

Parliamentarians are doing about them, as well as equipping constituents to lobby their MP.<sup>5</sup> Civil-society organisations, including churches, have a huge role to play in what happens next. If Britain is to take the lead in making the world an inhospitable place for regimes that seek to contravene Article 18, our government must be left in no doubt about the importance that citizens attach to this right. Politicians of all parties are aware that the same-sex marriage legislation has alienated many Christians, and are looking for ways to re-engage with churches. This provides Christians with a window of opportunity to be heard as they make the case for religious freedom.

## CONCLUSION

The work begun in June 2012 in setting up the group is not the work of months or years, it is the work of a lifetime. Tackling the neglected freedom of religion or belief will fall primarily to those in our schools and universities. It is within their lifetimes that the most seismic changes in religion or belief will happen. Where once sharing one's faith or belief with somebody on the other side of the world meant perilous journeys at sea, now it can be done with a tap of a mobile phone. The social-media challenge to accepted religious beliefs is bringing diversity of thought to the most physically and politically inaccessible areas of the world, and we are manifestly unready for the upheaval that this will cause. Those of us in the APPG are aware that our main focus must be to create strong foundations for future generations who will be forced to deal with the fallout of decades of neglect of Article 18.

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## Bats in Belfries (and Naves and Chancels)

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### THE PROBLEM

For many years, probably for centuries, bats have hunted and roosted in churches. They have now become less than welcome. In the eighteenth and

5 Freedom Declared, <<http://www.freedomdeclared.org>>, accessed 8 October 2014

early nineteenth centuries, a church in Bedfordshire placed a bounty of 6d per dozen on the heads of the animals, and in the 1930s the organist of Binsey found himself unable to distinguish the black keys from the white because the colours were obscured by bat droppings.<sup>1</sup> The problem, therefore, is not new. More recently, a debate in the House of Lords, initiated by Lord Cormack, a former Second Church Commissioner, produced a short-lived but vigorous spate of articles and letters in the national press. Complaints about the activities of bats came from far and wide, from North Yorkshire to Northampton and Oxford. The problem seems to be especially acute in East Anglia, however. The greatest cause for complaint was the damage caused to woodwork, floor tiles, alabaster memorials and monumental brasses by faeces and urine. As a moment's reflection shows, these are corrosive (the latter more so) and the effects can be disastrous.<sup>2</sup> In any case, where bats are present in any numbers, someone has the distasteful task of trying to remove the droppings and the urine stains on pews, window sills and floors each time the church is used. It is not unknown for bats to defecate on the heads of incumbents at the altar, which raises questions as to the consequences of bat infestation for the health of clergy, congregations and other church users, over and above the damage to buildings and their contents.

In 2013 the Royal Society published a paper that, in technical scientific language, concluded that bats play host to more viruses than rats or squirrels.<sup>3</sup> Natural England, the quango with prime responsibility for the natural world (of which more later) recognises that bats present at least three separate potential dangers to the health of humans. These are: infection from bites or scratches; as carriers of a rabies-like virus called European Bat Lyssavirus (EBL); and gastro-intestinal infection through hand-to-mouth transfer.<sup>4</sup> The risks of stomach infection where bat droppings or urine could infect Communion bread or wine are self-evident and a matter of common sense.

There may also be grave direct and indirect economic consequences. First, there is the obvious and recurring cost of removing droppings and urine stains, which may prove indelible in the worst cases. Second, because of the way in which Natural England exercises its regulatory powers, long delays may be imposed on the execution of maintenance or repair works so as not to interfere with the convenience of bats.<sup>5</sup> This can bear heavily on the (often limited) finances of parochial church councils, since grants for these works are often not available.

1 *The Times*, letter, 23 June 2014.

2 *The Times*, letter, 20 June 2014.

3 HC Deb 25 June 2013, col 30WH.

4 Natural England Technical Information Note TIN043, p 3, available at <<https://www.english-heritage.org.uk/content/imported-docs/a-e/commission-agenda/obatsinhistoricbldgsappi-decu.pdf>>, accessed 10 October 2014.

