

Amicus Response to the Statement of Good Practice

Introduction

Amicus recognises and commends faith organisations in their desire to enshrine good practice into their policies that govern the working lives of Ministers of Religion, and we also congratulate them where these are put into practice to good effect. However the Amicus campaign to see Ministers of Religion enjoying the same protection in their employment as secular employees, which has spanned more than a decade, has not arisen out of fundamental idealism or even a means of achieving equality across the spectrum of employment relationships, but out of the recognition that when things go wrong, there is no recourse for the Minister in question.

Resulting from our experience and expertise in dealing with situations when the inequality of power in the employment relationship is such that an individual has nowhere to seek restitution through a system that can provide impartiality to the judgement, has meant that in reviewing the DTI's outcomes of the working group, Amicus has applied a set of tests to see if the proposals would make any difference to the vulnerable members that we represent. Incorporating this, with our campaigning objectives, and our compromises in trying to seek resolve in moving forward with others, forms the basis of this document.

Amicus has never argued that our members who are Ministers of Religion should be exempt from discipline, or such measures, should that be the just outcome of any process, however the process needs to be fair in order to make that judgement. Likewise, we believe that Ministers of Religion should be able to find recourse for their grievances, and come to expect that they will not suffer detriment on the basis that their establishment does not have an obligation to put into practice that which secular employers are obliged to under the legislation. Our expectation is that, resulting from their faith, those responsible for the employment relationship would exceed the standards set for secular society.

The Government has now unique opportunity to remove the anomalies of the past. The Employment Relations Act 1999 made the provision, through Section 23, for categories of atypical workers, including office holders in faith organisations or Ministers of Religion, to enjoy the same protection as the vast majority of workers. Without these basic employment rights, even the policies devised and quite sophisticated systems of executing them within each faith organisation have little enforceability, whilst other organisations, who do not have such policies in place, are known to have used their immunity to treat Ministers detrimentally.

The Employment Relationship

Establishing the Employment Relationship

Before being able to describe terms or processes, where the employment relationship sits and who has the responsibility for this has to be the first fundamental building block. Amicus does not dispute that God, by virtue of a Minister's calling, is their ultimate employer, however in recognising this relationship, we believe that there can be no abdication of responsibility by those with the power to impact on that relationship, and thus, for a better term, to co-manage the employment of the Minister. In secular terms, and for ease, we refer to this as an employer–employee relationship. Terminology is not important to Amicus however the relationship is essential. Through the painful experiences of Amicus members, and most famously the Revd. Ray Owen, the abdication of this responsibility, and the absence of having a named entity undertaking this role, has had a severe and unnecessary impact on the individuals concerned.

Amicus recognises that for each faith, or denomination, the named entity for taking this responsibility will vary, but we believe that this should be established at the highest possible level of an organisation. For example, within small congregational churches, the deacons of that church would assume this responsibility as they are at the highest level within the church; within the Church of England, the Church Commissioners or the Archbishop's Council; and within the Jewish Community, the Chief Rabbi's Office; and so on. The reason we believe that this level of relationship should be established is that this is the level at which decisions are made which impact on the individuals concerned; anything less would mean that the employment relationship would be held at a level where those higher than this level could still impact the relationship, i.e. the authority was not complete at the lower level. This would have little purpose. We would see a parallel of this working in secular employment.

Amicus is also confused as to why there is opposition to full employment status since Ministers of Religion from each of the faith organisations already have the same full employment rights as secular employees in some establishments. In chaplaincy services, Ministers are able to enjoy the same rights as their secular counter parts working for that employer. Hospital Chaplains would be a good example of this. With this work, Chaplains often work part time in hospitals and part time in their parish or community and view the role as a continuum of their calling, however in one they are protected fully, and the other provides no protection under the law. Other examples, like the Church Commissioners in the Church of England or many people who are making the representations on the DTI Clergy Working Group are also protected under employment law. This discrepancy has not been subject to review by the Clergy Working Group, nor the arguments as to why this dual status can exist. If employment rights can apply to Ministers of Religion in one arena, then it is logical that this is followed through to all. From our own membership in Amicus we have members that have been granted full employment rights, contracts of employment, and so on, whilst having

identical roles to those that do not. Consistency in approach is crucial if logical arguments are to apply.

