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# PIOUS CAUSES: THE BOUNDARIES BETWEEN CHARITY LAW AND ECCLESIASTICAL LAW

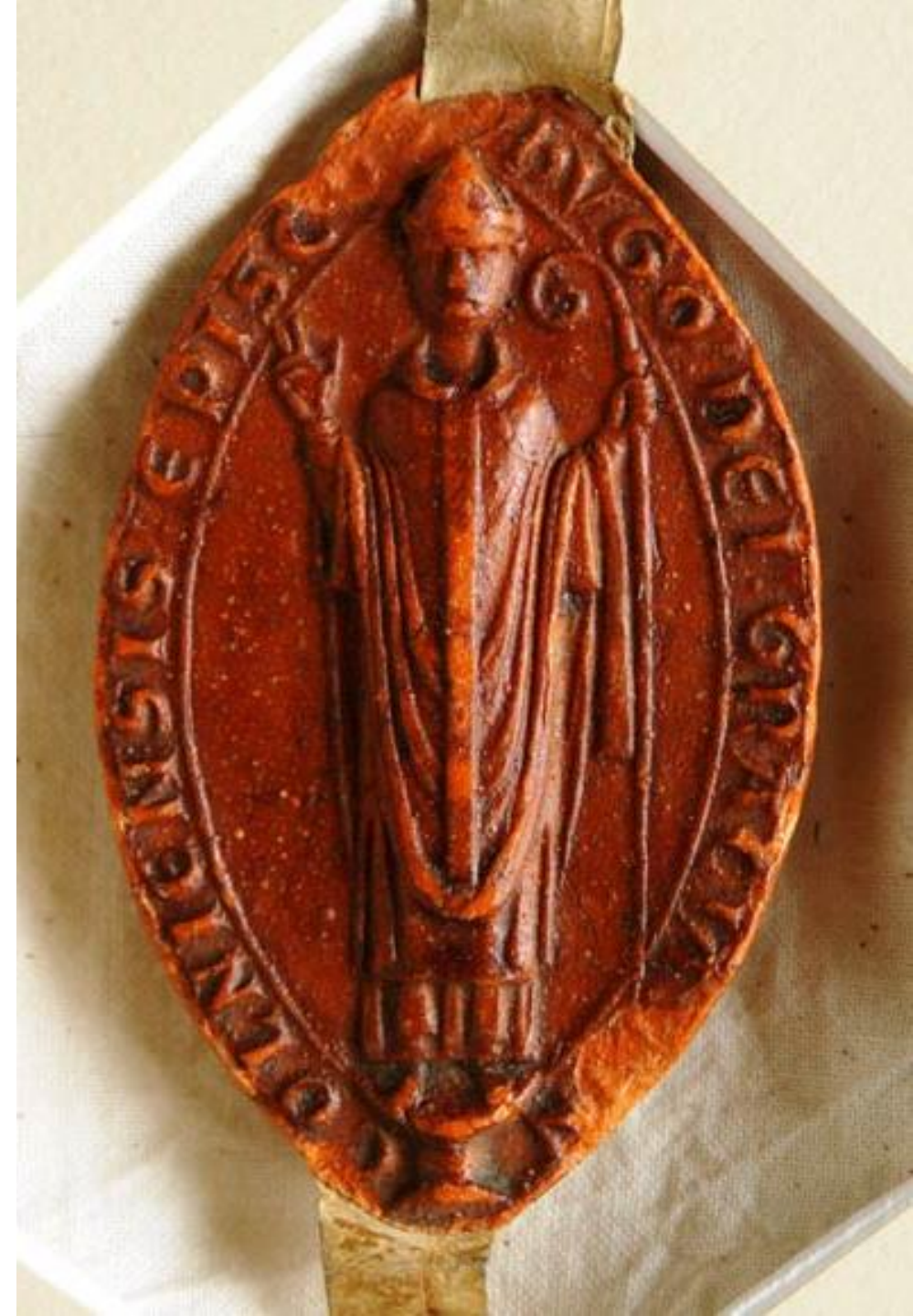
IAN BLANEY

PARTNER, LEE BOLTON  
MONIER-WILLIAMS

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## CHURCH OWNERSHIP OF PROPERTY SINCE SAXON TIMES

“they which hold in frank-almoign are bound of right before God to make orisons, prayers, masses and other divine services for the souls of their grantor or feoffor, and for the souls of their heirs which are dead, and for the prosperity and good life and good health of their heirs which are alive. And therefore they shall do no fealty to their lord, because that this divine service is better for them before God than any doing of fealty”  
(*Littleton’s Tenures*, section 135).



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## **CHURCH HOLDING OF LAND**

Church Building Acts 1818 to 1884

Gifts for Churches Act 1811

Church Property Measure 2018, ss 28, 31

Consecration of Churchyards Act 1867, s 5

# **CHARITIES ACT 2011, S 10 - ECCLESIASTICAL CORPORATIONS ETC. NOT CHARITIES IN CERTAIN CONTEXTS**

- “any ecclesiastical corporation in respect of the corporate property of the corporation, except a corporation aggregate having some purposes which are not ecclesiastical in respect of its corporate property held for those purposes”
- “any Diocesan Board of Finance, or any subsidiary of such a Board, in respect of the diocesan glebe land of the diocese”, or
- “any trust of property for purposes for which the property has been consecrated.”



BOOK II.  
FORMS OF PRAYER USED ON SPECIAL OCCASIONS  
IN S. PAUL'S CATHEDRAL.

I. Form of Admitting a Canon or Prebendary.

The Bishop's Mandate to be presented  
delivered to the Registrar to read.  
The Prebendary to read and  
against Simony: to take the  
Canonical Oath.

