

Church and Society issues

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A. THE STATE AND CIVIL SOCIETY

The classical picture of the state which has emerged in the British tradition can be sketched like this. Parliament enacts the laws which all must obey. The Government, working through parliament, governs society as a whole and alone has coercive power. The Government's powers are differently deployed in the various 'sectors' of society.

So the Government funds and controls the 'public sector'. The Government taxes and regulates 'the private sector' (or the business sector): there is an ongoing debate about the balance to be struck between the degree and nature of Government regulation in this sector over and against the freedom for innovation, risk taking and entrepreneurship demanded by business and constrained only by the self-regulation that business agrees to in its own interest.

In regard to civil society (or the informal and voluntary sectors), however, Government has traditionally intervened only with the lightest touch. For here is the much-treasured arena of an Englishman's liberty. (I use the male form deliberately, to remind us how recently is the shift towards gender equality.) Many trace the roots of our traditional liberties back to Magna Carta in the thirteenth century. From there they developed to include: freedom of association, freedom of conscience, freedom of worship, freedom to publish and be damned, freedom before the law.

At the core of civil society were home and family. "The Englishman's home is his castle," into which public authorities, including the police, did not intrude. Civil society was made up of countless associations, groups and clubs which gave colour and variety and genuine amateurism to local community life. The constraints on behaviour in civil society were not imposed by the state. They grew out of custom and culture ("the way we do things round here") and by the slowly-emerging common law which built on judicial precedents.

Churches belong in civil society*, and have prized their freedom to regulate their own affairs according to their theological understandings - save only that they must not abuse their freedom, e.g. by encouraging subversion of the state or plotting rebellion against the Government. Hence Churches, like our own, develop their own language for what is characteristic of the Church's life. We deploy ministers in what we call a 'covenantal' relationship between ministers and the Conference without reference to public laws on employment. We have developed a way of being together which is built essentially on

trust. We trusted treasurers to deal honestly and sensibly with church money with minimum fuss. We trusted the Conference to station ministers according to processes which win general consent, so that when things go wrong we sort them out internally, without recourse to the courts.

That's the classical picture. We must be careful not to romanticise it. In many aspects it was deeply flawed. If you were on the inside of a powerful or close-knit group in civil society, fine. If not, you might be cruelly oppressed and ruthlessly refused entrance, with little hope of redress when your interests were trampled on.

In recent generations, however, the picture has substantially changed. The Government's power of regulation (and its enforcement) has become much more detailed, and now enters into ever more areas in all three sectors (public, private and civil). Most notable is the rapid escalation of regulation by Government of civil society. Some examples:

Safeguarding policies, picking up abuse of children and vulnerable adults in families (which was always known about but never discussed in polite society) and even catching you if you press several wrong keys on your computer when surfing the internet and alighting on pornography sites.

The institution of marriage. Legislation now criminalizes domestic violence, including rape in marriage.

Health and safety rules requiring the reorganisation of such homely entities as the church kitchen and setting standards for church volunteers who serve tea and cakes.

Accountability for the use of money (SORP regulations rolling through charities large and small, including churches, like a never-ending stream).

The refusal any longer to see churches and other religious buildings as places of 'sanctuary' for people fleeing oppressive and unjust laws. (Asylum seekers, e.g.)

Some simple reflections on the ever-changing relationship between the state and civil society.

1. **Let's keep things in perspective.** We still have our fundamental freedoms! In some regards our individual freedoms are better protected now than in the informal culture of earlier generations. I refer, e.g., to the Human Rights Act. So we can preach the gospel unhindered, win converts, and live the good life as Christians describe it, without fear of arrest. We are not a police state. In all the apparently intrusive powers of Government, there remain lots of checks and balances on the behaviour of Government and of Government agencies. Aren't there in fact more protections now - the Data Protection Act, for instance?

2. **Government regulations are in general driven by identifiable values** which we do not on the whole object to (even when they sound slightly odd to ears schooled in classical Christian language). It would not be too great a caricature to label the values which underpin so much modern legislation and regulation as deriving from the liberal humanist tradition. So, as a society, we develop rules which honour the autonomous individual, protect privacy, put the needs of children high on the agenda,

safeguard rights, advocate fairness in corporate dealings, and enforce democratic procedures of one kind or another for collective decision-making in organisations, associations and corporations.

