

**GENERAL SYNOD
LEGAL ADVISORY COMMISSION**

**Parish Music: organists and choirmasters and church musicians (This opinion
supersedes that previously published under this title.)**

General

1. Canon B 20 was amended in 1988. Although the body of the Canon refers to “any organist, choirmaster (by whatever name called) or director of music”, the Canon is entitled “Of the musicians and music of the Church” and what is said in the Canon itself should be understood as including all musicians in similar positions. References in this opinion to “the organist” therefore include all such musicians and music directors and the term “choirmaster” includes choir mistresses and choir directors.
2. In spite of what is said below in relation to organists and the law of employment, the Commission recognises that there are many cases (especially in small parishes) where both the organist and the parish have no intention, or desire, to enter into any legally binding contract; this is so whether the organist plays on an *ad hoc*, or on a more permanent, basis. In all such cases it is best practice to set out that determination in writing, spelling out the reasons for so deciding and stating that there is no intention to create any legal relationships; this is particularly so if the organist receives any remuneration for his or her services. All such cases depend upon the particular circumstances; for example, however, there would no requirement upon the organist to pay a substitute in the case of his or her absence. Nevertheless, it is necessary to stress that the final determination of the legal relationship in such cases will always fall on a civil court or tribunal if the matter were ever to be litigated.
3. It is also necessary to stress that what is said below in relation to safeguarding and DBS checks applies whether or not there is a contract of employment.

Minister

4. The words “the minister” have at different times been given specific, and slightly differing, statutory meanings (see *Halsbury’s Laws of England*, 5th ed., 2011, volume 34 at paragraph 382, note 1, and paragraph 451, note 2). However, Canon B 35, paragraph 5 (which is concerned with the music to be played at marriage services), speaks of “the minister of the parish” and, as both Canon B 20 and Canon B 35 are concerned with music in church, it is the Commission’s view that Canon B 20 should be read in the same way. The word does not include a curate or assistant priest even during a vacancy in the benefice. It does include a priest-in-charge (see **Clergy: priest-in-charge**) and a team vicar assigned a special cure of souls (see the Mission and Pastoral Measure 2011, section 34(7)). However, in Canon B 1, paragraph 2, “the minister” refers to the person actually conducting the service and, for example, will include a reader.
5. The minister must pay heed to the advice and assistance of the organist or choirmaster in the choosing of chants, hymns, anthems or other settings and in the ordering of the music of the church. However, the final responsibility and decision in these matters rests with the minister (Canon B 20, paragraph 2, and Canon B 35, paragraph 5).
6. It is the duty of the minister (that is, the minister of the parish) to ensure that only such chants, hymns, anthems, and other settings are chosen as are appropriate, both the words and the music, to the solemn act of worship and prayer in the House of God as well as to the congregation assembled for that purpose; it is also his or her duty to banish all irreverence in their practice and in their performance (Canon B 20, paragraph 3; see, too, Canon B 35, paragraph 5). In the Commission’s view Canon B 1, paragraph 2 (which imposes a duty on the minister conducting the service to “endeavour to ensure that the worship offered glorifies God and edifies the people”) does not permit the person conducting the service to overrule any decision already made by the minister of the parish but is primarily concerned with the actual performance of the worship, especially by the congregation. The organist may not play the organ in opposition to the minister of the parish’s direction although, if the minister were to act in an arbitrary fashion, the organist may seek the bishop’s directions to the minister (*Wyndham v Cole* (1875) 1 PD 130).

7. During a vacancy or during a suspension of the minister, and if there is no organist already appointed, the churchwardens or PCC may invite an organist to play during services, although it should always be made clear that this is on an *ad hoc* basis until there is a minister who may make a formal appointment. In these circumstances the organist should co-operate in the choice of music with such minister as is to conduct the service. The latter has the final determination if in the minister's opinion the choice would not glorify God or edify the congregation.

Recruitment

8. For the safeguarding of children and vulnerable adults the process for appointing any organist must follow all Safer Recruitment procedures applicable in the diocese and parish concerned (see also paragraph 33 below).