In the Dean's Vestry before Service.  
The Canon installing, and by him  
Assent and the Declaration  
id, standing, the Oath.

FORMS OF PRAYER USED ON SPECIAL OCCASIONS.

the real, actual, and corporal possession of the Prebend or Canonry of  
founded in this Cathedral Church, and of all and singular its rights, members,  
and appurtenances, and limit and assign to you the Stall in the Choir of the said  
Church belonging to the said Prebend, and hitherto accustomed to be assigned  
to the same. In the Name of the Father, and of the Son, and of the Holy Ghost.  
Amen.

"The Lord keep your coming in and going out now and for ever."  
Then the Prebendary is to say the Lord's Prayer.  
Then the Dean or the Canon shall say as follows:  
"Deus, omnium bonorum principium et finis, virtutum dator, et meritorum benignus-  
sime premiator, obsecramus Tuam largitatis abundantiam, ut tribuas  
hunc famulo Tuo (quem nostro dignatus es scribere collegio) Tibi tam pie fugiter  
familiari, sicut in hac domo Tua cum fratribus conversari, ut post decessum  
per Jesum Christum Dominum nostrum. Amen."  
Then the Dean, or the Canon, shall show him the Palm belonging to the  
Then the Afternoon Service is proceeded with.

After Service.  
In the Vestry, the Dean, or the Canon, shall say:  
"We limit and assign to you the place  
Prebend of  
Note.—The Palms assigned to the  
The Text over the Stall is

# GOVERNANCE AND REGULATION OF ECCLESIASTICAL PROPERTY

Registrum Statutorum et Consuetudinum  
Ecclesiae Cathedralis Sancti Pauli  
Londinensis





# STICK'S VISITATIONS

statu et dignitate huiusmodi, ne aliqua feoda, corrodia, libertates, pensiones aut annuales redditus quibuscunque personis ad certum tempus terminum *vile* vel imperpetuum concedatis, vendatis vel donetis; nec nemora vel grossas arbores quouismodo vendatis aut prosterneatis, nisi solum ad focalia necessaria et reparaciones necessarias faciendas, absque nostri vel successorum nostrorum, episcoporum *Lincolniensium*, licentia petita et obtenta, et eciam de consensu maioris et sanioris partis conventus predicti.

Ceterum vt temporalia vestra ad vestri commodum vtilius dirigantur: de circumspeccione et industria *lui*,<sup>1</sup> fratris Ricardi Watforde supprioris nobis ad hoc per conventum nominati, confidentes, tibi<sup>2</sup> omnem et totalem administracionem temporalium eorundem committimus per presentes *[et totam]* *adminis[tracionem]* bonorum *[huiusmodi]* *durante* *[s]uspensione* *[pre]* *dicta de consensu* *[et]* *nominacione prefatis* *[c]onfidimus et cre[di]mus tibi*,<sup>3</sup> iniungentes et ordinantes vt vnum fidelem et discretum de communis achis<sup>4</sup> dicti prioratus, pro quo respondere volueris, tibi accipias in adiutorem, qui expensis coquine et cellarii presit et eas superuideat et tibi omni septimana de expensis huiusmodi fideliter sub iuramento suo coram priore et conventu per eum prestando computet. Tuque, proveniens prioratus in pecunia recipiens, eos duobus bursariis per priorem et conventum ad hoc eligendis per tallia vel indenturas liberes *[Fo. 90]* in vna cista sub tribus seruris claves<sup>5</sup> diuersarum formarum habentibus, quarum clauium vnam habeat prior, aliam tu, supprior, et terciam vnus confrater per conventum electus, reponendos et per eosdem bursarios per similia tallia vel indenturas reliberandos, dummodo sub iuramento tuo in hac parte prefato plenum et planum compotum de administracione tua, quociens fueris congrue requisitus, nobis vel cui mandabimus red- dere tenearis.

Item iniungimus et mandamus sub penis excommunicationis antedictae vobis vniuersis et singulis presentibus et futuris vt canes venaticos vtpote leporarios siue odorincecos,<sup>6</sup> aut alienorum equos in dicto prioratu sumptibus domus nullatinus teneatis aut foueatis, sed *[et eos]* qui in presenti sunt ibidem penitus expellatis; quodque fragmenta mensarum vestrarum integre colligi<sup>7</sup> et inter pauperes absque personarum acceptione extra portas interiores dicti prioratus fideliter distribui faciatis.

Absolucionem vero omnium et singulorum qui pref[ata] sententiam excommunicationis incurrerint quoquo modo nobis et successoribus nostris, episcopis *Lincolniensibus* preterquam in mortis articulo specialiter reseruamus. Data, etc., sub sigillo nostro ad causas in dicto prioratu de Dauentre xvij die mensis Julij anno Domini mccccxliij et *[nostrarum]* consecracionis<sup>8</sup> anno xvj<sup>o</sup> et translacionis sexto.

<sup>1</sup> *ex causa* cancelled.

<sup>2</sup> *de* cancelled.

<sup>3</sup> Interlined above *vestri* cancelled.

<sup>4</sup> Interlined above *vobis* cancelled.

<sup>5</sup> Added in margin, much torn.

<sup>6</sup> *vobis assumatis* cancelled.

# DAVENTRY PRIORY,

who shall succeed you in future, under pain of your and their remission and final deprivation from such office, estate and dignity, that you do grant, sell or give no fees, corrodies, liveries, pensions or annual rents to any persons whatsoever for a fixed time, for the term of their life or in perpetuity; and that you sell not nor cut down in any wise copses or thick trees, except only for necessary fuel and for doing needful repairs, without leave asked and had of us or our successors, bishops of Lincoln, and also with[out] the consent of the more and sounder part of the convent aforesaid.