One or two footnotes to what I have just said:

(i) Many of the new regulations coming our way derive from the EU in the first instance. Here we must remind ourselves that not all states in the EU are British in character (something we sometimes find well nigh incredible!). So it's worth reminding ourselves that the attitude to Government regulation of private societies is very different in, say, France and Germany (and indeed most of the non-English speaking world) from what it is here. Blame Napoleon and Bismarck for that. Napoleon codified a comprehensive civil law and then applied it to regulate private societies and private relationships. So in the EU there is a clash of political cultures - and ours is not the predominant culture in the new Europe.

(ii) On the wider international scene, we also find ourselves a society under pressure to increase formal regulation and to pursue adherence ever more rigorously. In the global financial markets, e.g., where 'action' may be largely electronic and therefore lightening fast, and where reputation counts for everything, we have to put in place large and powerful regulators to monitor behaviour, root out rogues and catch out sleight of hand. Hence, e.g., the Financial Services Authority.

(iii) We note here another important development about institutions of international significance. Because of ease of travel, the staff of global institutions are drawn from many nations. They are cosmopolitan in character. They do not use staff only from the nation and culture in which their offices happen to be situated. So the rules that govern behaviour cannot simply be those that apply to the local culture. Nor can the risk be taken that staff from many nations will adopt the taken-for-granted customs and values of the host nation or culture. There have to be comprehensive codes and rules which all can own, from whatever culture and background staff come. Hence the sense that regulation is increasing apace.

3. Churches increasingly find themselves in a vigorous dialogue. On the one hand we see coming at us endless new regulatory regimes driven by a 'rights' culture which, in turn, is shaped by a secular vision of democracy and just dealings. On the other hand is our classical way of doing things, built on different ethical foundations and shaped by theological pictures of how we live together responsibly, generously and caringly as members one of another within the body of Christ, or as members of a 'kingdom community'.

It would be a misconception for Churches to portray this dialogue as the Churches having to defend 'religious liberty' against the hostile intrusions of an atheistic state. It is better understood, I submit, as a telling encounter between different cultures about due process in shaping people's lives, especially at work, with the aim of obtaining outcomes which are good for workers, safe for the general public and fair to Church organisations.

In one respect, however, the dialogue has highlighted an important issue. This has come into focus, I judge, through the arrival of other faiths into British society. They often bring with them assumptions about the authority of God in human affairs which not only sound odd - provocative, even - to secular

humanists but also embarrassing to Christians. For after two hundred and more years of secular modernity, we don't habitually or straightforwardly talk about God any more in public affairs, or even elsewhere in civil society outside the Church. Perhaps we don't even talk easily about God in the Church, such is the degree to which secularity has eaten into the soul of believers.

4. Some comments on our Methodist tradition. We are essentially a modern Church, i.e. we came to birth with the European enlightenment. Our ethos is therefore markedly different from our Free Church colleagues who originated in the period of classical dissent in the sixteenth and seventeenth centuries, and also from Anglicanism and from Catholicism.

Thus, e.g., the issue of democracy - in one form or another - has been part of a vigorous internal dialogue from the beginning of Methodism. I wonder how many of us have yet had the opportunity to read Roy Hattersley's biography of Wesley**, with its fascinating description of the aging Wesley (ever more autocratic and stubborn, irritable and not always consistent) gently being pushed to one side by the very Conference of preachers he had invented as a tool for his personal control of the Methodist societies.

So the common mind which emerged from a process of conferring together became a dominant issue for the early Methodist preachers. But was there democracy for ordinary Methodists as well as for the preachers and pastors? We all know the famous dictum of Jabez Bunting (19th century leader in the Wesleyan tradition): "Methodists abhor democracy as they abhor sin". But the Primitives, and many Wesleyans, thought otherwise. After nearly a century of debate around this theme, all the main branches of Methodism had come to a common mind on the authority of democratic decision-making in a Representative Conference.

