THE CHURCH ELECTORAL ROLL: SOME VAGARIES OF THE CHURCH REPRESENTATION RULES

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The church electoral roll performs a number of important functions within the Church of England, yet the qualifications for enrolment as set out in the Church Representation Rules, and the basis on which a person's name may be removed from the roll, are far from clear. This article considers critically the criteria for enrolment (especially the meaning of 'habitual' attendance at public worship), the duties of the electoral roll officer, and the rights of appeal against his decisions. It concludes by drawing attention to the requirement for every parish to prepare a new roll in 2007.

The church electoral roll, as Mark Hill has observed,[1] is at the heart of the democratic process by which the Church of England is governed. Under the Church Representation Rules (hereafter the 'CRR'), as scheduled to the Synodical Government Measure 1969,[2] the church electoral roll[3] has the following important functions:

i. It determines those members of the laity entitled to attend the annual parochial church meeting ('APCM') and take part in its proceedings: CRR, rule 6(2);[4]

[1] M Hill, *Ecclesiastical Law* (2nd edn, Oxford University Press, 2001) p 45, para 3.04.

[2] See the Synodical Government Measure 1969, Sch 3. The rules have been the subject of many subsequent amendments, the latest being those effected by the Synodical Government (Amendment) Measure 2003, s 1(2), Schedule, and by the Church Representation Rules (Amendment) Resolution 2004 ('the 2004 Amendment Resolution'), SI 2004/1889. The resolution was passed by General Synod pursuant to the enabling power contained in the Synodical Government Measure 1969, s 7(1). All references in this article to rules are to the CRR in their currently amended form. The latest edition published by Church House Publishing contains the Rules as at 1 January 2006: ISBN 0 7151 1012 8.

[3] The church electoral roll is not to be confused with the electoral register maintained by local authorities and listing those entitled to vote in parliamentary and local government elections.

[4] This rule is quite specific, concluding 'and no other person shall be so entitled'. Contrast the annual meeting of parishioners (formerly often known as the 'vestry meeting') to elect churchwardens, which commonly is held immediately before the annual parochial church meeting: in addition to those whose names are entered on the church electoral roll, persons resident in the parish whose names are on the register of local government electors by reason of such residence are entitled to attend this meeting: Churchwardens Measure 2001, s 5(1).

ii. Only a person whose name is on the roll is qualified to be elected as a parochial representative of the laity on the parochial church council[5] or deanery synod: rule 10(1)(a);
iii. The number of parochial representatives of the laity elected from each parish to serve on the deanery synod is determined by resolution of the diocesan synod, the number being calculated by reference to the numbers of names on the rolls of the parishes as certified to the secretary of the diocesan synod under rule 4: rule 25(2);[6]
iv. Indirectly it determines the electorate for elections to the diocesan synod and to General Synod, since the members of the house of laity of the deanery synods (who, by rule 10(1)(a), must be on the electoral roll of their respective parishes) constitute what amounts to the electoral college (recorded in a 'register of lay electors') for these elections: rules 29(1), 31(3), 35(3);[7]
v. An elected member of the house of laity of a diocesan synod must have his name on the roll of a parish in the deanery he is elected to represent: rule 31(3);[8]
vi. Likewise, for a person to be qualified to be elected to represent a diocese on the house of laity of General Synod, his name must be entered on the electoral roll of a parish in the diocese: rule 37(1)(c).[9]
vii. A person whose name is on the electoral roll is entitled to access the approved minutes of PCC meetings held after the 1995 APCM, except any minutes deemed by the council to be confidential: r 15 and Appendix II, para 12(f).

[5] A person whose name is removed from the roll under CRR, r 1(9), ceases to be a member of the PCC on the date on which his name is removed: r 14(3)(a).
[6] In some dioceses the number of names on the electoral roll is one of the factors taken into account in determining the amount that a parish should pay as its 'parish share' or 'diocesan quota'. However, since some people whose names are on the roll rarely attend the church for worship (see n 33 below), account may also be taken (among other factors) of 'average weekly Sunday attendance', based on a count of those attending services over, say, a four-week period.
[7] Persons co-opted to the deanery synod under r 24(7), who must be actual communicants of 16 years or upwards but who are not required by this rule to be on an electoral roll, are specifically excluded from voting in diocesan synod and General Synod elections: rr 31(3), 35(3)(a).
[8] Or, alternatively, on the community roll or, in the case of Westminster Abbey, St George's Chapel, Windsor and the cathedral church of Christ Church in Oxford declared by the dean to be an habitual worshipper at the cathedral church: r 31(3) (as amended by the 2004 Amendment Resolution, para 10). A community roll is the roll of lay members of the cathedral community (not also a parish church) required to be kept under the Cathedrals Measure 1999, s 9(3). If the cathedral is also a parish church, it is required to have a church electoral roll pursuant to CRR, r 1(1).
[9] Again, in the case of a cathedral which is not a parish church, there is the alternative of entry on the community roll or, in the case of Westminster Abbey, St George's Chapel, Windsor, or Christ Church Cathedral, Oxford, a declaration by the dean that the person is an habitual worshipper: CRR, r 37(1)(c) (as amended by the 2004 Amendment Resolution, para 13(b)).

