

ARCHBISHOPS' COUNCIL

TERMS OF SERVICE IMPLEMENTATION PANEL

**ILLUSTRATIVE MATERIAL IN SUPPORT OF THE
DRAFT ECCLESIASTICAL OFFICES
(TERMS OF SERVICE) REGULATIONS**

Introduction

1. The Terms of Service Panel has continued to carry out work on the illustrative material contained in GS1637-9X, which was brought to the Synod in February 2007. Revisions made by the Panel to the capability and grievance procedures include the following.
 - i. Giving the procedures the status of codes of practice in line with the disciplinary and grievance procedures for employees (see paragraphs 40 – 42 of the explanatory memorandum GS17260X);
 - ii. Some small textual changes to the procedures;
 - iii. Adding new material to the procedures (see below);
 - iv. Providing supplementary advice to support the procedures (which now includes some of the material previously contained in the procedures).
2. Most of the material in the original procedures has been retained, either in the procedures or the supplementary advice.

Capability Procedure attached as Annex 1

Changes to the procedure

3. It has been made clear that the person appointed by the bishop to run the capability procedure may not be a member of the capability panel.

New material in the procedure

4. It has been stated more clearly that removal from one office as the result of the capability procedure does not remove office holders from holy orders or disqualify them from holding subsequent office (paragraphs 6 and 7 of the procedure).
5. The steps of the procedure have been set out in more detail.

Supplementary advice attached as Annex 2

6. The material contained in this advice is intended to clarify and explain the procedure rather than forming part of it. The Synod will not be asked to approve this advice, and the Bishop is not legally required to have regard to it. However, there will be a general expectation that

it will be followed, and, if a case were referred to an Employment Tribunal, the Tribunal would expect to be given a reason why the advice had not been followed.

7. Some material originally in the procedure has now been expanded and transferred to the advice including the following.
 - The relationship between capability and ministerial development review (MDR) (paragraphs 13-21)
 - The relationship with the Clergy Discipline Measure (22-24)
 - Written records (31-35)
 - The right to be accompanied (56-63)
 - Sickness (65-71).
8. New material in the advice includes the following.
 - Pastoral support (28-30)
 - Alternative and probationary posts (46-55)
 - Temporary improvements (64)
 - A summary of the steps of the procedure (annex 1).

Grievance Procedure attached as Annex 3.

Changes to the procedure

9. The procedure now puts more emphasis on the prompt use of mediation (paragraph 3 and annex 2), which may help to resolve grievances before they become acute.

New material in the procedure

10. This includes the following:
 - An outline structure of the procedure (paragraph 5)
 - Emphasis on the need for care when bringing parties together (13)

Supplementary Advice attached as Annex 4

11. This material is largely new, and consists of sections on the following.
 - Recording and monitoring grievances within the diocese (paragraph 1)
 - Training (2-3)
 - Groups hearing stage three grievances (4)
 - The right to be accompanied (5)
 - Provision of pastoral support (6)
 - Resources (7)
12. The intention is that the Council will bring the procedures to the Synod for final approval in February 2010.

13. In the meantime, the Panel is happy to receive any further comments and suggestions on this material. Please send them to:

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June 2009

**CURRENT DRAFT CAPABILITY PROCEDURE FOR OFFICE HOLDERS ON
COMMON TENURE PROVIDED FOR ILLUSTRATION**

Revised April 2009

Approved by the General Synod []200-
Made (sealed by the Archbishops' Council) []200-
Coming into force []200-

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MEMBERSHIP OF PANELS

1. The authority of the procedure

1. This code of practice is issued by the Archbishops' Council under clause 8 of the Ecclesiastical Offices (Terms of Service) Measure 2009 and has been approved by the General Synod. Anyone dealing with issues of capability in relation to any office holder on Common Tenure must have regard to this code of practice.
2. This code of practice should be applied in accordance with advice issued by the Archbishops' Council on XXXXX 20[] available at www.cofe.org.uk *** and any advice or guidance issued subsequently.

1 INTRODUCTORY

2. The purpose of the capability procedure is improvement

3. The principal objective of a capability procedure is to help office holders who fall below an acceptable minimum standard to improve in cases where the problems are not disciplinary in nature. If an improvement in performance cannot be achieved through the capability procedure, there is a real possibility that the office holder will be removed from their current office as a last resort.
4. Capability is demonstrated by the execution of the duties of a particular office to an acceptable minimum standard over a sustained period of time. It is about both what an office holder does and how they do it.
5. In assessing what is an accepted minimum standard, the requirements of the post must be taken into account along with the more general requirements of the Canons, the Ordinal, and the Ecclesiastical Offices (Terms of Service) Measure and Regulations 200...
6. Lack of capability in one particular office does not necessarily mean that the office holder is not capable of exercising any ministerial function. Removal from one particular office on capability grounds does not remove a cleric from holy orders or disqualify him or her from being appointed to another office. The Ecclesiastical Offices (Terms of Service) Regulations 200... provide for clergy, who have been removed from one office on capability grounds to be appointed to another office on a probationary basis.
7. Except in the limited circumstances prescribed in Canon C8.2, clerics are unable to carry out any ministerial function unless the bishop has granted them a licence or permission to officiate. Before granting a licence or permission to officiate to a cleric who has been removed from office for incapability, or appointing them to another office, the bishop must satisfy himself that their new duties are demonstrably different in nature from those in their previous post or that there is some other good reason why the previous lack of capability is no longer an issue.

