

# Gospel & Law

Advent 2015

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

[revdrcath@gmail.com](mailto:revdrcath@gmail.com)  
[admin@ecclawsoc.org.uk](mailto:admin@ecclawsoc.org.uk)



## **Editorial**

So another Synodical Quinquennium has begun and apart from the call to abolish the reading of the Banns of Marriage (which in this priest's view seems a misguided missing of a missional opportunity) there seems to have been comparatively little press coverage of the first group of sessions of the new Quinquennium's General Synod. Let us pray that the next five years can be quieter in terms of media-generated controversy and constructive in terms of Church business. More of Synod below. Also in this edition, an outline of the Archdeacon's duties, the case of *Pemberton v Inwood* thus far and some helpful news from the HMRC, as well as notices as usual.

## **The latest - legal - news from General Synod....**

What with inducting the new members of Synod and the opening ceremony, the actual business of this Group of Synodical Sessions was comparatively light in terms of items on the agenda. However, the weight of some of them was significant, in particular the latest update on Renewal and Reform and the report of the Church Buildings Group.

An amended Motion was carried in relation to church buildings adding, in the preamble, reference to the 'missional opportunities provided by our buildings, whatever their age', as well as 'acknowledging both the blessing and the burden of the Church of England's stewardship for so many historic buildings.' The Motion welcomed the report from the Church Buildings Review Group, commending it for discussion in dioceses, deaneries and parishes.

More substantively the Motion also invites the Archbishops' Council, the Church Commissioners and the Church Buildings Council to work together on the detailed implementation of the proposals in the report so as to enable the Business Committee by July 2016 to begin the legislative process for implementation of the proposals that require legislative change. In addition, a further addition to the original Motion invited the same agencies to develop a strategy to inspire, encourage and support churches and their dioceses to invest in their facilities to serve their communities and provide opportunities for mission.

The recommendations requiring legislative change and strategic review include:

- Facilitating greater flexibility about the meaning of churches being open and primarily used for worship.
- Under the Simplification Agenda, reducing 'red tape' affecting parish and benefice structure, organization and governance requirements so as to relieve pressures on clergy and laity
- Enabling PCCs, with Diocesan consent, to hand over management responsibility for buildings to

alternative organisations whilst retaining ownership and use of the building primarily for worship, by amendment of the Parochial Church Councils (Powers) Measure 1956

- Amending Canon B14A to facilitate the role of 'Festival Churches' in mission and evangelism in their surrounding communities,
- Establishing a new statutory Commission (entitled eg Church Buildings Commission for England) for oversight and a strategic view of the Church of England's stewardship of its church buildings, priorities and resource allocation, replacing the Church Buildings Council, its Statutory Advisory Committee, and the Church Commissioners' Church Buildings (Uses and Disposals) Committee. The new body would also, for some purposes, act as a committee of the Commissioners.
- Developing Diocesan reviews and audits of church buildings as part of Deanery Mission and Action planning.
- Disseminating guidance on the legal models for leases or licenses of church buildings
- Transferring responsibility for finding uses for closed churches to the Church Commissioners although ownership and upkeep would remain with the Dioceses.
- No change to the current powers and responsibilities of the Churches Conservation Trust

The report of the Church Buildings Review Group is available here:

[https://www.churchofengland.org/media/2383717/church\\_buildings\\_review\\_report\\_2015.pdf](https://www.churchofengland.org/media/2383717/church_buildings_review_report_2015.pdf)

The consultation period is now open and will close on the Friday 29th January 2016 at 5pm. Comments should be sent to [andrea.mulkeen@churchofengland.org](mailto:andrea.mulkeen@churchofengland.org).