In modern Methodism (i.e. since 1932), it is fair to say, we have more overtly allowed democracy to shape our decision-making than many if not most other Churches. We have therefore treasured our place in a wider democratic society. We have tried to play our part in the democratic processes which shape the formation of public policy and parliamentary law making. We do this through participation in Government consultation processes; in lobbying and campaigning on issues we hold dear; through encouraging people to vote in an informed way in elections; in supporting Methodists to stand for elected office; in resourcing debates and discussions at every level of the Church on public affairs - local, national and international.

The other side of the same coin is that we have scrupulously obeyed every public law - because laws are the product of democratic process through Parliament. That's not to say we can't envisage in any circumstance the possibility of civil disobedience. The Conference last debated such a prospect in 1986, when it was noted that grave injustice or tyranny might drive some individual Methodists to acts of non-violent protest and even modest law breaking. But even then it is unlikely, I judge, that the Conference would formally endorse civil disobedience, so long as any semblance of political democracy remained. We would, I think, say we had to take the rough with the smooth in a democratic society.

So what if layer upon layer of regulation comes our way from the EU or our own Government? What if we resent the intrusion from the public authorities into a space we thought should be free of

Government interference? What if we felt our basic theological identity was under threat of change by our being required to organise ourselves and behave in ways imposed by others? What would happen if we reached the point where we said: "Enough is enough"? Perhaps the best safeguards against getting to such a drastic place are these:

Review everything we do which we claim springs from our theology, to ensure it is as just and fair, as respectful of individuality and reliably administered everywhere in the Connexion as we possibly can make it. (How else shall we avoid charges of hypocrisy and special pleading?)

Punch above our weight in debates with Government on developments in public policy, making sure we don't just get involved when the Church's self interest is under threat, but also - mainly, even - when we believe we have a contribution to make to the common good. This requires adequate resources for senior staff in the Connexional Team who engage with the Government. It also requires supportive action everywhere in the Church (letters to MPs, talking to local government officers, trade union officials, etc).

Show how passionately we believe in democracy, and in better forms of democracy, for a healthy Church and a healthy society.

Refocus our Church agendas so that they are less pietistic, less introverted, less 'churchy' and more focused on the quality of life in our local communities, on national politics and the great ethical debates which throb through our culture. And let's engage with those debates in the world's terms - though infuse our contributions with Christian insights.

Learn one lesson at least from the Pope: not a speech comes from his lips without advocating basic human rights everywhere in the world. What a shift over the past two hundred years! Then human rights were invented by secular men and women to protect Europeans from the oppressive power of Rome and to give men and women space to think for themselves. Now the leader of the very Church which had to have its political and cultural ambitions curtailed, is the principal witness to human rights as the political expression of the Christian gospel, to protect the poor and marginalized from the oppressive power of godless tyrannies, psychopaths and overly powerful organisations on the world stage.

** The Church of England, by law established, is a special case. One conclusion to draw is that reflection on the relationship between Church and State is bound to be different in the Church of England and in our own Church. This problem is currently the focus of a Faith and Order working party.*

*** Roy Hattersley, A Brand from the Burning (2002).*

B. CHARITY LAW REFORM

1. In September 2002 the Government's Performance and Innovation Unit published proposals for reform of charity law. The voluntary sector has evolved over the past few decades to an extent where it is felt that the existing legal charitable framework no longer reflects the needs of the sector.

2. The Government proposals touch upon the Church in three ways - changes for the criteria for charitable status; the future of the exception and exemption schemes; and accounting procedures.

a) Currently there are four “charitable purposes”: education, relief of poverty, the advancement of religion and other purposes beneficial to the community. The Government proposes that a charity should be an organisation which provides public benefit and has one or more of ten listed purposes. These purposes include “the advancement of religion”. There will no longer be a presumption that certain categories are for public benefit, although in practice this will probably have little impact on the registration of new religious charities which already have to demonstrate their public benefit. The Government explicitly states that it does not propose to change the principle that celebration of a religious rite which is open to the public should be regarded as providing public benefit.

a) Methodist churches across the Connexion currently have “excepted” charitable status. Excepted charities are not required to register with the Charity Commission, because oversight is provided by an umbrella body, in our case the Conference. The Government proposes that “excepted” status be abolished. This is in the interest of greater accountability and to ensure compatibility with the Human Rights Act (the religious denominations with “excepted” status are all Christian). Instead all charities with incomes above a certain threshold (e.g. £10,000) would be required to register. However, the Government has indicated that it is willing to explore group registration schemes, under which bodies such as churches could register as part of a wider group. The Methodist Church already has relevant structures and advisory systems in place. It is also pressing for such group registration to be done in such a way that would not require the consolidation of accounts.

