The National Perspective

STEPHEN TROTT

At present, the dioceses and deaneries throughout the provinces of Canterbury and York are debating the report, Conditions of Service*, dealing essentially with the Parsons Freehold. The Committee producing the report was under the chairmanship of Sir Timothy Hoare. The Revd Stephen Trott examines the wider issues surrounding Parsons freehold, a system unique to the British Isles, which creates a set of checks and balances. He briefly surveys its history and the present position. He concludes that the Hoare report is inadequate insofar as it does not deal with issues such as the financial and legal implications which will inevitably arise.*

Historical

The origins of the clergy freehold lie several centuries ago in the history of the development of a parish system, with clearly defined boundaries and episcopal jurisdiction. As such it is anachronistic to consider the existing method of paying and housing the clergy as if these were directly comparable to the terms and conditions of employment which have evolved in secular law, especially the Employment Law statutes enacted since the mid-1960s. The conditions of service of the clergy cannot readily be disentangled from the wider question of the parish system, with which, as it will be argued in this paper, the freehold in particular stands or falls.

In its origins, the provision of a church, generally by a feudal lord, or by a monastic establishment, serving a defined parish, required the appointment of a parson, a priest answerable to the diocesan bishop, who needed adequate endowments attached to his benefice (or 'living') in order to minister there without having also to provide himself with an income by other means. The concept of a stipend is that it enables the priest to be free to carry out his ministry unhindered. In the course of time, and progressively after the Reformation and the introduction of married clergy with families, the benefice came to be equipped also with a parsonage house as a residence held also in trust by the parson as part of the freehold.

As with the house in later years, so with the endowments which provided the stipend: the priest needed to be able to depend on the income of the benefice, rather than on donations from year to year; and the right to receive the income was vested in the parson, usually termed at first the Rector, as the legal corporation entitled to receive the endowments, to occupy the parsonage house, and to have control of the parish church and the cure of souls within his parish. (Once it became possible legally to separate the parson from his tithes by transfer of the right to the income, a

deputy or Vicar was appointed instead, receiving a smaller proportion of the income as his right, with the greater tithes being appropriated to a local Lord, religious house, university college or the Crown.)

The parish system, together with the freehold, was substantially consolidated in the nineteenth century, when the abuse of the system by non-resident incumbents was abolished by the Pluralities Act of 1838. Many parsonage houses were built for the first time for incumbents now forced to reside in their cure, while many parishes were divided up more equitably in order to meet the needs of the greatly enlarged population following the Industrial Revolution. The late nineteenth century saw the highest levels of clerical manpower ever deployed—approximately twice the present number for a population roughly 55% of today's size.

The Situation in 1995

It is this system which in theory remains today, although a number of changes in recent years have modified certain key aspects of church life in England, leading to the present review and Report on the conditions of service of the clergy which the General Synod will be called to debate in November 1995. One of the principal defects of the report (GS 1126) is that it deals with the clergy in isolation from the wider perspective of the parish system; and then only with the lower clergy at work in that system. Archdeacons and bishops are not included within its terms of reference.

The inequitable nature of the old system of payment for the clergy, in which some received a much greater income than others, sometimes in tiny parishes, derived from the history of the endowments provided locally for the incumbent in the course of the centuries. What is more, no formal pension scheme existed, and therefore many clergy were forced to continue in office well after any reasonable retirement date, lacking the means to buy their own home, or to exist without a stipend. The income in richer benefices could be split between a new incumbent and his predecessor, enabling some to retire on dignified terms, and the parish to have an active incumbent once more.

Since the 1970s, in a series of reforming Measures, the General Synod has introduced compulsory retirement at age 70 for all clergy newly appointed to office, with a pension based on the newly created national minimum stipend for incumbents and other parochial ministers. The freehold of the benefice remains vested in the incumbent as an ecclesiastical corporation sole, but it may not be retained after age 70. While there are still significant discrepancies between the stipend paid from diocese to diocese, the national minimum stipend has been widely welcomed as ensuring a basis for fair and reasonable payment of the clergy. In order to accomplish this, certain historic endowments have been transferred to central management by the Church Commissioners; and the glebe land which provided a stipend in many parishes has been transferred to the control of the local diocese.

