

# The Way Out: Closure of and Departure from Anglican Religious Communities

FRANCESCA QUINT<sup>1</sup>

Barrister

**Keywords:** religious communities, charities, vows, Church of England

Anglican religious communities are currently experiencing decline. Member numbers are decreasing as their average age increases, recruitment of young people is virtually impossible and it is not uncommon to find a small and dwindling group of elderly religious inhabiting premises designed for a time when committing oneself to life as a member of a religious order was much more fashionable. There are several underlying reasons: young people are offered a wider and more diverse array of possible occupations; employment with a specific employer is no longer undertaken for life, but people tend to move from one job to another and from one sector to another; women in particular have more choices than previously and for those with a religious vocation the priesthood is a more exciting alternative; and, bearing in mind that many Anglican religious communities incline to the Anglo-Catholic end of the spectrum, the Ordinariate beckons.

## COMMUNITIES IN DECLINE

When a religious community is in decline there is an increasing need to prepare for a number of eventualities: members departing or wishing to live separately from the community; the possibility of merging the community with another community; the disbandment of the community; or, where a community is better endowed with material than with human resources, its transformation into another kind of institution. The trustees and senior members of the community must start preparing themselves mentally for change as soon as they see the signs. Planning ahead will tend to make the changes, when they come, less alarming and painful.

More specifically, where the eventual disappearance of the community can be foreseen, the trustees should consider how they will provide for the remaining members as they age, how they can ensure that the trustee body itself will

<sup>1</sup> This article is based on an Ecclesiastical Law Society London Lecture given on 16 March 2016.

continue to be active, and possible alternative uses for the surplus assets. Timing can be difficult, having regard in particular to the above-average longevity of members of religious orders (like clergy), coupled with the likelihood of members' increasing infirmity, requirements for help with mobility, physical healthcare and, for some, sadly, dementia. These increased needs (and expenses) will be accompanied by the members' decreasing ability to look after the community's affairs and to carry out its charitable activities themselves. Members of a nursing order, for example, may have to move on to providing a pastoral presence rather than carrying out practical nursing, which will be undertaken instead by lay staff, and may later progress to becoming residents or patients rather than carers.

In other cases, a care home may have to be closed down, with the need to deal with the change in a measured, considered and compassionate way. The community's buildings may well become redundant and the trustees will therefore have to maximise the potential proceeds by engaging a surveyor to consider such matters as planning applications and marketing. It may be distressing for members of the community to contemplate their erstwhile home and place of worship being redeveloped for commercial or luxury residential use. The trustees must be sure to obtain professional advice on their charity law obligations and will probably need to budget for fees payable to lawyers, accountants, surveyors and investment advisers. Subject to according full weight to the professional advice received, where the trustees encourage the members of the community to engage positively in the charity's future plans, the process of change is likely to run more smoothly than if they attempt to impose their own thinking.

## RELIGIOUS COMMUNITIES AND CHARITY LAW

Legal advice and practical planning for the future administration of the charity to which the community is attached may lead to changes to the charity's trust deed (or other governing document). Of course, if there is an express (or, in the case of a charitable company, a statutory) power of amendment this may be relied on. Otherwise, where the charity is unincorporated certain administrative changes – modifications to the powers or procedures of the trustees – can be made by resolution of the trustees under section 280 of the Charities Act 2011. It may be appropriate, for example, to ensure continuity in trusteeship by providing for a corporate trustee in the form of a company limited by guarantee to be appointed, or simply by facilitating the appointment of more lay trustees.

Where a more fundamental change of direction is required – for example, where as a result of a sale of a major building the charity's assets are greater than the foreseeable needs of the community – and there is therefore a need to alter the expressed purposes of an unincorporated charity, a *cy-près* scheme

will be needed in the absence of a sufficiently wide express power of amendment. In the case of a charitable company or charitable incorporated organisation (CIO), the consent of the Charity Commission will be required and the Commission will expect the trustees to provide a reasoned justification. In some cases the opportunity may be taken to 'incorporate' the (unincorporated) charity by transferring the assets to a charitable company or CIO. The 'foundation' form of CIO may be found most suitable as a replacement for a trust deed since it involves the least change in the style of administration and is generally considered simpler to administer than a company.