Further, only a person whose name is on the church electoral roll can be chosen as a churchwarden[10] or appointed as a sidesman.[11]

In addition to these governmental functions, the church electoral roll is important for other purposes, in particular determining where parties are entitled to marry. Marriage by banns may only be solemnised in a church where the banns have been published.[12] Banns must be published in the parish church of the parish in which each party to the intended marriage resides.[13] They may also be published in any parish church or authorised chapel which is 'the usual place of worship of the persons to be married or one of them'.[14] For this purpose:

> no parish church or authorised chapel shall be deemed to be the usual place of worship of any person unless he is enrolled on the church electoral roll of the area in which that church or chapel is situated, and where any person is enrolled on the church electoral roll of an area in which he does not reside that enrolment shall be sufficient evidence that his usual place of worship is a parish church or authorised chapel in that area.[15]

Having one's name on the church electoral roll also confers burial rights. A person who otherwise would have no right of burial in the parish churchyard or other burial ground[16] has such a right if his name is entered on the electoral roll at the date of his death.[17]

[10] Churchwardens Measure 2001, s 1(3)(a). The bishop may permit a person to hold office as churchwarden whose name is not on the roll if it appears to him that there are exceptional circumstances justifying a departure from this requirement, but any such permission is limited to the period of office next following the date on which permission is given: s 1(4).
[11] Revised Canons Ecclesiastical, Canon E 2, para 2; CRR, r 10(2).
[12] Marriage Act 1949, s 12(1).
[13] Ibid, s 6(1). Where, pursuant to a pastoral scheme under the Pastoral Measure 1983, a number of parishes are in the area of a single benefice, the diocesan bishop may direct that the banns of marriage of persons entitled to be married in one of the constituent parish churches may be published in the parish churches of the other parishes in the benefice. In such a case, the marriage may be solemnised in the church in which banns have been published pursuant to such a direction as well as in the parish church of the parish where one of them resides or is on the electoral roll: Pastoral Measure 1983, Sch 3, para 14(4), applying the Marriage Act 1949, s 23. The effect is that if someone living in parish A, or on the electoral roll of parish A, wishes to be married in the parish church of parish B (in the same benefice), but he or she is not on the electoral roll of parish B, he/she may do so provided that the banns of marriage are read (on all three Sundays) in parish B.
[14] Marriage Act 1949, s 6(4).
[15] Marriage Act 1949, s 72(1). This provision also applies to marriage by common licence, where, pursuant to s 15(1)(b), and as an alternative to satisfying the 15-day residence qualification, the parties wish to be married in a parish church or authorised chapel which is their 'usual place of worship' (or the usual place of worship of one of them).
[16] A parishioner, and anyone dying in the parish, has such a right, whether or not a member of the Church of England.
[17] Church of England (Miscellaneous Provisions) Measure 1976, s 6(1). The right is conditional on there being sufficient space for further burials.

Another provision, of less importance in practice, is that contained in section 16(2) of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991, whereby a person on the church electoral roll, but not resident in the parish, is deemed to have an interest as though he were a parishioner of the parish for the purpose of determining (under section 16(1)(c)) whether he has 'a sufficient interest in the matter' to petition for a faculty. Likewise, a non-resident whose name is on the roll is an 'interested person' entitled under the Faculty Jurisdiction Rules 2000 to object to the grant of a proposed faculty.[18]

In view of these functions, one would expect the criteria for inclusion on the roll to be clear cut and free from doubt. The purpose of this article is to suggest that this is not the case.

QUALIFICATIONS FOR ENROLMENT

The requirement for a church electoral roll in each parish is set out in rule 1(1) of the CRR: 'There shall be a church electoral roll (in these rules referred to as the "the roll") in every parish, on which the names of lay[19] persons shall be entered as hereinafter provided.' Rule 1(2) sets out the criteria for enrolment as follows:

> (2) A lay person shall be entitled to have his name entered on the roll of a parish if he is baptised, of sixteen years or upwards,[20] has signed an application form for enrolment set out in Appendix I of these rules and declares himself either—
>
> (a) to be a member of the Church of England or of a Church in communion therewith resident in the parish; or
>
> (b) to be such a member and, not being resident in the parish, to have habitually attended public worship in the parish during a period of six months prior to enrolment; or
>
> (c) to be a member of good standing of a Church which subscribes to the doctrine of the Holy Trinity (not being a Church in communion with the Church of England) and also prepared to declare himself to be a member of the Church of England

[18] Faculty Jurisdiction Rules 2000, r 16(1), (2)(a). In *Re St Michael and All Angels, Tettenhall Regis* [1995] Fam 179 at 184, [1996] 1 All ER 231 at 235, 236, Lichfield Cons Ct, the chancellor, Judge John Shand, declined to accede to a late application to strike out the name of a party opponent on the ground that he was neither resident in, nor on the electoral roll of, the parish of Tettenhall, preferring instead to 'ignore' his views, which the chancellor described as 'hysterical defamation of everybody in his sights', including the incumbent and 'even his wife'.