Furthermore, in order that your temporal affairs may be directed with more advantage to your profit, we, having confidence in the distinguished character and diligence of you, brother Richard<sup>1</sup> Watforde the sub-prior, who have been nominated to us for this purpose by the convent, do commit to you by these presents the whole and entire administration of the same matters temporal, *[and]* with the consent and nomination aforesaid do confide and entrust to you *[the whole]* administration of *[such]* goods during the suspension *[afore]*said, enjoining and ordaining that you take to your helper one of your fellow monks of the said priory, trusty and wary, for whom you shall be willing to answer, who shall be over the expenses of the kitchen and cellar and survey them and account to you faithfully every week for such expenses under his oath to be taken by him in presence of the prior and convent. And you, receiving the incomings of the priory in money, shall deliver them by tallies or indentures to two bursars who shall be chosen to this end by the prior and convent<sup>2</sup>, to be laid up in a chest under three locks having keys of different shapes, of the which keys the prior shall have one, you the sub-prior another, and one of the brethren chosen by the convent the third, and to be repaid by the same bursars by like tallies or indentures, provided that, under your oath in this behalf aforesaid, you be bound to render to us or to him whom we shall empower, a full and clear account of your administration, as often as you shall be agreeably called upon.

Also we enjoin and command you all and several that now are and shall be, under the pains of the excommunication aforesaid, that you do in no wise keep or nourish hounds for hunting, such as harriers or hounds that follow scent, or the horses of persons not of your convent in the said priory at the costs of the house, but that you also do altogether drive out those which are at present in the same; and that you do cause the broken meat of your tables to be gathered together in its entirety and to be faithfully distributed among the poor, without respect of persons, outside the inner gates of the said priory.<sup>3</sup>

The absolution moreover of all and several who shall incur in any way the aforesaid sentence of excommunication we specially reserve, save in the article of death, to us and our successors, bishops of Lincoln. Given, etc., under our seal *ad causas* in the said priory of Daventry on the 17th day of the month of July in the year of our Lord 1442, and the sixteenth year of our said Lord's reign.



# THE GROWTH OF CHARITY LAW I – TESTEMENTS AND LIFETIME GIFTS


2021 X Care of Cathedrals Measure 2011 X Cathedrals Measure 1999 X SPALDING RECTORY FEOFFEEES - X Map of allotted land containing X +

register-of-charities.charitycommission.gov.uk/charity-search/-/charity-details/509204/governing-document

conversion... Bookmarks bar Church academies... Hornsey and Strou... Land Registry We g... Religion and law ro... SRA Welcome to t... Imported From IE

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## SPALDING RECTORY FEOFFEEES

Charity number: 509204  Charity reporting is up to date (on time)

- Charity overview
- What, who, how, where
- Governance
- Trustees
- Financial history
- Accounts and annual returns
- Governing document
- Contact information

### Governing document

Details of the type of governing document the charity has and when it was established.  
It is not the full text of the charity's governing document.

SCHEME DATED 1 OCTOBER 2003 as amended on 02 Jan 2022

### Charitable objects Less

(1) FEOFFEEES FIRST TO PAY A STIPEND TO THE VICAR OF SPALDING THAT WILL BE NO LESS THAN THE HIGHEST STIPEND USUALLY PAYABLE TO CLERGY (NOT BEING BISHOPS, ARCHDEACONS OR THE DEAN) WITHIN THE DIOCESE OF LINCOLN WITH THE FEOFFEEES (SUBJECT THERETO) HAVING DISCRETION AS TO THE AMOUNT OF THE STIPEND TO BE PAID FROM TIME TO TIME; AND THEN (2) APPLY THE RESIDUE OF THE INCOME TO FURTHER THE RELIGIOUS AND OTHER CHARITABLE WORK OF THE CHURCH OF ENGLAND IN THE AREA OF BENEFIT

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# LOCAL GOVERNMENT ACT 1897

- “The expression “ecclesiastical charity” includes a charity, the endowment whereof is held for some one or more of the following purposes:—
- (a) for any spiritual purpose which is a legal purpose; or
- (b) for the benefit of any spiritual person or ecclesiastical officer as such; or
- (c) for use, if a building, as a church, chapel, mission room, or Sunday school, or otherwise by any particular church or denomination; or
- (d) for the maintenance, repair, or improvement of any such building as aforesaid, or for the maintenance of divine service therein; or
- (e) otherwise for the benefit of any particular church or denomination, or of any members thereof as such
- ....[and] any building which in the opinion of the Charity Commissioners has been erected or provided within forty years before the passing of this Act mainly by or at the cost of members of any particular church or denomination.” (Section 75(2)).



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# THE GROWTH OF CHARITY LAW II – THE NINETEENTH CENTURY



THE  
OFFICIAL REPORT  
OF THE  
CHURCH CONGRESS  
HELD AT LEICESTER

On SEPTEMBER 28th, 29th, & 30th, & OCTOBER 1st  
1880.

EDITED BY DAVID J. VAUGHAN, M.A.

HONORARY CANON OF PETERBOROUGH CATHEDRAL; VICAR OF ST. MARTIN'S,  
LEICESTER; AND FORMERLY FELLOW OF TRINITY COLLEGE, CAMBRIDGE.



