

**GS 1593**

**Review of Clergy Terms of Service:**

**The Property Issues Revisited**

**The First Report of the Implementation Group**

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# **1. Summary of recommendations**

- (i) The parsonage house of a benefice should vest, without any legal transfer, in the Diocesan Parsonages Board (DPB) of the diocese in which the benefice is situated on the day the relevant provisions of the Terms of Service legislation come into force, if the benefice is vacant; or when the benefice becomes vacant; or when the incumbent makes a declaration in writing to the effect that he or she wishes to have section 23 rights and move to common tenure;**
- (ii) The DPB should hold the parsonage house subject to the existing provisions in the Parsonages Measures 1938 and 1947 and the Pastoral Measure 1983 governing the use of the proceeds of any disposal, subject to an amendment empowering the incumbent, priest-in-charge or team rector to make representations in relation to any surplus proceeds;**
- (iii) The Repair of Benefice Buildings Measure 1972 should be amended (a) to extend the functions of the DPB to include a duty to oversee the provision of benefice housing in the diocese, and in particular an obligation to ensure that a suitable house is provided for the incumbent, priest-in-charge or team rector of each benefice and (b) to require that, where the Diocesan Board of Finance (DBF) acts as the DPB, the committee to which the functions of the DPB are delegated should consist of all the archdeacons in the diocese and members elected by the Diocesan Synod, of whom not less than 1/3 should be clergy and 1/3 lay people;**
- (iv) The Terms of Service legislation should include a provision that parsonage houses will not form part of the corporate property of the DBF and will not be accessible to creditors in the event of the DBF's insolvency;**
- (v) All clergy in posts where a house is provided, regardless of where the ownership lies, should occupy that house under an**

**occupational licence, which would clearly set out their rights and responsibilities;**

- (vi) All such clergy should be given the right to object to a disposal or improvement of the house they occupy during their term of office, or to the acquisition of a new house, such objections to be subject to adjudication by the Church Commissioners or, in cases where the Commissioners cannot act, by a panel appointed by the Archbishops' Council;**
- (vii) The vestigial legal estate in the church and churchyard should continue to vest in the incumbent as corporation sole, and that, where, exceptionally, a priest in charge is appointed, he or she should have the legal rights and duties attaching to the property of the corporation sole.**

## 2. Background to this report

1. The Archbishops' Council established a Review Group in December 2002, charged with reviewing 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'. The Review Group produced two reports (GS 1527 and GS 1564) which were the subject of debates in the General Synod, and the Convocations and the House of Laity meeting separately, in February 2004 and February 2005 and very full consultations with dioceses and other interested groups. The present Implementation Group has the responsibility of overseeing the process of preparing legislation and of taking forward the recommendations which do not require legislation. Its membership is recorded at Annex 1.
2. In February 2005, the Synod accepted the second report of the Review Group with clear majorities in all three Houses. The voting was:

	<i>Ayes</i>	<i>Noes</i>
House of Bishops	37	0
House of Clergy	150	39
House of Laity	154	53

The Synod did however express 'grave reservations' about certain recommendations relating to property matters. The focus of this report is on the particular issues so identified, but in this opening section we give a brief summary of the overall approach which the Synod has endorsed.

3. The Review Group identified a number of features of the present situation which needed attention. The clergy have, as a matter of law, very few of the rights enjoyed under general employment law. In some areas, there is a notable lack of clarity as to what are their legal rights and responsibilities, and this can make for real difficulty when disputes arise. Different groups of parish clergy, doing essentially the same work, have startlingly different

terms and conditions of service, especially in terms of security of tenure. The Church of England's human resource (HR) procedures can fall far short of best practice. Because of the freehold, the Church lacks any way of tackling the situation created by an incumbent failing to deliver minimum standards of performance.

4. The two earlier reports contain a comprehensive set of proposals to address these matters. The clergy were to retain their existing status as 'office-holders' rather than employees, but church legislation should ensure that they should enjoy most of the rights listed in section 23 of the Employment Relations Act 1999. These rights include access to an outside tribunal, an Employment Tribunal, if the other rights were not honoured and, where an appointment was terminated (by non-renewal or otherwise) to claim unfair dismissal. Although the Ordinal and the Canons say much about the office and work to which the clergy are called, their rights and responsibilities would be more precisely set out in new Terms of Service Regulations to be approved by the Synod.
5. A major recommendation was that all clergy, from archbishop to newly-ordained assistant curate, should hold office on the same basis, described as 'common tenure'. Future appointments would be open-ended (save in exceptional circumstances), and be subject to the retiring age and to the possibility of removal on grounds of discipline, ill-health, pastoral reorganisation or after a 'capability procedure' when a failure to reach minimum standards proved irremediable.
6. These new conditions would apply to *future* appointments to what are now freehold offices (those of archbishops, diocesan bishops, deans, archdeacons, some residentiary canons, and rectors and vicars) but would *not* affect the position of those now holding such offices unless they opted to transfer to the new conditions.
7. There were important associated recommendations for the creation of a properly resourced HR service, to ensure that the Church's appointment and personnel management procedures make use of the expertise and experience of HR professionals. Coupled with the legislative changes and other work, on for example ministerial review, grievance procedures and guidelines as to professional conduct, these recommendations will effect a

real change in culture, for the benefit of the clergy as a whole. An account of the progress already made in these areas forms Annex 2 to the present report.

### **3. The property issues**

8. The motion carried by the Synod in February 2005 was in the following terms, the words in italics being added by an amendment:

That this Synod

- a. *Welcome in general terms* the recommendations summarized on pages 1 to 7 of the (main) report, *but with grave reservations about recommendations v, ix, xxxiiif and xxxiiig;*
  - b. commend the report to the dioceses and the wider Church and ask dioceses and other interested parties to submit comments by the end of July 2005 to the implementation group referred to in (c) below;
  - c. request the Archbishops' Council to appoint an implementation group to follow up the recommendations in the report, (taking account of the responses from dioceses and other interested parties both to this report and to the earlier report (GS1527) on the first phase of the work) and to bring forward legislation based on those recommendations as early as possible in the next quinquennium.
9. The amendment, which was carried by 218 votes to 135, concerned the future of the property rights in the church and churchyard and in the rectory or vicarage (the 'parsonage house'). The Synod expressed no reservations about a related recommendation that in exceptional cases a diocese could require an incumbent to move to a more suitable house within his or her cure: this would remove the incumbent's existing right of veto (which has sometimes been exercised irresponsibly) but the incumbent and the PCC would have the right to make representations and the exercise of the power would require the assent of an independent body outside the diocese concerned.