[19] Note that it is only *lay* persons who are entitled to have their names entered on the electoral roll. This is emphasised by CRR, r 1(9)(b), which requires a person's name to be removed from the roll if he 'becomes a clerk in Holy Orders'. (The author is aware of one rural parish in East Anglia where a non-stipendiary priest, who is also a retired circuit judge, had his name on the roll.)

[20] Until the amendments made by the Church Representation Rules (Amendment) Resolution 1980, SI 1980/178, the qualifying age was 17 years. Contrast the age for entry on an electoral register, which currently is still 18 years.

having habitually attended public worship in the parish during a period of six months prior to enrolment.

Provided that where a lay person will have his sixteenth birthday after the intended revision of the electoral roll or the preparation of a new roll but on or before the date of the annual parochial church meeting, he may complete a form of application for enrolment and his name shall be enrolled but with effect from the date of his birthday.

The application form[21] requires the applicant to tick a box indicating which of the three options in rule 1(2)(a), (b) and (c), and which are set out on the form, apply in his case.

Strictly construed, if a person is aged 16 and baptised, entitlement to inclusion on the roll depends on self-certification. If such a person completes and signs a form of application for enrolment in the prescribed form, making the requisite declarations[22] (including a declaration that the answers he has given are true), he is *entitled* to have his name entered on the roll. Rule 1(8) provides: 'The names of persons who are entitled to have their names entered upon the roll of the parish shall, subject to the provisions of these rules, be from time to time added to the roll'. This paragraph of the rule continues: 'It shall be the duty of the electoral roll officer to keep the roll constantly up to date by the addition and removal of names as from time to time required by these rules ...'

So does this mean that the job of the electoral roll officer[23] (hereafter 'ERO') is wholly clerical (using that term in its broad sense)? Clearly, if the ERO knows that an applicant for enrolment is under 16, he should reject the application.[24] Likewise, if the ERO knows that the applicant is not baptised. However, there are likely to be few cases where an ERO will know personally whether or not an applicant has been baptised and, if the applicant declares himself to be baptised (as required by the application form), it would be a bold ERO who challenged the declaration and required him to produce a baptism certificate to prove his entitlement to enrolment.

What, though, of the requirements of church membership, and of residence or habitual worship in the parish? 'Membership' is not defined in the rules.

[21] The prescribed form, as set out in CRR, App I, s 1, is obtainable from Church House Publishing as form SG1. The prescribed 'Notes' are set out on the back, together with a note explaining the purpose of the electoral roll.

[22] As well as providing his full name and address, the form requires the applicant for enrolment to declare that he is baptised and aged 16 or over (alternatively, to state the date during the next 12 months when he will become 16), and to make one of the three declarations set out in r 1(2)(a), (b) and (c).

[23] The electoral roll officer is the person the PCC is required to appoint 'to act under its direction for the purpose of carrying out its functions with regard to the electoral roll': r 1(7).

[24] Subject to the proviso in r 1(2) whereby a person shortly to become 16 may be enrolled with effect from the date of his birthday.

As Hill points out,[25] neither baptism nor habitual worship can be the test as these terms appear elsewhere in the rule.[26] Nor can it mean a person whose name is on the electoral roll, since the matter would then be circular. It appears, suggests Hill, 'to be a self-defining concept'. This is certainly true with regard to rule 1(2)(c), which requires an applicant relying on that paragraph to be 'prepared to declare himself to be a member of the Church of England'. But, happily for EROs, they do not have to wrestle with this concept: if the applicant has made the requisite declaration, he is 'entitled' to be enrolled.

'HABITUAL' ATTENDANCE AT PUBLIC WORSHIP

It is unlikely that a person will declare himself to be resident in the parish if that is not the case.[27] But what of the alternative qualification of 'habitual' attendance at public worship in the parish? How often must a person attend church to be able to say that he has 'habitually attended public worship in the parish during a period of six months prior to enrolment'? Once a week? Once a month? And if he is only a very occasional church attender but, when he does attend, attends that church 'out of habit', does that qualify?

'Actual communicant' is defined in the CRR,[28] but 'habitual' attendance is not. The Chambers Dictionary[29] defines 'habitual' as 'customary; usual; confirmed by habit'. In the New Penguin English Dictionary[30] 'habitual' is defined as 'having the nature of a habit' or 'by force of habit' or 'in accordance with habit, customary'. Does this mean that a person who says that he is in the habit of attending communion at a particular church at Christmas and Easter can claim the right to be entered on its electoral roll? If, on the basis of such attendance, he declares himself to be an habitual attender, the answer would seem to be 'yes'.[31] But, it is submitted, this

[25] Hill, *Ecclesiastical Law*, para 3.04.