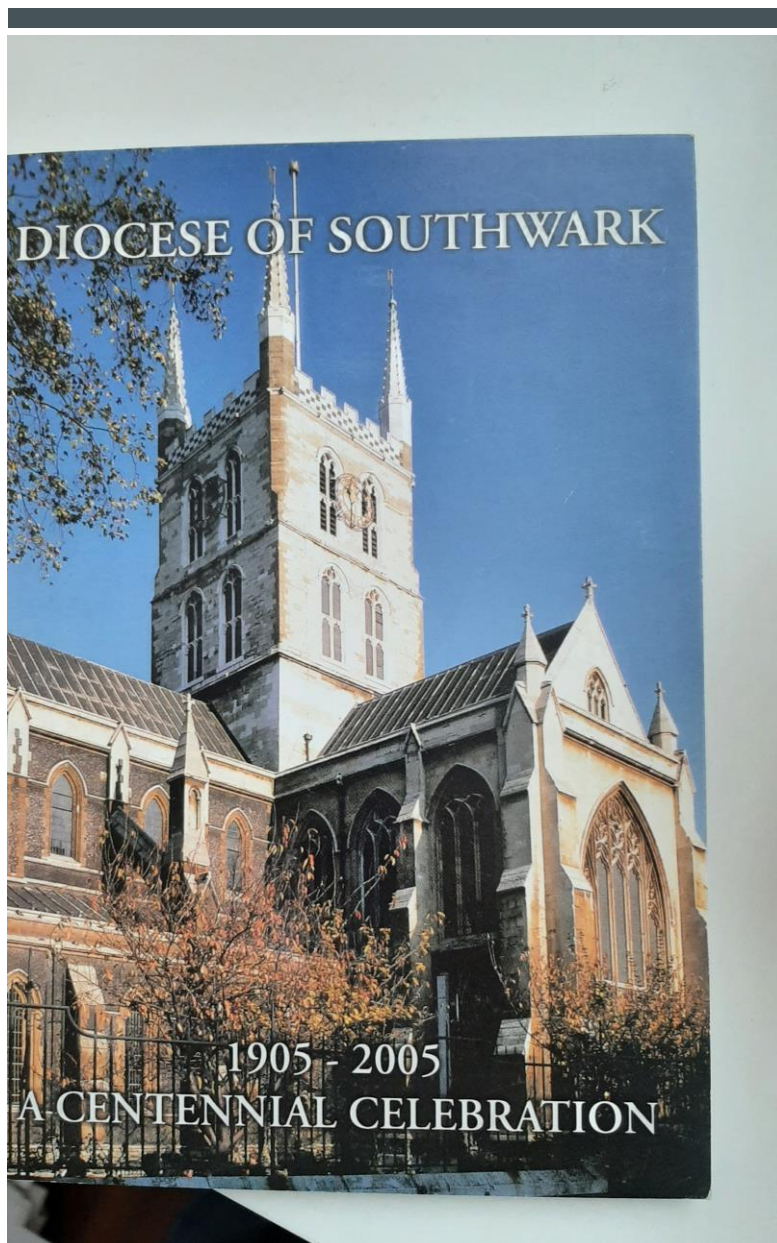
JOHN HODGES  
24 KING WILLIAM STREET, CHARING CROSS, W.C.  
1881

The Hon. WILBRAHAM EGERTON, M.P.

DURING the last half century, the growth of population, and the consequent necessity for providing more adequate spiritual ministrations for the masses in our large towns, have forced upon the Church the duty of increasing its financial resources, and perfecting its machinery for collecting funds. Besides these normal wants, a new difficulty has lately arisen. When the rights of the Church of England to its property are challenged, and its endowments are claimed, by a minority of the nation, it is time for the Church to consider in what way it can best meet the pressing claims of its members for greater support to its growing institutions, and invest the funds collected for these objects with the greatest security for the future. The Church has indeed spent millions during the present century on its cathedrals, churches, and schools; but it is, I believe, true that the Church, as a body, has been accustomed to rely too much on the liberality of past generations, and has not hitherto paid sufficient attention to the important question of finance, if we compare its organisation in that respect with any of the other great religious bodies, such as the Roman Catholics, Wesleyans, or the Free Kirk in Scotland.

