



Ecclesiastical
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NEWSLETTER
of
THE ECCLESIASTICAL LAW SOCIETY

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**RELIGION AND MARRIAGE LAW:
THE NEED FOR REFORM**



On 8 July 2021 the *Ecclesiastical Law Society* hosted a zoom webinar on the subject of Religion and Marriage Law: The Need for Reform. An expert panel marked the launch of Professor Russell Sandberg's new **book**. A copy of the webinar may be found on the Society's YouTube channel [here](#).

The panel included: Professor Gillian Douglas (formerly Dean of the Dickson Poon School of Law, King's College, London); Lady Hale of Richmond (formerly President of the United Kingdom Supreme Court); and Professor Jane Mair (Professor of Private Law, University of Glasgow). The session was moderated by Professor Mark Hill QC, former Chair of the ELS.

DATES FOR THE DIARY 2021

At the present time, some of our events remain online and we intend for others to take place in person. Please check the website for further details.

Monday 13 September 2021

Wendy Matthews, Head of Pastoral and Closed Churches at the Church Commissioners, and others will be speaking at an exclusive ELS zoom event about the *Consultation on proposed amendments to the Mission and Pastoral Measure 2011* (see below). There will be opportunity for questions and discussion.

Please note this Zoom webinar is open to ELS members only. Please sign up by Friday 10 September [here](#).

Wednesday 15 September 2021

The Rt. Worshipful Morag Ellis QC, Dean of the Arches and Auditor
Clean and green—law and the carbon neutral Church. Details [here](#).

Please note - this event is due to take place at Winckworth Sherwood, Minerva House, 5 Montague Close, London, SE1 9BB and is now fully booked. If you have booked but can no longer attend, please cancel your booking to make space available for others.

Wednesday 20 October 2021

A joint online lecture by the Rev'd Stephen Coleman (Assistant Director of the Cardiff Centre for Law and Religion) and the Rev'd Russell Dewhurst (Chair of the ELS Communications Committee). *The Canons of the Church of England—reflections on some fundamentals of ecclesiastical law.* [Book here](#).

Wednesday 17 November 2021

The Rt. Worshipful Peter Collier QC, Vicar General of the Province of York
50 years of Safeguarding—950 years of Clergy discipline: Where do we go from here?
Details [here](#).

Please note - this event is due to take place at Winckworth Sherwood, Winckworth Sherwood, 5 Montague Close, London, SE1 9BB and is now fully booked. If you have booked but can no longer attend, please cancel your booking to make space available for others.

FROM THE EDITOR

I'm delighted to present our 2021 summer *Newsletter* – and my first, as editor. Thanks must go to my predecessor Ben Harrison for his estimable work on this publication for just over a year, and we send our collective good wishes to him as he prepares to take on the role of editor of the *Ecclesiastical Law Journal*.

There has been plenty to report on, as you will see in the pages which follow, keeping those of us who are practitioners in ecclesiastical law firmly on our toes. The work of the Society too has shown no sign of slowing down, with excellent attendance at the

recent webinar on *Religion and Marriage Law: The Need for Reform*. Thank you to those who came and contributed, and, if you couldn't witness the live event, I encourage you to catch up online, via the link featured on page 1.

Bishop Christine's lecture on *Ecclesiastical Law and the Mission of the Church* provided much thought-provoking and inspiring content, and there's a fascinating insight into the life of a DAC Secretary, from Russell's interview with Wendy Harris of Guildford Diocese – links to both below.

It's membership renewal time, and so I must say a huge thanks to the 600-plus members who have already renewed their membership. Your continued support is invaluable, and the Society's trustees are so encouraged by the rising level of interest in our work. Warmest thanks too, to our Finance Officer Stephen Hogg, for his tireless work in this respect.

Wishing you all a wonderful summer, and I hope you enjoy this latest edition of our newsletter. **F.G.**

CDM Working Party

On 24 February this year the ELS Working Party on the Clergy Discipline Measure published its final report on the current state of clergy discipline in the Church of England, which included detailed proposals for replacing the CDM framework. Since then the NCIs have issued a revised CDM Code of Practice (link below) endorsing the Working Party's interim proposals for resolving minor complaints without recourse to the Measure; while more recently the Working Party's chair, HHJ Peter Collier QC, has been appointed to the new House of Bishops Implementation Group tasked with drafting legislative proposals for a replacement Measure to put before General Synod.

As the matter of CDM reform moves to this next stage, the Trustees would like to take this opportunity to thank Peter and all members of the Working Party for their incredible efforts in fulfilling their brief and producing a report of such detailed and incisive analysis within the space of nine months, particularly while operating under the unavoidable constraints of a global pandemic. Their thoughtful and measured contribution to the often heated CDM debate has been invaluable, and will no doubt continue to impact on how legislative reform proceeds in this area.

We commend once more the Working Party's final report to all who are involved in, or concerned with, the discipline of clergy in the Church of England. The full text can be found [here](#).

The views expressed in the report are those of the Working Party as an independent group of scholars and experts and do not necessarily reflect those of the Society's Trustees collectively or individually.

