



# Gospel and Law



The newsletter of the

## Ecclesiastical Law Society

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### Lent Edition: Editorial:

Welcome to the latest ELS newsletter and hope that you are enjoying a miserable Lent, as a former training incumbent used to say. This edition includes a Synod synopsis, notes on a selection of Consistory Court cases and a brief reference to the judgement in Christ Church Spitalfields. Some thoughts on schools and their trusts may provoke some thinking and as usual there are dates for the diary, starting with the conference, which is now imminent.

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### SYNOD SYNOPSIS: FEBRUARY GROUP OF SESSIONS 2017

**The Safeguarding (Clergy Risk Assessment) Regulations 2017** were approved despite some members having expressed concerns about consistency and a lack of clarity about the grounds on which a Bishop can require that a risk assessment is undertaken. The Regulations (which came into force on 1<sup>st</sup> March) make provision for the persons who can carry out risk assessments, the procedure for carrying them out and the procedure for challenging them.

**The Ecclesiastical Offices (Terms of Service) (Amendment) Regulations** amended the Regulations made under the **Ecclesiastical Offices (Terms of Service) Measure 2009** to make it possible for the term of office of bishops, deans, archdeacons and residentiary canons to be extended beyond the age of 70 and for parochial clergy to continue in office, or to be appointed to office, beyond the age of 70. The Synod carried an amendment making an extension in the latter case subject to the Bishop being satisfied that it was required by the pastoral needs of the parish or the diocese and that the PCC of the parish(es) concerned consented.

**The draft Church Representation, Ecumenical Relations and Ministers Measure and draft Amending Canon No. 38** were both committed to a revision committee. The Measure and the Amending Canon give effect to the proposals of Phase II of the work of the Simplification Task Group. Amongst other things, the Measure will allow the range of 'title' posts to which a person can be ordained to be expanded to include any Common Tenure office (including chaplaincy or pioneer ministry), will remove the minimum length of service required before a priest can be appointed as a dean or archdeacon, will replace the Church Representation Rules and extend the scope of the ecumenical provision that may be made by canon.

Other simplification Measures included:

- The **Mission and Pastoral Amendment Measure**, which implements changes identified in Phase I of the work of the Simplification Task Group. The Measure received final approval.

- The **Ecclesiastical Jurisdiction and Care of Churches Measure**, which consolidates over a dozen pieces of legislation concerned with the care of churches. The Measure also received final approval.
- The **draft Legislative Reform Measure**, which facilitates the removal or reduction of legal burdens by enabling the Archbishops' Council and the General Synod to amend some primary legislation by way of order. The Measure completed its revision stage without any amendments being proposed. Amendments previously made by the Revision Committee included a 'sunset clause' limiting the length of the power to five years initially.
- The **draft Statute Law (Repeals) Measure**, which repeals a significant number of enactments that are obsolete or no longer of practical utility. The Measure completed its revision stage without any amendments being made to it.
- The **draft Pensions (Pre-Consolidation) Measure**, which makes minor changes to Church of England pensions legislation in anticipation of a forthcoming consolidation. The Measure also completed its revision stage without any amendments being made to it.

The **Church of England Pensions (Amendment) Regulations 2017** were approved, changing the composition of the Pensions Board so that instead of six of its members being elected by the House of Laity, that House will elect two of its members to the Board - with four being appointed by the Archbishops Council, so as to ensure an adequate skills base.

The draft Amending Canons to allow liberalization of the **canons governing vesture and the forms of service to be used for the burial of the unbaptized and those who have committed suicide** concluded their revision stage.

**Banns** – The Private Member's Motion to remove the role of the Church in calling Banns of Marriage was defeated. The important pastoral and missional role that Banns can play was emphasized in the debate.

A **Private Member's Motion** was passed seeking to enable greater sharing of administrative resources and functions across parishes and up to national level, with a view to greater cost-effectiveness and improvements in the ratio of administrative to missional work.

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## **THE IMPACT OF THE EDUCATION ACTS FOR CHURCH SCHOOLS & ACADEMIES**

The latest London lecture, given by Howard Dellar of Lee Bolton Monier-Williams on 15<sup>th</sup> March, explored the history of the Church of England's involvement in education, since the foundation of the National Society in 1812 to the Education and Adoption Act 2016.

