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The Editor, Keith Lawrey, welcomes comment on any matters reported in this and previous issues of the Newsletter.

EDITORIAL

DATA PROTECTION LEGISLATION

The proposed new data protection legislation, superseding the Data Protection Act 1998 and based upon the General Data Protection Regulations issued by the European Parliament, is due to come into force on 25th May 2018. There is already a significant amount of misunderstanding about its provisions often from those who apparently wish to interpret the proposals restrictively - perhaps to save themselves work! This Newsletter contains my revised Note for Guidance on Data Protection and Societies which has been subject

to informal advice by colleagues in the Information Commissioner's Office and in the Department of Culture, Media and Sport for which I am grateful. I am also including a list of questions compiled by interested parties and my answers which, again, I have discussed and agreed with the ICO. Further questions and comments on the Note for Guidance will be welcomed. It is interesting that the activities of many membership organisations in preparation for the new Act vary considerably from excessive demand for agreement from their members to hold and process data to no mention of any change at all.

UNSPENT CONVICTIONS

While spent convictions do not have to be declared to employers under the Rehabilitation of Offenders Act 1974, the Act does not mention the position in respect of applications for admission to professional institutions. My personal view is that all unspent convictions should be declared to professional registration organisations because all offending is based on elements of deceit and self-interest which are absolutely an anathema to the principles of professional duty. Thus, such organisations should be able to exercise discretion, depending on the details of the offence, as to whether or not to admit an applicant with unspent convictions relating to an offence which might be considered relevant to the professional activity concerned. As I understand the situation, we should have to make a case to be able to demand the declaration of unspent convictions. The intention of the introduction of spent convictions was to give the offender another chance once he had completed his punishment and so we would have to make a very good case to require a declaration in respect of any spent convictions.

TRUSTEE BENEFITS

Charity law provides that trustees shall not normally benefit from their trusteeship but there are exceptions where the trust

instrument provides for benefit or, in the alternative, where a case is made to the Charity Commission for benefits to be allowed. However, the usual requirement is that only a minority of the trustees may take such advantage. I was asked recently about a situation where the trustees organise an annual conference which always makes a surplus and the trustees are expected to attend in addition to the duties they undertake in organising the event.

1. Some of the trustees undertook a great deal of the organisation of the meeting which would undoubtedly have had to be paid for if those trustees did not do the work *pro bono*. Therefore, those trustees, in my view, can be remunerated for the preparatory work and can be given free entry, accommodation and hospitality (as expenses) throughout the meeting. The point is that the trustees will not be being paid as trustees but as workers so, in default of trustee contribution, payment would have to be made to others – possibly at an even higher cost to the charity.

2. There is a difference between trustees being reimbursed expenses (which is allowed by charity law) and trustees being paid to undertake specific tasks. Attending a conference organised by the trustees may be a trustee duty and therefore the cost to them of such attendance is a reclaimable expense.

3. The remaining trustees are more problematic: those who have to attend and undertake some responsibilities (eg stewarding, chiring sessions *et al*), could be allowed to be paid for their services because, again, their contribution is beyond that which might reasonably be expected from a trustee. However, if there is any doubt about this category, a case could be made to the Charity Commission, to put the matter beyond doubt, for approval to pay.

4. Given that the Commission's approval to payments, other than reimbursement of expenses, should not be extended to all trustees, it may be that it might be useful to have some trustees who are not paid. If, however, there are none because all have responsibilities to fulfil, my suggestion is that all trustees' costs for the conference are treated as expenses against a specific set of duties required of them – in other

words, formalise the expectations of them in respect of the organisation and running of that particular event.

DRESS REQUIREMENTS

Last year the European Court of Justice has ruled that employers could prevent the visible wearing of any political, philosophical or religious sign (presumably only in the workplace). However, the Court said that any ban must be based on internal company rules requiring all employees to dress 'neutrally' and not at the whim of an individual such as a customer. The requirement must be one that covers all employees without discrimination between categories. Thus, the wearing of a religious headscarf and any other religious symbols such as a cross around the neck could be prohibited by an employer but only for all workers. This ruling may raise one or two difficult questions: for example, what about black jacket and striped trousers worn as a uniform by Freemasons but also by some lawyers and others engaged in ceremonial activities after office hours?

CHAIR'S DUTIES

Generally, a casting vote is operated by the Chair of a meeting because it has been given in the constitution but there is no law barring its use even if it is not mentioned in the constitution. Where there is a tie in voting but a decision must be made, the Chair may use Chair's action (a customary procedure but one without any legal basis) to exercise a casting vote (in addition to any vote he has already exercised as a member of the committee) and then tell the committee what he has done. The committee members are bound by his decision but they can express their disapproval of it if they wish and, in that event, the Chair may wish to consider his position! However, in exercising his decision-making (ie the non-existent casting vote) the Chair should vote for the status quo on the grounds that there has not been a majority vote for a change.

