

LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD

CHURCH BUILDING: BELLS

RINGING OF CHURCH BELLS: CANON LAW AND POTENTIAL LIABILITY FOR NUISANCE AT COMMON LAW AND UNDER THE ENVIRONMENTAL PROTECTION ACT 1990

CHURCH BELLS

1. There are at present over 5200 churches in England with rings of five or more bells and there are over 3000 bells cast in medieval times that are still rung. Church bells have been ringing in England since the 7th century but change ringing was not introduced until the middle of the 17th century. Change ringing is an art (or exercise) unknown outside the Anglican Communion, where it is principally confined to England and Wales. Bells are rung to summon the faithful to worship, to celebrate weddings and festivals and to mark national thanksgivings. Muffled bells are sometimes rung at funerals and at times of local or national disaster. During times of national emergency it has always been understood that church bells would be rung as a warning of invasion. Despite the antiquity of this tradition and practice, complaints of noise nuisance sometimes arise.

CANON LAW

2. Canon F 8 “Of Church Bells” states that:

- “1. In every church and chapel there shall be provided at least one bell to ring the people to divine service.
2. No bell in any church or chapel shall be rung contrary to the direction of the minister.”

3. The Commission considers this Canon imposes a composite obligation: a requirement for every church to have a bell, the purpose of the bell being to ring people to public worship, and an obligation that the bell will be rung unless the minister of the place directs that it be not rung.

4. The minister may in his/her discretion direct that the bell be not rung because for example, it may be safe to toll but unsafe to ring or for other good reason. The bell not being rung or tolled in these circumstances would not give rise to an ecclesiastical offence or found a complaint of misconduct on the part of the minister, though there would, of course, be a duty for the PCC to take all reasonable steps, as soon as practicable, to effect repairs to enable compliance in the Canon.

5. Canon B 11 also bears on the matter: “... Public notice shall be given in the parish, by tolling the bell or other appropriate means, of the time and place where the prayers are to be said or sung.” Today the ringing of a bell is likely to be but one among a number of ways in which a church will communicate arrangements for public worship.

6. The canonical obligation for the bell to be rung applies to ringing before public worship only, and is limited to the tolling of at least one bell (see Canon F 8). This will embrace the most common use of bells: before the principal Sunday services in our churches (morning prayer, evening prayer and holy communion). Provision of more than one bell or the ringing

of more than one bell is over and above the requirements of the Canon. Similarly ringing bells on other occasions such as for bell ringing practice, by visiting campanologists and for change ringing of a full peal are all purposes beyond the scope of the Canon.

7. It seems likely that clergy requiring the church bells – or at least one of them - to be rung in a way demanded by ecclesiastical law, namely to call the parish to public worship, will have a valid defence to an action of private nuisance. If canon law has directed a particular activity there can arguably be no liability for nuisance caused thereby. This defence is likely, however, to be limited only to what would be strictly necessary to discharge the canonical obligation.

8. Canon law however makes no reference to ringing the bell or bells on other occasions. It may be customary for church bells to be rung after a marriage in church, at festivals, to ring in the New Year, to mark national thanksgivings, to warn of invasion or national emergency, or as a mark of respect to ring muffled bells before/after funerals or at times of local or national disaster; but the minister or churchwardens would not be able to pray in aid Canon F8 as a complete defence to a complaint of nuisance. Whether in any particular case legal custom permits the ringing of church bells on these occasions, which are not preceding public worship, has not been reported in case law, and the Commission does not offer an opinion upon whether or not the long established custom of ringing on such occasions would provide a “reasonable excuse” defence (see below) to a prosecution for statutory nuisance. This will always be a question of fact.

NUISANCE AT COMMON LAW

9. A nuisance at common law consists of an unlawful interference with a person’s use and enjoyment of his property. Making unreasonable noise is actionable as a nuisance and there are a number of earlier authorities which accept that the ringing of noisy church bells may constitute a nuisance (see *Soltau v De Held* (1851) 2 Sim NS 133, and *Martin v Nutkin* (1724) 2 P Wms 266). In the Australian case of *Haddon v Lynch* [1911] VLR 5 complaint was made of an unmelodious church bell rung in the valley of an iron roof which served as a sounding board. The judge made an order that the bell should not be rung before 9.00 am. In *Hardman v Holbertson* [1866] WN 379, however, an injunction restraining the ringing of church bells was refused on the ground that the noise was not sufficient materially to interfere with comfort.