Since 1983, under the terms of the Pastoral Measure, a diocesan bishop has been given power to suspend the presentation of an incumbent to any benefice in his diocese as part of a process of pastoral reorganisation. The diminishing number of full-time clergy, and the glaring discrepancy in terms of workload between larger city parishes, and tiny rural or city parishes, has been the subject of much study, notably the Sheffield Report, and a formula has been evolved to ensure a fairer distribution of the clergy from diocese to diocese. In more rural areas this has been felt particularly, as also in the centre of ancient cities such as London and York, where historic parishes possessing ancient endowments and their own clergy have found themselves amalgamated with neighbouring parishes, under the care of one priest.

A major process of pastoral reorganisation took place in the early 1980s, bringing into being multi-parish benefices (each parish retaining its own church, PCC and parish boundaries) on a scale not seen before. Such benefices have required local church people to adapt in many ways to enable the ministry of the Church to continue effectively, and have posed particular problems for clergy accustomed to dealing with one parish at a time. Aspects of these arrangements, particularly the responsibility of one priest for a multitude of historic buildings and for a number of Parochial Church Councils, remain unsatisfactory. It is practically impossible in benefices with more than two or three churches to have a settled pattern of weekly service times. Many old expectations made of the clergy - especially residence in the parish, the availability of the clergy wife as a parochial minister, the prime service time on Sunday, a capacious parsonage and capacious hospitality to match - still linger unmet in many places. With substantial contributions now being made to the diocesan budget by parishioners, it is increasingly difficult to justify simultaneous reductions in the numbers of resident clergy.

Checks and Balances

The one thing that has remained essentially unchanged during the evolution of the parish system and clergy freehold is the effective independence of the parish, not only financially but in other ways—culturally, liturgically, and especially as a congregation. This enables the retention of a variety of theological opinion, which protects both the incumbent and the comprehensive styles of churchmanship which the Church of England contains and claims as a virtue. Assessments of parishes for purposes of reorganisation have had to have some objective criteria, the principal criterion being population statistics. Hard decisions have had to be made, after much searching of consciences, but church life is in many ways independent also of population figures. A country church or an eclectic place of worship may have a larger congregation than a town parish of 15,000 people. It will almost certainly have a higher proportion of the population attending its services on a Sunday. Leaving aside any theological debate

about congregationalism, it is a fact that it is the congregation of a church which is its principal (although not its only) *raison d'être*, the focal point of the ministry of the Church of England, and the chief contributor of funds. Equally significant in the view of very many Anglicans is the claim of the Church of England to be a national Church, in which the local parish church (not the cathedral, or 'the diocese') serves as a spiritual home for every parishioner who chooses to make use of it, and many if not most of the clergy value their pastoral responsibility towards every parishioner, not just those on the electoral roll. The pastoral office is very much a matter, both theologically speaking, and in practical terms, of knowing the local community, and being known as its pastor. Nevertheless many smaller parishes have accepted the arguments for pastoral reorganisation, to be joined with neighbouring parishes, and to share a priest who is no longer resident in their own parish.

Such amalgamations cannot usually be carried out without the assent of the sitting incumbent, whose property the parish is in law. Creation of new benefices often has to wait until the retirement of one or more clergy, or until they move elsewhere. It is sometimes a form of irritation for church authorities, that they must wait: but set against this is the stability which such a system provides for parishioners, and for the clergy themselves. When they were appointed the parish was considered to be a suitable size for their ministry; and as the ministers possessing the most detailed knowledge of their parishes they may not consider personally that such a change is justified, irrespective of personal feelings and wishes. It can be deeply damaging in a society such as the Church, with traditional expectations of stability in terms of parish boundaries and of ministerial appointments, to disturb established pastoral and personal relationships and patterns of ministry. Reorganisation has to proceed with the utmost sensitivity and only when it is absolutely inevitable. The existing system, in which the freehold of the incumbent provides a bulwark for the parish against undue reorganisation, has ensured historically that diocesan authorities and pastoral committees proceeded cautiously in such matters; and gives a voice to the incumbent in matters such as the maintenance of appropriate parsonage houses in strategic places in such new benefices.