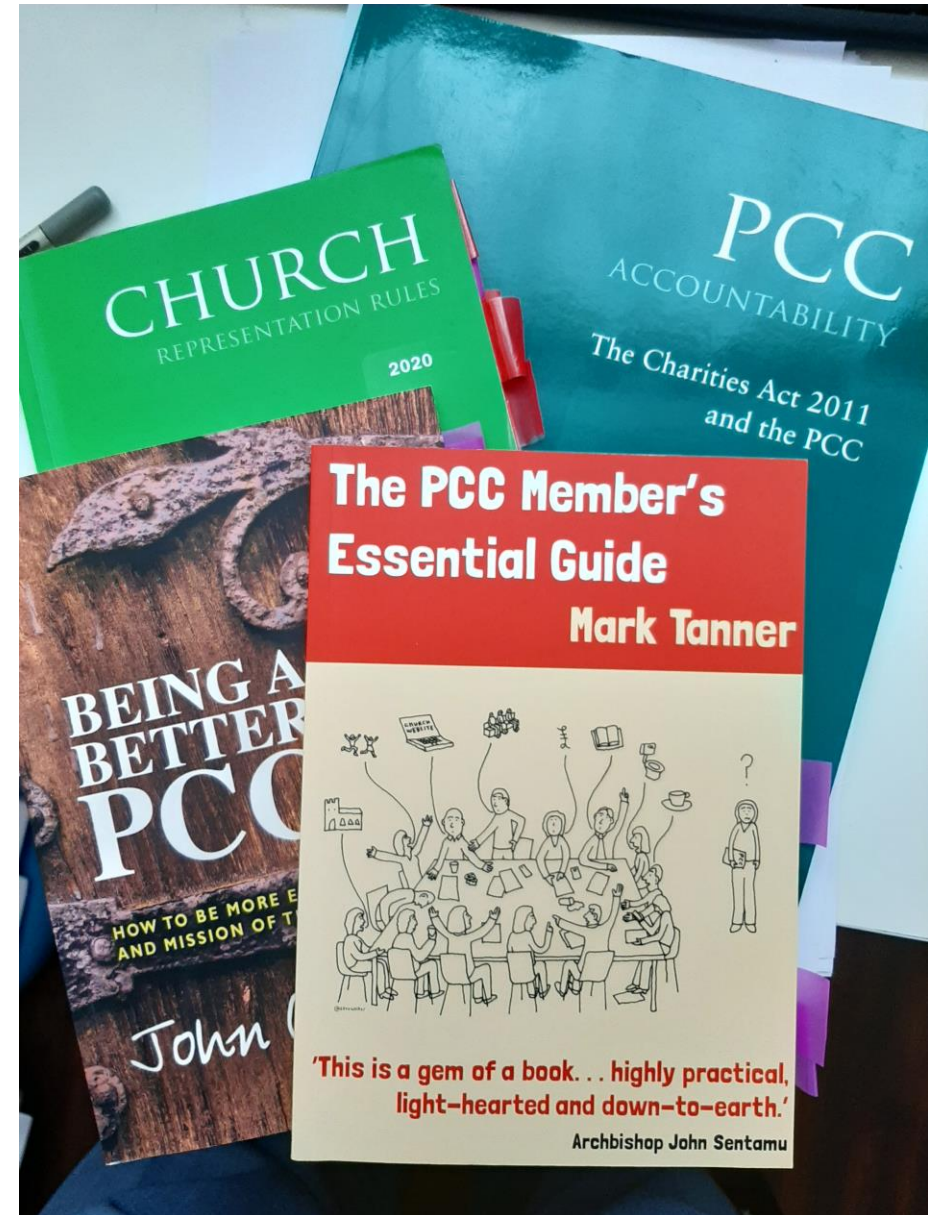
I will not dwell upon the means of raising money by the Church of Rome in times past, but we may emulate, with advantage, the centralised organisation of that Church, and its widely-spread machinery for raising large sums by the small contributions of the faithful. The Free Kirk in Scotland has, within a short period, given us an example of providing, by a central fund, a moderate stipend for its ministers, which is larger, in many cases, than the scanty pittance of too many of our clergy.





- 1864 - Diocese of Ely had a diocesan fund started in which through offertories and subscriptions was able to make grants for such matters as paying the stipends of additional curates
- c 1873 - limited liability company was incorporated under the Companies Act 1867 for the diocesan finance of the Diocese of Chester with the object “to assist members of the Church of England in providing for the maintenance and furtherance of the Church of England within the diocese”. The ex-officio members were the bishop, the dean, the chancellor and the two archdeacons with other members elected and nominated on a basis to represent the rural deaneries, the four charities, and further life members who had donated at least £5
- 1874 – Manchester sets up a board of finance but with unlimited liability under Companies Act 1862
- 1882 - Salisbury got its own board of finance, incorporated under the Companies Act 1867 and obtained a licence from the Board of Trade
- Trustee Act 1894 took away many problems of setting up property owning trusts
- 1895 - Worcester was settling upon a general trust deed that would allow property to be vested in a diocesan trust for the general purposes of the trust or for any special purpose
- 1896 - the York Diocesan Trust was constituted to look after existing and new trusts founded in the diocese
- 1906 - Lincoln incorporated its Board of Finance
- 1916 - Canterbury followed

**DIOCESAN BOARDS  
OF FINANCE  
MEASURE 1925  
PAROCHIAL CHURCH  
COUNCILS (POWERS)  
MEASURE 1921**





# COMPARISON OF CHARITABLE AND NON-CHARITABLE ENTITIES – (1)

## CHARITY PROPERTY

separation of legal from the beneficial interest in the property

The property is held exclusively for a purpose which is considered by the law to be charitable

The property is applied in the public benefit

There is (normally) more than one trustee, the trustees to watch over each other;

The charity is subject to the control of the High Court and the Charity Commission concurrently. The monarch is the *parens patriae*

It is subject to charity law, including the Charities Act 2011;

The property holding does not fall foul of the law on perpetuities

The disposal of property is regulated

## COMPARISON OF CHARITABLE AND NON-CHARITABLE ENTITIES – (2) ECCLESIASTICAL PROPERTY

The possibility of holding the property for the benefit of the owner is not precluded

There is no necessity for there to be a trust at all

Ecclesiastical corporations have perpetual succession and thus can in theory hold property for ever

Most kinds of ecclesiastical property are subject to restriction on disposal

Property which is consecrated is held for a sacred purpose, for example the burial of the dead

Consecrated property is under the jurisdiction of the consistory court and alienation is highly regulated

Ecclesiastical corporations are subject to the regulation of the Visitor



# CONCEPTUAL DIFFERENCES



## **THE PRESENT ADMIXTURE**

Older ecclesiastical corporations v newer charity law ones

Difference in functions

Connections between the two

Mixed economy leads to misunderstandings

# Bishop of Norwich orders vicar to apologise over 'pastoral breakdown' in Wymondham



by MADELEINE DAVIES  
19 NOVEMBER 2021



Report highlights 'authoritarian style' of the Revd Catherine Relf-Pennington

THE [Bishop of Norwich](#), the Rt Revd Graham Usher, has ordered a vicar in the diocese to apologise without reservation to those who have brought complaints against her, after receiving a visitation report that highlights problems in the benefice. These include her "authoritarian style", the termination of a longstanding [choral tradition](#), and non-payment of [parish share](#).