10. The amendment ran together two distinct issues, those relating to the parsonage house and those relating to the church and churchyard. It was not possible for the Synod to vote on those issues separately but it was clear from the debates that the strength of feeling on the church and churchyard issue was the stronger. So, for example, during the House of Laity debate, Mrs Daphne Brotherton (Chichester) spoke of the danger of ‘destroying a very deep-rooted perception of most of us laity, that in some sense the parish church is *our* church, *our* vicarage and *our* priest’. In moving the motion, Professor McClean, chairman of the Review Group, indicated that there was room for further exploration of that issue. The mover of the amendment, the Archdeacon of Berkshire said that the proposals should be ‘gone through with a fine-toothed comb’ to ensure that the clergy were not disadvantaged.

## **4. Principles**

11. This report contains the reflections of the Implementation Group, of which the Archdeacon of Berkshire is a member, after its own consideration of the issues and after a large number of face to face meetings between members or staff of the Group and diocesan bodies such as synods, houses of clergy and bishop’s councils. The feedback from these meetings had a major impact on the Group’s thinking and conclusions. The Group also benefited in its work from a number of submissions from a broad range of bodies and individuals, and we should like to thank those who took the trouble to write in with their views. Further details of the submissions received can be found at Annex 3. In its consideration of the whole question of the property rights attached to certain freehold offices (but not all), the Group recognised two important general principles.

### **Ministry as property**

12. The first is that no understanding of ordained ministry can be appropriately expressed in the language of property rights. As the Review Group wrote in its second report (GS 1564, paragraph 49):

We believe that everyone concerned with clergy appointments – be they the clergy themselves, patrons, the bishop, or the laity of the parish – thinks in terms of someone being appointed to an office;

they do not think in terms of the grant of a bundle of legal property rights which include rights *in* the office. The understanding of freehold of office as property is the result of an historical development, which has little, if any, relevance in today's circumstances.

The benefice system which expresses the earlier understanding, and which was once common in Western Europe, has been abolished almost everywhere else.

13. As that report also made clear, the distinction sometimes drawn between 'freehold of office' and 'freehold of property' is not at all clear. Bishops and deans, for example, have the freehold of office but their appointment confers no property rights. A Team Rector has no freehold, but does have property rights modelled on those of incumbents serving outside a team ministry.

### **A common set of terms of service**

14. The second principle which lay behind the work of the Review Group was a conviction that so far as possible all clergy should serve under a *common* set of terms and conditions of service. The principle of common tenure has been endorsed by the General Synod and received wide support in the various discussions in the dioceses. There is of course a recognition that different members of the clergy have differing responsibilities, but that need not detract from the principle that their terms of service should be the same. This principle must call into question a continuance of the situation in which some clergy (the freehold incumbents) are technically 'owners' of a great deal of property, and others have none.

## **5. Parsonage houses**

15. A feature of the life of stipendiary clergy (in this and in other Churches) is that they are provided with, and required to occupy, a house of residence attached to their office. Our consultations made it clear that clergy did not feel that they owned their houses in the way that a lay homeowner might, but that the provision of a house and the security that it gave them and their families were of immense importance to them.

16. We look first at the different ways in which the provision of housing is given legal effect for different groups of clergy, and then we examine more closely the position of freehold incumbents.

### **Different patterns of provision**

17. At the moment, the position varies greatly between the different groups of clergy. The Table below is an attempt to set out in summary form the nature of the office held by these different groups the person or body in whom the formal legal ownership of the house is vested, and the person or body responsible for 'outgoings' in terms of the repair, maintenance and insurance of the house. The reference to the DBF is in some cases shorthand, as decisions may be the responsibility of the Diocesan Parsonages Board or Committee.

<b>Occupant</b>	<b>Freehold office?</b>	<b>House vested in</b>	<b>Outgoings</b>
Archbishops	Yes	Church Commissioners	Church Commissioners
Diocesan bishops	Yes	Church Commissioners	Church Commissioners
Suffragan bishops	Unclear in law	Diocesan Board of Finance (DBF)	DBF
Deans	Yes	The corporate body of the cathedral	The cathedral
Residentiary canons	Varies	The corporate body of the cathedral	The cathedral
Archdeacons	Yes	DBF	DBF
Team rectors	No	Team rector as corporation sole	DBF
Rectors and vicars	Yes	Rector or vicar as corporation sole	DBF
Team vicars	No	Usually the DBF	DBF
Priests in charge	No	The empty corporation sole (see paragraph 39)	DBF
Assistant curates	No	DBF or PCC or local trust	Varies

This table does not attempt to cover every possible case. In house for duty posts, diocesan appointments and sector ministries, for example, the ownership of the house and the body responsible for the outgoings will vary, and sometimes the house is linked to a parochial post. It will be seen that there is no correlation between freehold office and the vesting of property.

