

Clergy Discipline

Background

The purpose of this paper is to explain the arrangements for clergy discipline. A helpful summary with all the relevant legislation, guidance and forms can be downloaded from the General Synod website:

<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline>

Meanwhile, the Convocations (the Houses of Clergy of the General Synod) produced *Guidelines for Professional Conduct*, which provide some guidance to "best practice". These can be found at

<https://www.churchofengland.org/more/policy-and-thinking/guidelines-professional-conduct-clergy>

The Clergy Discipline Process

The Measure, Rules and Code set out structures and a formal process, which apply to all disciplinary cases, in place of the previous (often informal) arrangements. All clergy are subject to this disciplinary regime (not only those who hold 'freehold' office), and no informal disciplinary procedures are now permitted.

Structures

There is a national Clergy Discipline Commission, with 12 members (Measure, s.3), which gives general guidance and oversees the working of the new regime. In those cases which have to be referred to a tribunal, the President of Tribunals (Lord Justice Andrew McFarlane, or his Deputy, Sir Mark Hedley) will appoint a chair, for the relevant tribunal (Measure, s.22(1)(a)).

The bishop's role is central (Measure, s.1); he or she determines how cases should be dealt with in the light of the Registrar's report and may be invited to advise the tribunal as to suitable censure. However, they must take care to observe appropriate boundaries due to their judicial role (Code, paras 17, 90-102).

The "bishop's disciplinary tribunal" (Measure, s.2) hears serious cases; it does not include any members drawn from the relevant diocese, in order to avoid prejudice or undue influence (Measure, s.22(1)(b) and (c)).

Steps to be taken

Complaints must be:

- Brought normally within twelve months of the occurrence of the alleged misconduct, save in the case of abuse of children or vulnerable adults (Measure, s.9)
- Brought by someone who has a 'proper interest' in doing so (Measure, s.10(1); Code paras 30-35)
- Laid before the bishop (Measure, s.10(2); Rule 4; Code paras 48-51); and
- Supported by written particulars and written evidence (Measure, s.10(3); Code paras 40-47)
- See generally, Rules 4-8, and Form 1a (at end of Rules)

If there are other criminal, matrimonial or capability proceedings under way, the usual period of one

year is extended until 28 days after the outcome of these proceedings is made known (Rule 19).

At this preliminary stage, the respondent (the person against whom the complaint has been made) does not need to submit any formal answer (Rule 10(1)(c); Code, para 74). The diocesan registrar is to investigate in the first instance, and report to the bishop within 28 days (as to the status of the complainant and as to the substance of the complaint) (Measure, s.11(2); Rules 11-14; Code, paras 77-89).

Within 28 days of receiving the registrar's report, the bishop may dismiss the complaint, subject to appeal by the complainant to the President of Tribunals (Measure, s.11(3) and (4); Rule 15; Code paras 103-106). If he or she does not dismiss the complaint, the bishop requires the respondent to submit an answer to the complaint, within 21 days (Rule 17(1)(d), using Form 2; Code paras 110-112)

The bishop then has a series of possible ways forward. See Rules 20-28; Code paras 113-162. He or she may:

- Take no further action (subject to appeal by complainant)
- Direct conditional deferment
- Direct a conciliation process
- Impose a penalty by consent
- Direct formal investigation

If the respondent decides to resign, a 7-day 'cooling-off' period is imposed before the resignation takes effect (Measure, s.16(2); Rule 27(5); Code para 158). The bishop may suspend the respondent from some or all rights and functions of office (Measure, s.36; Rules 60-66; Forms 12,13; Code paras 216-230). Any formal investigation is undertaken by the "Designated Officer" a member of the central legal team at Church House, Westminster; he submits his report to the President of Tribunals (Measure, s.17(1); Rules 28, 29; Code paras 176-185).

If the President considers the matter should be brought before a disciplinary tribunal, the Designated Officer prosecutes the case, and there

is a right of appeal to the Court of Arches (Measure, s.20(1); Code 233-235). Hearings will normally be held in private; but may be in public, if the respondent requests or the interests of justice require (Measure, s.18(3); Rule 40; Code paras 196,197). The standard of proof is 'civil' (balance of probabilities) not 'criminal' (beyond reasonable doubt), but the more serious the complaint, the more weighty the evidence that will be needed to prove the case (Measure, s.18(3)).

Penalties that may be imposed comprise (Measure, s.24(1)):

- Prohibition for life (Code, para 204)
- Limited prohibition (Code, para 205)
- Removal from office (Code, para 206)
- Revocation of licence (Code, para 207)
- Injunction (Code, para 208)
- Rebuke (Code, para 209)
- Conditional Discharge (Code, para 210)

Misconduct

The Measure does not define misconduct except in the most general terms (Measure, s.8):

- Acts or defaults
- Neglect or inefficiency
- Conduct unbecoming or inappropriate

The Code of Practice (paras 22-29) gives some explanation and raises the possibility that the same issues may give rise to 'capability' proceedings (under the Clergy Terms of Service proposals). This is one of the areas in which the Convocations' Guidelines has particular relevance.

Archbishops' List

S.38 provides for a statutory register to be compiled, listing:

- Those on whom statutory penalties have been imposed under the present or previous legislation

- Those who have resigned following a formal complaint
- Those who "in the opinion of the Archbishops have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment"
- Those who have relinquished their Orders as Anglican clergy

Before any name is included on the List, the individual is given the opportunity to make representations. The Archbishops are required to review the Register after a name has been included for five years (Measure, s.38; Rules 74-80)

Removing effects of prohibition for life and deposition

In line with theological understandings of the 'indelibility of orders', lifetime prohibition, and deposition (under the old regime) is reversible (Measure, ss.26, 27; Rules 97-100; Code paras 246-252).

For further information, please contact:



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