

A RESPONSE BY THE ECCLESIASTICAL LAW SOCIETY TO THE REPORT OF THE CHURCH BUILDINGS REVIEW GROUP (GS 2008)

1. The Ecclesiastical Law Society

- 1.1 The Ecclesiastical Law Society is a charity whose object is 'to promote education in ecclesiastical law for the benefit of the public, including in particular
 - (a) the clergy and laity of the Church of England and
 - (b) those who may hold authority or judicial office in, or practise in the ecclesiastical courts of the Church of England'.
- 1.2 The Society has approximately 700 members, mostly Anglican and resident in the UK, but includes a significant number from other Christian denominations and from overseas. It publishes the *Ecclesiastical Law Journal*, and circulates newsletters as well as organising conferences and seminars for members and non-members. It is active in promoting the teaching of canon law at theological colleges and as a component of continuing ministerial education.
- 1.3 It has established many working parties on matters concerning the ecclesiastical laws of the Church of England including participation in the revision committee of the draft Clergy Discipline Measure.
- 1.4 This response has been endorsed by the Committee of the Ecclesiastical Law Society and is submitted to the Church Buildings Review Group ("the Review Group") with its approval.

2. Introduction

- 2.1 In its report, the Review Group commends a set of six principles, and in the light of those principles makes ten specific recommendations. Those principles and recommendations largely relate to matters of general policy, and to that extent are beyond the remit of the Society – although of course individual members of the Society may wish to make an input on a personal basis. This response accordingly is restricted to those issues that are within the remit of the Society, in particular those raising matters of law and procedure.
- 2.2 However, as the preliminary recommendations of the Review Group are further developed in the light of responses to the Report, issues will undoubtedly arise in respect of which the Society may be able to offer further assistance, which it will be most willing to do.
- 2.3 In particular, it is noticeable that the responses that have already been made in the press and elsewhere to the Review Group's report, as was no doubt anticipated, reflect a wide range of views – from suggestions that most or all of the church buildings of the Church of England should be sold, to encouragement for all of them to remain open but without the religion. Clearly much will depend on the way in which the Review Group chooses to go forward, and the Society looks forward to making a more detailed input once that is clearer.

3. Responsibility for church buildings

- 3.1 The first of the principles commended by the Review Group is that the legal responsibility for a church building that remains open for worship should normally remain at parish level or, where that is not possible, at diocesan level. This principle is carried forward into Recommendations 2 and 3.
- 3.2 As for the principle, transferring ownership and responsibility to a national or regional body may tend to reduce the incentive for the local community (either the worshipping congregation or the wider community) to remain involved. That may in turn conflict with the understandable desire, reflected in the Group's first recommendation, to maximise financial support for listed churches. Further, it may be difficult in practice to transfer to such a body the full liability for the church and churchyard – for example under the Occupiers' Liability Acts – where the parish in practice retains responsibility for day-to-day care (see *Wheat v Lacon*).
- 3.3 It would be interesting to discover how the arrangements of the Church in Wales, whereby every church is owned by the Representative Body, operate in practice.
- 3.4 As for Recommendation 2, the transfer by a PCC of liability for an open church to another body may well be attractive to the PCC, although whether there would be many bodies willing and able to accept such liability must be open to some doubt. However, again, it will not be possible for the parish to avoid completely all liability for premises; and the comments at paragraph 16 of Appendix 3 to the Group's report are relevant in this regard.
- 3.5 It is also worth noting that the transfer of liability for closed churchyards to local authorities (under section 215 of the Local Government Act 1972) is not always a success. Local authorities in practice have very limited funds, can give low priority to churchyard maintenance even though they may be under a statutory duty to take action and in some cases parishes are keen to regain responsibility for the care of a churchyard that has been neglected by the relevant authority.
- 3.6 It would therefore be important for all parties to such a transfer to ensure that there is a clear understanding of who is responsible for what – and particularly, as the years go by, what happens if those who are thus made responsible default on their liability. The legislation needs to be drafted so as to make the default position clear – without being so complex as to deter parishes from taking advantage of the possible gain arising from a transfer.

4. Legal models for alternative uses of open church buildings

- 4.1 The ability of a parish to grant a lease, as opposed to a licence, is still relatively new, having only been available since the start of 2007. There is therefore probably no pressing need to amend what is now section 68 of the Mission and Pastoral Measure 2011; the need is rather to publicise the powers that are available.
- 4.2 In that regard, the guidance from the Legal Office as to possible legal arrangements to facilitate the use of open churches, in Appendix 3 to the Review Group's report, is helpful; and the Society supports the Group's Recommendation 3 that such guidance should be more widely disseminated.

