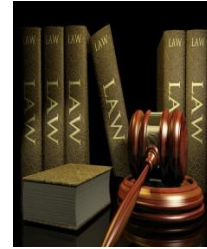


Gospel and Law

Michaelmas Edition

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Editorial

Parish Charities

I seem to have spent quite a bit of time recently advising on parish charities that have fallen into dysfunction and/or disuse. The issues involved include:

- Lack of trustees and improperly appointed trustees
- Ex officio trustees, often vicars, not exercising their trusteeship, sometimes because they are not aware of their role
- A lack of an ex officio trustee because of lengthy interregnum
- Failure to spend the money available, sometimes because the charity is not functioning at all, sometimes because the original objects no longer exist.
- Banks not observing the charity's own bank mandates.

Sorting things out...

Appointment of trustees.... Find your trust instrument and check; this may be in a will, a Deed or a Charity Commission Scheme. If the documents are not in the parish records then a copy may be obtained from the Charity Commission, assuming that the charity is registered. If it is not registered then enquiries of previous PCC secretaries or incumbents and the Diocese may assist.

Find out who has the power to make appointments; if enough of them are around eg Vicar and Churchwardens, to form a quorum then they may well be able to appoint new trustees in accordance with the trust document itself or under the Trustee Act 1925 (if unincorporated) or the Companies Act 2006 if incorporated.

Where organisations have the power to appoint but have not exercised that power or the original organization eg a local authority or parish no longer exists as boundaries have changed, then you should write to that authority or its successor to ask whether they still wish to exercise their powers. If they do want to do so then you need to hold them to that; if not, then apply to the Charity Commission for a scheme to amend the trust document and appointment powers.

Ex Officio trustees eg vicar, Area Dean or senior clergy, churchwardens, headteacher etc – if they do not want to exercise their ex officio trusteeship you might want to change the governing document to provide for the ex officio trustee to nominate an alternative.

No 'ex officio' trustee because of interregnum – you cannot appoint another ex officio trustee in the place of the named officer unless they fulfill the criteria of filling the relevant office. However, you can exercise powers of co-option or alternative appointment in the Deed to ensure that other posts are filled and there is a quorum. The lack of an ex officio trustee does not invalidate the charity. NB if the benefice is suspended a priest in charge can exercise the vicar's ex officio role under s.90 Mission and Pastoral Measure, at least for non-educational trusts.

Failure to spend the money... The duty for charities to act in the public benefit means that there is a stronger onus on charities to demonstrate that they are doing so. In the case of grant-making charities money should be spent to benefit the public in accordance with the charity's objects, rather than repeatedly accumulated. Where objects have become unworkable eg because parish boundaries have changed, because centres of population have moved away etc, then there is scope to apply to the Charity Commission for a scheme to widen the charities' objects or to apply them via another charity under the cy-près jurisdiction. There has historically been some reluctance to widen charitable objects but recent Charity Commission decisions suggest that this may be easing. For small, unincorporated charities (annual income below £10,000) there are some additional flexibilities under Part 13 of the Charities Act 2011, for example s.275 Charities Act 2011 allows trustees to amend the charity's objects on proper notice and with notification to the Charity Commission. However, it is important to check the trusts to ensure that the powers are not expressly prohibited and also other limitations in the Act do not apply.

Banks – Banks do not always check whether mandates for cheque signatories are being complied with. A bank that will remain nameless recently had to pay compensation to a charity linked with a University Anglican Chaplaincy because it had failed to note the charity's updated instructions about signatories and then ignored the mandate it held for over 16 years. Thankfully no inappropriate payments had been made but it was a concern that the bank was failing to check who was moving money around on behalf of the charity. Another recent failure in relation to a parish charity saw a bank permitting the movement of £20,000 on the signature of a single trustee, without any reference to and therefore in breach of the charity's mandates. Check your mandates and who has access to the cheque-books.

