

Church of England Clergy Terms of Service

Amicus broadly welcome the Church of England's terms of service as set out in the papers presented to the February 2007 General Synod. However we believe that there has been a missed opportunity in many areas, and we have concerns in others.

This paper summarises these concerns and in line with the consultation on the draft changes to the papers presented to the February 2007 General Synod we are submitting this paper prior to 2 April 2007 consultation deadline.

Draft Paper GS 1637-9X

1. Paragraph 5(a) Whilst clergy are to remain 'office holders', it is important to define the "employer" for purposes of grievance, discipline and appeals, including those to an Employment Tribunal. It should be made clear that this relates to Regulations 33(2). It should also be made clear that application to an Employment Tribunal shall be the same method as that for secular employment as laid out in the Act.
2. Paragraph 5(e), with regards to summary removal should say that this will only be used in cases of gross misconduct. I believe this should be made more explicit here. A reference as to what constitutes gross misconduct should also be made.
3. The objective that HR provision, section 5(f) should "ensure fairness and clarity of expectation in appointments and the development of an individual's ministry" will be difficult to achieve if contracted on an as and when basis. This role needs to be far more proactive to have any real effect. Also continuity of involvement with the church is essential to make any real changes, for example cultural changes. We believe that HR posts should be managed from the centre, but places within dioceses or a grouping of dioceses, that these posts should be substantive within the Church of England, and that their role should be proactive as well as reactive.
4. Amicus believes that section 6, on the removal from office is discriminatory on (i) the removal from office for the reason of disability, and (ii) the removal from office on the grounds of reaching "retirement age". We believe that the Age Regulations should apply.
5. We believe that the impact of the Stewart/Percy cases are significant, paragraph 15, and have set a precedent in the Employment Tribunal Courts to bring of cases of discrimination. It is not right, let alone expensive if cases of discrimination will be challenged by the church in the courts each time they occur.
6. For paragraph 19 we believe that the situation set out brings confusion and unfairness to the clergy. If a minister experienced detriment/unfairness on the "employee" part of the post whilst being an office holder, we believe that they would have employment rights for this part of the post, and would be able to make comparisons with other "employees" fulfilling this role, even if for the main of their post they are an office holder.
7. In paragraph 35, under Common Tenure, should an office holder be removed from office, i.e. under a pastoral re-organisation, can there be a period of time when they can remain occupants of the house so as not to render them homeless, and provide opportunity for alternative accommodation to be found. We would suggest

this to be for a minimum of 6 months, and longer in exceptional circumstances, although this could be shorter if this facility is not needed by the office holder.

8. Again in paragraphs 44 and 45 concerning HR provision. We are very concerned at the nature and level of HR provision to be invested in within the Church of England. We believe from our experience in Human Resources, that adequate and continual supply of HR is essential to ensure that there is consistency in application as well as an expertise in the organisation and its workings established. If HR is to provide a pro-active service, then a more consistent provision of HR is necessary.
9. In paragraph 51, Amicus continues to advocate that there should be national guidelines for MDRs to ensure consistency in the way that they are conducted, their criteria, and the support that is provided, i.e. training. This is particularly important as we see inconsistencies in the way that things are dealt with from diocese to diocese, which does not build confidence in the system. This is even more evident for clergy who change to work for a new diocese, if operating differently.
10. Paragraph 52 raised many issues for Amicus. In subsection (a) Amicus believes that with DRACSC not approving the diocesan schemes is a retrograde step, since this would ensure a standard for the system, from an expert and central source, and build the confidence of clergy in the system. In subsection (b) we hold that MDRs should occur annually, but recognise that the church must build capacity to achieve this, so a date should be set for diocese to build resources so that this can occur. For subsection (c) we continue to believe that archdeacons should not conduct MDRs since there is a potential conflict of interest if dealing with capability/disciplinary issues. Finally in subsection (d) we believe that the reviewee should write the summary since this is about them and therefore they will have greater insight into their post and circumstances than someone looking at this from the outside once every two years.
11. Finally it should be made explicitly clear in paragraph 53 that the capability process should not be initiated in the MDR process.

