



Ecclesiastical
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NEWSLETTER
of
THE ECCLESIASTICAL LAW SOCIETY

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ADVENT EDITION: EDITORIAL

Members will recall that the 2017 AGM approved a proposal for the Society to reconstitute itself as a Charitable Incorporated Organisation. Since then, a good deal of the work of the Committee has been a detailed examination of the Society's governance, led by Catherine Shelley: one of those tasks that is extremely time-consuming but crucial if we are to make the transition successfully. The intention is to bring the proposals before the 2018 Annual General Meeting in March.

And a correction: the St Luke's Day Newsletter was numbered 6/2017: it should have been 5/2017. Ouch. [FC]

DATES FOR THE DIARY

ELS Day Conference and AGM: *Gospel and Law in Theological Education* – Saturday 17 March 2018 – at St Bride's Institute, Bride Lane (off Fleet Street) London EC4: further details below. Book [here](#).

London Lectures 2018 – at Winckworth Sherwood, Minerva House, 5 Montague Close, London SE1 9BB.

- **Wednesday 10 January** – Philip Petchey, Chancellor of the Diocese of Southwark, on *Faculty Cases from City Churches*. Book [here](#).
- **Wednesday 7 March** – David Frei, External and Legal Services Director of the United Synagogue and Registrar to the London Beth Din, on *The Role of a Beth Din in Jewish Law*. Book [here](#).
- **Tuesday 3 July** – Baroness (Elizabeth) Berridge, co-chair of the All Party Parliamentary Group, on International Freedom of Religion or Belief on *Freedom of Religion or Belief*. Book [here](#).
- **Wednesday 10 October** – Dr Peter Smith, barrister of Lincoln’s Inn and formerly Dean of Law at Exeter University, on *Visitations*. Book [here](#).

Lyndwood Lecture 2018 – Professor Diarmaid MacCulloch Kt DD FBA on *Richard Hooker (1554-1600): Invention and Reinvention* – **Wednesday 7 November 2018**. Book [here](#).

ELS Residential Conference 2019 – to be held at **Cumberland Lodge, Windsor from 5 to 7 April 2019** on *Church and State in the Twenty-first Century: Re-imagining Establishment for the post-Elizabethan age*.

RECENT ARTICLES OF INTEREST

- ECtHR: [Information note on the Court’s case-law: October 2017](#).
- David Fardell, *Civil Society*: [How to prepare for the GDPR challenges faced by charities](#): largely good practice that church congregations – as charities – ought to be following already, but well worth reading.
- Mark Hill and Katherine Barnes, *Religion & Human Rights*: [Limitations on Freedom of Religion and Belief in the Jurisprudence of the European Court of Human Rights in the Quarter Century since its Judgment in Kokkinakis v Greece](#).

PAROCHIAL FEES 2018

The Church of England has published the [Table of Parochial Fees from 1 January 2018](#) for occasional offices, pursuant to the Parochial Fees Order 2014. Table 1 prescribes the fees for baptisms and marriages and Table 2 the fees for funerals, burials and monuments. The fees for ‘extras’ – such as charges for heating, the services of a verger, music, bells and flowers – are fixed by the individual Parochial Church Council and are not prescribed in the Table.

THE NEW CHURCH OF ENGLAND WEBSITE

As most members are probably aware, the Church of England has launched a rebuilt [website](#).

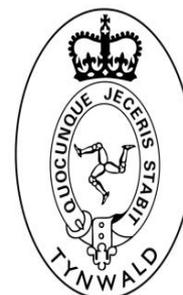
- The current edition of the Canons is [here](#).
- The current edition of the Church Representation Rules is [here](#).
- *Legal Opinions Concerning the Church of England* is [here](#).
- General guidance on clergy discipline is [here](#).
- The text of the Clergy Discipline Measure 2003, as subsequently amended, is [here](#).
- Tribunal decisions under the CDM 2003 are [here](#).
- Guidance on safeguarding issues is [here](#).
- A series of links to subordinate legislation currently in force that has been made by the General Synod and/or the House of Bishops but not laid before Parliament can be found [here](#).
- Press releases from 1 January 2017 onwards are [here](#).

We are slowly repairing the broken links on the ELS website. [FC: with thanks to David Pocklington]

ECCLESIASTICAL LAW IN THE ISLE OF MAN

Mission and Pastoral (Amendment) Measure (Isle of Man)

On 17 October, Tynwald Court approved the recommendation of its Standing Committee on Ecclesiastical Matters (the Manx equivalent of Westminster's Ecclesiastical Committee) that the draft Mission and Pastoral (Amendment) Measure (Isle of Man), approved by the Diocesan Synod on 29 June 2017 pursuant to paragraph 1(3) of Schedule 1 to the Church Legislation Procedure Act 1993, be presented to Her Majesty in the form laid before Tynwald for Her Royal Assent.



The text of the Measure and the Memorandum of the Synod's Legislative Committee are appended to [the Ecclesiastical Committee's report](#). Its objects are to make provision for 'mission initiatives', to simplify the procedures for pastoral reorganisation under the Mission and Pastoral Measure (Isle of Man) 2012 and to make minor and consequential amendments and repeals. The Measure includes a new compensation scheme for clergy and others whose office is abolished on pastoral reorganisation, removes the need for consultation by the Church Commissioners for the Isle of Man on a draft disposal scheme where the proposals contained in it are planning matters (for example, a change of use) that can be raised with the planning authority and simplifies arrangements for team and group ministries (for

example, special responsibilities will be assigned by the Bishop's licence, rather than by a pastoral scheme).