## **The present position of incumbents**

18. The legal position as to the property rights of freehold incumbents was examined in the Review Group's second report. We discuss the legal aspects in more detail later in this report, but it may be helpful to introduce that discussion by quoting extensively from that earlier report:
  54. We fully understand the need for clergy to have a proper security of tenure in respect of the house in which they are required to live, but what matters is the degree of security, not the legal form through which that security is given. At present, an incumbent may be the 'owner' of various pieces of property, but he or she has very few of the normal rights which are associated with 'ownership' as that concept would apply to the normal ownership of property. For example, clergy do not benefit from any increase in the capital value of the house, and are not required to meet many of the outgoings. As the benefit to clergy from the property is as a place to live while they hold office, for the better performance of their duties, it follows that they would not be worse off, were equivalent rights to be enjoyed by virtue of possession or occupation of the property, instead of this very notional ownership.
  58. The general duties of an incumbent are set out in the Repair of Benefice Buildings Measure 1972. The incumbent has a duty to take proper care of a parsonage house, a duty equivalent to that of a tenant 'to use premises in a tenant-like manner'. The incumbent has to notify the Board of any repairs needed to a parsonage house, and may be required to pay the cost of any repairs caused or aggravated by his or her deliberate act or default.
  59. The Measure contains detailed provisions as to the periodic inspections of parsonage houses by diocesan surveyors and their

duty to report on what repairs are required, and on whether in the surveyor's opinion a parsonage house should be replaced, with comments on, *inter alia*, the state of the interior decoration of the parsonage house. The incumbent is given the right to make representations as to the contents of the report. The Diocesan Parsonages Board is under a duty to carry out repairs within any period recommended in the report, but the incumbent may be authorised by the Board to carry out repairs as the Board's agent. The Board also has rights of entry in order to carry out necessary work.

60. The Measure restricts the powers of the incumbent to make additions or alterations to the parsonage house. He or she must consult the registered patron and may not make any additions or alterations to the buildings of a parsonage house until after obtaining the consent of the Diocesan Parsonages Board. An incumbent who acts without consent may be required to restore the buildings to their previous condition.
61. Under the Measure, the Board must insure all the parsonage houses in its diocese against all such risks as are included in the usual form of houseowner's policy relating to buildings. It has the power but not the duty to pay certain outgoings such as ground rent, water charges, and any payments for the maintenance of a private road, common drive, and party fence or wall.
62. During a vacancy, most of the incumbent's powers and duties pass to the sequestrators (or, if there is no sequestration, to the bishop).

### **The review group's recommendations**

19. The Review Group recommended that the legal provisions relating to housing should be broadly similar for all clergy so as to be in line with the principles of common tenure. Houses could continue to be provided by different bodies, but the occupant would have similar rights and responsibilities in all cases. In future, the houses provided for team rectors, rectors and vicars would be vested in the Diocesan Board of Finance (DBF), but, except for the change mentioned in paragraph 9 above, the

actual rights and duties of the occupants, including freehold incumbents and team rectors, would be quite unchanged.

20. The Implementation Group has noted that the responses to the consultation on the Review Group's recommendations demonstrate strong support for the proposal that parsonage houses should be vested in a diocesan body, albeit that some concerns have been expressed about how the houses would be protected in the event of the diocese coming under financial pressure or, in the worst case, becoming insolvent. We address these concerns at paragraph 31 and recommendation (iv).
21. Some of those who responded to the consultation were uneasy about the role of the DBF. For example, the response from the Diocese of Gloucester was that ownership of parsonage houses 'should be at diocesan level but not with the DBF'. These comments seem to be based on a perception – which we share – that decisions about parsonage houses involve sensitive considerations which are wider than (though must include) financial ones. Our own discussions have led us to take the view that, rather than the DBF, the appropriate body in which to vest the legal title to parsonage houses would be the Diocesan Parsonages Board ('DPB'). This body is already primarily responsible for policy and practice relating to the management of parsonages in the diocese. The functions of the DPB are in most dioceses exercised by a committee of the DBF, but it retains a distinct legal status and has particular responsibilities. We consider in paragraphs 23 and 26-7 below how the role and constitution of the DPB might usefully be strengthened
22. The principal benefit of vesting parsonage houses in the DPB would be to remove the anomalous position of incumbents and team rectors as the only clergy who 'own' the houses which they occupy during their term of office, without fundamentally altering the relationship that already exists between the incumbent and the DPB in relation to the repair and maintenance of the house. The table in Annex 4 (taken from the Church Commissioners' Code of Recommended Practice for the Repair of Benefice Buildings Measure 1972) summarises the main rights and responsibilities of that relationship. There is logic in the parsonage house being vested in the body which, in its role as DPB, already has the primary decision-making powers in relation to its day to day management.

23. However, we think that, if the ownership of parsonage houses were to be transferred to the DPB, it would be necessary to extend the DPB's present functions to confer upon it a responsibility to oversee the provision of benefice housing in the diocese and in particular an obligation to ensure that a suitable house is provided for the incumbent, priest-in-charge or team rector of every benefice. We propose that the 1972 Measure should be amended accordingly. We also consider that it would be sensible to permit (though not to compel) dioceses to give to the DPB a more general remit to consider the housing needs of assistant curates and other clergy, whose houses are provided from a variety of sources – DBF, parochial, glebe and trust property. The DPB might also, for example, play a useful role in drawing up minimum standards for such accommodation. All these functions would have to be exercised in collaboration with the DBF and operate within its overall strategic financial responsibility. But this is already the case – under the existing law an incumbent cannot enter into any disposal or other dealing with the parsonage house without diocesan consent.
24. The Repair of Benefice Buildings Measure 1972, which transferred the financial and executive responsibility for the maintenance of parsonage houses from incumbents to the diocese, provided for the new diocesan responsibilities to be exercised by the DPB. Under the Measure, each diocese could decide between two options:
- (i) the DPB could be constituted as a body corporate separate from the DBF; or
  - (ii) the DBF could serve as the DPB, in which case it was to conduct its parsonages business through a designated committee or committees.

The 1972 Measure requires that the composition of such a committee must have regard to the need for adequate representation of both clergy and laity, but does not otherwise prescribe how the committee should be constituted.

25. We sent out a questionnaire to all dioceses to find out what actually happens in practice. We discovered that in all but one diocese the second option had been taken, with the DBF being designated as the DPB. Some

dioceses conduct DPB business through a dedicated houses committee, but in others it is dealt with by committees with a broader remit (such as the finance committee). Although the questionnaire did not seek information as to the history of the present arrangements, our strong impression is that originally all dioceses had a dedicated parsonages committee, which has since been merged in some dioceses with other property or finance committees. The membership of the committees varies from diocese to diocese.

