

LEGAL ADVISORY COMMISSION OF THE GENERAL SYNOD

REVOCATION OF PRESENTATION BY PATRON AND REFUSAL OF PRESENTEE BY BISHOP

1. This Opinion considers the situation where the parish representatives and the bishop have consented under section 13(1)(b) of the Patronage (Benefices) Measure 1986 to the making of an offer by the patron, the offer has been made and accepted and the patron has given notice of presentation in form 38 to the bishop. New information then comes to light and:
 - 1.1 it transpires that the presentee misrepresented certain material facts to the patron, the parish representatives or the bishop, or
 - 1.2 although there was no misrepresentation by the presentee, had the patron been aware of the information, he would not have wished to present the priest and had the parish representatives and the bishop been aware of the information, they would not have given consent to the making of the offer.
2. Examples in the first category above (taken from actual cases) are where the presentee represented that he was happily married and that the appointment would be ideal for his wife and family, when in fact his marriage had broken down twelve months earlier and he now wished to be divorced. Or where the presentee had represented that he held various university degrees, but he did not. An example in the second category is where the bishop had taken a reference from the presentee's existing bishop and it was satisfactory, but enquiries subsequently made of the presentee's present parish revealed that the presentee and his wife had been extreme malcontents, obsessed with the alleged inadequacies of their parsonage house and there was every indication that there would be similar problems at the new parish.
3. The question is whether, in either of these circumstances, the patron can revoke the presentation prior to institution or the bishop can refuse the presentee.
4. It is stated in Halsbury's Laws paragraph 837 that presentation by a spiritual patron is complete when it is received by the bishop and it cannot afterwards be varied or revoked, but presentation by a lay person other than the Sovereign is not complete until institution or admission, and so it may be revoked.
5. Phillimore on pages 315 and 316 is somewhat equivocal, but also states the view that presentation can only be revoked by a lay patron "and not [by] ecclesiastical persons of any kind; because they are supposed in law to be competent judges of the sufficiency of the person and do therefore proceed by judgement and election; and whoever elects an unfit person is *ipso jure* deprived of the power of electing". The passage quoted is referring to varying the presentation (i.e. presenting a second candidate and leaving the bishop to choose) but would appear to apply also to revocation.
6. These principles appear to be derived from some extremely old authorities, and it is suggested that they should be treated with some caution. It may have been the case in the 17th century that spiritual persons and colleges would have presented from those whom they knew personally or from amongst their own members, whereas lay patrons would rely on the recommendations of others and might never meet the presentee. But that is not the case now. Whatever the status of the patron, the process of advertising and interviewing applicants is largely the same. The fragility of the distinction is further emphasised by the dicta summarised in Phillimore that "a patroness, though a spiritual person, as an abbess might vary her presentation, for she is no more apprised than a lay patron of the sufficiency of her clerk". The distinction therefore seems to derive from a pragmatic assessment of the knowledge of the presentee that different

categories of patron could reasonably be expected to have, rather than from any fundamental legal principles.

7. It is therefore suggested that the question should now be revisited. A sensible lay patron would take up references and invite the bishop to make appropriate episcopal enquiries, and it is normal for the patron, whether lay or spiritual, to meet the candidate in advance of offering to present them. There is now no logic for the distinction between lay and spiritual patrons.

8. Both Phillimore and Halsbury give the impression that a lay patron may revoke presentation for any reason or none and the presentee would have no redress. This seems strange and anomalous. It is suggested that in the context of the 1986 Measure and the regime that that creates, the presentation should be regarded as completed when the patron gives notice of presentation in form 38 to the bishop. The offer has been made to the presentee. The offer has been accepted and the patron has exercised his rights of presentation by completing form 38 and presenting the presentee. The patron's functions are fulfilled and, despite the earlier authorities to the contrary, there seems no justification for a lay patron revoking the presentation, at least without good grounds for doing so. This view can be reconciled with the earlier authorities on the basis that the position for a spiritual patron was the norm; an exception was made for lay patrons because they could not in the past be expected to have sufficient knowledge of potential candidates, but the justification for that exception has now gone.

9. If the foregoing proposition is accepted, it raises the question whether there are any circumstances in which the patron, lay and spiritual, can revoke the presentation. It is suggested that if the presentation has been secured by fraud or material misrepresentation, revocation may be justified. So, in the situation described in 1.1. above, if the presentee has knowingly misrepresented a material fact so that, had the patron known the true position, the offer would not have been made, the patron should be allowed to revoke the presentation. In the example of the priest who misrepresented his family situation, if the patron would not have made the offer had the true situation been known, that should be a ground for revocation..