Under the proposals the threshold over which charities would be required to have their accounts for that year professionally audited could be raised from £250,000 income per annum to £1 million. Charities with an income of between £10,000 and £1 million would have their accounts examined by a competent independent person.

3. Legislation is possible in 2003-04, and it is likely that a draft Bill will be published first. The Methodist Church is working with the Strategy Unit and with the Churches Main Committee on elements of the proposals which may affect churches.

C. EQUALITY AND DIVERSITY

4. The Government is in the process of implementing the Employment and Race Directives, which were agreed by the European Union member states in December 2000. These Directives will extend anti-discriminatory practices in employment to the new areas of sexual orientation, religion or belief, disability and age. Regulations on sexual orientation and religion will come into force across Britain in December 2003, with disability regulations in October 2004 and age regulations in December 2006.

5. At the time of writing, the Government has recently laid the draft Regulations on religion and sexual orientation before Parliament, but these have yet to be approved.

6. During the discussion of these Directives the Churches have supported the principle of equal treatment as being at one with the belief that we are all created in God's image. They have also committed themselves to rigorous and fair recruitment and employment practices. At the same time, however, the Churches have argued for the need to safeguard their identities and to regulate their internal affairs according to their own doctrines.

Discrimination on the basis of religion or belief

7. The draft regulations on religion or belief discrimination prevent direct or indirect discrimination, harassment or victimisation on the basis of a person's religion. There are exemptions from the regulations, including one for religious organisations. Such organisations will have to demonstrate that they have an ethos based on religion or belief which means that having a particular religion or belief is a genuine occupational requirement for the job. So for example if a person needs to be a Christian to perform a particular job - for example as a Co-ordinating Secretary or a church youth leader - applicants can be required to share that religion or belief. Religious organisations will need to ensure that each job is considered on its own merit for the pastoral, teaching or representative responsibilities it will have, before claiming an exemption from the regulations.

8. The Government has made it clear that the School Standards and Framework Act/Education (Scotland) Act are unaffected by these regulations with regard to appointment and dismissal in schools with a religious character.

9. Religious organisations will be expected to have a written ethos, which articulates the values and principles behind employment practices. Methodist churches will be able to draw on the Deed of Union and Conference statements but, along with other non-church religious organisations, may need to be more specific.

Discrimination on the basis of sexual orientation

10. The draft regulations on discrimination on the basis of sexual orientation similarly outlaw discrimination on the basis of a person's sexual orientation. There is an exemption in relation to employment for the purposes of an organised religion. Exemptions may be permitted so as to comply with the doctrines of the religion, or because of the nature of the employment or the context in which it is carried out, so as to avoid "conflicting with the strongly held religious convictions of a significant number of the religion's followers".

11. The Derby Resolutions, agreed by the Methodist Conference in 1993, lay out the Church's ethos and expectations of those in ministry, office and membership regarding sexual behaviour. The draft regulations suggest that the Church may be able to continue its current practices, but the situation will become clearer as case law is established by Employment Tribunals.

12. Ministers are considered office-holders rather than employees and so are not covered by many employment laws (see paragraph 14 below). The regulations state, however, that the new rules will apply to all office-holders, including ministers of religion, and that cases brought under them can be

heard in Employment Tribunals. This change may impact on the debate over the employment status of ministers outlined below.

13. The Methodist Church has worked with ecumenical colleagues during the passage of the Regulations. District Lay Employment Committees will have to be prepared to help churches to implement the Regulations, and to develop good employment practices. Ultimately the Regulations may help the Church to become a better employer.

