

**ARCHBISHOPS' COUNCIL**

**MINISTRY DIVISION**

**REVIEW OF CLERGY TERMS OF SERVICE:  
INTERIM REPORT**

1. Section 23 of the Employment Relations Act 1999 gives the Secretary of State for Trade and Industry the power to confer some employment rights on people who are not technically employees (including ministers of religion). A list of these rights is attached as **Annex 1**. Section 23 rights include the right to a written statement of terms and conditions of work and the right to appeal against unfair dismissal.

2. The DTI's discussion document on the possible application of section 23 (*Employment Status in relation to Statutory Employment Rights*) was issued last year and the Archbishops' Council responded in December. In its response the Council indicated that it would not necessarily resist the application of section 23 to clergy. However, it argued that the Church needed to conduct its own study of the options for amending current arrangements, with a view to enhancing safeguards against injustice and ensuring a proper balance between rights and responsibilities. The Council's response was included in the Report *Review of Employment Status and the Clergy (GS 1488)*.

3. To carry out this study, the Council set up a working group with the membership and terms of reference contained in **Annex 2**. The Synod held a debate on the setting up of the Group at its February Group of Sessions this year, at the end of

which it took note of GS 1488. Points raised in that debate included the following.

- The Church needed to show that it was following good employment practice in its treatment of clergy.
- Job security and protection against unfair dismissal were particularly important issues for clergy, as loss of job resulted in loss of housing.
- The freehold needed to be looked at. Parishes were having to meet an increasing proportion of stipends and pensions bill, which was resulting in calls for clergy to be more accountable. At the same time, dioceses needed more flexibility in responding strategically to financial pressures and falls in the number of stipendiary clergy.

#### *Historical Background*

4. Calls for a review of the freehold are not new. In 1990 a meeting of the Convocations of York and Canterbury called for a review of the freehold of ecclesiastical office. This was followed in 1991 by a General Synod debate on a Motion from the diocese of Southwark that asked for a review of clergy conditions of service. The Standing Committee of the General Synod set up a steering group ‘to co-ordinate the consideration of issues relating to clergy conditions of service, including a review of the ecclesiastical freehold.’ In 1994 the steering group issued *Clergy Conditions of Service: A Consultative Paper* (GS 1126). This was circulated to dioceses and other interested parties for consultation. The responses formed the basis of the paper *Improving Clergy Conditions of Service* (GS 1173). Following a debate in Synod in 1995, the steering group started work on the implementation of the recommendations that had emerged from the consultative process. The group considered that there was insufficient consensus about the possible abolition of the freehold to warrant a major exercise at that time. A review of the freehold

of property was undertaken. That review found there was no compelling evidence to suggest that changes to the freehold property ownership of parsonage houses were justified. However, in the light of the Report, it was agreed to make changes to the Repair of Benefice Buildings Measure 1972. These are being considered at this Group of Sessions. The steering group and the Advisory Board of Ministry's Ministry Development and Deployment Committee undertook work on the security of tenure for unbeneficed clergy but could not reach a conclusion. Considerable emphasis was placed on the possibility of giving clergy time-limited licences with a specified period of notice.

5. This work was remitted to the Deployment, Remuneration and Conditions of Service Committee, which was set up within the Ministry Division of the Archbishops' Council in 1999. In the event, this work had to give way to the requirement to undertake a review of stipends.

*Work carried out by the Group*

6. The Group has met six times to date. It has met representatives of Amicus, and the Revd Ray Owen. It has also met the Clergy Appointments Adviser and the Archbishops' Appointments Secretary. It has received a submission from the Bishop of Stafford, and has reflected on the General Synod debate in February. The group has also examined:-

the responses to the DTI's discussion document from Amicus, the Revd Ray Owen, the Churches Main Committee, the Free Churches Group, the United Reformed Church, the Roman Catholic Church, the Methodist Church, the Scottish Episcopal Church, the Church of Scotland and the Church in Wales;

material previously debated by the General Synod during the early 1990s (*Clergy Conditions of Service* (GS 1126); and *Improving Clergy Conditions of Service* (GS 1173); material by the Revd Stephen Trott, the Revd Dr Richard Turnbull, Philip Petchey (Deputy Chancellor of the Diocese of Southwark), Lionel Lennox (Legal Secretary to the Archbishop of York); the Secretary to the Church Commissioners and other correspondents; the House of Commons debate in Westminster Hall on 7 April 2003 on clergy conditions of service.

7. Members of staff have also attended an informal meeting with staff of the Department of Trade and Industry, in which they stressed the Church's willingness to improve protection for clergy without the freehold.

8. The Group's terms of reference (see **Annex 2** require it to give priority to clergy without the freehold or employment contracts and to report on this aspect of the review first. However, the Group has found that many of the issues also apply to clergy with the freehold (for example, issues relating to the availability of Human Resources expertise and ministerial review). In the next stage of its work, the Group will be looking more closely at some of these issues and also at the general question of the security of tenure and at the implications for bishops. The Group has agreed (having regard to its terms of reference and resources) that it will not examine the principle of patronage. The Group takes the view that giving clergy section 23 rights (by whatever method) is not inconsistent in principle with the continued exercise of rights of patronage. However, the Group's recommendations will have implications for the way in which patronage is exercised and the Group believes that good practice guidelines for making appointments should apply across the board.

## *Initial conclusions*

### *Section 23 rights as good practice*

9. As part of its commitment to social justice, the Church has urged employers to treat their workers well. It would therefore follow that clergy ought to enjoy the same rights and protections that the Church would urge employers to provide (and the Government requires employers to provide). The rights conferred by section 23 (see **Annex 1**) are generally seen as good practice and the Group can see no reason for not granting them to clergy.

