

Gospel & Law

Pentecost Edition

Editor: Revd Dr Catherine Shelley
Circulation & events: Andrew Male

revdrcath@gmail.com
male.andrew@sky.com



Happy Pentecost and welcome to a spirit-filled edition of the newsletter, with news and pictures from a very enjoyable and successful conference, responses to issues in previous newsletters, a church/state controversy that doesn't involve employment or marriage and as always a few notices.

ELS Residential Conference 2013: Over 120 assorted Bishops, Archdeacons, clergy, Registrars, Chancellors and lawyers, many dual-qualified as clerics with a legal background or lawyers who are ordained, gathered for this year's residential conference. It is possible that the Burlington Hotel wasn't sure what had hit it but they provided us with an excellent venue and hospitality. Bishop Tim Dakin's opening speech, with its concepts of 'Mods, Sods and Nods'* and 'Archdeacons with portfolio'+ running limited companies, set the tone for a weekend of searching speeches and discussions about possibilities for developing the church's mission.

In Saturday morning's panel Ven. Julian Hubbard, Director of Ministry gave an overview of current church statistics and Peter Wagon, Church Commissioners Pastoral Dept and Martin Follett, Diocesan Registrar Exeter outlined existing options for the use of Bishops Mission Orders to enable supra or extra-parochial ministry. Professor Grace Davie's sociological reflection on the church and British dependence on 'vicarious religion', 'believing without belonging' and the mismatch of expectations of the church and commitment of the people might have been a little depressing. However, there was positive news of increased numbers attending Cathedrals and evangelical or other parishes demanding commitment of their members. The talk certainly provoked many questions about where mission goes from here.

Saturday afternoon began with a brief and efficient AGM and was followed by Bishop Christopher Lowson's reflections on the outworking of the Pastoral Measure in Lincoln Diocese. After tea workshop groups considered legal aspects of parochial ministry relating to structures, church planting, lay ministry from wardens to licensed and unlicensed lay workers, collaborative ministry, teams, liturgy, common tenure and deployment. Further ideas for new ministry were developed by the Bishop of Birmingham, Rt Revd David Urquhart, in his after dinner speech. His vision of religious or missional communities of young Christians in challenging areas picked up the idea of 'sods' planted by the Bishop of Winchester over dinner the previous evening.

Sunday morning concluded our business with a closing plenary session in which Bishop John Gladwin performed the extraordinary task of summarising the conference reflections and a panel of earlier speakers picked up the questions posed by Saturday afternoon's workshop discussions. The conference concluded with a beautifully sung Holy Communion at Birmingham Cathedral, led by the Dean, the Very Reverend Catherine Ogle, deaconed by ELS member Tim Clarke, SSM at the Cathedral and with a sermon from our Chairman, Bishop Christopher, to send us on our way. The weekend was highly enjoyable and a success in a number of respects. Besides the discussions, of which more will be available in due course from other ELS sources, the increasingly youthful profile of members and greater proportion of women was noted. It was also encouraging to see a higher percentage of Archdeacons than previously, although the collective noun coined – 'a conspiracy of Archdeacons' – might have been a little harsh!

*Modalities for parishes, sodalities for religious communities and societies with extra-parochial reach and nodalities, the Bishops who hold it all together!

+Not such a strange idea – with us at the Conference was an Executive Archdeacon from Edmonton, Canada



The Very Revd Catherine Ogle, Dean of Birmingham Cathedral & Robin Ogle joined us for Saturday's dinner as well as welcoming us to the Cathedral



Andrew Male (left) our administrator; to whom is owed much thanks.





The collective noun for Bishops?

Rt Revd Christopher Hill, Chair of the Society
 Rt Revd David Urquhart, Bishop of Birmingham
 Rt Revd Christopher Lowson, Bishop of Lincoln
 Rt Revd Tim Dakin, Bishop of Winchester



So much for a conspiracy of Archdeacons...
 What are Hilary and Mark Hill plotting?
 Answers or captions on a postcard – or via
 email – to the Editor



Helpful advice concerning the removal of the body at Golgotha has been received from James Behrens. His opinion is that *'no faculty was needed for the stone outside Joseph of Arimethea's tomb for the body of Christ, as the stone was not put there as a memorial, but simply to seal the tomb and stop people entering.'*

I suspect that the construction of tombs commonly used for British burials preclude the use of this reasoning as a loophole to avoid the faculty jurisdiction! Ed.