Bishop Usher's directions to the Vicar of Wymondham, the Revd Catherine Relf-Pennington, and the [churchwardens](#), published



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ecclesiastical



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**JOB OF THE WEEK**

Office Administrator



# CONSEQUENCES



**CHARITY COMMISSION**  
FOR ENGLAND AND WALES



Ecclesiastical  
Law  
Society

Cathedrals Measur x Care of Cathedrals x Cathedrals Measur x SPALDING RECTO x independent scho x Private schools wir x Guard

theguardian.com/education/2011/oct/14/private-schools-public-benefit-ruling

Apps Academy conversio... Bookmarks bar Church academies... Hornsey and Strou... Land Registry We g... Religion and law ro... SRA Welco

**Private schools**

This article is more than 10 years old


## Private schools win case over showing benefit to society

**Court rules Charity Commission was wrong in defining how private schools show public benefit**

**Jessica Shepherd,**  
education correspondent

Fri 14 Oct 2011 12:31 BST

f t e 21



Dame Suzi Leather, chair of the Charity Commission said previously the "clearest and most direct way" for private schools to demonstrate public benefit was through bursaries. Photograph: Graham Turner/Guardian

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08/02/2022

Press: Christ Church threatened with nuclear option

# CHURCH TIMES

## Press: Christ Church threatened with nuclear option

by ANDREW BROWN  
17 SEPTEMBER 2021



**THE TIMES** had the best news story of the week, from **Christ Church, Oxford**: "The charities regulator has threatened to take action against one of Oxford's most prestigious colleges over a dispute between its governing body and the dean.

"The Charity Commission has written to the trustees of Christ Church to express its concern that the long-running row with the **Very Rev Martyn Percy** was damaging the reputation of the college, which was founded in 1546 and is a registered charity.

"Helen Earner, the commission's director of regulatory services, writes that the body is 'now considering whether it is appropriate to use our regulatory powers,' which could involve replacing trustees, effectively giving the regulator some control over the management of the college."

This is the nuclear option, because it threatens the set-up under which all **Oxford** colleges are run as charities, with all the Fellows acting as trustees. It would appear from the statutes of Christ Church that the only person outside the college who can intervene is **the Queen** (and possibly Queen Victoria, at that).

Now it turns out that the Charity Commission is taking a hostile interest in the machinations of the dons. That sets a precedent that threatens the interests of all the other self-governing colleges. Everything in this struggle happens slowly, and this threat may never be acted on. But,

# CATHEDRALS MEASURE 2021

## ECCLESIASTICAL PURPOSE

### SECTION 1

- Duty to have due regard to cathedral's ecclesiastical purpose
- A person on whom a function is conferred by or under this Measure must, in exercising that function, have due regard to—
  - (a) the fact that the cathedral is the seat of the bishop and a centre of worship and mission, and
  - (b) the importance of each cathedral's role in providing a focus for the life and work of the Church of England in the diocese.





# CATHEDRALS MEASURE 2021

## CHARITABLE PURPOSE

### SECTION 4(1)

- Constitution: objects
- (1)The constitution must specify the following as the only objects of the Chapter of a cathedral—
  - (a)to advance the Christian religion in accordance with the faith and practice of the Church of England, in particular by furthering the mission of the Church of England;
  - (b)to care for and conserve the fabric and structure of the cathedral church building;
  - (c)to advance any other charitable purposes which are ancillary to the furtherance of the purpose referred to in paragraph (a) or (b).
- (2)In subsection (1)—
  - “the mission of the Church of England” means the whole mission of the Church of England, pastoral, evangelistic, social and ecumenical;
  - “cathedral church building” means, in the case of each cathedral, the buildings within the ecclesiastical exemption for that cathedral;
  - “charitable purposes” means purposes within section 2(1) of the Charities Act 2011.

# ECCLESIASTICAL OFFICES (TERMS OF SERVICE) MEASURE 2009 SECTION 3A

## 3A Removal from cathedral office after disqualification as charity trustee

(1) This section applies in the case of an office holder referred to in section 1(1)(d) who—

(a) by virtue of that office, is a charity trustee of the Chapter of a cathedral, but

(b) is disqualified from being a charity trustee under the Charities Act 2011.

(2) The bishop of the diocese must, by notice in writing, remove the person from the office.

(3) But the duty under subsection (2) does not arise unless and until—

(a) any appeal against the disqualification under the Charities Act 2011 is dismissed or abandoned or the period for bringing an appeal expires without an appeal being brought, and

(b) subject to subsection (4), the period of three months beginning with the date on which the disqualification takes effect expires without a waiver of the disqualification under the Charities Act 2011 being granted or applied for.

(4) If, at the end of the three-month period referred to in subsection (3)(b), an application for a waiver of the disqualification has been made but not yet determined, the duty under subsection (2) does not arise unless and until the application is refused.

(5) The duty under subsection (2) must be complied with as soon as reasonably practicable and in any event before the end of 30 days beginning with the day on which the duty arises in accordance with subsection (3) or (4).