### **Provisional Conclusion 1**

**The rights conferred by section 23 of the Employment Relations Act 1999 are seen as good practice and should be granted to clergy (except in a very few cases where the rights are not applicable, such as the right not to work on Sunday).**

### *The operation of law*

10. It is sometimes argued that clergy should carry out their ministry outside the sphere of secular law. Two points are put forward in favour of this view. On the one hand, a strong emphasis is placed on the distinctive nature of the priestly vocation to be a unique channel of God's grace through the ministry of word and sacrament. On the other, it is argued that clergy are ultimately accountable to God. However, it is all but impossible to sustain the idea that accountability to God or the concept of vocation can only be applied to the clergy. It is significant that the New Testament rarely uses the language of vocation in respect of ministry. Rather the focus is on gift, and on all people (whether ordained or not) being gifted and called to use their gifts in the service of the Kingdom of God. In any case, there seems no reason for concluding that accountability to God precludes accountability to anyone else; a surgeon may

have a distinctive call to heal the sick but can be employed by an NHS trust.

11. In the case of clergy, the arguments above appear to be based on a confusion of orders – what priesthood is – with office (the framework and structures within which priesthood is exercised). A distinction needs to be made between what people are called to **be** and what they are gifted and chosen to **do**. Thus, it is appropriate to speak of being a priest employed for a particular role, but not of being employed to be a priest. If this distinction is drawn, it is clear that there is no fundamental theological incompatibility between being a minister of religion and having a contract, with access to employment tribunals in the case of dispute. This is already the case in respect of Church of England clergy who work for the National Church Institutions and in the sector ministries such as prison and hospital chaplaincies.

12. Anglican theology has tended to have a strongly incarnational emphasis, which sees God as able to operate through human agents and institutions. This would include the law, which has the capacity to be an instrument through which divine action can be channelled and manifested, for example by operating on behalf of the weak and vulnerable.

13. As Professor Anthony Thiselton has put it in a paper for the Group:

‘In the modern world there is seldom an exact one-to-one match between historical situations presupposed in the biblical writings and the specificities of modern structures. In terms of what theologians have sometimes called “a loose fit”, however, it seems to me that there is a sufficient overlap to legitimate and support an appeal to covenant as a basis to defend the

value of contractual relationships among Christian people, who worship the covenant God. Key features that link both concepts include: (1) the formulation of a *defined relationship* on the basis of which both parties *know where they stand*; (2) the imposition, definition, and acceptance of *mutual constraints* that limit deviations from what has been agreed by both parties; (3) a significant measure of *protection* for the helpless or vulnerable; and (4) the nurture of the *sense of confidence* that can arise only from knowing where one stands. In my view, it is arguable that these four features model the kind of relationship that God has purposed to characterise his own relationship with his people.’

14. All of this suggests that the weight of theological argument would be in favour of giving section 23 rights the force of law. In any case, it is difficult to see how improved protection of clergy without the freehold can have any credibility unless it has the force of law. Moreover, giving such protection the force of law would be a demonstration that the Church is serious about treating its clergy properly which would be conducive to good morale and effectiveness.

## **Provisional Conclusion 2**

**Clergy should have the rights conferred by section 23 not just in practice but in law.**

### *Employment Tribunals*

15. Any employee who thinks that they have been unfairly dismissed can take a case to an Employment Tribunal. At present, the jurisdiction of employment tribunals does not apply to the majority of clergy. The Group has been discussing how the right to claim unfair dismissal, which is enshrined in section 23, might be given to clergy.

16. Theoretically it might be possible to provide an alternative to Employment Tribunals by using the Church of England's Provincial Courts of Appeal as a vehicle for considering appeals against decisions made by bishops on the termination or non-renewal of licences. However, it might still be argued that such courts would not represent an adequate alternative to secular employment tribunals, on the grounds that they are not properly constituted and resourced to deal with issues of this kind and would provide only a single tier of appeal (as opposed to the secular system where an appeal (albeit only on points of law) could be made from an Employment Tribunal to an Employment Appeal Tribunal). Moreover, whatever appeal body the Church set up might not satisfy the requirement of the Human Rights Act 1998 for a hearing by an impartial tribunal. In any case, setting up the Church's own equivalent to employment tribunals would generate considerable (and arguably unnecessary) additional costs.

17. It is sometimes suggested, on the basis of 1 Corinthians 6: 1-8 that Christians should not have recourse to the secular courts to settle disputes between them, and that this implies that clergy ought not to have access to employment tribunals. Professor Thiselton has argued in his commentary on 1 Corinthians that Paul is talking here about the abuse of power and the use of manipulation to gain wealth and property. Whilst the Roman criminal law was relatively just and fair, the outcome of a civil case would rest on the use of wealth, influence and social and business connections by those involved. Elsewhere Paul's attitude to the use of Roman state institutions is far more favourable. On this interpretation, there would not appear to be any intrinsic obstacle to the use of employment tribunals for clergy.



18. There may, nevertheless, be some concerns as to whether employment tribunals are equipped to take proper account of matters that require particular expertise on church doctrine and practice. However, it may be possible for the jurisdiction of these tribunals in specific areas to be excluded or restricted (for example, doctrine, and issues of conduct covered by the Clergy Discipline Measure).