Brexit and Religious Law:

In the wake of the Brexit vote the Law and Religion UK blog has been producing regular lists of other blogs that are reflecting on the implications of that vote for various aspects of law, from constitutional questions to family law. Despite the fact that Article 50 has not yet been triggered, by the time of writing 7 lists of Brexit blogs have appeared. However, very little has touched on the implications for ecclesiastical law and laws pertaining to religion. So what might the consequences be as and when Article 50 is triggered and the slow withdrawal and unscrambling of legislation begins?

At first sight most of the laws ecclesiastical would appear to be immune from the consequences of Brexit. Planning law, faculties, burial law would generally be unaffected by changes caused by leaving the EU. However, there are some aspects of EU law that may make a difference to religious organisations as and when the Brexit process gets going. Here are a few speculative thoughts:

Marriage law – Nothing has been said yet but the logical implication of Brexit and withdrawal from the EEA will be to put all EEA citizens on the same footing as the current non-EEA citizens. This may widen the range of potential marriage enquirers who have to be referred to the Superintendent Registrar, with the State judging whose is a genuine marriage, rather than the Church. There is, as yet, no change however, so carry on booking weddings of EEA nationals as before until told otherwise. As when the current regulations came into force in March 2015 there are likely to have to be transitional provisions.

Human Rights are already being targeted for revision with the prospective development of a UK Bill of Rights or equivalent. What that may contain is frankly anyone's guess. However, possible casualties are Article 8 (private and family life) & Article 12 (right to marry), Article 9 (thought, conscience and religion), Article 10 (expression) and Article 11 (assembly and association). All of these have come in for criticism from some Brexiteers as allegedly protecting inappropriate rights for immigrants, criminals and Muslim extremists.

Article 9 has been important since 1998 in testing issues over religious dress although a pre-1998 case about the Sikh turban was brought under the Race Relations Act 1976. Article 11 was intended to protect trades unions and demonstrations but has been circumscribed by legislation curbing trades union activities regardless of the Human Rights Act. The provisions of Article 10 concerning freedom of speech have been invoked in relation to public meetings and tested, for example, when considering a variety of speakers – and “no platforming” policies – on university campuses. The repeal of each of these aspects of human rights could lead to greater vulnerability of religious groups in being declared extremist or denied a voice.

Data Protection – UK law on data protection was enacted to bring the UK into line with the 1995 EU Data Protection directive. Whether this might be tampered with post-Brexit is unclear – but if the Article 8 right to respect for private life were removed as well, there could be some very serious implications for privacy.

Working Time Directive – and other workers' rights and protections owe a significant debt to European law. Although many religious workers, as office holders rather than employees, do not necessarily benefit from things like limits on hours, nonetheless, as a discipline the existence of such rights provides a helpful framework.

Related to working time directives are health and safety laws. Although often a major butt of criticism, many of these alleged laws are actually of UK rather than

European origin as UK standards are higher than EU requirements. However, it will be worth paying attention to any changes in responsibilities and liabilities in this respect.

VAT – Over the past decades UK VAT laws have been tied to European law, so Brexit may mean a relaxation or change in VAT levels or other taxes to which Churches and places of worship are now liable.

It is likely that there will be other potential changes as a result of Brexit that have an impact on religious organisations and places of worship, however, it is understood that until Brexit actually happens EU law will apply as usual. For an interesting reflection on cases pending before the EU courts see: **Effect of EU referendum on cases involving EU courts** Sarah Abram, Brick Court - 7th July 2016 <https://brexit.law/2016/07/07/effect-of-eu-referendum-on-cases-involving-eu-courts/>

Correction: Re Glebe

The Church Commissioners have asked that the report of the simplification proposals included in the last edition of Gospel and Law be clarified slightly to make clear that in relation to Glebe, although the right to make representations to the Commissioners is being removed, they will still need to be notified.

Thanks to Peter Wagon for the clarification.