The following is a summary of his presentation:

In 2017 there are just under 5000 CofE schools or academies educating over one million children. However, the picture is mixed as some of the recent gains in Church school/academy provision are being passed to other sponsors as some academies the Church took on have failed to improve or like post offices are proving uneconomic. Some schools with Church of England trusts or chapels also appear to have been missed in that they have not been designated as church schools.

## **Some history:**

The Schools Sites Act 1841 allowed land-owners to sell or donate a maximum of an acre of land in trust to provide schooling for 'poor persons' but on the condition that if the land stopped being used for educational trusts it would revert to the donor's estate. All too often authorities are unaware of the trusts and schools move before the land is sold so that reverter is triggered. Today this if reverter occurs, besides losing the resources to education, Capital Gains Tax liability also arises, payable by the trustees. There are ways to defeat reverter if the school moves to a new site on the same trusts and the old school site is sold before the school moves site.

Before state education even those in voluntary schools had to pay for their education. Ragged schools were aimed at the really poor of Victorian society. They were entirely free and grew out of a recognition that Charitable and Denominational schools were not beneficial for children in inner-city areas. Working in the poorest districts teachers would often use stables, lofts and railway arches for their classes. It is estimated 300,000 children went through Ragged schools between 1844 and 1881. The 7th Earl of Shaftesbury led the way here. They were the first Community schools and a precursor to Board schools.

The 1870 Education Act set up the mechanism for board schools, mostly in urban areas, paid for from taxation and made attendance compulsory from 5-10, with extension to 13. What became known as the Forster Act was drafted by William Edward Forster. The schools remained fee-charging but poor parents could be exempted. Two systems, privately funded, charitably (often church) run voluntary and publicly funded board schools existed independently. State funding exceeded private funding which put the voluntary schools at a disadvantage and by the end of the 19<sup>th</sup> century the system was in crisis. A separate Act extended similar provisions to Scotland in 1872. When Local Authorities were formed in 1902 there were still three times as many voluntary schools as board schools. So with Voluntary schools struggling financially the eventual solution until 1944 was that all running costs were born from public funds; repairs were the responsibility of voluntary schools. The position was cemented in 1944 creating two categories of voluntary schools VA/VC which differentiated the degree of LEA control in exchange for meeting more costs.

Post 1944 the Church initially retreated into a landlord role, with a narrow concern with RE and collective worship. Church bodies appointed governors through Instruments of Government but LAs really led the system. The 2001 Dearing Report renewed confidence in church schools and there was a challenge to the church to increase its stake in secondary education in particular.

This was followed by the new labour academy agenda. The 2010 Academies Act effectively moves back to a more voluntary or private sector education system, with Academies run through contractual relationships with central government, governed more by Funding Agreements and the Financial Handbook than legislation. Standards have been used as the lever to move schools into academy trusts but financial pressures and rationalising costs are also a factor. Much lobbying has been necessary to protect church school trusts (and prevent risks of reverter) and involvement in governance and ethos. Again the protection is primarily contractual rather than legislative, although at policy level there is a now a Memorandum of Understanding and Model documentation, negotiated through the National Society, that ensure some uniformity of standards.

What has made Church of England schools distinctive - the fact that they are inclusive and serve the common good rather than being limited to faith allegiance only – has been a little eroded by a perception that all faith schools are exclusive to that faith. There is some employment law and governance provision to ensure leadership, designation, inspections of RE and worship (Statutory Inspection of Anglican and Methodist Schools (SIAMS) under section 48 of the Education Act 2005) that maintains the National Society ethos and vision. These provisions are preserved within the Memorandum of Understanding for academies.

There are opportunities however, for example mixed academy trusts where church schools work alongside community schools. The Free School movement is also providing scope for new church schools, although in such cases the protection of landed trusts is generally lost as there is a dearth of the landowning philanthropists. Land issues matter- site trustees can influence the education on the site and can block academisation of their school unless it is a school requiring significant improvement or special measures (new powers in Education & Adoption Act 2016). Having Church Academy Trusts available to support schools that are required to become academies is an important part of the role of Diocesan Boards of Education and enabling them to respond may require a new Diocesan Boards of Education Measure. Yet there is scope to keep the vision of education for all within an inclusive Christian ethos alive. Four core questions should be asked:

How well does the school, through its distinctive Christian character, meet the needs of all learners?

What is the impact of collective worship on the school community?