**Provisional Conclusion 3**  
**Clergy should have access to Employment Tribunals in order to claim unfair dismissal or a breach of “section 23 rights” rather than the Church attempting to set up its own equivalent.**

*The duties of clergy*

19. The Group’s terms of reference also include ensuring a proper balance between the rights and responsibilities of clergy. As part of its work, the Group has been struck by the extent of the existing obligations on clergy, principally those contained in Canon Law. Some of the relevant material relates to the duties of bishops, priests and deacons that arise from their ordination or consecration, and not from their appointment to a specific office. Given that many would summarise the task of an incumbent, for example, in terms of exercising a priestly ministry in the parish, that distinction may not matter overmuch. **Annex 3** sets out some material, contained in the Ordinal and the Canons, which illustrates some of the responsibilities currently laid on clergy. However, this Annex does not cover the many other obligations on clergy. These include the requirement to perform duties which arise from the role of an incumbent (and some other ministers) in respect of synodical government, parochial registers and records, and the law governing the care, inspection and repair of church, churchyard and parsonage house. In this area, the

minister's responsibility is often one of leadership and facilitation, as the duties may primarily be those of the PCC (of which he or she is part) or be shared with the churchwardens or lie with diocesan bodies.

20. The duties set out in Annex 3 come under a number of headings:

- to function as deacon, priest or bishop in a particular place;
- to have the cure of souls (Canon Law, especially Canon C24, spells out the principal duties that this involves);
- to observe the requirements of Canon Law (and where relevant of the general law) as to baptism, marriage and the burial of the dead, and the conduct of public worship and the administration of the Sacraments.

21. Clergy are not always as familiar with the Canons as they might be, and the Group is concerned to identify ways of enhancing the knowledge that clergy have of their existing responsibilities as currently set out in the Canons and the Ordinal. As Paragraph 13 puts it, there is a confidence that comes from knowing where you stand.

#### **Provisional Conclusion 4**

**Whatever mechanism the Church uses for conferring section 23 rights on clergy, it is important to ensure that both clergy and laity have access to material which clearly sets out the responsibilities of clergy as well as their rights.**

*A variety of possible approaches*

22. Over 1,000 stipendiary clergy currently have contracts of employment. These are mainly in chaplaincies – for example in hospitals, prisons, the armed forces – but also those

who hold diocesan appointments, work for the National Church Institutions at Church House and at Lambeth Palace or teach at theological colleges. In many cases they also hold the bishop's licence. However, the overwhelming majority of clergy are office holders, a category which also includes Members of Parliament and the Police. Of these clergy, most (some 5,500) have the freehold, which historically has been the norm of parochial ministry in the Church of England. Bishops, deans and archdeacons also have freehold of office.

23. The remaining 3,500 or so stipendiary clergy have neither the freehold nor a contract but operate under a licence from the bishop. For these clergy, the present arrangements do not always provide sufficient protection against possible injustice, and contracts of employment have the potential to improve the protection for many of these clergy. Nevertheless, it does not follow that they are the *only* possible model for clergy. The rights conferred by section 23 do not include all of the rights of employees, and the Government is not urging that the employment contract model should apply to all categories of workers.

24. The Church has never contended that its clergy are 'employed by God'. Nor has it suggested that there is a fundamental theological incompatibility between being a minister of religion and having a contract of employment with a human employer or employing body. Also the courts have accepted that the undertaking of spiritual duties is not *necessarily* inconsistent with the exercise of a contractual relationship. However, they have hitherto been loath to infer the existence of a contractual relationship unless the circumstances make it very plain that this was what the parties intended. The idea appears to be that the duties to which clergy are subject arise not under contract but under the rules

of the denomination in question (in the case of the Church of England from ecclesiastical law). The approach is not dissimilar to that which operates for other office holders such as police constables, who have limited access to employment tribunals but are not employed, as their terms and conditions are spelt out by specific legislation.

25. This legal analysis was most recently expressed in the case of *Coker V Diocese of Southwark*, which went to the Court of Appeal ([1998] ICR 140). The leading judgement included the following passage.

‘Special features of the appointment and the removal of a Church of England priest as an assistant curate and the source and scope of his duties preclude the creation of a contract, unless a clear intention to the contrary is expressed. The critical point in this case is that an assistant curate is an ordained priest. The legal effect of the ordination of a person admitted to the order of priesthood is that he is called to an office, recognised by law and charged with functions designated by law in the Ordinal, as set out in the Book of Common Prayer. The Ordinal governs the form and manner for ordaining priests according to the order of the Church of England. Those functions are also contained in the Canons of the Church of England and are discharged by a priest as assistant curate. It is unnecessary for him to enter into a contract for the creation, definition, execution or enforcement of those functions. Those functions embrace spiritual, liturgical and doctrinal matters, as well as matters of ritual and ceremony, which make what might otherwise be regarded as an employment relationship in the secular and civil courts and tribunals more appropriate for the special jurisdiction of ecclesiastical courts.

The legal implications of the appointment of an assistant curate must be considered in the context of that historic and special pre-existing legal framework of a church, of an ecclesiastical hierarchy established by law, of spiritual duties defined by public law rather than by private contract, and of ecclesiastical courts with jurisdiction over the discipline of clergy. In that context, the law requires clear evidence of an intention to create a contractual relationship in addition to the pre-existing legal framework.’

### **Provisional Conclusion 5**

**Giving clergy section 23 rights – including access to employment tribunals – does not necessarily require them to have contracts of employment, which would be going further than could be required by section 23. Other possible models also need to be considered.**

#### *Mechanisms for giving clergy section 23 rights*

26. The Group has identified two possible mechanisms by which the rights included in section 23 might be conferred on clergy.

**(a) amending ecclesiastical law to incorporate rights equivalent to those provided by section 23 of the Employment Relations Act (the self-regulatory or office-holder model)**

Under this option

- Rights equivalent to those contained in section 23 would be conferred through church legislation, for example through a set of detailed Terms of Service Regulations made under a Canon, (and, if necessary, by a Measure);

- There would be an opportunity to confer by the same means any additional responsibilities on clergy that were considered appropriate;
- It would be necessary to identify a body with a legal personality that would be required to defend cases at employment tribunals, which raises some of the same questions (considered below) associated with the identity of an employer of clergy;
- The clergy of the Church of England would retain their status as ecclesiastical office-holders.