Once the employment relationship is established. We believe that this should be communicated to the Minister of Religion concerned. This forms the basis of an employment contract. Again, not terminology but function is of essence here. Amicus has many examples where this has been achieved in different faith communities.

Other elements to be included in this contract can then be reviewed which the DTI's Statement of Good Practice attempts to do. However, first we must examine the reach and enforceability of the employment contract.

Ensuring that an established employment relationship applies to all

The next test that Amicus has applied to the process is to examine the reach of the proposals. In the first meeting of the DTI Working Group, it was established that whilst many of the major faith communities were present at the meetings, many were not. Among those present, many did not have the authority to enshrine any outcomes into the communities that they represented. Therefore the signing to a guide of best practice, whilst being a statement of good intent, is not going to ensure that it becomes an essential part of the employment relationship. Those not seated around the table are obviously even further removed from the process, and therefore they have no obligation under this process.

Through creating proposals we are trying to do one of two things: either to establish an aspirational guide to ensue good practice, which Amicus praises; or secondly to provide a net to ensure that no individual is caught on the outside of it, which Amicus sites as essential. In having employment rights, no individual has to exercise them if they do not wish to. However, if an individual does not have any rights in the first place, and they are at risk of suffering an injustice when things go wrong, there is ultimately nothing they can do but suffer or leave. Extending the rights to all is the only way that Amicus can identify to ensure that each and every Minister of Religion has any recourse. On this foundation, good practice can then be encouraged. Without it, to many, aspiration is of no consequence. The test here which Amicus sets the DTI is therefore how do you ensure that every Minister of Religion is covered by the proposals. Anything short of this would be unacceptable to us. The most vulnerable would remain most vulnerable.

Amicus believes that the faith organisations represented at the DTI have addressed well their processes and conduct, as well as their aspirations. However we are concerned at the lack of confession that the processes and relationships they operate are vulnerable to go wrong, as they are in all employment situations, no matter how good they are. The majority of cases that Amicus deals with each week would fall into this category.

It is worth highlighting at this stage that Ministers of Religion do not see themselves as separate from the wider church, but an integral part of it, thus there is no sentiment among our membership of a 'them and us' relationship, as would so often be the case in secular employment. The recognition that things can go wrong, which Amicus identifies, is a recognition of everyone's vulnerability to err. It is our representatives that have picked up many of these situations. There are occasional situations where we can identify direct and indirect discrimination, harassment and victimisation against an individual. We want to ensure that we have processes in place that can deal with all these scenarios, and that these are rigorous enough to remove the political elements to which all processes are vulnerable.

Enforcing the employment relationship

The next test that Amicus applies is to assess the effect that an employment relationship has on an individual's circumstances, and the recourse that an individual has within this. Again in secular employment, this is fairly clear, and where legislation falls short of clarity, case law establishes precedence. Amicus has always formally asked for a translation of this to apply to Ministers of Religion since we believe that the decades devoted to establishing this have provided a comprehensive package for the employee, although as a wider union we continue to campaign for improvements where we deem this to be necessary.

If an employment relationship is identified, then the powers under that relationship also need to be recognised. The DTI's proposals do not achieve this. Amicus has reviewed each individual case that we have dealt with in the recent months against the DTI criteria, and notes that not a single difference would be made to the individuals concerned whether the DTI's proposals were supported or not. The reason for this, in part, is the lack of detail in proposals regarding process, but mainly that the powers of the individual are not identified. As things currently stand, the Ministers of Religion have little power in the relationship, and therefore this trend would continue. The majority of the time, when things work well, this is of no consequence, but when things go wrong, this means that Ministers of Religion become the victims. It is only out of this recognition of wrongdoing by the faith organisation that a position is adjusted, or Amicus is allowed to make the case for the individual. In conclusion, unless there is recourse, there is no power to enable the individual to make their case, but full control is given to the faith organisation. Where restitution is made therefore implies the level of power of each of the parties, if remaining within processes.

