



Organist Publications

Notes Accompanying the Organist Contract

Introduction to the concept of contract

A contract is a legally binding agreement between two or more people. These people are known in law as the “parties” to the contract. Every party to a contract is bound by what the contract says. If anyone does depart from the contract, they could be liable to pay compensation to the other party.

In English law, a contract does not have to be in writing, so anyone who works as a church organist will probably have a contract of some kind. But there are two advantages of a written contract. First, it clarifies exactly what the church and the organist can expect from each other, so there is no argument later on whether the organist should play for a service on Ash Wednesday or arrange for the organ to be tuned. Second, it provides a safety net so that if something goes wrong, there is at least a minimum level of co-operation below which the relationship cannot fall.

The contract contains **recitals** in clause 1 followed by numbered clauses. These notes correspond to the numbers. These notes indicate how the draft contract may be modified to meet the particular needs of your circumstances.

Some items are marked in italics and square brackets, such as the names of the minister, organist and church. These must be completed with the relevant details of the particular appointment.

It should always be remembered that these clauses should only contain provisions which one party may wish to enforce against the other. This is so the church can point to the contract and say that the organist is obliged to play for a particular service, and the organist can point to the contract to say that he is entitled to holiday pay.

Whatever a church expects an organist to do must be put into the contract. If there is no provision in the contract for the organist to play for funerals, attend church council meetings or train the choir, then the church cannot require the organist to do so. This draft contract includes clauses for everything an organist can reasonably be expected to do. If the church does not want the organist to do that, it may simply delete the clause.

Sometimes churches wish to insert **additional clauses** into the contract. You and the minister are free to agree whatever clauses you wish, though it is difficult to see what additional clauses are required for an organist.

In practice, an additional clause should only be inserted if:

- both parties wish to be bound by it;
- one party may enforce it against the will of the other; and
- the clause is necessary for the operation of the working relationship.

An additional clause should not be inserted if it:

- is unenforceable;
- simply restates what is the law (as the law can change which could then create a problem if the contract is not also changed); or
- expresses an aspiration rather than a duty or right.

Any additional clause should be reasonable to both parties, necessary for the employment and enforceable. If you have any doubt, it is advisable to seek legal guidance.

Remember that the terms of a contract must be agreed *before* the contract starts.

There is no need for the contract to have any clause which starts "if the parties agree..." A contract may be changed simply by making a new contract, or amending the existing one.

Similarly the existence of a contract does not stop someone doing more than legally required. A contract which says that the organist will play for 60 services a year does not prevent the organist from playing for more if the church and organist so agree.

The parties may change a contract at any time, simply by agreeing a new contract or agreeing a variation in an existing contract. It is advisable to review any contract at least once every five years to ensure that it still reflects current working practices. Where any change is agreed, the employer must provide written details to the employee within one month (Employment Rights Act 1996 s4).

1 Recitals

The first paragraph defines words used later in the contract.

First, the recitals introduce the parties to the contract, in other words who is bound by the contract. These parties must then legally follow the contract.

The exact nature of the parties depends on the church denomination. For the Church of England, the contract is between the organist and minister (as the organist's employer) and the church council (who must pay the organist). This contract assumes that the appointment is in the Church of England, though we offer some notes which indicate how it may be adapted for other denominations.

The contract should quote the title of the minister and not his name. So the contract should say "the Rector of Snoddington" not "the Revd John Bloggs". It is acceptable to make the contract with "the Rector of Snoddington, currently the Revd John Bloggs".

The recital identifies that the contract is with the minister as minister, rather than with the minister as an individual. The point is that the contract is with whoever is vicar of St Bloggs church in Snoddington, not with the individual who happens to be vicar when the contract is signed. When the minister moves on, the contract remains with the church and binds the next minister. This is because a vicar or rector is a "corporation sole" which exists separately from the person holding the office. Another way of saying this is that the contract is with the office of vicar of St Bloggs and not with the Revd A Clergy. A priest-in-charge is a minister for these purposes.

The parties must be **named** at the beginning and then given a unique term which describes them throughout the contract. Traditionally the parties would be identified as "the first party" and "the second party" and so on. There is no need for this. The minister can refer to himself as "me", the organist as "you" and the church council as "the PCC". Provided these terms are used consistently and unambiguously, they are legally effective. They make the contract much clearer and easier to read.

The recitals must also identify the church where the organist is to play. If the contract covers more than one church, that must be stated in the contract. The description must be sufficient to identify the building and town where the organist is to play.