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12. Section 1 of the draft Measure identifies groups of people to whom the Measure would apply. 1(1)(h) deals with those whose ministry is outside the structures of the Church of England but who officiate on the basis of a licence granted by the diocesan bishop. This does not appear to cover either services chaplains who receive a licence with global remit from the Archbishop of Canterbury or those who have permission to officiate but no licence for their specific ministry.
13. The status of those ordained in other traditions who exercise a ministry within the Church of England, or who minister on behalf of a third party, such as an ecumenical body, where they receive some form of compensation package from the Church of England (stipend and/or housing for example) is not clear.
14. Section 2 is an enabling section but does not specify how members of General Synod are to be made aware of any Regulations laid before Synod and how long they have to raise an objection or request a debate. Presumably this is covered in General Synod's Standing Orders.

15. In section 3(3), question is raised as to why an office holder cannot work beyond the age of 70 as laid out in the Age Regulations for secular employees.
16. Clarification of subsection 7(2) regarding the date of vesting for a parsonage house where the right of presentation has been suspended and a Priest in Charge is in post would be appreciated.
17. Subsection 8(2) provides Parsonage Boards with the power to carry out improvements to a parsonage house after consultation with the office holder. It would be better if such alterations had to be with the consent of the office holder, provided that such consent may not unreasonably be withheld.
18. Section 10 provides for the issuance of Codes of Practice on how to apply the Measure. Such Codes are for guidance and do not have the force of law. As a result there may well be times when they are not followed, to the detriment of the office holder and/or their family. Given the potential impact of such Codes it is unfortunate that Subsection 10(4) makes provision for them to be laid before General Synod rather than debated there.
19. Schedule 1 paragraph 11 has a glaring typo where an extra paragraph break has crept in between (b) and (c).
20. Amicus believes that paragraph 11(6) would contradict the findings of the Stewart case from the legal advice that we have received.
21. In Schedule 4 paragraph 16 the last three words should presumably be “here shall be” rather than “her shall be”.

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22. Regulation 7 of the draft Regulations specifies what is meant by “reasonably accessible” in Regulation 4(2). While Measures as passed may be said to be reasonably accessible in that they are available on a website the same cannot be said of Regulations, Codes of Practice and Canons. These may change from time to time and it is not always easy to know whether or not a particular Code of Practice or Regulation exists, or the current wording of one that might have been amended. These documents should be made available on the website.
23. Regulation 9 should again make it clear that application to an Employment Tribunal will be through the use of an ET1 form, and who the respondent should be (although this second issue is covered elsewhere).
24. Regulation 10(3) and (4) deals with the provision of statements of stipend and of deductions there from. It is clear that an employment tribunal can order the restitution of any un-notified deductions. However there is no reference to the restitution of any deductions which may or may not have been notified but which were not authorised by the office holder or some competent authority. Further there is no reference to the recovery of costs that may have been incurred as a result of the un-notified deductions.
25. In Regulation 14(2) we believe that the period of 3 months is too short to properly take care of widows/widowers and therefore this should be extended to 6 months.

26. Amicus has already submitted its concerns regarding the ministerial development reviews referred to in Regulation 18. There are grave concerns regarding the objectivity of these reviews, the maintenance of comparable standards between reviewers and the problems posed by reviewers not necessarily being fully acquainted with the context of the reviewee's ministry. As already stated the frequency of MDRs should be increased to annually, under 18(1). In Annex 5 of GS 1637-9X we refer to our earlier comments. As a union we have not seen the special scheme for bishops, and believe that we should to make comparisons, but as we have members who are bishops, it would be right that we reviewed the scheme too, subparagraph 6(d).
27. Regulation 19 requires office holders to participate in Continuing Ministerial Education arrangements approved by the bishop. There is no apparent consideration as to whether the proposed arrangements are relevant to the office holder's situation as regards objectively identified weaknesses, the demands of the office held and their particular situation among other factors. Good practice requires that continuing professional development should be in regard to needs agreed between the post-holder and their reviewer that will assist their continuing professional development and/or facilitate the performance of their duties and responsibilities.
28. The entitlement to Annual Leave specified in Regulation 22(1) makes no comment about the entitlement of those in part-time posts. Further there is no requirement that annual leave must include up to a certain number of Sundays in any year. It specifically states the statement of particulars may state that annual leave may not be taken on Sundays, however if suitable arrangements can be made there is no reason why this should be so.
29. Special leave as provided for by Regulation 22(5) sensibly needs to be flexible in its extent but some indication that a minimum period for the purposes of removal and resettlement would be helpful.
30. Regulation 23 on parental and carers leave should match the minimum standards of the provisions available for employees.
31. While Regulation 24 allows for time spent on public duties the bishop is not necessarily ideally placed to be objective in determining how much time an office holder may reasonably spend on them. We believe that this regulation should also cover the right to time off for trade union training.
32. Whilst Regulation 25 addresses the need of the mother in ante-natal care, it doesn't address the need of the family. Spouses of pregnant wives should be able to attend ante-natal classes and appointments too. We believe that this is an important change to be made.
33. The reduction in the number of stipendiary posts over the coming years means that clergy seeking a new post will find the number of vacant posts lower than it would be in a "steady state" situation. As a result someone in a post that is specified under Regulation 29(1) to be of limited duration may find it exceptionally difficult to secure another position when their appointment is due to be terminated. This would seem to be contrary to the principle of common tenure whereby all office holders are to enjoy the same security. We also believe that the issue of retirement age

