

Ad Clerum 1.4

COMPLAINTS PROCEDURE

INTRODUCTION

The Clergy Discipline Measure 2003 ('the Measure') and its associated Code of Practice ('the Code') and the Clergy Discipline Rules 2005 ('the Rules') are now in force and operate a procedure for dealing with complaints against Clergy for matters relating to conduct and behaviour. The Measure applies equally to all those in Holy Orders within the Church of England notwithstanding their position within the hierarchy of the Church.

Complaints to do with issues of rituals, doctrine or ceremony are still dealt with under the provisions of the Ecclesiastical Jurisdiction Measure 1963.

Overview

The attached flowchart shows how the Measure works.

Preliminary stages

To start the formal procedure under the Measure, there needs to be a full written complaint made within one year of the alleged incident and made against a clerk in Holy Orders. The complaint must fall generally within one of four grounds of misconduct:

- there has been a breach of ecclesiastical law
- there has been a failure to do something which ought to have been done under ecclesiastical law
- the clergy person has neglected to perform, or been inefficient in performing, duties of his or her office
- the clergy person has engaged in conduct that is unbecoming or inappropriate to the office and work of the clergy, but no complaint may be made about the lawful political opinions or activities of a respondent (such as taking part in peaceful public marches or protests).

Upon receipt of a complaint from a PCC, churchwarden or another person with a proper interest the Diocesan Bishop has to refer the complaint to the Diocesan Registrar to perform a preliminary scrutiny of the complaint. This scrutiny is designed to ascertain whether the person complaining has the standing to do so and if the complaint has sufficient substance in it to justify proceeding. Further, the scrutiny is not intended to be an 'in depth' enquiry and is likely to be desk and telephone based.

The Diocesan Registrar must complete his work within 28 days of receiving the complaint from the Diocesan Bishop and must forward to the Bishop a copy of the conclusions.

Second stage

The Bishop then has four choices as indicated in the flowchart. Three out of the four choices leads to the dismissal of the complaint. The fourth is where the Bishop considers the complaint alleges conduct that could constitute an ecclesiastical offence.

Once the Bishop considers that the allegation may have sufficient foundation, he can at that stage decide to suspend the clergy person for up to three months from any aspect or the entirety of his or her ministry. This decision will only be taken after careful consideration and after the Bishop has consulted the clergy person unless the matter is particularly urgent. Consequently, without the Bishop's permission, a suspended priest would not normally be able to attend any church functions or PCC meetings, vote in any elections to the diocesan synod, exercise powers of patronage, or perform any deanery duties if appointed as a rural dean or area dean. Suspension does not, however, affect the right to housing or receipt of a stipend.

At the same time as considering whether to suspend, the Bishop will ask the clergy person to provide a written response to the complaint. There is a set form for this reply.

Third stage

Upon receipt of the clergy person's response, the Bishop then has to decide which of the five available courses to take. Naturally the option to be taken will depend on the particular circumstances of each matter but the penalties or other courses of action available to a bishop reflect the differing seriousness of allegations.

The Measure presents the Bishop with novel options together with courses of action previously available under the old regime. The novel courses of action are conditional deferments and conciliation. In the case of the former, if a complaint is admitted or shown to be proved, the Bishop can decide not to impose a more serious penalty at that stage but the complaint will remain on the cleric's personal record file for a further period of up to five years. If a subsequent allegation is made, the one on the record can then fall to be considered as well and may well affect any subsequent penalty. Conditional deferment can only be imposed with the consent of the clergy person concerned.

Conciliation reflects a practice that may already happen in some situations. Here the parties consent to discussing the complaint with the aid of a qualified conciliator to try and work out a middle path through the difficulties. It is therefore only appropriate in some situations where there does appear an opportunity for reconciliation. If it is not possible to agree a conciliation, the Bishop is able to impose any of the other penalties listed in the flowchart.

