

Review of Clergy Terms of Service

A Progress report from the Implementation Group

1. The Clergy Terms of Service Review Group was set up by the Archbishops' Council in December 2002, following discussion of the possible use by the Government of its power to regulate the employment rights of ministers of religion. The Council encouraged the Group to consider the possibility of introducing employment contracts for all clergy, and asked that it should devise terms of service which ensured a proper balance between rights and responsibilities.
2. The Review Group's first report (GS1527) rejected the idea that all clergy should become employees, recommending that they remain office-holders with the degree of autonomy that implies. The report then focused on the position of those clergy without the freehold, some of whom held fixed-term appointments and some of whom had no real security of tenure. It recommended that future appointments be on 'common tenure', normally open-ended to retiring age, and only time-limited in special circumstances such as training posts. Those appointed on common tenure and whose performance was seriously unsatisfactory could become subject to a 'capability procedure'. The aim would be to secure improved performance before the problems became irremediable, but if this was not achieved the office-holder could ultimately be removed from office. The procedure would be a lengthy one, with many safeguards (such as confidentiality, the right to be accompanied, and the taking of decisions by a small panel not any one individual). The report was debated by the General Synod in February 2004, and its recommendations welcomed.
3. The Review Group's second report (GS 1564) developed the proposals and recommended that the same principles should be applied in the case of future appointments to what are now freehold offices. This report was debated in February 2005. The Synod expressed reservations about some of the recommendations dealing with the property currently vested in some clergy holding freehold offices, but asked the Archbishops' Council to bring forward legislation based on the report as early as possible in the new quinquennium.

The new 'package' would:

- Retain the office holder status of clergy and confer the appropriate rights and responsibilities by means of Church legislation;
- Create a common set of terms of service applying to all clergy from assistant curate to archbishop (and in some cases to lay people serving in a stipendiary role);
- Introduce the new form of 'common tenure', under which appointments would normally be made until retirement age, fixed term appointments being limited to training posts or posts related to a particular project or dependent on special funding that is only available for a limited period;
- Provide legal entitlement to rights equivalent to those contained in section 23 of the Employment Relations Act 1999 (which cover such matters as annual and special types of leave);
- Provide access to Employment Tribunals to enforce those rights and claim unfair dismissal;
- Set out new Clergy Terms of Service Regulations, which would clarify the rights and responsibilities of clergy;
- Require all clergy to participate in ministerial development review schemes and Continuing Ministerial Education and on bishops to make appropriate provision;
- Establish proper mechanisms to encourage good practice and to foster deeper relations of trust and partnership, including the provision of professional Human Resources advice; appropriate training for bishops and archdeacons; and a clear framework for personal development and support;
- Include a Capability Procedure to be invoked if clergy are failing to reach minimum standards.

While recognising the special nature of the work to which clergy are called, the recommendations would be in line with best practice in the secular world.

4. The Council set up an Implementation Group in June 2005, to take this work forward. The membership of the Group is shown in the annex to this report. The Group's first report *The Property Issues Revisited* (GS1593) was debated by the Synod in November 2005. It took account of the reservations expressed by Synod during the February debate and replaced them with recommendations to the effect that the parsonage house should vest in the Diocesan Parsonages Board (and not be accessible to creditors in the event of the DBF's insolvency) and that decisions about the houses of parochial clergy should no longer be taken by committees with more general finance or property responsibilities. GS 1593 also recommended that the vestigial legal estate in the church and churchyard should continue to vest in the incumbent as 'corporation sole'. An amendment which would have had the effect of leaving the ownership of the parsonage house with the incumbent as corporation sole was narrowly lost by 11 votes. However, the final voting was decisively in favour of the report in all three Houses.

Some clarifications

Freehold of office

5. At present some clergy 'own' their offices as piece of property. As the Review Group explained, the notion that an incumbent held a benefice for life has been qualified in a number of ways. Provision for removal on grounds of ill-health was first made by the Incumbents (Disability) Measure 1945 (now repealed and replaced by provisions in the Incumbents (Vacation of Benefices) Measure 1977), later supplemented by the Church Dignitaries (Retirement) Measure 1949 applying to deans, canons, prebendaries and archdeacons, and by the Bishops (Retirement) Measure 1986. A further qualification came with the development of processes for pastoral reorganisation, which in effect enabled an incumbent to be made redundant by the abolition of his or her benefice under the Pastoral Measure 1983. Common tenure could be seen as a further stage in this process: although new mechanisms are used – defined rights and responsibilities instead of property ownership – essentially the same protections will be afforded.
6. No clergy currently in freehold appointments will have the freehold taken away from them, though they could opt to transfer to the new system. All future appointments to what are now freehold posts would be on the new basis (whether or not the priest appointed had the freehold in his or her previous post).