The recitals must give either the person's job title or a brief description of the work for which the person is employed (Employment Rights Act 1996 s1(4)(f)). Throughout the draft contract we have used the term "organist", but the church may prefer to use a different term, such as "choirmaster", "organist and choirmaster" or "director of music". The name does not particularly matter, as the important provision is the scope of the duties. This section of the Act also requires "a brief description of the work for which he is employed".

The contract must have a starting date from which point the person is the organist of the church. The date is important as legal rights can be determined from this date. It is not necessary for the organist to be required to do any work on the starting date. For example, if an organist's duties are limited to a choir practice on Friday and services on Sunday, there is no problem in having a contract starting on a Tuesday. The date is whatever the parties agree. This is often a convenient date, such as the first of a month, but any date is legal.

It should be noted that a contract is binding on the parties from when it is made, which is usually the date the contract is signed (though in some cases it can be earlier). This means that some provisions of the contract will apply even *before* the start date. For example, the organist could be sued if, before starting, he changed his mind or decided to take another job. Conversely, the organist could sue the church if the church changed its mind about employing the organist.

Employment Rights Act 1996 s1(3) requires the contract of employment to identify the names of the employer and employee, the date the employment began and the date on which any period of "continuous employment" began.

Continuous employment is relevant for enforcing employment rights, as many such rights only arise after one year of continuous employment. In most cases, continuous employment starts on the same day as the actual employment. If a new contract is issued for any reason, the new contract may start from any date the parties agree,

but the continuous employment starts from when the organist first started working. Continuous employment continues throughout holiday, sickness and maternity leave.

If the employment involves any **overseas work**, the contract of employment must also state:

- the period required to work overseas;
- the currency in which payment will be made; and
- any additional payment or benefits while working overseas.

(Employment Rights Act 1996 s1(4)(k)).

The last sentence of the Recitals provides for a six-month **trial period** to see if the relationship works out. This is normal in most contracts, and is a strong recommendation under child protection guidelines. At the end of this period, either party may simply end the arrangement, so the minister can end the employment without having to give a reason. The law generally does not confer any employment rights on an employee until you have worked for one year, so this provision does not take away any rights. If the trial period is successfully completed, the contract continues indefinitely.

2 Scope

This clause states the main functions that the organist is required to do. Incidental functions, such as being available to attend meetings, are covered in later clauses.

The wording of this clause may be amended according to the church's requirements. This must be specific enough to admit no ambiguity, while still being flexible enough to allow for any changes in patterns of worship, such as when the church decides to change the time of its morning service.

It is not advisable to have a contract which states that the organist will "play for all services as required by the minister". This is an unreasonable demand as it could, in theory, require a church organist to play every day of the week. Instead, the contract should state for which Sunday services the organist is required. Most churches have more than one morning service, so there may need to be further words of description such as "the main morning service" or "parish communion and mattins". Many churches also have different services on particular Sundays of the month, such as a family service on the first Sunday of each month. Whatever wording is used must be sufficient to allow for all these variations.

For a cathedral organist who does play on most days of the week, it may be appropriate to state that the organist is required to play for particular services on Sunday "and at Evensong on weekdays except for *[day of the week]* which is the organist's day off". It is totally unreasonable for a cathedral organist not to have a day off. On that day the service may be said or an assistant organist may be contracted to play.

It is usual for an organist to play for **major festivals** which fall on days other than Sunday. The main ones are listed in the draft. If a church wishes the organist to play for other non-Sunday festivals (such as Corpus Christi, Epiphany or a particular

Saint's day) that should be added to the list. Conversely if the church does not have a musical service on any of the listed festivals, they may be deleted from the list.

If the organist is responsible for **choir practices**, this must be included in the scope of duties. It is probably not necessary to be more specific, such as stating times and place; these can be left to the organist and choir. It is reasonable to allow the choir a break after Christmas and Easter, and to have a summer break, though these terms can be amended. In general, the contract should state whatever is the current practice of the church.

Many choirs have a run-through before a service on Sunday, and many may arrange extra practices for major events such as carol services. It is not advisable to include this in the contract as such practices should be at the discretion of the organist. If an organist fails to train a choir properly for any reason, that may be addressed under other provisions.

The organist should always be involved in the preparation of the **music list** in some way. The ideal arrangement is that:

- the minister notifies the organist in advance of any departures from the lectionary (such as for Harvest Festival, a visiting speaker or a sermon series);
- the organist prepares a music list on the basis of the lectionary and notification from the minister; and
- the minister approves the music list with any amendments.

