

CHARITY ISSUES**New Charity Commission “name and shame” tactics**

The Charity Commission displays details on its web site of every registered charity. Included in the information available to the public is the charity’s record of submitting the legally-required returns and accounts.

The CC has recently devised a very stark method of “naming and shaming” registered charities which are late with their returns – the details appear in red instead of black on the web site record, and this can remain on the web pages for the charity concerned for up to four years. In addition any returns and accounts still not submitted are marked as “overdue” and the number of days they are late is shown.

A number of evangelical churches are among the charities which have been “red-lined” and in some cases the returns are overdue by several years.

Given that every charity has 10 months after the end of a financial year (nine months if a company) to prepare and submit the information required by the Charity Commission, it is inexcusable that an evangelical church should ever fall behind. It must always mean that the church has been careless or indifferent in responding to the regulatory requirements and this is a bad witness and an unnecessary one.

Charitable Incorporated Organisations

The Charities Act 2006 created a new type of charity, called a Charitable Incorporated Organisation, which was intended to be a simplified version of a charitable company.

A Consultation has recently been held on what should be required of a CIO, and the Office of the Third Sector has announced that the detailed responses to the Consultation are being reviewed and it is expected that some changes will be made to the framework proposed in the original Consultation document.

In the light of this the OTS has also indicated that becoming a CIO is not expected to be an option for charities until April 2010.

Our reference to the proposed CIOs is not to be taken as advice that churches should re-structure themselves as CIOs. Our strong assumption at the moment is that most churches ought to remain as unincorporated associations, but we will give further advice once the government has finally decided on the governance structure of a CIO, and what obligations will be imposed upon them.

Compulsory charity information on documents

Trustees of registered charities with a gross income of £10,000 or more in the last financial year are required by section 5 of the Charities Act 1993 to state, on a range of official documents, that the charity is a registered charity. The documents on which the statement must appear include notices; advertisements; material placed on web sites; and other documents issued by or on behalf of a charity intended to persuade the reader to give money or property to the charity. It also includes cheques; orders for money, goods or services; contracts; endorsements; bills issued by the charity; invoices, receipts and letters of credit.

Trustees' Annual Reports not required for "excepted" churches

The Charity Commission has clarified that the requirement to demonstrate "public benefit" in a Trustees' Annual Report will only apply to churches which are registered charities.

In fact, "excepted" churches (such as those affiliated to an "excepted" body whose income is under £100,000 per annum) will not have to produce a Trustees' Annual Report at all, unless they have become registered charities voluntarily or have formed themselves into companies

Churches which have become registered charities or companies will have to produce a Trustees' Annual Report and include in that an explanation of how the charity operates for the public benefit. Though all registered charities have to produce a Trustees' Annual Report, only those with an income of £25,000 or more have to send it to the Charity Commission.

Land registration compulsory when changing trustees

From 6 April 2009, churches are legally obliged to register with the Land Registry any currently unregistered land they possess whenever they appoint a new trustee, whether the new trustee is an individual or a trust corporation. Registration in these circumstances will attract the fee for compulsory registration. Revised Land Registry fees both for compulsory and voluntary registration will come into effect from 6 July 2009, as follows:

Value of property	Compulsory	Voluntary
£	£	£
0-50,000	50	40
50,001-80,000	80	60
80,001-100,000	130	100
100,001-200,000	200	150
200,001-500,000	280	210
500,001-1,000,000	550	410
1,000,001 and over	920	690

FINANCIAL ISSUES

Impact of the recession

The Charity Commission has produced a paper encouraging all charities to respond appropriately to the implications of the recession. Entitled *The Economic Downturn – 15 questions trustees need to ask*, the paper covers the full range of issues which charities of various sizes and types will need to address. Because of its broad sweep, not all the issues the paper raises will apply to churches, but some of them will be helpful in reminding church officers of some issues which they may not yet have considered. The paper is available on the home page of the Charity Commission web site under *What's New*.

