

GS1527

Church of England

Review of Clergy Terms of Service

Report on the first phase of the work

Formal Response by Amicus Clergy & Churchworkers' Branch

Our first, most general, response to the proposals of the Church of England is to congratulate the members of the Review Group for facing up to the injustice inherent in the current employment status of clergy. We are pleased that the Church which seeks to proclaim God's justice to the nation is now prepared to offer some kind of protection from injustice to her own clergy. We also appreciate the courtesy with which our comments have been received to date and that members of the working party presented their conclusions to representatives of this branch. This made it possible for us to give serious consideration to the proposals at our Annual Conference and it is the conclusions of this very general discussion which we summarise below.

We cannot fail to note that the context for this important concession is the discussions about the injustice suffered by clergy of all denominations as a result of their status as "Office Holders". The evidence which this Union had offered to the Department of Trade's study of the position of clergy seems to have been accepted by the D o T as demonstrating that it would be appropriate to pass an order under Section 23 of the Employment Relations Act 1999 to give a substantial number of "employee" rights to all Ministers of Religion. We have reviewed the current proposals in the light both of the substantial change in "employment" practice that the Working Party is prepared to contemplate and the likely consequences of an order being made under Section 23. We have concluded that these proposals can be taken on face value, as a plan for unilateral action by the Church of England, or they can be seen (with some modification) as the plan for the Church of England's response if a Section 23 order is passed.

We offer the following comments about the proposals.

1) The use of Church legislation

The representatives of the Working Party and Ministry Division whom we met expressed the hope that the necessary legislation would be enacted within two years. We remain doubtful that, with all the other pressures facing General Synod, and the complexity of drafting which the lawyers will face, this will be possible. Even if it is there will still be a need for consequent training and the development of local procedures. Clergy Discipline seems to have halted in the quicksand of administration yet at heart this was a much simpler measure.

We were told that a very large number of canons and measures will have to be amended to put these proposals into effect. Our fear is that if the task is as great and complex as that there is a danger that some changes will be accidentally omitted or not be put through properly, or be carelessly drafted, or be messed about by Synod. We believe that it is inevitable that there will be a substantial number of anomalies as well as some lost protections by the time this federation of change is enacted.

We believe that if the aim is to grant Clergy Section 23 Rights then the logical way of doing this would be by a Section 23 order; this would guarantee the rights. There would be a need to change Church policy and practice – perhaps along the lines suggested and certainly substantial legislation would be needed. But if the ecclesiastical legislation were made badly or delayed Clergy would still have the Section 23 rights. If some ecclesiastical measure were to contradict a Section 23 right an Employment Tribunal will just set it aside.

2) **Employment Tribunals**

As we understand them the proposals suggest that C of E clergy be granted most of the rights normally given by a Section 23 order but through Ecclesiastical Law rather than the exercise of powers under the Employment Relations Act 1999. This will mean that Employment Tribunals will find themselves enforcing a totally alien system of law. ET's are well used to learning about a specific field of work and developing an understanding of what is considered important, how things work and so on in that setting. But they have no experience of dealing with Ecclesiastical Law. The proposals assume that the Employment Tribunal system will cope with this but we wonder whether it will. We would also question whether the Lord Chancellor or whoever is responsible for Employment Tribunals, Employment Appeal Tribunals and so on is happy to take on this extra burden of training and cost.

A specific consequence of the decision to give Clergy Section 23 rights without a Section 23 Order is that there must be a question as to the extent to which precedent applies. The Employment Appeals Tribunal has set down all sorts of definitions and tests which help the Employment Tribunals decide how to apply Employment Law – but the Church is not offering rights under Employment Law so the ET's will not be able to turn to them for the sort of definitions and other guidance which the precedents supply in other cases they hear.

3) **Common Tenure**

The idea of Common Tenure may be a good one if it achieves what is suggested by its name – all clergy holding their posts under similar conditions and with a degree of security.

Our principle concern arises from the list of limited term appointments in which we note that there is a degree of vagueness in the pastoral reorganisation exception. Having seen suspension of presentation used in a way which is so far beyond anything that was ever intended, or at least stated, when the measure was passed we look at this aspect of the arrangements with suspicion deepened by experience. We recognise that there is some need to enable pastoral reorganisation but we have seen too much abuse of rules and procedure in pursuit of what sometimes appears to be an unpublished and partial “Diocesan Master Plan”. There are well established procedures in the world of employment to cover the reorganisation of an employer and consequent redundancies; we feel that “the prospect of reorganization mentioned in the Instrument of Appointment” is inadequate and vague and may serve as a justification for inappropriate or unjust termination of an appointment..

