– "serving the people and their parishes" –

PARSON AND PARISH

is published by

THE ENGLISH CLERGY ASSOCIATION

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The Clergy Association has the following aims, revised in 1992:–

The English Clergy Association, as the successor to the Parochial Clergy Association, exists to support in fellowship all Clerks in Holy Orders in their Vocation and Ministry within the Church of England as by law Established; to uphold the Parson's Freehold within the traditional understanding of the Church's life and witness; to oppose unnecessary bureaucracy in the Church; to monitor legislative and other processes of change; and to promote in every available way the good of English Parish and Cathedral Life and the welfare of the Clergy.

Membership is open to all who support the aims of the Association, including retired clergy, and clergy of the Church in Wales, the Episcopal Church in Scotland, and the Church of Ireland, and lay people. Each new application is considered by a Committee of the Council of the Association.

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PARSON & PARISH

the half-yearly magazine of the English Clergy Association

— "serving the people and their parishes" —

Issue Number 164 Michaelmas AD 2005

CONTENTS

FROM OVER THE PARAPET

Editorial

A new, leaner, General Synod is being elected. Even allowing for the arrogance of the present – the sense that "now is the time" – the next five years could well prove to be particularly significant indeed for the life of our Church of England, just as were the reforms of the Synod of 1970–1975, as Brian Hanson reminds us in this year's Annual Address (reproduced in these pages). Already, the new Synod's agenda is largely set by the work of the past five years in three important areas: mission and parochial life; protecting and assessing the clergy; and ecumenism and women in the episcopate.

Mission and the parishes

The last Synod saw Cray's *Mission Shaped Church* and Toyne's *Measure for Measures: In Mission and Ministry*. Both reports, rightly, put mission at the heart of what we are about. There was much talk about new ways of "being Church", the importance of "mission initiatives", and outmoded structures of the parochial system. Interestingly, as we have pointed out before, Toyne showed just what could be done, with a bit of imagination and creativity, under the present arrangements, when we often seem locked into a too-territorial approach to mission and the idea that we have to work with contiguous units. Nonetheless, the head of steam for change to the Pastoral Measure, and related measures, seems impossible to resist and the precise terms of new legislation will be one of the new Synod's prime concerns. We urge those elected to work to uphold the complex set of checks and balances which go to make up the parochial system, involving rights and duties of parishioners, patrons, and clergy, while accepting that a more permeable – in terms of parish boundaries – approach to mission may be needed.

The protection and performance of clergy

There was a lot about the clergy in the past Synod. The Clergy Discipline Measure 2003, still not yet largely operative, finally made its way to the statute books, and in July this year the accompanying Rules and Code of Practice were approved. Again, we comment on these in this issue. How the clergy will fare under these provisions will remain to be seen — now that a cleric, for the undefined offences of "inefficiency" or "inappropriate conduct", can be driven out of home and vocation, on a majority verdict,

in private, on a civil standard of proof (a balance of probabilities). Clergy discipline does, of course, need addressing, from episcopal bench down to lowliest curate — but we remain concerned lest healthily-individual and colourful clerics fall foul of some of the sometimes unpleasant controlling and humourless tendencies that we see in the Church today. Nor are we reassured that the stress upon avoiding undue delay and expense in these new procedures will necessarily assist the cause of justice. This, too, is something touched upon in the Annual Address to us.

Related to this, there has been the McClean Review, in two parts, of clergy terms of service. We applaud the proposal of "common tenure" which would give far better security of tenure to the unbeneficed clergy (and there are, of course, many priests-in-charge presently licensed following the widespread suspension of livings, sometimes illegally, in many dioceses). Some of the McClean proposals, such as the introduction of intrusive performance-related capability procedures and compulsory ministerial review may not be welcomed by all, and will need close scrutiny. Most controversially, of course, it is McClean's proposal to abolish the freehold which will occupy some of the energies of the next Synod. The last Synod did not like the idea of vesting all benefice property – church, churchyard and parsonage – in the hands of "the diocese". We encourage those elected to uphold the trusteeship which we call "freehold"; it is not opposed to the gospel call to live precariously and to travel light, but is precisely about living insecurely and incarnationally in a place where parish priest would not necessarily choose and, above all, to be stewards of their office and property for the people of their parishes, keeping faith with past local benefactors in their communities, and also recognising their duty to their successors.

Ecumenism and Women bishops

The last Synod cast the die, and women bishops are now undoubtedly a *when* and not an *if*. No one envies the task of the Bishop of Guildford as he chairs the group which will advise the House of Bishops as to possible ways forward to put before the General Synod and, in turn, Parliament. Many will support this further development in Church order, while others will have their doubts or reservations. The task of the new Synod will be to ensure a just, fair and inclusive settlement.

Many have been uneasy about the inbuilt discrimination and anomalies, not so much of the Episcopal Ministry Act of Synod, but of the main legislation itself which, in one breath, enabled women to become priests, but at the same time expressly barred them from the episcopate, and enabled bishops, cathedrals and parishes to exclude their priestly ministry. We invite those

elected to contemplate a structured solution in which women, both as priests and bishops (and those ordained by them), are truly upheld as such, yet in which also space is given for those unconvinced by this further development, that they may continue to live and minister in the Church of their birth and baptism, while the process of "reception" rolls on.

All of this has a vital ecumenical aspect, too. It may be that, for the moment, we best fulfil Our Lord's prayer "that they may be one" by having a structured arrangement, allowing for separate jurisdictions within our Church of England, to enable the discernment process (a matter for the universal Church while we embark on a further course of action which may, or may not, prove to have been prophetic) to continue. At the same time, we have other responsibilities, to seek unity with those who have branched from us – such as the Methodist Church – while not unduly prejudicing the possibility of our being reunited, one day, with the rock from which we were hewn, in terms of the great communions of East and West.