Gift Aid back-dating reduced to four years

At present, charity claims under Gift Aid can be made up to six years after the gift. However, from 1 April 2010 this will be reduced to four years. Church treasurers need to be sure that their claims are brought up to date, and that any reference to "six years" on standard declaration forms is amended.

In order to qualify for the transitional relief currently available, claims must be made within two years of the gift.

In March 2009 HMRC up-dated its Gift Aid Toolkit CD-ROM for charities, entitled Go Even Further. Copies may be obtained by ringing 08453 020203 between 8.00am and 5.00pm on weekdays and selecting Option 6.

Fees for marriages and funerals

From time to time independent churches provide facilities for marriages and funerals for which they might wish to make a charge, and are not certain what might be a reasonable level of remuneration.

As a guide, the Church of England publishes each year its table of parochial fees. Fees applicable from 1 January 2009 include the following:

	Payable towards minister's stipend	Payable to church	Total payable
	£	£	£
Marriage service	123.00	131.00	254.00
Funeral service	54.00	45.00	99.00

In the case of the Church of England, there are two elements to the fee payable because one element goes to the diocese and the other to the local parochial church council. In the case of free churches all the income will go to the local church, and so only one fee usually needs to be calculated and charged. The starting-point for consideration of what to charge will therefore be the figure in the right-hand column above. Free churches have generally tended to charge less than the statutory Church of England fees.

Surface water drainage charges

The future impact on churches of surface water charges is still far from certain. The charges originally proposed for 2009-2010 have been moderated, and the government, OFWAT and the water companies are all involved in a re-think. There have been some hopeful signs:

- On 12 May 2009, Mike Hall, MP (Weaver Vale), introduced his Surface Water and Highway Drainage Charges (Exemption) Bill, which would exempt places of worship, non-profit-making sports clubs, Scout group and Guide associations from surface water and highway drainage charges. It has no chance of becoming law, but it gave Mr Hall the opportunity to attack the present strategy of the water industry regulator, OFWAT, which had made it known to water companies that it would not approve any tariffs which involved cross-subsidies, were based on rateable values or involved exemptions.
- Environment minister Huw Irranca-Davies said in a parliamentary answer in February: "It is very wrong that customers such as churches are facing increases in bills of several hundred per cent. Increases in bills of this magnitude are not in line with the government's guidance on charging issued to OFWAT in 2000, nor OFWAT's more detailed 2003 guidance to the water companies.

Polling stations on church premises

It is fairly common for church premises to be used as polling stations, and at the elections held in June 2009, a random sample of 39 churches and chapels showed that the average rental paid by the respective local authorities for the use of the premises for a 15-hour day was £207.

However, the amounts paid were anything but similar. They varied from a high of £800 to a low of £25.

Region made a difference too. In the London boroughs, 11 churches charged (or were offered) an average of £316, and in the South-East outside London, the average was £184. In the rest of the country, including churches in the North, the Midlands and the West Country, the figure was £150.

These statistics may encourage those who are not charging very much to seek a figure nearer to the "going rate."

Interestingly a number of churches see the use of the premises for polling as a possible witness, with the potential of hundreds of people passing through. One said his church would gladly provide the

premises free of charge in order to enable the church to become more familiar to the local population. Another said: "We took it as a great opportunity to display posters and a table in the porch with gospel literature and Good News papers."

National minimum wage

As from 1 October 2009, the national minimum wage will be £5.80 per hour, an increase of 7p over the present rate. This will apply to all workers aged 22 and over. The rate for younger workers will be £3.57 for those aged 16 and 17 and £4.83 for those aged 18-21.

The minimum wage legislation does not apply to pastors and assistant pastors whose employment status is office-holder (minister of religion), but it is relevant to most other remunerated posts in churches.