This is an example of the role of a Chair. Many would argue that the person in the Chair is in charge of a meeting and whose role is to ensure that decisions are taken and thus to give a robust lead where there is disagreement. I take a different view: the

legal definition of a Chair's role is to conduct an orderly meeting to ensure that the will of the meeting is decided, unanimously or by a majority, and that everyone who so wishes has an opportunity to express their views. Thus, in my view, the Chair should not express personal views, and should not even exercise a vote as a member of the committee (other than the casting vote if necessary) simply because his opinion gives an impression of partiality and may affect the reception of his summing up of the issues before they are put to the vote.

APPOINTMENT OF NEW TRUSTEES AND OF NEW DIRECTORS

In respect of new trustees, the Trust Secretary must arrange for:

- a. the new trustee to complete and sign CC5c (Confirmation, Eligibility and Responsibility Registration Form) which must be submitted online to the Charity Commission,
- b. the new trustee also to complete and sign CSD 1382 (Trustee Declaration of Eligibility) but only for the Charity's own records and,
- c. the Charity must notify the Charity Commission of appointments and resignations of trustees but this may be done through submission of the annual return.

In respect of new directors, Companies House must be informed online or by post or by hand using:

- d. APO1 for the appointment of a new director,
- e. TMO1 for the resignation of a director,
- f. CHO1 for any change in director's details.

EXCEPTIONS FOR REGISTRATION WITH THE ICO

A correspondent told me that he had read in the privacy policy of a large national organisation a statement that 'as a not-for-profit organisation, it was not registered under the Data Protection Act 1998'. I learned the name of the organisation and questioned the Information Commissioner's Office about such an exemption. The ICO is looking into the matter but did say that there are some minor exceptions to the need for companies and charities to register under the present law. However, I was also advised that I should not bother to queue to apply for them because they would largely be removed under the new law.

EMPLOYMENT AND SELF-EMPLOYMENT

There often arises a question as to whether a part-time member of staff is an employee or is self-employed. The difference is clear: employees are employed by an employer under a contract of employment which is governed by employment law. The tests as to employment status include that the contract provides the employee with holiday pay and that the employer both contributes to the employee's NHI and makes income tax deductions from the employee's salary under PAYE provisions. Self-employment is also under contract but of a commercial nature whereby a contractor agrees to provide various services according to the terms of the contract and without the benefits of employment law to provide him with other rights.

HIGHER EDUCATION ACADEMY

The Higher Education Academy is in the process of merging with the Equality Challenge Unit and with the Leadership Foundation for Higher Education. The target date was 31st March after which the name of the new organisation will be Advance HE.

NON-CO-OPERATION IN PURSUING A DISCIPLINARY ENQUIRY

A professional institution sought guidance on what it could do in pursuing a disciplinary enquiry based on a complaint about an anonymous member who was employed by a company which refused to identify the individual on the grounds that any complaint about his work was a matter solely for the company. I regret that the company does not seem to understand the difference between its role as an employer and the professional institution as a regulator of the use of post-nominals which hold out the user to the world as having a recognised level of competence in the relevant subject discipline.

1. As a provider of services to customers under contracts, the company does have a duty in contract law to deal with any complaints made to it about the performance of that contract. It also has a duty in employment law to deal with any complaints made to it about the performance of its staff.

However, that duty arises only if a complaint has been made to the company.

2. The professional institution, on the other hand, has a public interest duty (under its Royal Charter of incorporation or even if it is only a corporation registered at Companies House as long as its constitution so provides), to deal with any complaints made to it about one of its members whom it holds out as being professionally competent to a level which it has set for all its equivalent members. This is a matter of public interest and not of the private interest of the employer of the member. Even if the complaint has not been made to the professional institution directly but the institution hears about a possible breach of professional competence indirectly, the institution should pursue the matter because of this public interest.

3. I think four matters arise in this respect:

- (a) One is how the institution finds out the name of the Subject of a complaint without the co-operation of the Subject's employer. A Freedom of Information request might be made if there is a relevant public body involved (a prerequisite for a FoI request).
- (b) If the company had a director who was also a member of the professional institution concerned and the Code of Professional Conduct of the institution contained a requirement that all members assist the institution in reporting relevant incompetence and providing identity details.
- (c) If the complainant/customer has not also contacted the company, he could be asked to do so, bearing in mind there will be no publication of the (possible) complaint until the preliminary investigation has been held and a case-to-answer has been found. If there is no case, there will be no record maintained and the erstwhile Subject will not be compromised by any mention of an unfounded complaint. An allegation is no more than an allegation until a preliminary enquiry has found that there is a case to answer.
- (d) Regrettably, if the Subject cannot be identified, an enquiry cannot be pursued.

DECLARATION OF CHARITABLE DONATIONS

I have been asked if it is possible to keep anonymously the names of the names of donors. The answer is that charities do not have to declare their donors to anybody - it is a matter between donor and the charity. Obviously, it will keep an official record available for audit purposes but that should be the only need. Similarly, the size of the donation does not affect the secrecy either.

WHAT ARE LEGAL ENTITY IDENTIFIERS?