A music list will typically include the hymns, hymn tunes (if different from that set or where there is a choice), anthems, introits, settings, psalms, canticles, chants, responses and final voluntary, as appropriate. This should be prepared for one to three months at a time. The process should be finalised by the start of the period covered.

This arrangement is probably the normal practice in the Roman Catholic and Anglican churches. In other denominations, such as the Methodist church, it is the practice of the minister to choose the hymns. In such a situation, the wording may be amended to "advising the minister on suitable music".

3 Additional services

This deals with the eventuality of a church arranging an extra service. Possible examples range from the induction of a new minister to a school carol service.

The organist should always be given "first refusal" which is what this clause requires. As work additional to the contract, it attracts an additional fee.

Cathedrals and many churches may have an assistant organist who has the right to play when the regular organist is not there. This is something which will be in the contract with the assistant organist and need not be in the organist's contract.

4 Weddings and funerals

Weddings and funerals provide a significant element of an organist's income. The right to this income should be included in the contract.

The contract refers to weddings and funerals "and similar services". This description includes such services as a blessing after a civil marriage, renewal of marriage vows, memorial service and service of thanksgiving for the life of the departed.

An additional fee is not payable if such a service is held as part of a service for which the organist is engaged anyway, such as a normal Sunday service.

It is unreasonable for an organist to be expected to play for all such services, particularly where the organist has other commitments. This is particularly so for funerals which are often arranged at short notice and held during the working week. The most equitable answer is the "first refusal" as in clause 3.

The clause requires the organist to state promptly if not able to play. In practice, this usually means when contacted and asked to play. The organist should say yes or no at the time.

The **fee** for the wedding at the time the contract was made should be stated, with a clause that this fee should be reviewed from time to time. This creates an expectation that there will be reviews to allow for inflation.

The additional fees for **recordings** is a vexed and sometimes contentious area. The wording reflects the recommendations of the ISM and other bodies. In practice, the only recordings made are video recordings of weddings, which doubles the organist's fee.

A problem arises when the additional fee is not imposed as the couple do not plan to take a video and then a guest produces a camera. In such an event, the organist is entitled to the additional fee and this wording requires the church to make payment. In practice, the church will seek the additional fee as part of the charges made to the couple. If they have not, the minister taking the service is entitled to require the person to put the video camera away and to stop the service until this is done.

Organist Publications believes the time has now come to drop the additional fees for recording weddings. Instead a higher fee should be charged, at least £100, and the couple and guests be allowed to record what they wish. Those who wish to adopt this policy should delete the words in square brackets.

Separate arrangements should be made when the couple pay for a *professional* recording.

It is important to have a **deadline** for paying the organist for weddings and funerals. We have heard of instances of organists waiting more than a month to be paid, which is unacceptable. An organist should ideally be paid in cash or by cheque *on the day*. There is no legal, accounting or other reason to keep an organist waiting. Similarly, there is no problem in paying an organist from the collection (if big enough), provided this is properly accounted for by putting a note in the collection.

Sometimes a couple or the family may wish **another organist** to play. They do not have the right to demand this, only to ask. The organist may refuse. It is good practice for an organist to allow a relation or close friend to play when there are special reasons. The right to play at a wedding is part of the organist's income. If an organist steps aside to allow Uncle Albert to play, there is no reason why the organist should pay for that privilege. In the Church of England, the organist has the legal right to play for weddings anyway.

The responsibility for **collecting** the fee must remain with the church, which will collect all other fees due at the same time. Only if the couple or family engage an organist other than the regular organist is the payment of fee a matter for the organist.

5 Payment

The amount of payment at the start of the contract must be included. Under Employment Rights Act 1996 s1(4), the contract of employment must state:

“(a) the scale or rate of remuneration or the method of calculating remuneration,

(b) the intervals at which remuneration is paid (that is, weekly, monthly or other specified intervals)”

The contract *may* also state that payment is made in arrears (which is normal), and how it is paid (eg credit transfer, cheque or cash).

Every payment must be accompanied by an itemised pay statement (Employment Rights Act 1996 s8). This statement, commonly known as the **payslip**, must state:

- gross amount of wages or salary;
- amounts of any variable element;
- net amount of wages payable; and
- where amounts are paid in different ways, the amount paid in each way.

In practice, most payslips are more detailed, showing separate figures for income tax and national insurance and any other additions or deductions.

