



Gospel & Law

The newsletter of the
Ecclesiastical Law Society



Editor: Revd Dr Catherine Shelley
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Co-ordinator: Andrew Male
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Harvest Edition....



Editorial:

As we enter on the season of mists and mellow fruitfulness this newsletter ponders some further thoughts about charities. These start with a response from Stuart Jones to musings on parish charities in the last edition and further consideration of charity trustees' duties.

Rural parish charities - Stuart Jones, Registrar Norwich Diocese

We have a number of these rural parish charities in Norfolk, many being fuel allotment or similar charities established to benefit the poor. They often hold land which was appropriated to them as part of an Enclosure award, or specifically given to provide the charity with an income. Some are very venerable – at least one here originates from a gift by will in the sixteenth century, and is still going strong.

The trustees often include the incumbent and churchwardens as ex officio trustees, together with the parish 'overseers [of the poor]' and sometimes others such as the local lord of the manor. On occasion keen parish councils have been in touch to draw attention to the provisions of the Local Government Act 1894, section 6, and suggesting that the churchwardens (though not the incumbent) should be replaced by parish council nominees where the charities are not purely ecclesiastical. This can be a relief for overworked churchwardens, although in one case I had the churchwardens were very keen to cling on to control of the charity rather than see it fall into the hands of local parish council – village politics!

I often say to priests that, when considering a move to a new benefice, they should ask what parish charities they would become responsible for. In a multi-parish rural benefice, the additional work involved in being a trustee of a number of small parish charities can be quite considerable, consuming many additional evenings in trustees' meetings, so it is as well to be aware of this before accepting a new role. In some cases, an argument can be made for consolidation of these charities into a single larger fund serving the whole benefice area. This can much reduce the workload, as well as consolidating assets into a decent sized fund which can be used to generate more useful grants.

Some local charities have good mechanisms in place for advertising for potential claimants or beneficiaries, but others complain of having too few 'poor' people who might benefit from the charity's help, particularly in the rare cases where the charity holds a valuable piece of land which



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is well let, or has a substantial endowment, so that they have a reasonably sizeable income. In these cases, as you suggest, a widening of the charity's objects, e.g. to allow income to be spent on maintaining the church building or to benefit community groups doing charitable work in the parish or wider area, can be appropriate.

The other issues which have arisen here quite frequently are those of conflicts of interest, where land owned by the charity is let to one of the trustees, often a local farmer, and a failure to comply with Charities Act requirements on lettings of land. In many cases, there has been no effort to take valuation advice or to market the tenancy properly. This is often explained by the high cost of obtaining professional advice relative to the rental value of the land, where valuation or marketing fees can consume more than a year's rent. Here I usually suggest that a proportionate approach can be taken, at least for short term lettings, and that as long as the trustees can show that they have tested the market, e.g. by advertising the tenancy in the locality and inviting bids, they are unlikely to be criticised. But cosy arrangements with trustee tenants, especially when continued for a number of years, can be more difficult to justify! Altogether a fertile (if not very well remunerated!) area for legal problems.



And some further general thoughts from the Editor: PCCs and Charitable Status:

PCCs are charities established by the Parochial Church Councils (Powers) Measure 1956, which sets out the purpose of the PCC as "promoting in the parish the whole mission of the Church". The rest of the PCC's 'constitution' is the **Church Representation Rules** (set out in Schedule 3 to the Synodical Government Measure 1969). As the annual income of most PCCs will be over £100,000¹ they should be registered on the Charity Commission website but even if your charity is exempt or excepted from registration it is still obliged to follow Charity Law. The Charity Commission's 6 core principles for charity trustees are as follows:

1. Ensure your charity is carrying out its purposes for the public benefit

This is following the objects ie Mission, and it is essential to ensure that money is still being spent for public benefit – church is not a private club

2. Comply with your charity's governing document ie PCC Measure and Church Rep Rules – and the wider law ie Church law, charity law and the range of other laws eg health and safety, safeguarding, employment (if applicable), planning etc

¹ <https://www.gov.uk/government/publications/excepted-charities/excepted-charities--2#s5> The majority of Church charities benefit from an exception to the usual requirement to register at £5,000 income; the exception lasts only to 2021.



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3. Act in your charity's best interests

- ie making sure that you act for the church and not any conflicting interest
- eg a related school; ensure the decisions are yours not those influenced by others

4. Manage your charity's resources responsibly

For the charity's purposes, following proper procedures to ensure affordability, proper investment, proper value and security against theft/fraud.

Church law requires an inventory and quinquennial inspection as part of this duty.

5. Act with reasonable care and skill

- According to your ability and experience eg a lawyer or accountant would be expected to have more knowledge and skill than eg someone without a professional background. So far as possible seek to have people with relevant skills – and to train up those who do not have such skills or background.

6. Ensure your charity is accountable

Accountability is to the law, the parish and the wider purposes and public benefit of the charity.

Decision making is collective (Fr does not always know best!) Whilst the PCC Measure requires 'co-operation' with the vicar all votes carry the same weight.

If you do not feel that you have sufficient information on which to base a decision or assess whether action has been taken properly, then you are entitled to ask for more information. That includes information about finances.

Making decisions as a trustee

By majority, collectively and in accordance with governance docs eg re quorum

When you and your co-trustees make decisions about your charity, you must:

- act within your powers
- act in good faith, and only in the interests of your charity
- make sure you are sufficiently informed, taking any advice you need
- take account of all relevant factors you are aware of
- ignore any irrelevant factors
- deal with conflicts of interest and loyalty
- make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances

RECORD decisions

Personal liability... It's extremely rare....