I have been asked for an explanation of LEIs. An LEI is a unique 20-character alphanumeric code that identifies distinct legal entities (including charities) that engage in financial transactions, including transactions in listed investments. It is an international identifier and is not limited to the United Kingdom. The code is entered on a global database. It enables any legal entity that is party to a financial transaction such as buying and selling listed investments to be identified in any jurisdiction. Legal entities in almost 200 countries are now required to have an LEI. From 3rd January 2018 UK investment managers are not able to execute investment transactions on behalf of clients who do not have an LEI. Because the code is an international requirement, a Charity Registration Number (or any other form of UK identifier) does not qualify as an alternative.

DUPLICATION OF NAMES

It is well-known that companies registered at Companies House have their names protected in that no other company can register with the same or a similar name. That is also true of companies incorporated by Royal Charter and therefore on the Privy Council's List of Chartered Corporations. Furthermore, Chartered corporations can apply to Companies House to be included on its 'Chartered' List just to ensure avoidance of future registrations of companies with names similar to those of Chartered corporations. However, the question has been asked about duplication of CIO names. I understand that there is no legal protection of such names but HMG is intending to address the matter later this year by adding new CIOs to the Index of Company Names

which Companies House checks prior to any of its registrations. But, such a move will apparently affect only names added after this introduction of the addition.

MINUTES

I read recently that the former company secretary of the Anglo Irish Bank took legal advice having been asked to amend her minutes for an audit committee in connection with a matter that turned out to be fraudulent. The legal advice given was that the chairman of a meeting has the final say. This advice is incorrect in that the minutes only become approved minutes when adopted at the subsequent meeting by a majority of members voting that the minutes are a correct record of the proceedings at the previous meeting. They then become, *prima facie*, the legal record. It is true that the first draft minutes (made by the secretary) are amendable until their adoption and if the draft has been approved by the chairman, they become the chairman's minutes and he must answer for their content to the subsequent meeting before they are signed. Furthermore, if the secretary and chairman should have different views about the correctness of the record, it is my absolute view that the secretary has a duty (in default of the chairman so doing) to draw attention to such differences at the meeting where the minutes are to be adopted.

DATA SUBJECT ACCESS REQUEST

I was consulted recently by a professional institution which was undertaking a professional disciplinary enquiry in respect of one of its members. A data subject access request had been lodged by the Subject to disclose certain relevant information but the institution was relying on the exemption given in the Data Protection Act to public bodies to be exempt from giving access to potential prejudicial data. However, as I understand the law, I did not think the exemption applied. It was intended for 'public bodies' or bodies exercising powers granted under statute. The institution concerned, although acting very much in the public interest, was a private body dealing with an internal matter (enquiring into the professional behaviour of one of its members). It was acting under its Charter

powers but these are not statutory even though they are contained in the Charter of incorporation which has been granted by the State. To be statutory, they would have to be granted by Act of Parliament or the authority of ministers acting under statutory powers.

CHARITY BANKING

I was asked recently whether there was any requirement in charity law on charities registered in England and Wales keeping their monies in UK bank accounts. The answer is no. Charity monies may be kept, in whole or in part, in overseas bank accounts and there is similarly no restriction on those whom the trustees resolve should be able to draw on, or pay into, such accounts.

CHANGES TO CONSTITUTIONS

Changes to articles of association are made by members in general meeting (as provided in the articles) and submitted to Companies House. Where a company also has given itself power to create regulations (by whatever name), those will be drafted by the directors who may also adopt them or, according to the articles, may have to submit them for approval and adoption to members in General Meeting. The latter requirement causes delays so companies are advised to allow directors to both draft and adopt. Similarly, Chartered corporations may petition the Privy Council to change their Charters and Bylaws according to the requirements of the Bylaws but the Privy Council does not wish to approve Regulations (which, as with companies, must not conflict with anything in the registered constitutional documents). It should be noted that, where directors draft and adopt Regulations, such Regulations can always be challenged by disaffected members in General Meeting.

POWERS TO GRANT POST-NOMINALS

The Privy Council wishes that not only the power to grant post-nominals but also the actual post-nominals themselves are provided in the Bylaws rather than in the Regulations. This is because post-nominals are the identification of a level of professional competence which the Chartered corporation is required to regulate

in the public interest and is the basis for enforcing a code of professional conduct and the supporting disciplinary procedure. The Privy Council approves the Charter and Bylaws content whereas it does not see what is contained in the Regulations. In respect of companies registered at Companies House and CIOs registered with the Charity Commission, although there is no actual guidance in place, other Regulatory organisations such as the Engineering Council also require that post nominals be included in the registered constitutional documents. This is of benefit to all societies because, when taking legal action to stop non-members from using unearned post-nominals, they can rightly claim that their post-nominals and the requirements for their use are approved by the Privy Council or Companies House or the Charity Commission with whom they are registered. (Source: HRH Magazine 14 September 2017)

NOTES FOR GUIDANCE

MEMBERSHIP ORGANISATIONS AND DATA PROTECTION 2018

The Data Protection Act 1998 is being revised pursuant to the European General Data Protection Regulation and will result in a new Data Protection Act planned to come into force on 25 May 2018. These draft notes have been based on the guidance given by the Information Commissioner's Office (see www.informationcommissioner.gov.uk), but may be revised in due course where necessary.