[26] In effect, baptism constitutes entry into the universal Christian church family, rather than membership of a particular Church. Cf the words used by the minister after baptising a child: 'We receive this Child into the congregation of Christ's flock' (*Book of Common Prayer*) or 'May God, who has received you by baptism into his Church ...' (*Common Worship*). This is emphasised by the subsequent words of welcome spoken by the congregation: 'We welcome you into the fellowship of faith; we are children of the same heavenly Father; we welcome you.' Likewise, confirmation does not make the candidate a member of the Church of England: rather it is the service in which those who are baptised have their Christian faith confirmed by the laying on of hands by the bishop, and are commissioned, *inter alia*, to serve Christ and proclaim his gospel.

[27] He may, of course, be unaware of the parochial boundaries. Confusion may arise where the boundaries of the ecclesiastical parish are not coincidental with those of the civil parish.

[28] The obligation is not very onerous: see n 32 below.

[29] *The Chambers Dictionary* (9th edn, Chambers Harrap Publishers Ltd, 2003) p 665.

[30] *New Penguin English Dictionary* (Penguin Books, 2000) p 625.

[31] Cf CRR, r 6(3)(c), whereby a clerk in Holy Orders, not resident in the parish and not beneficed or licensed to any other parish, is entitled to attend the APCM and take part in its proceedings if 'the parochial church council with the concurrence

cannot be what the rule envisages when referring to habitual attendance '*during* a period of six months prior to enrolment'. This is more consonant with frequent (and regular[32]) attendance over that period, such as one would expect of someone wanting to regard himself as a true member of that particular church.[33] Yet, it would seem, it is not open to the ERO to decline to enter a person's name on the roll because he (the ERO) does not regard him as an habitual attender: if the applicant has made the appropriate declaration, it is the ERO's duty to add his name to the roll. Perhaps this is sensible, otherwise there could be invidious arguments in the parish over whether a person qualified for enrolment. And, although in other areas of law the word 'habitual' has been considered by the courts,[34] the vast majority of EROs will not be lawyers and cannot be expected to apply a legal test.

of the minister has declared him to be an habitual worshipper in the parish.' The clergy, it would appear, are not to be trusted to self-certify!

[32] Cf Canon B 15, para 1, which states that it is 'the duty of all who have been confirmed to receive the Holy Communion regularly, and especially at the festivals of Christmas, Easter and Whitsun or Pentecost.' Being a communicant, however, is to be distinguished from being an habitual attender at public worship. This is clear from the provisions in the CRR that require a lay representative on a PCC, deanery synod, diocesan synod or General Synod to be 'an actual communicant as defined in rule 54(1)' as well as having his name on the electoral roll. Rule 54(1) defines actual communicant as 'a person who has received communion according to the use of the Church of England or of a Church in communion with the Church of England at least three times during the twelve months preceding the date of his election or appointment being a person whose name is on the roll of a parish'.

[33] But if a person lives in the parish and is otherwise qualified for enrolment, he is entitled to be enrolled even if he never attends the church for worship. The Bridge Report, *Synodical Government in the Church of England: A Review*, GS 1252 (Church House Publishing, 1997) had sympathy with but rejected suggestions that eligibility for enrolment should be amended to require some defined level of commitment to the local church: see paras 4.5 to 4.10.

[34] Eg whether a person was 'an habitual drunkard' so as to enable a magistrates' court to make a matrimonial order against him in favour of the other spouse to a marriage: see the Matrimonial Proceedings (Magistrates' Courts) Act 1960, ss 1(1)(f), 16(1), considered in *Hall v Hall* [1962] 2 All ER 129, [1962] 1 WLR 478, and *Hall v Hall* [1962] 3 All ER 518, [1962] 1 WLR 1246, CA. In *Re S (A Minor) (Custody: Habitual Residence)* [1998] AC 750, [1997] 4 All ER 251, HL, the issue was whether a child was 'habitually resident in England and Wales' within the meaning of the Family Law Act 1986, s 3(1)(a), so as to confer jurisdiction on the English High Court to make an interim care order. More recently, in *Mark v Mark* [2006] 1 AC 98, [2005] 3 All ER 912, HL, a case concerned with whether the English court had jurisdiction to entertain a wife's divorce petition, Baroness Hale of Richmond said that while a person can have only one domicile, 'habitual residence may have a different meaning in different statutes according to their context and purpose' (at p 106 and at p 920). In an ecclesiastical law context, Hylton-Foster Ch, in ruling that a tabernacle on the communion table was an illegal ornament, referred to the fact that the sacred elements were previously reserved in an aumbry in the north wall, but that since the installation of the tabernacle 'it has been habitually used for reservation in place of the aumbry': *Re St Mary, Tyne Dock* [1954] P 369 at 375, [1954] 2 All ER 339 at 342, Durham Cons Ct. From the author's research, the phrase 'habitually attend' appears to have been used in only one reported case, namely *Dockers' Labour Club and Institute Ltd v Race Relations Board* [1976] AC 285, [1974] 3 All ER 592, HL. The issue there was whether the appellant club had unlawfully refused to sell drinks to a member of another club, and thus an associate member, on the ground of his colour. This depended on whether associate members