It is a source of considerable dismay to a parish to lose its resident priest, or its historic parsonage, or both. Many older properties, designed for a past age of grandeur, have had to be replaced, or sold when no longer required following reorganisation. The corollary of the reform, providing smaller and warmer houses, has been that most modern parsonages do not provide the facilities for study, or entertaining parishioners, which the former houses did. They are intended by the Church Commissioners as homes for the clergy, rather than work-places, although they are necessarily so in most cases. The parish has lost a resource to which it or its previous incumbents or patron contributed, now that the parsonage house is designed essentially as a private family home, rather than a place of

work and hospitality. Provision is rarely made, if ever, for the replacement of these facilities at the parish church out of the proceeds of sale of the parsonage house.

The process of destabilisation of the parish system has been greatly accelerated in the past two years or so by a policy, in certain dioceses, of not appointing incumbents to vacant parishes, supplying instead a priest in charge who has no control over the freehold of the benefice, and who is personally at the disposal of the diocese, having no right of tenure in the parish. Such a policy, ostensibly a response to the financial difficulties of the present day, is arguably illegal: suspension of benefices as envisaged in the 1983 Pastoral Measure, and in its accompanying Code of Practice, is not designed as a short term response to financial problems, but as a means of meeting a genuine, local pastoral need. Where such a policy is in operation the deliberations of the Hoare Report and any final decision by the General Synod and by Parliament have already been anticipated by the diocese concerned.

Such a policy has the effect of finally overthrowing the essential checks and balances which have preserved the relationship between parishes and their diocese throughout much of the history of the Church of England, which is arguably as desirable today as it was twenty or a hundred years ago. The process of enlarging the powers of the diocese was accelerated by the transfer from the parishes of the clergy endowments and glebe into central management; and by the growth of parish quota systems as a means of financing not only the stipends of the parish clergy, but officers employed centrally by the diocese itself. The local pastoral units - combined benefices or single parishes - which were sufficient to support a priest in the early 1980s, must now support an increase in staffing at the diocesan level as well. The inevitable consequence is that these units are now proving too small to meet the continual rise in diocesan quota, and must now expect the withdrawal of more clergy in order to balance the diocesan books. Such a withdrawal is in addition to the steady reduction in full-time clergy numbers in recent years through retirement, and because of falling numbers of ordinands.

The transfer of ministry and administration to the diocese from the parishes is in itself an issue for debate, on which opinion will be sharply divided. The effects are felt in the parishes, however, where considerable resources in terms of endowments, clergy and parsonage houses have already been withdrawn by the wider Church, and there is now growing pressure to raise funds for the diocese. The transfer of the cost of National Insurance contributions (at present met by the Church Commissioners) to the diocesan budgets in 1995 may shortly be followed by a requirement for clergy pension contributions to be met by the diocese, effectively by the parishes. Quota payments cannot at present be legally enforced by the diocese, but increasingly the withdrawal of freehold from the clergy will have the same effect. Resources can be withdrawn from the parishes by

deploying fewer clergy, and by disposing of parsonage housing. Financial control by the diocese, coupled with the effective removal of freehold, means that parishes and their congregations will become dependent on the diocese to an extent not seen before in the Church of England.

The Conditions of Service of the Clergy Affect the Parish System as a Whole

In one sense, therefore, the key decision about the terms of service of the clergy has already been anticipated by many dioceses, in that fewer and fewer are being instituted as incumbents, a policy that may well become general as the Church seeks to meet the self-imposed financial constraints resulting from its overall policy of centralisation of resources. GS 1126 makes no proposal as to how the freehold system, as it theoretically continues to exist, might actually be reinstated as normative should the report's proposals not find favour with the General Synod in November of this year, with a return to a policy of suspending benefices only in cases of genuine pastoral reorganisation.