1. INTRODUCTION

Most organisations retaining personal data must be registered with the ICO. The exceptions are those who are small (small is not defined but probably those who do not employ any staff – a Squash Club might well be an example). Most learned and professional societies will have to register and the Data Protection law relating to them will affect primarily their activities of membership and staff records.

2. DEFINITIONS

Data Controller – the person or organisation responsible for the accuracy and safe-keeping of the data.

Data Processing Officer – a person who processes the data on behalf of the Data Controller other than an employee.

Personal data – information relating to a person which causes them to be directly or indirectly identified.

Privacy policy statement - all Controllers must indicate how the data they hold will be used but this indication may be in any way that gives the information (website or ancillary document) and need not be a formal statement.

Processing – obtaining, recording or otherwise dealing with personal data.

Sensitive personal data - information relating to racial or ethnic origin, political or religious beliefs, trade union membership, health and genetic and biometric data, and criminal records which need especial policies. Such data processing needs an ancillary statement.

3. GENERAL PRINCIPLES

- (i) The data must be processed lawfully and transparently, and it must be kept safely.
- (ii) The relevant law will provide that information in electronic or hard copy form about persons (the DP Subjects) may be kept by the DP Controllers with, usually, the consent of the Subjects concerned although consent is not always necessary.
- (iii) Data collected for one purpose, about which the Subject will know, shall not be used for another purpose about which the Subject does not know.
- (iv) Subjects may require (normally without cost) to have one copy of what information about them is being retained by the Controller. A charge may be made if the information is extensive or several copies are required.
- (v) They may then request that all or any of the information be amended or removed.
- (vi) If the Controller refuses the request, the Subject may complain to the Information Commissioner's Office which will then decide. The ICO has power to fine any organisation that does not comply, to issue enforcement notices, and in some matters to prosecute in the criminal courts.
- (vii) Data may be retained only for as long as the Controller deems it necessary for the purpose for which it was collected. However, the Controller may exercise considerable discretion in this respect.

- (viii) Data must be accurate and current so the Subject has a responsibility to keep the Controller informed of changes.

4. DATA PROCESSING

There are six lawful bases for processing data but only four may apply to societies.

- (a) **Public task** – applicable to those relatively few societies which regulate professional memberships under statute.
- (b) **Legitimate interest of Controller or any third party.** Thus, a professional institution, holding out its members as qualified and competent professionals, has a legitimate interest in processing data such as membership contact details, awards and qualifications, experience, employment details, records of continuing professional development, publications, and records of any professional disciplinary matters. Furthermore, any third parties who wish to use the services of such a professional also have a legitimate interest in accessing such information that is published in a public directory. Data processing under legitimate interest does not require specific consent of the Subject which is inferred by the continuation of payment each year of membership subscriptions. Thus this basis overlaps with (d).
- (c) **Consent given by Subjects for a Controller to process their data.**
- (d) **Contract** – professional institutions require the information listed in (b) supra, and learned societies also need some of this information, to be able to provide the services that they offer to those who choose to apply to join them.

5. RIGHTS OF SUBJECTS

- (i) To be informed about what information is held by Controllers.
- (ii) To have access to that information.
- (iii) To require rectification.
- (iv) Normally to require erasure but the Controller may exercise discretion.
- (v) To restrict processing and particularly if the information is used for unwanted marketing purposes.

- (vi) To object to processing if the processing is being used for purposes other than as notified.
- (vii) Not to be subject to automated decision-making including profiling.

6. MEMBERSHIP ORGANISATIONS

- (i) Membership organisations (ie learned and professional societies), by definition, rely on continuing membership records in order to provide their services which will include such data as shown in (4b).
- (ii) Furthermore, the membership contract, evidenced by its signed copy of the membership application form, will provide the Controller with the information it needs and the Subjects with notification of the information being held about them. Such signature thereon of the Subject (being the membership or register applicant) will give retention consent without regular need of refreshment as long as the Subject continues to pay each annual subscription – such payment extends the contract (and its terms) for another year.
- (iii) Such information will be used for purposes of providing Subjects with notices of professional meetings organised by the Controller, receipt of the professional publications, and such administrative matters as may be deemed by the Controller to be of interest to the Subject. These matters do not have to be listed on the application form but reference as to where to find how the data will be used must be included. Such information may be placed, for example, in ancillary documents or the website.
- (iv) A Subject can opt out of receiving certain matters but cannot refuse to provide the initial information as part of the membership or registration contract or to consent (as a term of the contract evidenced by the application form) to its retention or to make any changes to the information. Any such failures will allow the Controller to reject the application to contract or terminate the existing contract.

- (v) It is anticipated that the application form will contain this information (with a catch-all notification that the incorporation documents and any related procedures will also contain terms of the contract) or will show where such information may be found. If the organisation publishes a register of its practising members, this must also be included on the application form or elsewhere although the applicant could strike it through before signing to indicate lack of consent to that particular item. Such application forms shall be retained as evidence of the Subject's agreement to the processing of the data contained thereon.

