

Sub Regional Seminar Presentation

Pastoral Process, Practice, Pitfalls and Prejudice

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This covers the broad roles of the Diocesan Pastoral Committee and the Church Commissioners , both administratively and judicially. the same broad rules apply to parsonage and glebe issues too.

This includes material for Committee members as well as diocesan staff.

Legal Obligations on Diocesan Pastoral Committee

Universal local agreement to reorganisation not needed but you must:

- “have particular regard to” making provision for the cure of souls in the diocese as a whole;
- “have regard to” the traditions, needs and characteristics of individual parishes; and
- “have regard to” matters of diocesan policy indicated by Diocesan Synod.

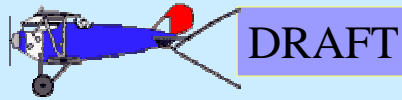


• **THREE GOLDEN RULES**

- **You must show you have taken them all into account if schemes or orders based on your proposals are contested via relevant objections to us.**
- **Bullet 2: for the alert reader...“Have regard to” is not the same as “make special provision for”. But be alive to churchmanship issues, especially where women priests may be involved.**
- **Bullet 3: Any Synod policies may have to be proven “reasonable”; You can’t have a rule that “all incumbents must support Disestablishment”.**

Diocesan Consultations

- **Preliminary draft proposals must be expressly “DRAFT”;**



- **Outline the reasons behind them; plus**
- **Any wider policy considerations; plus**
- **Any supplementary issues.**



- **You proposed a united benefice and parish. The locals want a united benefice but not a united parish. Why not oblige? Lack of genuine consultation could haunt you at a much later stage.**
- **You suggest a Team Ministry with a Patronage Board for appointing the team rector but not the team vicar (the latter being appointed by Bishop and team rector instead). The locals want it for both. Why not? The PCCs have to approve all appointments so this will get over the team vicar being seen as “junior” appointee.**
- **Housing issues, especially in the country. Weigh up the house standards against the Green Guide, consider the Parsonages Board’s view and review. Priests do not *have* to live in the biggest village. Size isn’t everything.**
- **Wider policy issues may include Diocesan Synod policies e.g. deployment/staffing.**
- **Supplementary issues may include proposals for a curate, an NSM or an LMT. These will not appear in any eventual Scheme as these do not include all second-order issues.**

The Letter of the Law

- **Failure to stick to the correct legal procedures is a potentially fatal flaw to proposals;**
- **Fatal flaw = start again = waste of time and money;**
- **So...no short cuts;**
- **If in doubt, ask us.**



- **The Privy Council has indicated that it will not normally substitute its judgement for that of the Church authorities, although it has the right to consider all aspects of the case. It tends to focus on procedural issues only.**
- **We are happy to advise on any aspect of the process, be it procedural, technical or general. The Code of Practice has a number of tools aimed at helping dioceses. We do this work full-time and pick up diocesan pointers from all 43 dioceses.**
- **EDITED CODE aimed at members of diocesan committees**
- **www.ccpastoral.org**
- **Pastoral administration**
- **Code of Recommended Practice**
- **“Short Version”**

Mediation

- **Suggested by the Privy Council where Leave to Appeal against a CC decision was sought;**
- **Has to be co-ordinated by the DPC.**



- **We can't be involved in mediation as we have a quasi-judicial role in considering objections to any schemes arising.**
- **This course of action isn't obligatory on a diocese but, if the DPC can co-ordinate some organised mediation, that may go some way towards securing a higher level of agreement.**
- **The Code of Practice now recommends that DPCs consider mediation before they take a view on what recommendation to make to the Bishop. But we know it won't work in all cases.**
- **By law you have to "have regard" to what we say in the Code but this is not the same as "slavishly follow".**

Why try to mediate?

- **Not appropriate in all cases.**
- **Minor differences of local opinion should be resolved “in house” if possible.**
- **But where, for example, major impasse reached, consider “neutral” mediator.**



- **A Deanery in the South-West: The Privy Council thought that mediation was the right approach to a much-objected to scheme.**
- **Mediation was put in hand by the DPC (who stood outside the process having teed it up).**
- **In effect, the Deanery reviewed the pan-deanery reorganisation proposals and came up with their own version that commanded a good deal of support. They did not appoint an external mediator.**
- **“Minor Differences” might include the name of a new benefice, the question of patronage in turns or jointly, or whether there should be a joint PCC.**

Right to meet the DPC

- Incumbents, team vicars and PCCs have right to meet DPC or a Sub-Committee thereof before recommendations made to Bishop;
- Other interested parties do not have a similar right, but be *flexible*;
- Meetings can be held in groups.



- Be flexible about offering meetings to interested parties who may not be entitled to such a meeting. For example, if all the patrons are unhappy, why not offer to meet them? This will help in the long run as this will be an added aspect of *listening* to their views.
- We suggest PUBLIC MEETINGS wherever a redundancy is proposed as this brings things out into the open. Incidentally, the LOCAL BUILDINGS AUDIT material on website (www.ccpastoral.org) as a useful tool when redundancy under consideration. It doesn't give you a scored solution, nor should it.
- BEING SEEN to listen is half of the battle.

Declarations of Interest

- Open DPC Agendas with “Declarations of Interest”.



- Leave the room if “interest” is a substantial one and record in minutes.
- Minutes should record more minor reported “interests” too.



