

STATUS OF PASTORS UNDER EMPLOYMENT LAW AND PAYE

Status under Employment Law

Until recently, the status of pastors was very clear. They were not regarded as employees, in the normal sense, but as “office holders” and were closer to what could be regarded as self-employed. This meant that they did not come within the scope of employment legislation such as Employment Acts, Working Time Regulations and the National Minimum Wage. Neither did they have the right to a pension, to claim unfair dismissal or to bring a discrimination claim.

However, recent cases involving litigation have created much uncertainty since, when an employment dispute has been taken to a tribunal or to the courts the ruling has frequently been that the pastor was an employee. Whilst those rulings applied only to the specific situation they were addressing, the result has been to create much uncertainty. On 15th May 2013, the Supreme Court delivered its judgement on a case involving a Methodist minister, the case having previously been considered by an Employment Tribunal and the Court of Appeal. The Supreme Court judged that the minister was not an employee; the decision resting on a detailed consideration of the church’s governing document.

The Practical difference between an Employee and an Office Holder

The relationship between an employer and an employee is analogous to that of one between a master and servant. The employee serves and is accountable to the employer, whose reasonable requests the employee is obliged to carry out. It is the employer who determines the scope and details of the employee’s work. The position of an office holder is different in that his or her duties are not defined by an employer but by the office itself, and arise from the organisation’s constitution and policies.

Churches are likely to have theological reasons for considering that their pastor is an office holder. This is because it is not the role of the pastor simply to follow the instructions of the church. Rather, the pastor holds an office within the church with responsibility for giving spiritual direction to the church and, in some cases, also providing oversight of the church’s practical affairs. Therefore, in the light of the Supreme Court ruling, if a church does regard its pastors as office holders rather than employees, the church’s rules and regulations must make it clear that the role of the pastor is not so much to follow instructions but to guide the church.

There is an anomaly in that pastors are regarded as employees under Her Majesty’s Revenue & Customs (HMRC) and Social Security regulations (see below), but as self-employed in respect of income arising from other sources (such as preaching fees received from other churches).

Terms and Conditions of Service

Assuming that a pastor is not an employee, he cannot be given a contract of employment. However, an exchange of letters setting out the agreement between the pastor and the church is advisable. This should deal with matters that might have been included in a contract of employment if it were appropriate. Churches might wish to consider such matters as:

- Anticipated hours of work
- Number of permitted Sundays “off”

(list continues on next page...)

- Number of permitted Sundays preaching elsewhere
- Holidays
- Expected duties to be performed
- Use of manse or other accommodation arrangements if the pastor owns his own house
- Stipend and arrangements for review
- Pension arrangements
- Sickness arrangements
- Reimbursement of expenses
- Arrangements for termination, either way

The above suggestions are given for guidance only. It is the responsibility of church officers to decide their view on the matters that are, or indeed are not, listed above.

Status under PAYE

Pastors and assistant pastors are regarded as employees under HMRC regulations in respect of income arising from their duties connected with their church. The church treasurer is therefore responsible for maintaining PAYE records and for deducting Income Tax and National Insurance Contributions from the pastor's salary. Furthermore, he is legally responsible for forwarding those deductions (and the related employer's NI contribution) to the Collector of Taxes at the appropriate time, and for making returns to HMRC.

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