As a corporate body, a PCC has its own legal identity, so contractual obligations it enters into or liabilities it incurs are enforceable against it, rather than against its members. And whilst it would be possible for members of a PCC to incur personal liability if they act in breach of the duties that they owe to it to act in its best interests (eg because they take a reckless decision which causes it loss), that situation is, fortunately, very rare. However, if PCC members are concerned about such a possibility arising, they can consider taking out 'trustee indemnity insurance' to cover



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themselves against it. Further information about the position can be found in the opinion of the Legal Advisory Commission *Parochial Church Councils: Legal Position of Members*, which you can find under the heading PCC Legal Position of Members, here:

<https://www.churchofengland.org/about-us/structure/churchlawlegis/guidance.aspx>

<https://www.churchofengland.org/media/1701935/legal%20position%20of%20pcc%20members%20final.pdf>

To help to assess and demonstrate whether you are fulfilling your trustee duties adopting policies about the following areas of work can help:

- Public benefit – how do you help the public and how are you open to the public? The statement should be included in the PCC's annual return to the Charity Commission.
- Conflicts policies and managing those with influence
- Reserves policy – Balance of using funds prudently so that can meet costs for 6-12 months if something goes wrong BUT also show that you are spending your money for the purposes of the charity
- Ensure you have adequate insurance as well
- Recruitment policies for volunteers, staff, trustees – ensure adequate skills
- Are your banking mandates and financial controls in order
- Complaints and grievance policies
- Data Protection policies
- Expenses, gifts and hospitality
- Risk assessment and safeguarding



ELS Website: What do you think?

At its away day on 1st October the ELS Committee spent some time thinking about the **website, publicity and ways to enhance communication with members ... and we are now considering an overhaul of the website & other electronic communication**

Your feedback about what you would like to see on the website would be welcome....

For example:

- **What else would you like to see on the website? Beyond the existing events, cases, access to the ELJ, Newsletters etc...**
- **Would you like to be able to use the website for eg electronic booking for events and payments online?**
- **Separate areas for Members and general interest?**
- **And anything else....?**

We need to get a tender to potential website designers soon so any views should be sent by email to Rev Russell Dewhurst (rdewhurst@mac.com) project co-ordinator.

Consultations: Two new consultations have been launched, this time by the Law Commission rather than the Church. They cover the laws of weddings and burial law. The ELS is proposing a joint response via working parties co-ordinated by:



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For Weddings: Stephen Borton, Lee Bolton Monier-Williams, 1 The Sanctuary Westminster SW1P 3JT – Email: Stephen.Borton@1THESANCTUARY.COM

For Burials: Frank Cranmer, Law and Religion UK – Email: Frank.Cranmer@centrallobby.com
Ecclesiastical Law Society Dissertation Prize 2016

This year's Dissertation Prize winner is Shams Rahman of Harris Manchester College, University of Oxford. His topic was 'What should be the relationship between the Crown and the Church of England in the 21st Century? A critical and historical examination with particular reference to the Report of the Fabian Commission on the Future of the Monarchy.'



Shams Rahman, Manchester Harris College,

Essays submitted for the competition were of a high standard and the Committee was pleased to offer a year's complimentary membership of the Society to the runner up, Paul Meager of Durham Law School, whose topic was: 'Is the Right of Anglican bishops to sit in the House of Lords on an ex officio basis tenable in modern Britain?'

The prize competition is open to any undergraduate who submits a relevant dissertation of at least 9500 words as part of the assessment for their first degree, irrespective of subject. The topic must be relevant to the study of Ecclesiastical Law but may be on any subject concerned with the interrelation of Law, State and Church, in England or in relation to the Anglican Communion. The competition is advertised primarily in Law Schools but it was envisaged that suitable work could well be written by those studying other subjects, such as Theology, History or Politics. This year university chaplains were asked to post flyers for the benefit of any students within their ambit. It



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is noteworthy that Mr Rahman was studying theology.

The Committee has decided to offer the prize again in 2017 and 2018. Although the standard of entries so far has been encouraging it is hoped that the numbers will increase as the prize becomes better known. The aim is for it to be advertised at the beginning of the year around the time that students choose the topics for dissertations that will actually be written the following academic year. It is hoped that more students may recognize the inherent interest of the interface between law and religion and may see the wide scope of topics relating to the law of Church and State. It is hoped that advertisement at the beginning of the present year should bear fruit with submissions in the summer of 2017 and that further advertising in January 2017 may lead to more entrants in 2018.

David Harte, HE Officer

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.

Looking forward to 2017...

25th January 2017 – Philip Petchey Chancellor of Southwark Diocese, *Hidden Treasure: the Church of England's stewardship of its silver plate*

16th March 2017 – Howard Dellar, Lee Bolton Monier-Williams, *The implications of the Education Acts for Church schools and academies*

21st June 2017 – Nigel Baker, former HM Ambassador to the Holy See, *The Embassy to the Holy See: who, what, why?*

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



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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.**

There are still a few places left if you would like to come and join this training, for those who are delivering or want to deliver training in Ecclesiastical Law. The aim is to share and reflect on materials and best practice. Rev Irina Edgcumbe, Area Ministry Officer for Stepney, London will also lead a session on contemporary educational methods.

Booking is required – for further details contact admin@ecclaw to book contact Sarah Neden, Lee Bolton Monier Williams, 1 The Sanctuary, Westminster SW1P 3JT The cost of £20 per person includes lunch and other refreshments.

30th November 2016 – an invitation to ELS members to join the Advent Carols at The Temple Church – 5.45pm

'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.