7. STAFF

- (i) Staff members are in a similar position to members. Necessary information (much as that listed in 4(b) for retention will be collected via the job application form and will be updated by the Subjects (if they wish to continue in employment!).
- (ii) Such information may continue to be held after retirement or resignation at the discretion of the Controller (eg tax information must be kept for a six years period for HMRC purposes) and information for reference purposes would need to be retained.
- (iii) Amendments may be requested but not such that records become falsified.

8. USE OF BUSINESS CARDS OR INFORMATION IN PUBLIC DIRECTORIES

Such information may be used by organisations if it is reasonable to expect that it was given for relevant purposes. So, if a person gives a business card, it is reasonable to infer that the donor is happy to be contacted. The same would apply to entries in directories. However, there is a caveat in that contact would be expected to be made in the context of why the card was exchanged or the entry listed in the directory thus excluding using either for direct marketing purposes.

9 MYTHS

- (i) Express consent always required – not necessarily. Consent may be implied by performance of a relevant contract, and legitimate interest does not require consent (eg there may be a legitimate security interest in retaining CCTV footage).
- (ii) Individuals have an absolute right to erasure – not necessarily. There will be a right to retain some information obtained before consent to retain was withdrawn – eg professional disciplinary matters.
- (iii) Fines for minor non-compliance – while there is power for the Information Commissioner to fine heavily for non-compliance, fines will not be used to fund the Regulator and those that are not effective or proportionate may be challenged in the courts. The annual registration fees paid to the ICO by registered organisations will provide the income for ICO to operate the Data Protection Register.
- (iv) Need for many more Data Processing Officers – not necessarily. Many, if not most private organisations (as opposed to public bodies) may well not have to appoint one at all depending on processing operations that require regular and systematic monitoring.

QUESTIONS TO THE ICO - ANSWERS IN LIGHT TYPEFACE

1. REGISTRATION WITH ICO

a. Are small charities, not for profit professional bodies or private associations normally exempt from the need to register?

Only the very small organisations that process data ones (charities and non-charities) are exempt - almost certainly those without any employees such as a Squash Club.

b. If so, when is it necessary for them to register? What activities trigger a need for registration?

If they are registrable for data protection (ie they process data), they should already be registered with ICO, so those that are not yet registered should do so forthwith.

c. Do 'subsidiary' or 'connected' charities need to register separately if the parent body is registered?

Yes, if each is a separate Data Controller.

d. What are the penalties for failure to register when it should?

Reprimand or possibly a fine but, to begin with, warnings will be given.

2. COMPLIANCE WITH GDPR

a. Is it mandatory for all organisations to fully comply with GDPR, or only those registered with ICO?

As for 1a.

b. If the latter, what are the compliance expectations on those who do not need to be registered?

None.

3. PRIVACY POLICY STATEMENT

a. Are all organisations required to issue a Privacy Policy statement, or only those required to register with ICO.

All processors that register must indicate how the data they hold will be used but this may be in any way that gives the information and need not be a formal statement.

b. Does ICO review Privacy Policy Statements to check they comply with GDPR?

Only if there is a complaint about them.

c. What happens if it is not compliant?

As for 1d.

4. GUIDANCE ON HOW LONG DATA SHOULD BE HELD BEFORE IT IS DELETED.

a. Is there an upper time limit for data retention? If so how long?

As long as the Data Controller considers to be necessary. The Data Controller has the discretion but may have to justify its use of it if a complaint is laid.

b. Does data held by 'consent' need to have a specific time limit for retention?

Until consent is withdrawn but, again, the Controller has discretion to hold the data for an extended period if it, so decides. No maximum times are provided.

c. How regularly should data held by virtue of 'legitimate interest' be reviewed to determine whether it can still be retained.

While the Data Controller has a legitimate interest he should review the interest from time to time. Obviously, there is an interest in members' details while they are in membership but, even thereafter, the Controller may maintain an interest (eg a member who has been struck off for incompetence.)

d. Can data held by virtue of 'contract' be held after the contract has been terminated?

As for 4c.

e. Do the time periods for retention need to be included in the Privacy Policy Statement?

Indications may be given to apply in normal circumstances but may be extended in the discretion of the Controller.

f. What happens if data that should be deleted is not?

As for 1d.

g. Can data held in paper only records be held for longer than that stored electronically?

Same rules apply to each.

5. MEMBERS AND NON-MEMBERS DATA

a. Does being a member of a learned society or association create a 'legitimate interest' reason for acquiring and processing members' data, or does it now require their specific consent?

Creates a legal interest so no consent required.

b. Can data acquired about non-members, e.g. interested members of public who pay to attend society conferences or events, or ask to receive a society newsletter or publication, be treated similarly to data about members?

Yes, because the privacy requirements must also apply to them.

c. What information on candidates for membership can be made available to other members? e.g. as part of the process of determining who is suitable to become a member.

Under legitimate interest or application to enter a membership contract, it will be whatever information the Membership Committee (and any other group of members involved in the process) needs to consider.

6. PUBLICATION AND DISSEMINATION OF DATA

a. What data on members can now be published in a members' Directory or Register?