The constitutional position of the Bishop of Sodor and Man

Also on 17 October, Tynwald approved the *First Interim Report – Remit and Work Plan – of the Select Committee on the Functioning of Tynwald*. Among the recommendations approved [see item 20 of Tynwald's *Votes & Proceedings*] is that the Committee should have authority to consider, *inter alia*, 'Whether the Lord Bishop should retain his vote'. A later motion [item 37] 'That Tynwald is of the opinion that the Bishop should not retain his vote; and refers this opinion to the Select Committee on the Functioning of Tynwald to report with recommendations to Tynwald on the changes required for its implementation' was negatived. [FC: *with thanks to the Clerk of Tynwald*]

MARRIAGE LAW REFORM PUT ON HOLD

In December 2014, the Government asked the Law Commission to conduct a review of the law governing how and where people can marry in England and Wales. The Commission conducted a preliminary study involving researching domestic and comparative law and engaging with key stakeholders and published a [scoping paper](#) setting out its findings.

On 11 September, the Minister of State for Justice, Dominic Raab, [wrote](#) to the Commissioner in charge of the project, Professor Nick Hopkins, to say that the Government was not taking the project forward because priority was being given to reforms to address the increase in public and private family law cases currently putting pressure on the justice system; however, he said that he had not ruled out further Law Commission work on marriage law as a future option.

The Commission's [response](#) of 26 October notes that the pressure for reform – or at least for a comprehensive review – is unlikely to diminish. In particular, the Commission cites campaigns for humanist weddings and concerns about religious-only marriages. [FC]

CHRISTIAN LAW PANEL OF EXPERTS

The Society was well represented at the recent meeting in Geneva at the John Knox International Centre, between the Christian Law Panel of Experts and the Revd Dr Odair Pedroso Mateus, Director of the World Council of Churches Commission on Faith and Order. Readers of the *Journal* will be familiar with the Panel's work: it was established in November 2013 at an invited Symposium at the Venerable English College in Rome during the Chairman's tenure as Ecumenical Fellow in Canon Law. A summary of its work, together with the

Principles of Christian Law which the panel drafted in the course of a series of subsequent meetings, was published at (2017) 19 Ecc LJ 138-155.



The meeting was attended by Professor Leon van den Broeke (Vrije Universiteit, Amsterdam); the Very Revd John Chalmers (former Moderator of the General Assembly of the Church of Scotland and Principal Clerk of Assembly); Professor Norman Doe (Cardiff University); Professor Leo Koffeman (Protestant Theological University, Amsterdam); Professor Nikos Maghioros (Aristotle University, Thessaloniki); Anna Trônet (Diocesan Lawyer, Church of Sweden); the Revd Dr Paul Goodliff (Associate Fellow, Spurgeon's College London). They were joined by Frank Cranmer, acting as a Quaker 'critical friend', and by Professors René Pahud De Mortanges and Astrid Kaptijn, both of the University of Fribourg.

Drawing on Norman Doe's *Christian Law: Contemporary Principles* (2013), the Panel had examined how Christian traditions, through their regulatory instruments, evidence common principles which have a strong theological content and are fundamental to ecclesiological self-understanding. In 2015, the Panel submitted a juridical response to the Faith and Order Commission Paper, *The Church: Towards a Common Vision*.



The meeting in Geneva allowed the Panel to present to the Commission its completed version of its *Principles of Christian Law*. These were received with thanks by Dr Mateus, who outlined the history of the ecumenical movement leading to *Common Vision* and commented on the distinct lack of comparative canon law in ecumenical dialogue thus far. Dr Ani Ghazaryan Drissi of the Commission added that the Panel of Experts' response had been the first received following and that it was 'unique', identifying a 'fresh path'. It will be further considered at meetings in January 2018 and then by the full Commission in 2019.

Dr Mateus proposed an informal partnership between the Panel of Experts and the Faith and Order Commission as a means to carry forward this ongoing project. The Panel next convenes in Oxford in May 2018 for a symposium aimed at producing a book commissioned by

Cambridge University Press, *Christianity and Juridical Ecumenism*. It will meet again in Rome in November 2018 to review local initiatives in Sweden, the Netherlands and the United Kingdom currently at the planning stage. [MH]

CLERGY DISCIPLINE AND THE ECtHR

Readers may be interested to learn that the issue of clergy discipline and the jurisdiction of religious tribunals has been the subject of a recent judgment by the Grand Chamber of the ECtHR.



In *Károly Nagy v Hungary* [2017] ECHR 782, a minister in the Reformed Church of Hungary had been dismissed in 2005 after a local newspaper had reported him as saying that state subsidies to a Calvinist boarding school had been paid unlawfully. His unfair dismissal claim was unsuccessful before the domestic courts was unsuccessful and at Strasbourg he argued that the domestic proceedings had not satisfied the terms of Article 6 ECHR.

The Grand Chamber pointed out that the national courts had examined Mr Nagy's case in detail and had concluded that his situation was governed by ecclesiastical rather than secular law – and those findings were in line with the principles set out by the Hungarian Constitutional Court in 2003. Though the Church Act 1990 did not give Churches unfettered immunity against all civil actions, Mr Nagy's claim was excluded by the terms of that Act; and the domestic courts' conclusion that his pastoral service had been governed by ecclesiastical law was therefore neither arbitrary nor manifestly unreasonable. As a result, he had no 'right' that was recognisable under domestic law and 'To conclude otherwise would result in the creation by the Court, by way of interpretation of Article 6 §1, of a substantive right which had no legal basis in the respondent State' [77]. The GC held by ten votes to seven that Article 6 was therefore inapplicable and his claim inadmissible. [FC]

Frank Cranmer