Where the Bishop considers it appropriate, especially if the complaint relates to a serious offence which is denied, he may refer the complaint to the Designated Officer for formal investigation. This is a precursor to a full trial of the complaint before a Disciplinary Tribunal.

The Designated Officer will make enquiries and may interview witnesses. Both the clergy person and the complainant have a duty to co-operate with the investigation.

Once the Designated Officer's report has been completed, it will be sent to the President of the Tribunal who will decide if the complaint has substance. If that is the case, all the parties will be notified. The matter will then proceed to a full hearing before a Tribunal made up of persons appointed by the President.

The complainant's case will be put forward by the Designated Officer, although he will be independent from the complainant and not be representing them. The clergy person is entitled to separate legal representation and legal aid is available for this.

The hearing will be conducted in accordance with principles of fairness and justice both to the complainant and the clergy person.

The Tribunal may reach a decision by a majority vote and it has the power to impose various penalties ranging from a rebuke to prohibition for life (it prevents the clergy person without limit of time from exercising any functions as a member of the clergy).

A clergy person has the right of appeal from a decision of the Tribunal on the penalty imposed or on a point of law or of fact. The Designated Officer may also appeal but only in relation to a question of law.

Archbishops' List

If a penalty is imposed, the clergy person will be placed on the Archbishops' List which replaces the informal Lambeth and Bishopthorpe registers that were kept under the Ecclesiastical Jurisdiction Measure 1963. Within 21 days of being included on the List, a clergy person will be informed of such and can request the President of Tribunals to review their inclusion. The President will inform the clergy person of his decision whether to keep them on the List or not. There is provision for a review of the List every five years where clergy have been included under certain categories.

Criminal convictions and matrimonial issues

If a criminal charge results in a conviction and a sentence of imprisonment (including a suspended sentence) the Bishop may remove that person from office or impose a prohibition order (either for life or for a limited period) without further proceedings within two years of the sentence of imprisonment becoming conclusive. There is still a discretion for the Bishop but he has to consult the President of the Tribunals to ascertain his views about the seriousness of the criminal charge and the matters relating to it. The Bishop will then make his decision and inform the clergy person. The clergy person then has a further period in which to make further representations about the proposed penalty, if applicable.

In the case of an acquittal following criminal proceedings, any complaint under the Measure alleging exactly the same matters as the criminal charge should not normally be proceeded with.

In cases where there are divorce proceedings or judicial separation and there are findings of adultery, unreasonable conduct or desertion by the clergy person, then the Bishop has a discretion to remove the clergy person from office or impose a prohibition order (either for life or for a limited period) without further proceedings. As with a criminal conviction, the Bishop must consult with the President of Tribunals to ascertain his views about the seriousness of the matrimonial conduct, as well as consulting with the former spouse. The Bishop will then make his decision. The clergy person then has a further period in which to make further representations about the proposed penalty, if applicable.

Conclusion

This note is only designed to give a very general overview of the procedures under the Measure and is not intended to be a comprehensive account of what the law is. Copies of the Measure and the Code of Practice can be obtained from the Office of Public Sector Information website and Church House Publishing respectively.

If a complaint is levelled against a clergy person on or after the 1 January 2006, that person ought, in the first instance, to speak to their archdeacon who will be able to offer some preliminary guidance. Due to the need under the Measure to ensure the processes are unbiased, it will not be possible for the Diocesan Registrar or Diocesan Bishop to offer either formal or informal advice or pastoral care to a clergy person who is the subject of a complaint. It will, however, be possible for the Registrar to offer very general advice and point clergy towards other lawyers with expertise in this field. Legal aid is available for this assistance.

It will take some time for everyone to get used to the new mindset and procedures created by the Measure. In due course, there will be further publications regarding particular aspects of the procedure to assist clergy. In the meantime, further advice should be obtained from the Diocesan Registrar.

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CLERGY DISCIPLINE FLOWCHART