- Abstentions from voting (recorded in the minutes) or not participating in discussions are sensible options where members think they have minor “reportable” interests.
- The basic test is whether “the man in the street” would be concerned by an individual’s participation in a discussion.
- “Major Interest” is an incumbent involved in reorganisation;
- “Minor Interest” might be a Rural Dean or Deanery Synod Member. They never act QUASI-JUDICIALLY so can’t flaw things.
- If in doubtplay it safe!

Would “the man on the Clapham Bendybus” be concerned?



- The key thing is to avoid the *appearance* of bias.
- We know that DPCs aren't by nature biased!
- The same broad rules apply to Archidiaconal or Deanery Pastoral Committees and Parsonage and Glebe Committees.

Commissioners' Administrative Role

- **No prior view on the merits of your proposals;**
- **Check for accuracy;**
- **Technical issues: would a minor change to proposals resolve an impasse?**
- **Publish draft schemes based on your proposals (often with explanatory footnotes and diocesan “context statement”).**



- **So you've completed your open minded consultations and of course have changed your initial proposals in the light of comments made. You send them to us. Then....**
- **If the proposals are legal we will publish a scheme based on them.**
- **But it is often clear from earlier correspondence that a minor change to proposals might increase the chance of them being generally accepted (e.g. patrons exercising patronage in turns rather than jointly). So we contact you about that.**
- **Schemes are boring and hard going. They are a dull read. We readily add explanatory footnotes aimed at making things clear. Also, footnotes can explain the diocesan intentions on supplementary issues which cannot go in the scheme (such as the appointment of curates etc). This helps gain acceptance.**
- **Dioceses should use footnotes at their draft proposal stage too.**

Commissioners' Quasi-Judicial Role



- Do proposals meet the basic tests in the Measure of “better provision for the cure of souls” and having regard to “traditions, needs and characteristics” etc?
- Are diocesan policies shown to be “reasonable”?
- Each case on its merits, considering the points raised.



- We are independent arbiters at this stage.
- If objections are based on misunderstandings we try to resolve these.
- But one case in eight attracts sustained objections. Letters are FAVOUR are important too!

Human Rights Act 1998: A Fair Trial

- **Sigh...wake up at the back please!**
- **We are “a Public Authority” (and so are Bishops). Must ensure a “Fair Trial” without delay.**
- **Representors have the right to see (and comment about) our exchanges with the Bishop and DPC about representations received.**
- **All letters therefore in the public domain.**



- **THE MUCH-LOVED HRA.....**
- **This will slow things down but we cannot ignore the Act.**
- **Our meetings are now much more like public hearings although our Committees presently have decision discussions in private.**
- **A clear advantage is that the process is much more transparent than it used to be and in that sense less open to challenge.**

Human Rights Act 1998: A Fair Trial

- **Facts relied on must be capable of corroboration.**
- **Representors and diocesan representative may attend our Committee meetings and talk to their points.**



- **You *must* be able to corroborate every fact that you rely on in replying to our letters about objections.**
- **Modern day objectors are wise to a “semi” fact and this could cost the Church time and money in appeal processes.**
- **SLIP OF A PEN: One diocese told us that “the average priest looks after 10,000 people”. This was in connection with a bitterly contested reorganisation scheme. The real average was 7,000 people. Luckily we spotted the mistake.**
- **An appeal could have been lost on that basis but we just caught it in time.**
- **By the way, vital that DPC send a member level representative as well as a staff member if possible if representors attending.**

Options open to Commissioners

Either as a result of a Sub-Committee visit or not, we have three basic options:

- To refer the case back to the diocese for further consideration (although we can't force you to take a course of action you don't wish to);
- To agree to a scheme proceeding despite the objections;



- To decline to allow the scheme to proceed.



In 80% of cases we find for dioceses.

BUT there must be the prospect of our finding for the locals if our role is to have relevance.

THE BEST WAY to deal with representations is when the locals withdraw their objections after brokering or mediating a deal with the DPC. There is a track record of this happening. This is helped of course by locals seeing all our correspondence with Bishops. Open Government.

Privy Council's Role

- **Overruled objectors can seek Leave to Appeal to the PCO in respect of schemes (but not orders).**
- **PCO mainly (but not only) examines questions of process.**
- **We meet costs of defending Appeals.**



- **Appeals and potential appeals are hugely expensive to the Commissioners, even where the case does not come finally to Court. So they are best avoided.**
- **The Privy Council tends to focus on process or excess of jurisdiction (but there have been occasions where it has taken an interest in the ecclesiastical judgements exercised in the case). Otherwise, it looks for decisions that “NO REASONABLE TRIBUNAL” could have reached.**
- **Our basic defence in law is to show that we have reached a decision fairly (and not necessarily to have reached “A FAIR DECISION”). However, WE AIM HIGHER than that and assure you all that we aim for a FAIR decision FAIRLY reached.**
- **Only one case has actually come to Court in twenty years but Leave to Appeal has been granted four times. And we’ve had plenty of near-misses. APPEALS COST US CIRCA £100,000. We presently pay as it is our decision being appealed.**

The Future

- **New *Dioceses, Pastoral and Mission Measure* to be brought in circa 2008;**
- **Under current proposals, dioceses (not Commissioners) will draft and publish schemes (unless they involve the closure of a church);**
- **We will “validate” them and otherwise offer advice.**



- **BUCK ROGERS IN THE 25th CENTURY, celebrating the fact that the new Measure has finally become law.**
- **Pending the new Dioceses, Pastoral and Mission Measure we have issued advice on what can be done under existing legislation in terms of Mission Initiatives. This is Peter Wagon’s presentation as seen earlier and as found on our website.**
- **And we’ll still help with scheme drafting when new measure operative if you want us to.**