Clergy houses

7. Some clergy, principally incumbents of parishes, 'own' the houses attached to their office. Other clergy (bishops, archdeacons, cathedral clergy, assistant staff in parishes) have no such 'freehold of property'. Since 1972, incumbents have been relieved of the obligation to repair the house: the Diocesan Parsonages Board now has this responsibility as it has for insurance and other charges. Most of the rights associated with ownership are, in the case of parsonages, vested in the diocesan board, and the incumbent, though technically owner, has only rights such as to be informed and make representations.
8. As the vast majority of clergy are required to live in the house provided by the church, it is both right and necessary that they have security of tenure for themselves and their families while they occupy that post. This applies to all clergy, and it is very desirable to have one clear set of rules which apply across the board; that is impossible under the present legal arrangements, which are of notorious complexity.
9. We have therefore proposed that
 - A house should be designated for almost every benefice, except where this is not appropriate (e.g. where benefices are held in plurality);
 - All clergy should occupy their housing subject to terms that set out clearly their rights and responsibilities;
 - There should be a legal obligation on the Diocesan Parsonages Board to oversee the provision of benefice housing within the diocese and to ensure that a suitable house is provided for clergy of incumbent status;

- Clergy should have the right to object to alterations to the house they occupy during their term of office, or to certain types of transactions affecting the house, or to the acquisition of a new house; it should only be possible for that objection to be overridden by the Diocesan Parsonages Board (DPB) after adjudication by the Church Commissioners;
- Only in the most extreme circumstances would clergy be required to move against their will. Any proposals to sell a house in such a case could be objected to by the patron, incumbent or PCC, and in that case it would only go ahead if the diocese (which would have the burden of persuasion) convinced the Church Commissioners that it was necessary and appropriate.

Patrons

10. Our recommendations leave the rights of patrons essentially unchanged. The effect of our recommendations will be that the need for suspensions of the rights of presentation should be greatly reduced. This will mean that patrons will have more opportunity to exercise their rights. Like everyone else involved in appointments procedures, patrons will need to comply with good practice in this area, in particular over issues such as discrimination and inappropriate questions at interviews.

Concerns About Employment Tribunals

11. Crucial among the section 23 rights is the right to appeal against unfair dismissal. If this protection is to be credible and realistic, then appeals have to be dealt with by a demonstrably independent body. This led to the recommendation that clergy should have access to Employment Tribunals to appeal against unfair dismissal.
12. Concerns continue to be raised about the appropriateness of Employment Tribunals in a Church context. Employment Tribunals are a well established feature of our legal system, and hear appeals from a wide range of people, not just employees, in cases where the employer or some other body is alleged to have infringed the applicant's rights. The Review Group believed that there are sound theological principles underpinning the use of secular tribunals, and the legal position is that clergy already have the right to appeal to Employment Tribunals where there is alleged discrimination.

Legislative work

13. A major part of the Implementation Group's work, after some months spent largely on the property report for the November synod, has been in addressing the necessary detailed questions which arise when seeking to apply rights derived from employment law to clergy office-holders. The group has spent much time looking at the special issues of clergy in dual posts (eg sector ministers with a parish responsibility) and in considering how the principles apply in the case of NSMs, house for duty posts, and the like.
14. Work has now been put in hand on the rules to govern clergy housing. Some of this area is not subject to adequate legal regulation, more is over-regulated, and the whole is so complicated as to be inaccessible and often misunderstood. The outcome, clear statements of rights and responsibilities, should be an enormous improvement. It is to be emphasised that the interests of the clergy occupying houses will be at least as well protected as under the current law.

HR Conference

15. Work has been continuing on how to provide the necessary Human Resources support for dioceses to undergird the Review Group's proposals.
16. The first of two conferences to consider implementation of the HR proposals will take place on 19 October, at which the issues will be raised and various models explored. A second conference in February 2007 (at a date to be announced) will, we hope, reach agreement on the shape and form of the HR service. The target audience is bishops, DBF chairs and diocesan secretaries who are invited to attend both events. The participation of all Dioceses will be essential.
17. Work is also going on with the Archbishops' Advisers to ensure that appropriate training is provided.

Ministerial Development Review(MDR)

18. Although clergy are called to *be* priests, they are also called to *do* a particular job, and it is right to try and define that job, and for clergy to be accountable as to how it is done. Ministerial Development Review (MDR) is *not* about checking up on clergy or trying to micro-manage them. Nor is it about putting pressure on them to increase congregational numbers and ensure that parish share is paid promptly. As the Review Group's first Report put it (para 115), 'clergy are not called on to meet specified targets but to be faithful and preach the Gospel.'
19. Many clergy are in danger of overworking, and some have unrealistic expectations of themselves that lead to unacceptably high levels of stress. MDR is a way of helping clergy see what is achievable and how it can be done, and clarifying what can reasonably be expected of them. It ensures that any problems are not swept under the carpet but dealt with fairly and sensitively before they become major issues.
20. Most dioceses already have ministerial review schemes. We are recommending that all clergy should be required to take part in these, and that ways should be found of involving lay people in ministerial review.
21. No-one is suggesting that bishops are not already supporting their clergy. Formal visits to parishes are often good opportunities to do this, although the focus of these is often the development of the parish rather than the ministry of the individual priest. Regular MDR with a trained reviewer can provide clergy with an opportunity to talk about themselves, to discern God's presence and activity in and through their ministry, to consider what they do well and what they could do better, and also what help they need to do it better. In the dioceses where ministerial review is established, it is generally appreciated by the clergy.
22. We have prepared some key principles for MDR (such as that the review will be annual, on a one-to-one basis, include an assessment of how far past objectives have been met and recognise the context in which the cleric is ministering). We have also prepared two sample schemes, one of which is based on the Ordinal. Bishops were asked for their comments on these proposals and there will now be a wider consultation. They will be attached for illustrative purposes to the draft legislation that we hope will be considered by General Synod in February 2007.

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