## LEAVING A COMMUNITY

The prospect of change, as well as a more obvious trauma, can sometimes destabilise a community and lead to some members wishing to separate themselves from the community. It is as well for the chapter and the trustees to be familiar with the *Handbook of the Religious Life*, since this sets out the norms which will be followed by the constitutions of most communities or which can at least be regarded as a guide to their interpretation.<sup>2</sup> Apart from transfer to another Anglican community, there are four options or stages governing separation, of increasing seriousness: leave of absence, exclaustation, release from vows and dismissal.

### Leave of absence

Any member may for good reason seek leave of absence from the community's premises.<sup>3</sup> Examples include illness, family responsibilities or training needs. The written permission of the chapter is required, and the duration of such absence should not be greater, initially, than one year. The member retains all his or her rights to take part in the community by voting in chapter, and can be expected to be adequately maintained. At the end of the period of absence the member is expected to resume life within the community.

### Exclaustation

Where the absence is (initially) expected to be for up to three years, a member may apply for exclaustation.<sup>4</sup> This is a longer-term and more formal arrangement than leave of absence for living outside the community while remaining a member and under its pastoral and spiritual care. Significantly, there is no obligation on the community to provide maintenance and the member can no

2 Advisory Council on the Relations of Bishops and Religious Communities, *A Handbook of the Religious Life*, fifth edition (Norwich, 2004).

3 *Ibid.*, para 502.

4 *Ibid.*, para 503.

longer vote in chapter. It is likely to be relevant when the member is faced with a long-term problem and may perhaps wish to re-examine his or her vocation. If the chapter refuses permission, the member may appeal to the visitor; in any case, the visitor's approval is necessary. Exclaustration is normally followed by either resumption of full membership and involvement in the community or the member's release from his or her vows.

### Release from vows

Release from religious vows, or secularisation, is a very serious step which involves departure from the community and the release of the member from the life vows which he or she made on joining the community.<sup>5</sup> The *Handbook* envisages its applying where a member converts to another religion or denomination or decides that it would be preferable for him or her to follow a secular lifestyle. It is very rare and (except perhaps in cases where the member is mentally incapacitated and cannot personally consent) normally requires the agreement of the member, the chapter and the visitor. It is effected by a decree of secularisation made by the Archbishop of Canterbury or, where the constitution so provides, the visitor of the community. Clearly, it will be considered most conscientiously by the authorities and will not be imposed against the wishes of the member. Although it is known that some members of Anglican religious orders have joined the Ordinariate, it is understood that there have been no decrees of secularisation made by the Archbishop of Canterbury in at least the last ten years. However, the *Handbook* states that, in a case where a member joins a non-Anglican community without seeking a release from vows, a decree of secularisation should be sought.

### Dismissal

The occasions for the dismissal of a member of a religious order, which also necessarily involves secularisation, are even rarer.<sup>6</sup> Dismissal is a truly exceptional step which can be taken only in the most serious of circumstances and after every effort has been made by both the community and the visitor to find an alternative solution through mediation and otherwise. It presupposes a fundamental breakdown in the member's commitment to the religious life: for example, by marriage or entering a civil partnership, by a public renunciation of faith or by a persistent refusal to live in the community, despite genuine efforts to bring the member back into communion. It is a matter for the community to make a declaration of dismissal, which is then followed by a decree of secularisation.

<sup>5</sup> Ibid, paras 504 and 508.

<sup>6</sup> Ibid, para 505.

The *Handbook* warns that in certain circumstances a member who has been dismissed may have a cause of action against the community.<sup>7</sup> It is recommended that a community which contemplates dismissing one of its members should give a written warning at least a month before making the final decision, and that a member threatened with dismissal should be entitled to appeal to the visitor, whose ratification is required if the decision is to become effective.

The *Handbook* stresses that neither release from vows nor dismissal is necessarily final. The former member may be re-admitted if circumstances permit. The Church's ethos of forgiveness requires this potential reversal of the situation.

### Transference

Moving to another (Anglican) community is not unusual.<sup>8</sup> It is necessary to take account of the provisions of the constitutions of both communities, both of which (as well as the member concerned) must give permission. The two communities have to be satisfied that the proposed transfer is a call from God, and the transferring member's existing life vows should be acknowledged by the receiving community.

doi:10.1017/S0956618X16000557

<sup>7</sup> Not usually, presumably, where dismissal is occasioned by marriage or a public renunciation of faith.

<sup>8</sup> *Ibid.*, paras 401–409.