10. All the circumstances of a particular case are relevant and will be taken into account by the Court in deciding whether there is a nuisance. Opinions differ markedly about the acceptability of noises, but it is ultimately for the civil Court to decide (*R (on the application of the London Borough of Hackney) v Rottenberg* [2007] EWHC 166 (Admin)). It is often principally a matter of degree or place or time of day. The question for the Court will always be the effect on ordinary, reasonable people. Relevant factors and circumstances will vary from case to case but may properly include the duration of the bell ringing, the time of day the bells are rung, the purpose for which the bells are rung, and the frequency of the ringing. Of course, the volume of noise created by the bells will be a key factor (and reliable measurements should assist the Court). The Court will consider volume together with all the other relevant factors, in the light of the particular locality and context.

11. There is no prescribed or objective standard of what is, or is not, a permissible level of noise. The test the Court will apply in deciding whether the level of noise constitutes a legal nuisance is the subjective test of the Court, guided by expert evidence (if available). But such

expert evidence is not determinative and all relevant factors and circumstances are to be taken into account. The Court exercises judgment as to where noise comes on a continuum between the mildly irritating and the intolerable. There is a need for an element of give and take, live and let live. But the personal vulnerability of an individual complainant(s) affected should be ignored in law (*Rottenberg*). The Court will seek to balance the competing or conflicting interests of all parties affected.

12. Those who complain about the ringing of church bells are invariably those who live close to a church. Often newcomers to the locality buy houses close to churches and then complain. This fact does not prevent such a person from proving an actionable nuisance and recovering damages or an injunction. Coming to the nuisance is not a defence. Nevertheless it is a general principle that in the case of a nuisance interfering with comfort and amenity, the local character of the neighbourhood is relevant in determining liability. A person who chooses to live near a church cannot reasonably expect the same freedom from noise as he would expect in some other place. Whether an actionable nuisance exists is not an abstract consideration; it has to be determined by reference to all the circumstances.

13. The duration of the interference is an element in assessing its actionability. Few, if any, complaints appear to have been made in respect of short periods of bell ringing prior to mid-morning or early evening service. Complaints have been made in connection with periods of week day practising where bells may be rung for an hour or so. It is not unreasonable that bell ringers should need to practise; but practising in the late evening is more likely to create a nuisance than the early evening. The test is whether the bells materially interfere with the ordinary comfort and amenity of those living in houses near the church. Each case must be determined according to its own merits. The courts are unlikely to restrain bell ringing practice except in extreme cases. The Central Council for Church Bell Ringers may assist or advise with its wealth of practical experience. It also maintains a complaints helpline.

STATUTORY NUISANCE UNDER THE ENVIRONMENTAL PROTECTION ACT 1990

14. Section 79 of the 1990 Act defines a statutory nuisance as constituting inter alia “noise emitted from premises so as to be prejudicial to health or a nuisance” (s79(1)(g)). Noise, which includes vibration, may fall into this category either because it is prejudicial to health or because it is a nuisance at common law, in the sense of interfering unduly with the comfort and convenience of neighbouring occupiers. The Act does not depart from the common law definitions and standards but it provides additional remedies through the magistrates’ court. Where a local authority is satisfied that a statutory nuisance exists or is likely to occur or recur, it is the duty of the local authority to serve a notice requiring the abatement of the nuisance or the prohibition of its recurrence (s80(1)). Such an abatement notice may require works to be done or steps to be taken to abate the nuisance. A person who receives such an abatement notice may appeal against it to the magistrates’ court (s80(3)). If there is no appeal, and if the abatement notice is not complied with, then an offence is committed. Such an offence may be prosecuted in a magistrates’ court. Independent of the local authority, a person aggrieved by a statutory nuisance may make a complaint to the magistrates’ court direct (s82(1)). If the magistrates are satisfied that the alleged nuisance exists they must make an order directing the nuisance to be abated and they may order the execution of the necessary works for that purpose (s82(2)).

15. The *Rottenberg* case concerned the level of noise in one half of a semi-detached house which was registered as a place of worship and had planning permission for use as a school and synagogue. As a result of complaints from the neighbour in the other half of the house

the local authority served on the respondent, an Orthodox rabbi, an abatement notice in accordance with section 80 of the Environmental Protection Act 1990. The High Court decided several points on an appeal by case stated:

- The decision whether the noise constitutes a nuisance is a subjective decision of the court and the opinion of environmental health officers that the noise they heard constituted a statutory nuisance may be rejected by the court. Whether the noise on the occasions witnessed and reported by the environmental health officers was a nuisance so as to constitute a breach of the abatement order was a matter of fact for the Court to decide on the evidence.
- If on a prosecution under the 1990 Act the Court finds that the offence of a breach of an abatement order has been committed then the Court has to decide the second point of whether the nuisance is created “without reasonable excuse”. The court in *Rottenberg* was not required finally to decide this point.