Secondly, we need a system that ensures that personal bias is excluded from the process, in other words has a viable form of independence. As so well defined by the representative on the DTI's Working Group from the Jewish Communities in stating that such is the nature of faith communities by being so close knit, that it is very hard for them to be truly independent. If an individual does have the luxury of an appeal process, then there is a high probability that the individual under examination or indeed the other parties

will come to the process with a reputation known to them, and this will have an impact on the decision; such is the fallibility of human nature, no matter how just they try to be. Therefore independence is a crucial element.

Whilst the Church of England has decided to make use of the Employment Tribunal service, and we very much welcome this, we recognise the sensitive nature of having faith organisations taken through a public court to discuss its internal business, and the impact that this can have on the wider issues of ministry and mission. At the same time, we want to see that justice to the individual can be achieved. Amicus would therefore welcome a process which, at a minimum, would allow for binding arbitration to be used, a process greatly encouraged by the Government. This is a massive compromise on Amicus' behalf, but a way that we believe could move the situation forward. We would obviously say that this process is adopted subject to review, since adopting the Church of England's position of using the Employment Tribunals could well be the only ultimate resolve to this problem, since we know the power of the threat of utilising the tribunal process of resolving issues at earlier stages has. We would always advocate that resolve is found at the lowest possible level of an organisation.

We have suggested alternative arrangements to internal processes to provide independence, something that our colleagues from the Salvation Army said they were also exploring. Through bringing in people, perhaps from a recognised national panel, faith organisations could bring in an independence to their processes at an earlier stage, thus building confidence in a system, and removing the weaknesses that any process could adopt towards bias.

Without any independent stages of a process, Amicus would have little confidence in the resolve in the worst cases. When adopting processes the worst scenarios that we deal with are the ones that have to be under consideration, since if these are not catered for, then again the most vulnerable slip through the net. The consequences of this must be bore in mind. A Minister of Religion if no longer able to work will lose their income and their home on a practical level, and often any hope of working again to fulfil their vocation on a spiritual level.

Processes

Once the above has been established, then we can start looking at the processes needed to manage the relationship and the personnel involved.

Procedures

A checklist of items to be included in the Statement of Good Practice does not actually achieve anything as far as process is concerned. It is when these are referenced to policies that they are given meaning. Interpretation can therefore be minimalistic of the requirements of each policy. Taking an example of leave arrangements, whether for holidays, sickness or for family

responsibilities. It could be that a particular faith organisation sets a very minimal amount of leave entitlement, stipulates when and how this is to be taken, and the level of pay or not that accompanies it. On the other hand another faith organisation could reflect the statutory requirements as for secular employers. A third interpretation could go well beyond this in its provision. Three very different interpretations of a statement, all of which the employing organisations could argue as good practice for them.

If applied to areas such as termination arrangements, then we would still be able to see some of the practices occurring as they currently do, with individuals having little meaningful recourse when their faith organisation determines the end of their ministry. This is obviously deeply unsatisfactory.

Standards

If terms are coupled with standards, then these titles, or bullet points take on an entity and gather meaning. The law has already set a benchmark in secular employment in this area and therefore it would seem an appropriate place to start. If secular provision is reviewed as to its appropriateness to Ministers of Religion, then there is nothing stopping the faith organisations agreeing to go beyond this in regards to increased provision, for example, carers' leave or coaching arrangements.

Process

Once a standard is set, there also has to be a process by which it is applied, or else we see an aspirational list with no enforceability. Again Amicus would argue that processes have evolved in secular employment, and a minimal standard set in each area whether approaching redundancy situations, applying for flexible working for parents, or resolving disputes. Whilst again Amicus would argue these as minimal standards, and we have our concerns about the way that these operate, we also believe that as a process has been tried, there is opportunity to review how well this translates to Ministers of Religion.