With thanks to new trustee Sam Maginnis for this update.

NEWS

Managing faith charities as trustees

The Charity Commission has published updated guidance for charities established with a religious purpose. This updates and replaces the previous guidance, 'Faith in good governance'.

The new guidance, titled 'Managing faith charities as trustees', can be viewed [here](#).

Methodist Conference votes to allow same-sex marriage

A 'momentous vote' was passed at the 2021 Methodist Conference on 30 June to approve an in-principle change to its rules allowing same-sex couples to marry. The vote was passed by 254 to 46 votes.

The motion required a change to the definition of marriage to be "a lifelong union in body, mind and spirit of two people who freely enter it". The conference also voted to recognise, accept, and celebrate the love and commitment of unmarried cohabiting couples.

Further details can be found [here](#).

Clergy Discipline Rules and Code of Practice

The amended Clergy Discipline Rules came into force on 13 July 2021, and can be accessed [here](#), along with the new Code of Practice which is [here](#).

The amendments relate to the procedure and practice once an allegation has been made and referred for preliminary scrutiny by the registrar, addressing issues around efficiency, clarity, case management, and vulnerable witnesses.

In particular, there is now the ability to submit allegations online and a strict word/page limit applies for statements and supporting documents. It is hoped that these steps will help to make the process more efficient and streamlined across dioceses, ahead of any more substantive changes to the clergy discipline regime currently under scrutiny and debate, as previously reported.

General Synod elections

Following last year's postponement, the electoral process for General Synod is now underway, with dioceses issuing invitations to nominate and the timetable of events to electors by the end of July. The NCI Legal Office has produced a helpful FAQ dealing with online elections in particular, which can be viewed [here](#).

The Church of England has, for the first time, run an advertising campaign encouraging more young people and those from diverse backgrounds to stand for election to General Synod for the next five-year term from 2021 – 2026. More information is available [here](#).

It is worth highlighting that a last-minute amendment to the Church Representation Rules was passed at General Synod and came into force on 15 July 2021, which provides that, where a person has been unable for reasons connected with coronavirus to receive

Holy Communion at least three times in the past year, that does not disqualify the person from standing for election to the House of Laity of the General Synod. A copy of the resolution may be viewed [here](#).

Consultation on the Mission and Pastoral Measure 2011

At the July 2021 meeting of the General Synod, members approved the consultation paper for the review of the Mission and Pastoral Measure 2011. The consultation is now open, and runs until 30 September 2021.

The main aim of the review has been to consider how the legislation and processes associated with the Measure can be improved and simplified. The Measure makes provision for the legal reorganisation of parishes and benefices, dioceses, and the closure and re-use of church buildings no longer needed for public worship.

A link to more information, and the consultation itself (which can be completed online as well as in writing) is available [here](#).

In addition, exclusively for ELS members, there will be a webinar on Monday 13 September at 5:30pm. Eve Poole, Third Church Estates Commissioner, Wendy Matthews, Head of Pastoral and Closed Churches, and Alex McGregor, Head of the Legal Office of the Church of England, will speak about the Green Paper and consultation, and there will be opportunity for questions and discussion. Please sign up by Friday 10 September by registering [here](#).

Winner of the Eric Kemp Prize 2021

Congratulations to Denisa Ujlakyova, a student at Oxford Brookes University, winner of this year's **Eric Kemp Prize**, for her Law and Religion in the 21st Century paper entitled: *Should medical practitioners be able to refuse to carry out medical procedures because they are contrary to their religious beliefs?*

The ELS awards the prize on any university degree course which contains a significant element relating to ecclesiastical law, to the student producing the best performance in the subject for the year. From 2010, these prizes have been named in honour of the Rt Revd Dr Eric Kemp (1915 – 2009), Bishop of Chichester and a distinguished canon lawyer, who was the first President of the Society.

Denisa summarised her winning paper as follows:

“The essay focussed on the law surrounding abortion and reproductive health, as these areas have been particularly associated with religious beliefs.

It began by examining The Abortion Act 1967, which was introduced to allow for legal abortion services. The Act included conscience clauses allowing professionals to refuse to participate on ethical grounds. The question of what is meant by “participation” has been examined in several significant judgements, arguably not leading to much clarity on which professional duties are covered. The need to protect the interests of patients also needs consideration, along with the potential for professionals exercising their rights to suffer negative consequences.