Credit transfer directly into a bank account is normal. To set this up, you only need to give the employer two numbers: a bank account which has eight digits (though you may need to add a 0 to the front for Lloyds TSB) and the sort code, which is three pairs of digits in the form 12-34-56. These numbers are printed on the bottom of each cheque. With this information, anyone can pay money into your account, but they cannot otherwise access your account. So your employer cannot take money out of your account, nor find out how much you have in the account.

The amount of pay must be at least the national minimum wage (National Minimum Wages Act 1998 s1(1)) unless the organist agrees to play for no payment at all (ibid s44). In such a case, the organist may be paid reasonable expenses, such as for travel, but no more. An organist either receives the national minimum wage or nothing. Provisions about giving lessons are covered in a separate clause.

For some organists, particularly cathedral organists, there may be **benefits in kind** provided in addition to pay. These must be detailed in the contract. Examples of such benefits include:

- free or low-rent accommodation;
- a car;
- fuel for the car;
- private health insurance;
- membership of a sports or social club;
- payment of fees to professional bodies;
- interest-free or low-interest loans.

The special provisions for pensions are covered in a separate clause. It should be appreciated that most of these benefits increase the amount of tax you pay.

If the organist is an employee, the church may be required to deduct income tax and national insurance at source under PAYE. This will not usually apply if the organist is self-employed in this agreement. This is a matter of tax law, not of contract. It is sufficient that the contract states that any deductions which the law requires will be made.

Deductions could also be required under an attachment of earnings order from a court or local authority. This is covered by the expression "required to deduct by law".

An employee may authorise an employer to make other deductions from pay. This commonly happens for payments to a pension scheme, social club or trade union. The payment must be authorised *before* the debt arises.

In most cases, an employer may make a deduction to correct an overpayment on a previous payslip (Employment Rights Act 1996 s14(1)). However not all overpayments may be reclaimed. The rules are complex, but generally an employee does not have to refund an overpayment where he did not realise he was overpaid, when the overpayment was a mistake of the employer, the money has been spent, and it would be inequitable to require repayment.

Otherwise an employer may not make a deduction from pay (Employment Rights Act 1996 s13). If an organist owes the church £20 for barn dance tickets, the PCC will commit an offence if it simply deducts the money from pay without having been authorised to do so.

If the PCC wants to have the right to deduct sums which an organist may owe the church, suitable wording is "you authorise the church to deduct from your pay any sums owed to the church by you."

The draft wording includes a sentence relating to holiday entitlement, otherwise covered in clause 6. Suppose an organist leaves having taken three weeks' holiday when his pro rata entitlement is only two. The organist owes a sum equal to one week's pay. That may be deducted from the organist's final payslip.

If a deduction is made from the payslip other than authorised by law or by the contract of employment, the employee may complain to an employment tribunal (Employment Rights Act 1996 s11). This applies even where the employee does owe

money to the employer; the right to deduct from a payslip is a separate right from claiming the money.

Any non-payment of wages may similarly be appealed to an employment tribunal as this is regarded as a 100% deduction of wages. This was the House of Lords' decision in the case *Delaney v Staples* [1991].

An organist is not entitled to claim **expenses** unless these have been agreed in advance. Being an employee does not give a person the right to claim expenses.

This is a separate consideration from giving the organist a budget for spending on music and incidental items (such as perhaps folders, pencils, a metronome, training books). The budget should not normally include other music-related expenditure such as organ maintenance, choir pay and congregational hymn books. These should be dealt with by the church treasurer on behalf of the PCC.

6 Holiday

The contract must state:

- entitlement to holidays;
- entitlement to public holidays;
- the amount of holiday pay; and
- the right to accrued holiday pay on termination of the employment.

This is required by Employment Rights Act 1996 s1(4)(d)(i)).

The organist is entitled to holiday, and we recommend six weeks, which is now common for church and cathedral organists. Church of England clergy are entitled to six weeks off per year, taken as one week after Easter and Christmas, and four weeks off elsewhere.

Some old contracts may specify four weeks. These are now unlawful. Under the Working Time Regulations, every employee is entitled to 24 days (4.8 weeks) paid holiday from 1 October 2007, and to 28 days (5.6 weeks) from 1 April 2009. These changes broadly have the effect of making the eight public holidays paid leave which they were not previously (though many employers already treated them as such.)

An organist is not entitled to take the public holidays as leave — indeed some public holidays such as Good Friday and Christmas Day are exactly when the organist is needed! The Regulations simply state the total number of days for which the organist may be absent.

