



Ecclesiastical
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NEWSLETTER
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EDITORIAL

Humanist marriage ceremonies were in the news when the Northern Ireland Court of Appeal held in *Laura Smyth, for Judicial Review* [2018] NICA 25 that the current law – Article 31 of the Marriage (Northern Ireland) Order 2003 – already permits the appointment of humanist celebrants to conduct weddings and its provisions on religious marriages do not need to be read down so as to accommodate humanists. Nor does it forbid readings supporting or promoting humanist beliefs: ‘The prohibitions in Article 19 should be narrowly construed and ought not to interfere in any way with non-religious material’. Whether this will have any longer-term impact on the position in England and Wales remains to be seen: the issue of licensing buildings rather than officiants remains a major stumbling-block because humanists do not have any buildings to license.

Then came the unanimous judgment of the Supreme Court in *Steinfeld* in favour of the appellants – of which more below. [FC]

DATES FOR THE DIARY

Wednesday 10 October: London lecture – Dr Peter Smith, barrister of Lincoln’s Inn and formerly Dean of Law at Exeter University, on *Visitations*. Book [here](#).

Thursday 11 October: Northern Province lecture – Sir Philip Mawer (lately the Independent Reviewer under the Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014) on *The Role of the Independent Reviewer*. Book [here](#).

Wednesday 7 November: Lyndwood Lecture 2018 – Professor Diarmaid MacCulloch Kt DD FBA, Professor of the History of the Church, University of Oxford, on *Richard Hooker (1554-1600): Invention and Reinvention*. Hooker’s *Of the Lawes of Ecclesiastical Politie* has been described as ‘a continuous and coherent whole presenting a philosophy and theology congenial to the Anglican Book of Common Prayer and the traditional aspects of the Elizabethan Settlement’. Book [here](#).



Wednesday 6 February 2019: Northern Province lecture – Bishop Colin Buchanan on *The transferable vote: a hundred years of Anglican experience*

5 to 7 April 2019: ELS Residential Conference – to be held at **Cumberland Lodge, Windsor: Church and State in the Twenty-first Century: Re-imagining Establishment for the post-Elizabethan age**. Speakers will include Prof Robert Blackburn, The Revd Canon Malcolm Brown, Prof Norman Doe, The Revd Paul Goodliff, The Rt Revd Graham James, Dr Colin Podmore and Lord Singh of Wimbledon. Book [here](#).

May 2019 (date tbc): Northern Province lecture – Caroline Mockford, Registrar of the Diocese and of the Province of York, on *Closed Churchyards*.

Tuesday 16 July 2019: Northern Province lecture – Bishop Nick Baines on *The Function of Ecclesiastical Law in Effective Parochial Ministry*.

Wednesday 6 November 2019: Northern Province lecture – Charles George QC, Auditor of the Chancery Court of York, on *Do we still need the Faculty System?*

*London Lectures are held at Winckworth Sherwood, Minerva House, 5 Montague Close,
London SE1 9BB.*

*Northern Province Lectures are held at the offices of the Diocese of Leeds, 17-19 York Place,
Leeds, LS1 2EX*

CIVIL PARTNERSHIP IN ENGLAND & WALES

In May, the Government Equalities Office published a [policy paper](#) on the future of civil partnership in advance of the Supreme Court's ruling on whether or not they should be opened to opposite sex couples. In brief, it explained that the Government believed that further research was required and anticipated being able to consult on the future operation of civil partnership no earlier than 2020. Responding on behalf of the Church of England, the Revd Canon Malcolm Brown, the Church's Director of Mission and Public Affairs, called for civil partnerships to remain in place. *Christian Today* [reported him](#) as saying that the Church believes that civil partnerships 'still have a place, including for some Christian LGBTI couples who see them as a way of gaining legal recognition of their relationship. Even if the Government's current information-gathering exercise reveals only a small number are taking up civil partnerships, we hope it will remain an option.'

The Supreme Court then ruled unanimously in *R (Steinfeld and Keidan) v Secretary of State for International Development* [\[2018\] UKSC 32](#) that ss.1 & 3 of the Civil Partnership Act 2004 are incompatible with Article 14 ECHR (discrimination) taken in conjunction with Article 8 (respect for private and family life) to the extent that they preclude an opposite sex couple from entering into a civil partnership [62]. The Government is considering the judgment: where it goes from here is anyone's guess. [FC]

ECCLESIASTICAL JURISDICTION AND CARE OF CHURCHES

The [Ecclesiastical Jurisdiction and Care of Churches Measure 2018 \(Commencement and Transitional Provision\) Order 2018](#) was made on 13 June. It brings the substantive provisions of the [Ecclesiastical Jurisdiction and Care of Churches Measure 2018](#) into effect on 1 September 2018 and makes transitional provision in connection with the coming into force of certain of those provisions. Section 99 of the Measure provided for the technical provisions on commencement, extent and short title to come into force on Royal Assent. [FC]

PERMISSION TO OFFICIATE

In July, the House of Bishops issued its [Policy on Granting Permission to Officiate](#) approved by its Delegation Committee. [FC]

CHARITY COMMISSION ANNUAL RETURN 2018

On 22 June, the Charity Commission issued a [progress report](#) on its implementation of improvements to the facility for updating charity details online. When the Commission was consulting on what was to be included in the Annual Return 2018 it said that it proposed to require every trustee to supply it with an e-mail address – following which, it was pointed out

very firmly to the Commission that not all charity trustees possess or have access to a computer. (In passing, it is difficult to see on what basis possession of an e-mail address could be made a necessary qualification for charity trusteeship in England and Wales simply by administrative decree, without amending the charity legislation.)