D. EMPLOYMENT RIGHTS OF MINISTERS

14. Employees in the UK enjoy a wide range of statutory employment rights, including redundancy payment, parental and maternity leave and the right not to be unfairly dismissed. These rights are enforceable in Employment Tribunals. Over the years, courts have judged that ministers of religion holding office as such in a church have a non-contractual status and so cannot benefit from statutory employment rights. However, some similar protections are provided for Methodist ministers through Standing Orders.

15. Under Section 23 of the 1999 Employment Relations Act the Secretary of State for Trade and Industry has the power to confer employment rights on people who do not at present have them. These “atypical workers” comprise some home workers, agency workers, casual workers, and office-holders, the last including ministers of religion.

16. In July 2002 the Department of Trade and Industry published a discussion document - Employment Status in relation to Statutory Employment Rights - which raised the question of using Section 23 to extend employment rights to (amongst others) ministers of religion.

17. A short consultation process within the Methodist Church, advertised through the Methodist Recorder, the Methodist Church website and District Chairs, sought the views of ministers and lay people within the Church. A range of views was expressed, with a majority opposing the introduction of statutory employment rights for ministers. The Church was also involved in discussions with the DTI and with representatives of other denominations and faiths. These responses and discussions were reviewed by a small group convened for the purpose. The Methodist Church's response to this consultation was endorsed by the General Purposes and Finance Committee of the Methodist Council. It is attached at Appendix A.

18. In this response it is argued that it is crucial to treat everyone who serves the Church fairly. Methodist procedures (as laid out in Standing Orders and guidance as to terms of service, stationing and discipline) provide ministers with a high degree of protection and security. This means that statutory rights for Methodist ministers are in many ways unnecessary; nor would they adequately reflect the complex relationship between Connexion, the minister and their Circuit.

19. However, the response recognised that there are still areas where existing protection for Methodist ministers could be improved, or strengthened in response to new legislation. Proposals will be brought to future Conferences in a range of areas, such as the introduction of a grievance procedure. This will

dovetail with work already being carried out in related areas, such as the ongoing examination of terms and conditions of ministers and deacons by the Connexional Allowances Committee and related work done by the Ministerial Committee and the Law and Polity Committee.

20. The Department of Trade and Industry plans to publish the next stage of its plans in July 2003. It has a number of options, including a statutory requirement to treat ministers as if they were employed, an “opt-out” system for different denominations, or remaining with the status quo.

21. If new regulations on employment rights for ministers were introduced quickly, it is possible that Standing Orders might no longer comply with the law. Although the risk is low and transitional periods are normally provided for, some actions might need to be taken before Standing Orders could be appropriately amended. In such exceptional circumstances, the Methodist Council could find itself facing conflicting requirements. The second resolution below therefore authorises the Methodist Council, in those exceptional circumstances, to take actions that are necessary to comply with the law in the period between this and the next Conference. Such actions would be reported, and revised Standing Orders could then be brought, to the following Conference.

22. A working party, consisting of representatives of the Law and Polity Committee, Stationing Committee, Connexional Allowances Committee, Ministerial Committee, the Connexional Team, and the Districts, together with other lay and ordained people with specific interests and expertise, will report to the Methodist Council and oversee continuing discussions with Government Departments, the revision of existing Methodist practices and the implementation of any Government Order.

RESOLUTIONS

37/1. The Conference receives the Report.

37/2. (1) In the circumstances described in paragraph (2), the Conference authorises the Council, notwithstanding the provisions of Standing Orders for the time being in force, to take such actions as it considers necessary and expedient to secure compliance with the law.

(2) The circumstances mentioned in paragraph (1) are that:

(a) legislation which alters the [legal] status of ministers or deacons is enacted and brought into force in the period between the closing of the Conference of 2003 and the commencement of the Conference of 2004; and

(b) in consequence, certain Standing Orders for the time being in force have been rendered ineffective,

conclusive evidence of which shall be a declaration made by the Convenor of the Law and Polity Committee.

(3) If exercising the powers conferred on it by this Resolution the Council:

(a) shall first obtain the advice of the Convenor of the Law and Polity Committee;

(b) shall do so by [affirmative] resolution;

(c) may make provision as to particular cases or by reference to specified classes of persons;

(d) shall make a report to the Conference of 2004 on what was done and the reasons.