26. We consider that, if the DPB were to acquire the additional responsibilities that we are proposing, the membership of the committee or committees that conducts its business should be more strictly regulated, both to create greater consistency between dioceses, and, more importantly, to ensure that the interests of both clergy and laity in the provision and management of benefice housing are properly reflected. In particular, we felt that it would be an important reassurance to clergy transferring from freehold office to common tenure that decisions on clergy housing would be taken by a body on which clergy were well represented.
27. We therefore propose that the 1972 Measure should be amended to require that, where the DBF has been designated as the DPB, the business of the DPB should be conducted through a dedicated committee elected by the Diocesan Synod, and the membership should consist of all the archdeacons in the diocese and members elected by the Diocesan Synod, of whom not less than 1/3 should be clergy and 1/3 lay people. Those eligible for election would be all beneficed and licensed clergy in the diocese and all lay people in the diocese who were members of a PCC. Similar provisions would apply where the DPB remains a body distinct from the DBF.
28. We recognise that this proposal would require the restoration in some dioceses of a dedicated parsonages committee. Some other concerns have been expressed to us about additional administrative burdens for DBFs which we think are mistaken. In particular, there would be no requirement for a completely separate set of accounts, as some have suggested. It is already recommended practice that benefice houses should be shown as functional fixed assets in the balance sheet of the annual accounts of the DBF, and the income and expenditure of the DPB

would be reported in the same way as other 'trust' funds managed by the DBF.

29. Nor would the transfer of title to the DPB necessarily involve any significant change in the present arrangements governing the use of the proceeds on any disposal of a parsonage house. Some of the responses to the consultation revealed misunderstandings of the present position: in particular, some suppose that the proceeds of any sale went directly to the parish. Under the Parsonages Measures 1938 and 1947, the net proceeds are at present<sup>1</sup> sent to the Church Commissioners on completion of the transaction and credited to an interest-bearing account for the benefice concerned. The first call on the funds (after the deduction of costs and the repayment of any outstanding loan by the Commissioners) is the provision of a replacement house or (if the proceeds do not derive from sale but, for example, the release of a restrictive covenant) the improvement of the existing house. If there are any surplus funds not required for these purposes, then (subject to consideration by the Commissioners of any objections raised by the patron and/or the PCC) these may be returned to the diocese for credit to either the Diocesan Pastoral Account (DPA) or the Capital Account of the Diocesan Stipends Fund (DSF Capital). Where the house is sold as part of a process of pastoral reorganisation, the funds are normally dealt with in any scheme made under the Pastoral Measure 1983. This may include the use of the funds for parsonage purposes in the new benefice or their transfer to either the DPA or DSF Capital Account.
30. If parsonage houses are no longer to be vested in the incumbent, it would seem equitable that the incumbent should in future have rights on disposal that are at least equivalent to those presently enjoyed by the patron and the PCC. We therefore take the view that the legislation should provide a right for the incumbent/team rector to make representations under the Parsonages Measures about the destination of surplus proceeds, as the patron and the PCC already have power to do. We emphasise that we are

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<sup>1</sup> The Church of England (Miscellaneous Provisions) Measure (GS 1555B) which received final approval at the July 2005 Group of Sessions will, when it comes into force, simplify this procedure by providing that the monies need no longer be sent to the Commissioners but may be applied by the DBF (or DPB if separately constituted) directly in accordance with the specified priorities. The rights of representation, however, will remain unchanged and the Commissioners will retain the responsibility to consider any representations.

not planning to make any changes to the existing rights of patrons and PCCs.

31. We believe that the concerns that have been expressed about insolvency can be met. We would include in the terms of service legislation a clause that would specifically provide that parsonage houses would not form part of the corporate property of the diocese and would not be available to creditors to defray the debts of the DBF.
32. The major change that would necessarily result from the vesting of parsonages in the DPB is that the incumbent would no longer be the 'person who acts' on the sale, purchase, demolition, exchange or improvement of a parsonage under the Parsonages Measures, or in relation to additions or improvements under Repair of Benefice Buildings Measure (The table at Annex 5, taken from the Church Commissioners' Diocesan Parsonages and Glebe Manual, summarises the current position). Therefore the power that the incumbent presently has to veto such transactions would disappear, unless specifically preserved in the new legislation. In practice, this is mainly important in cases where it is proposed to sell a house which is no longer judged to be suitable while an incumbent is in post.
33. As has already been mentioned in paragraph 9 above, the Review Group recommended that the incumbent should be given a right of representation equivalent to that afforded to the patron and PCC under the Parsonages Measure, so that any objection raised by the incumbent could only be overridden by the DPB after adjudication by the Church Commissioners. Synod expressed no reservations about this recommendation, and the Church Commissioners have stated that they would be willing to undertake this function – including considering the views of all parties and giving leave for the sale to go ahead if, and only if, it was judged in all the circumstances proper to proceed with the proposals. However, the Commissioners have indicated that they would not wish to conduct their own separate consultation of the parties as originally envisaged by the Review Group's recommendation. We therefore endorse the Review Group's recommendation, with the qualification that the Commissioners' should not be required to conduct a separate consultation.

34. The Review Group also recommended that, so far as possible, equivalent rights should be afforded to all clergy in respect of the houses that they occupy while in office, although it stressed at paragraph 66 that this did not necessarily mean that all houses - whether occupied by bishops, cathedral or parochial clergy - should be vested in a single owner. We endorse this approach and do not recommend any change to the ownership of houses currently vested in cathedral chapters, the Church Commissioners, PCCs or local trusts<sup>2</sup>. This would require a suitable adjudicatory body to be empowered to deal with representations made by cathedral clergy and diocesan bishops, and any other cases where the Church Commissioners are not in a position to act impartially (for example, any suffragan bishop's house acquired with funds provided by the Commissioners). The Implementation Group recommends that the Archbishops' Council should be required to appoint on each such occasion a panel consisting of a person in episcopal orders, a cleric and a lay person, all from outside the diocese concerned.
35. The transfer of the legal title in parsonage houses to the DPB would make it possible for all clergy to occupy their houses in a broadly similar way – that is, by way of an occupational licence granted by the body that owns the house. We anticipate that the Terms of Service Regulations would prescribe the fundamental terms of the licence, while making allowance for variations to meet particular circumstances.

