

### **Michaelmas Edition: Editorial**

Welcome to a new academic year, a new legal term and so on. Following the revised newsletter format we begin with various dates for the diary. With the arrival of the new website there is the opportunity to add the occasional topical paragraph about things ecclesiastical and legal and the latest items to be posted are listed here. An article from Law and Religion UK considers the ongoing pews versus chairs debate and the newsletter concludes with some reminders about use of church buildings.

### **DATES FOR THE DIARY:**

**London Lecture** – 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*

**Church Law: Carrot or stick?** - 30 OCTOBER 2017, 10:30 - 15:30 – Leeds. A day conference for those involved in leading training sessions about Church Law

Organised by the Education Committee of the Ecclesiastical Law Society – a daytime conference for all those engaged in leading training sessions about Church Law for curates, clergy and churchwardens. Repeating a successful day a year ago (which drew together chancellors, registrars, archdeacons and representatives from theological education), a further session of Training for the Trainers will be held on Monday **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. See programme attached and note that Sue de Candole, Registrar of Winchester and Southampton, is a speaker and will welcome your attendance. *To register: Contact [admin@ecclawsoc.org](mailto:admin@ecclawsoc.org) also via website: <https://ecclawsoc.org>.*

For more details of all events see <http://ecclawsoc.org.uk/Events>

### **ADVANCED NOTICE:**

**Education on Canon Law – Day Conference & AGM – Saturday 17<sup>th</sup> March 2018** – at St Bride's Institute, Bride Lane (off Fleet Street) London EC4

**Lyndwood Lecture 2018** – Professor Diarmaid MacCulloch on Richard Hooker; date and venue to be confirmed in due course

**Save the date: ELS Residential Conference 2019** – to be held at Cumberland Lodge, Windsor from 5<sup>th</sup> to 7<sup>th</sup> April 2019 – *The evolving nature of establishment*.

**OTHER THINGS TO LOOK OUT FOR ON THE WEBSITE:** [www.ecclawsoc.org.uk](http://www.ecclawsoc.org.uk)

**Norman Doe to deliver the Beckington Lecture in Law and Religion, Wells Cathedral**

Prominent ELS member Professor Norman Doe is to deliver the The Beckington Lecture in Law and Religion at Wells Cathedral, 4.15 pm Sunday 1 October 2017 (The Education Room).

**Charity Commission updated guidance for independent examiners of charity accounts:**

The Charity Commission has published updated guidance for independent examiners of charity accounts that includes three new obligatory Directions to examiners. The revised Directions aim to strike a fair balance between extending the role of the examiner and, potentially, increasing the regulatory burden on charities. They consider both the implications for the role of the examiner and the need to maintain public trust and confidence in charities. The three new Directions are as follows:

- to check for any conflicts of interest that may prevent the examiner from carrying out the independent examination;
- to check that related party transactions in Statement of Recommended Practice (SORP) accounts are properly disclosed; and
- to check whether the trustees have considered the charity's financial circumstances when preparing the accounts, and – for SORP accounts – whether the trustees have made an assessment of the charity's position as a going concern.

The new requirements are mandatory for independent examiner reports signed and dated on or after **1 December 2017**. This is to allow time for examiners to familiarise themselves with the updated guidance.

<https://www.gov.uk/government/publications/independent-examination-of-charity-accounts-examiners-cc32>

**Charity Commission Consultation on the 2018 Annual Return:**

The Charity Commission has announced a consultation on the content of the Annual Return for 2018. It closes at 5pm on 24 November 2017. The Commission wishes to move to a more dynamic annual return that is better targeted and easier to use: under its proposals, smaller charities with simple operating structures will have to answer fewer questions while larger and more complex charities will have to answer more.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641748/GOV.UK\\_AR18\\_consultation\\_proposal\\_v1.3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/641748/GOV.UK_AR18_consultation_proposal_v1.3.pdf)

**Historic England advice on Telecommunications Installations:**

Historic England has published new advice what it needs to know in order to assess a proposal to install telecommunications equipment in a listed place of worship.