Whatever the society decides to publish. The member can then ask for some or all of the data not to be published.

b. Does it make a difference if a members' Directory is only made available to other members of the society? What if there is a charge to non-members who want to consult the Directory or Register?

In respect of professional practitioner Registers, they must be publically available in the public interest - eg how do I find a competent surgeon unless I can consult the RCS Directory and that may cost me?

c. Does GDPR prevent data being shared with other similar organisations, e.g. for joint events. If not prohibited, under what conditions should it be shared?

No if it is clear beforehand that sharing data will take place. Anyone who objects, may then be excluded.

d. Can attendance lists of those attending a seminar or conference include email addresses of all those who have registered, or only those who give consent for this to be given? Does it make a difference if the email address is institutional and not a private address?

Again, if it is a condition of the contract to attend that email addresses will be published, non-consenters will be excluded. Obviously, this will need to be made clear at the time of applying to attend.

7. LISTS

Where a society asks for consent to names being added to a list to whom, for example, regular invitations to meetings may be issued yet many do not bother to reply to the consent request even though most will wish to continue to receive invitations, what can be done.

If they are already on such a list and they have received invitations, legitimate interest applies so invitations can continue to be sent until the recipients withdraw consent. However, new names must give consent before being added.

NEWS

SENSITIVE WORDS

Companies House has published for many years a list of sensitive words which should not be used, or must have the Registrar's permission to use, in companies' names. Now, Companies House and the Charity Commission have agreed that Charitable Incorporated Organisations will not be subject to all of those restrictions although CIOs must be included on the Index of Business Names held by Companies House. This means that a CIO wishing to use one of the sensitive words will have to justify its use before application to register the CIO is made to the Commission. The following words will not need justification by CIOs: Charity, Charitable, Association, Foundation, and Trust.

(Source: StoneKing Charity essentials February 2018)

CONVERSION OF A CIC INTO A CIO

The Charity Commission has given further information about the conversion of a Community Interest Company (CIC) into a Charitable Incorporated Organisation and vice versa. All applications will be dealt with by the Commission's registrations team and, once the conversion has taken place, a new declaration will have to be signed by all the trustees. It will not be permissible for the membership structure to be changed so an association (ie with members other than directors) structure cannot change to a foundation (ie where only the directors are the members) structure and *vice versa*. This is because, whatever the conversion, the members after conversion are the same

as those before.

(Source: StoneKing Charity essentials February 2018)

CHANGES TO ACCOUNTING STANDARDS

From 1 January 2019 for all accounting periods ending on 31 December 2019 and thereafter, charities with subsidiary trading companies must note that gift aid payments must be accounted for when paid or when there is a legal obligation to do so. Therefore, trading company directors meeting before the year end to confirm that the profits will be paid to the charity does not create a legal obligation. So they may create a deed of covenant to make the intended payment obligatory or the payment must be made in the year in which it arose. This will be a matter for discussion with the auditors or financial examiners but it is something of which all parties should be aware.

(Source: Price Bailey blog 23 January 2018)

REASONS FOR DISMISSAL

An employer does not necessarily have to tell an employee the reason for terminating his contract of employment. However, if the employer does give a reason, it must be the truthful one. So held the Employment Appeal Tribunal in a 2017 case. The EAT said that there is an implied term in every employment contract that the employer would not conduct itself in a manner that would damage the trust and confidence necessary between employer and employee. To give a reason for terminating a contract of employment that was misleading was a breach of the implied term so the real reason should have been given if any were to be given at all.

(Source: StoneKing e-bulletin December 2017)

TRADE MARK GUIDANCE

If someone wishes to oppose a Trade Mark application, the procedure is as follows. There is a two months opposition period which begins as soon as the Trade Mark is advertised in the Trade Marks Journal. Form TM7 – notice of opposition can be filed with the appropriate fee. This period can be extended by a further month by filing electronically TM7 - notice of threatened opposition. This must be done within the initial two months and no fee is payable. Such filing does not commit the filer to opposing the application. There is also a

fast track procedure using form TM7F.

Further information is available from information@ipo.gov.uk

WITHOUT PREJUDICED CONVERSATIONS

The use of the words 'Without Prejudice' in discussions where there is a dispute is well known and normally means that neither party will subsequently use anything said in such discussions if no agreement is reached by the 'without prejudice' exchange. Recently, the Employment Appeal Tribunal considered an employment dismissal appeal where the Claimant appealed on the grounds that things said in 'without prejudice' conversations had been relied upon by the employer to found the case for his dismissal. The EAT said that a meeting described as 'without prejudice' did not mean that all that was said was definitely protected. The use of the description was relevant but not determinative and there may be other factors to consider. For example, one factor was whether the parties contemplated litigation or possible litigation if they could not agree on matters in dispute.