There is, however, a difficulty. CRR, rule 1(8), requires the ERO to both add and remove names from the roll 'as from time to time required by these rules'. Rule 1(9) specifies the circumstances in which a person's name is to be removed. Apart from the obvious case of a person having died, they include where the person:

(d) ceases to reside in the parish,[35] unless after so ceasing he continues, in any period of six months, habitually to attend public worship in the parish, unless prevented from doing so by illness or other sufficient cause; or
(e) is not resident in the parish and has not habitually attended public worship in the parish during the preceding six months, not having been prevented from doing so by illness or other sufficient cause; or
(f) was not entitled to have his name entered on the roll at the time it was entered.

Thus, although self-declaration that an applicant for enrolment is an habitual worshipper is sufficient to entitle him to have his name *added* to the roll, unless he resides or continues to reside in the parish, his name must[36] be removed if he does not in fact habitually attend public worship in the parish. Where a person, previously resident in the parish, has moved away, para (d) makes clear that whether he continues to qualify to have his name on the roll is to be determined after a period of six months has elapsed following his removal. However, if the person was not resident in the parish at the time of enrolment and has not habitually attended public worship in the parish 'during the preceding six months', his name is to be removed: para (e). Paragraph (e) does not restrict the assessment to a period of six months *after* enrolment. Accordingly, the nonsensical situation could arise whereby a person who has not attended public worship in the parish for the last six months, is nonetheless entitled to have his name added to the roll by virtue of declaring that he is such an habitual worshipper resulting in the ERO being obliged to add his name to the roll (rule 1(8)), but he must then immediately remove it in compliance with rule 1(9)(e).[37]

were 'a section of the public' within the meaning of the Race Relations Act 1968, s 2(1). In holding they were not, Lord Reid added: 'I would reserve my opinion about a case when so many non-members habitually attend that the club loses its character of a private meeting place' (at 292 and at 595).

[35] Where a person's name is removed from the roll under this paragraph, CRR, r 3(2), states that 'notice of that fact shall, wherever possible' be sent by the PCC to the PCC of the parish where the person is now resident. It is questionable to what extent this provision, with its obvious concern for pastoral continuity, is observed in practice.

[36] Note the wording of r 1(9): '... a person's name *shall*, as the occasion arises, be removed from the roll'.

[37] Such a person would not fall to have his name removed under r 1(9)(f) since, having made the required declaration, he was 'entitled to have his name entered on the roll at the time when it was entered'.

Paragraphs (d) and (e) also give some insight into what is meant by habitual attendance at public worship. By excluding from consideration any time when the person is prevented from attendance 'by illness or other sufficient cause', it is implicit, it is suggested, that attendance otherwise is to be both regular and frequent. Such attendance would, of course, be in accordance with New Testament principle.[38] The words 'sufficient cause' indicate that attendance at worship should be a priority and that excuses for non-attendance should be objectively assessed. This does not, unfortunately, provide a clear and straightforward test for EROs to apply when deciding whether a person's name should be removed from the roll. It is suggested that attendance at least once a month[39] (unless prevented by illness or other sufficient cause) should be expected from a person who desires to keep his name on the roll.[40]

APPEALS

The CRR give wide rights of appeal in respect of the electoral roll, not restricted to a person who considers his name has been wrongly rejected for enrolment or wrongly removed. Rule 43(1) provides:

> There shall be a right of appeal with regard to —
> (a) any enrolment, or refusal of enrolment, on the roll of a parish or the registers of lay or clerical electors.[41]
> (b) the removal of any name, or the refusal to remove any name, from the roll of a parish or the registers of lay or clerical electors.

Rule 43(2) sets out the persons who have a right of appeal under the rule:

> (a) a person who is refused enrolment on the roll or register;
> (b) a person whose name is removed from the roll or register; or
> (c) any person whose name is entered on the roll or register who wishes to object to the enrolment or removal of the name of any other person on that roll or register.

[38] 'Let us not give up meeting together, as some are in the habit of doing': Hebrews 10 : 25 (*New International Version*). The regular meeting together for worship of Christ's faithful people is also a powerful witness to the gospel and a means of church growth: Acts 2 : 44–47.

[39] Some relaxation might be required for a small rural parish with only infrequent services.