Sometimes a contract may express a holiday entitlement as working days. If a cathedral organist is entitled to six weeks holiday and normally works for five days a week, the contract may say that the organist is entitled to 30 working days leave per year. The term "year" must be defined. In the draft, it is defined as the calendar year, that is from 1 January to 31 December. It is permissible to use another year, such as the church year from the first Sunday in Advent, or the financial year from 1 April, though the calendar year is probably the simplest to adopt.

The contract makes clear that unpaid leave from one year may not be carried forward to the next, nor is the organist entitled to any extra pay for unpaid leave. Holiday leave is intended to allow an employee a break from work for his general health and wellbeing. If there is a need or desire to depart from this rule, this may be done by agreement between the vicar and organist which in effect creates a new contract to modify the existing contract.

Notice must be given of all holidays. The contract states that the notice must be reasonable and should normally be at least one month. This wording achieves the right balance between being both specific and flexible.

The responsibility for paying a substitute organist rests with the church, not the organist. Holiday is a legal entitlement of an organist. Making an organist pay for that entitlement contravenes the Working Time Regulations and is therefore illegal.

In the first and last year, the organist will have a pro rata entitlement based on how much of that year has been worked. This is calculated as:

$$\text{Pro rata entitlement} = \text{Annual entitlement} \times \frac{\text{Time worked}}{\text{One year}}$$

Under the Apportionment Act 1890, the time worked should be calculated on a calendar day basis (though tribunals have accepted calculations on the basis of working days). So if an organist is entitled to 36 days leave for a whole year, but leaves after working 127 days, the pro rata entitlement for the final year is:

$$\text{Pro rata entitlement} = 36 \times 127/365 = 12.52 \text{ days.}$$

Suppose the organist had taken 10 days leave, the contract says that the organist will be paid for the 2.52 days entitlement which the organist will not be taking.

It is normal not to allow additional unpaid leave. However the law does allow an employee to have **paid leave** for:

- attending ante-natal classes while pregnant;
- performing duties as a safety representative;
- performing duties as a trustee of the employer's pension fund;
- performing certain duties as a trade union officer;
- for certain purposes related to being disabled; and
- looking for work while under notice of redundancy.

An employee is entitled to **unpaid leave** for:

- jury service;
- certain public duties (eg magistrate or councillor);
- looking after dependants, under strict conditions;
- looking after a young child or dependent adult, under strict conditions.

There are separate rules about leave for maternity, paternity and sickness.

7 Sickness

The terms of sick leave must be stated in the contract, as required by Employment Rights Act 1996 s1(4)(d)(ii). This provision does not require an employer to pay sick pay, only to state whether sick pay is paid.

For these purposes, "sickness" includes mental sickness and any injury. It can include stress if this is diagnosed as a medical complaint. Sickness does not include pregnancy, tiredness or drunkenness.

If the organist becomes sick or injured and so unable to perform his duties, the organist must notify the minister as soon as possible. If the organist is too ill or otherwise unable to do so (such as by being unconscious after a road accident), a family member or someone else should contact the minister on his behalf.

The notification must include the date when the organist became sick, even when this is not a working day. Statutory sick pay works on the basis of days of sickness, not on working days lost.

The entitlement during sickness or injury is statutory sick pay. As this is a statutory scheme, its terms do not need to be spelled out in the contract. Many contracts of employment now include a provision which allows the employer to make additional payments during sickness. This usually denotes the practice of paying an employee their full pay for the whole period of sickness unless there is reason to believe that this provision is being abused. It should be noted that statutory sick pay is not payable for the first three days of absence.

Sick pay schemes make a distinction between notification and evidence. Generally the employer is free to make his own rules. The rules for notification are given above. The separate rules for evidence are that the employer will accept the employee's word for up to one week and then require a medical certificate.

There are two types of sick pay: statutory sick pay (SSP) and occupational sick pay (OSP). SSP is a scheme laid down by law. An employer must pay SSP if the employee meets the relevant conditions. OSP is only payable if the contract says it is. Many employers pay OSP on either a contractual basis or a discretionary basis. (The draft contract assumes the latter.) The total of OSP and SSP may not exceed the amount the employee would have earned had he not been sick.

The final provision deals with suspicions of skiving or serious illness. They mirror a provision in the rules regarding statutory sick pay.