Many other areas for consideration will, of course, arise for the members of the new Synod. To those elected, we offer our congratulations, and the assurance of prayers, that all debate and emerging legislation will be for the good of the people, parsons, and patrons of the parishes, and dioceses, of our land.

PARSON & PARISH

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While the magazine seeks to uphold the aims of the English Clergy Association, the views of the contributors are, of course, entirely their own, and do not necessarily represent those of the Association, its Editorial Committee, its Council, or its members in general.

CLERGY DISCIPLINE MEASURE 2003
CODE OF PRACTICE

Code of Practice approved by General Synod
under section 39 of the Clergy Discipline Measure 2003
(General Synod ref GS1585).
A note on the Association's submission
—and the Code of Practice as finally approved

The Council of our Association made various submissions to the Legal Office at Church House, as part of the consultation over the draft Rules and draft Code of Practice. In particular, we stressed that in today's culture of recognition of human rights (everyone being entitled to a fair and public hearing, all presumed innocent until proven guilty, and private and family life being respected – Articles 6 and 8 of Convention rights) the Measure, with its Rules and Code of Practice, seemed to be moving in the opposite direction.

Although the form of the Code of Practice, as finally approved by the General Synod in July this year, is improved in some respects, there are still areas of concern. The purpose of administering discipline is, we are told, "to deal with clergy who fall below the very high standards expected" (paragraph 4). There is little about reformation and rehabilitation; the model of discipline is principally punitive, with clergy being "dealt with" by the "imposition of an appropriate penalty." Under the new Measure the sanctions to be applied are *penalties* – punishment – which have not the same reforming or restorative end as *censures* (under the Ecclesiastical Jurisdiction Measure 1963).

The position of bishop as pastor to those with whom he shares the cure of souls remains a difficult one in the Code. Paragraph 10 refers to the possibility in which a bishop may

> "receive information about a priest or deacon, which, if true, would amount to serious misconduct. The bishop will obviously wish to find out more about it. However, the bishop should be cautious about the extent of any direct involvement...."

But why is a claim, an allegation, described as "information"? What is the "it" or "the matter" (paragraph 11) which is being looked into, and why, on this basis, is "the priest or deacon…normally [to] be told why his or her conduct is in question"? The bishop, it seems, will become a remote, distant figure in a culture of rumour and an atmosphere of paranoia, while

the presumption of innocence until proof of guilt appears rather bruised in these paragraphs. Similarly, under the new Measure a cleric may be suspended while a complaint is being considered (albeit only "when necessary" says the Code, paragraph 109), whereas under the previous disciplinary legislation a cleric could only be inhibited in the proceedings once he or she had been charged.

The overriding objective is "to deal with all complaints justly", as paragraph 14 of the Code proclaims, but this "justice" includes, according to paragraph 15, avoiding undue delay and undue expense. Justice, by its nature, often means time, thoroughness and expense. One of our Council's concerns, as we submitted, was the lack of clarity about legal aid. The Code does refer to the Church of England's Legal Aid Commission, and legal aid "may be available" (paragraph 248) at some stages of the proceedings but there is no "absolute right" (paragraph 249). It all sounds rather tentative and not very reassuring for the respondent cleric. We are disappointed, too, given the vagaries of e-mails, to see that justice also includes using electronic means to serve documents in certain circumstances: Rules 101(1)(d). The "interests of justice", we are told in paragraph 73, may involve, admittedly in "exceptional circumstances" (suggestions not supplied), the withholding by the registrar from the respondent any details which may reveal the identity of a complainant or a witness. We should be relieved, at least, that anonymous complaints will not be considered under the Measure (paragraph 42).

The Code does not help in defining the slippery "inefficiency" offence of the Measure, or "inappropriate conduct". "It is not practical to give detailed guidance on what amounts to misconduct here…" announces paragraph 28. Again, as our Council's submission raised, what about the hunting parson, or the one who races motorcars? What, if in an increasingly no-smoking society, the Vicar enjoys a cigarette?

Help is at hand for the complainant. Paragraphs 37 to 40 stress the need to help complainants who otherwise may be discouraged or prejudiced from making or pursuing complaints, and in each diocese there will be a designated person to ensure that appropriate help is made available. But what help will there be for the respondent clergy? The draft Code simply said, after several paragraphs all about assisting complainants, "following a complaint the respondent should be encouraged to seek help and advice." Mercifully, the weighting against the cleric is slightly improved in the final version, which now provides that every diocese should help identify an appropriate person to offer practical help and advice, as well as to identify where the respondent cleric may obtain legal advice (including the registrar of a different diocese): paragraphs 75 and 76.

The role of the registrar remains a concern of ours. The involvement by the registrar in the process – in the preliminary scrutinising of a complaint – comes at the expense of the registrar's duty and service to the clergy of the diocese. It would, in our view, have been preferable, to bring in the "designated officer" (who conducts the case for the complainant), at an earlier stage, thereby freeing the registrar to advise the respondent cleric. Registrars, after all, hold a merged office of bishop's Legal Secretary (sometimes necessarily and rightly a position of partiality) and also Diocesan Registrar (judicial and tenured, holding the balance impartially between accusers and accused). What particularly worries us – in terms of justice and economics – is that, although the fees for both offices are combined in the current registrar's fee, whenever a conflict arises the registrar now becomes, in effect, purely the Bishop's Secretary.

The concern of our Association's Council, in the consultative stage, was that the odds were stacked too unevenly against the respondent cleric. Clearly, some tidying up and improvement has taken place before final approval of the Code of Practice, but, ultimately, we do not find a great deal of reassurance about the operation of a Measure which we consider to have been fatally flawed from the beginning. We await its implementation with interest.

