

Law & Religion UK

Issues of law and religion in the United Kingdom – with occasional forays further afield

Law and religion round-up – 15th March

Posted on **15 March 2020** by **Frank Cranmer**

“Don’t you dare shake hands with me, or offer signs of peace.

 You lay a finger on me and I’ll send for the police.

 Don’t whisper “Peace be with you”: this is the C of E,

 So bend the knee, say “thou” and “thee” and keep your hands off me!

“Mrs Beamish” by Richard Stilgoe

... and if in explaining the **efficacy of hand-washing with soap** you don’t include a description of the virus as “a self-assembled nanoparticle in which the weakest link is the lipid (fatty) bilayer”, you probably haven’t been looking at Twitter.

Beards, paramedics and coronavirus

On Sunday, the BBC **reported** that the London Ambulance Service was contemplating telling its ambulance crews that its ability to handle potential Covid-19 cases could be “adversely affected” by crews unable to wear respirators properly because of facial hair. According to the report, a draft memorandum said that the Service’s ability to respond to potential Covid-19 patients had been “adversely affected by the low availability” of crews who

had been successfully tested for the fitting of face-masks and that this was “partly driven by crew staff not being clean-shaven”.

Which, as the memorandum goes on to recognise, is something of a problem if a crew-member is (eg) an observant Sikh, suggesting that “staff with protected characteristics – such as religious beliefs or a disability who could not clean shave would ‘be engaged with on a case-by-case basis and a number of alternative options have been identified to support this’”. Article 9(2) ECHR certainly permits exceptions to the general right to manifest “in the interests of public safety, for the protection of public order, health or morals” – but it’s a very difficult call to make.

A common approach to the Common Cup in Anglican Provinces in the UK & Ireland...

...and by the Catholic Bishops’ Conference of England and Wales. In last week’s **round-up**, we noted that an important difference had emerged between the advice produced by the Church of England and that produced by the Church in Wales, the Scottish Episcopal Church and the Church of Ireland – the latter Churches taking a stronger line on the Common Cup and the Peace. **Anecdotally**, an increasing number of vicars were already unilaterally implementing these restrictions at their own churches, whilst others had expressed concerns at the lack of definitive guidance.

The Church of England revised its **guidance** as at 17:40 on 10 March 2020, and the Archbishops of Canterbury and York have **written to clergy** to update them on it. Early indications suggested that the revised policy has been broadly welcomed. However, some issues are not addressed, such as holy water stoups and the veneration of the Cross on Good Friday. This guidance was twice updated on **12 March**, and now addresses these and other issues, although not the Asperges. We have included extracts from these latest revisions in a **subsequent post**, and all our earlier posts on COVID-19 now cross-refer to the latest guidance and are collated **here**.

There now appears to be a strong degree of convergence of the advice for Roman Catholic and Protestant Churches within the UK and Ireland.

Further advice from the Dioceses

The Diocese of Oxford **notes**: “At this time, Dioceses are each leading in different areas. The Oxford contingency planning documents have now been adopted nationally”. It has also produced a **poster**, specifically for the use at church locations, and following a number of questions concerning catering, is “happy to share...additional **guidance from the Diocese of Exeter**“. The Exeter guidance covers: refreshments; social events / meals &c; coffee mornings; youth groups; children’s groups; and toddler groups.

Lambeth Conference and coronavirus

The Lambeth Conference, which is due to take place from 22 July to 2 August 2020, issued a **Coronavirus update** on 3 March which states:

“... at this point, we have not had official health advice to cancel the event and are currently proceeding with our conference planning. We will continue to monitor the situation, adhere to public health advice and provide updates and guidance to our event attendees [sic] as soon as we have it. Updates will be advised via the **Lambeth Conference web site** and emails to event attendees.”

A religion, law and coronavirus website

A new website, **Religion, Law and Covid-19 Emergency**, has been set up as a consequence of “difficulties raising from the possible contradiction between the respect for the measures taken by civil authorities and religious rules”. *DiReSom (Diritto e Religione nelle Società Multiculturali* – Law and Religion in Multicultural Societies) is a research group created in 2017 within ADEC (Associazione dei docenti della disciplina giuridica del fenomeno religioso – Association of academics of the legal regulation of the religious phenomenon). Its activities are carried out in collaboration with the European Academy of Religion and it is coordinated by Pierluigi Consorti, Professor of Law and Religion at the University of Pisa and chairman of ADEC. The group explains:

“As scholars engaged in the study of the legal regulation of the religious phenomenon, we have wanted to create a space to collect documents, comments and other useful materials related to the emergency, in order to assess the outcomes of the normative choices made by civil and religious authorities”.

