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COMMENT

Quaker Governance and Charities Legislation

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'Quakers in Britain', wrote Bill Bowder recently in the *Church Times*, 'have resisted the idea of appointing an "archbishop" to help them register their faith under the Charities Act 2006.'[2] Though the appointment of an all-powerful executive to head the Society in Britain was never on anyone's agenda, Bowder's slightly opaque report marks the culmination of a long, complex process that was partly the result of Quakers' own scrutiny of their governance and partly driven by external factors that they could not have foreseen.

In 1994, after a protracted consultation, Britain Yearly Meeting of the Religious Society of Friends (Quakers) (YM) approved the first edition of *Quaker Faith & Practice* (*QF&P*), which restored to a single volume material on Quaker witness, discipline and 'theology' together with the material on governance, practice and procedure.[3] At the same time, however, YM saw the need for 'a clearer corporate vision' before the church-government sections of the new publication could be significantly reviewed, and accordingly set in train a three-stage review – which, as it turned out, lasted almost ten years.

The interim central body of the Society that operates between Yearly Meetings is Meeting for Sufferings,[4] which consists of representatives of each Monthly Meeting.[5] In 1996, Sufferings set up a Memorandum Group to 'embrace the

1 I should like to thank my Friends Beth Allen (formerly Secretary of Quaker Life) and Christine Davis (formerly Clerk of Britain Yearly Meeting and of Quaker Stewardship Committee) for their helpful comments on this article in draft.

2 'Quakers reorganise to meet new law', *Church Times*, 29 December 2006.

3 *QF&P* 1994 combined the current version of the *Book of Christian Discipline* (first issued as a *Book of Extracts* in 1738 and regularly revised since then) with *Church Government*. For a century before that, the two strands had been issued separately.

4 In the early days of the Society, this was a regular meeting to explore means of redress from the 'sufferings' or legal disabilities laid on Friends: now commonly known simply as 'Sufferings'. The basic structure of the Society is a three-tier system of Meetings: Preparative (local) Meeting (PM) ⇔ Monthly Meeting (MM) ⇔ Yearly Meeting (YM); for a full discussion, see Frank Cranmer, 'Regulation within the Religious Society of Friends' (2003) 7 Ecc LJ and *QF&P* 10.03.

5 The basic connexional unit of the Society, roughly equivalent in area (though not in membership) to an Anglican archdeaconry.

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whole of our structures' and consider a constitutional review.[6] The Group's Report in 1998 made a number of recommendations to tackle widespread anxiety about structures and relationships, perhaps the most important of which was a proposal to look at the constitution of Sufferings itself and how it related to Monthly Meetings. Sufferings then decided to take the matter forward by bringing together the work of two existing bodies: the Local and Regional Groupings Working Party (which was looking at regional groupings and their relationship with local meetings) and the Representative Council Review Group (set up in 2000 to look at the role of Representative Councils and the Annual Conference of Treasurers in relation to the central committee structure). The new body – the Working Group on REpresentation, Communication and Accountability in our STructure (RECAST) – was given the task of consulting every local Quaker meeting, central and standing committee and representative council about the conclusions reached thus far on local and regional groupings, to 'identify the best ways of achieving representation, accountability and communication between individual Friends, local meetings, Yearly Meeting, Meeting for Sufferings and their committees', and to bring proposals for reform to Yearly Meeting 2005.[7]

While all this was going on within the Society, the general law on charities was under review on both sides of the border. The Scottish Charity Review Commission, established in March 2000 under the chairmanship of Jean McFadden to review the law relating to charities in Scotland, reported in May 2001,[8] while at about the same time the Cabinet Office Strategy Unit was undertaking a review of the law in England and Wales, reporting in September 2002.[9] McFadden reported first, recommending the establishment of a proper system of registration in Scotland[10] (and, incidentally, influencing the course of the English review), while one of the principal outcomes of the Strategy Unit review was a decision that excepted charities with incomes above a new proposed registration threshold should for the first time be required to register.

The position of excepted charities (a category that includes the Society of Friends) had already been under review for some considerable time. In 1996, the Charities (Exception from Registration) (Amendment) Regulations (SI/1996/180) had extended the temporary exception of certain religious charities to 1 October 2002, and in June 2002 the temporary exception was further

6 Yearly Meeting of The Religious Society of Friends (Quakers) in Britain: *Supplement to Documents in Advance: the RECAST report to Britain Yearly Meeting 2005* (London, 2005), p 5, para (a). Available at <http://www.quaker.org.uk/shared_asp_files/uploadedfiles/d50f182c-9b89-4a96-b3b9-589d8613610d_recastym.pdf>, accessed 6 January 2007.

7 Ibid, p 4, para (c).

8 *CharityScotland* [sic] – *Report of the Scottish Charity Law Review Commission*.

9 *Private Action, Public Benefit: a review of charities and the wider not-for-profit sector.*

10 Prior to the establishment of the Office of the Scottish Charity Regulator in December 2003, charities in Scotland were, in effect, supervised by the Inland Revenue.