Congratulations to the Association's
Parliamentary Vice-President
Sir Patrick Cormack FSA, MP
upon his return to the Commons
as Member for South Staffordshire

AUTONOMY IN PROVINCE AND PARISH

Brian Hanson, in this year's Annual Address, suggests that moves to end parochial autonomy sit uneasily with the retention of provincial independence

In this talk I will attempt to examine the present state of autonomy of a province within the Anglican Communion with particular reference to the recently published Windsor Report and compare that with the autonomy of a parish in the Church of England as presently perceived and how that could be affected by recent General Synod reports.

I should preface my remarks by saying that, although I am President of the Society for the Maintenance of the Faith and Chairman of the House of Laity of Chichester Diocesan Synod and a member of various other organisations, you will appreciate that my remarks today are my own views and do not necessarily represent the views of any organisation with which I am connected.

So let us begin by looking at autonomy as it is understood in the Anglican Communion. I was in attendance at the 1998 Lambeth Conference as Legal Adviser and it was always recognised that the most explosive issue at the Conference was going to be homosexuality. Resolution 1.10 was passed by a large majority with, in the main, the United States and Canadian bishops voting against. This 1998 resolution was unanimously upheld as the standard of Anglican teaching at the Primates' October 2003 meeting "as having moral force and commanding the respect of the Communion as its present position on these issues". Notwithstanding that unanimous resolution, as we are all aware, the US Episcopal Church agreed to consecrate as bishop a divorced man living in a sexually active same-sex relationship and the Diocese of New Westminster in the Canadian Church agreed to allow public rites of blessing of same-sex unions.

The Windsor Report

Thus the Windsor group was formed under the Chairmanship of Archbishop Eames to make recommendations in relation to the US and Canadian events in terms of the Communion one with another within Anglicanism. The group was not examining the events themselves, but their effect on the provinces of the Communion.

In the *Oxford Concise Dictionary* the definition of the word "autonomy" is fairly straightforward. It is the right of self-government; personal freedom; freedom of the will; a self governing community; and the word "autonomous" is defined as "acting independently or having the freedom to do so".

However in the Windsor Report a certain gloss is put on autonomy. We read at paragraph 72 that autonomy "is a much misunderstood concept". Paragraph 75 tells us that autonomy represents "within Anglican discourse a far more limited form of independent government than is popularly understood by many today". Autonomy-in-communion is otherwise described as freedom-in-relations and, says the Report, "there are legitimate limits on the exercise of this autonomy demanded by the relationships and commitments of communion" (paragraph 82). This echoes the Virginia Report presented to the 1998 Lambeth Conference which argued that "when decisions are taken by provinces on matters which touch the life of the whole Communion without consultation, they may give rise to tension as other provinces or other Christian traditions reject what has been decided" (4.13). What a prophetic statement that has turned out to be.

But, of course, this is not new. The first Lambeth Conference called by Archbishop Longley held in 1867 was opposed by many churchmen including the then Dean of Westminster who refused Westminster Abbey to be used by the Archbishop of Canterbury for the closing service. At the meeting there was a prolonged discussion about Bishop Colenso of South Africa and his controversial theological position. The presiding Bishop of the Church in the United States proposed a motion condemning Bishop Colenso and his theology but this was ruled out of order by Archbishop Longley. However, the Archbishop did permit a motion to be moved by Bishop Selwyn of New Zealand in the following terms:

> "That in the opinion of this Conference unity of faith and discipline will be best maintained among the several branches of the Anglican Communion by due and canonical subordination of the synods of the several branches to the higher authority of a synod or synods above them."

This resolution was carried by the Conference *nem con* but, unfortunately, in my view, it was never followed up. The question was raised from time to time at later Conferences but the idea of a central or supreme authority in matters of faith and discipline has so far been resisted. For example, Bishop Browning, the Presiding Bishop of ECUSA, in a debate at the 1988 Lambeth Conference calling for restraint in the matter of election of women

to the episcopate, urged that such a motion would be *ultra vires* because it would be an attempt to interfere with the legal rights of provincial electoral bodies.

Commenting on the Windsor Report in the *Church Times* of 29th October 2004, the Regius Professor of Divinity in the University of Oxford, Canon Marilyn McCord Adams, said the proposal in the Report of institutional structures that move in the direction of international Canon Law "is pernicious; it brings us too close for Anglican comfort to the coercive and authoritarian structures of Rome. A multicultural consensus would have the consequence of quenching the Spirit." It would seem that, for some Anglicans, the break-up of the Anglican Communion would be preferable to some kind of magisterium which could reassert the primacy of Scripture and the tradition.

The proposals of the Windsor Report – including the idea of an Anglican covenant which would deal with common identity, the relationships of communion, the commitments of communion, the exercise of autonomy in communion and the management of disputes – were accepted by the January meeting of the English House of Bishops. The response of the House states that "the exercise of provincial autonomy has to be exercised consistently with the demands of communion".

However, although the House of Bishops was persuaded by the Windsor recommendations, it came as no surprise that the February meeting of the Primates was cautious of "any development which would seem to imply the creation of an international jurisdiction which would override our proper provincial autonomy" (Primates' Meeting communiqué, paragraph 10). Dr Williams, when interviewed, said that "a papal model of central authority was no more acceptable to the provinces in the developing world than it was to North Americans. The logic of this position," said the Archbishop, "is that the legally autonomous provinces must voluntarily embrace principles of self-restraint, otherwise the Communion will disintegrate."

We are drawn to the conclusion that, at the provincial level, archbishops and presiding bishops see autonomy as essential.

The parson's cure of souls

Perhaps it would now be instructive if we turned our attention to the question of autonomy as it is perceived in relation to parishes and benefices of the Church of England. When a clergyman is instituted and inducted to a benefice he is entitled to the whole emoluments thereof. According to Gibson's *Codex* this includes the church, churchyard and parsonage house and, until recent years, the tithe and glebe land attached to the parish

for the maintenance of the minister. *Halsbury's Laws* emphasises that, by induction, the instituted or collated priest is put into complete possession of the church and benefice with all profits and emoluments and that he holds office as a corporation sole. That is, of course, what is often termed the parson's freehold.