The latest progress report suggests that any element of compulsion has now been abandoned; instead, the Commission intends to ask all trustees either to supply an e-mail address *or to confirm that they do not have one* – which looks very like a welcome climb-down. [FC]

ECCLESIASTICAL LAW SOCIETY SPONSORS INTER-INN MOOT COMPETITION

For the fourth successive year, the Ecclesiastical Law Society sponsored the Inter-Inn Mooting competition which concluded with the final on 3 July 2018. Hosted by Lincoln's Inn, with excellent organisation by Clare Shepherd and Charlie Taylor, the finalists were Gray's Inn and Lincoln's Inn. The Moot problem was set by David Harte, book review editor of the *Ecclesiastical Law Journal*, on the



subject of rights to burial and exhumation. Despite the event clashing with England v Colombia (the organisers doubtless assuming that England would not get beyond the group stage) a panel of judges formed themselves into a fictitious Court of Arches: Christopher Hancock QC (Middle Temple), HHJ Oscar del Fabbro (Gray's Inn) and Mark Ockelton (Lincoln's Inn). Huge thanks to the judges for stepping into the recondite world of ecclesiastical law.



Unlike the other fixture being played out that evening in Russia, the moot was not decided on penalties. Instead, by the narrowest of margins the Lincoln's Inn team of Gillian Hughes and Paul Erdunast was declared the winner, but congratulations also go to the runners-up, Thomas Phillips and Gemma McNeil-Walsh of Gray's Inn. The £500 prize for the winning team

was presented by Mark Hill QC, Chairman of the Ecclesiastical Law Society. [MH]

FREEDOM OF RELIGION OR BELIEF

Baroness Elizabeth Berridge's lecture on 3 July at Minerva House was fast-paced (timed to end as the World Cup qualifier England v Colombia began!), very well informed (as you might expect from the Chair of the All-Party Parliamentary Group on International Religious Freedom) and highly stimulating. She ranged widely around issues concerning religious toleration, and the lack of it both politically, and in some cases within religious groups themselves. In particular, she pointed to the situation of women in certain religious groups both Christian and others, and the role that equality legislation can play in assisting women's development in their own cultures – where the law provides some leverage.

She pointed out that toleration as we know it in the West is not an exclusively Western concept, derived simply from the experience of the post-Reformation European religious wars of the 17th century, or the 18th century Enlightenment. She identified a longer history, in some surprising contexts – in Islam, and Hindu and Chinese cultures, not least prior to the European colonial period. She pointed to the amicable relations that continue to exist between deeply-ingrained faiths in a number of areas around the world, notably in the nations of Sierra Leone and Ghana in West Africa.

At the same time, the rise of fundamentalisms remains a challenge even in those areas; and it is likely to continue to do so, partly driven by pressure on natural resources, and climate change. But in her view, although the colonial era has much to answer for, the British Commonwealth, with its historic emphasis on the Rule of Law as well as the opportunities it currently gives for encounter between indigenous cultures within a shared history in recent centuries, may yet provide some ground for hope that religious cultures may find ways to coexist amicably, each maintaining its own integrity.

It is to be hoped that such a stimulating talk will find its way to publication in the *Journal* in due course. [John Rees]

FORTHCOMING CHARITY LAW CONFERENCE

Members with a particular interest in religion and charity law may be interested in the forthcoming afternoon conference, on **Wednesday 12 September**, on *Charity and the State: an uneasy relationship*. The conference, at Liverpool University's London Campus, 33 Finsbury Square, London EC2A 1AG, is organised jointly by the Centre for Law & Religion at Cardiff, the Edmund Plowden Trust and the Association of Church Accountants & Treasurers. Speakers will include Hubert Picarda QC, author of *The Law and Practice relating to Charities*, Matthew Smith of Maitland Chambers, who represented the Catholic Care adoption society in its litigation with the Charity Commission, Paul Barber, Director of the Catholic Education Service

for England and Wales, and Robert Meakin, partner at Stone King LLP and author of *The Law of Charitable Status: maintenance and removal*. Further details are available [here](#). [FC]

MEMBERSHIP

Your Committee has been working extremely hard at expanding membership numbers, and with some degree of success. Quite a few former members have renewed after an interruption caused by the hiatus in the system for subscription by direct debit, while some had simply fallen off the radar because we did not have their current e-mail addresses. However, new members are always very welcome, so if you know anyone who is interested in ecclesiastical law – or, indeed, in matters of law and religion generally – *please* encourage them to join. The *Journal* alone is worth our (modest) subscription; the cover price for three issues direct from CUP is currently an eye-watering £178.

Details about membership renewal are [here](#). [FC]
