THE PARSON'S FREEHOLD AND CLERGY DISCIPLINE

Address given to the Ecclesiastical Law Society Conference on 30 March 1992 by the Rt. Revd. Ronald Bowlby, formerly Bishop of Newcastle and Southwark.

Retirement brings unexpected consequences. I will not strain your credulity by suggesting that I am so busy that I wonder how I found time to be a Diocesan Bishop! But I do find myself preparing talks on subjects about which I have never spoken before, and that has led me to extend my reading in all sorts of ways. I think I should now confess that I had never read an issue of the Ecclesiastical Law Journal until last month. Yet a careful study of two recent numbers suggests that it would often be very helpful to bishops if they did see it regularly, and I wonder if there is some way in which its merits could be drawn to the attention of new bishops? (Archdeacons, I presume, are more diligent and well-read in these matters; if not, the same applies to them with added force, in view of the special legal demands made upon them regularly).

The Parson's Freehold and Clergy Discipline are two subjects which must often be discussed among you, and within the pages of the Ecclesiastical Law Journal, as well as appearing on the agenda of the General Synod from time to time. They are less often tackled together. It may, therefore, be helpful if I start by taking a brief look at the recent history of debate and legislation about both these matters before focussing more precisely on the connection between them. The task is made easier by the publication of the article on the Parson's Freehold by Rupert Bursell in the ELJ for January 1992, the paper entitled 'Freeholders or Employees?' by Bishop David Say (published in Nov. 1989), and the background literature produced for the Southwark Diocesan Synod motion calling for the abolition of the Freehold – or rather, to be precise, for a Review to consider replacing it with a 'renewable term of years'. This was debated by the General Synod in January 1991 and the motion was carried, 316 voting in favour and 84 against. The issue of Clergy Discipline has centred most recently in the debate of the Vacation of Benefices (Amendment) Measure, which began its course through the General Synod in January 1991 also.

Chancellor Bursell, in the preface to his article, rightly says that we need to take careful stock of what the freehold actually is before we hasten to abolish or modify it, and in particular to consider carefully what might take its place. It is obviously important to be clear at the outset that the freehold should not be considered in the context of discipline alone, since it is seen by many as a safeguard for proper clerical independence. Further, as we shall see later, the word discipline has quite a wide spread of meaning which needs to be clarified in any discussion about the relationship of the freehold to the clerical profession.

At the present time, over a third of the full-time stipendiary clergy do not possess a freehold at all. Many of them will be members of Team Ministries, or in charge of suspended benefices, or chaplains, or employed by Church organisations or societies. In addition there is always a sizeable group of curates, most of them newly ordained. However few of them qualify as employees in the legal sense, and they are still regarded as office-holders; a distinction which it may be

important to continue if the freehold is to be further modified. Some have contracts: all have, or should have, episcopal licences, though the latter carry no legal obligation to continue employment or to provide housing if the contract is terminated (e.g. by a Health Authority).

In practice, there have been very few cases to my knowledge of clergy being left to fend for themselves (and without housing) because their curacy or term of years with a Team has come to an end. It can be a different story where the employer is not a diocese. It is possible that dioceses may find it increasingly difficult to place all their clergy if the present financial difficulties worsen, and this is something which we need to keep in our minds in any discussion about a possible further limitation of the freehold. In two diocesan surveys carried out quite recently (Chelmsford and Ripon), it was said that a majority of the clergy was opposed to the abolition of the freehold unless they could be convinced that they would be equally secure in another way.

Opposition has other roots as well, some of them mentioned in Rupert Bursell's article and expressed more forcefully in speeches like that of The Reverend Malcolm Johnson in the General Synod debate on the Southwark motion. (Proceedings of the Gen. Synod, Vol. 221, p.161). 'I am all for the Freehold being abolished but not until bishops are more accountable than they are at present. I am also certain that the function of a bishop as father-in-God and the function of a bishop as employer need to be looked at'. He then cited the play 'Racing Demon', by David Hare, as an example of what could happen to a Vicar in a Team Ministry whom the bishop regarded as ineffective and wanted out, an opinion not apparently shared by most of the other characters in the play.

