

CLAS CIRCULAR 2012/02 (16 January 2012)

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EMPLOYMENT & VOLUNTEERING

Clergy employment: are Methodist ministers employees or office-holders?

For information

The issue of whether clergy are employees or office-holders and the extent to which they have secular employment rights has surfaced in a case involving the Methodist Church which has implications for other denominations as well.

The Revd Haley Preston (*née* Moore) was ordained in 2003 and in 2006 was appointed Superintendent Minister to Redruth Circuit. Under the terms of her appointment she was provided with a manse and a pension and received a stipend from which income tax and National Insurance contributions were deducted. She had an employee reference number, at the end of each tax year she was given a P60 and had to sign a confirmation for tax purposes of the benefits that she had received, she was entitled to holiday and sick pay and she was required to obtain sick notes and to claim statutory sick pay. In addition, the Circuit Stewards were required to inform her of any concerns as to her performance, any such concerns could be raised at Circuit meetings and she was obliged to have at least one accompanied self-appraisal each year. Over the course of the first half of 2009 she felt that she was being unfairly pressured to resign and in early June she was told that the procedure was being set in motion to "curtail" her appointment. On 10 June 2009 she submitted her resignation and in September started proceedings in an Employment Tribunal (ET) alleging unfair constructive dismissal.

The ET decided that it was bound by a previous decision in *President of the Methodist Conference v Parfitt* [1984] ICR 176, in which it had been held that a minister could not bring an action for unfair dismissal because the doctrinal standards of the Methodist Church did not provide for a contractual relationship between the Church and the individual minister. The ET therefore decided that it did not have jurisdiction to hear Ms Moore's claim. In *Moore v The President of the Methodist Conference* [2010] UKEAT 0219 10 1503 (15 March 2011), however, the Employment Appeal Tribunal (EAT) reversed the ET's decision, concluding that the law had moved on since 1984.

The EAT held on the facts that the claimant had a contract of service:

"Once it is accepted that there is nothing in the claimant's spiritual role which is inconsistent with her being an employee, and once the question whether there was anything special about the nature of the claimant's remuneration is decided, all the indications point one way. She received regular remuneration, including an entitlement to sick pay. She was given accommodation. She was required to engage in an appraisal process, was subject to at least a degree of supervision from the Church and was liable to a disciplinary procedure. Although she did not have to work set hours, there was a clear concept of working time, when she was at the disposal

of the Church, and holiday, when she was not. Of course, like any professional she had a great deal of discretion as to how she did her work, but that is in no way inconsistent with a contract of service" (para 63).

The Church appealed; and in *President of the Methodist Conference v Preston* [\[2011\] EWCA Civ 1581 \(20 December 2011\)](#) – Ms Moore having married in the interim – the Court of Appeal unanimously upheld the EAT's finding. Delivering the judgment of the Court, Maurice Kay LJ concluded that it was "abundantly clear" that there was no longer a rebuttable presumption that there was no intention to create an employer/employee relationship between a Church and its clergy. He agreed with the EAT that the spiritual role of ministry could no longer, of itself, justify denying effect to an arrangement which otherwise had the marks of a contract. The Church is seeking leave to appeal to the Supreme Court.

Comment: The previous position – that clergy of whatever denomination were normally to be considered as office-holders – appears to have been fatally undermined by the judgment in an earlier case, *Percy v Board of National Mission of the Church of Scotland* [\[2005\] UKHL 73, \[2006\] 2 AC 28](#). In *Percy* a female assistant minister and prison chaplain who had been persuaded to demit ministerial status after an accusation of adultery subsequently alleged sex discrimination. When the case finally reached the House of Lords, their Lordships concluded that whether or not Ms Percy was employed (and therefore within the scope of Sex Discrimination Act 1975) rested on a false apposition between 'office' and 'employment' and that, in the absence of an express intention by the Kirk to do so, the provisions of the 1975 Act could not be set aside. The Court in *Preston* found this point particularly significant because the judgments in *Percy* had undermined the reasoning in *Parfitt*.

