

Clergy Working Group – The Way Forward

Introduction

This paper is written to progress the Amicus position, from the previous papers submitted to the DTI process, as a means of resolving some of the issues that have been raised as a result of the Working Group. However it is not to replace the previous submissions.

Present at the DTI's Clergy Working Group there were clear differences in views as to how employment rights will impact on the different faith organisation, differences in authority of those represented and their ability to implement, differences in structures, traditions, cultures and human resources, both in terms of methodology and capacity.

However, this is true of any collection of employers, so the challenge is to identify the need and then to determine how this is implemented.

The Case for Employment Rights

Amicus has argued for a long time that Section 23 rights contained in the Employment Relations Act 1999 is a necessary baseline for all workers, no matter if categorised as "Office Holders" or not. The key to this is the evidence base that not only our members have expressed through successive surveying, but also individual cases that Amicus has been involved with, and the limitations to find satisfactory resolve due to the lack of procedure and fair processes of restitution.

Amicus is looking for the same employment rights to be applied to "Office Holders" as to all other workers. It is important to note at this stage that these rights form the basis of a minimal standard, and with implementation an individual that chooses not to exercise their rights if they so chose, but can find alternative ways of resolving their issues. Having that choice is therefore the principle to be won here.

Amicus would want to see these rights extended into other areas as well, including health and safety and discrimination areas.

The Employment Contract

There is currently a mix in practices with regards to the issuing of Employment Contracts. The contract is there to benefit both the employer, as it is a measure of minimal obligations for the employee to adhere by, and of benefit to the employee as it provides a minimum of expectations from the employer. With clarity brought to the employment relationship, this should bring greater transparency and reduce areas of dispute. Therefore this is of benefit to both parties.

The second issue is that the Employment Contract has to be enforceable. Without the legally enforceable element, our members contracts are of little value when issues are contested. Only statutory employment rights would produce this. If either party does not fulfil their obligations under contract there needs to be a mechanism for redress, and to enable correction. Here Amicus believes that grievance and disciplinary processes are adequate to address this (see below).

Thirdly the level at which the Employment Contract is held within a faith based organisation has to be identified. As with different employers in secular employment, Amicus recognises that this cannot be a one size fit all model. However we would argue that this has to be at the highest possible level within each organisation. The reason for this is that it would enable there to be sufficient levels of appeal within procedures, and would again mirror the good practice as set out in secular employment.

For example, within the small congregational churches, some have central bodies that normally provide the “Terms of Service” which their associated churches adhere to, thus there is a national body or headquarters where the employment contract could be held with. In some, however, we recognise that the relationship would have to be at that church level as there are no higher relationships that could be formulated. Within the Jewish Community we would argue that this relationship was with the Chief Rabbi’s Office. Within the Church of England we would see this relationship sitting with the Church Commissioners, and so on.

We believe that this model would facilitate best practice across each faith organisation.

Grievance and Discipline

The processes for grievance and discipline used within secular employment do set a model for addressing dispute within the employment relationship. In discussions with the faith organisations, it would appear that this is an appropriate model to adopt, together with the promotion of the ACAS guidance as a model of good practice.

At all stages of the process, we believe that individuals should have the right to representation, providing not only transparency, but also protection and advocacy for the individual.

Clearly there are arguments for less formal processes to be adopted, however we have not heard this argument once from amongst our members, only the reverse to be true. If individuals so chose, additional opportunities for seeking conciliation on issues should be made available within the processes, however this should only be applied by the agreement of both parties, should not unnecessarily delay the process, and should not prejudice the case from continuing from within the formal process. If this is to be adopted, then

conciliation must be independent, with the option of facilitation through an independent external organisation like ACAS.

There needs to be processes built within the procedures to enable there to be stages of appeal against the decisions made. We would argue that wherever possible there should be more than one appeal stage. Each appeal must be heard by a different panel. Again for the larger organisations, the personnel available should mean that this is possible, with each stage heard by a progressively more senior panel. For the smaller organisations, the appeal stages must consist of separately constituted panels. Where there are national bodies or headquarters, it would be envisaged that procedures would start at the “church” level, and then appeals would go upwards to their national bodies. The members of each should not discuss the case between them. In a final stage appeal we would also advise that someone could be drawn from a panel of experts.

The panel of experts could consist of individuals from a range of faith organisations who are fully trained in employment practices and who could contribute in this way.

Final restitution should take place either through binding arbitration through ACAS, with the agreement of both parties, or at an Employment Tribunal. Whilst it is always desirable to settle cases at the lowest possible level, on rare occasions, cases need the expertise of the tribunal system to bring conclusion to such matters. As outlined within the Church of England’s reports conclusions, the ET is the right body to do this, with the expertise in the interpretation of employment law.

We do understand that in cases that might reach an Employment Tribunal, there could be an irrevocable breakdown in the relationship between the Minister of Religion and his/her congregation. In such circumstances we would still want to see reinstatement, if appropriate, which could mean that the employer needs to seek suitable alternative employment.

