

Health and Safety – a reminder

At a recent seminar of the Charities' Property Association, Andrew Banks, of Stone King LLP, presented a brief overview of the key aspects of the [Health and Safety at Work Act 1974](#) of which charity trustees need to be aware.

The new sentencing guidelines for breaches of the Act that came into operation on 1 February 2016 create the potential for large fines based on turnover and on levels of harm and culpability – *and trustees cannot insure against criminal liability*. We therefore thought it might be helpful to remind CLAS members of the basic features of the Act.

The core purpose of the Act is “securing the health, safety and welfare of persons at work [and] protecting others against risks to health or safety in connection with the activities of persons at work”. In short, Health & Safety is about protecting employees and others in contact with the organisation; but it is also about protecting the organisation itself from prosecution. The Act places several obligations on *any* employer – duties towards employees, duties towards others and duties as controllers of premises – *and there is no charity carve-out*.

Under the Act:

- employees are protected “at work”, which includes working away from the office (e.g. a hospice home visit). In many instances an employee might possibly be more vulnerable when away from the normal place of work, which means that employers need to consider the less obviously-risky circumstances;
- the duty to others creates a responsibility during work activities where non-employees might be affected (visitors, members of the public, volunteers, contractors, tenants etc.); and
- the duty as the controller of premises *falls on each person who to any extent has control of a building*, including non-domestic premises.

Liability under the Act may arise under three heads:

- **consent**, where activities were known about and ignored or allowed to continue;
- **connivance**, where a trustee played an active part in the activity; or
- **neglect**, where there were no systems in place to avoid the activity, or where systems were not being reviewed properly.

In the event of a breach, it is possible for the Health and Safety Executive to prosecute all trustees, though it is more likely to focus on specific people with relevant responsibilities.

For the majority of the time, most churches will probably have very few issues with H&S. But, for example, a routine job like changing lightbulbs or replacing the candles in a chandelier may involve working at height; and the Work at Height Regulations 2005, as amended, mean that churches in England, Wales and Scotland have a legal duty to provide protection for their employees and persons under their control in such circumstances. Moreover, the Health and Safety Executive regard it as good practice to provide volunteers with the same level of protection as employees. See the Ecclesiastical Insurance website: www.ecclesiastical.com/documents/work-at-height.pdf

To minimise the risk of problems arising:

- you should have adequate systems in place and be aware that H&S regulations will almost certainly apply to your church in some capacity;
- you should have a clear policy on what degrees of responsibility will apply to different individuals;
- once an H&S policy is in place, you should make sure that it is regularly reviewed and kept firmly before the trustees *as a priority* – for example, by appointing a trustee with specific responsibility for H&S reporting; and
- you should have your H&S policy audited regularly and, if necessary consider seeking specialist advice.

There is a lot of helpful advice on the Ecclesiastical Insurance website: www.ecclesiastical.com

[Source: CLAS summary – 30 January 2017]