5 See *The Times*, 27 June 2014; *Daily Mail*, 10 July 2014.

## THE RESPONSE OF THE AUTHORITIES

The reaction of officialdom to the churches' plight has oscillated between the flippant and the disingenuous. In replying to debates where the point has been made, ministers have set the tone. In a debate on bats and churches on 25 June 2013, the then Under-Secretary of State for Environment, Food and Rural Affairs, Richard Benyon, began by saying 'I was dismayed that not long ago he [the MP who began the debate] had to bring yet another delegation to my office – a Trollopian group of senior clerics and others – to talk about the [bat] problem yet again.'<sup>6</sup> Much the same reaction emerged in the House of Lords twelve months later. There, Lord Ahmad of Wimbledon, a minister in the Department for Communities and Local Government said:

Turning to bats, I will share a confession with noble Lords. This is one of those issues about which, when I sit down as a Minister with my briefings, I have very limited knowledge. I certainly remember bats of a cricket kind, and my memories of bats in childhood also refer back to Batman and Robin . . . In fact historic buildings, especially churches, play an important role in helping to protect the conservation status of native bats. In a changing landscape, churches can represent one of the few remaining constant resources for bats, thus giving them a disproportionate significance for the maintenance of bat populations at a favourable conservation status.<sup>7</sup>

As will appear, the last two sentences were evidently read verbatim from a civil service brief, one wonders with how much understanding on the part of either speaker or audience.

Earlier in the debate Lord Cormack and the Bishop of Norwich, in whose diocese bats give rise to particularly acute problems, had spelled out yet again the burdens imposed on parishes, and asked for understanding. However, the minister chose to ignore their contributions, in effect telling peer and prelate alike that they could lump it.

One incumbent unsurprisingly raised the possibility of obtaining a licence from Natural England, which would allow the bats to be removed from the church, leaving her free to conduct services unmolested. A technical advisor to Natural England responded with, among other things, two comments. First, he declared that there were no known health risks associated with bat droppings, and that they could be safely swept up and disposed of on flowerbeds, as they make good fertiliser. He did not explain why ingestion of fertiliser presents no known health risks. When it was pointed out that he was factually wrong and that Natural

<sup>6</sup> HC Deb 25 June 2013, col 31WH.

<sup>7</sup> HL Deb 12 June 2014, col 575.

England's own literature contradicted his assertion, the Chief Executive took refuge in the euphemism that Natural England had provided a 'mixed message'. Others might have described the messages in stronger language.<sup>8</sup>

The second claim was that 'a licence [*sic*] will only be granted where it can be shown that the action authorised would not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'.<sup>9</sup> Insofar as the phrase 'favourable conservation status in their natural range' has any discernible meaning, it appears to require the applicant for a licence to show that there will be no risk to the relevant bat population, irrespective of other considerations. If so, that misunderstands the law, as will be seen.

The approach of officials, both ministerial and quango, seems to have been dictated by a body called the Bat Conservation Trust. That name disguises the fact that it is a pressure group dedicated to advancing the interests of bats. By way of example, it proclaims on its website its readiness to carry out 'bat crime investigations', presumably with a view to prosecuting those who incur its displeasure. The myth that bats present no significant health hazard also appears to have originated with the Trust, perhaps because of its concern for the bats' welfare.<sup>10</sup>

## THE LAW

The primary legal source is the European Union Habitats Directive 1994, incorporated into UK law by the Conservation of Species and Habitats Regulations 2010, SI 2010/490. Regulation 41 makes it a criminal offence, punishable with a fine or up to six months' imprisonment, to do almost anything which disturbs or inconveniences a bat. However, it is a defence to show that what was done was under and in accordance with the terms of a licence granted by Natural England as the authorised licensing body.<sup>11</sup> Natural England has power to grant licences in five circumstances relevant for present purposes. First, a licence may be given in order to prevent 'serious damage to property'.<sup>12</sup> Thus, where, as has happened, bat urine and/or faeces stain or pit woodwork such as rood screens or pews, floor tiles, alabaster memorials or monumental brasses, there would be a strong case for granting a licence which would lead to removal of the bats from the church.

8 Letters to the Revd M Shepherdson, Rector of Avebury, 9 May 2013 and 11 October 2013, as communicated to the author.

9 Letter to M Shepherdson, 11 October 2013. The letter quotes a judgment of the European Court in *Commission v Finland*, Case C 0342/05, and the Conservation of Species and Habitat Regulations, considered below. The attentive reader will recognise the language of the minister's speech in the House of Lords debate.