**The Implementation Group therefore recommends that:**

- (i) the parsonage house of a benefice should vest, without any legal transfer, in the Diocesan Parsonages Board (DPB) of the diocese in which the benefice is situated on the day the relevant provisions of the Terms of Service legislation come into force, if the benefice is vacant; or when the benefice becomes vacant; or when the incumbent makes a declaration in writing to the effect that he or she wishes to have section 23 rights and move to common tenure;**

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<sup>2</sup> This would mean that, in a few cases, such as where the house was owned by a local trust, the decision to sell the house would remain a matter for the trust.

- (ii) the DPB should hold the parsonage house subject to the existing provisions in the Parsonages Measures 1938 and 1947 and the Pastoral Measure 1983 governing the use of the proceeds of any disposal, subject to an amendment empowering the incumbent, priest-in-charge or team rector to make representations in relation to any surplus proceeds;**
- (iii) the Repair of Benefice Buildings Measure 1972 should be amended (a) to extend the functions of the DPB to include a duty to oversee the provision of benefice housing in the diocese, and in particular an obligation to ensure that a suitable house is provided for the incumbent, priest-in-charge or team rector of each benefice and (b) to require that, where the Diocesan Board of Finance (DBF) acts as the DPB, the committee to which the functions of the DPB are delegated should consist of all the archdeacons in the diocese and members elected by the Diocesan Synod, of whom not less than 1/3 should be clergy and 1/3 lay people;**
- (iv) the Terms of Service legislation should include a provision that parsonage houses will not form part of the corporate property of the DBF and will not be accessible to creditors in the event of the DBF's insolvency;**
- (v) all clergy in posts where a house is provided, regardless of where the ownership lies, should occupy that house under an occupational licence, which would clearly set out their rights and responsibilities;**
- (vi) all such clergy should be given the right to object to a disposal or improvement of the house they occupy during their term of office, or to the acquisition of a new house, such objections to be subject to adjudication by the Church Commissioners or, in cases where the Commissioners cannot act, by a panel appointed by the Archbishops' Council.**

## **6. Churches and churchyards**

36. The second matter about which the General Synod expressed reservations in February 2005 was the, with hindsight, crudely expressed recommendation that the formal ownership of churches and churchyards should be transferred to the DBF. If this is to be properly understood, it requires considerable ‘unpacking’.

### **Who owns a church?**

37. There is a sense in which the answer to the question ‘who owns a church?’ is: nobody. According to the Legal Advisory Commission the ‘fee simple’ (what most people understand by ‘ownership’) of church and churchyard is ‘in abeyance’. It is, however, possible to identify who would be the owner but for that fact; the interest thus identified is vestigial.
38. As in the case of houses of residence, the position differs with different cases. A diocesan bishop has his *cathedra* in the cathedral church, but does not ‘own’ the church. Nor does the Dean, even if the cathedral has a parish of which the Dean is incumbent. A Team Vicar with a ‘special cure of souls’ related to a designated church has no property interest in the church. A priest-in-charge has no property rights. A parish church is ‘owned’ in this very limited sense by the incumbent of the benefice in his or her corporate capacity.
39. To explain that concept more fully, certain offices in the Church are held by a ‘corporation sole’: bishops and incumbents are examples. If there is a person holding the office, he or she is the single member of the corporation. If the office is vacant, the property is still held by the (‘empty’) corporation, and various arrangements are made by statute for someone to deal with the property during the vacancy.

### **To whom does the church belong?**

40. If the question is put in a less formal way, asking to whom the church and churchyard ‘belongs’, the question requires a complex answer. Different groups of people have various rights and duties in relation to the building. The Table below is an attempt to state them in summary form; ‘parishioners’ generally includes others on the electoral roll:

<b>Rights and duties</b>	<b>Held by</b>
Access to church for worship	Parishioners
Right to burial	Parishioners
Control of forms of worship	Incumbent and PCC jointly
Repair and maintenance	PCC
Insurance	PCC
Liability as occupier	Incumbent and PCC separately
Rights of inspection	Archdeacon or rural dean
Duty to arrange quinquennial inspection	PCC
Ownership of contents	Churchwardens
Maintenance of order and decency	Churchwardens

41. One major omission from the Table concerns physical changes to the church or churchyard, or the contents of the church. These almost always require a faculty, that is permission from the consistory court of the diocese. Any interested person may apply for a faculty, but the usual petitioners are the incumbent or priest-in-charge and the churchwardens, supported by a PCC resolution. Any parishioner may object, as may other persons with a proper interest. If there are objections, the judge of the court, the diocesan chancellor, decides the issue.
42. In practice, the only times when the formal 'ownership' of the church and churchyard by the incumbent becomes relevant are those when there has to be some dealing with the land, for example the sale of part of the churchyard for road widening. This again requires a faculty, with the usual rights of objection, and the chancellor will approve the terms of any conveyance.

### **The Review Group's recommendations**

43. The Review Group recommended that the formal 'ownership' be vested in the DBF. It had considered but rejected alternatives, such as vesting it in the PCC (which represents the worshipping congregation and not

necessarily the wider parish) or some new corporate body at parish level (which would add even more legal complexity, and, given the sheer number of churches (16,000) would create practical problems too). The main pragmatic argument for ownership by the DBF was that, on the rare occasions a property issue arises, the professional expertise is usually to be found at diocesan level (in the diocesan office or the diocesan registry), and the interests of the parishioners, the PCC and the incumbent would all be protected by the procedures of the consistory court.

### **Reactions to that proposal**

44. The proposal excited a good deal of comment. One point, expressed in a variety of ways, was that the diocese would be taking away what belonged to the parish. One correspondent wrote in terms of the 'confiscation of churches'. That is not, in fact, a correct analysis. Something would be taken away from the *incumbent* but it is remarkably difficult to state what exactly that 'something' is. There is already a partnership between the parish, including the incumbent and the PCC, with the day to day care of their church, and the diocese, represented by the consistory court and the diocesan advisory committee on the care of churches (which advises both parish and chancellor).
45. There was, however, a substantial body of comment which understood the present position but feared the negative effect the suggested change might have. As a speaker in the debate in the Lichfield Diocesan Synod (Mr D Lawton) was reported as saying, 'If ownership was transferred in this way, he believed local interest in the buildings as expressed by PCCs and churchwardens would be very much diminished'. This 'grass-roots' opinion was shared by the Council for the Care of Churches, which observed that, if parishioners feel that the church building is no longer 'theirs', then, however inaccurate that perception may be, they may be less willing to assume or share responsibility for its upkeep.