(4) The Council shall not delegate the powers conferred on it by this Resolution.

APPENDIX A

Response on behalf of the Methodist Church of Britain to the Discussion Document on Employment Status in Relation to Statutory Employment Rights, December 2002

The Methodist Church is grateful for the opportunity to respond to this discussion document, and to have participated in round-table meetings with the DTI running parallel to the consultation. We have an interest in this issue as Methodist ministers are not currently considered to be employees, and are not covered by statutory employment rights.

The Methodist Church has a third of a million members, with over a million people on the “Community Roll” or attending churches. It has 6,378 churches with 2,204 active ministers, 1,652 retired ministers and 117 ministers in training.

1. Summary

1.1 The Methodist Church believes that a solution which allows for non-statutory employment protection for Methodist ministers is the preferred way forward. An extension of statutory employment rights to ministers would be unnecessary given the high degree of security that ministers already have, and might undermine the internal discipline and order of the Church. We would propose that appropriate equivalent protection should be agreed between the Church and the DTI, starting with the comprehensive provisions already contained within the Church's own Standing Orders. These protections could be backed up by a comprehensive internal appeals process, together with the option of an appeal to an external body, e.g. through judicial review or perhaps an independent ecumenical arbitrator, if it were felt that the procedures were not duly observed.

2. Methodist Structures

2.1 Before beginning a detailed response to the Discussion Document, it is necessary to explain something of the structure of the Methodist Church in order to make our position clearer.

2.2 Methodism in Britain operates on a “Connexional” basis. Churches are organised into Circuits - the local decision-making unit - and each Circuit belongs to one of 33 Districts. The annual Conference is the governing body and ultimate court of appeal of the Church. Connexionalism is the opposite of congregationalism or parochialism: although responsible to a large extent for their own decision-making, each minister, member, church, Circuit and District is bound to the national Church or

Connexion. This requires observation of the decisions of the annual Conference, including the Standing Orders of the Church which have to be agreed by the Conference. Each minister formally serves the Connexion and in the name of the whole Church serves the particular churches where she or he is stationed. Methodist ministers are itinerant, serving in general between five and ten years in a particular Circuit, before moving on to another one. Unlike Anglican clergy, on completing an appointment they are not effectively “unemployed” and dependent on their own resources until such time as they might acquire a new appointment. Rather, because they are “stationed” or deployed by the Conference, ministers will not be left without a station or a stipend, unless they are subject to discipline or request not to be stationed.

2.3 A minister's status is not only not that of an employee in law; it is very different from that of an employee, in fact. Employers have the right to direct what employees shall do, when and how, in other words to manage them. By contrast, the foundation document of the Methodist constitution, the Deed of Union, describes the situation thus in its statement of doctrine: “Christ's ministers in the church are stewards in the household of God and shepherds of his flock. Some are called and ordained to this sole occupation and have a principal and directing part in these great duties.” Both by deeply ingrained practice and by numerous constitutional provisions, such as the right to preside over all official meetings at local church level, this “principal and directing” role is a pervasive reality.

2.4 We have taken time to explain the Methodist structures and procedures because it is vital to realise that one solution will not fit all cases. This may mean that the DTI will wish to consider an “opt out” system, under which Churches and other faith groups can opt to provide appropriate equivalent protections, which can be monitored by the DTI, rather than to come within the statutory system.

3. Internal Consultation

3.1 In view of the time-scale laid down by the DTI, the Methodist Church has not been able to adopt its normal consultative arrangements with regard to potential significant changes in our constitution, i.e. through the courts of the Church. Instead we conducted an internal consultation over the issues raised in the Discussion Paper, and encouraged consideration of it within Circuit leadership teams (made up of lay and ordained people). A total of 54 responses were received from groups and individuals. Of these, around two-thirds were against an increase in statutory provision, with a third being in favour. A slightly higher proportion of those who were ministers were against an extension of statutory employment rights. Although some members of the clergy feel they need statutory employment rights, according to our consultation this is not the majority.

4. Existing security and protection

4.1 There are clearly many people working in Britain who lack adequate protection. The discussion document indicates that they are the primary targets of this exercise: casual workers, agency workers, homeworkers. Whilst we would support the need to provide additional employment protection for these groups of workers, we do not believe that Methodist ministers are in the same category.