8 Maternity and paternity

This provision mirrors those for sickness in allowing the organist both leave and payment on the occasion of becoming a parent whether by childbirth or by adopting a child. The provision is that the organist will receive just the statutory entitlement. This does not stop the church providing additional benefit.

As the schemes are statutory, they are compulsory under law. Therefore their details do not need to be put in the contract. Also the terms of these schemes have changed many times in recent years, and are likely to change again.

The rights to maternity leave and adoption leave are contained in Employment Rights Act 1996 s71 and s75A respectively.

9 Private use of organ

It is normal for the organist to be allowed free use of the organ for private practice, whether or not it relates to voluntaries to be played in church. The cost of electricity for lights and the organ blower is very small. Having someone in the church at occasional hours helps church security.

Old contracts for organists included a provision that the organist must pay for the services of a blower, the person who hand pumps the organ. This is still included in the legal notes for the Church of England. In the unlikely event that an organist is engaged at a church without an electric blower, such a clause could still be inserted.

The organist is allowed to use the organ to give private music lessons for which he may keep the whole fee. This does not allow students free use of the organ for private practice but simply states that the church will seek to reach a reasonable agreement. The church may require payment for use of the church by the student, agreement that the student will be available to play for services (if good enough) or restricting practice hours to when someone else in the church is present.

Thought needs to be given about whether the organist should reimburse the church for any additional expense relating to using the church for private practice, lessons and student practice. Although the church may reasonably regard free use of the organ as a reasonable adjunct to being the organist, it may not take such a view about expensive **heating** of a building so that the organist can give lessons and the students may practise. The church authorities may reasonably question whether church funds should subsidise the organist's ability to earn a private income.

The organist and church authorities are free to agree whatever they wish. There are broadly three options.

First, the church may regard such expenses as part of the organist's remuneration. So the organist is being remunerated as both a sum of money plus an amount of electricity and heating. In churches which are well used and well insulated, there may be no need to turn on the additional heating. The additional electricity for lighting and the organ blower is likely to be a small amount, usually pence per hour, and so not be worth bothering.

In such cases, the contract may include the clause. "You are not required to reimburse the church for any heating or electricity used for private practice, giving lessons or for your students when practising."

The second option is that the organist does reimburse the church for any additional expense in heating the church while giving lessons. This would be calculated as the

cost of the electricity, gas or oil for running the heating system for an hour, multiplied by the number of hours for which the heating is running.

This should be paid directly by the organist to the church treasurer and not deducted from the organist's pay (which is illegal unless previously authorised by the organist in writing).

For this option, the contract may say: "You will reimburse the church for the cost of heating when giving private lessons." The organist is not liable to pay for the heating of the church while a student practises. This is part of a separate agreement between the church and the student.

The third option is to agree a set figure to cover all private use by the organist and students. A church may not wish to receive (say) £1 a month from ten different students. It may be more convenient for the organist to add £1 to the cost of a lesson and pay it to the church, or to agree a figure of (say) £20 a month to cover all lessons and student practising.

Provided the agreement is reasonable and mutually accepted, any such arrangement is acceptable. Whatever is agreed must be put in the contract of employment. Employment Rights Act 1996 s15 specifically bans an employer requiring payments from an employee unless they arise from a law or the contract.

The organist is required to comply with reasonable requests regarding church premises. This includes locking up, setting the burglar alarm, use of toilets and kitchen facilities and the suchlike. In terms of safety, it should be remembered that Health and Safety at Work Act 1974 s2 requires both employer and employee to co-operate in ensuring a safe working environment.

10 Pension

The contract of employment must state what terms and conditions apply to any occupational pension scheme, under Employment Rights Act 1996 s1(4)(d)(iii). An employer does not have to provide an occupational pension scheme at all. The legal requirement is met simply by saying that no such scheme is operated.

Normally a church does not run a pension scheme. There is no need to add "so you must make your own pension arrangements" as this necessarily follows from not having an employer scheme.

If a church or cathedral employs five or more people, it must provide a stakeholder pension. This means little more than the employer must nominate a pension fund provider who will provide a pension scheme which meets the legal requirements of a stakeholder scheme. The organist is not compelled to join, but must be given the opportunity.

If the employer does run a pension scheme and is prepared to allow the organist to join, this right must be put into the contract. An employee cannot be compelled to join a scheme. Typical wording would be:

“The cathedral operates a contributory final salary pension scheme. You may join after six months’ continuous employment with us. The terms of the scheme are provided by the scheme trustees. The scheme holds a contracting out certificate [or does not hold a contracting out certificate].”