The advice covers:

- *The information that Historic England requires in order to offer relevant advice.*
- *Issues that will be of particular concern.*
- *The impact of the installation on the outside of the building.*
- *The impacts of the installation inside the building.*
- *Access to the equipment and the rest of the building.*

- *Safety issues.*
- *Possible archaeological implications.*

See also:

<http://www.churchcare.co.uk/churches/open-sustainable/telecoms>

<https://www.spab.org.uk/advice/conservation-advice/telecommunications-installations/>

**Invitation to share training resources** with the education committee; if you have materials that you think may be appropriate please contact the chair of the education sub-committee at: [simon.baker@lichfield.anglican.org](mailto:simon.baker@lichfield.anglican.org).

### **And in other news...**

Pursuing similar trains of thought to the ELS Conference's consideration of Authority a conference held from 6<sup>th</sup> to 8<sup>th</sup> September at Jena University, Germany brought together ELS members Catherine Shelley, Jan Hallebeek, Professor at Utrecht University and Rev Professor Paul Avis, from Exeter University and Cathedral, who led the English delegation. The conference was hosted by Professor Nikolaus Knoepffler of Jena University also included papers by Rev Dr David Chapman of the Methodist Church, Rev Professor Martin Percy Dean of Christ Church Cathedral Oxford, Professor Andrew Pierce from Trinity College Dublin and the Church of Ireland and Rev Dr Jeremy Worthen from the Council for Christian Unity. A book is proposed to collate the thinking of the conference which covered Crises in Authority, Authority in the Church of England, the Methodist, Old Catholic and Orthodox Churches and subsidiarity in the Roman Catholic Church.

### **THE LAST WORD ON THE "PEWS VS CHAIRS" DEBATE... ..**

#### **or would that be too much to hope for?**

Based on Law and Religion UK - Posted on [15 August 2017](#) by [David Pocklington](#)

Of the wide range of guidance issued by the Church Buildings Council (CBC), that entitled "Seating" is one of the more prescriptive. A further judgment has been handed down which re-states its advisory status, queries the rationale of an important aspect of this guidance, and raises important issues on the perception of aspects of the petition.

**Background:** The post *Pews vs Chairs: Application of CBC Guidance* considers the binding nature of the [CBC Guidance on Seating](#) ["the Guidance"], which was addressed by HH John Bullimore in *Re All Saints West Burnley* [2017] ECC Bla 6 and subsequently in *Re St. Stephen Burnley* [2017] ECC Bla 7. Whilst the Guidance is "statutory guidance" since it was produced under [S55 1\(d\) Dioceses, Mission and Pastoral Measure 2007](#), it was unlikely to have the same binding effect as a statutory provision or a statutory instrument would have. Chancellor Bullimore expanded further on the issue of statutory guidance in this latest judgment, *infra*.

*All Saints Higher Walton* [2017] ECC Bla 9, in which the Blackburn consistory court again considered replacement. A petition was sought in relation to changes to the heating system, accompanied by a proposal to remove the side aisle pews and introduce upholstered chairs matching those in the centre of the nave, authorised in 2015 ["the 2015 Faculty"]. In addition to further consideration of the Guidance, there are three areas of interest: perceptions of the replacement seating; the rationale in the Guidance on removable cushions; and the approach of the Victorian Society. In passing, it is of interest to note that only a small part of the total

cost of the £30k project [i.e. £7,344] was referable to the chairs, but consideration of the issues raised dominated the judgment. Objections were made by the Victorian Society as follows: “para.14 ...These bright red upholstered seats offer no public benefit which cannot be achieved with other good quality un-upholstered seating. These chairs are also (sic) *do not conform to the statutory guidance of the Church Buildings Council* who state: ‘The Council’s experience is that wooden have the greatest sympathy with historic church environments...’”.

The CBC Guidance refers to its status as “statutory guidance”. However, to suggested that this requires “compliance with” its content, might be to misconstrue its status. Referring to his recent decisions in the diocese of Blackburn, *All Saints, West Burnley and St Stephen, Burnley*, Chancellor Bullimore said: “para.17 .... In the first I tried to explore the legal basis for the concept of “statutory guidance” contained in the Guidance Note that the VS relies on, *and my reasons for not considering it was as binding as they did*. In relation to *Re All Saints, West Burnley*, he said at para. 18 “These three decisions do demonstrate that the *consistory courts have been ready to weigh the petitioners’ arguments against the content of the Guidance Note, and not simply treat it as a ‘trump card’*. I fully accept that in individual cases, decisions will sometimes go one way and sometimes the other. *The CBC also seems to accept that with its use of the phrase ‘generally advocates’ un-upholstered seating in the Guidance*, (although it gives no indication what factors or circumstances may lead to the acceptance of the installation of upholstered furniture in a particular case).