(Source: StoneKing e-bulletin 18 January 2018)

DISHONESTY

Dishonesty as a concept is well used in disputes between parties but what does it mean? The test used for some years has been that in the criminal case of *R v Ghosh 1982* which required the court to decide if what the defendant did was dishonest by the standards of reasonable and honest people (the well-known man on the Clapham omnibus!) and did the defendant realise his actions were dishonest by those standards. The problem is that the more dishonest a person is, the less likely he is to have given thought to what others might think. In a recent civil case of *Ivey v Genting Casinos (UK) Ltd 2017*, the second limb of *Ghosh* was removed and the test now just stands at 'what reasonable people would think'. The only problem that then remains is whether the defendant could have been mistaken in what he believed and, if so, would he have been dishonest? The answer then is: what would a similarly-mistaken reasonable person have done in the circumstances.

(Source: The Magistrate December 2017)

NOTICES

THE FOUNDATION FOR SCIENCE AND TECHNOLOGY

(further information on 020 7321 2220)
29 September 2018 - The Learned and Professional Societies' Annual Luncheon (Speaker TBA)

ASSOCIATION OF LEARNED AND PROFESSIONAL SOCIETY PUBLISHERS

(further information from info@alpsp.org) The current programme of training courses is available at www.alpsp.org

CASS BUSINESS SCHOOL, CITY UNIVERSITY, CENTRE FOR CHARITY EFFECTIVENESS

Five degree courses (part time):

1. Voluntary Sector Management
2. Charity Marketing and Fundraising
3. Charity Accounting and Financial Management
4. Grant-making Management
5. NGO Management

For further information, please email or call Professor Paul Palmer, Course Director on profpalmer@city.ac.uk tel 020 7040 5133.

MBA SCHOLARSHIPS FOR ENGINEERS WITH LEADERSHIP POTENTIAL

Sainsbury Management Fellows (SMF) Scholarships develop engineers as leaders in UK industrial companies from FTSE 100 to technology start-ups. Each year up to ten such Scholarships are awarded to outstanding engineers to study for a post-graduate MBA at a leading international business school to enhance their career potential and extend their leadership skills. Each award is of the value of £50,000.

The Fellowship promotes engineering in business as an exciting and financially rewarding career, highlighting the benefits of innovation. It does this alongside the Royal Academy of Engineering, Engineering UK, the Engineering Council, and the engineering professional institutions. The Fellowship (comprising 330 Fellows) is involved with a variety of entrepreneurial organisations and university commercial groups, providing mentors for 'spin-outs'. It also supports and mentors engineering undergraduates in the Royal Academy of Engineer's Leaders Scholarships Programme.

Applications for the September 2018 Scholarships are open now so for further information and application details visit www.smf.org.uk

APPOINTMENTS WANTED

Paul Mitchell having spent over 30 years in the city specialising in the management of charity investment portfolios, has now set up his own company, Paul Mitchell Investment Reviews Limited (PMIR) and is looking for opportunities to help charities review their investments. He can help with a review of your current investment strategy, statement of investment principles and performance of your fund manager. This process often results in the need for a beauty parade to find a new fund manager and PMIR can undertake this process as well as offering an on-going monitoring service to ensure your fund manager is performing in line with your expectations.

Please see his website <https://www.pmir.co.uk/> for more information or contact him at paul.mitchell59@aol.co.uk tel 07900907657

David Brown, formerly CEO of the Institution of Chemical Engineers, is available to advise learned, professional and similar bodies on governance, operations and growth strategy (including international development). He also offers training and advice on enhancing links between academia, industry, government and the professions.

Contact: dbrown@cantab.net or 07979 658 321

Dr Valerie Shrimplin seeks part-time, committee or board work, as an education management consultant, particularly in the field of professional education and training. Building on an earlier career as a lecturer (to PhD), she has wide experience of governance, planning, management, budget-setting and HR practices in universities and professional bodies, as well as extensive experience of the maintenance and management of quality and standards in education, both nationally and internationally (Middle East, North Africa, Eastern Europe, South Pacific). Having held senior positions in universities, the Royal College of Surgeons and the Bar Council/BSB, she currently runs a unique higher education establishment in Central London. Contact: vshrimplin@gmail.com

Stephen Gilbert MSc FCIS FRSA formerly Chief Executive of a leading £30 million investment industry charity, seeks opportunities for involvement in projects where commercial and intellectual challenge

are more important than remuneration. A qualified Chartered Secretary with twenty years experience in the not-for-profit sector, Stephen offers a wide portfolio of skills including strategic planning, reputational management, partnership creation and governance. All delivered with commitment, speed, efficiency and a good sense of humour.

Contact: www.linkedin.com/in/stephencharity/

Futura Consulting helps not for profit organisations (including academies, learned societies and professional bodies) to develop and deploy their powers of influence. We work closely with leaders and their teams to design, implement, monitor and review strategies, policy and the communications needed to make them successful. Our aim is to help make your people, projects and policies as compelling as possible, so that your organisation can set the agenda, lead the debate or bring about change.

For more information visit www.futuraconsulting.co.uk or email tony.mcbride@futuraconsulting.co.uk

Sue Thorne Consulting can help you get the best out of your society. We provide advice to learned societies on governance, strategy and operations. The basic governance health-check covers the governing documents, Trustees Report, reserves policy and trustee induction. Optional extra modules include risk management, public benefit, committee structure and function, and internal policies. We can assist with strategic reviews, including facilitating away-days, as well as preparation and follow-up if required. We also provide a 'virtual CEO' service for societies that do not have their own CEO, but want access to expert advice on an ongoing basis.