The Society has set up a working group to prepare a response to this consultation, under the leadership of Charles Mynors. If any members would like to be part of the group, or to make any comments for inclusion in its response, please contact him at [charles.mynors@ftb.eu.com](mailto:charles.mynors@ftb.eu.com)/

**The legal aspects of the update on Renewal and Reform, under the Simplification Task Group** included:

- The coming into effect on 01.11.2015 of amendments approved by Synod in July 2015 to the Ecclesiastical Offices (Terms of Service) Regulations 2009, which allow for more flexibility over the creation of limited term posts under Common Tenure
- Further legislative proposals for reform of pastoral reorganisation, church buildings, Bishops' Mission Orders and clergy compensation will be included in a draft measure to be introduced to Synod in February 2016.
- A second phase of legislative proposals arising from consultation with parishes as Part II of the Simplification Process will come to Synod in February 2017, following consultation on the proposed content during 2016.
- Work on the new Enabling Measure (emerging from a report on Optimising the Role of the National Church Institutions - see below) aims to make it possible for the Synod to amend or repeal some primary legislation by a less complex process than currently possible. It is emphasized that this power would not be used for 'the most sensitive and significant categories of legislation', eg 'of a doctrinal or constitutional kind.'

Further information about these proposals can be found in Papers [GS Misc 1124](#) and [GS Misc 1125](#) at <https://www.churchofengland.org/about-us/structure/general-synod/agendas-and-papers/november-2015-group-of-sessions.aspx>

The report on responses to the Enabling Measure is at:

[https://www.churchofengland.org/media/2392344/gs\\_misc\\_1125\\_-\\_enabling\\_measure.pdf](https://www.churchofengland.org/media/2392344/gs_misc_1125_-_enabling_measure.pdf)

It is proposed that a motion seeking agreement to the introduction of the Enabling Measure be put to the Synod in February 2016.

There is further consultation on a proposed Statute Law (Repeals) Measure, further details of which can be found at:

[https://www.churchofengland.org/media/2399881/gs\\_misc\\_1128\\_-\\_consultation\\_on\\_possible\\_statute\\_law\\_repeals\\_measure.pdf](https://www.churchofengland.org/media/2399881/gs_misc_1128_-_consultation_on_possible_statute_law_repeals_measure.pdf)

Responses can be sent to Sin Hughes-Carew, The Legal Office, Church House, London SW1P 3AZ, or [sin.hughes-carew@churchofengland.org](mailto:sin.hughes-carew@churchofengland.org) no later than 29 January 2016.

Here, too, the Society is preparing a response. Those wishing to be involved in its preparation, or to make any comments for inclusion, should contact Peter Smith at [P.M.Smith@exeter.ac.uk](mailto:P.M.Smith@exeter.ac.uk)

A report on '**Optimising the Role of the National Church Institutions (NCIs)**' has led to work on:

- The Scope and range of activities undertaken nationally, so as to add value to specific Diocesan needs
- Church buildings, as reported above
- Social media and digital channels, particularly aimed at new ways to engage young people in exploring Christian faith and enhancing the Church of England's website to make it a more effective platform for information and engagement
- Culture change within the NCIs.

**Report on Public Perceptions of Jesus** - There was not much of legal import in the report on Public Perceptions of Jesus, although there might be something to be reflected on as regards Jesus' impact on public perceptions of lawyers.

### **A bit of legal education.... so what do Archdeacons do?**

Whether it's the power-hungry and scheming Archdeacon Grantly of Trollope's Barchester Chronicles or the smoothly controlling Archdeacon Robert in Rev, the poor Archdeacon seems to be the fictional Church character we love to hate. But what does

the Archdeacon do? Whence this reputation as shady, controlling power-behind-the-Episcopal throne? Or more precisely what are the Archdeacon's powers?

Given that General Synod has recently expanded the Archdeacon's powers it seems timely to consider what the job involves.

It is worth noting that unlike other clergy, whether in a parish or chaplaincy, the Archdeacon does not exercise his/her powers as a delegate of the Diocesan Bishop. Archdeaconries are created by Statute and within their Archdeaconry the Archdeacon has their own jurisdiction, independent of the Bishop. They are not therefore the Bishop's right hand man or woman but instead an alternative, possibly restraining authority on Episcopal power, at least insofar as the jurisdiction of their role allows.

