



Amicus briefing: The campaign for employment rights for Faith Workers

Background

Amicus is the professional trade union that represents over 2,500 Ministers of Religion from across all denominations and faiths. We provide support on individual cases, as we have no rights for collective representation, for over 10% of our membership each year, of which nearly half of these cases appertain to unfair or constructive dismissals and virtually all would be covered by the UK employment law framework of legislation which is applied to employees.

Ministers of Religion are exempt from employment rights as set out in Section 23 of the Employment Relations Act 1999. This includes the right to representation by a trade union, the ability to take a case to an employment tribunal for unfair dismissal, an employment contract or any other claim, and the access to redundancy protection. This exemption is based on the fact that a Minister of Religion is known as an Office Holder under the law.

In 2004, the Government set up a group to review the employment status of Ministers of Religion under the DTI Clergy Working Group. This group of denominational and faith leaders met on a number of occasions and after much delay will enter a phase of two years of voluntary employment rights, which one could argue we already have. Not all are party to this and the subsequent review.

The objection to employment rights by some faith communities has been based on historical tradition, the lack of resources to institutes such a package of rights would bring, the belief that God is the employer and therefore there can be no terrestrial employer (however this has not proved to be so when Ministers of Religion have been subject to unjust treatment prescribed by someone within the hierarchy of their faith body).

In 2005, Amicus met with the EU Commissioner, Commissioner Spidla, with the MEP Glyn Ford to set out the need for employment protection on Ministers of Religion across Europe, since many member states, particularly those from

a Lutheran tradition (Scandinavia, Belgium, the Netherlands, and so on) have full employment rights for their Ministers of Religion, and yet the UK with some other member states face inequality of treatment due to the way that Ministers of Religion are defined under their national definitions of what constitutes an employee. Clearly this is a technical loophole that needs to be closed.

Further to this, in the UK, we find that all Ministers of Religion who work in chaplaincy services do enjoy full employment rights, so it is just those that would minister in a church or other faith body setting that would face the UK exemption based on definitions alone, clearly not function. To highlight the absurdity of this technical difference, a hospital chaplain could be ministering to a patient in a hospital bed one day and fully enjoy full employment protection, whereas the next day a parish priest could identically be ministering to the same patient in their bed at home, and yet have no employment protection at all. So differential in treatment is clearly not based on functionality of post.

In the UK we are now seeing an increase in litigation to test the exemptions to rights achieved under employment status, where the Court of Appeal (*Church of Scotland v. Rev. Helen Percy*, 2005) and the Employment Appeals Tribunal (*New Testament Church of God v. Rev. Sylvester Stewart*, 2006) are clearly saying that the legal framework must be reviewed and changed. Both cases gave leave for the applicants to take cases to an Employment Tribunal, the former case on a Sex Discrimination claim which was then settled, and the latter, which is now being appealed to the Court of Appeal by the New Testament Church of God, on a claim for Unfair Dismissal. This second case is scheduled for July 2007.

Commissioner Spidla invited Amicus to make a response to this Green Paper on Modernising Labour Law for this category of worker.

The case for protection under labour law

As set out in the Green Paper, the original purpose of labour law was to offset the inherent economic and social inequality within the employment relationship. With this being established around the definitions used for employment status.

Amicus would argue that a Minister of Religion had a terrestrial employer, since all faith bodies have the ability to remove an individual from office, and therefore surely must take with them the responsibilities as well as their rights to be accountable for their actions. We would similarly argue, as have the judgements mentioned above, that there is evidence to say that there is intention of a contract of employment between a Minister of Religion and their respective faith body, thus entitling them to employment rights.

However unless the EU stipulates that member states have to close this loophole in definition of an employee to include such a category of worker, then the Minister of Religion will continue to be treated unfairly, without the basic human right of protection by employment law. With the disproportionate

number of case that we handle on behalf of our members who are office holders compared with those who are employees, i.e. chaplains, strongly makes the case that where there is employment protection, employers take greater responsibility for their actions towards their Minister of Religion. However the current inequality of power through the absence of any rights means that not only is more draconian treatment exercised in the lack of protection, but also there is no place to take the case to seek independent restitution to the dispute, thus the original objective of labour law set out on the Green Paper is breached, and the Minister of Religion invariably loses their job, their license to work again and also their home, since most will live in accommodation supplied by their faith body, an even harsher outcome than an employee subject to a fair dismissal would experience.

Definition of Worker

Amicus believes that a Minister of Religion has established work. For the vast majority, they have a place of work, receive a regular stipend (wages) in exchange for fulfilling a number of set objectives, would be subject to discipline if they were in breach of these and would be categorised by the UK Inland Revenue for purposes of taxation the same as that of an employer. Therefore we believe that there is no other way of defining a Minister of Religion as both having subordinate employment and being in economically dependent work, and yet due to the nuances of UK definitions of employee, fall into the 'grey area' category of worker. Therefore a clearer definition of employee across member states would make the difference for this category of worker, where there is approximately 250,000 Ministers of Religion across the EU.

We would also argue that there is need for employment rights for people that fall into this 'grey area'. If there was a 'floor of rights' it would continue to indicate that there is a two-tier workforce split between those that enjoy full rights and those that have less, whilst improved from our current situation for Ministers of Religion, it clearly does not address the differentials in treatment, and therefore we would argue that full employment rights should be applied across this category of worker.

Working Time

Like others categories of workers exempt from employment status, Ministers of Religion, who are not protected by employment legislation, are also exempt from the UK's interpretation of the EU's Working Time Directive. Minister of Religion often find that if they are not working that they are certainly on call for the 24/7 period. With the high propensity of stress issues and stress related illness that occur among these workers, we would certainly argue that for health and safety reasons alone the UK Working Time Regulations must be applied to all Ministers of Religion.

In Conclusion

The extension of EU labour law coupled with member state application of full employment rights enjoyed across the rest of the economy will not only remove the need for cases in the UK having to go through the Employment Tribunal System to adjudicate whether a Minister of Religion has the right to

go to an Employment Tribunal over their actual case, but will also address the economic and social inequality currently experienced by Ministers of Religion.

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