4.2 Security

Methodist ministers have a degree of security not open to most employees. Firstly, ministers are not in a short-term relationship with the Church that can be easily terminated. When ministers are ordained, they are accepted into "Full Connexion". This was described in the Stationing Review Group Report in 1997: "Being received into Full Connexion binds a minister to accept the authority of Conference and puts him or her into a formal relationship with the Church's stationing procedures. It also binds the Conference to sustain and support its ministers. Therefore, there are mutual obligations and commitments." From training, the Church accepts that it will provide a station (or posting) for the minister, that provision will be made for the housing of his or her family, and that a stipend will be provided in order to allow the minister to follow his or her calling and serve the Church. Even when ministers retire, they still remain under the discipline of the Church, and provision is made for their housing, if required, and for a pension.

4.3 In Christian language ministers enter into ministry as a life-long response to a calling from God and, at ordination and reception into Full Connexion, the Methodist Connexion and the minister make a life-long covenant to each other. This is not to deny or denigrate many other - lay - forms of vocation. However, the difference is that a nurse, doctor, teacher or church worker can hand in their notice and walk away from their vocation should they choose. Ministers cannot resign or retire without permission, and still have requirements laid on them when they retire. The spiritual nature of a ministers' calling has meant that the Court of Appeal has judged them not to be employees, as this does not adequately reflect the nature of their role and the covenant relationship with the Church.

4.4 Protection

Secondly, ministers do not fall into the general description of atypical workers because of the high level of protection they already receive. The Methodist Church is governed by the Standing Orders and Guidance contained in The Constitutional Practice and Discipline of the Methodist Church (CPD). This contains a range of equivalent protections for Methodist ministers, from a thorough disciplinary procedure to provisions for paternity leave. In addition there are practices, such as itemised pay statements, which are standard practice within the Church. As you will see in Appendix 2, there are only a few statutory protections for workers or employees that are not already covered by Methodist procedures.

4.5 A comparison shows that these statutory protections fall into four categories:

1. Protections already provided by the Methodist Church - e.g. provisions for maternity leave;
2. Protections not yet provided but soon to be included in Standing Orders - e.g. provisions for flexible working for parents;
3. Protections that are irrelevant for ministers - right to insolvency payments;
4. Protections that are theoretically possible, but would be deleterious for the minister and the Church - e.g. Sunday Trading provisions.

4.6 We would hope that if a non-statutory solution were to be agreed, it would be possible to agree levels of appropriate equivalent protections. The Church would also commit to review the protection currently provided in the light of new legislation and good practice.

4.7 One argument often heard is that those members of the clergy who do not want employment rights need not use them. However, this rests on the assumption that employment rights will only affect those who draw on them. This fails to recognise the degree to which such statutory intervention would alter the special relationship between the Church and all its ministers. If all ministers are brought into a situation where employment rights apply to them, church members may assume that their responsibilities and obligations to ministers are fulfilled by those means, and will cease to fulfil them through the current systems and processes. Furthermore, over time, statutory employment rights may develop into a contract culture, where rights require responsibilities. Any Methodist minister who chose not to make use of any employment rights that are extended to her or him would therefore be automatically disadvantaged in comparison with his or her current position. A potential outcome would be to diminish the security of Methodist ministers, bringing it closer to the current situation of clergy of the Church of England [see 2.2 above].

4.8 There is additional perspective for deacons. At ordination deacons become full members of the Methodist Diaconal Order, a religious order. This involves a commitment to mutual accountability, discipline and care to one another, and to following a common rule of life. The whole point of exercising ministry within a religious order is that each represents and upholds the whole body - an individual opting in or out of certain employment statutes is incompatible with sharing in a common discipline.

5. Enforcement of Protection

5.1 One argument in favour of the extension of statutory protection to all members of the clergy is that people would be able to seek redress from Employment Tribunals if they felt they were treated unfairly. The Methodist Church, along with other denominations, has particular concern about being made subject to Employment Tribunals. Our disciplinary tribunals have to make decisions on such issues as whether the person charged has preached doctrines at variance with Methodist doctrinal standards, or whether he or she has acted in a way inconsistent with his or her office or standing in relation to the Church. A secular court would have much greater difficulty in addressing such questions and reaching an informed decision.