Contact Sue Thorn, suejthorn@yahoo.co.uk, 07545 330851, www.suethorn.org.

Polaris Associates Ltd

We offer a range of communication design, market research, and survey capabilities that leverage our many years' experience of providing services to the professional membership community, and 20 years of working with scientists and engineers.

We help organisations with recruitment and retention activities; understanding members' requirements more closely,

understanding why people do not join, re-branding, and value marketing.

In addition, the Polaris Membership Model has been proven as a valuable tool which provides accurate predictions of membership and offers advanced scenario modelling. It can therefore immediately answer the President's or Chief Executive's perennial question of 'what increases or changes in membership will we see in the next few years depending on decisions we make today?'

Contact: David Falzani 0777 5814848, DFalzani@PolarisLondon.com, www.PolarisLondon.com

Pippa Smart: Publishing advisory services

Learned Societies are increasingly outsourcing their learned publications to commercial or contract publishers, leaving little in-house expertise to evaluate if they are receiving a good service from their publisher and to decide upon mid- and long-term strategies for their publications. As an independent publishing consultant, I provide learned societies and other similar organisations with advice on their scholarly publications (journals, books and e-products), and on working with commercial/contract publishers. I have experience of advising organisations on sending out and evaluating publishing tenders, working with external publishers and developing publishing strategies. If you would like to discuss any aspect of your scholarly publishing, please do contact me: pippa.smart@gmail.com, or take a look at my website: www.pspconsulting.org

Accounting for Smaller Societies

A new facility from Livery Accounting Service (LAS), an Ironmongers' Company initiative, offers a complete accounting service for learned and professional societies. LAS will take over your accounting records, and your accounts staff if you wish, and post your books. It will answer questions on your data between reporting dates, and send Management reports monthly or quarterly and annually depending on need.

If interested, please contact john.hayes@lasaccounting.co.uk or call 020 7776 7592

CONFERENCE AND MEETING VENUES AND FACILITIES

This list of all types of meetings rooms in

and around London, which are for hire, is available from the Foundation free of charge. It gives details of capacity, facilities, catering and other general information: additions and amendments should be notified to the Learned Societies' Liaison Officer.

DIRECTORY OF SERVICE PROVIDERS FOR SOCIETIES

This Directory identifies organisations that have experience of serving societies and about whom some societies have indicated their satisfaction. It is not an exclusive list so the Foundation is happy to add to it from time to time but it is not intended to provide the Foundation's endorsement to such service providers.

NOTES FOR GUIDANCE

The Foundation publishes a series of Notes for Guidance in respect of matters of common interest to societies.

Requests for free copies should be made to the Foundation.

The following guidance notes are available:

1. Assignment
2. Award of UK National Honours
3. Branches and Groups
4. Charities Act 2006 summary
5. Companies Act 2006 summary
6. Conflicts of Interest
7. Copyright law
8. Court Judgements and Codes of Conduct
9. Data Protection and Membership Organisations
10. Directors' and Trustees' Liabilities
11. Disciplinary Hearings: Presentation of Complaints and Appeals
12. Display of Framed Certificates
13. Employment Equality (Age) Regulations 2006
14. Encouraging Legacies
15. Governance
16. Harrassment and Professional

Misconduct

17. Incorporation by Royal Charter
18. Incorporation under the Companies' Acts [including a model memorandum and articles of association]
19. Meetings Law and Procedure
20. Membership and Chartered Practitioner Registration as a Contract
21. Overseas Divisions
22. Parliamentary Liaison
23. Passing off Qualifications
24. Payment of Trustees
25. Professional Discipline [including a model disciplinary procedure]
26. Publication of Members' Details
27. Registration of Incorporated Companies and Annual Duties Thereafter.
28. Staff Disciplinary and Grievance Procedure
29. Subscriptions and Income Tax
30. Trustee Indemnity Insurance
31. Equality Act 2011
32. Use of Employers' equipment
33. Whistleblowing

E-MAIL

This is a reminder to all members that the Foundation would like to be in the position of being able to circulate to all societies this Newsletter and other information by e-mail. All that is necessary is for such societies to e-mail the Foundation at office@foundation.org.uk with the words 'Societies mailing list – please add to e-mail list' in the subject title.

ENTRIES FOR JUNE 2018

Those wishing to use the Notices (for job advertisements, information-seeking or exchange or other related matters) in the next issue should send their entries to the Foundation by 31 May. The right of editing entries is reserved.

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DISCLAIMER

While great care is taken to provide accurate and helpful information and guidance in this Newsletter, the Foundation for Science and Technology, its Chief Executive, and the author of this Newsletter, accept no responsibility for errors or omissions in this or other issues of the Newsletter. Readers are expected to check all essential information and to seek professional or expert advice as appropriate to specific circumstances. The same applies to information given by the Foundation's information service for learned and professional societies.

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