How effective is the Religious Education?

How effective are the leadership and management of the school as a church school?

To maintain this vision of good, inclusive, viable church schools, against the tendency of the academy process to commercialise education, support is needed. This includes through site trustees, involvement in school governance and continued support at local, Diocesan and national level for a vision of education that remains popular and has benefitted the country for centuries.

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## **CONSISTORY COURT JUDGEMENTS – A VERITABLE FEAST...**

### **Divisions in the parish...**

**Re St Peter and St Paul, Heydon [2017] ECC Nor 2** – a petition to authorize installing wireless broadband equipment in the church tower was approved on the basis that the benefit of the facility to the community outweighed the minimal harm. The interesting factor is that the Petition was in the name of the Vicar and Fabric officer as the parties opponent were the churchwardens.

**Re St. John Waterloo [2017] ECC Swk 1** – application for re-ordering that would affect post-War restoration work undertaken by Thomas Ford in 1951 to coincide with the nearby Festival of Britain exhibition. The evidence of Heritage England, the 20<sup>th</sup> CE society and local authority was that the Ford interior was of importance and would be harmed by the proposals; the parish and DAC disagreed to the extent that they argued the work need not be kept integral to maintain distinctiveness. The Chancellor held that it would be harmed and that proposals did not outweigh the harm, therefore he was not prepared to grant

faculty for the contentious items but would grant one for works that were not contested.

**St Peter, Bratton Fleming [2016] ECC Exe 2** – The extensive re-ordering project for this parish's Grade II\* listed building has now featured in a series of four different judgements from 2010 to 2016. The background and funds for the re-ordering arise from a Methodist-Anglican LEP dating from 2004 and the sale of the Methodist church's building. The first Petition in 2010 was opposed by 70 objectors, three of whom became Parties' Opponent. The Petitioners argued that the proposals should be considered as a whole, suggesting that there was a general principle in favour of radical change. Chancellor McFarlane rejected that argument, finding that there was nothing in this parish, notwithstanding the partnership with the Methodist church, that raised special considerations for such an approach. On the contrary the disparate nature of the various proposals required that he consider them severally. The 2010 hearing approved the re-ordering of the west gallery, an extension to create a meeting room, kitchen, toilet facilities, Chancel reordering and glazing to the south door. It was ordered that the pulpit be refurbished rather than removed. Removal of pews and organ were not justified. A subsequent judgement in 2011 accepted modified proposals for remodeling the pulpit steps and removal of some pews.

A 2012 Petition sought to remove three further pews and reposition the font. Unlike the earlier proposals this had the express support of the DAC, Archdeacon and CBC but was contested by local residents, five of whom became parties' opponent. The Chancellor found that the proposals would complement the works previously approved and so granted a faculty. The final hearing **Re St Peter Bratton Fleming [2016] ECC Exe 2** featured a further application to remove the pulpit which it transpired had already been removed sometime in 2012, despite the express refusal of a faculty and the ongoing Faculty process. The Chancellor decided that the arguments around the removal of the pulpit had not changed and a faculty for removal of the pulpit would not be granted. He warned about the consequences of breaking the law, pointed out that he could make a specific order for restoration of the pulpit but hoped that, in the light of his decision and warnings about the rule of law, the Petitioners would restore the pulpit without the need for an express order. The Chancellor also suggested that advice be sought from the Registry about apportionment of costs noting that those with a conflict of interests over the costs should not be involved in the process.

**Re Christ Church Charnock Richard [2016] ECC Bla 2** – Considering proposals for a complete re-wiring of a Grade II listed church and installation of new emergency lighting, the Chancellor held that the works did not require his advice under r.9.6(1) FJR 2015 as they were likely to have a low impact on the church's interior. Accordingly it was also not necessary to give the Victorian Society notice of the Petition as the works would not affect the architectural or historic significance of the building.

**Re St Mary the Virgin, Redcliffe [2017] ECC Bri 1** – A faculty was refused for the conversion of the space beneath the altar into a "chest of drawers for the storage of vestments" by the addition of oak paneling to the existing altar table. Appeal to 'precedent' at Wells Cathedral was rejected on the basis that the Cathedral was outside the jurisdiction of the Consistory Court and that no evidence had been produced to show that the alteration was approved by the Cathedral's Fabric Commission. Arguments that only the surface of the altar was sacred, based on arguments about altars in *St Stephen's Wallbrook* and *St Michael Uffington*, were also rejected. The Chancellor found that to make the altar into a chest of drawers would breach Canon F2 that 'the table of the Lord be kept in a sufficient and seemly manner.'