In the centuries preceding the nineteenth, it is probably true to say that the freehold was seen primarily as a defence against political pressures or congregational pressures, particularly those associated with a more Independent order of church government. But in the nineteenth and twentieth centuries the freehold has more often been seen as a protection for clergy whose churchmanship was not initially approved by the congregation or the bishop or both. Later, of course, what was seen as dangerous or even heretical innovation often became widely accepted and taught. (But not invariably, let me stress: the need for discernment always remains!) Because of this, it is historically correct to argue that the freehold has served a useful purpose in securing the comprehensiveness of the Church of England over the centuries, a point made forcibly by the Dean of St. Pauls in that same debate.

So why seek to modify or abolish it? The Archbishop of York, with his customary clarity of definition, has argued that we confuse security with immobility. One of the major reasons for proposing further modification is that it will enable the church – or at least each diocese – to deploy its clergy better. It will also, so it is hoped, promote a greater sense of accountability to diocese and congregation as well as to God, and it is in this context that the discussion begins to shade into questions of discipline also. It was this, more than anything, for which the Paul Report argued, and at which the Fenton Morley proposals aimed. A good deal was achieved. When I look back to how things were when I was ordained in 1952, I realise what a long way we have already come. I think it is easy to underestimate just how difficult it would have been to cope with the massive changes we have had to face, if there had not been greater flexibility in the organisation of our Church.

That said, what has not happened is a decisive and legal shift towards putting the clergy of a diocese on 'the strength', a reform which Bishop Say (himself a member of the Morley Commission) describes as 'basic'. (See Freeholders or Employees? pp.6-8). The Freehold was to be abolished in order that deployment could happen more easily; the verdict of the church subsequently, at all levels but especially among the clergy, was that this was too high a price to pay for an uncertain objective which smacked of excessive bureaucracy and which might have undesirable side-effects of other kinds. The fact that something like the Morley-Paul proposal already existed within the Roman Catholic Church and might offer some useful case history, so-to-speak, was not much considered, as far as I recall: probably because it was felt that celibate clergy do not have the same responsibilities towards spouse and family, and also because of an instinctively different approach to episcopal authority. Nor was the experience of the Methodist Church in using a more centralised deployment of its clergy called in evidence to any extent, and I am very glad that we have the Rev. Brian Beck with us today to open up a different dimension.

The Mover of the Southwark Diocesan Synod motion in General Synod, the Rev. John Hall, devoted some time to exploring a reason for abolishing the freehold which touches directly on our theme today. (And at this point perhaps I should place on record the fact that I had nothing to do with promoting this motion originally, nor with the contents of John Hall's speech!). 'The freehold', he said, 'symbolises protection and privilege. It protects the freeholder from the ultimate sanction of dismissal and thus it puts him beyond censure, almost beyond question, except in that narrow band of circumstances subject to ecclesiastical law that we have been thinking about'. (He is referring to the EJM and to the Vacation of Benefices (Amendment) Measure, which had been on the agenda immediately before this debate). He went on to argue that 'there must be ways of preventing the frustration of God's mission by square pegs stuck in round holes'.

That comment brings us to the nub of the question with which we are concerned today. What kind of 'Square peg' are we talking about? Or to phrase the question differently, what categories of "square-pegness" might fall under the heading of 'discipline'? What can be learned from other professions? For example, what is it which the church or bishop cannot do sometimes because of the freehold, but would be possible for a firm of solicitors, a health administrator, commercial manager, or whatever? As you know well, there are already certain categories of offence which can be dealt with by proceedings under the EJM. Furthermore, the shortened procedure ensures that most of them are dealt with expeditiously and privately, and so incur little publicity or expense. It is then up to the Bishop and the Diocese, (in cooperation with the Church Commissioners) to make provision for a spouse and family where necessary, and perhaps help with counselling and re-training. The help that can be offered is more generous than it used to be, now that the Commissioners are able to assist with housing: in the past it varied greatly from Diocese to Diocese, and was sometimes scandalously inadequate in regard to dependent family.