### **Clarifications**

46. In view of a number of questions raised in the consultation process, it is important to draw attention to two further paragraphs in GS 1564. Paragraph 70 indicates that the legislation implementing any recommendations as to property would make it clear that anything

transferred to the DBF would be held as 'benefice property'. It would not form part of the DBF's corporate property or otherwise be capable of being diverted to other uses except as currently provided for under the law of the Church. Paragraph 83 emphasises that any change in the formal ownership of a church would not affect the rights and responsibilities of parishioners or others, nor the law as to the effects of consecration or the existing arrangements for the maintenance of closed churchyards.

## **Considerations**

47. We have reminded ourselves of the principles set out at paragraphs 11 to 14 above: that the reality of ordained ministry cannot be expressed in terms of property rights, and that there should be a common set of rights and responsibilities for *all* clergy. Both those principles argue against the maintenance of a system under which most incumbents have property rights but all other clergy have none. However, the Synod debate and the responses to the consultation have led us to the conclusion that, in the particular case of churches and churchyards, the advantages of achieving complete legal consistency may be outweighed by the practical disadvantages resulting from changed perceptions.
48. We considered various other options for change that were put to us, including creating a new corporation consisting of the incumbent and churchwardens; vesting the property in the PCC (with or without extended membership arrangements); or forming a designated trustee body at local, diocesan or national level. However, we eventually decided not to recommend any of these, primarily for the reasons already given in paragraph 43.
49. To vest the church and churchyard in either the churchwardens or the PCC is, we suggest, to run the risk of identifying the property too closely with the worshipping community rather than the parish as a whole. Suggestions we received that the church and churchyard be vested in the PCC were sometimes coupled with a proposal that the role of the DBF as 'diocesan authority' with duties akin to those of a custodian trustee in respect of PCC property be abolished. We doubt the wisdom of that proposal, which is, in any event, outside the scope of the present exercise.

50. Nor do we consider that it would be beneficial to transfer ownership of the church and churchyard to a joint trust between the PCC and the DBF, as happens in some dioceses with Church Halls. To use the vehicle of a property trust would introduce additional legal complexity and, given that it was never the intention to disturb the existing network of rights and responsibilities set out in the table at paragraph 40, it is difficult to argue that the vestigial interest presently vested in the incumbent merits the creation of a specially constituted trust. There would be little, if any thing, that the trustees would have power to do, and, quite apart from generating a substantial amount of additional work at both parish and diocesan level, this proposal suffers from the drawback (which we have already highlighted) of identifying the church buildings with the worshipping community and the diocesan administration at the expense of the wider community.
51. We have therefore come to the conclusion that the 'ownership' of the church and churchyard, in the very limited sense described in paragraphs 37 to 40, should remain vested in the existing corporation sole, which is in effect the corporate expression of the 'cure of souls' exercised by the incumbent for the benefit not only of the worshipping community but of all parishioners.
52. Under the common tenure system, most parishes which now have priests-in-charge will have a vicar or rector. We recommend that, where, exceptionally, a priest-in-charge is appointed, he or she should have the legal rights and duties attaching to the property of the corporation sole. Legislative provision to this effect will be required, and we recommend that the rights and duties should be vested in the incumbent or priest-in-charge by the deed of appointment. The ceremony of induction would cease to have any legal effect, but, if so desired, could be retained for its symbolic value.
53. It was also suggested to us that it might be possible to retain the status quo for clergy housing. We would reject this approach for a number of reasons. Whilst the incumbent's 'ownership' of the church and churchyard is, as we show in the report, more symbolic than real, that is not the case with the parsonage. As long as the ownership of the house stays with the incumbent, the incumbent, as owner, would have to sign the transfer in the

event of a sale, and he or she would retain an effective right of veto (even if this right were qualified in law by a requirement for it not to be exercised unreasonably). More crucially, this would have the effect of maintaining the distinction between those clergy who occupy their houses as of right, and those who occupy them under a licence – and that, we think, would undermine the principle of common tenure to an unacceptable degree.

**The Implementation Group therefore recommends that:**

**(vii) the vestigial legal estate in the church and churchyard should continue to vest in the incumbent as corporation sole and, where, exceptionally, a priest-in-charge is appointed, he or she should have the legal rights and duties attaching to the property of the corporation sole.**

54. We also wish to respond to a question raised with us by several respondents to the consultation, and in particular by the Bishop of London as Chairman of the Church Heritage Forum. The Bishop asked whether a ‘one size fits all’ approach was necessarily appropriate, and suggested that we might explore a different model of ownership, involving the wider local community, for those church buildings which are rarely used for worship and which the PCC no longer has the resources to maintain. Whilst we sympathise with the concerns that have given rise to this question, we are not convinced that a change of legal ownership would address them – indeed, we suspect that to impose a new legal structure at a difficult period in the life of a church community might create more problems than it solved. We are aware of the excellent work done by many ‘Friends’ organisations, and would encourage the sharing of good practice in this area (including the development of model constitutions). We also believe that the Pastoral (Amendment) Measure, when it comes into force, will afford some of the flexibility which the Bishop seeks, as it will enable parts of church buildings that are still in use for worship to be leased for other purposes.