LEGAL ISSUES

Requirements for working with children and other vulnerable groups

Previous issues of *Blue Pages* have referred to the fact that, under the provisions of the Safeguarding Vulnerable Groups Act 2006, millions of people in the UK who work with children or other vulnerable groups will, over the next few years, be legally obliged to register with a new body called the Independent Safeguarding Authority.

More details have recently been announced in connection with the timetable for implementing the new requirements. There will be three stages:

- From **12 October 2009**, two new ISA lists will replace a variety of lists which currently exist of those people barred from working with children and/or vulnerable adults. From that date, enhanced CRB checks will include a check against one or both of those lists, as appropriate. At the same time, more employment and voluntary positions – those coming within a category defined as "regulated" – will become eligible for enhanced CRB checks. Standard CRB checks will no longer be available for those working with children or other vulnerable groups. However there will be no change to the current Disclosure application form or application process and existing procedures for checking those working with children should continue unchanged.
- From **July 2010**, individuals will be able, via registered bodies, to apply to the CRB for ISA registration if they are newly applying to work with children and/or vulnerable adults in England, Wales and Northern Ireland. At this stage those already in posts will not be eligible to register. Employers and voluntary organisations, including churches, will be able to express an interest in a person's ISA registration and be informed of any changes to that person's ISA registration status. A new Disclosure application form will be introduced to allow applications for ISA registration and CRB checks to be made on the same form. These will remain free of charge for volunteers. Employers and voluntary organisations, including churches, will be able to carry out free, on-line checks of a person's ISA registration status.
- From **November 2010** it will be a legal requirement for individuals to register with the ISA if they intend to work or currently work with children and/or vulnerable adults in England, Wales and Northern Ireland. Employers and voluntary organisations, including churches, will also be legally bound to check and confirm that a person they have engaged in 'regulated' activity is registered and has therefore been checked by the ISA. Organisations will be given up to five years to ensure that all current employees and volunteers are ISA-registered. A detailed timetable for this five-year transitional period will be issued at a later stage. From this date, there will also be a legal obligation on any organisation to report any relevant conduct that might affect a person's registration status. Such information can be reported either directly to the ISA or indirectly via statutory bodies such as the police or local social services department.

The above is all applicable to "regulated activity," some examples of which are as follows:

- Any activity of a specified nature that involves contact with children or vulnerable adults frequently (once a month or more), intensively (on three or more days in a 30-day period) and/or overnight. (Examples of such activity are teaching, training, care, supervision, advice, treatment and transportation.)
- Any activity allowing contact, frequently or intensively, with children or vulnerable adults in a specified place. (Examples of such places are schools and care homes.)
- Fostering and childminding
- Any activity involving people holding certain positions of responsibility. (Examples of such positions are school governor, director of children services, director of adult social services and trustee of certain charities.)

Most activities for children undertaken by churches (e.g. Sunday schools, children's clubs, youth clubs and holiday bible clubs) will come into the category of 'regulated activity' and therefore the obligations outlined above will apply. However, more general church activities, such as regular Sunday worship services, will not be regarded as 'regulated Activities,' since although children and/or vulnerable adults may attend such services, the meetings are not specifically for such groups, but are open to all. There is still uncertainty over whether some activities, such as luncheon clubs and the provision of crèche facilities during a church service, will be classed as "regulated."

Once it is fully operational, the ISA registration scheme will apply to anyone coming to the UK from abroad to participate in a 'regulated activity.' Further guidance specific to the voluntary sector will be issued by the ISA at a later date, and *Blue Pages* will keep churches informed.