Just in case you've forgotten, HMG is in negotiations with the European Commission on an *Agreement on the New Partnership between the European Union and the United Kingdom*. The Commission's version of a **draft text** has appeared on the Internet – presumably leaked. If the document is authentic, the first two paragraphs of Article LPFS.2.6: (Courts and tribunals of the United Kingdom) will no doubt go down with HMG *comme un ballon en plomb*:

“1. Noting that the Court of Justice of the European Union has jurisdiction under the Treaties in respect of acts of the European Commission in the area of State aid, in respect of measures of the United Kingdom authorities that are subject to Article LPFS.2.1(1) [General provisions], the United Kingdom shall ensure that courts or tribunals in the United Kingdom are competent to:

- (a) review and enforce compliance by the United Kingdom's authorities with the obligation under Article LPFS.2.1(1) [General provisions], in conjunction with Article 108(3) of the TFEU, to notify in due time the relevant authority of any intended measure to grant or alter aid, and not to put such intended measure in effect until the relevant authority has authorised it;
- (b) review the compliance of the decisions taken by the relevant authority with the acts and provisions listed in ANNEX LPFS- X;
- (c) review and enforce compliance with a decision of the relevant authority by the United Kingdom's authorities, and impose penalties in case of non-compliance;
- (d) decide on actions for a failure of the relevant authority to act, and order the relevant authority to act; and
- (e) decide on actions for private damages and award such damages.

2. The United Kingdom shall ensure that, when, in performing their competences under the paragraph 1, a question of interpretation of a concept of Union law or a question of interpretation of a provision of Union law referred to in the acts and provisions listed in ANNEX LPFS-X arises, courts or tribunals in the United Kingdom may request the Court of Justice of the European Union to give a preliminary ruling on the question. *The Court of Justice of the European Union shall have jurisdiction to give such a ruling and such ruling shall be binding on the referring courts or tribunals of the United Kingdom*" [emphasis added].

Vicarious liability for sexual abuse

Last week, we noted the case of "Victim T", who was awarded £317,000 in damages against the Christian Brothers for the sexual and physical abuse he had suffered while a pupil at St Ninian's residential school in Falkland, Fife.

The judgment of Sheriff McGowan, sitting in the All-Scotland Sheriff Personal Injury Court, has now been published as ***T v The English Province of the Congregation of Christian Brothers [2020] SCEDIN13***. Not one for readers of a nervous disposition, we're afraid. [With thanks to Scottish Legal News.]

"Due regard"

On 27 February 2020, the Church of England issued **guidance** on the duty to "have due regard" to the House of Bishops safeguarding guidance. This was in response to a recommendation of the *Anglican Church Case Studies: Chichester/Peter Ball Investigation Report*, in which the IICSA observed that the legal term "have due regard" was not well understood and that there was a need for greater clarity on the nature of the obligation (paragraph **496** of the Report). In its **response** to the Report of the Church of England's National Safeguarding Steering Group (a committee of the House of Bishops) stated that the Church would consider changing the nature of the legal duty as part of a review of clergy discipline legislation

The impact of this guidance on clergy is discussed by the Bishop of Manchester, The Rt Revd David Walker in his post on **ViaMedia.News** entitled ***Taking Advice – Gentlemen vs Players***, which we reproduced

here with permission. This indicates how this guidance on safeguarding, *and other specialist advice*, impacts on the parish priest and bishop who “remain at heart, generalists”. Bishop David notes:

“Clergy are called to comprehend scripture and theology, ethics and psychology, social sciences and pastoralia, and to apply simultaneously each of these and more to the specifics of individual lives in particular places...Specialist advice and guidance provide boundaries and safe space within which we can deploy our own training and skills to craft an appropriate response to the questions we face...Like the Player and the Gentleman in those cricketing days of yore, far from being implacable enemies, the generalist and the specialist are batting for the same side.”

Freedom of religion and belief

On Thursday, there was a Commons **debate** in Westminster Hall on freedom of religion or belief. The debate centred largely around abuses in territories for which HMG has no administrative responsibility and was answered by the Minister for Asia, Nigel Adams. He said that the Government had demonstrated “strong commitment to defending the right to freedom of religion or belief around the world” through close work with the United States, Canada and other European states. He pointed to current Government work to ensure that British diplomats and officials, “receive enhanced religious literacy training”, adding that the Government was working to establish the UK’s first autonomous global human rights sanctions regime:

“The UK Government will continue to show global leadership in encouraging all states to uphold international human rights obligations and in holding human rights abusers to account economies.”