16. Some general comments may be made:

- (i) It is not for witnesses, however expert, independent or impartial, to decide whether noise complained about constitutes an actionable nuisance whether at common law or under statute (*Rottenberg* per Scott Baker LJ).
- (ii) The subjective judgment is that of the court. Parliament has not provided an objective standard to be measured by some yardstick such as the level of decibels of noise at particular times of day. The Court must take into account all the circumstances - and therefore many different factors. Technical evidence of noise readings is not required as a matter of law (*Rottenberg* per David Clarke J).
- (iii) Where an offence under the 1990 Act has been found to have been committed, the Court must further decide if the nuisance was created without reasonable excuse. In that regard it is suggested the requirements of Canons F8 and B11 (if the bells were being rung prior to public worship) would be an important consideration.
- (iv) Further, the fact that the noise is created in the course of religious worship, in premises registered and with planning permission for that use, could be a relevant consideration but if, for example, a service or other activity was conducted in such a way that the court, exercising its own judgment, found a statutory nuisance exists, then the fact that the nuisance has created in such circumstances, would be unlikely in itself to amount to a defence of reasonable excuse, nor would a prosecution be disproportionate (*Rottenberg* per David Clarke J).
- (v) Cases on statutory nuisance involving church bells do not appear to have reached the Law Reports and this is no doubt due to the common sense of the ringers and local authorities concerned. However, one such case relating to St Peter Harrogate was settled by compromise, and reported in the 28 January 1977 issue of *The Ringing World*. In the compromise ringing before services was restricted to 45 minutes and a further 60 minutes per week for general ringing. Bell practice time was restricted to 90 minutes between 6.00 pm and 9.00 pm on one week day evening. There were other generous special provisions for peal attempts.

17. Part III of the 1990 Act is the statute under which a local authority will act against bell noise. Remaining sections and codes of practice under the Control of Pollution Act 1974 deal with other kinds of noise, noise from construction sites and make additional specific provision for loudspeaker noise. If, as is the case in some church towers, bell recordings are played via a loudspeaker these provisions may be relevant, but not otherwise. The Noise Act 1996 relates to “dwellings” and provides additional powers to local authorities but seems irrelevant here.

SUMMARY

18. Every case remains a question of fact, degree and context. Evidence of noise levels is very relevant. If the level of comfort is reduced unacceptably, the ringing of church bells even for a normal period of practice of about one and a half hours may nevertheless constitute an actionable nuisance at common law giving rise to claims for damages and/or an injunction. It could also be prosecuted in the magistrates’ court as a statutory nuisance. It may therefore be wise for a parish to consider the question of abatement by ensuring that practices take place as early in the evening as possible. Consideration should also be given to the fitting of sound proof shutters to the inside of the belfry louvres which can be closed during practice periods. The ringing of bells for relatively short periods before public worship or after a wedding or at festivities is probably not actionable at the suit of those who have lived near churches for many years or of those who have bought or tenanted houses close to a church where bells are habitually rung. The tolling of bells, so long as it is not for an unreasonably long period of time, before public worship in compliance with Canon law should constitute a defence of “reasonable excuse” to a prosecution under the 1990 Act.

19. It may be advisable for the minister and churchwardens in consultation with the PCC to establish a policy as to when and for how long the bells in the church for which they are responsible may be rung. Such a policy may be helpful in dealing with complaints or defending an action in nuisance or establishing a “reasonable excuse” defence on being served with an abatement notice under the 1990 Act.

20. Furthermore a bells policy should, if practicable, take into account pastoral considerations such as the particular vulnerabilities of (potential) complainants eg the position of the elderly, the very ill, night shift workers etc.

CONTROL OF CHURCH BELLS AND BELL-RINGERS

21. The control of the church bells and bell-ringers does not belong to the PCC but jointly to the incumbent and churchwardens. Accordingly anyone who wishes to ring the bells must comply with their requirements which could, if they thought fit, include the levying of a charge.

WHO IS LIABLE

22. Clearly the persons who can give directions regarding bell ringing may be liable, usually the incumbent or churchwardens. However, the ringing of bells in a parish church which might constitute a nuisance is not actionable against the bishop of the diocese in which the church is situated (*Calvert v Gardiner and Others* (The Times 22 July 2002)).

Note: Information and advice on the conservation of church bells and bell-frames can be obtained from the Council for the Care of Churches and the Central Council for Church Bell Ringers.

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