They are essential in an ordered Church and carry responsibilities for monitoring and enforcing Church Order through the programme of Quinquennial inspections under the Inspection of Churches Measure 1955 and annual visitations under Canon 22(5). The latter also covers inspection of Churches and Churchyards, in person or by deputy (often delegated to Area Deans) with powers to direct the sorting out of defects in the fabric, ornament or furniture.

The Archdeacon also enforces the Faculty jurisdiction in their own Archdeaconry, under the Care of Churches and Ecclesiastical Jurisdiction Measure 1991. As an ex-officio member of the DAC, Archdeacons should be able to explain to the Incumbent and Churchwardens the likely attitude of the DAC to their plans. Archdeacons have statutory authority to intervene in faculty proceedings, eg asking that objects placed without authority are removed (and if necessary taken to a place of safety), supervising the carrying out of works by condition in a Faculty and issuing faculties by delegation from the Chancellor where works require no material change.

An Archdeacon's licence can also allow experimental re-ordering, minor reversible changes etc for up to 15 months, provided that a faculty is sought or the experiment stopped at the end of that period.

Until the end of this year, each Chancellor's 'de minimis' list sets out other minor works that the Archdeacon is able to authorize. From the start of 2016, the new Rules set out, as List B, a number of categories of works that do not need a faculty, but only providing the archdeacon has been consulted.

The Archdeacon's responsibilities for buildings also include duties for clergy housing under the Repair of Benefice Buildings Measure 1972 and they are ex-officio members of the Parsonages Board, if there is one. If the Board's functions are exercised by a DBF committee Archdeacons are usually members of that committee but, unlike the Parsonages Board, do not have to be members.

The Archdeacon is also an ex officio member of the Diocesan Pastoral Committee and not only an 'interested party' in pastoral re-organization but charged with identifying the need for such changes and negotiating with other interested parties about it.

Under Canon 22(5) Archdeacons are required to induct any priest instituted to a Benefice. This is one of the few things that the Archdeacon is required to do on the directions of the Bishop. Another is to 'take such steps as the Archdeacon considers appropriate to promote better relations' in a parish where there has been a request for an enquiry into the breakdown of relationships. The Archdeacon also gives an opinion as to whether there should be a formal enquiry under the Incumbents (Vacation of Benefices) Measure 1977. An Archdeacon also has the responsibility of convening and conducting an extraordinary meeting of a Parochial Church Council under Rule 23(1) of the Church Representation Rules.

An Archdeacon will be in priests orders and have been at least 6 years in holy orders (Canon C 22.1) and is an ex-officio member of Diocesan Synod (Rule 30(3) of the Church Representation Rules).

**Pemberton v Inwood, Acting Bishop of Southwell and Nottingham Case [2015] ET 2600962/2014.** – Readers will probably have seen by now that the Employment Tribunal rejected Rev Jeremy Pemberton's claims for discrimination on grounds of marital status and sexual orientation against the Acting Bishop of Southwell and Nottingham. Although it was agreed that Pemberton was not employed by the Bishop, he did require the Bishop's licence to perform his duties as a hospital chaplain. The licence was a "relevant qualification" and therefore the Bishop was a 'qualifications body' under the Equality Act 2010 (s.53), in line with the decision in *Ganga v Chelmsford Diocesan Board of Finance and the Bishop of Chelmsford [2015] ET 3200933/2013/* (which held that a general licence granted to a priest who was employed in the diocese was a "relevant qualification") It was common ground that the licence had been refused because Pemberton had married his (male) partner in a civil ceremony earlier in the year, and the tribunal accepted that Pemberton had felt humiliated and degraded by the refusal of the licence.

