

It is not government's role to regulate faith leaders, but government does have a responsibility to ensure that those working in the public sector are suitably trained. The Government will therefore work in partnership with faith groups to review the training provided to those who work as faith leaders in public institutions” [87].

(So it looks as if earlier press reports about a “register of faith leaders” were premature.)

[Source: Government Press Release – 19 October]

PROPERTY & PLANNING

Chancellor announces abolition of uniform business rate

For information

In his speech to the Conservative Party conference the Chancellor, George Osborne, [announced radical changes](#) in the system of business rates in England:

- local government will be allowed to keep the rates they collect from business – which should mean that local councils will retain the proceeds from attracting new businesses to their areas.
- because much more is collected in business rates than given back in the central Government revenue support grant, the local government grant will be phased out altogether.
- the uniform business rate will be abolished entirely.
- councils will be given more power and greater responsibilities for running their own communities.
- cities with elected mayors, such as London, Manchester and Sheffield, will be able to add a premium to the rates to pay for new infrastructure provided they have the support of the local business community to do so.

Comment: The implications of this for the voluntary sector are impossible to predict: it all depends on what is in the detailed proposals. The change is highly unlikely to affect the 100 per cent exemption for registered places of public worship. Otherwise, however, if local authorities are, in effect, left to operate business rates more-or-less as they see fit – *and to retain all the proceeds* – might that give rating authorities an incentive to be less generous with the current 20 per cent discretionary relief for charity premises?

[Source: Conservative Party – 4 October]

'Right to Rent' checks introduced for landlords in England

On 20 October 2015, the government [announced](#) that from 1 February 2016 all private landlords in England will have to check new tenants have the right to be in the UK before renting out their property.

Under the new rules, landlords who fail to check a potential tenant's 'Right to Rent' will face penalties of up to £3,000 per tenant. It should, however, be made fairly straightforward for people to give evidence of their right to rent and a range of [commonly available documents](#) can be used.

Landlords affected by this will have to:

1. Check adult tenant(s) will live in the property as their only or main home;
2. Ask tenant(s) for the original document(s) that show they have the right to be in the UK;
3. Check the documents are valid with the tenant present;
4. Make and keep copies of the documents and record the date the check is made.

Right to rent was introduced in the Immigration Act 2014 as part of the government's reforms to build a fairer and more effective immigration system. The first phase was launched in parts of the West Midlands, and this announcement is the next stage of the scheme's national roll out.

[Source: Home Office – 20 October]

SCOTLAND

Abortion law to be devolved

For information

The Secretary of State for Scotland has [announced](#) that the Government will bring forward an amendment to the [Scotland Bill](#) at Report Stage to transfer the responsibility for abortion law to the Scottish Parliament.

"Holyrood already has responsibility for dealing with end of life issues. It has responsibility for the NHS and for criminal justice in Scotland. I do not see a convincing constitutional reason for why abortion law should not be devolved and that is what has led me to this decision. What will follow is proper engagement with interested parties as we take this matter forward."

He confirmed that he had informed Deputy First Minister John Swinney of the UK Government's decision. The UK and Scottish Governments have been discussing the devolution of abortion law since the conclusion of the cross-party Smith Agreement in November 2014.

[Source: Scotland Office Press Release – 14 October 2015]

Burial and Cremation (Scotland) Bill

For information **and possibly for action**

Following a detailed [consultation](#) on Scots burial and cremation law, the Government has introduced a Bill "... to restate and amend the law relating to burial and cremation; to make provision about exhumation of human remains; to make provision in relation to the inspection and licensing of funeral directors; and for connected purposes." See:

- [Bill \(As Introduced\)](#)
- [Explanatory Notes \(and other accompanying documents\)](#)
- [Policy Memorandum](#)
- [Delegated Powers Memorandum](#)

[Source: Scottish Parliament website – 8 October]