The parson has exclusive cure of souls within the parish, subject only to the general cure of the bishop of the diocese. It is worth noting that the diocesan's general cure does not extend to any suffragan bishop who has no right to demand that he takes services in the parish church. This undermines the exclusive or autonomous nature of the parson's freehold. Until recent years the incumbent was entitled to remain in office until death unless removed by due process of law which usually involved some gross disciplinary offence.

Subject to statute and canon law, the incumbent, it could be said, is autonomous in his benefice provided he carries out the duties of office required by canon. He cannot be compelled to attend deanery synod of which he is an *ex officio* member, or deanery chapter. The PCC cannot be compelled to pay the diocesan quota. The only encroachment of the incumbent never having to venture outside his benefice is the bishop's or archdeacon's visitation where he and the churchwardens must answer the articles of inquiry prior to the visitation.

Inroads into the freehold

As I have already mentioned, the exclusive nature of the incumbent's freehold has been encroached upon in recent years. The Pastoral Measure of 1968 made it possible for a benefice to be dissolved even where there was a sitting incumbent; but the Measure did entitle the dispossessed clergyman to compensation in respect of his loss of office. Those provisions were re-enacted in the Pastoral Measure 1983.

The first General Synod of 1970-75 was very much a reforming synod. It sponsored three Measures which had a major impact on the parson's autonomy. The first was the Ecclesiastical Offices (Age Limit) Measure of 1975 which provided that an incumbent who entered into office on or after 1st January 1976 must retire from office on attaining the age of seventy. It could be argued that this legislation was unnecessary once a more equitable system of clergy pensions and housing for the retired had been introduced. These days most clerics are only too happy to retire at 65 or thereabouts and it will be interesting to see what the Church's attitude to the 1975 Measure will be, given that the Government is pledged to abolish the compulsory retirement age.

The second piece of legislation to affect the parson's freehold was the Endowments and Glebe Measure of 1976. The Measure vested all glebe land in the diocesan board of finance and provided for it to be managed for the diocesan stipends fund. The two arguments for the legislation were the inequality of benefice income and the amount of land which was lost to the Church through local mismanagement and claims of adverse possession. For example, in the early years of the 1970s my local incumbent had benefice income approaching £10,000 p.a. because shops had been built on his glebe, whilst the neighbouring incumbent was on the diocesan minimum of less than £1000 p.a. In my view, the Endowments and Glebe Measure was an overdue piece of legislation and we had little difficulty in persuading the Ecclesiastical Committee of Parliament that the Measure was expedient.

The third Measure was far more controversial, namely the Incumbents (Vacation of Benefices) Measure of 1977. Basically the clergy discipline legislation – at that time the Ecclesiastical Jurisdiction Measure 1963 – could not cope with pastoral breakdown where there was not a disciplinary element. Amongst the laity there was a serious call for incumbents to be removed where the pastoral relationship had broken down. The Measure also dealt with the case where the incumbent was suffering from mental or physical illness. Rather like the 1963 Measure, it proved to be a laborious and expensive process. I would argue that the Church has to realise that processes which could lead to a person possibly losing his or her livelihood are, of necessity, time consuming if the rights of all parties are to be protected. In matters legal, if the process is time consuming, inevitably it will also be expensive. The new Clergy Discipline Measure will be no different.

And now, following the Paul Report of 1963, Morley in 1967 and Tiller in 1983 we have McClean's Review of Clergy Terms of Service Part II which recommends the replacement of the parson's freehold with common tenure. McClean Mark II proposes removing clergy (and bishops too!) if they show a "lack of capability". The ownership of church, churchyard and parsonage house would be transferred not to the PCC but to the diocese. In return, clergy would gain employment rights under section 23 of the Employment Relations Act 1999: rights such as maternity, paternity and compassionate leave and the right of appeal to an employment tribunal.

When presenting these proposals in General Synod Professor McClean was at pains to tell the Synod that clergy would lose nothing by his proposals and that unbeneficed clergy would gain by having common tenure. Those in common tenure would be subject to a "capability procedure" if they fell below an accepted minimum standard. The Synod was told that the procedure would involve an informal warning from the archdeacon, followed

by two different panels issuing formal warnings if no improvement was shown. This would then be followed by a final capability panel to decide whether the priest (or bishop) should be removed from office. Appeals would be possible at each stage. Following all this, because of the 1999 Employment Relations Act, the priest would be able to appeal to a secular employment tribunal.

Is it really thought that this would prove to be a better vehicle than the virtually discarded Incumbents (Vacation of Benefices) Measure? The Report considers that the new system would require an additional eighteen human resources posts at a cost of an extra £1.5 million p.a. If the Report admits to that amount of money you can be quite sure the true cost would be a great deal more. Would it really lead to a more dedicated priesthood than we have now? Would not that sort of money be better spent on more priests in parishes?

Why does the House of Bishops consider it to be so necessary to bring Church of England clergy under the provisions of the 1999 Act when there could be tailor-made internal procedures? When there were moves in Government circles to scrap the ecclesiastical exemption and bring church alterations under the secular planning laws, the Council for the Care of Churches and the Archbishops' Council spent many hours in negotiation to retain the exemption and strengthen the faculty jurisdiction so that it was acceptable to Government.

It would seem that the parson's freehold is not perceived by the bishops as worth fighting for. Do they see the autonomy of the incumbent as a hindrance to new ways of being church (as the Report *Mission Shaped Church* puts it)? Without the freehold it might be thought easier for clergy to be moved and for benefices to be dissolved in favour of mission initiatives. In his foreword to the Cray Report the Archbishop of Canterbury recognises that the parish system "still has a remarkable vigour in all sorts of contexts which relates to a central conviction about the vocation of Anglicanism. The challenge is not to force everything into the familiar mould; but neither is it to tear up the rule book and start from scratch."