Places of Worship Security Fund

In a Written Answer [**23481**] to Claudia Webbe (Lab, Leicester East), Victoria Atkins (Parliamentary Under-Secretary at the Home Office) said that over the first three years, the Places of Worship Security Fund had approved 134 grants, worth approximately £1.5m, to 63 churches, 49 mosques, 5 Hindu temples and 17 gurdwaras.

Belgium and religious slaughter

On 21 April, the European Court of Justice will hear argument on the legality under EU law of the laws passed by the regional parliaments of Flanders and Wallonia that effectively ban the religious slaughter of animals without pre-stunning. The ban was challenged before the Belgium Constitutional Court, which referred the matter to the CJEU for an opinion. EU legislation includes a religious exemption for non-stunned slaughter provided that it takes place in authorised slaughterhouses.

Cancellation of ecclesiastical law-related events

- **Ecclesiastical Law Society:** *ELS Day Conference and AGM*, scheduled for Saturday 28 March.
- **Scottish Episcopal Church (SEC):** *General Synod*, scheduled to take place on 11 to 13 June.

Quick links

- **Juan Pablo Perez Leon Acevedo & Thiago Felipe Alves Pinto, *Berkeley Journal of International Law* (2020 vol 37:3): *Enforcing Freedom of Religion or Belief in Cases Involving Attacks Against Buildings Dedicated to Religion: The Al Mahdi Case at the International Criminal Court*.**
- **Barry W Bussey, *Intersection: Church membership a matter of contract?***: “Exactly why would a court want to put its toes into the murky waters of internal church politics? It baffles me when they do”: on the recent judgment in *Aga v Ethiopian Orthodox Tewahedo Church of Canada* 2020 ONCA 10.
- **Tabitha Cave, *Lexology, Safeguarding – What’s Expected of School Governors?***: on safeguarding in light of recent work by IICSA and the Charity Commission.
- **Matthew Flinn, *UK Human Rights Blog: What’s in store for judicial review?***: rocky times, suggests the author.
- **House of Lords Library: *Coronavirus: emergency legislation***.
- **Bríd Ní Ghráinne and Aisling McMahon, *Int’l & Comparative LQ* (2019 Vol 68:2): *Abortion in Northern Ireland and the European Convention on Human Rights: Reflections from the UK Supreme Court***: full text currently available online.

- Cara Nuttall, *Family Law: Islamic Nikah ceremony and marriage validity*: on *HM Attorney General v Akhter & Anor [2020] EWCA Civ 122*.
- Ed Peters, *In the Light of the Law: Thoughts on the obligation to attend Mass during times of pestilence*.
- UK Muslim Council of Britain (MCB) and British Islamic Medical Association (BIMA): *Guidance for Mosques/Madrasas and Umrah Pilgrims*.
- Government of Jersey: *Advice on Social Distancing*.

Comments: a reminder

We have binned two anonymous comments this last week.

We just don't, as a matter of principle, publish anonymous comments

– however worthy and to the point.

Which they mostly aren't.

And finally...I

Burning calories: pig starts farm fire by excreting pedometer

Seventy-five square metres of farm near Leeds set alight after copper in pedometer battery reacted with dung and dry hay

(No animals were harmed in the preparation of this post.)

And finally...II

In the style of the *Yes Prime Minister* script on **confidential briefings**, Jim Pickard, Chief Political Correspondent, Financial Times has suggested another “irregular English verb”: “HE is “panic buying”; YOU are “over-reacting”; and I am “popping out to buy a few bits and bobs just in case”.

This entry was posted in **abortion, Article 9 ECHR, Buddhism, Canada, Charity Commission, charity law, children, Church in Wales, Church**

of England, CJEU, clerical abuse, constitution, criminal law, ecclesiastical law, education, England & Wales, health & safety, Holy Communion, IICSA, Islam, Judaism, Law and Religion UK, marriage & divorce, medicine & medical ethics, Northern Ireland, pews, property, religious slaughter, Roman Catholic Church, safeguarding, Scotland, Scottish Episcopal Church, sharia, Sikhism, UK Parliament, vicarious liability, weekly roundup and tagged abortion, Article 9 ECHR, Brexit, Canada, Charity Commission, charity law, children, Church in Wales, Church of England, CJEU, clerical abuse, constitution, criminal law, ecclesiastical law, education, England & Wales, health & safety, Holy Communion, IICSA, Islam, Judaism, Law and Religion UK, marriage & divorce, medicine & medical ethics, Northern Ireland, pews, property, religious slaughter, Roman Catholic Church, safeguarding, Scotland, Scottish Episcopal Church, sharia, Sikhism, UK Parliament, vicarious liability by Frank Cranmer. Bookmark the [permalink](#) [<https://www.lawandreligionuk.com/2020/03/15/law-and-religion-round-up-15th-march/>].