We recognise that it is not the task of the Review Group to deal with the way in which the process of pastoral reorganisation is taken forward. We would suggest, however,

that the lack of clarity in the report at this point is a direct consequence of the muddled and inconsistent way in which Dioceses tackle matters of reorganisation and that a more open and honest process should be devised.

4) Responsibilities & Accountability

There is rather more about the responsibilities and accountability of clergy (and ways of dealing with those who fall short) than there is about the responsibilities and accountability of the Diocesan and national wielders of power. Specific examples of these are mentioned below (Section 6 - omissions); we would hope that these would be dealt with and we accept that in a true employment situation all clergy would be both responsible and accountable.

“Clergy Terms of Service Regulations” may, as suggested, provide a realistic guideline for ministry, setting in context some matters given too much weight in the Canons and others which are important but not mentioned anywhere. We would hope to be involved in the process of their devising and we would urge that they be firmly rooted in the reality of modern ministry. To this end we would urge that the Regulations be prepared by a group in whom the majority are currently parish clergy, most with substantial experience. Regulations may well be helpful both for clergy and the people they serve but they will not be easily defined.

The Union has commented in the past about Ministry Review and we are aware that there is marked variation in practice between the Dioceses. We have encountered a number of cases in which the relaxed and open conversation between reviewer and reviewed has been used as a starting point for criticism, bullying or other unacceptable behaviour. If Ministry Review is seen by all, including Bishops and Archdeacons, as being a way of improving and supporting the individual practice of ministry the Union will have no problem with it. When it is used, as it so often has been, as a way of gathering evidence against a minister the process itself becomes discredited. We are currently reviewing our past advice on Ministry Review and will pass our conclusions to the Review Group and to ABM. There is a major responsibility upon the Dioceses to restore and maintain the credibility of Ministry Review especially as this report envisages it becoming compulsory.

5) Capability Procedures

There is a tendency within the Church to assume that if someone complains about a minister then there must be something wrong with the minister. The procedure set down allows the Archdeacon to conclude that the matter is too minor to bother taking it any further but at no point is it stated that he may conclude that the facts asserted by the complainant are untrue and/or that the cause of the trouble is the complainant who is for some reason unable to accept what is happening. The procedure needs to allow at each stage for the gathering of facts and the hearing of evidence demonstrating that the complaints are not justified in context. At present this is not clear in the Capability Procedure even though Employment Tribunals look at facts and are well capable of recognising that a job is well done if 99% of the people are happy with it.

If a problem goes to the Employment Tribunal for whatever reason the respondent will be the Diocesan Board of Finance and the E.T. will be asked to judge whether the Minister concerned has breached the Clergy Terms of Service Regulations and/or if

they have been fairly judged through the various stages of the Capability Procedure. If the Tribunal finds for the minister the DBF will have to pay damages but it won't be able to do anything else. The DBF does not make appointments and will not be able therefore to reinstate the Minister. The DBF does not write the Terms of Service Regulations and so will not be able to correct any anomaly, injustice or contradiction that the ET has found. The DBF does not set up the Capability Procedure and so will not be able to correct any anomaly, injustice or contradiction that the ET has found. The DBF does not employ the Archdeacons or Bishops so will not be able to discipline them if they have been found to have abused their power save by becoming a complainant and raising the matter with the Church Commissioners or whoever the quasi employer of important people will be. The role of the DBF seems to start and finish with paying the price for the incompetence of the Bishops.

The DBF is a democratically elected body, in some dioceses separately elected, in some the entire membership of Diocesan Synod. Though powers of day to day management are regularly delegated we wonder how decisions about whether to defend a Tribunal Action or seek to settle will be made. If a select few make the decisions and disguise the cost, as so often happens now, then the confidentiality of the minister will be maintained but democracy will be stifled. In the more open environment which this process may generate we can easily imagine debates in the full DBF about whether or not the Reverend X deserved to have been disciplined or sacked with dozens, or perhaps hundreds, of people demanding the right to express an opinion on whether or not a settlement should have been made, whether a case should go to appeal and much more. It is a recipe for confusion and humiliation in which the clergy and diocesan leaders stand equally in danger of humiliation or ridicule.