## **Annex 1**

### **Membership of the Clergy Terms of Service Implementation Group as at July 2005**

#### **Members**

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

The Revd Canon Tim Barker - *Vicar of Spalding, member of the Deployment, Remuneration and Conditions of Service Committee and General Synod*

Dr Clive Dilloway - *Chairman of Chichester Diocesan Board of Finance and member of the Deployment, Remuneration and Conditions of Service Committee*

The Revd Prebendary David Houlding - *Vicar of Hampstead St Stephen with All Hallows, Pro-Prolocutor of the Convocation of Canterbury and member of General Synod and the Archbishops' Council*

Mr Andrew Howard - *Diocesan Secretary of Winchester*

The Revd Canon Dr Judy Hunt - *Diocesan Director of Ministry and Residentiary Canon Chester Cathedral, member of CME and Development Panel, Clergy Discipline Commission and General Synod*

The Ven Norman Russell - *Archdeacon of Berkshire*

Anne Sloman - *member of the Archbishops' Council*

The Rt Revd Stephen Venner - *Bishop of Dover*

#### **Staff**

Mrs Sue Edward - *Secretary to the Deployment, Remuneration and Conditions of Service Committee*

The Revd Judith Egar - *Assistant Solicitor to the General Synod*

Sir Anthony Hammond - *Standing Counsel*

Miss Julia Hudson - *Human Resources Manager – McClean Implementation*

The Ven Dr Gordon Kuhrt - *Director of the Ministry Division of the Archbishops' Council*

Mrs Su Morgan - *Director of Human Resources for the Archbishops' Council*

Mr Patrick Shorrocks - *Secretary to the Implementation Group*

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

## Annex 2

### **Progress towards improving the Church's appointment and people management procedures**

Work in this area has been going on at both diocesan and national level for many years. Some of the products of that work will need to be embodied in legislation, such as Clergy Terms of Service Regulations. Publications, such as those on ministerial review and the Guidelines for the Professional Conduct of the Clergy approved by the Convocations, are crucial milestones on the road to providing guidelines that will inform and improve the Church's practice and procedures in a wide range of areas.

- Publication of the Report of the Working Party on Clergy Appraisal: *Ministerial Review: its Purpose and Practice* (ABM Ministry Paper No 6) – 1994
- Publication of *Servants and Shepherds: Developments in the Theology and Practice of Ministerial Review* (ABM Ministry Paper No 19) - 1998
- Setting up of the Deployment, Remuneration and Conditions of Service Committee – 1999
- *Generosity & Sacrifice: the Report of the Clergy Stipends Review Group* (GS 1408) - 2001
- Setting up the Review of Clergy Terms of Service in response to the DTI's consultation document *Employment Status in Relation to Statutory Employment Rights* – December 2002
- *Guidelines for the Professional Conduct of Clergy* – issued 2003
- *First Report of the Review of Clergy Terms of Service* (GS1527) including a draft capability procedure and recommendations that clergy without the freehold should have section 23 rights (including access to Employment Tribunals) conferred through common tenure and be required to participate

in diocesan ministerial review schemes and take appropriate advantage of Continuing Ministerial Education - February 2004

- *Second Report of the Review of Clergy Terms of Service (GS1564)* including recommendations for applying common tenure to clergy with the freehold and setting up a professional HR function to support bishops and their staff- February 2005
- Initial Grievance Procedure – issued 2005. Further revision will be required, as the work of the Implementation Group takes shape
- *Guidelines Towards Good Practice in the Appointment of Clergy to Parochial Posts in the Church of England* - to be issued shortly by the Clergy Appointments Adviser
- The Archbishops' Council sets up a Group to implement the Review of Clergy Terms of Service - 2005

The Implementation Group has:

- set up a sub-group to look at ministerial review and commence consultation on the content of Ministerial Review Guidelines;
- commenced a programme of visits by HR staff to bishops and dioceses to ascertain current HR awareness and practice in dioceses and to facilitate the implementation of diocesan Human Resources support with a view to sharing resource, training and good practice;
- considered submissions from interested parties made during the consultation period (February - July 2005) following the publication of the Review of Clergy Terms of Service Reports;
- agreed a communications plan and asked bishops to nominate a link person as a single point of contact in each diocese in connection with Clergy Terms of Service.

