

Ordained Chaplains and Common Tenure

The position of chaplain to a person or institution is not recognised in law as an ecclesiastical office. Unlike parochial ministry, the duties and parameters of a chaplaincy are not defined in statute or in the Canons, but are governed primarily by the requirements of the person or body that the chaplain serves and/or the person or body that appointed him or her, if different. Even in situations where there is at present no written contract, it is very likely that a Court, if asked to determine the matter, would conclude that chaplains are employees in law. Their contracts of employment, written or oral, sit alongside the licence from the bishop which authorises their ministry under Canon C8.

The Ecclesiastical Offices (Terms of Service) Measure 2009 ('the 2009 Measure'), which came into full force on 31 January 2011, introduced a new framework of terms and conditions of service for clergy, known as Common Tenure. Strictly speaking, the 2009 Measure applies (inter alia) to all clergy who exercise their ministry in accordance with a licence from the bishop of the diocese, and therefore chaplains fall within the ambit of Common Tenure. However, as a result of a clarifying amendment passed by the General Synod in November 2010, the legislation now states in terms that the Ecclesiastical Offices (Terms of Service) Regulations 2009 ('the 2009 Regulations'), which contain the detailed provision for the terms of service of office holders under Common Tenure, shall not apply to any ministry that is exercised pursuant to a contract of employment. The reason for this is clear. The 2009 Regulations are designed to confer rights and responsibilities, akin to those which apply to employees under the general law, on those ecclesiastical office holders who are not employees. Those who are employees, however, have such rights and responsibilities already by virtue of their employed status, and it is their contract which governs their detailed terms and conditions of service.

It is therefore important that chaplains should be given a written contract of employment (even if they are already in post and have not previously had their terms of service expressed in writing). The contract should state who is the employer of the chaplain and should also make clear the relationship between the contract and the bishop's licence. The 2009 Measure allows a bishop to terminate a licence granted in connection with ministry exercised under a contract when that contract comes to an end, but not otherwise except as a result of proceedings under the Clergy Discipline Measure 2003.

Because the 2009 Regulations do not apply, chaplains will not be *required* to participate in the diocesan scheme for Ministerial Development Review ('MDR') nor to undertake Continuing Ministerial Education provided by the diocese. However, the Archbishops' Council's Guidelines on MDR, approved by the House of Bishops, recommend that the opportunity to take part in MDR should be offered to all employed clergy.

We are aware that many chaplains also exercise a parochial ministry – for example by taking Sunday services regularly in a church that would otherwise be without a minister. In such cases we recommend that, if this additional ministry is sufficiently substantial that the bishop and the chaplain agree that full Common Tenure should apply to it, it should be the subject of a separate licence. If

the chaplaincy and the additional ministry effectively form a single 'package', the licence covering the additional ministry can be linked to the chaplaincy under Regulation 29(1)(g), which enables the bishop to terminate this licence when the chaplaincy ends.

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