needs addressing, since an office holder may be fully able, and want to work full time beyond 70. We believe that the arrangements for employees who wish to work beyond the retirement age should apply. This will avoid issues of age discrimination arising too.

34. Regulation 30 provides a degree of compensation for those whose office ceases to exist as a result of pastoral reorganisation. They will face similar difficulties to those whose appointments are limited under Regulation 29. Indeed their situation may be worse as they could be perceived as the diocese's hit-man, resulting in a less supportive reference from the present parish and a more suspicious view by parish representatives. The adequacy of the proposed level of compensation needs examination in the light of the whole situation.

35. The proposed capability procedure causes great concern. Firstly we believe that the title is no longer appropriate. Many employers are changing the title of their Capability Procedures to "Managing" or "Improving Performance Procedures" As the Amicus submission on ministerial development reviews makes clear there are real concerns that the person conducting the ministerial development review may not be fully aware of the constraints affecting the office holder's ministry. It may well be that they see certain matters as ones that need greater attention and do not fully appreciate others which of pressing urgency. The same factors would apply to the determination of matters to be considered under the capability procedure. We believe that there needs to be a greater emphasis of monitoring improvements, with regular monitoring/supervision to help enable an office holder to meet the improvements set, and that this support could be provided by a third party, a "mentor", under the authority of the person who has set the improvement in performance objectives. The reason for this is that it has to be the objective of such a policy to ensure that the office holder succeeds, sadly this policy does not provide enough support for this, and there is therefore a good chance that an office holder would fail under this process, especially in the light that they will be very vulnerable at this time. We also have real concerns that the process will not weed out vexatious complaints by members of the parish, for example, and that the investigation stage does not go far enough in trying to preclude these issues. Also mediation and reconciliation should be offered from day 1 of the complaint if individuals are concerned, since this is a major issue that we deal with, and is poorly handled by the Church of England currently, and this procedure does not address these relational issues. Finally we believe, is normal, that at each stage there should be three options – improvement is met, progression to the next stage of the process, and the addition of an extension given to the office holder should be included, since often the person has improved their performance but not yet reached the desired objectives, and therefore an extension should enable them to do this, rather than punish them for not making the progress in the original time perceived as necessary. Appeals should be available to be made at every stage of the process not just at dismissal. This is not worded clearly. Amicus believes that this procedure should not come into force until the appointment's process has been reviewed, since people may end up in this procedure because the appointment's process has not done the individual justice.

36. Incapability due to illness. Amicus is very clear, as are the vast majority of employers today that this should not be dealt with under capability, but a separate managing sickness policy. This mustn't belong here as illness, physical or mental comes from a different route, and is not within the control of the post holder

whereas capability can be. Also we believe that this process is out of date by only referring to the Disability Discrimination Act and not the Disability Act, where definitions have been upgraded, although still not perfect. We strongly advise that this section is put under a different heading.

37. Regulation 31(7) provides for the approval of draft directions by the Archbishops' Council without them being debated in General Synod. Given the potential implications of any such directions there should always be some debate in General Synod.
38. Any directions under Regulation 32(1) regarding the grievance procedure need to be communicated directly to all office-holders so that they have ready access to the current procedure. In the case that a post holder is under a different procedure, and then lodges a grievance, i.e. for bullying or not following the procedure properly/fairly, Amicus believes that the process should be put on hold whilst this issues is addressed, before returning to the procedure. Wherever this is applied the outcomes of the case are not only fairer, but better for all concerned. It should be made clear which process takes precedence.
39. Given the structures of the Church of England it may be difficult to ensure sufficient objectivity within those structures for the proper consideration of grievances. It might be desirable to make provision for the involvement of ACAS in grievances which are not resolved at an initial meeting provided for in Regulation 32(2)(c). Amicus strongly advocates mediation and reconciliation whenever possible, and believes that this would be supported Biblically.