The CBC Guidance states: “Upholstered seats are not considered to be appropriate for the following reasons: They have a significant impact in terms of *colour*, texture and character which is not consonant with the quality of a highly listed church”. Consequently, the colour chosen is an important factor in the selection of appropriate upholstery. It is significant that in the judgment in *All Saints Higher Walton*, the colour of the proposed chairs was perceived differently by different parties – from ‘bright red’, ‘claret’ to ‘orange’. It was also significant that the Victorian Society had not objected to the colour of the chairs installed in 2015. “The fact is that the petitioners were, as far as I can tell, allowed to introduce chairs of this kind and colour as recently as two years ago. To say now this colour (or type of chair) is not acceptable, would seem to the petitioners and wider congregation, totally wrong...”

*Removable Cushions*: The Chancellor commented: “28.... One of its strange features, (as it seems to me), that also appears in the Guidance, (and also in the Society’s advice tendered in the two other Blackburn cases referred to above), is the notion of having removable cushions. *That somewhat undermines the strong statement in the Guidance that a well designed and chosen un-upholstered chair can be as comfortable as an upholstered one*. Inevitably a cushion will be made of some kind of fabric, and that will also be coloured.

He continued with the following *reductio ad absurdum* argument: “I do not suppose the Society is contemplating members of the congregation turning up with their own cushions (which like Joseph’s proverbial coat, will be of many colours), so the church, if it takes up this suggestion, will have to obtain and provide a stock of cushions for those who wish to ease the rigours of prolonged sitting. Can it really be contemplated that these will be given out for every service and gathered up afterwards? Rather they will be left out for use whenever services are taking place, and will simply be left on the seats at other times. The reality will be that large amounts of coloured fabric will be on display (admittedly on the seats only, not the

back rests), but in reality there will be very little difference in appearance between upholstered furniture, and un-upholstered chairs or benches adorned with removable cushions. Also it seems to me to illustrate very little conception of life in the average congregation. If the PCC could be encouraged to adopt un-upholstered seating, it will take only one person to take along a cushion, and everyone will do it. The last situation will probably be far worse than having upholstered seating in the first place”.

“Para.34 The Guidance about un-upholstered seating rather than upholstered, is still being assessed up and down the country, and will doubtless be the subject of many more decisions in the coming months. Whether one indirect effect of the Guidance may be that DAC’s and others will in future give stronger advice about colour, remains to be seen”. Watch this space.

### **CHURCHES AND SECULAR USES....**

Just a reminder that whilst the faculty jurisdiction allows for the missional use of churches for community purposes far wider than worship (by Licence under faculty or lease of part of the building under s.68 of the Mission and Pastoral Measure 2011) the primary aim of churches is worship. Worship means religious services according to the rites and usage of the Church of England (s.68 Mission and Pastoral Measure 2011 inter alia). This does not stop the church or bits of it being used for other purposes but activities like the youth club, the toddler group and other aspects of mission and outreach are mission not worship. Worship must remain the priority and not just on Sundays. Canonically there should be morning and evening prayer in the parish daily (Canon B11) and notice of feast and fast days (Canon B7); it is normal parish ministry not the preserve of new monastic movements. The occasional offices (weddings, funerals and baptisms) must also be able to take place on any day of the week.

This still allows plenty of scope for the parish to run its own courses, youth work and other ministry and mission and also to share the building with other users. It is for that wider sharing, for cafes, post offices, dance classes, non-Anglican churches, circus workshops (yes, really, churches' high roofs are great for circuses), film, drama and all manner of other festivals and community use, that a licence or part-lease, authorised by faculty is required. When agreeing heads of terms, preparing the faculty petition and drafting the agreement, it is important to ensure that provision is made for the worshipping life of the church and the possibility of a short-notice funeral or a long-notice wedding, to interrupt the activities under the licence or part-lease.

Catherine Shelley