**(b) bring the clergy under contracts of employment (the employment contract model)**

Under this option

- Legislation would provide that, on the next vacancy, each bishopric, archdeaconry, deanery, residentiary canon and stipendiary parochial post would cease to exist as an ecclesiastical office and would become a post held under a contract of employment;
- The legislation would convert rights of patronage into equivalent rights of nomination;
- The employing body would *prima facie* be the body providing the stipend (currently the Church Commissioners in respect of bishops and some cathedral clergy, and the DBF in other cases), although Church legislation could provide for other arrangements;
- The obligations of employees under the general law could be seen as a constraint on the traditional freedom the clergy have enjoyed as office holders;
- The clergy employer (whoever that might be) would have some additional vicarious legal liability for the wrongful

action of its employees, which could have significant financial implications.

27. There are a number of differences between these options.

- Contracts of employment provide a model that is most familiar to those in secular life, whilst retention of the office-holder status would retain the church's historic forms of office.

- The office-holder model would be broadly in line with the model favoured by some of the other churches (who have generally expressed a preference for self-regulation and amending their own internal procedures) although the Church of England has the ability to give section 23 rights legal force through its own legislation, which is not an option open to the other churches. By contrast, contracts of employment would be at odds with the approach taken by other churches in this country and by churches elsewhere in Europe.

- With contracts of employment, the clergy would gain more rights than those contained in section 23: health and safety legislation and a wider range of EC legislation would automatically apply to clergy.

28. However, at this point it is probably more significant to emphasise the features common to these options.

- Conferring section 23 rights on the clergy, whichever model is chosen, has significant legislative implications. The full scale and nature of the revised legislation will only become clear when the Group has done further work on security of tenure and the implications for the

freehold concept. If the self-regulatory or office-holder model is adopted, a major part of the legislative work would focus on the transition to the new system. If clergy became employees, the drawing up of individual contracts would be an ongoing cost, though one likely to diminish over time as practice became established and forms of model contracts were developed. The Regulations or model contracts, as the case may be, would need to be kept under review to take account of developments in employment law and practice. Many changes in employment law would apply automatically to clergy employed under contracts, but under the office-holder model only when incorporated into the Terms of Service Regulations.

- Both will inevitably lead to significant additional costs, and require the Church to change its culture by taking professional Human Resources advice in respect of clergy on a regular and sustained basis, in a way that it has not hitherto been its practice. However, these additional costs need to be set against the additional costs that would follow from having legislation imposed on the Church or liability resulting from the Church's failure to follow good practice.
- Both offer ways of providing more clarity in terms of what is expected of the clergy, which would not only make them more accountable but would also protect them from unreasonable expectations.
- Both options have within them sufficient flexibility to take account of changes in security of tenure for different groups of clergy. The Group has already begun to work on this subject, including the closely-related issues of housing and provision for those leaving stipendiary ministry.



29. The Group is well aware of the importance of NSMs and house for duty posts. It considers that many of the ‘section 23’ rights can and should be granted to clergy in these categories. Special provisions could be included in the Terms of Service Regulations, or in the licences issued to individual clergy. (Employment contracts would not be appropriate for at least some of the clergy in these categories.)

### **Provisional Conclusion 6**

**Whatever model is adopted by the Church will require substantial legal and cultural change. The Church will need to have proper mechanisms in place to encourage good practice, such as taking professional HR advice and providing appropriate training for bishops and archdeacons. This will result in additional costs.**

30. The Group also considered the possibility of inviting the Government to make an order under section 23, as a way of conferring these rights on clergy. However, this would give the Church considerably less room for manoeuvre than if it were to amend or produce its own legislation, and the Church would still have to devise its own mechanisms for clarifying the responsibilities on clergy. In addition, the legislation would not go through the Synodical process of revision and it would represent a departure from the principle that Church legislation is devolved to the Synod.

### **Provisional Conclusion 7**

**Giving clergy section 23 rights in law should be done either by means of Church legislation or through contracts of employment and not by requesting the Government to make an order under section 23.**

### *Further Questions for consideration*

31. The Convocations and the House of Laity are invited to consider the following questions.

**(i) If clergy were to be made employees with contracts of employment, who should be the employer?**

There are obvious drawbacks to having the parish as the employer. It would imply a congregationalist model that is at odds with the tradition of the Church of England. In addition, clergy might find it difficult to challenge their congregations or act in a prophetic or leadership role if they were the employees of the PCC.

The Group is aware of a strongly-held view that the Bishops should not be the employer, so as to keep the ‘spiritual’ and ‘employment’ functions apart; but, given the necessary role of the bishop in appointments and deployment, the Group questions whether this separation is realistic.

The Group also considered the DBF as possible employer, as this would have the advantage of avoiding introducing another entity into the diocesan structure. Having the DBF as employer would prompt some concerns about whether the DBF would allow considerations of finance and efficiency to overrule pastoral factors, although the employing body, whoever it was, would have to give some weight to these considerations.

The Group has considered the possibility of having the Bishop and DBF as joint employer (with the Bishop having the final say) or the Bishop’s Council (identical with the DBF in some dioceses) as employer, but there are concerns that this might

leave parishes feeling marginalised. There is also the issue of who is to be identified as the employer of Bishops.