5. Review of governance requirements for parishes and benefices

- 5.1 The Society notes and shares the concern of the Review Group as to the way in which existing parish structures operate in sparsely populated rural areas – although it is likely that many of the same concerns, particularly as to attracting sufficient officers and PCC members, will occur also in struggling urban parishes, particularly in inner cities.
- 5.2 Here too the Society agrees with the comment of the Review Group (at paragraph 144) that there may be scope for amendments to structures, but that at least as important is to disseminate information and guidance as to the options that are already available.

6. Closing church buildings

- 6.1 The suggestion to transfer use-seeking functions for closed churches from dioceses to the Church Commissioners seems sensible.
- 6.2 However, as noted in the Review Group's report, the number of churches being closed remains very modest. Churches nearing closure, particularly unlisted buildings in urban areas, can absorb considerable amounts of human and financial resources to little reward; and there perhaps needs to be a greater willingness by both dioceses and parishes to contemplate parishes combining resources so as to release under-used church buildings and their sites for other purposes.

7. Simplification of overall legislative framework

- 7.1 The third of the principles commended by the Review Group is that the overall legislative framework governing the use and management of church buildings needs to be simpler, less prescriptive and less burdensome for laity and clergy. This principle is not directly carried forward as a formal recommendation.
- 7.2 The Society agrees that the legislative framework is indeed unduly complex and unclear. There would seem to be much to be said for the relevant legislation to be consolidated into a single Care of Churches Measure – to incorporate at least the Inspection of Churches Measure 1955, the Ecclesiastical Jurisdiction Measure 1963 (Part 1 and Sched 1), the Faculty Jurisdiction Measure 1964, the Dioceses, Pastoral and Mission Measure 2007 (ss 54-57 and Sched 4), the Care of Churches etc Measure 1991, the Care of Places of Worship Measure 1999, and the Miscellaneous Provisions Measures and Amendment Measures amending them. It is noted that the Legal Office has identified (in the Annex to GS Misc 1125) that a programme of consolidation could usefully include legislation relating to the care of churches and church property.
- 7.3 Following such consolidation, or alongside it, it would then be possible also to explore ways in which the law could be improved, as opposed to merely simplified. The Society considers that this would be a very useful exercise, especially in the light of the various amendments that have recently been made to the legislation in this area.

8. National functions

- 8.1 The Review Group recommends that relevant staff in Church House be brought together into a single team, and that a new statutory Commission be established to take oversight of the Church's stewardship of its buildings. The latter proposal would obviously require new legislation, but there would seem to be no inherent problem to prevent the implementation of such a proposal.
- 8.2 The Society is also aware of a suggestion from the Chair of Historic England that there should be a Royal Commission – or, perhaps, some other form of independent, evidence-based enquiry – to look into the future of church buildings, taking into account the wider public interest. This seems sensible, as many of the most acute problems, seen from the perspective of the Church, arise in precisely those areas (principally but not exclusively rural areas and historic town centres) where the problems are greatest from a heritage perspective.
- 8.3 It is not clear what the relationship would be between such a Royal Commission (or similar body) and the Commission recommended by the Group. However, if the HE suggestion – or some other similar initiative – commends itself to the Group, the Society would be happy to explore ways in which it can most constructively make an input into that further work.

9. General observations

- 9.1 Overall, this report of the Review Group contains in Part 1 a great deal of useful factual material, which helps to provide a solid basis for any discussion of possible changes to law, structures and procedure. And the general principles and recommendations seem sound, as far as they go; although, as noted at the outset, many of the issues raised are beyond the remit of the Society.
- 9.2 Further, in relation to many of the issues explored by the Review Group, the need may not be so much for changes in the law – helpful though they may be – as for greater awareness by parishes of the options available to them under the existing law. There is also considerable scope for dioceses using the powers they already have under the Mission and Pastoral Measure to keep these issues under review and to propose strategies for future development of the Church's ministry – which may well involve more support for rural churches to enable them to remain open, and more encouragement for urban parishes to combine to use fewer buildings more creatively, thereby releasing resources for growth elsewhere.
- 9.3 It is thus important to ensure that any new legislation that emerges is drafted in such a way as to leave open a series of different options as to possible ways forward. As is perfectly clear from the Report (and as is indeed confirmed by many of the preliminary responses to it), the problems faced in particular parishes vary hugely – not least as between those in rural, suburban and urban areas, and between those with churches of different sizes and differing heritage status. We agree that a single, one-size-fits-all model would thus be inappropriate; and it is important to ensure that what works well in Islington is not imposed on rural Herefordshire.

9.4 It is to be hoped that, in the light of the responses received to this report, the Review Group will produce a further report with more specific suggestions. As noted at the outset of this response, the Society would be very happy to offer assistance to the Group in that process.

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