"... although most of the speeches in *Percy* are characterised by a linguistic gentleness in their approach to *Parfitt*, that does not disguise the fact that they caused the tectonic plates to move" (para 25).

The ultimate effects of all this remain to be seen – not least because they depend on the outcome of any appeal. But the suspicion must be that courts are becoming increasingly reluctant to allow groups to attempt to opt out of "employment status", whether by contractual terms declaring that there is no contract of employment between the individual institution and the worker or by claiming that their staffs are office-holders rather than employees. The probable reasons for this are twofold: the fear that any concession to particular groups such as Churches – however reasonable – may be relied upon by unscrupulous employers who are simply trying to avoid their legal obligations, coupled with a feeling that the distinction between "employee" and "office-holder" is based on an outdated view of society. It may also become more difficult for a Church to argue for exemption on grounds of its own ecclesiology (as the FPCS did – successfully – in *Macdonald v Free Presbyterian Church of Scotland* [\[2010\] UKEAT S/0034/09/BI \(10 February 2010\)](#), in which it was concluded that the existence of an employer-employee relationship would be inconsistent with the Church's declared belief that its officers should not be in a legal relationship with the Church that was subject to control by the Civil Magistrate).

[Source: *BAILII Judgment* – 20 December 2011]

CRB checks: charging volunteers

For information

On 10 January, in reply to written PQs from Steve Brine and Stuart Andrew asking whether the Home Office plans to introduce annual subscription fees for volunteers who undergo portable Criminal Records Bureau checks and for CRB and vetting and barring checks for volunteers in the charitable sector generally, Lynne Featherstone confirmed that the Government is “committed to reducing the barriers to volunteering and regular Criminal Records Bureau (CRB) checks will remain free of charge for volunteers”. However, she also said that “The decision on whether volunteers will have to pay for the new on-line service is still under consideration.”

[Source: HC Deb 10 January 2012 cc 178W & 179W]

FAITH AND SOCIETY

Assisted suicide: Demos Commission on Assisted Dying

For information.

The [*Final Report of the Demos Commission on Assisted Dying*](#) chaired by Lord Falconer QC was published on 5 January and provoked immediate controversy. The Commission's recommendations were supported by all Commissioners except one: the Revd Canon Dr James Woodward, who believes that until there is a greater ethical, moral and social consensus on the issue the time is not right to consider a change in the law – and he produced a minority statement to that effect.

The report's main conclusions are as follows:

- the current legal status of assisted suicide is inadequate and incoherent;
- there is a strong case for providing the choice of assisted dying for terminally ill people – even with skilled end of life care, a comparatively small number of terminally-ill people experience a degree of suffering towards the end of their lives that they consider can only be relieved either by ending their own life, or by the knowledge that they can end their life at a time of their own choosing;
- the issue of assisted dying cannot be viewed in isolation from the need for adequate health and social care or from the need to protect terminally-ill people from the risk of abuse or indirect social pressure to end their lives; and, therefore,
- if an “assisted dying framework” is to be implemented in the future, its purpose must be viewed as providing all people with access to high quality end of life care, and protecting vulnerable people from any kind of social pressure while, at the same time, providing people with greater choice and control regarding how and when they die.

In light of these findings, the Commission has developed a set of core principles that frame its subsequent recommendations:

- open discussion about death and dying should be promoted;
- each person should be entitled to core rights in end of life care;
- good-quality end of life care should be available in all settings;
- all forms of discrimination in end of life care should be ended so far as possible, whether based on geographical location, physical condition, ethnicity or wealth;
- there should be more choice in how people die and clear and accessible information must be provided; and

- there must be effective social support and protection for more-vulnerable people.