THE INTER INN STUDENT MOOTING COMPETITION 2016

For a second year the Society sponsored the Inter Inn Student Mooting Competition, hosted on Tuesday 19 July by Gray's Inn, which had won the competition the previous year. The 2016 final was between the Middle and Inner Temples and was won by the Inner Temple which will therefore host the competition in 2017. This year the Gray's Inn Education Office organised the semi finals and the Society provided the moot problem and suggestions for judges at the final. The problem was posed in the Court of Arches on the genuinely ecclesiastical law topic of exhumation and addressed issues as to when a faculty may authorise the opening of a grave to look for items of historic or literary interest interred in a coffin and to take DNA samples.

With the assistance of the Chairman, an exceptionally distinguished panel of judges was enlisted. Sir John Mummery for the host Inn and Sir Colin Rimer for Lincoln's Inn gave the judgements on law and selected the winning team. The competing Inns were represented by two Supreme Court Justices; Lord Hughes for the Inner Temple and Lord Hodge, contributing a Scottish perspective for the Middle Temple. All four judges took part in questioning the contestants on their legal arguments and the moot nature of the issues was confirmed when Sir Colin Rimer gave a dissenting judgment.

The moot was watched by an audience which included visiting members of the French Bar and a party of sixth formers interested in legal careers, as well as by supporters of the contesting teams. Cheques of £250 for each of the winning team members were presented by the Chairman and a vote of thanks was given by Sir Andrew McFarlane, Chancellor of Exeter. Following the moot, the Chairman and the moot judges were entertained at High Table by the Treasurer of Gray's Inn with other distinguished guests, at an Inn Guest Night. (with thanks to David Harte)

Dates for the Diary:

Lectures and Conferences:

Last **London Lecture** of 2016, **Winckworth Sherwood**, Montague Close, London SE1 9BB (by Southwark Cathedral), **starting at 5.30pm**; refreshments available from 5pm

19th October 2016 – Chancellor Tim Briden, Vicar General Province of Canterbury-Confirmation of Episcopal elections

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

The 2017 and 2018 lectures are now being planned; if members have ideas, suggestions or preferences for lecture topics do feel free to let us know.

THE ELEVENTH LYNDWOOD LECTURE hosted by The Canon Law Society of Great Britain and Ireland *in association with* The Ecclesiastical Law Society

The Revd. Dr Nicholas Schofield Author of *The English Cardinals* speaking on:
A Church without Bishops: Governance of the English Catholic Mission 1594-1685

St Mary Moorfields (Eldon Street EC2M 7LS) Thursday 17th November, 2016
6.30pm for 7.00pm Tickets: £40 including buffet supper and wine

'Training the trainers' - 3rd November 2016, from 10.30am to 3pm at the offices of **Lee Bolton Monier-Williams, 1 The Sanctuary, Westminster SW1P 3JT.**

A chance for those already delivering training in Ecclesiastical Law to consider best practice and contemporary educational methods. Booking required – for further details contact admin@ecclaw to book contact Andrew Male, Lee Bolton Monier Williams, 1 The Sanctuary, Westminster SW1P 3JT

30th November 2016 – an invitation to ELS members to join the Advent Carols at The Temple Church – 5.30pm

'The nature and diversity of authority in Anglicanism...', the **2017 ELS Residential Conference and AGM will be at Trinity Hall, Cambridge** from Friday 31st March to 2nd April 2017. This will also be the 30th anniversary of the Society.

Speakers whose attendance is confirmed include Rev Dr Sam Wells (St Martin in the Fields), Professor Norman Doe (Cardiff University), Rt Rev Ric Thorpe (Bishop of Islington), Rev Lucy Winkett (St James Piccadilly), Ven Jane Steen (Archdeacon of Southwark), Helen Fraser (Church Warden, St Brides Fleet Street), Stephen Slack (General Synod), Rev Canon Dr Philip Groves (formerly of the Anglican Consultative Council), Chancellor Ruth Arlow and Sir John Laws.

Services will be held in the College Chapel and Lucy Winkett will preach at the Sunday morning Eucharist. Do put the date in your diary.

Prices are variable dependent on whether you have an en suite room or not and there will be bursaries available for clergy again.