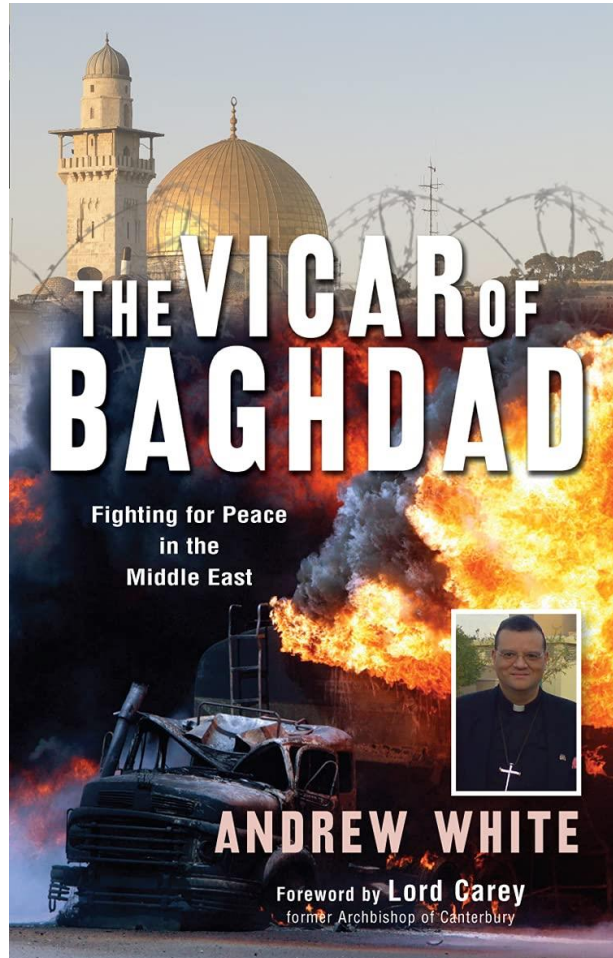
(6) The bishop must, by notice in writing, suspend the person from office for a period which begins when the disqualification takes effect and ends—

(a) if the duty under subsection (2) arises, when the duty is complied with;

(b) if the duty under subsection (2) does not arise because an appeal of the kind mentioned in subsection (3)(a) is allowed, when the appeal is allowed;

(c) if the duty under subsection (2) does not arise because an application of the kind referred to in subsection (3)(b) is granted, when the application is granted.

...



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churchtimes.co.uk/articles/2020/24-january/news/uk/canon-white-is-censured-over-is-sex-slaves-case

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CHURCH TIMES

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## Canon White is censured over IS sex-slaves case


by TIM WYATT  
24 JANUARY 2020

But inquiry finds no evidence of money paid to terrorists

CANON ANDREW WHITE has been censured by the Charity Commission after an investigation concluded that he tried to pay money to secure the release of young girls held as sex slaves by [Islamic State](#) (IS).

Canon White, a former Chaplain of St George's, [Baghdad](#), founded and led the Foundation for Relief and Reconciliation in the Middle East (FRRME) until 2016, when he was suspended and the Commission began its inquiries.

Although a separate Metropolitan Police investigation into the alleged terrorist financing



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JOB OF THE WEEK

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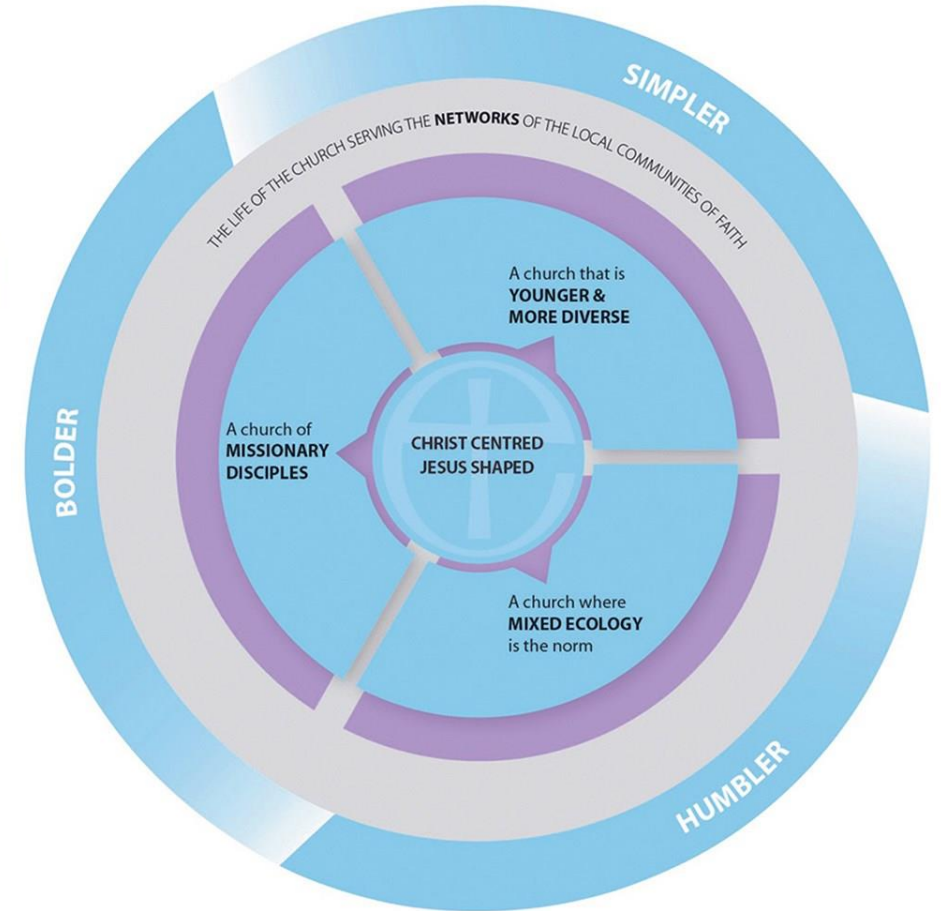
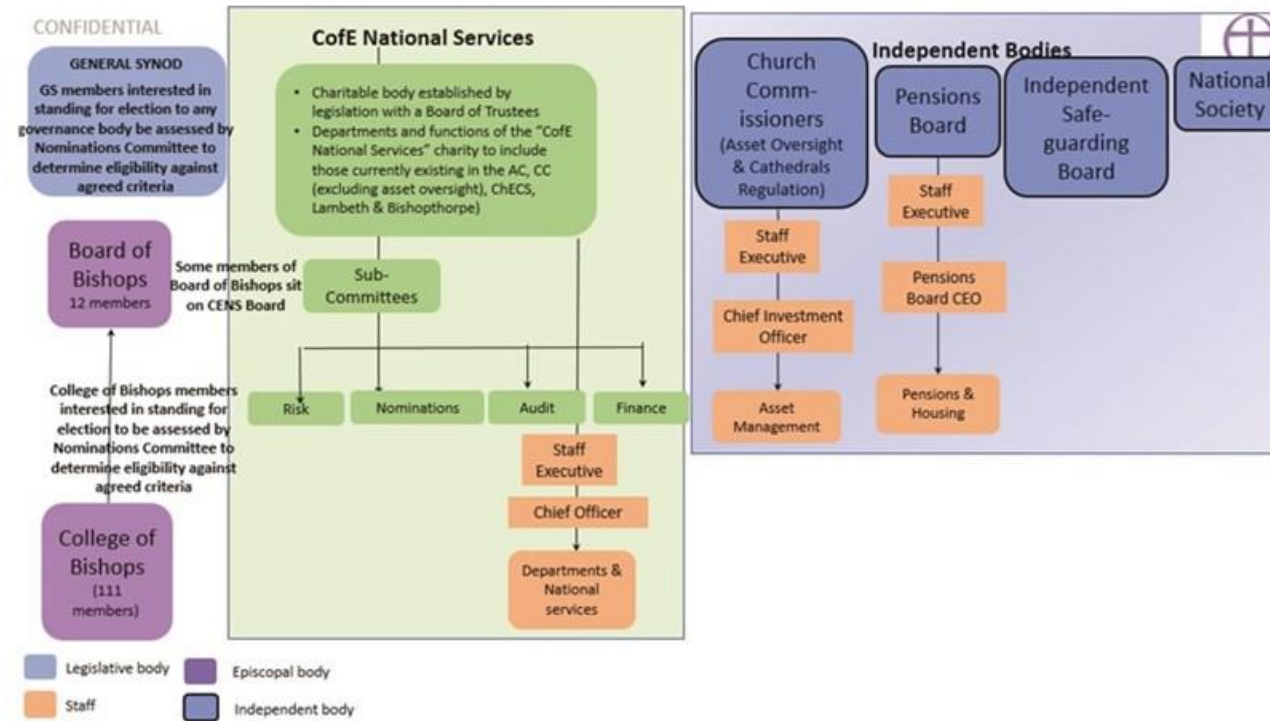