10. The rationale for the revocation is either that the offer was induced by the misrepresentation, or that on account of deliberate deceit the presentee has shown himself to be unworthy of the post. On the same principle, the presentation could not be revoked in a case falling within 1.2 above. There has been no misrepresentation by the presentee. New information has come to light that suggests that the decision was a bad one, but the fault lies with the bishop who gave the reference and perhaps with the patron, the parish or the receiving bishop for not making other enquiries before making or giving consent to the making of the offer.

11. The position of the bishop having given consent to the making of the offer is governed by the Benefices Act 1898 and the Benefices Measure 1972. Under section 2 of the 1898 Act, the bishop may refuse to institute or admit a presentee to a benefice on the grounds of lack of experience (a ground supplemented by section 1 of the 1972 Measure), unfitness to discharge the duties of the benefice through physical or mental infirmity or incapacity, pecuniary embarrassment of a serious character, grave misconduct or neglect of a duty in ecclesiastical office, evil life, grave scandal concerning moral character since ordination or having been party to a transaction or agreement invalid under the Act. Section 3 of the Act provides a right of appeal to the Archbishop and the Dean of the Arches and Auditor where a bishop refuses to institute or admit "on any ground included in section 3 of this Act or of unfitness or disqualification of the presentee otherwise sufficient in law, except a ground of doctrine or ritual". The words "or of unfitness or disqualification...otherwise sufficient in law" imply that there are grounds on which a bishop might lawfully refuse to institute other than those in section 2. Citing various 16th century authorities, Halsbury at paragraph 839 states that "Any cause which would be sufficient to deprive an incumbent is a sufficient ground for refusing a presentee", but it is not stated that presentation may

only be refused on such grounds, and it appears from note 10 to that paragraph that a bishop may refuse a presentee who has been guilty of ritual offences which, if he were beneficed, would be dealt with, in the first instance, not by deprivation but by monition. A refusal to institute or admit a presentee on the ground of unfitness in respect of doctrine or ritual can be challenged by a patron in the temporal courts.

12. It is suggested that it is in principle sufficient for the bishop to refuse to present because of matters which might give rise to action under Part II of the Incumbents (Vacation of Benefices) Measure 1977 (disability cases) or an offence under the Ecclesiastical Jurisdiction Measure 1963 (whatever censure might ultimately be imposed under that Measure) or misconduct which could be the subject of proceedings under Section 8 of the Clergy Discipline Measure 2003. In any of those cases, the Bishop would be entitled to refuse to institute, but subject to the right of appeal in section 3 of the 1898 Act or an action in the temporal courts on the ground of unfitness in the case of doctrine or ritual. It would be open to the appellate tribunal to conclude that, although the bishop had grounds under section 2 of the Act to refuse to institute, the circumstances of the particular case were not such that his refusal was justified.

13. Prior to the 1986 Measure, the patron did not have to obtain the bishop's approval to the making of an offer. The patron presented and the bishop then examined the candidate. The bishop now has two bites of the cherry in that he can refuse to approve the making of an offer (subject to the patron's right to request the Archbishop to review the matter under section 13(5)), but having either approved the offer or been overruled by the Archbishop, the bishop can then refuse to present under the 1898 Act, subject to the right of appeal under section 3. It is suggested that the relevant issue for the appellate tribunal in considering any appeal under section 3, is why the bishop gave consent to the making of the offer but is now refusing to institute.

14. In the situation described in 1.1 above, the fact that the presentee's marriage had broken down is not, without more, a disciplinary offence and is not on the face of it grave misconduct, evil life or grave scandal concerning his moral character. Therefore, it does not in itself seem to be a ground for refusal under section 2 of the 1898 Act. However, the fact that a misrepresentation has been made which induced the patron to make the offer and possibly induced the bishop to approve the making of the offer could, it is suggested, be grave misconduct under section 2 of the 1898 Act and, since the misconduct was only discovered after the bishop approved the making of the offer, there is justification for his apparent volte-face. Likewise, the deceit about the university degrees may be a ground for the bishop to refuse to institute.

15. In the situation described in 1.2 above, it is suggested that the bishop would only have a ground for refusing to institute if the matters discovered after the presentation were of sufficient seriousness to come within section 2 of the 1898 Act. In the examples given in paragraph 2, they would probably not have been.

16. Whatever the correct interpretation of the law, if a manifestly unsatisfactory incumbent is instituted to a benefice, damaging and potentially expensive pastoral difficulties are likely to follow. The Commission therefore recommends as good practice the taking up of references before parish representatives give consent to the making of the offer.