James Pitkin sends a very interesting response to the question of which occupations are incompatible with ordination as an SSM: - *'I am now a Vicar of several parishes in Hampshire and was ordained having been sponsored for training by the Bishop to the Forces. Although I wanted to continue as an Engineer in the Royal Air Force and be an SSM it was explained to me that to be ordained and to be a serving member of the forces (non-chaplain) 'caused problems with the Geneva Convention' and that I had to leave the Forces to be ordained (it was 'incompatible to be an engineering officer and a priest'). Since my position of argument was weak (I could not insist on ordination!) I agreed to leave the RAF and was ordained to a Title Post in the Winchester Diocese – although I was ordained over 3 months before I actually retired!*

The argument was that ordained I would be both a combatant (as an engineering officer) and a non-combatant (as a priest). I could not see the problem citing the then Church of England Communications Director – an ordained priest who was also a Lt Colonel in the US Reserves! However, a Royal Navy Surgeon (classified as a combatant) had been ordained in Portsmouth Diocese and the Bishop to the Forces did not want to see the problem recur! I was also told that during the Second World War some priests had joined the forces as combatants – one famously being a rear-gunner in an aircraft.

The bells, the bells are being taken over by the telephone masts.

In an article headed *Storm over plan to install phone masts-* the *Church Times* (p.8, 3rd May 2013) states that London DAC guidance counsels against situating such masts close to schools or buildings containing young or vulnerable people because of health and safety concerns. On checking the London DAC website I could not find that reference but did find positive support for the idea of installing phone masts in churches not least on financial grounds! Apart from the *CT's* apparent oversight that there might be young or vulnerable people in churches not just schools in the surrounding locality, the article fails to acknowledge the actual legal issues involved or the fact that London Diocese has already approved the installation of telephone masts in 11 church towers over the last two years. There are significant quotes from the local Councillor who seems unaware of his own Council's history of permitting two installations of masts in church towers without planning permission. The legal situation is that due notice was given under both the Faculty and planning jurisdictions. Public Notice of the scheme in the usual way would have been seen by more people than usual as the Olympics open churches policy increased footfall during the relevant period. Notice was given to the planning authority on the understanding that the installation involved no material alteration to the character of the building and was therefore within the ecclesiastical exemption. The Council did not indicate otherwise. After the notice period was over the public campaign began, leading to an onslaught of emails out of time. Despite being out of time the Chancellor considered them all. He also considered the case-law, incorporating scientific evidence about the health and safety implications of telephone masts. Cases in both secular and ecclesiastical law suggest that the installation of telephone masts is not a health risk. It was on this basis that the Chancellor granted a faculty for the masts at St Augustine's, Kilburn. The ball is now in the Council's court if it wants to take further action but somehow I don't think it will do so.

The President of the Methodist Conference v Preston [2013] UKSC 29

The Supreme Court has overturned the Employment Appeal Tribunal and Court of Appeal in deciding that Ms Preston, a former Methodist District Superintendent, was not an employee under s.230 Employment Rights Act 1996 but an office holder. She was therefore not entitled to bring a claim for constructive unfair dismissal under s.94 of the same Act. The EAT and Court of Appeal held that the previous authority of *President of the Methodist Conference v Parfitt [1984] ICR 176* was no longer good law following the House of Lords decision in *Percy v National Mission of the Church of Scotland [2006] 2 AC 28*, which held that a Church of Scotland minister was an employee and so able to bring a case for sex discrimination.

The majority in the Supreme Court distinguished *Preston* from *Percy* on the basis that sex discrimination legislation covers 'labour' which is more general than 'employment' under s.230 Employment Rights Act 1996. They held that because Methodist Ministers serve by virtue of their connexional status with the Methodist Conference, as set out by the Methodist constitution and Deed of Union, their terms of service with a particular church or district do not amount to a contract of employment nor can one be implied. The fact that their service is spiritual or held as an office does not automatically preclude contractual status but on the facts of this case there was no such contract. The enforcement of basic entitlements such as stipend and manse should be considered under the law of the Church's trusts not employment.

Lady Hale dissented however, arguing that the spiritual dimension of the Minister's work is her relationship with God; the relationship with the Church is temporal. She used the analogy of a university Professor to illustrate the fact that office does not exclude employment. The university relationship with office holders was also used as an analogy for the relationship between the Methodist Church via Conference and its ministers. Whilst the over-arching terms of office are held from the connexion with Methodist conference there were very particular terms of time, post, duties and stipend arising from the letters inviting the Minister to serve in Redruth, a post that was then reorganised out of existence without the 'usual protections' for the Minister. Accordingly Lady Hale was satisfied that the case of constructive dismissal had been made out and dismissed the appeal.

The majority decisions refer to the particular circumstances of this case and the Methodist Church's Connexional arrangements, meaning that the case may provide little guidance beyond the Methodist Church. However, Lady Hale's dissenting decision would seem to provide some mileage for the matter to be re-visited in another case at some point.

The remaining London Lectures 2013:

12th June 2013 – Dr Peter Smith – Churchwardens: a case of mistaken identity?

16th October 2013 – The Revd Canon John Rees, Provincial Registrar - Anglican Covenant or what?

All are at Winckworth Sherwood, Minerva House, Montague Street, starting at 5.30pm; they are free but it helps if you can let us know that you are coming to assist planning. You can either email Andrew Male at:

male.andrew@sky.com or

contact Winckworth Sherwood direct on: 0207 593 5000 or by email on: info@wslaw.co.uk