But what about those situations where some kind of action or discipline is required – indeed, demanded by some closest to the scene – but which are not covered by the EJM? Every now and again, bishops are brought face to face with a profoundly unsatisfactory state of affairs, yet one where no 'offence' has been committed, legally speaking. The problem is not new, and responses have varied

from the 'blind eye' to a severe dressing-down, of the kind described by Charles Smyth in his biography of Cyril Garbett, one time Bishop of Southwark. He comments: 'Whenever the Bishop had to interview a delinquent clergyman, he used to become very worked up beforehand: he showed little mercy to the offender, and almost always concluded the interview by saying grimly "I'm sorry for you when the Day of Judgement comes" '. Whatever protection is afforded by the freehold now, clearly it will not be available in the life hereafter!

I have been thinking quite hard about the kind of behaviour which is likely to cause the most intractable problems, drawing on my own experience as a diocesan bishop in two dioceses, and on the experience of some of my colleagues.

There is alcoholism, especially in those early stages when everyone else knows what is wrong but it is still being strenuously denied by the person concerned. I was once able to relieve a parish of its priest after he had been brought back to the Vicarage in a wheelbarrow by the churchwarden after a busy lunch at the local. But I was only able to do this because he was licensed to a suspended benefice. By revoking his licence on the spot, the necessary shock was administered and eventually he agreed to accept treatment and a disability pension plus housing for him and his wife. Had he been in possession of a freehold, I suspect that there would have been prolonged resistance, and difficulty in operating the EJM effectively on the strength of what seemed to be one serious incident only.

Then there is laziness, when the statutory minimum of services are taken, but pastoral work, teaching and preparation, etc., are almost non-existent. I can think of several examples of this, tragic for the parish and a real waste of diocesan resources, and deeply unsatisfactory for the priest himself. Specific suggestions for a move are turned down, and as time goes on, it becomes more and more difficult to make further suggestions because of the reputation that he has acquired. At present, there is nothing further that can be done.

There is inefficiency and neglect: what I believe the Roman Catholic Canon calls the 'bad administration of temporal goods'. A priest seems unable to cope with the general running of the parish: letters are left unanswered, the PCC is badly handled, fees are neither collected nor handed over, and so on. A secular employer would not allow this to continue indefinitely, nor accept the defence that the spiritually-minded are entitled to ignore or neglect all other kinds of responsibility. This is not exactly pastoral breakdown, though it does the parish and the congregation no good, especially when prolonged.

And then there is the breakdown of relationships within the congregation and parish community: a category where an attempt has been made to grasp the nettle. This is sometimes due to the onset of illness or infirmity, and so the Vacation of Benefices Measure has two parts: both make it possible to break the freehold, but only after the possibility of a lengthy legal process designed to ensure that no priest is victimised unjustly by disaffected parishioners. Will it be used more often in its revised state? I can only say that the evidence so far suggests that there is still great unease among the bishops. Perhaps they are mindful of the prophet Hosea's words: 'Litigation spreads like a poisonous weed along the furrows of the field' (10:4) The Draft Code of Practice produced by the House this year lays stress on the need to try and reconcile the incumbent and parishioners without the formal procedures under the Measure being invoked.

It is not difficult to see why. Not only is it right that Christians should always seek reconciliation first, rather than resort to law: it is also likely that a 'breathing-space' may enable the incumbent concerned to recognise the wisdom of trying to move away of his own volition. Thereby much unpleasant publicity and considerable expense may be avoided.