[40] It is of interest to note that non-resident couples wishing to marry at St Mary's Church, Orchardleigh, in Somerset (a church romantically set on an island in the grounds of Orchardleigh House, recently refurbished as a wedding reception venue), many of whom live a long distance away, make the effort to attend worship once a month for six months so as to entitle them to be enrolled and thus have their banns read and be married in the church. Often they comprise the majority of the congregation. Orchardleigh Church featured in the BBC2 programme *A Passion for Churches* on 8 February 2006, when it emerged that the church will host no fewer than 65 weddings in 2006. The new rector, initially concerned at feeling 'swamped', now sees the weddings as a pastoral opportunity.

[41] The 'electoral college' for the purposes of elections to the diocesan synod or General Synod (see p 439 above).

Notice of appeal must be given not later than fourteen days[42] after the date of notification of the enrolment, removal or refusal, or not later than fourteen days after the last date of publication of a new roll or of a list of additions or removals from the roll.[43] Where the appeal concerns the electoral roll, notice of the appeal has to be given in writing to the lay chairman of the deanery synod: rule 43(3). Unless the appeal is withdrawn, it must then be referred within fourteen days to the bishop's council.

The appeal is decided by a panel of three or more (provided it is an odd number) lay members of the bishop's council, appointed by the council: rule 43(5). The rules do not stipulate a time limit for the determination of any such appeal but, it is submitted, any such appeal should be decided promptly in view of the rights that enrolment confers and the fact that a disputed election result may depend on the outcome. There is no requirement for grounds of appeal to be given, but clearly the appellant must put forward the details of his case. Nor do the rules provide for notice of the appeal to be given to any opposite party, or who is to be a respondent. In deciding the appeal, the panel is to 'consider all the relevant circumstances and shall be entitled to inspect all documents and papers relating to the subject matter of the appeal and be furnished with all information respecting the same which they may require': rule 45(a).[44] This suggests a quasi-inquisitorial role. However, rule 45(b) provides that the panel 'shall give the parties to the appeal an opportunity of appearing before them in person or through a legal or other representative'.[45] Of necessity, therefore, the opposite party must be given notice. The rules do not state that the parties can call witnesses, but it is submitted that if there is a disputed issue of fact (for example as to whether a party did or did not attend church on certain occasions) as opposed to, say, an argument as to whether agreed attendance amounts to habitual attendance, this should be allowed.

[42] The panel appointed to decide the appeal may extend the time for giving notice: CRR, r 45(c). It follows that the lay chairman of the deanery synod should refer any notice of appeal he receives to the bishop's council and cannot summarily reject one that appears to be out of time.

[43] CRR, r 43(4). Rule 2(3) requires such publication (by exhibition on or near the principal door of the parish church) for a period of not less than fourteen days before the APCM.

[44] CRR, r 45(a). This was also the wording of the former rule: Representation of the Laity Measure 1929, Schedule, r 18(4)).

[45] Regardless of this provision, it could be argued that the panel would be obliged, in any event, to afford the parties the right to a hearing, in compliance with Article 6 of the European Convention on Human Rights, as scheduled to the Human Rights Act 1998: 'In the determination of his civil rights ... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.' Arguably, the fundamental right to be able to take part in the church's democratic processes is a 'civil right' within the article. It would follow that the parties (or one of them) could insist on a public hearing. It is suggested that Article 6 rights apply in such circumstances notwithstanding that in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2003] UKHL 37, [2004] 1 AC 546, [2003] 3 All ER 1213, the House of Lords held that a PCC is not a 'public authority' for the purposes of the Human Rights Act 1998, s 6.

In some cases, it will be obvious who is to be the other party. For example, if the appeal is against an ERO's refusal to remove someone's name from the roll, plainly that person must be a respondent. But what of the ERO? It is his decision that is under challenge. Should he be allowed to appear or make representations to defend it? Fairness suggests he should be able to, but the rules provide no answer.[46] Or, since the ERO acts under the direction of the PCC, is it the PCC who should be the respondent? The rules do, however, empower the panel to award costs to any party, to be paid 'by any other party to the appeal or by the diocesan board of finance': rule 45(f).

A case in the 1930s, *Stuart v Haughley Parochial Church Council*,[47] illustrates the working of the appeal provisions in practice and how a dispute may arise from a lack of understanding of the rules regarding entitlement to enrolment, or the adoption of an entrenched position by one side. The relevant provisions, which in many respects were in similar terms to those in the current CRR, were contained in Rules for the Representation of the Laity in the Schedule to the Representation of the Laity Measure 1929. As with the CRR, the primary obligation to keep and revise the roll was that of the PCC.[48] Prior to 1932 Edmund Stuart's name was on the electoral roll of the parish of Haughley, a village in Suffolk about three miles from Stowmarket. However, at the annual revision in January 1932 the PCC removed his name from the roll. He, and nine other people whose names had been removed, appealed. The secretary of the lay electoral commission[49] wrote to the PCC secretary asking for the council's reasons for removing their names. He added: 'You are doubtless aware that it is very difficult when names are once on the roll to remove them so long as those to whom the names belong still remain in the parish.'[50] After some prevarication, the PCC secretary wrote reporting a resolution passed at a meeting of the PCC 'that the names of the ten persons removed from the electoral roll at the last revision neither attend worship or support the parish church, and that any further correspondence will not be entered into