**(ii) Should further investigation be made into the possibility of setting up a national employer of clergy?**

The Group gave some consideration to the possibility of having a national employer of clergy, possibly through a Board on which there could be elected representatives from bishops, clergy and laity. This idea has some initial attractions. It would encourage a consistency of approach, and would facilitate the Church's move towards improved practice. It would also avoid some of the anxieties about the DBF, Bishop or parish being the employer, and might provide a more suitable employer for bishops than, say, the DBF.

Against that, a move to a national employer would represent a fundamental change to the Church's polity, based as it is on the unit of the diocese. Parish and clergy have a much closer relationship with their Bishop than they could ever have with a national employer. Decisions about the terms of clergy contracts and their implementation would still have to be made at local level, although it would be the national employer who would be required to defend cases at Employment Tribunals. It would also be necessary to take advice on the VAT implications of having a national employer of clergy, in order to ensure that setting up such an employer did not create an additional VAT liability for the Church, because it was thought that the national employer was 'supplying' clergy to dioceses.

**(iii) What should be the role of the laity in the parish with regard to the responsibilities of clergy?**

For the reasons given above, there are real difficulties with the PCC being the clergy employer. However, if the parish is not to be the employer, it still needs to be involved. This will require a difficult balance to be struck: on the one hand clergy need to be protected from unreasonable expectations on the part of some PCCs; on the other, it is vital to ensure that parishes do not end up feeling marginalised. Proper acknowledgement of the increasing role of the parishes in raising the money for clergy stipends needs to be balanced against avoiding congregationalism. Whatever model is chosen, lay people need to have a greater involvement in ministerial review.

**(iv) What are the merits of contracts of employment as against amending church legislation as a mechanism for giving clergy section 23 rights?**

The Group has not come to a final view on this question on which it will need to hold further discussions, and on which it would welcome further comment.

**(v) Are there alternative models that strike a better balance between giving clergy security and encouraging greater mobility?**

Other churches provide security for their clergy in ways that are equivalent to having them ‘on the strength of a diocese’ (to use a phrase from the report *Partners in Ministry* (CA1640)). The Roman Catholic Church effectively guarantees continuous employment, although the Bishop has powers to move clergy within the diocese more or less as he sees fit. The Methodists effectively provide continuous employment because each minister formally serves the Connexion. The right form of tenure for Church of England clergy would almost certainly

need to give clergy more say in the kind of parish where they might be sent to serve than appears to be provided in the Roman Catholic or Methodist Church. Striking the right balance would be difficult, as it ought be possible to move clergy if they are in the wrong job, but at the same time proper weight needs to be given to clergy concerns about job security, especially as their home is provided with their appointment.

**(vi) Are open-ended appointments (possibly with a commitment to regular ministerial review) preferably to fixed term appointments?**

The Group is aware that there is a number of issues surrounding the use (increasing in the Church) of fixed-term (usually renewable) appointments. If the Church is to continue to make use of fixed-term appointments, there may need to be a stronger presumption of renewal, particularly in the case of clergy approaching retirement. The Group is of the view that many of the cases that attract negative publicity are the result of deferring problems until a fixed-term appointment comes to an end and the bishop has the option of not renewing it.

Some clergy without the freehold have understandable concerns about being arbitrarily removed. These concerns are unlikely to be addressed through fixed-term appointments. Such clergy could be given increased job security by means of open-ended appointments, capable of being ended after a period of notice, but with a presumption of reasonable permanence, analogous to open-ended secular contracts, and this could be combined with a commitment to regular ministerial review.

32. This paper is being circulated widely throughout the Church. It is also being sent to representatives of other

churches, Amicus and the DTI. Comments are welcome and should be received by the middle of October at the latest.

33. The Convocations are being invited to discuss the Group's work to date. The House of Laity is invited to take note of this report.

David McClean  
Chairman  
Review of Clergy Terms of Service Working Group  
June 2003

**ANNEX 1**

List of Rights that might be made applicable to clergy  
under section 23 of the Employment Relations Act 1999

a written statement of employment particulars  
an itemised pay statement  
protection against unlawful deductions from wages  
protection for making a ‘protected disclosure’, that is  
‘whistle-blowing’  
protection against detriment for exercising certain  
employment rights including rights in respect of Sunday  
working  
time off for public duties  
time off to look for work or arrange training in the event  
of redundancy  
time off for ante-natal care  
time off in respect of dependants (eg when child-care  
arrangements unexpectedly break down, or a dependant  
gives birth, is ill or dies)  
time off for duties as trustee of an occupational pension  
scheme  
time off to serve (or to be a candidate for election as) an  
employee representative  
remuneration when suspended on medical grounds or on  
maternity grounds  
maternity leave  
paternity leave  
parental leave  
adoption leave

flexible working hours for parents of young children  
access to dispute resolution procedures  
a minimum period of notice of termination of employment  
a written statement of reasons for dismissal  
not to be unfairly dismissed  
a redundancy payment  
an insolvency payment  
be accompanied to certain hearings  
be informed of collective redundancies  
the national minimum wage  
rest-breaks and annual leave  
belong (or not to belong) to a trade union  
time off for trade union activities  
not to have unauthorised union subscription deductions  
from wages.