Misuse of suspension

I believe that to be sound advice. However, in many dioceses they are tearing up the rule book and behaving as if these various Reports have already been enacted into binding legislation. There is widespread misuse of section 67 of the Pastoral Measure. The Society for the Maintenance of the Faith of which I am President has 86 livings and last year we only had one benefice to fill. All other vacancies were suspended for unspecified

pastoral reasons. In one of our benefices we had notice of the renewal of the suspension for the fourth time, making it twenty years in which the Society as patron had been unable to exercise its patronage. When we challenged this we were told that further suspension was necessary for pastoral reorganisation to which the Society responded that if the diocese had not been able to achieve this in twenty years they should do the honourable thing and allow us to present a priest for institution and induction to the freehold. The Society has also experienced suspension being used in order to sell an over-large rectory where, of course, the priest in charge has no right of objection to the sale in the way that an incumbent has. That, in my view, is another misuse of section 67.

Suspension of presentation is a good way for the bishop to gain control of appointments at the expense of the registered patron —rather like common tenure where it will be easier to manage the clergy.

The Society for the Maintenance of the Faith gave evidence to the Toyne Committee which was responsible for rethinking the Pastoral Measure. In our evidence we said that we considered patrons should be given the same powers to nominate a priest in charge when the benefice is suspended as they have in the appointment of an incumbent. This idea was rejected by Toyne, the Report simply reiterating the existing statutory requirement that patrons should be consulted when a priest in charge is to be appointed.

The comprehensiveness of the Church of England has, in the past, depended on checks and balances: of the parson being able to preach the Word without fear of reprisal from bishop or laity; of the patron being able to nominate a priest whose churchmanship might be radically different from the bishop's. But more and more we are seeing power concentrated in fewer and fewer hands. The Episcopal Ministry Act of Synod provides that "no person or body shall discriminate against candidates for ordination or for appointment to senior office in the Church of England on the grounds of their views or positions about the ordination of women to the priesthood." And yet where in 1992 there were twelve diocesan bishops opposed to the ordination of women now there are three who do not ordain women. This is another example of the comprehensiveness of the Church being compromised.

To conclude, in the very difficult issues which confront the Anglican Communion, the archbishops and presiding bishops are cautious lest their provinces lose their autonomy or independence. Whereas, at parochial level in the Church of England, in my opinion, we are seeing a very different picture where bishops and dioceses see it as imperative that parishes, clergy and patrons surrender their independence because, it is alleged, this hinders the spreading of the Gospel. I am not clear that a satisfactory case has been made out for the curtailing of parochial autonomy. We will not

make disciples of all men by forever lowering the barriers to membership and changing the rules because of the attitudes of current society. Those churches which are growing – often evangelical or charismatic – are the places where the Gospel is preached in its fullness and where the greatest demands are made of its members.

May we heed these warnings before it is too late.

Dr Brian Hanson, CBE, DCL, LLM, Solicitor and Ecclesiastical Notary, sometime Registrar and Legal Adviser to the General Synod of the Church of England. This address was given to the Association and members of the Patrons Consultative Group on 16th May 2005 in the Church of St. Giles-in-the-Fields.

ADVANCE NOTICE

AGM Monday 15th May AD2006
by kind permission of the Rector and Churchwardens
in St.Giles-in-the-Fields, London WC1

AGM at 12.30pm

Annual Address at 2pm
by the Most Hon. The Marquess of Salisbury

Have you visited the ECA's website?

www.clergyassoc.co.uk

contains details of the Association's news and events, our work among churchwardens and patrons, our charitable help to clergy through holiday grants, and the latest *Parson & Parish*.

IN ALL THINGS LAWFUL AND HONEST

Alex Quibbler, Parson & Parish's legal agony uncle, responds to some recent questions arising in parish life

QUESTION: Like all incumbents, I recently received, along with a recent payslip from the Church Commissioners, a note about the guaranteed annuity being no longer payable, under the Stipends (Cessation of Special Payments) Measure 2005, and the need for me to decide whether or not to continue receiving the guaranteed annuity. I realise that the annuity is only a small amount – just a few hundred pounds in my case – and that its value has diminished over the years, but I suppose I have grown rather attached to it, and just wondered what all this was about. Furthermore, a circular from our diocesan office tells us that if we opt to relinquish this annuity, then the diocese "will be financially better off" and it then actually goes as far as to "urge" us to do so. What do you make of this?

The 2005 Measure to which you refer provides that in future, and subject to the option of present incumbents deciding to retain it, no guaranteed annuity payable by the Commissioners under the Endowment and Glebe Measure 1976 – in other words, a payment arising from historic endowments existing up to that time – is to be payable by the Commissioners to the Diocesan Stipends Fund. Instead, the payments will go straight from the Commissioners to the Archbishops' Council. The Archbishops' Council will then make payments to the Diocesan Stipends Fund, allocating them in such manner as the Archbishops' Council shall determine, after consulting the Commissioners, but in such a way as is consistent with the Ecclesiastical Commissioners Act 1840, section 67. This section, just in case it wasn't immediately at the forefront of your mind, is the one (as the 2005 Measure itself explains), "relating to the making of additional provision for the cure of souls in parishes where such assistance is most required."

So what will happen is that the monies released by those incumbents opting to relinquish their guaranteed annuities, will increase the centrally-administered "pot" of money which goes out to help the more needy dioceses. I think they call this "the diocesan stipend augmentation grant." Whether your decision to retain or to relinquish your annuity will help your diocese will depend entirely on where your diocese ranks in the list of the poorest or richest dioceses —a ranking which is reviewed annually. At present, of course, the system of guaranteed annuities benefits the diocese, because the burden on the Diocesan Stipends Fund for the incumbents' stipends is reduced accordingly. If, however, your diocese is one of the poorer ones then the loss to the diocese suffered by a good number of its incumbents deciding to relinquish their annuities could well be more than

offset by an increase in the amount the diocese then receives from the central pot. This would explain the circular you have received from your diocese. Some richer dioceses, on the other hand, may well be urging their clergy to opt to retain the annuity, as otherwise those dioceses could end up financially worse off. It may be also worth pointing out that under the system of guaranteed annuities, during a vacancy the annuity payment would remain with the Commissioners; under the new arrangements, the dioceses will be paid, irrespective of whether a particular parish post is filled.