5.2 Nor would it be appropriate for such a court to require as redress that a minister should be re-stationed with a Circuit. Invitations to remain in a Circuit are based on a judgement of whether the Circuit as a whole wishes the minister to remain. Procedures require that this process follows natural justice. But for such an appointment to work, both the church or Circuit and the minister have to desire it to continue. The Circuit must follow the procedures, but it is a valid decision for the church to vote that they do not wish the minister to remain. If the relationship has broken down to such an extent, then it is probably best for the minister to move on (it is worth remembering that in this circumstance ministers are moved to another vacant station - there is no question of them becoming homeless or losing their livelihood as may happen in other denominations). If procedures are judged to have been

broken, then the personnel responsible are open to disciplinary charges and sanctions. But it would be inappropriate for a secular tribunal to rule that the minister must return to that station.

5.3 However, the Church is concerned that it provides effective protections, and is committed to ensuring that its procedures conform to natural justice. Therefore, in addition to the protection already provided, the Church would consider the following additional safeguards:

- a) Changes to current protections provided within CPD where these fall short of relevant existing or future statutory requirements.
- b) Further opportunities for appeal introduced into the disciplinary process, for example if it were felt that the procedures for re-invitation had not been followed, to supplement the existing points of appeal (see Appendix 4).
- c) Institution of a grievance procedure open to all ministers, so that they could raise concerns prior to their being formally pursued through the Complaints and Discipline procedures.
- d) Possibility of re-framing good practice contained within CPD, currently situated within the “guidance” sections, to be constituted as Standing Orders. It would be possible to move such instructions (for example covering detailed procedures for the re-invitation of ministers) from guidance to Standing Orders.
- e) Further training for ministers and Circuit Stewards, who have responsibility for following Standing Orders locally, on the application of revised Standing Orders.
- f) Exploration of possibilities for an external review of procedures. This would be in response to concern at a perceived lack of an external body to hear appeals. The Church would be willing to examine the possibility of either including at least one non-Methodist on appellate committees or alternatively, together with other denominations, establishing an independent ecumenical body which would hear appeals against the operation of stated Church procedures. There would also be the possibility that, if it were felt that the Church had not observed its own procedural requirements, or that they were deficient, the process could be judicially reviewed.

6. Impact on the labour market

6.1 The Government hopes that the extension of employment provisions would increase the willingness of some people to enter the labour market. We have heard it argued in a number of places that this would also apply for people considering a vocation in the ministry. However, this would seem to be unlikely, bearing in mind the concept of calling - people who feel a calling to the ministry would be unlikely to turn their back on the Church and on God because they do not have access to an Employment Tribunal.

7. Conclusion

7.1 In conclusion, the Methodist Church believes that there is an alternative to statutory provision in the case of Methodist ministers. We feel that the protections already provided in CPD offer demonstrably good protection to ministers. These protections could be updated in accordance with evolving employment legislation to provide equivalent employment protection (bearing in mind that some statutory protections are not appropriate for ministers) in discussion with the DTI. These protections would then be implemented by a rigorous system of procedures, with the processes scrutinised in the last instance by judicial review or an independent ecumenical body.

8. SUMMARY

8.1 The Methodist Church asks that the Government considers a non-statutory system for the extension of employment protection to ministers. In order to make such a system effective the Methodist Church would commit to explore the following:

- a) Agree levels of appropriate equivalent protection with the DTI;
- b) Review the protection provided in CPD in the light of existing or new legislation and good practice;
- c) Examine the need for further opportunities for appeal within the current system;
- d) Examine instituting a formal grievance procedure for ministers;
- e) Transfer the relevant parts of “guidance” in CPD to Standing Orders to make their observance mandatory within the Church;
- f) Offer increased training for Circuit Stewards and ministers responsible for following Standing Orders;
- g) Examine making the observation of procedures open to external review, either through non-Methodist representation on appellate committees, through an independent ecumenical body, or through judicial review.