10 Bat Conservation Trust (BCT), 'Bats in churches', available at <<http://www.bats.org.uk>>, accessed 10 October 2014; letter from the Chief Executive of the BCT, *The Times*, 20 June 2014.

11 Regulation 53(1), (3).

12 Regulation 53(2)(g).

Second, if public health needs to be preserved, a licence may be granted.<sup>13</sup> So where, for instance, bats defecate on and around an altar and onto the celebrant clergy, most independent observers would see a strong case for a licence, perhaps even an unanswerable one. In this context, the protestations of the Bat Conservation Trust that there is no evidence of damage to health lack conviction. Third, a licence may be granted for the purpose of protecting public safety.<sup>14</sup> There having been no recorded instance of bats attacking church users, this ground may be more hypothetical than real. However, there is always a first time, and both English Heritage (owners of Stokesay Castle, which is home to a significant bat population<sup>15</sup>) and, as has been seen, even Natural England recognise the existence of the risk.

Fourth, a licence may be justified where ‘imperative reasons of overriding public importance [IROPI], including those of a social or economic nature’, obtain.<sup>16</sup> Given that freedom of religion and worship are rights given by human rights legislation, where bats seriously impair the ability to carry on religious worship it could be persuasively argued that this constitutes a reason of overriding public importance. Where, as happens more and more often, churches are used for educational and community purposes, the argument becomes proportionately stronger. Finally, a licence may be granted where to do so would achieve ‘beneficial consequences of primary importance for the environment’.<sup>17</sup> One can envisage instances where bats are causing or threatening serious damage to a building or artefact of architectural or historic importance, and where a licence to remove them would be more than justified, since that building would be a contributor to the environment.

Two further conditions remain to be satisfied. First, there must be no satisfactory alternative to the grant of a licence.<sup>18</sup> It takes no piercing insight to understand that, where there is a choice between compelling church users to endure their difficulties indefinitely and ending the ordeals by taking practical steps to get rid of the bats, there cannot be a ‘satisfactory alternative’. Second, the interference with the bats must not be detrimental to the maintenance of the population of the species at a favourable conservation status in their natural range.<sup>19</sup> The provenance of that Delphic provision has already been noted. Whatever the meaning, it cannot be supposed to carry a guarantee that under no circumstances may a licence pose a threat to the number of bats in the species. Among other things, the numbers of bats in the church in question and the

13 Regulation 53(2)(e).

14 *Ibid.*

15 *The Times*, letter, 2 July 2014.

16 Regulation 53(1)(e).

17 Regulation 53(2)(g).

18 Regulation 53(9)(a).

19 Regulation 53(9)(b).

rarity or abundance of the species as a whole will determine whether the requirement is met or not. So far, however, it seems that neither Ministers nor English Nature are prepared to balance these considerations against the protection of the bats no matter how much hardship is inflicted on the users of churches.

## CONCLUSION

Analysis of the law shows that there is no shortage of opportunities to grant licences which will allow the use of churches uninfested by bats. The question remains – what can be done in practice to get rid of them? The correspondence in 2014 produced an intriguing range of possibilities, including revving motorcycles, burning incense, installing and turning up the volume of the electronic muezzin in a mosque, and stuffed owls. A study by the University of Bristol in 2014 offered two scientifically researched solutions, namely ultrasound equipment and intense lighting. However, the efficacy of any one deterrent may vary with the species of bat. This, and the more homely remedies tried earlier, indicates that noise is the most promising way of discouraging the bat population.

In the end, bats are wild animals, and belong in the wild, not in buildings designed and used for purposes other than as bat sanctuaries. If there were greater willingness to recognise this, within the framework of the Habitats Regulations, then a reasonable solution would be to allow experiments, undertaken with specialist advice, with a wide variety of deterrents. Limited studies are in train, but in the meantime the nuisance from bats continues, as it has for many years. There is no need for amendment of the law, merely for a change of attitude.

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## The Confidentiality of Confessions in the Anglican Church of Australia

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On 1 July 2014 the General Synod of the Anglican Church of Australia passed the Canon Concerning Confessions 1989 (Amendment) Canon 2014, which creates