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NEWSLETTER
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MICHAELMAS EDITION

EDITORIAL

The new, tougher rules for England and Wales on the automatic disqualification of charity trustees and senior managers, under the provisions of the [Charities \(Protection and Social Investment\) Act 2016](#), came into effect on 1 August: the Charity Commission guidance on their operation is available [here](#), and the guidance for seeking a waiver from disqualification [here](#). It should be emphasised that the disqualification rules apply to trustee and senior manager positions at *all* charities based in England and Wales, *whether or not they are registered with the Commission*.

Ignorance of the law is no excuse (or whichever Latin version of that maxim you prefer); but given that a considerable swathe of church charities with an annual income below £100,000 is currently excepted from registration with the Charity Commission – and therefore hardly, if ever, comes into contact with it – I cannot help wondering how many of them are even aware of the *previous* rules, let alone of the new ones. [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 24 October: study day – to be held at **Winckworth Sherwood, Minerva House**: ‘Foremost in Representing the Laity: Training of churchwardens in today’s Church’ – on churchwardens and the law, with Simon Baker, Stuart Beake, Norman Boakes, Stephen Borton, Mark Hill QC and Andrea Russell. 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*.

Thursday 14 March 2019: study day – to be held at **Manchester Diocesan Office, 90 Deansgate, Manchester M3 2GH**: ‘Foremost in Representing the Laity: Training of churchwardens in today’s Church’ – on churchwardens and the law, with Simon Baker, Stuart Beake, Norman Boakes, Stephen Borton, Mark Hill QC and Andrea Russell. Book [here](#).

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 Grace Davie, Prof Norman Doe, Sir William Fittall, 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*

ECCLESIASTICAL LAW 4th EDITION

OUP has generously agreed to produce a special paperback edition of the recent fourth edition of M Hill, *Ecclesiastical Law*, which can be purchased from the Ecclesiastical Law Society for £40.00 inclusive of postage and packing. The print run is limited to 100 copies and the offer is open only to members of this Society and members of the General Synod of the Church of England.

The content and appearance of the volume is identical to that of the hardback version, which retails at £150. Orders can be placed in advance on the ELS website, [here](#), and copies are expected to be despatched during September. [Russell Dewhurst]

EWEIDA AGAIN

Almost every reader will recall *Eweida and Others v UK* [2013] ECHR 37, in which Ms Nadia Eweida claimed – successfully – that she had been unlawfully discriminated against, contrary to Regulation 3 of the Employment Equality (Religion and Belief) Regulations 2003 and in breach of Article 9 ECHR, when British Airways refused to allow her to wear a cross and neck-chain with her uniform as a check-in clerk.

She still works for the airline and, according to media reports, she has lodged a further Employment Tribunal claim against it, alleging various instances of victimisation and harassment since the judgment in 2013. She told the media that ‘It is victimisation over the years as a result of the cross case. They have never forgiven me, and they never let it go. I want my day in court.’ Which she will get on 26 October, in a hearing at Watford. [FC]

FACULTY PETITIONERS WARNED ABOUT INADEQUATE NOTICES

In *Re St Giles Kellamarsh* [2018] ECC Der 2, Bullimore Ch highlighted a ‘serious procedural problem’: that the Public Notice did not summarise the nature of the proposed works clearly enough for someone reading it to understand what was proposed. It simply said: ‘To

undertake repairs and refurbishments in accordance with the Schedule of Works ref 1403A prepared by Jane Holt Architect 16.02.18 and accompanying drawings...'. He granted an interim faculty for the work to start but directed the issue of new Public Notices summarising the works. In addition, in a Postscript [18] – which relates only to the Diocese of Derby but clearly has wider relevance – he requested

'all those who handle petitions at an early stage, or are consulted by petitioners – in particular Archdeacons, the DAC Secretary and Registrar – to have regard to the concerns that I have raised and ensure, so far as they can, that the works described on petitions are suitable to appear on the public notices. Insofar as any slip through the net, I will return them to the Registry without further ado, so the deficiencies can be rectified and fresh notices prepared'. [David Pocklington]

THE 'GENUINE OCCUPATIONAL REQUIREMENT' AND THE CJEU

The CJEU has handed down judgment in response to a request from the German Federal Labour Court about the Equal Treatment Directive and the scope of the genuine occupational requirement. The case, *JQ v IR* [2018] EUECJ C-68/17, involves a Roman Catholic doctor who was Head of the Internal Medicine Department of a hospital managed by IR, a limited liability company established under German law and subject to the supervision of the Archbishop of Cologne. He was dismissed after divorcing his first wife and remarrying in a civil ceremony without a prior annulment: he challenged his dismissal on the grounds that a non-Roman Catholic employee would not have been treated in the same way.

The Grand Chamber emphasised that, in order to be compliant with the terms of the Directive, an occupational requirement must be genuine, legitimate and justified in the light of the ethos of the church or organisation concerned. In short, it confirmed the position it adopted in April in *Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV* [2018] EUECJ C-414/16. [FC]

VICARIOUS LIABILITY AND LIMITATION

In *Murray v Devenish & Ors (Sons of the Sacred Heart of Jesus)* [2018] EWHC 1895 (QB), the claimant sued the Provincial Superior of the Order for alleged sexual assaults between 1973 and 1974 at the school run by the Order in Mirfield – the alleged abuser having died in the 1990s. The claim was well out of time; and Nicol J dismissed it on the basis that it would be inequitable to exercise his discretion under s.2D of the Limitation Act 1939 in favour of the claimant. [FC]

CHARITIES' ANNUAL RETURN 2018

On 3 August, the Charity Commission for England and Wales published the final [updated list](#) of the questions to be answered in the 2018 Annual Return for registered charities. The [online filing service](#) opened on 20 August. [FC]

THE CHURCH LAW SOCIETY OF PRAGUE – IN ENGLISH

The Church Law Society has unveiled an English-language version of its website, [here](#).