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extended to 1 October 2007.[11] The wider debate about transparency and good governance within the voluntary sector led to legislation in both jurisdictions: the Charities and Trustee Investment (Scotland) Act 2005 (asp 10) and the Charities Act 2006 (c 50) (first introduced into the House of Lords in 2004); and, as a result of the McFadden Commission's and the Strategy Unit's recommendations, the new legislation will oblige almost all charities to register with the Charity Commission in England and Wales or with the Office of the Scottish Charity Regulator in Scotland.

The RECAST Report presented to Yearly Meeting in 2005 suggested that the trusteeship function of Sufferings should be passed to a smaller body of trustees and that Sufferings itself should concentrate upon the discernment of key directions for future work and service within the Society. As the *Handbook for Trustees of Quaker Meetings* observes, 'Trusteeship as a concept is not in any way new to Friends. They are quite familiar with the idea of taking responsibility for the assets of the Society and of looking after the Society's affairs with integrity, in accord both with good practice and with legal requirements'.[12]

At first, however, the prospect of registration and a body of trustees separated from Sufferings seemed to cause some Friends considerable pain. There was a certain degree of reluctance to accept that a separate body of trustees would be directly responsible under the law of trusts for acting in the interests of the trust rather than as agents of Sufferings or YM; and at an informal gathering on trusteeship at Yearly Meeting in York in 2005 one Friend went so far as to suggest that the simplest course might be to give up charitable status altogether – only to be told, politely but firmly, that to do so would require primary legislation and involve the promotion of a private bill.[13] That said, however, it is arguable that any body of Quaker trustees that was foolish enough to ignore the sense of YM or Sufferings as recorded in its Minutes would in any case be failing in its duty.[14]

There were other issues in the reform of English charity law that concerned the Society. Most importantly, the Charities Bill as originally introduced contained an entirely reasonable provision requiring that any change in the powers or procedures of a charity that had members (which many do not) should be made only with the consent of a majority of those members voting at a meeting convened for the purpose. This caused Friends considerable problems of a kind that ministers and civil servants could not possibly have foreseen. Apart from the obvious practical difficulty of convening a meeting of, potentially, 16,000 people, the proposed requirement for a majority vote was absolutely contrary to Quaker business method. Friends do not under any circumstances whatsoever take votes in

11 Charities (Exception From Registration) (Amendment) Regulations 2002 (SI/2002/1598).
12 Quaker Stewardship Committee (third draft: nd), para 1.2.: available at <http://www.quaker.org.uk/Templates/Internal.asp?NodeID=93046&intIstParentNodeID=89723>, accessed 6 January 2007.
13 I was present at that meeting.
14 The view of Christine Davis, who was intimately involved in the detailed discussions about trusteeship.

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business meetings; instead, the Clerk of the meeting offers a draft minute that expresses the sense of the meeting – and, if the first draft will not serve, continues drafting until a wording is found that those Friends present find acceptable.

After representations from the Recording Clerk[15] and an intervention by a Quaker peer, Lord Shutt of Greetland, the first version of the Bill was amended in the Lords to take account of the problem; and the 2006 Act makes provision in section 42 for a resolution

> . . . passed at a general meeting of the body either—
>
> (a) by a majority of not less than two-thirds of the members entitled to attend and vote at the meeting who vote on the resolution, or
> (b) by a decision taken without a vote and without any expression of dissent in response to the question put to the meeting.

During the Commons standing committee stage the Minister gave an assurance that the proposed wording of the section was 'perfectly consistent with the notion of consensus, which the Religious Society of Friends understandably thinks is important . . . I am assured. . .that the expression of dissent is taken to mean for the process of voting, not the previous discussion'.[16] If the matter were ever to be tested in the courts, presumably that statement would be good enough evidence of legislative intent in terms of *Pepper v Hart*.[17]

Paradoxically, at the root of recent problems over trusteeship has probably been the fact that the governance of the Society is so very much 'bottom-up'. 'Oversight' among Friends is exercised not by any individual but by each Monthly Meeting collectively: a practice that comes near to realising the episcopacy of all believers.[18] There are no clergy, the Society has very few permanent salaried employees, and elders and overseers are appointed for three-year terms. So, because Friends are not accustomed to being told what to do by ecclesiastical officialdom, they tend to be very jealous to protect the participative nature of the Quaker business method. But the logic of the new situation brought about by the impending abolition of excepted status has proved irresistible, with the result that the Society has now established a body of seventeen trustees and, for the first time, adopted a Governing Document,[19] while Sufferings itself is in the process of coming to terms with its new role as the trustees' advisers.

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15 The senior salaried officer of the Society.
16 HC St Co Deb (Charities Bill [*Lords*]) (2005–06) 11 July 2006 c 231.
17 [1993] AC 593; [1993] 1 All ER 42.
18 'When early Friends affirmed the priesthood of all believers it was seen as an abolition of the clergy; in fact it is an abolition of the laity. All members are part of the clergy and have the clergy's responsibilities for the maintenance of the meeting as a community.' (*QF&P*, 11.01, para 7).
19 Bowder, 'Quakers reorganise to meet new law'.

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