## **Annex 3**

### **Submissions received by the Group**

The Diocese of Birmingham

The Diocese of Bradford

The Diocese of Bristol

The Diocese of Canterbury

The Diocese of Carlisle

The Diocese of Chichester

The Diocese of Durham

The Diocese of Ely

The Diocese of Exeter

The Diocese of Gloucester

The Diocese of Guildford

The Diocese of Lichfield

The Diocese of Lincoln

The Diocese of Liverpool

The Diocese of London

The Diocese of Oxford

The Diocese of Peterborough

The Diocese of Portsmouth

The Diocese of St Edmundsbury & Ipswich

The Diocese of Southwark

The Diocese of Southwell

The Diocese of St Albans

The Diocese of Truro

The Diocese of Worcester

Gravesend Deanery Synod

Orpington Deanery Synod

Shoreham Deanery Synod

Sevenoaks Deanery Synod

Sidcup Deanery Synod

Trigg Major Deanery Synod

Barbourne St Stephen PCC

St Barnabas, Joydens Wood PCC

Lastingham PCC

Tunstall and Rodmersham PCCs

Christ Church South Ashford PCC

All Souls College Oxford

Amicus

The Church Commissioners

The Church Heritage Forum

The Council for the Care of Churches

The Deployment, Remuneration and Conditions of Service Committee

English Heritage

Save our Parsonages

The Archdeacon of Norwich\*

The Bishop of Peterborough\*

The Dean of Battle

The Revd Canon Roger Arguile

The Revd Nigel Bourne

The Revd Martin Cannop Price

The Revd Malcolm T Cooper

The Revd Michael Forrer

The Revd Oliver Harrison

The Revd Owen Higgs

The Revd Ronni Lamont

The Revd Colin Lunt

The Revd John Mason

The Revd Jim Mynors

The Revd Gordon Roxby

The Revd Stephen Tudgey

The Revd Phil Williams

The Vice Provost of Eton

Mrs Diana George, Chairman Hereford House of Laity

Mr Robert Higham, the Worcester Diocesan Secretary

Canon CC Hodson, Registrar to the Diocese of Southwell

Mr Michael Ayles

Mr Trevor Cooper

Mr Norman Critchell ALW

Mr Geoffrey Fenton

Dr Julian Litten\*

Alex MacLaren

Mr Christopher Roy-Toole

Mr Geoff Smithard

\* denotes membership of General Synod as at July 2005

## Annex 4

### Repair of Benefice Buildings Measure 1972

#### Summary of Main Duties and Rights of Parsonages Board and Incumbent/Team Vicar

	Diocesan Parsonages Board	Incumbent/Team Vicar
1.	Diocesan Surveyor carries out inspection of parsonage.	Has to allow access to parsonage.
2.	Serves notice on incumbent/team vicar inviting representations on Surveyor's Report.	Has at least one month in which to make representations to the Board on Surveyor's Report; Has the right to meet the Board to discuss the matter.
3.	Considers any representations on any variations and confirms Report with or without variation.	
	<b>OR</b>	
4.	Considers any representations received and serves notice of Board's decision inviting representations if any variations to Report are not designed to meet earlier representations. Confirms Report with or without variation.	Has at least one month in which to make representations to the Board on any variations to Report not designed to meet earlier representations; Has the right to meet the Board to discuss the matter.
5.	Serves notice of intention <u>not</u> to carry out repairs where house is to be sold, exchanged or demolished.	Has at least one month in which to make representations to the Board on any repairs <u>not</u> to be carried out to such properties; Has the right to meet the Board to discuss the matter.
6.	Considers any representations received and serves notice of decision concerning repairs <u>not</u> to be carried out.	If proposals to proceed notwithstanding representations, has at least on month to appeal to the Commissioners whose decision is final.
7.	Serves notice of intention to demolish superfluous parsonage outbuilding.	Has at least one month to make representations to the Board.

8.	Considers any representations and serves notice of decision on demolition of superfluous parsonage outbuilding.	If proposals to proceed notwithstanding representations, has at least one month to appeal to the Commissioners whose decision is final.
9.	Serves notice on incumbent/team vicar of intention to inspect or carry out repairs where it has not been possible to agree a mutually convenient appointment.	Can expect the Board to do its best to agree a mutually convenient appointment to inspect or carry out repairs but has the right to receive at least 14 days notice in the absence of such agreement (except in an emergency).
10.	Serves notice on incumbent/team vicar seeking payment for repairs caused by deliberate damage. Has the right to take proceedings to enforce claim and recover costs if necessary.	No formal right of representation but has the right to meet the Board to discuss the matter.
11.	Serves notice on incumbent/team vicar seeking reimbursement of loss following unauthorised felling, lopping or topping of trees. Has the right to take proceedings to enforce claim and recover costs if necessary.	Has the right to dispute the amount of any loss claimed by the Board in respect of the alleged depreciation of the parsonage or the value of removed timber.
12.	Serves notice of intention to refuse consent to unauthorised additions or alterations to parsonage.	Has to obtain Board's prior consent to any additions and alterations. Has at least one month in which to make representations to the Board where such consent is to be refused.  Has the right to meet the Board to discuss the matter.
13.	Considers any representations received and, if consent is refused, serves notice requiring restoration of unauthorised additions or alterations. Has the right to take proceedings to enforce claim and recover costs if necessary.	Has to restore parsonage to original condition (or to such a standard as may be agreed with the Board) and pay any associated costs.
14.	Advises incumbent/team vicar on statutory notices and acts on his or her behalf if so requested.	Has to notify the Board of any matters affecting the parsonage and of any statutory notices received. Has the right to seek advice from the Board on any matters arising and ask it to act on his or her behalf.

## Annex 5

	PARSONAGES MEASURES 1938 AND 1947 SUMMARY OF LEGAL POSITION						REPAIR OF BENEFICE BUILDINGS MEASURE 1972
PROPOSAL	SALE, DEMOLITION	EXCHANG E	BUILD, PURCHASE, IMPROVEMENT	DIVISION, ENLARGEMENT, IMPROVEMENT (IN A VACANCY)	USE OF PROCEEDS FOR PARSONAGE PURPOSES	TRANSFER OF PROCEEDS TO DPA/DSF CAPITAL	ADDITION, ALTERATION
SECTION OF MEASURE	1	1(1A)	2	2A	7	7	21
A. <u>Person who acts:</u>							
a) Benefice Full	Incumbent	Incumbent	Incumbent	-	Diocesan Parsonages Board	Diocesan Parsonages Board	Incumbent
b) Benefice Vacant	Bishop	Bishop	Bishop	Bishop authorises Sequestrators			Sequestrators
B. <u>Consents required:</u>							
a) Church Commissioners	See note 3	See note 3	See note 3	See note 4	Y	Y	See note 5
b) Diocesan Parsonages Board	Y	Y	Y	Y	N	N	Y
c) Bishop	Y	Y	Y	N	N	N	N
d) Team Ministry member living in the house	Y	Y	N	Y	N	N	N
C. <u>Notices to be served on:</u>							
a) Patron (s)	Y	Y	Y	Y	Y	Y	N

b) PCC(s) [or Churchwardens where no PCC]	Y	Y	Y	Y	Y	Y	N
D. <u>Additional consultations required:</u>							
a) Every member of a Team Ministry	Y	Y	Y	Y	N	N	See note 6
b) Team ministry member living in the house	N	N	N	N	N	N	Y
c) Patron(s) <i>See also note 7</i>	N	N	N	N	N	N	Y

Notes:

1. Team Ministry members are (a) team rector; (b) team vicars; and (c) other people licensed by the Bishop to serve as members of the team (e.g. curates and lay readers). However, not all assistant staff licensed to a particular area will necessarily be additionally licensed as members of the team.
2. The consultative procedures carried out under D above are the responsibility of the incumbent (or Bishop or sequestrators in a vacancy). The party acting under A above has to have regard to the views of those consulted before taking any action on the proposal.
3. The Commissioners' consent is only required when the proposal does not meet certain criteria or where representations are received from the patron(s) and/or PCC(s)/Churchwardens of the benefice concerned.
4. The Commissioners' consent is only required where representations are received from the patron(s) and/or PCC(s)/Churchwardens of the benefice concerned.
5. The Commissioners' consent is only required where (a) a loan from them or (b) capital held on a Parsonage Building Fund is needed.
6. This is recommended but not statutory.
7. Although not statutory, we recommend that the patron(s) and PCC(s) of all the benefices held in a plurality should be consulted informally over any proposal affecting the parsonage under the above sections of the Measure.