In the light of the new obligations, by November 2010 churches will need to have a formal procedure for the appointment of people (whether in paid employment or volunteers) who will be working in regulated activities. The procedure will need to include:

- A formal, probably written, request to potential workers asking if they are registered with the Independent Safeguarding Authority. If they are registered, the church would then ask for the details of their registration and their written permission to access these details by means of an on-line check.
- The church would then be obliged to carry out this on-line check and register its interest in the person concerned. This on-line check would only indicate whether the person concerned is registered or barred from working with children and/or vulnerable adults. The church will still be able to decide whether it should separately seek an Enhanced CRB Disclosure check. An Enhanced check may reveal details of offences that have not resulted in the person being barred but could still be relevant to the proposed appointment. Further guidance from the ISA is awaited, but at this stage, it seems that in most cases in the voluntary sector the ISA registration check will suffice without an additional Enhanced CRB Disclosure check.
- If a person being considered for an appointment is not yet registered with the Independent Safeguarding Authority, the church would be obliged to carry out an Enhanced CRB Disclosure check incorporating ISA registration. The CRB will continue to make no charge for such checks for volunteers.
- A procedure, probably as part of a child protection policy, for reporting any relevant conduct by individuals that might affect a person's registration status.

More information about the ISA registration scheme can be found on the ISA website - www.isa.gov.org.uk

Corporate manslaughter

Churches which have re-structured themselves as companies may not be aware that they now have significant health and safety obligations under the provisions of the Corporate Manslaughter and Corporate Homicide Act 2007.

An offence is committed under the 2007 Act if anyone for which a company has "a relevant duty of care" is killed as a result of a gross breach of that duty, and if the way the company's activities are managed or organised by senior management is a substantial element in that breach.

The penalty upon conviction is a fine, but the court can also require the company to take remedial action and can order the company to publicise its conviction, and the details of the court's findings.

Companies will therefore always need to ensure that they have adequate health and safety provisions in place, in order to prevent any such incidents occurring. The "relevant duty of care" could relate to what staff members are asked to do by the company; how they are expected to do it; the resources available to assist them; and the systems in place to monitor their performance. Alternatively it could apply to any danger into which members of the public are put as a result of the way in which the company conducts its business.

The Corporate Manslaughter and Corporate Homicide Act 2007 does not apply to churches which have retained the governance structure of an unincorporated association.

New immigration rules

In the few months since the new UK immigration rules took effect in November last year, it has become clear that people from non-EU countries who enter the UK on visitor visas, will be in breach of their visas if they undertake any work, whether paid or voluntary.

This immediately puts in jeopardy the schemes which a number of churches operate, in which teams from overseas, particularly from churches in the United States, are invited to come to the UK for two weeks or so to take part in particular projects. Some of these team visits have an evangelistic emphasis, while others involve building or other practical work. Team visits of both kinds are likely to fall foul of the new requirements.

If any work at all is to be undertaken by teams, this will require a tier 5 (temporary worker: religious worker) visa. Under the tier 5 regulations, each entrant into the UK will require a UK sponsoring body, a sponsorship certificate from that body, and a tier 5 visa. The fee for a church to become a sponsoring body will be £400, the fee for each certificate issued £10, and the tier 5 visa fee per entrant £100. This means that the cost for a team of 10 will amount to £1,500.

UK churches, and the churches and organisations in the States who promote and co-ordinate these team visits, will have to re-think their strategy for team visits in order to accommodate the new stricter requirements of the immigration regulations.

One possibility would be to turn shorter team visits of one or two weeks into "cultural exchange" visits, the aim of which would be fact-finding, fellowship and experience of church life. Such teams could still take part in all the activities which are part of the regular church programme, and which would have happened anyway, whether the team was visiting or not.

Another would be to see if smaller teams could be put together, but coming for slightly longer periods of four to six weeks, enabling as much work to be done as would be done by a team of 10 in two weeks. A team of six coming for four weeks would cost a total of £1,060. There would be a further saving if a sponsoring body was able to be the sponsoring body for a number of teams, so that the cost of its £400 fee could be spread across a number of team visits.

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Any queries about the issues contained in this publication may be raised with Eric Cousins (Chief Executive of the Grace Baptist Trust Corporation) or, if your church is in an Association of Grace Baptist Churches, with your association secretary.

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