The essay went on to look at balancing Article 9 rights to manifest religious belief through conscientious objection against a society's legitimate aim of making sure legal healthcare services remain available. It is suggested that this

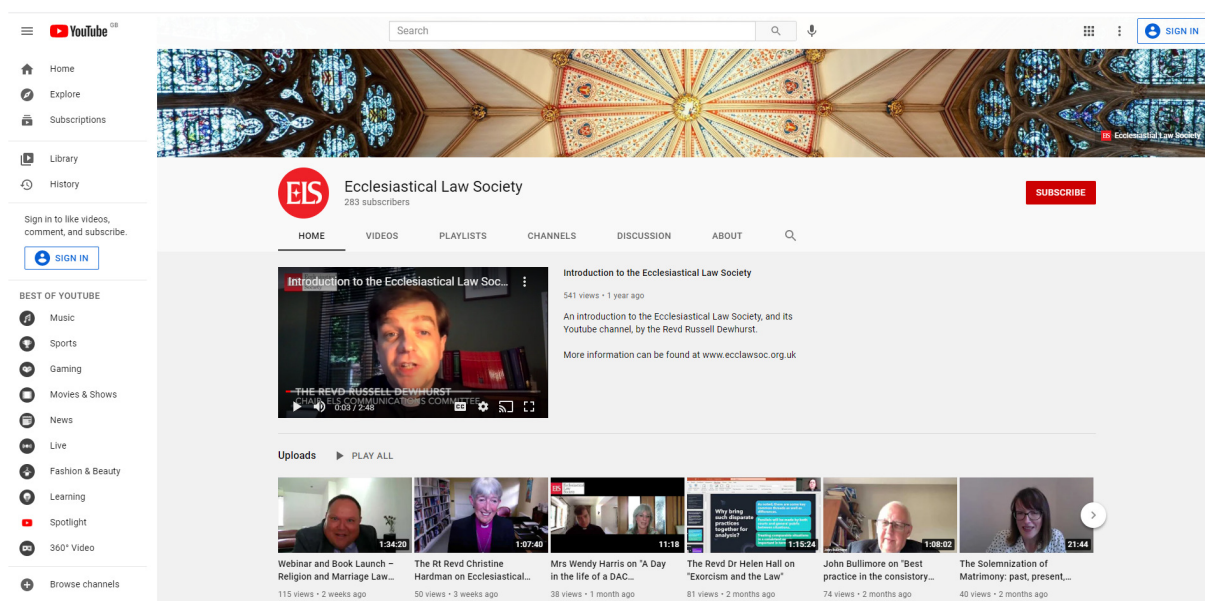
can be managed through the employer-employee relationship, with employment contracts spelling out the range of duties and exemptions appropriate to the circumstances.

The final section of the essay looked at appropriateness of conscience clauses within the context of a socialised healthcare system. It is established that professionals' use of personal discretion must be limited in certain areas. Perhaps within this context, issues of conscience could be better managed under employment law.”

And, in case you missed it...

The Ecclesiastical Law Society on YouTube

The *Ecclesiastical Law Society* has its own dedicated YouTube channel – you can sign up to subscribe and view past recordings of lectures and interviews [here](#).



Recent additions include:

Ecclesiastical Law and the Mission of the Church

The Bishop of Newcastle, the Rt Revd Christine Hardman, delivered this lecture on 16 June 2021. It can be viewed [here](#).

A Day in the life of a DAC Secretary

Russell Dewhurst interviews Wendy Harris, DAC Secretary of the Diocese of Guildford, for an insightful perspective on the work required to administer the faculty jurisdiction. It can be viewed [here](#).

Legislation update

The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2021, SI/2021/843, was made on 26 May, laid before Parliament on 27 July and comes into force on 1 January 2022. The Order ‘does what it says on the tin’. See [here](#).

The Legal Officers (Annual Fees) Order 2021, SI 2021/844, was similarly made on 26 May, laid before Parliament on 27 July and comes into force on 1 January 2022 and its contents also reflect its citation. See [here](#).

The Ecclesiastical Offices (Terms of Service) (Amendment) Regulations 2021, SI/2021/840, are made under section 2 of the Ecclesiastical Offices (Terms of Service) Measure 2009 and amend the Ecclesiastical Offices (Terms of Service) Regulations 2009. They were made on 13 July, laid before Parliament on 27 July and come into force in accordance with the provisions of Regulation 1. Part 2 makes provision about residentiary canons. Part 3 relates to salary sacrifice arrangements. Part 4 relates to gender neutrality: Regulation 10 amends the Terms of Service Regulations so as to make the references to bishops gender neutral. See [here](#).

The Charities Bill (available [here](#)), which implements the Law Commission's report on Technical Issues in Charity Law (in England and Wales), was introduced in the House of Lords on 26 May and read a second time on 14 July. The Law Commission subsequently produced a Keeling Schedule (see [here](#)) of the Charities Act 2011 showing the changes that will be made to the Act by the Bill if it becomes law without amendment, and a factsheet has been published on the gov.uk website [here](#).

The Marriages and Civil Partnerships (Approved Premises) (Amendment) Regulations 2021 were made on 29 June, laid before Parliament on 30 June and came into force on 1 July. They amend the Marriages and Civil Partnerships (Approved Premises) Regulations 2005 (SI/2005/3168), which make provision for the approval of premises for the solemnization of civil marriages and the formation of civil partnerships to enable them to be held in outdoor areas in the grounds of premises which have been approved under the 2005 Regulations. Regulation 4(1) declares that 'In relation to a church or chapel of the Church of England, nothing in these Regulations is intended to oust the faculty jurisdiction'. This is not, however, a permanent reform: Regulation 5 provides that the amendments are time-limited and will expire at the end of 5 April 2022. See [here](#).

Thanks as ever go to Frank Cranmer for these useful contributions.