Appointment

9. In all churches and chapels (except cathedral or collegiate churches or chapels¹) the appointment of an organist must be by the minister (subject to the terms of any contract thereafter entered into) together with the agreement of the PCC (Canon B 20, paragraph 1)². It is important that the actual contract of employment is entered into between the PCC and the organist³; this is so in spite of the difficulties that may be caused if the archdeacon exercises his or her discretion under Canon B 20, paragraph 2, to dispense with the PCC's agreement to termination. A draft contract of employment can be obtained from the Guild of Church Musicians, although care must be taken to ensure that the terms of any contract finally agreed are consistent with the provisions of Canons and incorporate all the terms suitable to the church (see below) and are agreed to by both parties.
10. A purported appointment other than by the minister (such as by an archdeacon, churchwarden or the PCC) is *ultra vires*. Nevertheless, a legally enforceable unwritten

¹ These are expressly excluded by the wording of Canon B 20, paragraph 1, as they are likely to have their own statutes governing such matters.

² This is so whether or not the organist is to be employed under a contract of employment. The resolution should be formally minuted. The minister, if chairing the meeting, has a casting vote: *Church Representation Rules 2017* (Church House Publishing, 2017), appendix II, paragraph 11.

³ This is because of the recent developments in employment law.

contract may thereafter arise by conduct if the minister and PCC thereafter go along with such a purported appointment.

11. If during a vacancy in the benefice or the suspension of the minister the PCC or other person or persons purport to appoint an organist or arranges for the services of an organist to be provided, the arrangement should specifically state that it will terminate upon the filling of the vacancy or suspension. (See above.)
12. Subject to what has been said in paragraph 2 above, any agreement between the PCC and the organist will in nearly all circumstances constitute a contract of employment⁴. It is therefore essential in every instance that the agreement is reduced to writing and signed by both parties. Oral agreements or agreements by conduct should in every case be avoided. It is good practice expressly to include in that agreement reference to the provisions of Canons B 20 & B 35, although it is the Commission's view that the provisions of those Canons are in any event included by operation of law. It is a well established principle that "the labels parties attach to the arrangement are not determinative of employment status" (see *Sholl v PCC of St Michael's with St James, Croydon* [2011] ET 2330072/2010); it follows that there may be a contract of employment even though the parties may have expressly said that they do not intend that there should be one or the word "employment" is never used.

Content of the agreement

13. The agreement should also always include amongst other matters:

- (a) the names of the parties entering into the contract;

⁴ In the case of *Ready-Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance* [1968] 1 All ER 433 the court provided **that** "A contract of employment exists if these three conditions are fulfilled: (i) the servant agrees that, in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some service for his master; (ii) he agrees, expressly or impliedly, that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master; (iii) the other provisions of the contract are consistent with it being a contract of service."

- (b) a recital of the PCC's agreement to the appointment of the organist by the minister;
- (c) the date on which it begins;
- (d) the amount of remuneration (or other recompense) on appointment⁵ (if any) and when it is payable;
- (e) a clause that the termination of the agreement is exercisable by the minister with the agreement of the rest of the PCC except that, if the archdeacon⁶ of the archdeaconry in which the parish is situated considers that the circumstances are such that the requirement of the agreement of the PCC should be dispensed with, the archdeacon may direct accordingly (see Canon B 20, paragraph 1);
- (f) the length of notice required to be given by either the minister or the organist to terminate the appointment under the terms of the agreement in the absence of conduct amounting to gross misconduct or other repudiatory breach of contract (this should be the same period for both sides of the agreement);
- (g) a term that, although the minister of the parish must pay attention to the views of the organist in relation to the choice of music on any given occasion, (i) the final decision on all such matters rests with that minister alone (see Canon B 20, paragraph 3, and Canon B 35, paragraph 5); and (ii) the minister conducting the service has the final decision whether the worship (including the playing and singing of any music) offers glory to God and edifies the people (see Canon B 1, paragraph 2);
- (h) a term setting out the duties of the organist or choir director, including performing at any occasional services;
- (i) an appropriate, and carefully worded, condition making it clear what conduct is to be regarded as gross misconduct and what behaviour will amount to a repudiatory breach of the agreement, for example, in relation to DBS certification or its equivalent and safeguarding (see below);
- (j) a pre-condition insisting both on the organist providing a satisfactory DBS certification (or any similar statutory requirement) prior to his or her taking up the post of organist and thereafter taking part in ongoing safeguarding training

⁵ This should include the payment of fees (if any) for occasional services such as weddings and funerals (see below).