Personnel

The final component of this section is looking at who has the responsibility for managing these policies. The establishment of this is essential to the working of them, and where appeal can be made if leave is refused, or termination of post is issued. The ability to apply and appeal has to be with named personnel, and although it would not be the remit of the Clergy Working Group to determine this for each faith organisation, it is the responsibility of the group to ensure that each organisation carries out this piece of work, as secular employment law requires.

With appeals, Amicus recognises that many faith organisations are very small and therefore the process of appeal before a fresh panel, not already with an understanding of the case, would be difficult to achieve. Amicus has made recommendations that a panel of personnel is established by the DTI to address this resource implication. This panel would consist of personnel from the faith organisations, and possibly independent, external organisations as well; would be trained to a high standard in this area; and would provide a service to the faith organisations through becoming part of or the appeals panel in full.

The personnel function is essential in every organisation, no matter how small, to devise policies and implement them. Again Amicus recognises that such a luxury of a resource would not be available to many faith organisations due to cost pressures. A central resource to assist with personnel, the writing of policies, and the provision of advice would greatly assist. Other tools could also be provided for this, such as internet links, a help-line service or a compact of organisations. This would save a lot of work for each organisation, whilst also providing advice that could avert grievances occurring, or could assist in resolving them at earlier stages.

Terms

The DTI's document addresses this third consideration, the range of areas to be considered. Amicus, despite talking to the DTI about this, continues to be confused as to the composition of the Standard of Good Practice list. We believe as far as capturing a list of interests that have been raised is concerned, this only considers some of these issues. The level and detail of these also varies. Below, Amicus tries to set out a more comprehensive way of addressing these issues.

Amicus also believes that generating a list from the basis of what a collection of individuals believes are important is a dangerous place to start since those individuals may not comprehend all the legislation currently in operation in secular employment or how this works. If individuals did not make consideration for a particular area round the table, it could impact on the terms of 10,000s of Ministers. It would therefore be wiser to start by producing a list of all the elements of the secular legislation relating to employment, and then deeming what is appropriate to this group of workers. Although Amicus would argue that this list is not exhaustive to meet the needs of our members, it would enable sound review and a deeper examination of the issues. Starting from this point, instead of the blank sheet of paper, would be more inclusive in its approach. Should additions then be made to this list, this would be in order.

Written Particulars

A list of written particulars is already enshrined in legislation, and therefore we see no rationale as to why this list cannot be provided in these circumstances. These would provide a basis of obligations between the Minister of Religion

and the entity responsible for the employment contract, and would therefore clarify roles and responsibilities. Included in this, and as outlined in the DTI's Statement of Good Practice, are details of engagement and termination arrangements, leave arrangements, as well as factual information about the employment.

Grievance and Disciplinary matters

The new legislation that sets a minimal standard for grievance and disciplinary processes as a means of settling disputes again would be a good starting place. As outlined in the DTI document, these standards are laid out in the new legislation with the exception of pastoral support, which would form a good basis for a best practice document. In the cases that Amicus deals with, the pastoral element in the role of the representative is a major component of the role and therefore it is good that this is recognised, however the process needs to be as rigorous as the support provided. Agreement of a minimal format for a procedure would therefore give this section some meaning, and the freedom of each faith organisation to go beyond this. This piece of work has already been done.

Information and Consultation

Whilst Ministers of Religion are generally part of a highly structured organisation, even at the level of an individual synagogue or church, and are often involved with discussions about change, enabling Ministers to have a true voice in these discussions is often more difficult. As many faith organisations are going through major reorganisation due to the rationalisation of services, it is advisable that those that change most greatly affects should have input into the discussion and ultimately the decisions that are being made. Committees constituted for the purposes of redundancy or under the Information and Consultation directive do provide a forum for dialogue. The processes that result from this, for example, redeployment issues, or reorganisation on job specification, needs close scrutiny by those that it affects, in order to highlight the impact of such decisions.

As an example of this, where we have seen a reduction of posts, we have also seen Ministers being allocated unrealistic workloads. When they fail to meet their requirements, despite working excessively under unrealistic levels of stress whilst attempting to do this, disciplinary measures are taken against the individuals, and in some cases result in termination of post. We have many more examples of where this has occurred.

