Terms of service

What legal obligations are owed to the servants of God? Mark Hill QC discusses the judgment & impact of *Preston*

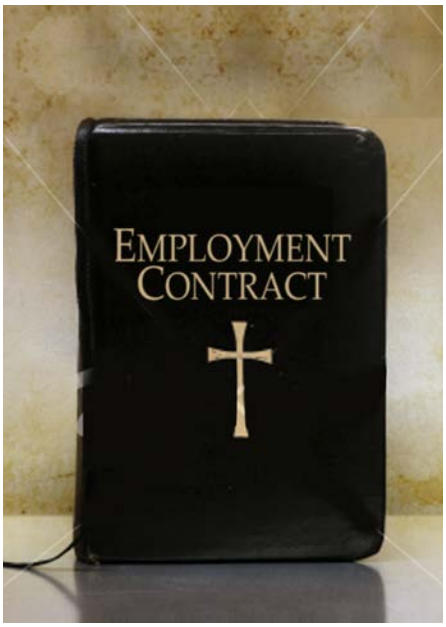
"Ye Servants of God, Your Master proclaim" So wrote Charles Wesley, hymnodist and father of Methodism, in the 18th century. But what legal obligations are owed by an earthly master to a servant of God as a matter of secular employment law today? This was the question addressed by the Supreme Court in *President of the Methodist Conference v Preston* [2013] UKSC 29.

Facts

Haley Preston was ordained into the Methodist Church and in 2006 she was appointed to the post of Superintendent Minister to the Redruth circuit, from which she felt compelled to resign after three years. She brought a claim in the employment tribunal, alleging unfair constructive dismissal. A preliminary issue was whether she was an employee of the Methodist Conference within the meaning of s 230 of the Employment Rights Act 1996. If employed under a contract of service, she would qualify, bringing with it statutory protection against unfair dismissal. Her claim exposed the tension between two conceptual approaches: that which seeks to extend basic employment rights uniformly to all categories of worker and that which regards clergy as *sui generis*.

The employment tribunal determined that Haley Preston had not been employed by the conference. It considered itself bound by the decision in *Parfitt v President of the Methodist Conference* [1984] QB 368, where the status of a Methodist minister had previously been addressed. The Court of Appeal had concluded that "the relationship between a church and a minister of religion is not apt, in the absence of clear indications of a contrary intention in the document, to be regulated by a contract of service".

The decision of the employment tribunal, however, was overturned by the Employment Appeal Tribunal (EAT), which held that it was wrong simply to have followed *Parfitt*, whose reasoning could not be sustained in the light of the speeches of the House of Lords in *Percy v Board of National Mission Church of Scotland* [2006] 2 AC 28. There was a further appeal to the Court of Appeal, which found itself in agreement with Underhill J in the EAT that the decision in *Percy* had impliedly overruled *Parfitt* so that there was no longer



a presumption against an intention to create legal relations. In unusually colourful language, Maurice Kay LJ stated: "Although most of the speeches in *Percy's* case are characterised by a linguistic gentleness in their approach to *Parfitt's* case, that does not disguise the fact that they caused the tectonic plates to move."

Supreme Court ruling

The case for the Methodist Conference was substantially reformulated when it came to be argued in the Supreme Court, which by a majority moved the tectonic plates back again. Lord Sumption stated that determining whether a minister of religion serves under a contract of employment can no longer be answered simply by classifying the minister's occupation by type: office or employment, spiritual or secular. There is no longer a presumption against the contractual character of the service of ministers of religion. The primary considerations are the manner in which the minister was engaged and the character of the rules or terms governing his service which depend on the intentions of the parties.

He found that Methodist ministers have no written contract of employment, and their relationship with the church is governed by the Deed of Union and Standing Orders of the Methodist Church. These suggest that unless some special arrangement is made, the rights and duties of ministers arise entirely from their status in the constitution and not from any contract.

In her powerful dissenting judgment, Baroness Hale took a very different view. On her analysis it would be very odd indeed if a minister, who was not paid her stipend or was threatened with summary eviction from her manse, could not rely upon the terms of her appointment, either to enforce the payment or to resist a possession action (an argument not addressed by the majority) and concluded: "Everything in this arrangement looks contractual…It was a very specific arrangement for a particular post, at a particular time, with a particular manse and a particular stipend, and with a particular set of responsibilities. It was an arrangement negotiated at local level but made at national level."

Comment

By distancing itself from the rebuttable presumptions of earlier jurisprudence, the majority in *Preston* have created a situation for the future where every case will turn on its own facts. This will mean a proliferation of claims in the employment tribunal in which there will have to be a microscopic examination of the constitutional documents of religious communities, to the extent that these express their doctrine and ecclesiology. In adopting this highly fact-specific approach, different churches may be treated differently in employment terms, as may ministerial posts within the same church. The future trend will substitute an over-analysis of the law (roundly condemned by Lord Sumption) with an over-analysis of the facts instead.

The length and complexity of the recent judgment of the employment tribunal in *Sharpe v Worcester Diocesan Board of Finance* (2012) 14 *Ecclesiastical Law Journal*, 459 is symptomatic of the difficulties posed for judges in making determinations such as these; so the forthcoming decision of Cox J in the EAT (delayed pending the judgment in *Preston*) will be read with interest. There are pointers in the majority judgment in *Preston* towards beneficed clergy of the Church of England still being office holders but whether this analysis survives into the new form of Anglican Common Tenure is debatable. A little bit like God, employment law seems to move in a mysterious—and occasionally seismic—way. **NLJ**

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