## ANNEX 2

### MEMBERSHIP

Professor David McClean (Chairman) Professor of Law, Sheffield University Chairman of the Legal Advisory Commission and member of General Synod

The Revd Canon Bob Baker, Rector of Brundall with Braydeston and Postwick, Prolocutor of the Lower House of the Convocation of Canterbury and member of the Archbishops' Council

The Revd David Houlding, Vicar of Hampstead St Stephen with All Hallows, and member of General Synod

Mr Andrew Howard, Diocesan Secretary of Leicester

The Rt Revd Michael Langrish, Bishop of Exeter

The Revd Canon Cathy Rowling, Dean of Women's Ministry and Co-Director of Ordinands, York Diocese

Mrs Anne Sloman, Chief Political Adviser of the BBC and (from 1 January 2003) member of the Archbishops' Council

#### Assessors:

Miss Judith Egar, Legal Division

The Ven Dr Gordon Kuhrt, Director of Ministry

Mrs Su Morgan, Director of Human Resources

Mr Stephen Slack, Chief Legal Adviser to the Archbishops' Council and General Synod

#### Secretariat:

Mr Kevin Diamond

Margaret Jeffery  
Mr Patrick Shorrocks

## **TERMS OF REFERENCE**

To review the terms under which the clergy hold office to ensure a proper balance between rights and responsibilities, and clear procedures for resolving disputes which afford full protection against possible injustice; and

to consider in this context the future of the freehold and the position of the clergy in relation to statutory employment rights.

In the review, to give priority to consideration of the position of clergy without the freehold or employment contracts, and to report on this aspect in 2003 with detailed proposals and a programme for their implementation, the rest of the review to be completed, if possible, in 2004.

## **ANNEX 3**

### **THE DUTIES OF THE CLERGY**

This material provides a summary of the duties of clergy as contained in the Ordinal and Canon Law. It does not attempt to provide details of the duties laid on clergy through other legislation, such as those in respect of synodical government, parochial registers and records, or the church, churchyard and parsonage house.

#### **A Extracts from the Ordinal**

*(i) The descriptions of the work of a deacon, priest or bishop:*

A deacon is called to serve the Church of God, and to work with its members in caring for the poor, the needy, the sick, and all who are in trouble. He is to strengthen the faithful, search out the careless and the indifferent, and to preach the word of God in the place to which is licensed. A deacon assists the priest under whom he serves, in leading the worship of the people, especially in the administration of the Holy Communion. He may baptize when required to do so. It is his general duty to do such pastoral work as is entrusted to him.

A priest is called by God to work with the bishop and with his fellow-priests, as servant and shepherd among the people to whom he is sent. He is to proclaim the word of the Lord, to call his hearers to repentance, and in Christ's name to absolve, and to declare the forgiveness of sins. He

is to baptize, and prepare the baptized for Confirmation. He is to preside at the celebration of the Holy Communion. He is to lead his people in prayer and worship, to intercede for them, to bless them in the name of the Lord, and to teach and encourage by word and example. He is to minister to the sick, and prepare the dying for their death. He must set the Good Shepherd always before him as the pattern of his calling, caring for the people committed to his charge, a joining with them in a common witness to the world.

A bishop is called to lead in serving and caring for the people of God and to work with them in the oversight of the Church. As chief pastor he shares with his fellow bishops a special responsibility to maintain and further the unity of the Church, to uphold its discipline, and to guard its faith. He is to promote its mission throughout the world. It is his duty to watch over and pray for all those committed to his charge, and to teach and govern them after the example of the Apostles, speaking in the name of God and interpreting the gospel of Christ. He is to know his people and be known by them. He is to ordain and to send new ministers, guiding those who serve with him and enabling them to fulfil their ministry. He is to baptize and confirm, to preside at the Holy Communion, and to lead the offering of prayer and praise. He is to be merciful, but with firmness, and to minister discipline, but with mercy. He is to have a special care for the outcast and needy; and to those who turn to God he is to declare the forgiveness of sins.

(ii) *The declarations made by those to be ordained:*

**Q** Do you believe, so far as you know your own heart, that God has called you to the office and work of a [*deacon/priest/bishop*] in his Church?

A I believe that God has called me.

Q Do you accept the holy Scriptures as revealing all things necessary for eternal salvation through faith in Jesus Christ?

A I do so accept them.

Q Do you believe the doctrine of the Christian faith as the Church of England has received it, and in your ministry will you expound and teach it?

A I believe it, and will so do.

Q Will you accept the discipline of this Church, and [(d,p)*give due respect to those in authority/(b)faithfully exercise authority within it*]?

A By the help of God, I will.

Q Will you be diligent in prayer, in reading holy Scripture, and in all studies that will deepen your faith and fit you to uphold the truth of the Gospel against error?

A By the help of God, I will.

Q Will you strive to fashion your own life and that of your household according to the way of Christ?

A By the help of God, I will.

Q Will you promote unity, peace, and love among all Christian people, and especially among those whom you serve?

A By the help of God, I will.

Q **(d,p)***Will you then, in the strength of the Holy Spirit, continually stir up the gift of God that is in you, to make Christ known to all men?*

*(b)Will you then be a faithful witness to Christ to those among whom you live, and lead your people to obey our Saviour's command to make disciples of all nations?*

A By the help of God, I will.

## **B Related provisions of Canon Law**

Some of the declarations in the Ordinal are made matters of legal obligation by provisions in the Canons. So, Canon C26 provides:

1. Every bishop, priest, and deacon is under obligation, not being let by sickness or some other urgent cause, to say daily the Morning and Evening Prayer, either privately or openly; and to celebrate the Holy Communion, or be present thereat, on all Sundays and other principal Feast Days. He is also to be diligent in daily prayer and intercession, in examination of his conscience, and in the study of the Holy Scriptures and such other studies as pertain to his ministerial duties.

2. A minister shall not give himself to such occupations, habits, or recreations as do not befit his sacred calling, or may be detrimental to the performance of the duties of his office, or tend to be a just cause of offence to others; and at all times he shall be diligent to frame and fashion his life and that of his family according to the doctrine of Christ, and to make himself and them, as much as in him lies, wholesome examples and patterns to the flock of Christ.

## **C      The Declaration of Assent**

More closely associated with the assumption of a particular office within the church is the Declaration of Assent which Canon C15 requires to be made at every consecration and before anyone is admitted to a benefice, curacy etc.