The Commission has concluded that it is possible to devise a legal framework that would set out strictly-defined circumstances in which terminally-ill people could be helped to die, while providing what the report describes as “upfront safeguards” to protect potentially-vulnerable people. It must be a matter for Parliament to decide on behalf of society as a whole whether or not to implement such a framework. The Commission has also identified other policies that would need to be pursued in parallel with the development of a new framework: in particular, improvements to health and social care services to support universal access to high-quality end of life care.

The Commission considers that the following key elements should underpin any future statutory framework for assisted dying:

- a good level of care and support services with properly-trained health and social care staff;
- clearly-defined eligibility criteria;
- that the person concerned should request an assisted death on his or her own behalf and has the capacity to make the request;
- a doctor who, where possible, knows the person well and supports the person and their family through the process;
- that the person who requests an assisted death is fully informed of all the options available for treatment, care and support and still wishes to proceed;
- an assessment to determine if the person meets the eligibility criteria is provided by at least two doctors who are wholly independent of one another;
- detailed guidance on how lethal medication to be used for an assisted death should be stored, transported and administered in such a way as to ensure, so far as possible, no risk of abuse constituting a danger to the public or theft;
- the patient must take the final action that will end his or her own life;
- certification of the death should expressly record it as an assisted death; and
- reporting of the assisted death to a national monitoring commission that should review all cases and have retrospective powers to investigate whether or not any individual case complied with the law.

The Commission proposes three eligibility criteria: that the person concerned—

- is aged 18 or over and has a diagnosis of terminal illness;

- is making a voluntary choice that is an expression of his or her own wishes and is not unduly influenced by others; and
- has the mental capacity to make a voluntary and informed choice and that his or her decision-making is not significantly impaired as a result of mental health problems such as depression.

The Commission has identified eight principles for framing safeguards that should be included in a statutory framework for assisted dying:

- a decision-making model involving the assessment, advice, support and independent judgments of two independent doctors, with support from other health and social care professionals where necessary;
- ensuring that the person has been fully informed of all other treatment and end of life care options that are available and still wishes to proceed;
- ensuring that the eligibility criteria are met;
- ensuring that the person has a settled intention to die;
- ensuring the safe storage and transportation of lethal medication;
- ensuring the person has a reliable and supported assisted death;
- ensuring that assisted deaths are reported correctly; and
- providing monitoring and regulatory oversight by a national monitoring commission with powers to investigate cases suspected of non-compliance retrospectively.

In addition, the Commission considers that substantial improvements to health and social care services would be needed in parallel with changes to assisted suicide legislation.

Comment: Two final points:

First, however eminent its members may be, *the Commission has no official status.*

Secondly, *it should be remembered that all this is about England and Wales only.* When the issue of the DPP's guidelines on prosecution for assisting a suicide first came to public attention the then Lord Advocate, Eilish Angiolini QC, issued a statement to the effect that the parallel law in Scotland was a matter for the Scottish Parliament. The same considerations also apply in Northern Ireland.

[Source: *Demos Press Release* – 5 January 2011]

ODDS & ENDS

Cheque guarantees and cheque clearing

For information.

Readers will no doubt be aware that the UK Domestic Cheque Guarantee Card Scheme closed on 30 June 2011. The decision to close the Scheme was taken by the Payments Council prior to its decision that the 2018 target for possible closure of the cheque-clearing system should itself be scrapped. Subsequent to the announcement that cheques and cheque-clearing would not, after all, be abolished in 2018 there were calls for the reinstatement of the Guarantee Scheme, on the grounds that its end would help to hasten the demise of the cheque.

On 20 December the Payments Council published a [report](#) on the impact of the closure of the Scheme. The research demonstrates that withdrawal of the cheque guarantee card has had no significant impact either on customers who wrote guaranteed cheques or on businesses who accepted them. The Payments Council therefore takes the view that the results of the research do not support a reintroduction of the Scheme.