But all this is to look at the matter from the diocesan angle, important though that undoubtedly is. You, as a parish priest, have other considerations too.

I don't see any plot here, but what I do see is a Measure motivated by the desire to streamline and cut the administrative costs (which in a computerised age cannot, surely, be colossal) of the present arrangement. The other reason for the Measure – to enable money to be realised to assist dioceses most in need – is all very well, but it comes at the expense of blurring a strand of our heritage (just like those who, in a bid for monochrome consistency, would have us abandon the historical difference between vicars and rectors), but also, and more importantly, it would also take away one element of the stipend which is absolutely guaranteed. As I have mentioned before in one of my replies, the guaranteed annuity and the fee income of the benefice form the inalienable part of the stipend, while the rest is made up on a discretionary basis (and not, ultimately, guaranteed), decided upon by the bishop, in consultation with the diocesan synod. I would be wary of doing anything to give up the inalienable part of your stipend. So, although my advice is usually "Don't sign anything", in this instance I would advise that you do sign something —the slip at the bottom of the note to the Church Commissioners telling them that you wish to continue receiving your guaranteed annuity. If you do nothing before 31st December, you will be deemed to have opted to relinquish it.

QUESTION: Alex, I help organise the "secular" bookings for our church – concerts and other events – and we have about a dozen of them a year, usually with a bar at the back of church. It's actually quite a useful little earner, and helps towards paying the quota. We also have a few church social evenings just for the congregation – quiz nights, a Saint George's Day party, patronal festival celebrations and the like – and sometimes we've run a cash bar, while on other occasions it's been "bring your own tipple". Until the change in the licensing law, I've gone along to the

licensing magistrates with a list of all events when we plan to sell alcohol, so the church was covered. But what do you make of new Licensing Act that's just come into force – how will it affect us?

Yes, thank you for this one. There has, I think, been a lot of hype about the Licensing Act 2003, and I've heard some people suggest that you will no longer be able to bring your own bottle of wine for personal consumption at an in-house church social, or even serve alcohol at a dinner party for friends. I realise that there are some intrusive, over-regulating tendencies in today's government, but I don't think the news here is all that bad!

It is more than possible that I have missed something here – and comments from readers and those more learned than I are always welcome – but I've been trawling through this Act, and some of the literature supplied by my local council (which takes over as the licensing authority) and I can find nothing to suggest that an internal church social evening, where people bring and consume their own alcohol, is in any way caught within its provisions. In terms of alcohol, the Act is about sale by retail, or its "supply by, or on behalf of, a club to, or to the order of, a member of the club". I suppose someone might claim that a PCC which, for example, buys some wine for serving, modestly and at no charge, for the refreshments following the institution of their new vicar may possibly be caught as a "club", but I'm not convinced. Also, perhaps it would be safer to concentrate on the churchwardens as public officers supplying wine, rather than the more "clubbish" and elected (by a much smaller body) PCC. In any event, I do think we have to hold before us the whole purpose of this legislation: to reduce crime and disorder, to uphold public safety, to prevent public nuisance and to protect children from harm.

Moving on, though, to the larger events held in your church, open to the public and with a bar, then my advice to you is simply to keep the events that need a bar to no more than twelve per year, and rather like the occasional event licences which you applied for under the old system, you now apply to your council for TENs. These, under the 2003 Act, are Temporary Event Notices, for events with up to 500 people present, with notice given at least ten days before the event, and covering up to twelve events in a year at which alcohol may be sold. If your needs are greater than this then you'll need to go down the road of personal licence or a premises licence.

What I do think we need to do, for the wellbeing – and conviviality – of our parishes is to monitor the operation of this legislation and I would be interested to hear from people involved with the implementation and practical consequences of these new licensing provisions and the way in which church and church halls are being affected.

QUESTION: When I resigned my benefice a few years ago, in my late sixties, I didn't retire —I could, in fact, have stayed on beyond 70 as I had been incumbent there since the late 1960s. Instead of retiring, I accepted an invitation to become the chaplain to an individual and to minister in a private chapel in a large country estate. The terms of the Licence that I then received from the diocesan bishop were that this appointment was made under the Extra-Parochial Ministry Measure 1967. There was no mention of a time-scale: simply that I was being granted licence and authority under that Measure "to serve during [the Bishop's] pleasure as chaplain….", and a note at the bottom of the Licence said that it must be returned to the Bishop's Legal Secretary "for cancellation on your ceasing to be resident in the Diocese" —nothing about reaching 70. I have just now received a letter from the diocesan registrar telling me that the Licence is about to expire, as, under the Ecclesiastical Offices (Age Limit) Measure 1975, the bishop has already enabled me to continue in office for up to two years since reaching 70. Is this right?

This seems slightly curious to me, and I'm rather surprised that your diocese has gone down the Extra-Parochial Measure 1967 route and given you a licence —when common law has long recognised that the Sovereign, peers of the realm, and others of note, may appoint chaplains to their households and private chapels. Maybe it's because you perhaps wanted to be able to continue to minister in the diocese generally – although a PTO (permission to officiate) would have sufficed – or that fact that as a licensed cleric you would otherwise have been able to vote in a General Synod election and the diocesan office is trimming the electorate?