Issues relating to health and safety

Working time issues, including rest breaks, are clearly set out in the Working Time Regulation, formulated on a basis of safe working conditions. With this, and the individuals right to opt out of this should they so choose, Amicus

believes that the embodiment of this piece of legislation supports the call from the Working Group at the DTI to address this issue. Unsafe working can result in a serious price being paid.

Wider health and safety legislation is recognised to have a far wider benefit, and whilst not the remit of this working party, it certainly has been discussed by all sides at these discussions. If a voluntary code of standards is being produced, enabling wider issues to be incorporated, this one is crucial. With Ministers of Religion having to maximise protection for those that use their premises, their own health and safety really needs to be addressed too. Again the work on this has broadly been established through the breadth of legislation that we currently have in the secular sphere.

One area where Amicus would like to see an expansion is to those that need protection due to bullying or “clergy abuse” as it is globally known. A significant number of our members would testify that they have been victims of this misuse of power, and on some occasions quite serious consequences have resulted.

If developing best practice, we must ensure that this is achieved across the spectrum. It certainly is in many organisations through provisions laid down.

Equality Policies

The European Equal Treatment Directive is a key component to seeing a level playing field to all workers. Whilst domestic legislation goes further, we believe that with the Genuine Occupational Requirements built into our equality legislation, much of what the faith organisations would want to sign up to is contained within these statutes. Again recognising that this does not directly form part of these discussions, it is none the less important to include them in the Statement of Good Practice, which need not depend on Section 23 rights since a statement has no enforceable elements.

Policies effecting Work-Life Balance

Again there has been much discussion surrounding family friendly issues, and therefore we believe the secular terms, although we would argue that they do not go far enough, insofar that they do not impact on carers or fully address the needs of members, for example. The work for this has already been done, and therefore a review of the statutory rights would therefore provide a good starting point.

Housing

Housing is viewed by the Inland Revenue as a benefit, however, clear policies around housing need to be established. Health and Safety should form part of this discussion, since we have had examples of members being required to

stay in inhospitable accommodation, such as a small room provided on the faith organisation's premises or damp and cockroach infested accommodation. A set of standards should be provided and should include standards expected from landlords.

Membership of a Trade Union

The essence of Amicus' effectiveness is not only union membership, but the ability to represent our members. We have countless examples of when representatives and officials have been told that they cannot attend a meeting, or have been told to leave a meeting at a certain point. Amicus needs to have the right to represent its members fully. Whilst the individual work is important, being able to have a relationship with faith organisations on collective issues is also essential to ensure that good practice is provided. As a totally independent entity, yet comprised of each organisation's workforce, we are able to bring a different dynamic into discussions which can help the understanding of issues, for example, views are often expressed to us which would not be through official structures.

Development

Training and development, mentoring and review is a crucial component for the benefit of individuals and faith organisations, and Amicus welcomes all steps taken to ensure that opportunity is afforded to everyone. How this is achieved is obviously for discussion since the smaller or under resourced faith organisations may have difficulty in delivering some elements of this. Therefore systems to enable the above are important to establish.

Evaluation

The evaluation process set out in the DTI's document provides no explanation as to how evaluation can take place, and as the whole process is voluntary, and not far reaching, measuring the impact is not outlined.

Any evaluation process should have a quantitative and qualitative element to it. The process should also outline the objective measures that need to be achieved in order to deem success.

The first question should not be put to the faith organisations but to the DTI. If not all faith organisations have had any engagement with the Working Group, how will the outcomes of the Working Group be disseminated to all? Once this has been achieved, Amicus believes that the DTI's document is so scant in detail that the circulation of this list of issues would be a very easy process for faith organisations to achieve since it is our experience that their structures are there to do this.

Taking the minimalist approach again, Amicus believes that the majority of faith organisations, if not all, have already achieved the issues on the list being proposed, in fact we would argue that the majority have already exceeded them. Therefore there would be no obligation on these organisations to change anything, or very little at most. The faith organisations have already submitted their current practices to the DTI in detail and therefore we believe that we would just see the re-submission of this work in two years time.