We have read the arguments in the report in support of making the DBF the respondent but, noting these problems, repeat our suggestion in an earlier submission to the Review Group that a National Employer should be found. We continue to believe that as well as the issues we have raised there must be a real doubt whether good and competent Human Resource expertise can be developed in each diocese in the suggested time scale and we wonder why this wheel has to be reinvented in each diocese.

6) **Omissions**

There are many aspects of what is now considered to be a good standard employer / employee relationship which are not covered by the proposals; we presume this is because they are not explicitly imposed by a Section 23 order and so there is no immediate pressure from government on the Church to deal with them. However these are not, on the whole, things on which there can be any kind of theological objection and so we wonder why the Review Group has not chosen to deal with them. We would suggest that if the Group can feel justified in removing the right not to work on Sunday from the Section 23 list of rights they should feel able to add to the list rights which are entirely appropriate to Clergy. We mention some of these below.

Health & Safety:

Health and Safety is a phrase which has become commonplace. Society now takes it for granted that employers are in some way responsible for the Health and Safety of their employees and clients and that those who administer public buildings or offer public

service also have Health and Safety responsibilities. PCC's are encouraged to consider the Health and Safety of worshippers and other visitors to Church property. We believe that it is wrong for those who in all but name employ the clergy not to accept responsibility for their Health and Safety. The Union has reported on the effect of actual and threatened violence on clergy and we are also aware of an increase in the number of clergy suffering stress related illness. We believe that the Church has so far failed to see these and other Health and Safety issues as matters of concern to the Church preferring to offer advice to clergy on how *they* should deal with *their* problems. This is the sort of inadequate response which is now quite out of date.

Discrimination:

True employees have the right not to be discriminated against on the grounds of their race, sex, disability or sexual orientation. While we recognise that there are substantial problems for the Church accepting what has become societies standards in all aspects of discrimination on grounds of sex and sexual orientation we believe it would be appropriate for there to be an explicit commitment to anti-discrimination policies in the matters of race and disability. In the case of Disability Discrimination the Review Group asks clergy to rely on rights given by Europe rather than simply state that they accept the demands of the Disability Discrimination Act as applying to the work of clergy. We find it illogical that the same Church which is encouraging its parishes to provide ramps for those in wheelchairs and loops for the hard of hearing is reluctant specifically to commit itself not to discipline or dismiss clergy who have a disability and provide a means of complaint to those who feel they have suffered in this way.

Clergy Appointments:

There is no mention of the process of appointment of ministers and this is being reviewed in some ways by other people. But it is worth pointing out that justice in employment is not only about justice on dismissal but also on appointment. Whether it be the quiet word to a friend or short list and interview process that is followed there are many ways in which the Church's appointment practice falls far short of the standards of fairness, openness, and freedom from discrimination rightly demanded when an employee is appointed.

Complex Posts:

The Church has a variety of shared posts, combined appointments, part time and full time such as may baffle many. The consequences of unravelling these complex arrangements are hardly touched on.

7) The Proposals in Context

We recognise that it is not the job of the Church of England to propose legislation for the other churches and faith organisations but as a Union we are concerned about them all. We are aware that some other denominations have set themselves firmly against anything along the lines of the Church of England proposals although they each have their own histories of poor or outrageous treatment of clergy. Even if we felt the proposals of the Church of England were without flaw we would still wish to press the Secretary of State for Trade and Industry to make a Section 23 Order for their sake. As we believe the proposals before us are by no means flawless, and for other reasons

touched on above we will continue to seek that such an order be made for clergy and ministers of all faith groups in the United Kingdom.

The nature of the Freehold is currently under discussion and may be affected in some respects by the conclusions of the Review Group in the second phase of their discussions. We will continue to argue that while the Freehold as a means to job security may well have to evolve as these new forms of appointment develop there is no need to confuse with this the Freehold as a means of ensuring local trusteeship of Church property.

8) Summary Conclusion

We applaud the recognition by the Church of the need to change fundamentally the terms of employment of clergy. We continue to be happy to work with the Church as the relationship evolves and to offer the expertise of our Union organisation to that process. We believe that the tradition of Amicus (and previously MSF), which has been to seek to work with employers and avoid confrontation whenever possible, is one that can be very positive for all concerned especially in a time of great change. We will therefore continue to review and comment upon the proposals of the Working Party in an attempt to make them as workable and fair as possible for all concerned.

Alongside this we will continue to press for a Section 23 order applying to the Church of England as to all other Churches and, in the long term for full employment rights for all clergy and ministers of religion.