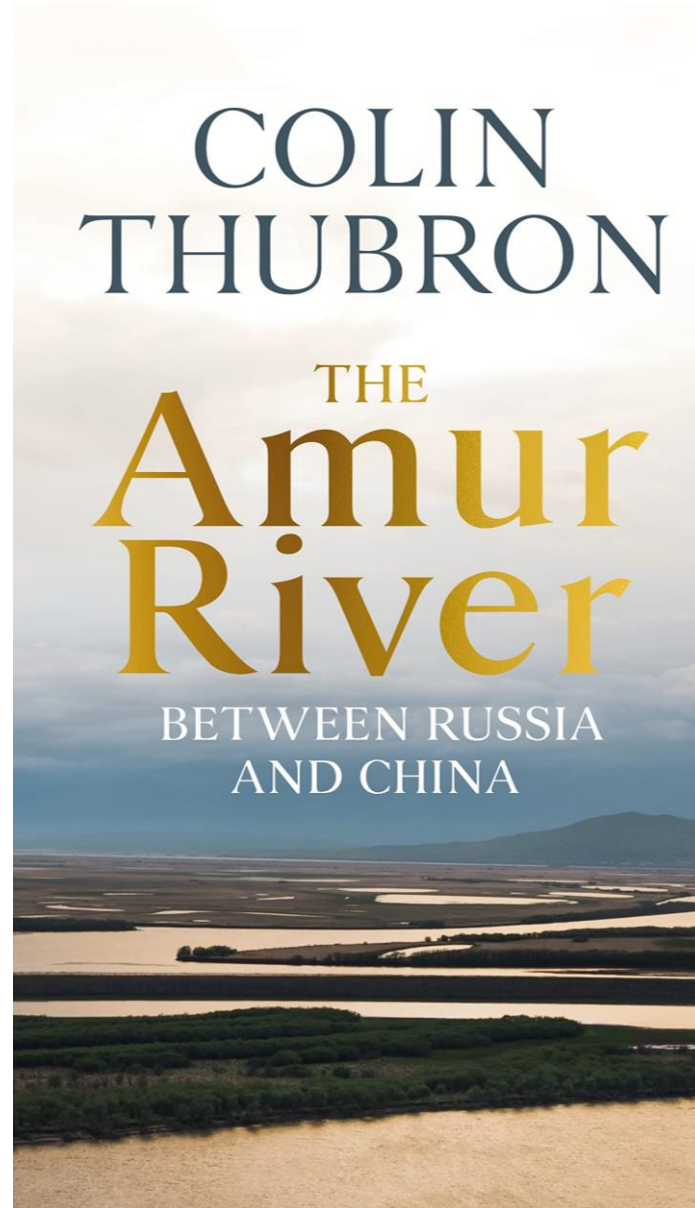
*Re Keeping Kids Co Official Receiver v Atkinson and others*

[2021] EWHC 175 (Ch)

## ANNEXE I

### Governance Model Diagram







**END**

- Ian Blaney
- Email: [ian.blaney@LBMW.com](mailto:ian.blaney@LBMW.com)



**LBMW**  
LEE BOLTON MONIER WILLIAMS