⁶ If the minister is also the archdeacon, the function of the archdeacon must be exercised by the diocesan bishop.

(see below). A failure to undergo such training and/or to provide evidence of having done is to be regarded as serious misconduct; and

(k) a term recognising that the PCC is bound to pay due regard to the House of Bishops' guidance on the safeguarding of children and vulnerable adults (see section 5 of the Safeguarding and Clergy Discipline Measure 2016).

14. The contract will in almost all circumstances constitute a contract of employment⁷ (see above) and in these circumstances there are a number of obligations imposed by statute upon the employer, that is, the PCC: see the Appendix (below). However, it must be borne in mind that these obligations may change from time to time and therefore care must be taken to ensure that all current obligations are fulfilled. (A further complication is provided by the possibility that an employment tribunal may rule that an agreement is one of employment in spite of the express wording of the agreement.)

15. In all cases the agreement must be subject to a pre-condition of obtaining of a satisfactory DBS disclosure (or any similar statutory requirement) where such a disclosure is required and it is good practice for the agreement specifically to refer to the safeguarding guidance given by the House of Bishops. The agreement should also cover other points referred to below and it is therefore advisable to consult the diocesan registry about the content of the draft agreement before finalising it.

Termination

16. Subject to the general provisions of employment law, the contract may be terminated either by the organist or (with the agreement of the PCC) by the minister except that, if the archdeacon considers that the circumstances are such that the requirement as to the agreement of the PCC should be dispensed with, the archdeacon⁸ may direct accordingly (Canon B 20, paragraph 1). The PCC's agreement was introduced as a

⁷ Assistance can be found in a number of diocesan websites such as <https://www.london.anglican.org/kb/employment-status> (see, especially, the FAQs section).

⁸ If the minister is also the archdeacon, the function of the archdeacon must be exercised by the diocesan bishop.

requirement in 1988 to prohibit ‘shot-gun’ dismissals or summary dismissal by the minister acting solely on his or her own initiative.

17. If the organist has been employed for two or more years the minister must be satisfied before terminating the employment that any dismissal is a ‘fair dismissal’ for the purposes of the applicable employment law. Before dismissing the organist the minister should therefore obtain legal advice as necessary.

18. Where the minister is of the opinion that there cannot be a proper discussion or ‘fair’ hearing of the matter in the PCC then the minister may ask the archdeacon to consider dispensing with the PCC’s agreement. If the PCC’s agreement is dispensed with, the decision is solely that of the minister. The circumstances which the General Synod had in mind included where there is a dispute concerning the choir and many members of the choir are also members of the PCC, or where an improper relationship has developed and for the sake of avoiding scandal it is desirable that one person only, i.e. the archdeacon, and not a group of persons, i.e. the PCC, should be consulted. However, it must be remembered that an employment tribunal will look at each case of dismissal on its own facts and an organist’s immoral or scandalous conduct may not be sufficient grounds for dismissal (see *Obst v Germany* [2010] ECtHR (no. 425/03); *Schüth v Germany* [2010] ECtHR (no. 1620/03); and *Siebenhaar v Germany* [2011] ECtHR (no. 18136/02)). For this reason it is essential to include in the agreement an appropriate, and carefully worded, condition making it clear what conduct is to be regarded as gross misconduct and what behaviour will amount to a repudiatory breach of the agreement, for example, in relation to DBS certification or its equivalent and safeguarding (see below)⁹. Nevertheless, no condition may be contrary to the general laws against discrimination.

Duties of the organist (These should be included in the written agreement.)

19. It is the duty of the organist:

⁹ See, too, *Neary v Dean of Westminster* (1985) 5 Ecc L J 303.

