**GENERAL ASSEMBLY 2007**

**SPEECH, LEGAL QUESTIONS COMMITTEE**

Moderator, depending on an individual’s perspective there has perhaps seldom been a better time, or a worse time, to be a Constitutional Lawyer! Due to the potential changes that are facing the UK, advice and comment are frequently sought from experts in the field. In these uncertain times the Legal Questions Committee maintains its own watching brief, to advise the Church if it is likely to be affected by changes in Civil Law.

That said, our report this year mainly focuses on the law of the Church. The Committee has been fulfilling the instructions given to it by previous Assemblies, to review and if necessary to revise aspects of the Church’s own procedures and legislation.

**One of our largest ongoing projects** involves the task of consolidating and updating the Church’s discipline legislation. This piece of work has taken longer than we originally envisaged, largely because it is essential that we get it right. We are trying to ensure that where people are subject to disciplinary processes under Church Law, they are treated fairly and with dignity. As far as possible we need to ensure that the Church’s processes at least equal the standards of justice which would prevail elsewhere.

This time last year, the Committee circulated a draft of a proposed new discipline Act, inviting the Church to comment. We are grateful to those who responded to that consultation, not least because their comments have significantly influenced our direction. One of our biggest issues has been the extended period of time which it often takes for disciplinary cases to be concluded. This is partly a consequence of such cases being investigated and prosecuted by teams of volunteers. This is very intensive work – yet those who undertake it all have other commitments - parishes of their own, jobs of their own and families of their own. Co-ordinating diaries is hard enough at the best of times.

We are therefore now proposing that a disciplinary case should be investigated, and if appropriate prosecuted, by a single Assessor. Such an Assessor would be legally qualified, and would be supported by an Advisor who would be an ordained Minister of the Church. These are two of the key principles which are outlined in Section 2.7 of the report. We are asking the Assembly to approve this list of principles, which would then be superimposed on the proposals that we circulated last year. If we are given the go-ahead then we firmly intend to present a new Discipline Act to the Assembly next year.

**At the Assembly two years ago**, under the report of the Panel on Review and Reform, the Committee was instructed, along with others, to review the Church’s ‘Arbitration’ procedures in the light of the Panel’s report on procedural justice. The process, which has been known as ‘Arbitration’ has sometimes been used as a tool when choosing between church buildings in situations of readjustment. This has entailed bringing in a group of independent arbiters who then make a binding decision about which building is to be used. However the Panel on Review and Reform had received negative feedback from local parties who had felt distanced and disempowered from the process.

In looking at this, the Committee has concluded that the Church’s use of the word ‘Arbitration’ has perhaps been misleading. Outwith the Church ‘Arbitration’ is generally a form of ‘dispute resolution’ – a process which involves negotiation with different parties. The Church’s so-called ‘arbitration’ has really been more of an ‘independent adjudication’. It has never really pretended to be a means of ‘negotiating a solution’.

That said, it is actually for a quite different reason that we now recommend that the Church’s Arbitration process should no longer be used. Arbitration was first introduced when parish reappraisal was undertaken in accordance with Act IV 1984. However, that legislation was replaced by the current Appraisal and Adjustment Act in 2003. This ‘newer legislation’ introduced the concept of Presbytery Planning and it has an underlying ethos that Presbytery itself should determine how resources should be used. External adjudication doesn’t sit comfortably with that. It perhaps discourages Presbyteries from taking the decisions that they are best placed to take.

In recommending that Arbitration processes should no longer be used, we want to acknowledge the work that has been done and the expertise which has been provided by the Panel of Arbiters in the past. We are proposing that guidelines should be prepared to assist Presbyteries, when they are making these kinds of decisions.

**Last year we were pleased** to accept a motion from the floor of the Assembly, instructing the Committee, jointly with the Council of Assembly and Presbyteries, to explore the possibility of creating a Presbytery review procedure. Initial discussions recognised the potential benefits. Under Local Church Review, congregations are encouraged to reflect on where they are at and to consider their priorities for the future. It is hoped that Presbyteries might benefit from a similar procedure which helps to shape their future life and action.

With the help of some Presbytery Clerks we are hoping to carry out a pilot exercise over the next few months, with a view to reporting back to the Assembly next year. We hope that next year’s Assembly might be able to approve some principles, upon which a Presbytery Review Process could be developed.

**Finally, in section 12 of the draft deliverance** the Committee seeks authority to undertake a consultation exercise in relation to membership of Church Courts. As outlined in the report some interesting points were made in this regard, in the returns that were received from Presbyteries in relation to the Registration of Ministries Overture. We would now like to seek views from across the Church, about what membership of a Church court ought to entail. We are keen to ask questions about the underlying purpose and functions of each Church court. This consultation process would begin soon after this Assembly.

Moderator, in speaking to this report I have restricted my comments to four areas of our work. The printed report outlines other work that the Committee has been doing. I shall be very happy to respond to any wider questions that Commissioners may have.

I therefore present the report and move the deliverance.