An employee who earns enough pays national insurance. Some of this is a contribution to the state second pension (S2P), known as SERPS before 2001. This provides an *addition* to the state retirement pension. If an employee is a member of an occupational pension scheme approved by HMRC (formerly Inland Revenue), the employee may pay less national insurance but be “contracted out” of S2P. That means that no S2P entitlement will build up for those tax years. An employee may have a private pension plan which has been approved by HMRC and can therefore contract the employee out of S2P. The employee pays the full amount of national insurance but HMRC refunds part of the national insurance to the pension plan.

The law requires the contract of employment to give “particulars” of a pension scheme in the contract of employment, without specifying what those particulars are. In practice, details of the scheme should be given to the employee by the scheme trustees.

The government proposes to introduce compulsory work pensions, known as savings accounts, from 2012.

11 Trade union

This clause is a legal requirement in contracts of employment though of little relevance to organists.

Collective bargaining is when a trade union has the legal right to negotiate pay rates and other benefits (such as holidays and pensions) with the employer on behalf of all employees. It would be unusual, though not impossible, for this to apply in a church or cathedral.

An employer must not refuse employment to someone just because they are or are not a member of a trade union (Trade Union and Labour Relations (Consolidation) Act 1992 s137). Nor may an employer take any action against an employee just because the employee is or is not a member of trade union (ibid s146). Dismissal because of trade union membership or non-membership constitutes automatically unfair dismissal which could make the employer liable to pay significant damages (ibid s152).

There are many other legal provisions regarding trade unions, but these are not detailed as they seem to be largely irrelevant to organists.

12 Co-operation, grievance and discipline

The first paragraph is necessary to ensure smooth working in so far as this can be prescribed by a contract. It builds on the implied conditions in every contract of employment.

Employment law requires an employee to show:

- fidelity,
- obedience, and
- diligence and care.

These are implicit legal obligations and do not need to be stated in the contract of employment.

Obedience only requires an employee to obey a lawful order. An order is not lawful if it is illegal, immoral, impossible, outside the scope of the employee's duties or otherwise unreasonable. Diligence and care means that the organist will do the job to the best of his ability. It excludes deliberately playing the organ badly.

Employment law requires an employer:

- not to destroy the relationship of trust and confidence; and
- not to act capriciously.

These are legal obligations and do not need to be in the contract of employment.

There have been many cases where the employer has been found guilty of breaching these implied conditions. An example of destroying the relationship of trust is when the vicar "bad-mouths" the organist to other people. Acting capriciously is when the employer acts in an arbitrary or unfair manner, such as excluding the organist from a pay rise or benefit provided to all other employees.

One of the conditions inserted into the first paragraph is that the parties will be available to **meet** each other as reasonably required. Many organist/vicar problems have arisen simply because one of them refuses to discuss a concern with the other. The inclusion of this paragraph makes it easier for the organist to bring a claim for unfair dismissal and to receive compensation if the vicar does not co-operate, and makes it easier for a vicar to dismiss an organist and resist a claim for unfair dismissal if the organist does not co-operate in this way.

The first paragraph also requires the organist to attend the occasional meeting of the church council, chapter, trustees or equivalent body to discuss music.

Para 2 deals with **other work** and clarifies that an organist is free to engage in such other activities as he wishes, subject to two conditions. This paragraph is in line with various decisions from employment tribunals. An organist is free to compose, arrange, write, teach, examine and perform other music without restriction.

The two conditions are, first, that the organist does not engage in any work which has the effect of making him unable to perform his duties under the contract. An example would be where the organist plays in a band during Saturday night and is then too tired to play for Sunday morning services. The second condition is the less likely event that the work brings disrepute to the church. This could apply if the organist played at a strip club, where publicity would reflect badly on the church.

A composer is entitled to receive a **royalty** from income generated by his compositions. There is an exception if the composer was paid by the employer to

compose the work. As it is most unlikely that an organist would be contractually obliged to compose music and be paid to do so, it is equally unlikely that the work could be regarded as belonging to the employer. This paragraph puts the matter beyond doubt.

An employee is an agent of his employer. An agent is not allowed to make a secret profit. Accordingly if the organist receives any **gift** or third party payment, that must be declared to the employer. Such gifts legally belong to the employer. Non-disclosure of a gift can be regarded as theft and can justify dismissal. Organists have been dismissed for non-disclosure of secret profits.