Grievance

If individuals do not wish to raise issues of grievance, as some may argue or determine this on the basis of their religious doctrine, then they are at liberty not to do so, and to try and resolve their issues through a more informal process. However in having the processes available, this would provide the protection of the most vulnerable that would need to rely on these.

Due to the nature of some grievances, it is felt that some system of a whistle-blowing would be helpful through an independent ombudsman, or someone of this stature. Currently there is a lot of serious issues that are occurring within faith organisations, some criminal in nature (incitement to violence, paedophilia, etc.) whilst others are not, and yet have got serious consequences for staff working in these organisations. Having the ability to raise these issues for investigation without being identified by the “employer” is important for our members.

Some issues that have implications for individuals, are also cause of collective concern. There does need to be a mechanism in looking at these issues, including transparency in appointments, selection for redundancy or management of re-organisations; in addition issues of pay, health and safety, development and equality are all issues that Amicus would like the “employer” to address.

Disciplinary

We would advise all organisations to address issues of discipline before the stage that requires the use of procedures. By offering early counselling over conduct or in the case of capability issues, making provision for appropriate training and support, many cases that would require the use of Disciplinary Procedures can be averted. If an individual went through a process of counselling we would still want them to be able to be accompanied by a representative, if they so chose.

However, if an individual believes that their case would be better represented within a Disciplinary Procedure, they should have the right to request that this is used.

In cases of dismissal, Amicus believes that clear criteria needs to be set out as to what would constitute gross mis-conduct to warrant such recourse.

Each faith organisation does have its own structures, and therefore in identifying each as an employer, would have the latitude as set out in the legislation to tailor make the processes that match those of the organisation. However with the limited Human Resource functions within many organisations, Amicus would support the concept of a HR partnership forum to assist with this.

Right to Representation

The right to representation at all stages of all procedures is essential. Members need to have someone to act as their witness within meetings, to support them through their case, and if necessary to be their advocate. The majority of cases that Amicus is involved in within this area also site a measure of bullying or harassment, management not adhering to processes, or discrimination; this often leading to stress and ill health. The presence of a representative, greatly reduces the incidence of this from occurring, and can bring so much benefit to the individual’s own ability to cope with the process, as well as ensure that the process is being followed properly.

Work-Life Balance Rights

Amicus believes that there should be the full measure of work-life legislation applied to all ministers of religion, from working time to family friendly provision.

Whilst it would appear that ministers work over the 48-hour threshold each week, issues regarding managing congregational/community expectations is also key. The issues regarding an employers duty of care and the health and safety issues are key drivers in regulating working time in secular employment and are not diminished for the clergy, we cannot allow this issue to be regarded as different for this category of workers. Amicus would recommend that the working time regulations are therefore enforced, however the definition as what is classified as working time also needs to be given. A minister may volunteer to work in excess of these hours on other ministerial duties if he/she so chooses. In bringing regulation to working time, it will also help identify if further resource or support is needed within the faith community, as well as support different models of flexible working, including part-time working. The arguments made for excessive working time are those that Amicus has heard from a wide range of employers. Clearly application of the Working Time Regulations needs proper planning.

Ministers also need to have the opportunity of the minimum of 4 weeks leave without having to be “on-call” during this period. Proper rest breaks during the working week are also necessary, including at least a 24 continuous period of rest. During these periods there needs to be arrangements built in for emergency cover. Team ministry models were cited as good examples where responsibilities could be shared, or the use of “locum” services which would need to be established for such occasions.

There would appear from the discussions that all other family friendly measures from flexible working to parental provision would be of benefit to all.

Human Resources

Amicus recognises that there is a range of human resource expertise currently available or planned within each faith organisation. It is essential that inexperience or the lack of resource should not be a determinant of whether ministers of religion attain their employment rights. However the transition into managing employment rights should be addressed.

In Amicus’ discussions with its members, as well as with some of the faith-based organisations, we have mooted the concept of a partnership forum to share good practice and to look at other areas of employment. Whilst Amicus is seeking more formal relationships with each of the organisations in their own right, it would appear helpful to establish a partnership. In particular this would benefit the smaller faith communities where there is limited capacity for human resource functions. Amicus would want to play a role within such a forum.

As part of this we would recommend the setting up of a panel of experts trained in process that could help advise panels conducting grievance and disciplinary procedures. This panel would draw on individuals from different faith communities and undergo training (possibly by ACAS and funded by the

DTI). They could then be called upon to provide advice, or have a presence at final appeal stages. The benefit to organisations in volunteering to participate in the panel is that they will receive the training, the benefit to organisations in adopting a panel member for support, is firstly that it brings in an independent measure to the case; and secondly would mean that organisations where the panel is made up of mainly volunteers or non-HR professionals would also have assistance.

Finally a process of mentoring or supervision has been identified as a means to improve support for ministers of religion. This has been identified by our members as being key, however would need to be outside of the management process. In places where this does occur, it is reported to be extremely successful.