[46] See, however, the discussion below of the case of *Stuart v Haughley Parochial Church Council*. Cf the position of a planning inspector, appointed by the minister to decide an appeal against the refusal of planning permission by the local planning authority, whose decision to dismiss the appeal is challenged by the developer in the High Court under the Town and Country Planning Act 1990 s 288. In such a case, RSC Ord 94, r 2(2)(d) (as scheduled to the Civil Procedure Rules 1998) requires the claim form to be served on both the minister and the authority. Both may appear to defend the decision, though in practice the local authority usually leaves it to the minister. Indeed, if the authority appears as well, it will generally have to bear its own costs: see the principles set out in *Bolton Metropolitan District Council v Secretary of State for the Environment* [1996] 1 All ER 184, [1995] 1 WLR 1176, HL.

[47] *Stuart v Haughley Parochial Church Council* [1935] Ch 452 (Bennett J); [1936] Ch 32, CA.

[48] The ERO acts under its direction: see n 23 above.

[49] This was the body constituted by the diocesan conference to decide such appeals: Rules for the Representation of the Laity, r 18(3). Cf now the *ad hoc* panel appointed under CRR, r 43(5).

[50] From this it is to be inferred (though it is not stated in the two law reports) that those whose names had been removed were all resident in the parish.

by the PCC.' If the ten people still resided in the parish, this was not a good reason for the removal.[51] Two weeks later the lay electoral commission met and, having considered the PCC's response, decided that it could see no reason for removing the names of the appellants. The PCC secretary was so informed, the letter adding:

> If you feel it desirable that these names should be removed from the roll the best course of action is to see the people concerned and get their consent to the removal of their names or else you must produce conclusive evidence that they are members of a religious body not in communion with the Church of England. If you are not prepared to do this please reinstate all the names at once and let me have a certificate to the effect that this has been done.

Notwithstanding the subsequent intervention of the diocesan bishop, the PCC refused to reinstate the names, so the bishop appointed the rural dean to give effect to the commission's decision.[52] In September 1932 the rural dean posted a supplementary roll containing the appellants' names on the church door, but within two days someone unknown took it down. At the annual revision in January 1933 Mr Stuart's name was not restored to the roll. He attended the APCM but was told that he had no right to be there. Exercising commendable restraint, he then waited until the 1934 APCM and again went to the meeting, intending to exercise his right to take part. He was met by one or two stewards and a police constable, for whose presence it appeared that the vicar was responsible, and told he was not on the roll. Following this, he commenced an action in the High Court for a declaration that he was entitled to have his name reinstated on the roll, for an order directing the PCC and/or its present secretary to reinstate his name, and for an injunction restraining the PCC, its secretary and the vicar from interfering with his right to attend and vote at church parochial meetings or exercising any other rights and privileges vested in him as a person whose name was entered on the roll.

At the trial, at which both sides were represented by leading and junior counsel, the defendants claimed that the appeal had not been considered or determined, that the lay electoral commission had disregarded the rules of natural justice by not giving them an opportunity to state their case orally, and that the plaintiff's true remedy was to ask for a writ of mandamus in the King's Bench Division[53] instructing the commission to hear the appeal. Bennett J gave these arguments short shrift. He had no doubt that the commission had decided the appeal and that it had acted properly and in good faith. He said (p 462):

[51] See n 33 above.
[52] Cf CRR r 53(1)(b) which empowers the bishop 'to appoint a person to do any act in respect of which there has been any neglect or default on the part of any person or body charged with any duty under these rules.'
[53] Mr Stuart had brought his action in the Chancery Division.

> The lay electoral commission is a statutory body, a body of laymen, and the powers of a court of law to interfere with the decisions of a body of that kind are distinctly limited, and, as Maugham J decided in *Maclean v The Workers' Union*,[54] the Court has no jurisdiction to vary or set aside the decision of such a tribunal if in giving the decision the tribunal has acted honestly.

The judge ordered the PCC and the vicar to pay Mr Stuart's costs. Unperturbed, the defendants appealed. In giving the only reasoned judgment dismissing the appeal, Lord Hanworth MR[55] was particularly critical of the vicar:

> I cannot help thinking that if he had exercised his influence in favour of obeying the direction of the Bishop rather than in contending that the plaintiff was not entitled to be present a happy ending might have been reached in this unfortunate dispute.[56]

