

# Barry Williams, the RSCM's Special Adviser, explains the new legal guidance on church musicians

In 2015 the RSCM gathered a working party together to look at all aspects of the engagement of church musicians. The working party includes representatives from archdeacons, rural clergy, the Royal College of Organists, the Incorporated Society of Musicians and the Guild of Church Musicians. A sub-committee has recently completed the first part of the task which was to produce a model contract for employed organists and church musicians.

It is helpful to consider the law in this matter. In the Church of England parish music is under the absolute control of the minister of the parish – Canon B20. That Canon has only been amended once since 1603 – in 1988, to prevent the ‘shotgun’ dismissal of organists. The effect of that amendment was that all appointments and dismissals were, as before, made by the minister, but became subject to the agreement of the parochial church council, with the proviso that the archdeacon could substitute for the PCC in certain very rare circumstances.

Since the Industrial Relations Act 1971, the case law on church organists has built up. (That Act created, for the first time, the statutory concept of ‘unfair dismissal’. Wrongful dismissal is concerned with the process of dismissal, not its fairness.) Contrary to popular opinion, the written contract does not, of itself, determine the status (i.e. employed or self-employed) of the relationship between the minister and the organist and church musicians. That is determined by the facts. Almost all the decisions in case law have deemed the organist and choirmaster to be an employee, with the protections and obligations that follow. These include many cases where the organist had a ‘self-employed’ contract. When testing ‘status’ (i.e. whether the musician is employed or self-employed), courts and tribunals look at about 28 issues, but many are quite obvious:

- ▶ Does anyone have control over the worker?
- ▶ Whose equipment does the worker use?
- ▶ Does the worker look part and parcel of the organization?

- ▶ Does the worker wear a uniform?
- ▶ Can the worker choose when and where they do the work?
- ▶ Does the worker have the unfettered right of substitution, i.e. to send any deputy at will without the engager being able to challenge the substitution?

Applying these tests to the average church musician’s situation usually indicates employment, or what in law is known as a ‘master and servant’ relationship. HMRC has helpfully provided an ‘Employment Status Indicator’ that assists workers in finding out whether they are employed or self-employed ([www.tax.service.gov.uk/check-employment-status-for-tax/setup](http://www.tax.service.gov.uk/check-employment-status-for-tax/setup)). The Legal Advisory Commission of the Church of England (LAC) gives guidance on the interpretation of the Canons and other legal matters. The previous guidance was rather out of date, referring to the cost of hand pumping the organ! The few references to recording of services did not take into account modern technology, nor the now popular use of CDs without any organ music being played at all. Our working party asked the LAC whether it would consider refreshing its Guidance, and it graciously agreed.

The new Guidance is wide-ranging and comprehensive ([www.churchofengland.org/media/3956676/organists.pdf](http://www.churchofengland.org/media/3956676/organists.pdf)).



After clarifying that references to ‘the organist’ should include all musicians and music directors in similar positions, it states that the majority of organists are employees. There is extensive guidance about safeguarding requirements on appointing an organist and that the church organist should be paid a fee when just CDs are played at a wedding. The only time an organist’s fee is not payable is when there is no music whatsoever. It is important that the new guidance is made widely known to musicians, ministers and PCCs.

Perhaps the most striking feature of the revised Guidance is that the parochial church council is now deemed to be the employer. This does not alter the right of the minister to direct what music shall and shall not be performed (while taking into account the advice of his or her director of music); nor does it alter the right of the minister to hire and fire organists, albeit with the agreement of the PCC. The reason for making the PCC the employer is that, in law, the PCC is a corporation and has ongoing continuity. So do the posts of vicar and rector, but not priests in charge – and there are more and more priests in charge nowadays.

As an employer, the PCC must do all the ordinary things that employers do, including:

- ▶ Pay the national living wage
- ▶ Deduct tax
- ▶ Deduct employee’s, and pay employer’s, national insurance contributions
- ▶ Provide, where required, a pension
- ▶ Provide holiday pay
- ▶ Provide sick pay
- ▶ Provide maternity and paternity leave/pay
- ▶ Have annual reviews

The Local Religious Centre exemption in respect of PAYE was withdrawn when Real Time PAYE came into force in 2012. Employers’ returns have to be filed online.

Some may think this is a heavy burden, but it is laid on many PCCs where there is already a parish employee, such as an administrator or secretary. Moreover, it is the law, however large or small the employer. PCCs are not exempt from any law – since 2005 they have had to comply with fire regulations, as well as health and safety requirements.

A model contract was provided as an appendix to the Archbishops’ Commission on Church Music in 1993, but it was little used. The sub-committee therefore decided to ask a specialist employment law solicitor to draft a model contract, taking into account recent case law

and the LAC’s revised Guidance. Many RSCM members and affiliates belong to denominations other than the Church of England, i.e. denominations for whom the LAC Guidance is not specifically written. However, the model contract is drafted in such a way that it will equally serve their situations, with suitable amendments. It is available on the websites of the RSCM, the Royal College of Organists and the Guild of Church Musicians. It is downloadable without charge and can be amended to meet individual requirements. If these requirements are complex, a PCC may wish to engage a solicitor to help with changes to the drafting.

The RSCM recommends that all organists, choir trainers and other musicians should have a written contract – something originally recommended by Sir Sydney Nicholson in his book *Quires and Places Where They Sing* in 1932. While current working relationships may be good, changes of personnel, finances, parish politics or musicians’ personal circumstances may lead to disagreements. A contract helps to define what is required of all parties. Musicians who are in a position to donate their salary/fees to the parish are encouraged to draw their salary etc., and then donate it to the parish with, if appropriate, Gift Aid. Such arrangements help when the musician leaves and a new person is appointed.

For church musicians who think that they may be self-employed, the RSCM recommends that they consult their professional body, such as the Musicians’ Union or the Incorporated Society of Musicians, for advice and a contract. If you are not a member of a professional body you may find it helpful to ask such organizations about the range of services they offer. Like insurance, you will never need it until you need it, but it is much harder to procure subsequently!

This article represents the writer’s understanding of the legal issues. Anyone who may be affected by the matters that it deals with should take their own legal advice; the RSCM accepts no liability in respect of anything said in the article. A specimen contract is available at [www.rscm.com/music-and-resources/advice-and-information/paying-church-musicians](http://www.rscm.com/music-and-resources/advice-and-information/paying-church-musicians). This contract is produced for guidance only. It is not a substitute for specific legal advice tailored to individual circumstances. Please also bear in mind that legal and regulatory requirements change from time to time. The RSCM accepts no liability to persons who use all or any part of this specimen contract.