Still, for better or worse, your appointment has been made under 1967 Measure and that requires the bishop's licence. A licence is what it says: a licence —and capable of being revoked *automatically* (if it were for a term of years), *summarily* for what appears in the bishop's mind to be a good and reasonable cause (although if for misconduct, this will no longer be possible once the relevant parts of the Clergy Discipline Measure 2003 come into operation), or *upon reasonable notice*. Yours is a "reasonable notice" case, and the authors of the Church of England's *Legal Opinions* consider that withdrawal of a licence solely on a person's having reached a given age is possible. The reasonableness of the notice, they add, would depend upon all the circumstances, including the length of time in post, and the arrangements needed to be made for your relocation (p.230). All that said, there is no age limit for unbeneficed clergy and the registrar is mistaken to claim that the bishop must now revoke your licence. There is, though, no right of appeal.

What is somewhat strange is that your registrar is praying in aid the

Ecclesiastical Offices (Age Limit) Measure 1975. That Measure applies to certain specific offices listed in its schedule: archbishop, bishop, dean and provost, residentiary canon, archdeacon, incumbent of a benefice, vicar in a team ministry and vicar of a guild church. As your office is not one of these, the Age Limit Measure strictly does not have any bearing. I suppose that the diocese would claim that it is referring to this Measure, by analogy, to achieve parity of treatment within the diocese; but it is slightly bizarre, and confusing, to claim that a bishop must revoke the licence by virtue of a Measure that doesn't technically apply!

If the bishop now revokes your licence then the previous basis of your appointment falls away. There is though, surely, no problem about your continuing to hold the appointment. Normally, for a cleric to exercise his or her ministry then, under Canon C8, the authority of the bishop ("or other the Ordinary") and the consent of the incumbent is needed. There are, however, exceptions, some of them acknowledged in that Canon. As for the bishop, then there is the proviso that cathedral chapter members are not debarred from ministering in the diocese "merely by lack of authority from the bishop of the diocese" – which indicates that the bishop's conferring of authority is seen as enabling ministry to be exercised around the diocese, and that, even then, it is not an absolute requirement. In the case of your appointment, it may that the owner, especially if he or she were a peer of the realm – I don't know – would be held to be the Ordinary. As for the incumbent, then some legal authorities suggest that a private chapel, unlike a proprietary chapel, may not require the incumbent's consent to the appointment and ministry of a domestic chaplain, but I feel sure that he, or she, would rejoice in your being there. I wish you many more years of service!

QUESTION: I've just had a slightly grumpy circular from my Archdeacon about clergy in the area who, apparently, aren't co-operating with giving access to their vicarages to enable the diocesan-contracted heating engineers to carry out the annual boiler servicing. What's caught my eye is a statement in the letter claiming that there is no legal obligation upon the diocesan parsonages board to have these annual checks carried out. If this is true – is it? – then my fear is that dioceses may simply try to save money by leaving it to the parish clergy to organise and pay for.

Ah, interesting. What we're talking about here is the Gas Safety (Installation and Use) Regulations (latest amendment is 1998), under which the annual inspections of parsonage gas heating are made. These Regulations arise from the Health and Safety at Work Act 1974.

Now the Diocesan Parsonages Board has statutory duties in relation to the parsonage by virtue of the Repair of Benefice Buildings Measure 1972. Although this is completely separate legislation from that under which the Gas Safety Regulations are made, the Church of England's Legal Advisory Commission takes the line that the existence of these statutory duties has the effect of imposing duties under the Gas Regulations on the Parsonages Board (*Legal Opinions*, p.136b, paragraph 5). The Board is the "responsible person" with duties under the Gas Regulations. So, one part of your reply to the archdeacon is that the Parsonages Board *does* have a legal obligation.

But there is also an obligation on the part of the incumbent or priest-in-charge. The same Legal Opinion to which I have just referred also considers that a clergyman, although strictly not working for gain or reward (not, of course, the philosophy of the stipend), could, on a broader approach, still be regarded, in the context of health and safety, as a self-employed person having a place of work under this control (the parsonage, or certainly the study in it). This also gives rise to duties under the Gas Regulations. As you know, for payment purposes, parsons are treated as Schedule E employees, yet for taxation purposes they are deemed self-employed (Schedule D) —even though, in strict law, they are neither, but simply ecclesiastical office holders. I think one can understand the rationale of the *Legal Opinions*; like someone self-employed, the priest is, in law, responsible for carrying out his vocation, and, clearly, he pays the bill for the consumption of the gas which, presumably, gives rise to much of the need for servicing. And don't forget, too, that some parsons install, at their own expense, removable heating appliances; these must, of course, be the responsibility of the incumbent.

In a word, there is both a statutory obligation on the Parsonages Board but also a responsibility on the incumbent or priest-in-charge. The answer, I think, must be that your archdeacon has rather oversimplified the legal position which, in fact, involves concurrent and overlapping responsibilities. Nonetheless, please do encourage your fellow clergy to be co-operative!

Readers are invited to continue sending in their questions about parish law and practice to the Quibbler in forthcoming issues of the magazine. All names and addresses are, of course, withheld. Whilst every effort is made by Alex to ensure the accuracy of his responses, advice should be taken before action is implemented or refrained from in specific cases.

BOOK REVIEW

Becoming a Spiritual Leader —A Life of the Apostle Peter
by The Revd. Canon Patrick Whitworth MA
288pp pbk Terra Nova Publications ISBN 1901949346 £8.99

Every member of our Association is a spiritual leader! Whether by our example or by explicit witness and teaching, whether clerical or lay, we all have opportunities to lead others into and along the Way of Christ —and never has the need been greater for such leadership, at every level. So this is a book for all of us, and it is an extremely enjoyable read. Canon Whitworth, an able incumbent who leads a large and flourishing congregation in Bath, is a fine teacher and expositor, and he paints a most helpful picture of St Peter, whose failures, restoration by Jesus, and subsequent ministry, hold so many lessons for us.