### Preface

The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-nine Articles of Religion, *The Book of Common Prayer* and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make will you affirm your loyalty

to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making him known to those in your care?

### **Declaration of Assent**

I, A B, do so affirm, and accordingly declare my belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness; and in public prayer and administration of the sacraments, I will use only the forms of service which are authorized or allowed by Canon.

## **D The Oaths of Allegiance and Obedience**

There are two other declarations required by Canon Law, in the form of oaths: the Oath of Allegiance under Canon C13, and the Oath of Obedience. This latter is dealt with in two Canons. Canon C1, paragraph 3 declares:

3. According to the ancient law and usage of this Church and Realm of England, the inferior clergy who have received authority to minister in any diocese owe canonical obedience in all things lawful and honest to the bishop of the same, and the bishop of each diocese owes due allegiance to the archbishop of the province as his metropolitan.

Canon C14 deals with the Oath itself:

1. Every person whose election to any bishopric is to be confirmed, or who is to be consecrated bishop or translated to any bishopric or suffragan bishopric, shall first take the oath of due obedience to the archbishop and to the metropolitan Church of the province wherein he is to exercise the



episcopal office in the form and manner prescribed in and by the Ordinal.

3. Every person who is to be ordained priest or deacon, or to be instituted to any benefice, or to be licensed either to any lectureship, preachership, or stipendiary curacy, or to serve in any place, shall first take the Oath of Canonical Obedience to the bishop of the diocese by whom he is to be ordained, instituted, or licensed, in the presence of the said bishop or his commissary, and in the form following:

I, A B, do swear by Almighty God that I will pay true and canonical obedience to the Lord Bishop of C and his successors in all things lawful and honest: So help me God.

It is probably true to say that the precise scope of ‘all things lawful and honest’ is uncertain. Some clue as to its meaning may be found in the Canon dealing with diocesan bishops, Canon C18. Paragraph 4 of that Canon provides:

Every bishop is, within his diocese, the principal minister, and to him belongs the right, save in places and over persons exempt by law or custom, of celebrating the rites of ordination and confirmation; of conducting, ordering, controlling, and authorizing all services in churches, chapels, churchyards and consecrated burial grounds; of granting a faculty or licence for all alterations, additions, removals, or repairs to the walls, fabric, ornaments, or furniture of the same; of consecrating new churches, churchyards, and burial grounds; of instituting to all vacant benefices, whether of his own collation or of the presentation of others; of admitting by licence to all other vacant ecclesiastical offices; of holding visitations at times limited by law or custom to the end that he may get some good knowledge of the state, sufficiency, and ability of the clergy and other persons whom he is to visit; of being president of the diocesan synod.

## **E Duties of ministers having the cure of souls**

The specific duties of the parochial clergy are set out at many points in the body of Canons. Some provisions apply to ‘ministers’ generally, but a number refer specifically to ministers having the cure of souls (which

includes team vicars and priests in charge as well as incumbents). The most general provision is Canon C24:

1. Every priest having a cure of souls shall provide that, in the absence of reasonable hindrance, Morning and Evening Prayer daily and on appointed days the Litany shall be said in the church, or one of the churches, of which he is the minister.

2. Every priest having a cure of souls shall, except for some reasonable cause approved by the bishop of the diocese, celebrate, or cause to be celebrated, the Holy Communion on all Sundays and other greater Feast Days and on Ash Wednesday, and shall diligently administer the sacraments and other rites of the Church.

3. Every priest having a cure of souls shall, except for some reasonable cause approved by the bishop of the diocese, preach, or cause to be preached, a sermon in the church or churches of which he is the minister at least once each Sunday.

4. He shall instruct the parishioners of the benefice, or cause them to be instructed, in the Christian faith; and shall use such opportunities of teaching or visiting in the schools within his cure as are open to him.

5. He shall carefully prepare, or cause to be prepared, all such as desire to be confirmed and, if satisfied of their fitness, shall present them to the bishop for confirmation.

6. He shall be diligent in visiting the parishioners of the benefice, particularly those who are sick and infirm; and he shall provide opportunities whereby

any of such parishioners may resort unto him for spiritual counsel and advice.

7. He and the parochial church council shall consult together on matters of general concern and importance to the parish.

8. If at any time he shall be unable to discharge his duties whether from non-residence or some other cause, he shall provide for his cure to be supplied by a priest licensed or otherwise approved by the bishop of the diocese.

Some of the paragraphs of that Canon are reinforced by other provisions. So, paragraphs 4 and 5 are amplified in Canon B26, paragraph 1:

Every minister shall take care that the children and young people within his cure are instructed in the doctrine, sacraments, and discipline of Christ, as the Lord has commanded and as they are set forth in the Holy Scriptures, in *The Book of Common Prayer*, and especially in the Church Catechism; and to this end he, or some godly and competent persons appointed by him, shall on Sundays or if need be at other convenient times diligently instruct and teach them in the same.

and in Canon B27, paragraph 2:

Every minister who has a cure of souls shall diligently seek out children and other persons whom he shall think meet to be confirmed and shall use his best endeavour to instruct them in the Christian faith and life as set forth in the Holy Scriptures, *The Book of Common Prayer*, and the Church Catechism.

Paragraph 6 is amplified in Canon B37

1. The minister shall use his best endeavours to ensure that he be speedily informed when any person is sick or in danger of death in the parish, and shall as soon as possible resort unto him to exhort, instruct, and comfort him in his distress in such manner as he shall think most needful and convenient.

2. When any person sick or in danger of death or so impotent that he cannot go to church is desirous of receiving the most comfortable sacrament of the Body and Blood of Christ, the priest, having knowledge thereof, shall as soon as may be visit him, and unless there be any grave reason to the contrary, shall reverently minister the same to the said person at such place and time as may be convenient.