## Cemeteries and Memorials

**Re Camberwell Old and New Cemeteries [2017] ECC Swk 2** – 660 people objected in writing and another 318 by email to two faculty petitions by Southwark Council for proposals to re-landscape the consecrated areas of the cemetery and provide extra burial space. Three became parties opponent but later withdrew. The Faculties were granted.

**Re St Mary the Virgin Ecclestone [2017] ECC Bla 4** – Petition for memorial to two family members on gravestone. PCC, Incumbent and wardens opposed the memorial but the Chancellor overruled them and granted the faculty. Two subsidiary issues arose re whether the petitioners needed to show exceptional reason for the memorial and whether DAC can change the advice it offers petitioners.

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### Christ Church Spitalfields – 12<sup>th</sup> February 2017

The judgement of Chancellor June Rogers in the case of Christ Church, Spitalfields (or “CCSpits” as it is known on social media) has now been delivered. At 497 pages long is this the longest ever judgement in a consistory court case? Is it possibly even the longest ever judgement in an English court case? It will be considered in more detail in the Journal as befits a judgement of that length but if you want to read the full judgement here is a link.

<http://ccspits.org/wp-content/uploads/2017/02/Spitalfields-Judgment-as-delivered-12-Feb-2017.pdf>

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Staying in touch with the International dimensions of the Society’s work Mark Hill attended a one day seminar on 19<sup>th</sup> January 2017 at the School of Law of Notre Dame University, Sydney Australia. The subject of the seminar was The Teaching of Canon Law in the Anglican Church of Australia. Alongside Chancellor Hill QC other speakers included the Rt Rev John Ford Bishop of Murray, Garth Blake SC and Dr Robert Tong AM. Practical application of Canon law and the wider areas of law such as charity law, were considered alongside ‘The interaction of theology and canon law’ and the idea of ‘Autonomy in communion.’

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And continuing the international theme a call for papers for the Law and Religion Scholars conference to be held in Amsterdam on Friday 19 May 2017.

You can submit an abstract via <http://centre-religion-law.org/en/actueel/46-papers-larsn-conference>

And the organisers state “We look forward to welcome you at the Centre for Religion and Law at the Vrije Universiteit Amsterdam!”

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**Other Dates for the Diary:**

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

Speakers include Rev Dr Sam Wells (St Martin in the Fields), Professor Norman Doe (Cardiff University), Rt Rev Ric Thorpe (Bishop of Islington), Rev Canon Lucy Winkett (St James Piccadilly), Ven Jane Steen (Archdeacon of Southwark), Stephen Slack (General Synod), Rev Canon Dr Philip Groves (formerly of the Anglican Consultative Council), Chancellor Ruth Arlow and Sir John Laws. The Conference Chaplain will be Stephen Taylor, Archdeacon of Maidstone; the President at the Sunday Eucharist in Clare College Chapel will be the Rt Rev Christine Hardman, Bishop of Newcastle and the preacher is Rev Canon Lucy Winkett.

**The AGM will be at 12 noon on Saturday 1<sup>st</sup> April 2017 at Trinity Hall, Cambridge** and all are welcome whether attending the Conference or not. The papers can be found here:

<https://ecclawsoc.org.uk/2017-agm-papers/>

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***London lectures 2017 - free of charge and open to members and non-members, but please book ahead (with [admin@ecclawsoc.org.uk](mailto:admin@ecclawsoc.org.uk)) as spaces are limited.***

***All lectures continue to be held at Winckworth Sherwood, Minerva House, 5 Montague Close, London SE1 9BB and begin at 5.30pm with refreshments available from 5pm.***

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

11<sup>th</sup> October 2017 – Sir Mark Hedley DL, Deputy Chair and Deputy President of the Tribunals, *Practical Aspects of the Clergy Discipline Measure*

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**Training for the Trainers** - Following on from the successful training day held in London in November 2016 a further session of Training for the Trainers will be held on **30th October 2017, from 10.30am to 3.30pm at the Leeds Diocesan Offices, 17-19 York Place, Leeds, LS1 2EX**. The price for the day is £20 and includes lunch as well as training materials.