What, one wonders, would Peter have made of ministerial appraisals? What, indeed, would selectors for ordination training have made of Peter? The first part of the book explores Peter's 'formation' – from the call from Jesus through to that moment of restoration after failure, by the Sea of Galilee. The author leads us through the great events depicted in the Gospel narratives as they touch on the relationship between Jesus and Peter. With gentle wit and wisdom, and a fresh, lively touch, we are shown many things, the significance and application of which maybe we had not noticed before. The second part of the book takes us through the post-Pentecost phase of Peter's life. Here, the author looks at some of the ways we can apply in today's church some unchanging truths about Christian leadership, which we discover as we look at how Peter lived out his calling. In a final section, some key themes of the epistles of Peter are explored.

This book is an especially valuable resource for preachers, as there are thought provoking reflections on virtually every page. Here is an author who understands the life of our Church of England, and can express biblical insights and applications in a powerfully attractive manner. Those who read this volume will no doubt wish to explore Canon Whitworth's first 'Becoming...' book – *Becoming Fully Human* – with its rich and illuminating mix of apologetics, devotional material and biblical application.

The Foreword writer aptly comments: "*Becoming a Spiritual Leader* invites us to walk alongside Peter and learn from his struggles to come to terms with his full humanity and calling, as well as feel the full impact and depth of Jesus, the man who is God. This book reminds us that only the broken are called into God's ministry to others...."

Submitted by a member of the Association

CHAIRPIECE

John Masding on Sponsorship – the new patronage?

Patron or Bishop —who used to matter most to the Rector or Vicar? Patrons historically provided church, parsonage and endowment as often as not, with tithes and fees making up the clerk's income, after the Bishop had given institution and he had been inducted into the real, actual and corporeal possession of his benefice with all its rights, privileges and perquisites. After that the parson was much more on his own than he is today —the Archdeacon's Visitation would be his main contact usually with what today we call "the diocese", and in many, many instances Visitation would be not by the Archdeacon but by the Ordinary of the peculiar jurisdiction in which the parish might then have lain. Support, and sometimes significant financial support, would be more local —and by the patron. This is a broad-brush picture —it does not pretend to be a complete and accurate statement. Patrons — well, when they were good they were very, very good, and when they were bad they were awful. Even in more recent years, the very, very good has been known to buy his parson a house for a retirement present, which is more than a bishop does or can do.

Contrast (again, broad-brush stuff) the patron who used to give with the Bishop who today takes. The quota is now a major pre-occupation for many clergy, often exceeding the stipend received, and the value of diocesan help in other ways is marked – sometimes very welcome help indeed, but, not altogether occasionally, also liable to regarded as Nanny getting up to a spot of control-freakery. The feeling is exacerbated when the rectory which a patron gave is sold, and a bishop scoops the proceeds.

Is the pattern reversible? Patronage endowed livings in an era of expansion —even, it could be said, of mission, outreach and evangelism. Diocesanism absorbs parochial assets at a time of contraction and retreat. Nor does a diocese even with gained resources have much capacity for generating growth in areas where it could be possible. The funds are just Not There. Bishops meet one another with a haggard "more-bankrupt-than-thou" expression flitting across the face usually presented, so genial, and rightly so, to The People. Like Nelson blockading the French and signalling to an imaginary fleet beyond the horizon as it would appear from land, there's an awful lot of bluff bluff.

Sponsorship is how expansion takes place in the secular world. The Church has embraced sponsorship half-heartedly and in a minor way, as when the Rector is sponsored at 10p. a minute for the Organ Fund if he'll do a marathon Bible reading in church —the sound of shekels is more than the meaning of words; they are heard (perhaps) and heard not.

Sponsors or patrons – sport, music and the arts in general, university

chairs even, or colleges named after breakfast cereals – sponsorship can be Big Money, and is clearly here to stay. Political correctness may have banished tobacco from Formula One, but there is apparently no shortage of new money offering replacement sponsorships.

Smoke from the Anglo-Catholic censer, I am not suggesting, is to be paid for by tobacco —nor can we envisage with equanimity advertising logos blazoned over St. Paul's proclaiming its grateful indebtedness to commercial enterprises who know that sponsorship pays. But there are more subtle, and more acceptable, ways of indicating that Church life is sponsored. An agreed Code of Practice would regulate sponsorship so that it was tasteful and not obtrusive, and because of the sensitive nature of religious faith the Advertising Standards Authority could have specialized teeth for this area. But if everyone was treated in the same way, sponsorship could well work.

What the patron got in return for his outlay in days of old was prayer. Chantry chapels were the notorious example of that —until 1539 there was one a few yards from where I am writing this. Sponsors today might not be too keen in that area – publicity and advertising rule OK – a bit more this-worldly. But what is the essential difference between the Lady Margaret Professor of Divinity, say, and the Embassy World Cup? The prominence of the name is all. Can one imagine a cathedral welcoming the endowment of the Jaguar Canonry, say, or a bishop licensing the new Royal Bank of Scotland Schools Officer? That may be harder than conceiving of a commercial logo beneath the Coat of Arms on the Dean's Stall, or the Vicar's? I have just received my usual newsletter from the Historic Houses Association: ".....the H.H.A./ Smiths Gore Lecture.....generously co-sponsored by Smiths Gore and Farrer & Co." – perhaps the Vicar will at Easter be preaching the annual Ford Sermon, or the Rector arranging his Wednesday Lenten talks sponsored by Supa-Vit plc? One of the churches in which I regularly preach has still in the Rector's Room a framed list of anciently-sponsored Sermons. Buildings, appointments, addresses and activities —I believe there are many fruitful possibilities and of course one can easily "send up" the idea of sponsorship in a religious setting. *Abusus non tollit usum*. Proper regulation would avoid the possibility of abuse, one would hope.

Sponsors in the sense of modern patrons do bear thinking about with some real care and consideration.

What is there to lose but our pride? Has the Church ever been self-supporting financially? Has it not always drawn upon human society with all its hopes and fears? What Sport can do, we can do better. And for the spiritual exercise and health of this wounded, drifting nation that we serve. *J.W.M.*

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