- (a) to devote his or her best efforts towards securing a devout and appropriate rendering of the musical portions of the church services so far as the means available permit;
- (b) to recognise the authority of the minister in all matters relating to the conduct of the service, including what parts are to be said and sung respectively and the amount of musical elaboration suited to the needs of the congregation;
- (c) to play the organ (or take such part in the service as his or her position requires) at all chief services on Sundays, the Great Festivals and major Holy Days as defined in the terms of the agreement;
- (d) to play the organ (or take such part in the service as his or her position requires) at such services on the Lesser Festivals and weekdays (including occasional services) as the organist's agreement with the PCC requires; and
- (e) to assist the choirmaster and/or choir director (if any) at choir practice, if the offices are distinct.

Duties of the organist, if also the choirmaster or choir director (These should be included in the written agreement.)

- 20. If the organist is also the choirmaster or choir director, the duties include:
 - (a) the training of the choir;
 - (b) the conduct of suitable practices as specified in the written agreement; and
 - (c) generally, the advancement of the interests of the church in musical matters.

- 21. It should be noted that none may be admitted to, or dismissed from, the choir save with the approval of the minister of the parish.

Holidays and maternity/paternity leave

- 22. The agreement should make provision for holidays (at least as provided by statute) during which the organist should be required to find a suitable deputy (to be paid, if payment is required, by the PCC). If the organist is absent on any other occasions in the year, apart from illness and maternity/paternity leave, the organist must find (and

make appropriate payment to) a deputy approved by the minister. If the organist is absent through illness or maternity/paternity leave, the organist should (unless prevented by illness) assist in finding a deputy acceptable to the minister. The remuneration of such a deputy is a matter for decision between the deputy and the PCC.

Other absences

23. If the organist is absent for any reason other than those referred to in paragraph 22, he or she must assist in finding a suitable deputy approved by the minister (or, during a vacancy, by the churchwardens). Where the organist is employed and the deputy requires remuneration, the deputy should be paid by the PCC which should in turn be reimbursed by the organist.

Use of the organ

24. The use of the organ should not be granted to anybody save the organist (or a deputy in the case of holiday, illness and maternity/paternity leave), except by joint permission of the minister and the organist.

25. The use of the organ should be granted to the organist for the purposes of:

- (a) the organist's own private practice;
- (b) the occasional practice of the organist's friends; and
- (c) the instruction of the organist's pupil or pupils.

However, care must be taken by the organist and the PCC to ensure that proper safeguarding requirements are in place at all times.

Use of the organ at weddings, funerals and other occasional services

26. As an organist's entitlement to remuneration or fees for occasional services (such as weddings and funerals) has on occasion proved to be a contentious issue, it is best practice that any contract entered into specifically deals with entitlement to play at such services and with entitlement to remuneration (if any) for such services. What is said in this section is subject to whatever is specified in the contract.

27. Care should be taken in any advertisement for a vacant position to state that entitlement to remuneration or fees for occasional offices is a matter for negotiation between the organist and the PCC.
28. The use of the organ at weddings, funerals and other services of a similar character is subject to the approval of the minister. If so stated in the agreement, the organist has the right to play if organ music is required¹⁰; in these circumstances he or she is entitled to be paid such remuneration or fees as may have been set by the PCC¹¹ for such occasions. If the organist does not wish to perform these duties on any particular occasion, then another suitable organist (chosen by the organist with the approval of the minister) may play; in these circumstances any remuneration should be agreed between the organist and the substitute organist.
29. Where there is any such agreement as is referred to in paragraph 28, if for any reason those for whom the service is held desire that the organ be played by a relative or friend rather than by the organist of the church, it is subject to the agreement of both the latter and the minister; in these circumstances the organist of the church is still due the normal fee. Similarly, if there is any such agreement, the organist is still entitled to the normal remuneration or fee whenever any music is played or performed at any such service. This includes the playing of any CD or other recorded music.
30. The organist is entitled to composer's fees if his or her musical works are publically performed at an occasional service. However, the Performing Rights Society has the right to collect these fees on behalf of those composers who are members of that Society and it has decided not to exercise that right in respect of divine worship (including weddings and funerals) in the United Kingdom¹². The playing of recorded music during divine worship falls within the purview of the Mechanical Copyright Protection Society and the MCPS in practice makes a similar concession.