The Payments Council's Charity and Voluntary Sector Liaison Group (of which the Secretary of CLAS is a member) does not dissent from that view; however, the Group continues to keep a careful eye on developments. The continuing year-on-year decline in the use of cheques continues to be a matter of concern; and the likely emphasis will be on the introduction of electronic payment methods that are both secure and – crucially – acceptable to users.

[Source: *CLAS Summary* – 10 January 2012]

“Heritage crime” and metal theft

For information.

In 2011 English Heritage, the Association of Chief Police Officers and the Crown Prosecution Service set up the [Alliance to Reduce Crime against Heritage \(ARCH\)](#). At the recent meeting of the Places of Worship Forum Diana Evans, of English Heritage, asked all those present to bring the existence of ARCH to the attention of members of their organisations. Membership of the Group is free and open to all organisations and groups with an interest in preventing and enforcing heritage crime; and English Heritage is keen for as many groups as possible to join in order to demonstrate the strength of feeling on the issue. The obvious issue for CLAS members is metal theft, but the interests of ARCH range more widely than that. Anyone wanting to join should contact Chief Inspector Mark Harrison, who was seconded from Kent Police in March 2010 to act as Policing Advisor for English Heritage: mark.harrison@english-heritage.org.uk.

As to metal theft, Lord Henley, Minister for Crime Prevention and Anti-Social Behaviour Reduction, has launched the curiously-titled Operation Tornado, which covers the area of the Durham, Cleveland and Northumbria police forces. Under the scheme, people selling scrap metal to participating dealers will be required to provide proof of their identity. The scheme is, however, voluntary.

Lord Henley was quoted as saying that "Metal theft is a serious and growing national and international problem. It is clear legislation dating back to the 1960s is not sufficient to deal with an increasingly organised crime and we are examining what changes to the Scrap Metal Dealers Act 1964 are needed. In the meantime we are working with the police and other law enforcement agencies on what immediate steps can be taken better to identify rogue metal dealers".

That said, however, we understand that the Government has still not come to a collective view on the issue of cash payments for scrap metal – apparently BIS is concerned that banning cash transactions would put many small scrapyards out of business.

[Source: *CLAS Summary* - 13 January 2012]

TAX

VAT on postal services

For information and for action if you are affected.

New rules relating to VAT on postal services were introduced on 31 January 2011. The changes meant that any service individually negotiated or not subject to any price and regulatory control became liable to VAT at the standard rate. This included, but was not limited to:

- all individually negotiated services
- Parcelforce services
- door-to-door (unaddressed mail)
- mailroom services.

In [August](#), Royal Mail announced that from 1 August 2011 three more bulk account packet services [Mailsort 3 1400, Presstream 1 & 2, Packet Post 1 & 2 and Packetsort 1 & 2] were to be removed from price control and therefore subject to VAT. This was extended further in December 2011 to include packets sent via bulk account services weighing more than 1kg [Mailsort 1 1400 and Mailsort 2 1400].

From April 2012 this will be extended to all bulk mail services, including services such as Mailsort (70, 120, 700 and 1400), Advertising Mail (70, 120, and 1400), PO Box Services and First and Second Class Standard Tariff account mail. Full details are available on the Royal Mail [website](#) and a [HMRC guidance manual](#) is also available. The reason for the change is that the Regulator has given notice that from 2 April 2012 more Royal Mail services will be moving out of price control.

This is obviously of little or no interest to individual congregations; but several denominations, nationally, use bulk mailings for activities such as fundraising. The charity sector generally is very concerned that this gradual extension of VAT to postal services used by charities will result in a significant extra financial burden and the Charity Tax Group (in which several members of CLAS already participate) intends to reconvene its working group on VAT on postal services to determine the scope of the potential problem and to look at possible ways to challenge this creeping extension of VAT. **As part of this process it is very important that CTG collect as much information as possible about the estimated financial impact of the changes on individual charities. Could any member of CLAS who can provide information on the likely impact of this on its operations please contact Chris Lane at info@charitytax.info or 020 7222 1265?**

[Source: *CTG Summary* - 12 January 2012]