It is to be hoped that this is an isolated case.[57] However, the Court of Appeal decision does serve to determine two matters. First, Lord Hanworth MR said that it was the duty of the PCC 'to prove as a fact that those persons whom the parochial church council had taken off had ceased to be entitled to be upon the roll of the parish'.[58] This indicates that the burden of proof, in a 'removal' case, is on the ERO (or PCC) to justify the removal. Given the power of an appeal panel to award costs, an ERO, before removing a person's name from the roll, needs to consider carefully whether the ground for removal relied upon under CRR, rule 1(9), is established. Second, the decision of a duly appointed lay panel is final and the court will not interfere if the panel has acted *bona fide*: '... [the commission] is rightly entrusted with the powers of exercising its jurisdiction, and it is not subject to scrutiny or to being overruled by some other body who may wish that it had acted differently'.[59] It is submitted that if there is to be a direct challenge to the decision of an appeal panel[60], this must be by way

[54] *Maclean v The Workers' Union* [1929] 1 Ch 602.
[55] The other appeal judges, who concurred, were Romer and Maugham LJJ.
[56] *Stuart v Haughley Parochial Church Council* [1936] Ch 32, CA, at pp 40-41. Despite these comments, the vicar remained unrepentant. Over twenty years later he was still arguing in the church magazine that the bishop had acted 'dishonestly' in drawing up and signing the supplementary electoral roll, which he had then 'ordered' the rural dean to affix to the church door, and that 'Perjury deceived the Judge': *In the Cause of Truth* – the Magazine of the Church of St Mary, Haughley, 17 April 1956, p 6. (The Author is grateful to the Revd Canon Deirdre Parmenter, the present Rector of Haughley with Wetherden and Stowupland for providing a copy of this magazine.)
[57] It is the only case that the author has found in the Law Reports.
[58] Ibid, p 36.
[59] Ibid, p 39. Under the present rules, however, a panel would now be required to offer the parties an oral hearing: CRR, r 45(b). See also n 45 above.
[60] As opposed (as in *Stuart v Haughley Parochial Church Council*) to an action to enforce rights already established.

of an application for judicial review, with the concomitant protection for the respondent in the requirements for the applicant to act promptly and to show an arguable case if he is to obtain leave to proceed.[61]

A NEW ROLL

Before the APCM in 2007 every parish will have to prepare a completely new roll: CRR, rule 2(4) as amended by the 2004 Amendment Resolution, para 1(a).[62] The PCC is to take 'reasonable steps' to inform everyone on the previous roll that a new roll is being prepared and that if he wishes to have his name on the new roll he must apply for enrolment.[63] It is suggested that at a minimum this should involve a letter, accompanied by an application form, to all those on the old roll. Many parishes go further and see this as an ideal opportunity for mission. A person whose name was on the old roll is not to be disqualified from enrolment on the new roll by reason only of his failure to comply with the condition in rule 1(2)(b) or (c) concerning habitual attendance at public worship where that is due to illness or other sufficient cause: rule 2(6). The person must state the circumstances on the form and the notes on the back of the published form SG1 (which are part of the prescribed form)[64] give guidance as to how the form should be completed in such a case.

CONCLUSION

This article has demonstrated that aspects of the CRR with regard to the electoral roll are obscure and could benefit from revisiting when the rules next come to be amended by General Synod.[65] Meanwhile, the Church should be grateful that there are thousands of lay people in the parishes willing to take on the duties entailed in being an ERO. The 2007 renewal will provide an opportunity for the parishes to check who their 'real' members are, so that dioceses may know the true number of those 'wishing

[61] That the secular courts will intervene in an appropriate case was emphasised by the recent decision of the House of Lords in *Percy v Board of National Mission of Scotland* [2005] UKHL 73, [2006] 2 WLR 353. See the article by Frank Cranmer and Scot Peterson on p 392 of this Issue and in particular the comments of Baroness Hale quoted on p 398.

[62] The amendment substituted '2007' for '1990' in CRR, r 2(4). Under that rule, before amendment, a new roll was to be prepared 'in the year 1990 and every succeeding sixth year'. The effect of the amendment is to bring forward by one year the date for preparation of the next new roll. The purpose of the amendment is to ensure that at least every other round of the triennial elections to deanery synods (next due in 2008) will take place on the basis of up-to-date electoral rolls. See the Revision Committee Report, GS 1484-7Y, paras 79-82, and the General Synod *Report of Proceedings*, Vol 35, No 1, p 76 (10 February 2004).

[63] This obligation does not apply with respect to any person whose name could be removed from the previous roll under r 1(9).

[64] See n 21 above.

[65] The opportunity could also be taken to correct the numerous errors in the statutory text highlighted in the footnotes to the 2006 edition of the Rules published by Church House Publishing (see n 2 above).

to be in touch with the Church as a whole and to play a part in decision-making'.[66] In all this, the 'essential role' of a PCC to 'promote the mission of the Church'[67] should never be forgotten.

[66] An extract from the note 'What is the Church Electoral Roll?' printed on the back of form SG1.
[67] *Aston Cantlow and Wilmcote with Billesley PCC v Wallbank* [2004] 1 AC 546 at 555, [2003] 3 All ER 1213 at 1219, HL, per Lord Nicholls of Birkenhead.