It may well be that the possibility of legal action (I do not think 'threat' is the best word), like the prospect of death, will concentrate the mind on essentials. That can certainly happen in cases which clearly fall within the provisions of the EJM, as I have discovered. But Bishops will remain wary. It is so easy for clever Counsel to make havoc of an imprecise phrase like 'pastoral breakdown'. And how is a financially-straitened church going to find the enormous sums involved?

So we have a range of situations where 'discipline' may be urgently needed, and where the possibility of requiring a priest to move to a new sphere of ministry, or even out of ordained ministry altogether, is integral to effective pastoral action. Already, about one third of clergy do not have the freehold but a more limited tenure. As I have suggested, it is undoubtedly easier to deal with discipline cases within this group when they arise. I believe we ought now to try to move towards a further limitation of the freehold for the remaining two-thirds: but before this happens, there are certain other changes which ought to be made.

(1) First, there need to be clear guidelines for bishops and others about the kind of problem for which clergy might be disciplined to the extent of requiring them to leave their present post – either to another one within the diocese, or in another diocese, or out of the ministry altogether. It must be clearly seen and understood that a bishop cannot revoke a licence for any personal or arbitrary reason, or simply on grounds of churchmanship.

(2) The growth of schemes for regular interviews and assessment within dioceses should do much to build up confidence in the more positive approach by those in authority. Far better to offer support and encouragement at an early stage before any question of 'discipline' ever arises. Further, we need to meet the possible criticism that the bishop is relying too heavily on 'hearsay'. There is a particular difficulty in getting to know the quality of a person's ministry when you are not working within the same premises and only meet infrequently.

(3) Each diocese needs adequate arrangements for providing counselling, and advice about how to cope with a difficult parish situation or to make the move to a different kind of work. Not all bishops or archdeacons find it easy to offer this sort of help, but it needs to be available. We no longer live in an age when people could be ordained and then left to 'get on with it' as best they could in a society which was largely rural and unchanging. Yet it was for ministry in that kind of world that the freehold came into being in the first place.

(4) Because most clergy are married, and live in a tied house, there have to be adequate regulations about this aspect of any disciplinary arrangements that are made. This is a difficult area which is peculiar to churches and a few other employers; I think it is now generally accepted that it is not good enough to make a family statutorily homeless and expect the local authority to take over responsibility, costly as this may be.

(5) There must be some kind of 'panel', I think, to which appeal can be made in the first instance, with an Archbishop's nominee in reserve as a

place of final appeal, perhaps. The composition of such a panel is a matter of debate, but there is a wealth of experience in other professions upon which we should draw.

Leslie Paul and the Morley Commission advocated the most radical solution, the abolition of the freehold and the creation of a secure status (sometimes referred to as a kind of 'leasehold') on the strength of the dioceses. So far this has been resisted, and it is still very doubtful if it would succeed, at least while there is so much uncertainty over the ordination of women as priests and the position of homosexual clergy. But there is quite a lot of evidence to suggest that a further limitation of the freehold might be acceptable, and the most likely candidate for this would be a term of ten years. The vote in favour of an enquiry along these lines by members of the General Synod was surprisingly large.

What such an enquiry will have to consider, among many things, will then be the nature and extent of safeguards that will be available after the ten year period has expired, and I have tried to indicate what these might be.

Finally, I think there is no doubt that any such further limitation (like that imposed for retirement) must apply to all clergy regardless of the office they hold. There can be no exceptions for Bishops, Deans or Archdeacons, etc. That raises further questions about accountability, since in this country we have no concept of bishops being directly accountable to Archbishops, for instance, and little likelihood that this would be thought possible or even desirable at present. Nevertheless, a new generation of clergy is emerging which includes many who are used to being accountable for their work and ministry, and regard this as something both helpful and responsible. Accountability and discipline shade into each other at many points, and I think we are now ready to work at these issues in a fresh way. There are many more questions to be considered, and this is certainly not something to be rushed at without careful reflection, but I hope this paper may offer a little stimulus to engage in what is now a necessary task for the good of God's people and the ordering of the Church of England.