However, the Bishop was entitled to refuse to grant the licence by reason of the exception provided for in paragraph 2 of Schedule 9, because the qualification was for the purposes of employment for the purposes of an organised religion [147]. The present doctrine of the Church of England was clear that "marriage for the purposes of the Church of England is 'between one man and one woman' " [188] and that until there was a change in that doctrine the clergy had to conform to it in their ministry and individual behaviour [209]. Having determined that there *was*, in fact, a doctrine and concluded that the Claimant's position was incompatible with that doctrine, it followed that the Bishop's action was implicitly proportionate [236]. In addition, Pemberton would not have been in the position of feeling humiliated had he not defied the doctrine of the Church.

**A note from HMRC on Gift Aid** – HMRC has made an extremely helpful concession, as follows: "Following approaches made to HMRC by various charities and churches that hold stocks of pre-printed Gift Aid donation envelopes that were ordered and printed just before the new Gift Aid declarations were published on our website, it has been agreed that charities, churches, cathedrals, parishes etc. can use up their current stock of pre-printed Gift Aid collection envelopes beyond April 2016. The guidance will

continue to recommend that charities introduce the new wording by April 2016, because we want to reduce the numbers of non-taxpayers that currently complete Gift Aid declarations. The Gift Aid legislation has not changed and consequently previous versions of the Gift Aid declaration and Gift Aid envelopes used by donors after 6 April 2016 will still be valid and can be accepted by charities and churches". The concession extends to all charities but it is likely to be of particular importance to Churches because, unlike the vast majority of secular charities, they have weekly collections during services.

***Please keep in your prayers*** the Society's Chairman John Rees who is still receiving ongoing treatment following minor surgery.

***Dates and events:***

**London Lectures 2016 all to be held at Winckworth Sherwood, Montague Close, London SE1 9BB (by Southwark Cathedral), starting at 5.30pm with refreshments available from 5pm**

27<sup>th</sup> January 2016 – The faculty Jurisdiction Rules 2015: all change (again)? Chancellor Dr Charles Mynors who is author of *Changing Churches: A Practical Guide to the Faculty System*, to be published by Bloomsbury early in 2016.

16<sup>th</sup> March 2016 – Winding up/leaving a religious community – Francesca Quint, Barrister and Specialist in Charity Law and Alastair Hunt FCA

22<sup>nd</sup> June 2016 – Relations between Church and State, the Norwegian experience Andreas Hendriksen Arflot, Secretary to the Committee on Church Order of the General Synod of Norway

19<sup>th</sup> October 2016 – Chancellor Tim Briden, Vicar General - Confirmation of Episcopal elections

***The lectures are free of charge and open to members and non-members but spaces are limited so prior booking is essential.***

**The 2016 Annual Conference** will be held on **Saturday 12<sup>th</sup> March 2016** at the Bridewell Institute, Bride Lane, London, with worship at St Bride's Church, Fleet Street. **Freedom from and of Religion - Keynote speaker will be Baroness Hale of Richmond, Deputy President of the Supreme Court**, with David Burrowes MP and Mark Hill QC. Further details and booking forms have gone out with the September edition of the ELJ; contact Andrew Male if you need more.

**LARSN Conference** – The 2016 Law and Religion Scholars Network (LARSN) Conference will be held on Thursday 5th and Friday 6th May 2016 at Cardiff University and will celebrate the 25th Anniversary of the LLM in Canon Law at Cardiff. The plan is to include a number of themed panels alongside the usual general panels. Proposed panels so far include: Law, Religion and Media Reporting, The Reformation Revisited

and Religious Law. Further suggestions are welcome. Further details including a call for papers (for both themed and general panels) and information about the conference fee will be available in the New Year. We regret that we are unable to provide financial support for travel or accommodation. Please direct any queries to [SandbergR@cf.ac.uk](mailto:SandbergR@cf.ac.uk)

**The ELS 2017 Residential Conference and AGM will be at Trinity Hall, Cambridge** from Friday 31<sup>st</sup> March to 2<sup>nd</sup> April 2017 and will consider the theme, 'By whose authority? A Church ordered in its diversity...', covering authority at all levels of the Church. The price will be variable dependent on whether you have an en suite room or not and there will be bursaries available for clergy again. More details in due course but do put the date in your diary.