¹⁰ There is no such entitlement if a CD is to be used or a string quartet (or similar) is to be provided apart from the organist.

¹¹ The Parochial Fees Order does not include fees for any music provided.

¹² If any question arises in relation to this concession reference should in the first instance be made to the PRS.

31. No videos or recordings should be made without the agreement of the minister taking the service but, in addition, no video or recording may be made while the organ is being played without the consent of the organist¹³. The organist may make his or her consent contingent upon the payment of remuneration or fees although in practice the organist often agrees in his or her written agreement specifically to include the payment of such monies either within his or her ordinary remuneration or within the calculation of the PCC's fees for such occasions.

Children

32. For the purposes of the provisions of the Children and Young Persons Acts 1933 and 1963 and any subsidiary legislation or regulation made under them relating to the employment of children, a chorister taking part in a religious service, or in a choir practice for a religious service, is not deemed to be employed whether or not the chorister receives any reward: see the Children and Young Persons Act 1933, s 30(1).

Safeguarding

33. It is of fundamental importance that, before being appointed, all organists and choir directors (whether they are employed or not) are required to apply for a DBS check (or any similar statutory requirement) at the appropriate level and to provide the requisite certificate; thereafter they must undergo ongoing training approved by the diocese in accordance with any guidance from the House of Bishops on safeguarding; in addition the organist must apply for updated DBS checks at the intervals required by the safeguarding policy as well as providing certificates to show that they have done so. The written contract should provide for any such subsequent training to be paid for by the PCC. Failure to comply with these requirements must be treated as misconduct rendering the organist liable to dismissal. Each diocese has established a procedure for carrying out these checks, and for conducting risk assessments where

¹³ The taking of any video without such consent would be an infringement of the Copyright, Designs and Patents Act 1988, s 182(1).

necessary. The PCC must pay due regard to any such House of Bishops' guidance and comply with its own parish safeguarding policy as well as seek guidance from the diocesan safeguarding officer as needed. Failure to carry out such checks, and to put in place reasonable steps to manage any risk, could expose the PCC to legal liability if a child or an adult at risk is harmed.

APPENDIX

Obligations imposed by statute on the PCC as employer

(It must be remembered that the organist may be an employee whatever terminology may be used in the wording of the agreement).

- (a) Where an employee begins employment, the employer not later than two months after the commencement of the employment must give to the employee a written statement of specific particulars of employment; subject to certain exceptions some of these particulars may be given in instalments: see the Employment Rights Act 1996, sections 1, 2 & 3. These particulars include any terms or conditions relating to holidays and holiday pay; incapacity for work due to sickness or injury (including any provision for sick pay); and pensions and pension schemes: see the 1996 Act, s 1(4)(d).
- (b) Where any changes to the terms of employment are agreed, the employer must provide details of these changes to the employee within one month: Employment Rights Act 1996, s 4.
- (c) Every payment to an employee must be accompanied by an itemised pay slip (or statement) giving specific particulars: Employment Rights Act 1996, s 8.
- (d) If an organist has a contract or other arrangement for work or services personally for reward and is between the ages of 16 and 24, he or she is entitled to the national minimum wage; if the organist is over the age of 25, the entitlement is to the national living wage: National Minimum Wages Act 1998, s 1. This does not apply if the employer is a charity (such as the PCC) and the organist receives (i) no monetary payment of any description or only receives expenses actually incurred in the

performance of his or her duties or reasonably estimated as such; and (ii) no benefit¹⁴ (other than in relation to subsistence or accommodation) in kind of any description: see the 1998 Act, s 44.

- (e) If the organist is employed, the employer is under a duty to deduct income tax and national insurance at source under PAYE and to inform HMRC using the online service: see <https://www.gov.uk/payee-for-employers> .
- (f) If the organist is female she is entitled to maternity leave; a male organist may in certain circumstances be entitled to paternity leave: see the Employment Rights Act 1996, ss 71 & 76.
- (g) The auto-enrolment pensions scheme may in certain circumstances apply to employed organists: see www.thepensionsregulator.gov.org

¹⁴ A benefit would include the right to practice on the church's organ or to use it for the purposes of teaching.