It would be unfortunate if twin cornerstones of the Church, the independence of the parish system and the freehold of the clergy, were to be permitted to be eroded almost to vanishing point as an unplanned response to financial difficulties, and without the fullest consideration and debate by the Church as a whole. Dealing with the conditions of service of the clergy, in isolation from the wider questions of the transfer of powers to the diocese, and of the kind of Church its members would like to see, inevitably raises a debate which goes much further than the clergy themselves, as the freehold is intrinsically involved with the parishes it serves and the system which has evolved over many centuries. Church members considering this issue must be made aware of its significance for the whole Church and its future relationship to the nation as an Established church with responsibilities for the whole population, not only church electoral roll members.

Rights of Employment

In employment law, the clergy of all denominations are not employees, but office-holders. Although for many practical purposes the distinctions are hard nowadays to maintain (payment through PAYE being a useful litmus test as to the distinction between being employed or self-employed) the provisions of the law affecting secular employers in their relationship to employees do not extend generally to the clergy. Those dismissed from office as theological students, curates, chaplains, priests-in-charge, or from any unbeneficed position, have no right of appeal to an industrial tribunal. In one decision even lay ministers of the Salvation Army have been held not to have employment rights. The recent case in which the Revd Dr Alex Coker was judged by the Croydon industrial tribunal to have a contract with the Diocese of Southwark, as an assistant curate, has yet to be tested

on appeal. This situation may eventually be further tested in the European courts in a separate case proceeding elsewhere, but for the present, none of the clergy can appeal outside the ecclesiastical legal system in defence of their rights as employees.

The situation is compounded for the clergy in that they are, generally speaking, required by the terms of their licence, or by the Pluralities Act, to reside in the official house of their office. The level at which stipend is paid takes account of the provision of housing, and it is accordingly set at a much lower level than would be the case if the clergy were expected to provide their own housing. Estimates of the value to the clergy of such housing vary widely. To those clergy who would prefer to take their place in the mortgage market, the official house is at best a neutral asset, at worst a system which denies them proper financial remuneration for their training and ministry. In some dioceses estimates of the value to the clergy of the stipend plus tied house package reach astonishing levels, £35,000 a year being quoted not long ago in one diocese. It is not worth that to the resident, who acquires no personal interest in the property however long it is occupied as a parsonage. Such statistics are used misleadingly however as a criterion on which to compute the viability of parish ministry in general, and of specific parishes at the local level. They are more representative of the likely cost of paying clergy a realistic rate for the job if the present arrangements are brought to an end, and the clergy must house themselves.

What is without doubt, however, is that few clergy are able to afford a house of their own on the stipend which is actually paid, whatever the notional value of the tied property which they are required to occupy. They must hope either to inherit a home from parents; or that their partner will earn enough to buy a house; or that there will be a suitable property made available as part of their retirement provisions from the Church Commissioners. All this assumes that they will complete a working life in the ordained ministry, and not be forced at some earlier stage to seek alternative employment.

Those made redundant in mid-career in comparable forms of secular employment generally occupy private property on which much of the mortgage has already been paid. A priest, by and large, has no such capital or mortgage on which to depend if suddenly ceasing to be employed in the Church's ministry, and has few opportunities, generally speaking, to obtain alternative employment. It is for reasons such as these, that the security represented by the freehold system was first provided for the clergy, as protection against personal misfortune resulting from sudden deprivation of office.

None of the alternative proposals put forward by GS 1126 take sufficient account of the two key facts as they affect the clergy personally: the relatively modest stipend and their consequent dependence on a secure freehold in their tied housing. Their terms of reference request the commit-

tee to consider only alternatives which do not include retention of the freehold. As we have already seen, however, freehold is already being diminished by policy decisions not taken or approved by the General Synod.

The argument is also being advanced that it is not fair to clergy who do not have freehold, that others should continue to enjoy it. The Church however ought to seek to be a model employer. If it is an historical accident that incumbents enjoy security of employment, while others do not, then, least of all, should the Church seek to redress the balance by taking it away altogether. It would be far more appropriate to introduce some security of employment for those without freehold, perhaps conferring on them a freehold of office, such as that enjoyed by most cathedral clergy and by archdeacons.