Unless rigorous criteria are set to look at each grievance or measure of discipline, the response that was made to each, and where there were failings, the evaluation would have little meaning, and therefore in two years time we will either continue with the same discussions we are having today, or there will be a false sense of satisfaction that all has been achieved. Clearly this is unsatisfactory. By engaging in such an important process, and having the experience that the current arrangements are not meeting the need, change has to occur. Prolonging the inevitable solution will be of no benefit to anyone.

Normally if scenarios are being tested to good effect, detailed pilots on a range of measures undergo scrutiny, and outcomes are evaluated. Amicus cannot agree to the proposals since we cannot identify anything that can be measured or achieved under them.

Does it work

The real test that Amicus puts on this whole process is, does the DTI's document deliver what it needs to? As we have assessed that each individual case we deal with will not be influenced by the scope of the DTI's document, Amicus believes that this Statement of Good Practice will not make any difference to the treatment of its members. If no difference will result, then there is little point in having the statement in the first place.

Amicus has only ever wanted to see justice and fairness played out with regard to the employment relationship of each of its members, as well as the wider community. We do not exaggerate at the nature of the cases we have to deal with, the lives of Ministers of Religion that are ruined, the fear, the bullying, the discrimination on all grounds, the avoidable accidents, the unjust termination of posts, the stress, and so on. We now have a comprehensive system of monitoring all the cases we deal with, and whilst they remain confidential, due to the fear that the victims have, we can also see how they can be resolved. The vast majority of the cases would be resolved quickly and easily if they were transposed to the secular sphere due to the responsibilities placed on employers, however with no recourse and the absence of rigorous systems our Minister of Religion are failed.

The DTI Working Group has not addressed the crucial issues, and much of the essential discussion has been dampened down in the meetings.

Addressing the central issues in the light of secular conditions would have provided a platform for comprehending the arguments in full.

It must also be remembered that our members do not see themselves as opponents to the faith organisations. They are more than dedicated in their ministry and have given their lives in sacrifice to serve them. Our representatives, because of the role that they have, and our members, because of the things they have seen or experienced know that the best intentioned policies are not working to achieve fairness and justice, and therefore are being honest in their call for change. We know that the faith organisations aspire to do what is right, however if they acknowledged their organisation's vulnerabilities to get things wrong, then proper exploration of how to address these issues could take place.

Amicus does not believe that the process adopted by the DTI to examine this issue has therefore provided the right forum to fully examine the centrality of the key issues at stake. In a secular employment scenario, in reaching different opinions with regards to processes, we would look to formal conciliation to bridge the differences. In this process areas of common agreement have not been sought, and therefore the process has not been able to address the areas of disagreement.

With the Church of England, the difficulties that were recognised from within their internal processes, many of which were highlighted by cases brought by Amicus, have led to change, and we welcome these steps. We don't want more Ministers to suffer or lose their ministry in order to achieve such change elsewhere, or further in the Church of England in other areas.

It has taken decades to refine employment legislation, sometimes with it taking regressive steps on the way, however the minimal set in law provides protection to a certain level, and this has been tried and adjusted. Ministers of Religion do have a special role in our society, however they should not have to suffer any detriment due to this.

In Conclusion

Amicus has tried to engage in the process of reviewing employment rights for Ministers of Religion, yet our membership strongly feel that rational discussion around the essential elements of the debate have not run their course. We have a unique opportunity through this process to make a real difference to those that experience difficulties on a day to day basis, and to diminish this opportunity is not only wrong, but will result in many more suffering. If relationships are built on a combination of trust and power, then any redress of the balance of these two elements would provide resolve to many issues that we deal with.

It is essential that any outcomes cover everyone, so no-one is caught outside of this net of minimal standards, or else it makes a mockery of the words minimal and standards. It is also crucial that the individuals concerned are

able to reach restitution through an independent means since without this, the human failings of bias, prejudice and discrimination can creep in, however much resisted.

Amicus is keen to make progress, and makes itself available to do this.