Where the church makes a **professional recording** (which includes a broadcast) of the organist's music, the organist is entitled to an additional fee. This applies if the organist is playing for a grand occasion such as a royal wedding. This also applies when the church sells recordings of entire services which includes the organist's music.

Some churches make recordings of services on cassettes or CDs to distribute to church members unable to attend services in person. A church may similarly distribute a service on the Internet or by podcast or similar for the same reason. The clause makes clear that the organist is not entitled to an additional fee as such distribution is simply regarded as an extension of playing for the service.

There are statutory procedures for **grievance** and **discipline**. The contract inserts a provision that any such matter, provided it is not too serious, should first have an attempt at informal resolution. Otherwise the statutory procedure must be followed. As a statutory procedure it does not need to be included in the contract. The employer and employee must comply with these procedures under Employment Act 2002 s30. The procedures are contained in statutory instruments, as explained in *Everything Else an Organist Should Know*.

The statutory procedures allow an employee to be accompanied by a **companion**. The employer must by law accept a work colleague or a trade union official, and *may* accept someone else. The final paragraph gives the organist the right to take *anyone* as a companion. This may include a legal adviser from the ISM or a fellow organist, a solicitor, a barrister, or suitable friend or colleague.

13 Termination

The contract of employment must state the notice period that either the employer or employee must give to the other (Employment Rights Act 1996 s1(4)(e)).

The organist is required to give notice of leaving. For a cathedral or large parish church appointment, a period of three months may be more appropriate. An employee cannot be required to give longer notice than the employer. So if the contract requires an employee to give three months' notice of resigning, the employer must give three months notice of dismissal.

The law sets out minimum notice periods. After two years, these are one week for each whole year's service to a maximum of 12 weeks.

An employer may wish to make a payment in lieu rather than have a disgruntled organist remain in post. This is deliberately not allowed for in the contract of employment. If an organist is paid for three months rather than given three months notice, that payment is tax-free as compensation for wrongful dismissal to a maximum of £30,000 (Income Tax (Earnings and Pensions) Act 2003 s403). If the contract of employment contains a provision allowing for such payment, the payment is taxable as earnings.

If an employee is dismissed, the employer must provide a written statement setting out the reasons for dismissal (Employment Rights Act 1996 s92). Certain reasons give rise to automatically unfair dismissal. These include dismissals for pregnancy, asserting a statutory right, membership or non-membership of a trade union, or for reasons connected with a person's race or sex.

Action may be taken if the dismissal is either unfair or wrongful (or both). This is a large area for which specialist help may be needed. Some guidance is given in our publication *Everything Else an Organist Should Know*.

No notice or payment in lieu is made for **summary dismissal**. This is where a person's conduct is so outrageous that he or she cannot reasonably remain an employee. Examples include vandalism, theft and assault.

Under age discrimination law, the employer must set a retirement age which cannot ordinarily be below 65. An employee is not obliged to retire at this age, but continued employment requires the agreement of both employer and employee and extends the employment by six months at a time. There is no limit to the number of extensions, so it remains legal for an organist still to be employed at 100.

14 Law

A contract must state the jurisdiction under which it is made. This is the usual wording to do so.

Signatures

All parties to a contract should sign all copies, and give the date they signed. Each party should have a copy of the contract with the signatures of the other parties. While signing a contract is good practice, it is not a legal requirement as a contract can be valid even if unsigned, provided it can be shown that it represents the agreement of the parties.

The responsibility for producing a written contract rests with the employer, who must provide a copy to the employee within two months of the employment starting (Employment Rights Act 1996 s1(2)).

Note that the contract exists separately from any written document, so there is a contract of employment even if the employer fails to provide a document.

Also remember that the contract may only reflect what you and the minister have agreed. A minister may not add, delete or change any provision which you have

already agreed. If he does so, the change is not effective unless you do agree it. You should always read the contract before accepting it and question any provision with which you do not agree.

A clause in a contract is only valid if both parties have agreed to it *in advance*. If you believe the contract does not reflect that agreement, it is advisable to say so promptly, in writing, and refuse to sign until the clause is amended. You cannot be sacked for refusing to sign a contract of employment which you believe does not reflect the agreement.

It is acceptable for a contract of employment to refer to another document, which then becomes part of the contract of employment. Examples of such documents would be provisions relating to pension funds, grievance and discipline procedures, child protection and security of church premises.

The contract does not need to be witnessed, the parties do not have to be in each other's presence when they sign (so it is acceptable for one party to sign and send the contract to another by post). The contract does not have to be under seal or notarised.