Practical Solutions

There appears to be no way satisfactorily to remove the only remaining employment protection for the clergy, the freehold, without considerable extra expense to the Church. Such expense would be incurred by the necessity to confer full employment rights, as employees, upon the clergy; and above all by the need to pay a greatly increased stipend to the clergy to enable them to have the security of purchasing their own homes, as an assurance against further reductions in clerical numbers, or of losing their employment at the end of a fixed term contract or 'leasehold'. To expect clergy to continue their ministry at the present stipend level, without security for their future employment and housing, is unrealistic and unfair to ask of those called to serve in the stipendiary ministry.

Any further burden on diocesan budgets would inevitably have a knock-on effect once more upon clergy numbers, and upon the parishes of each diocese, where existing clergy would have to be stretched further still in order to make up the deficit. It is debatable whether the parish system can in fact be realistically maintained beyond a certain level of staffing reductions.

As has been demonstrated by the curtailment of the modern freehold at age 70, General Synod has power if it chooses to legislate by Measure to include requirements thought desirable for beneficed clergy, such as in-service training, accountability, assessment and so on, in the terms of their office. But it has to be asked, and faced by those advocating a completely new system of clergy conditions of service, whether reforms such as these are sufficient to justify the extent of change to both the parish system and to the pattern of ordained ministry to which we are all accustomed. And whether the Church can afford such change at present, financially or morally. Provision for continuing ministerial education is at present limited by financial constraints; the necessary expertise for appraisal of individual ministers is not in place and would be costly to acquire; and the alteration of the relationship between bishop and minister from a pastoral

basis to that of employment supervision begs many questions which the Hoare Report scarcely begins to address. Is it not possible to consider other means of responding to financial constraints, however pressing, rather than risk undermining fundamental aspects of the Church's provision for a national ministry which took centuries to establish, and have stood the test of many years? Would it not be preferable to seek means to endow each benefice afresh, for example, dividing up the income derived from historic resources held in trust for the clergy, and ask the local congregation to contribute a proportion of their priest's stipend directly, rather than via a diocesan budget? Is there really such a financial crisis that wholesale and unproven proposals for change are actually essential? Does the Church of England as a whole really wish to withdraw more of its stipendiary ordained ministry from the parishes? Or does the pressure for change come at least in part from a desire to redistribute power within the Church of England?

Discipline and the Clergy

One argument frequently advanced against the freehold system is that it gives undue protection to the 'bad apples' in the barrel. A tiny number of recent cases have been widely cited as illustrating the cost and the scandal, as well as the protracted legal process involved in removing offenders. (Certain categories can be removed from office immediately by virtue of the Ecclesiastical Jurisdiction Measure 1963, eg those sentenced to imprisonment, actual or suspended, for a criminal offence in the secular courts.)

From the point of view of clergy threatened with such disciplinary action, the ecclesiastical courts are themselves profoundly unsatisfactory. They continue to exercise an archaic criminal jurisdiction over the clergy in moral matters, such as adultery; they are presided over by a Chancellor appointed by the Bishop who may well have brought the case to court. Although a criminal jurisdiction is involved, there is not a jury, but a small panel of assessors to assist the Chancellor. Nor is an adversarial criminal trial perceived as a universally appropriate way to exercise ecclesiastical discipline.

Again, the freehold could simply be modified by Measure to render incumbents liable to disciplinary proceedings before a national tribunal (not a merely diocesan court) along the lines of those already established in other professions, such as medicine or the law. Such proceedings would be conducted with the support of representatives or advocates who were not part of the ecclesiastical system, and would have the appropriate powers to reprimand, suspend or sack those found to have acted unprofessionally. In most cases, the agency of a professional conciliation and arbitration service should prevent the need for public hearings, enabling those facing complaints either to come to a satisfactory arrangement with their diocese, to move on, or be assisted financially to resign, or to leave office without further dispute.

Great advances could be made by reconsidering the present appointments system. A number of 'offenders' are appointed to posts despite track records known to bishops and other patrons, who continue to act unprofessionally—or criminally—after appointment. A degree of openness in the appointments procedure, in which references are taken up, and responsibility for appointing shared by a competent committee, would alleviate some of the worst cases, and provide a greater sense of justice about the whole system. Candidates for any post involving children or young people should be required to disclose past convictions.

