

Legal Questions Committee – General Assembly 2019

Moderator, the Legal Questions Committee has a role providing general oversight in relation to Church Law. In many ways the Committee performs a balancing act: on the one hand we try to ensure that Church Law is suitably up to date and that it enables the Church to do the things that are identified as being priorities for today; on the other hand we have to consider how any innovations will impact on other areas of existing law. The overall result needs to be coherent.

When people are working locally in congregations and in Presbyteries, at times they are frustrated at being required to follow the rules of the Church. The requirement to do things in particular ways can seem quite burdensome, especially if we now have fewer people to do them. As we look to the future the Church will almost certainly need to reduce the burden of governance that is falling on the shoulders of some local people. We need to adapt, perhaps enabling some worshipping communities to exist in other forms, without necessarily having to do everything that would be expected of a traditionally constituted congregation.

Whatever the frustrations, there are actually good reasons for having an overall framework of Church Law. The Church of Scotland isn't a loose federation of independent congregations; rather, we are bound to one another through a Presbyterian polity. As such we need to have, for example, national standards for ministry and there has to be a degree of parity about the conditions in which people are serving. It is actually a matter of justice that all parts of the Church are required to follow the same set of rules, rather than some being required to uphold them, while others are excused them.

This year's report of the Legal Questions Committee is the shortest that we have produced for many years. However, this doesn't reflect any lack of activity, but rather the stage that we are at with certain pieces of work.

A lot of work has been happening behind the scenes to enable the new Discipline Act to be rolled out, and in particular to ensure that people who become involved in disciplinary procedures are able to understand them. With this in mind the Committee has produced a Guidance document, which we hope offers a clear explanation of the procedures. In particular, the Guidance document provides support for respondents, by clearly setting out each step of the process. This procedural support is distinct from the pastoral support which is provided for within the legislation.

Over the past couple of years the Committee has undertaken quite an extensive review in relation to the membership of Church Courts. At one stage we anticipated possibly bringing a new Church Courts Act to the Assembly this year, but in the light of wider changes that may be pending, we believe that such legislation would be premature. However, we are now asking the General Assembly to approve a more flexible approach towards Kirk Session membership. In particular, we believe that it would be helpful to draw a distinction between an elder being 'ordained for life' and being expected to give 'indefinite service' as a member of a Kirk Session. By allowing the option of fixed-term appointments to Kirk Sessions, we hope that eldership may become a more realistic prospect for some who might not otherwise feel able to serve. This measure should also allow elders, in time, to step back from membership of a Kirk Session, and to use their gifts in other ways. This proposal is referenced both in the report of the Mission & Discipleship Council and in the Report of the Special Commission on Structural Reform.

Three years ago a Commissioner proposed a motion from the floor, which instructed the Committee to consider a review process for Presbyteries, along lines similar to those followed for Local Church Review. At the time we were glad to take on that piece of work and in fact over the past two years 19 Presbyteries have taken part in a pilot scheme. This has happened through 'peer review' – in other words by representatives of one Presbytery undertaking a review of another. The experience of this has been sufficiently positive, that we now seek permission to prepare legislation, creating a review process that would become a regular part of every Presbytery's life. The aim is to help Presbyteries to function well and also to be forward-looking. Objectives for the future will be set along the lines of an action plan.

Last year the Assembly instructed the Committee to prepare legislation which would enable Ministers and Deacons, who wished to do so, to solemnise same-sex marriages. The precise terms of this instruction are outlined in Section 4 of our report. A subgroup from the Committee is continuing its work on this matter and is paying particular attention to the Assembly's expressed concern that individuals should be sufficiently protected against risk. We are taking account of the broad range of circumstances in which ministers and deacons can find themselves officiating at marriage services, and we are also considering the approaches that are being taken by other denominations. As instructed the Committee will bring a report to next year's Assembly.

Moderator, I present the report of the Legal Questions Committee and I move the deliverance.