## **F Residence and ‘Leave entitlement’**

A typical contract of employment will deal with holiday entitlement. There are some general understandings about this but the nearest equivalent in Canon Law is Canon C25:

1. Every beneficed priest shall keep residence on his benefice, or on one of them if he shall hold two or more in plurality, and in the house of residence (if any) belonging thereto.

2. No beneficed priest shall be absent from his benefice, or from the house of residence belonging thereto, for a period exceeding the space of three months together, or to be accounted at several times in any one year, except he have a licence to

be so absent, granted by the bishop of the diocese subject to the statutory provisions in this behalf for the time being in force, or be otherwise legally exempt from residence.

3. Any beneficed priest, within one month after refusal of any such licence, may appeal to the archbishop of the province, who shall confirm such refusal or direct the bishop to grant a licence, as shall seem to the said archbishop just and proper.

4. In the case of any benefice in which there is no house, or no fit house of residence, the priest holding that benefice may be licensed by the bishop of the diocese to reside in some fit and convenient house, although not belonging to that benefice: Provided that such house be within three miles of the church or chapel of the benefice, or, if the same be in any city or borough town or market town, within two miles of such church or chapel.

### **G Specific duties in connection with liturgy and the sacraments**

Most of the other provisions deal with the work of the minister in terms of liturgy and the sacraments.

#### *(a) Forms of worship*

Every minister shall use only the forms of service authorized by this Canon, except so far as he may exercise the discretion permitted by Canon B 5. It is the minister's responsibility to have a good understanding of the forms of service used and he shall endeavour to ensure that the worship offered glorifies God and edifies the people. (Canon B1, paragraph 2).

The minister having the cure of souls shall give adequate public notice, in any way which is locally convenient, of the Feast Days and Fast Days to be observed and of the time and place of services on those days. (Canon B7)

The minister shall teach the people from time to time, and especially before the festivals of Christmas, Easter and Whitsun or Pentecost, that they come to [the Holy Communion] with such preparation as is required by *The Book of Common Prayer*. (Canon B15, paragraph 2)

It is the duty of the minister 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; and to banish all irreverence in the practice and in the performance of the same. (Canon B20, paragraph 3).

*(b) Baptism*

Canon B22 provides

4. No minister shall refuse or, save for the purpose of preparing or instructing the parents or guardians or godparents, delay to baptize any infant within his cure that is brought to the church to be baptized, provided that due notice has been given and the provisions relating to godparents in these Canons are observed.

6. No minister being informed of the weakness or danger of death of any infant within his cure and therefore desired to go to baptize the same shall either refuse or delay to do so.

9. The minister of every parish shall warn the people that without grave cause and necessity they should not have their children baptized privately in their houses.

(c) *Marriage*

It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church of which he is the minister, to explain to the two persons who desire to be married the Church's doctrine of marriage as herein set forth [*i.e. in Canon B30, para 1*], and the need of God's grace in order that they may discharge aright their obligations as married persons. (Canon B30, paragraph 3)

It shall be the duty of the minister, when application is made to him for matrimony to be solemnized in the church or chapel of which he is the minister, to inquire whether there be any impediment either to the marriage or to the solemnization thereof. (Canon B33)

In all matters pertaining to the publication of banns of marriage and to the solemnization of matrimony every minister shall observe the law relating thereto, including, so far as they are applicable, the rules prescribed by the rubric prefixed to the office of Solemnization of Matrimony in *The Book of Common Prayer*. (Canon B35, paragraph 2)

*(d) Burial*

Canon B38 sets out at some length the minister's duties:

1. In all matters pertaining to the burial of the dead every minister shall observe the law from time to time in force in relation thereto, and, subject to this paragraph in general, the following paragraphs of this Canon shall be obeyed.

2. It shall be the duty of every minister to bury, according to the rites of the Church of England, the corpse or ashes of any person deceased within his cure or of any parishioners or persons whose names are entered on the church electoral roll of his parish whether deceased within his cure or elsewhere that is brought to a church or burial ground or cemetery under his control in which the burial or interment of such corpse or ashes may lawfully be effected, due notice being given; except the person deceased have died unbaptized, or being of sound mind have laid violent hands upon himself, or have been declared excommunicate for some grievous and notorious crime and no man to testify to his repentance; in which case and in any other case at the request of the relative, friend, or legal representative having charge of or being responsible for the burial he shall use at the burial such service as may be prescribed or approved by the Ordinary, being a service neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter: Provided that, if a form of service available for the



burial of suicides is approved by the General Synod under Canon B 2, that service shall be used where applicable instead of the aforesaid service prescribed or approved by the Ordinary, unless the person having charge or being responsible for the burial otherwise requests.

*(e) Registration*

*In all matters pertaining to the registration of baptisms, marriages, and burials every minister shall observe the law from time to time in force relating thereto. (Canon B39, paragraph 1)*

## **H Care of the church building**

Finally there are two Canons dealing with faculties and the use of the church:

It shall be the duty of the minister and churchwardens, if any alterations, additions, removals, or repairs are proposed to be made in the fabric, ornaments, or furniture of the church, to obtain the faculty or licence of the Ordinary before proceeding to execute the same. (Canon F13, paragraph 3)

1. When any church or chapel is to be used for a play, concert, or exhibition of films or pictures, the minister shall take care that the words, music, and pictures are such as befit the House of God, are consonant with sound doctrine, and make for the edifying of the people.
2. The minister shall obey any general directions relating to such use of a church or chapel issued from time to time by the bishop or other the Ordinary. (Canon F16)