Alternative Means of Job Security

If the freehold is to be abolished, the Church must set an example of employment terms and conditions, emulating the best working practices in secular employment, and offering at least equal security to future clergy as that which has obtained in the past under the freehold system. Such personal security will inevitably require a radical shift from tied housing to a stipend which enables clergy to enter the mortgage market.

- The freehold of church property will need to be vested in a body which is not controlled by the local diocese—either the Parochial Church Council, or a special trustee body—retaining a balance of power between the local church and the diocese. Clergy will need instead to have security of office, which will need to be applied equitably not only to former benefice-holders, but to all those employed as clergy. This will include those at present classed as 'unbeneficed', and may well include theological students in full-time training.
- There is discrimination of many kinds at present between clergy, on grounds of gender, age, service abroad, remarriage and sexuality, to name several examples. These issues need to be addressed by the Church as a matter of some urgency, whatever the outcome of the debate about freehold. Much could be achieved by an improved appointments system.
- There will need to be a full right of appeal against unfair dismissal. This could best be achieved by a change in statute law, by Measure or by Act of Parliament, to give clergy full rights in employment law. If this is not forthcoming, then appeal should be made to the European courts seeking equal treatment for clergy before the law.
- Existing pay differentials within the Church appear arbitrary and unjustified in the ecclesiastical context. The principle of the national minimum stipend is fair and widely applauded, and most clergy would prefer to see one basic standard of stipend for all clergy, with expenses of office properly met. Why are cathedral canons paid more than parish clergy? Why are some bishops paid more than others, and more than 'lower' clergy? And any abolition of freehold, in order to be fair, must apply to clergy of every kind, including the dignitaries not included in the terms of the Hoare Report.

- The clergy need a professional body of their own, such as MSF Clergy Section, with the training, skills and resources to negotiate as a body with the Church authorities when matters such as their conditions of service are to be discussed. Of those appointed to serve on the Hoare Committee, for example, only one is a serving parish incumbent; and no mechanism has been put in place for the clergy nationally to receive a copy of the Report, or to be consulted. The MSF Clergy Section could be recognised as a national body for such purposes, and all clergy encouraged to join, the clergy chapter possibly serving as a model for local consultation and discussion.

Overall Conclusions

There are many aspects of the present system which contain injustices of one kind or another, and there is much that calls for reform, if the Church is to be able to claim to be a compassionate and modern employer. In particular these issues are identified as:

- the lack of job security for unbeneficed clergy and ordinands in training;
- the secrecy surrounding the appointments system and the perceived discrimination within it;
- the differentials between lower and higher clergy;
- the obsolete system of ecclesiastical discipline;
- the lack of employment rights in secular law;
- the lack of a professional association for the clergy, representing their interests nationally;
- the need to retain proper checks and balances within the Church in terms of the exercise of power, for local parishes as well as for the clergy.

In this broad, national context, the questions addressed by the Hoare Report concerning clergy freehold appear at best to be partly tangential. There are many issues here which appear to take priority over the narrow issue of freehold. Addressing that question directly, however, the Report appears to have set out as much to alter the balance of power within the Church as to deal with the specific question of clergy Conditions of Service.

The broader picture concerning the relationship of the diocesan bishop to his clergy and parishes is not sufficiently clearly spelled out by the Report to inform debate within the Church adequately. Nor does it propose adequate provision for alternatives for the clergy in the event of the security afforded by freehold being modified or abolished.

As this paper has argued, the inevitable alternative to the freehold is for the clergy to be paid a stipend which reflects the present cost of servicing a mortgage, as tied accommodation on low pay without security of tenure would be strongly unwelcome both to present clergy and to potential future ordinands. The cost implications of this have not been adequatrely set out in the Report, either in terms of individual stipends, or in terms of

the job losses that would have to be made in order to balance diocesan books.

Nor has the alternative, of re-endowing benefices in order to support their clergy, been properly explored. Again, the whole issue of parsonage housing is scarcely touched upon, although the desirability of providing a resident priest in each parish, one of the great reforms of the last century, is arguably as significant today as it ever was.

STEPHEN TROTT is Rector of Pitsford with Boughton, Northamptonshire.