2 GENERAL

3. Basic principles

8. The procedure is based on the following principles:
- a) the procedure must not be used in response to complaints that are found to be frivolous or unsubstantiated;
 - b) the primary purpose of the procedure is to find a way of helping the office holder to improve an unsatisfactory performance;
 - c) the procedure must be carried out in a way that is fully in accord with the requirements of natural justice;
 - d) proper human resource advice must be taken at every stage;
 - e) the office holder must have full opportunity to respond to all points made;
 - f) a panel must be involved at every formal stage, not a single individual;
 - g) sufficient notice must be given in advance of any appearance before a panel;
 - h) the office holder must have the right to be supported by a trade union representative or a lay or ordained colleague;
 - i) sanctions may only be imposed if the office holder has not reached the specified level of improvement;
 - j) there must be a right of appeal at every formal stage;
 - k) meetings to resolve matters must be held as soon as reasonably possible after the issue has been raised and the evidence gathered, in order to minimise the level of anxiety experienced by those involved; and
 - l) the bishop must ensure that appropriate pastoral support and care is provided for office holders undergoing the procedure.
9. Lack of capability is one of the grounds for fair dismissal as far as employment tribunals are concerned. However, the decision to dismiss on this ground must never be the outcome of a single meeting, but only after a series of conversations that have:
- assessed the evidence
 - recorded dissatisfaction with performance;
 - provided evidence of opportunities given to improve and develop; and
 - noted where there was persistent failure to improve.

3 BEFORE INVOKING THE FORMAL PROCEDURE

4. The role of the appointed person

10. The provision of ministry within the diocese is the responsibility of the diocesan bishop, and the proper use of this procedure to address inadequate ministry falls within the scope of that responsibility. However, the bishop will usually find it helpful to appoint a suitably competent person ('the appointed person') to act on his behalf in these matters and oversee the capability procedure, particularly in the early stages. It should usually be the archdeacon unless the bishop has good reason for determining otherwise. Any report that appears to raise issues of capability must be referred initially to the appointed person. The appointed person may also raise the issue him or herself.

11. When the appointed person is made aware of a potential capability matter, he or she must ensure that appropriate investigations are made to establish whether there is a capability issue and that written records are kept for later reference.
12. The appointed person must not chair or be a member of the capability panels.
13. The appointed person must collect information about the issue(s). If the person reporting the alleged capability problem is not prepared to be put on record or participate in the procedure, the appointed person must not take the matter any further. If the matter concerns a parochial office holder and the person reporting it is not one of the churchwardens, the appointed person may discuss the matter with the churchwardens, and ensure that both the person reporting the issue and the office holder are informed about the results of the conversation. The procedure must not be taken further if the report that originated it is found to be vexatious or unsubstantiated.
14. The appointed person must consider any other information (which may include the results of ministerial development reviews) that helps to provide a picture of the alleged problems alongside the matters which prompted the original concerns or report. While some cases might be fairly clear-cut, others may be more difficult to discern, and might require a sustained accumulation of information. The incidents may be small in themselves, but may represent part of a cumulative and persistent pattern of behaviour or ways of doing things that prevents the person from fulfilling the requirements of the post.
15. Before deciding to implement the informal stage of the capability procedure, the appointed person must :
 - discuss the case with a human resource adviser;
 - review the role description and recent MDR records; and
 - check whether
 - there might be issues of gender or misunderstanding arising from cultural assumptions;
 - the office holder is simply in the wrong post for their particular talents;
 - the issue can be resolved in some other way than commencing the procedure, for example by a timely offer of help or advice;
 - the expectations set out in the role description and any recently set objectives are unclear or unrealistic.

5. Meeting with the office holder

16. If the appointed person decides to take the matter further, he or she, must consult the human resource adviser and arrange a meeting with the office holder; alerting him or her in advance to the concerns raised, and giving at least 10 days' notice of the meeting.
17. At the meeting, the appointed person must review the issues with the office holder. In assessing whether there is a capability issue, the appointed person should take account of the office holder's particular strengths and gifts, but should remember that the primary

issues will be the requirements of the post, and whether the post holder is meeting them to an acceptable standard.

18. One outcome may be that, after the facts have been gathered and considered, a complaint or concern is found to be unjustified or trivial. It may also prove to have been a one-off occasion, and thus not a capability problem. Another outcome may be that the expectations surrounding the role and the office holder are found to be unrealistic. In this situation the appointed officer must examine the role description, in order to check whether it is realistic or whether it needs revision in the light of changing circumstances.
19. If there is a capability issue, the appointed person must:
 - indicate a commitment to identifying and overcoming shortcomings in the office holder's performance and a willingness to help with remedial measures;
 - explore with the office holder any contributory factors (such as domestic circumstances);
 - explore what can be offered to the office holder to assist in improving performance (see the section on helping to improve performance below);
 - seek to agree with the office holder a form of action to improve performance; and
 - set a date for reviewing progress.
20. If the matter is the result of reports from others, the appointed person must inform them that action is being taken, that improvement is expected, and that they will be asked to comment on this at a later stage. If no further action is required, the appointed person must inform the office holder and those who raised the problem in writing that no further action will be taken.

6. Helping to improve performance

21. Ways of helping an office holder improve their performance include:
 - Coaching
 - Training
 - Counselling
 - Altering working arrangements
 - A period of additional leave
 - Conciliation and mediation
 - Mentoring (appointing someone under the authority of the appointed person to provide regular monitoring and supervision to help the office holder to meet the improvements set)
 - Exploring the possibility of transferring the office holder to other work, although this cannot be guaranteed
 - Suggesting that the office holder may wish to have an interview with the Clergy Appointments Adviser, who will be able to offer confidential advice about the office holder's abilities and help them consider whether it might be appropriate to explore the possibility of finding an alternative post.

7. Review of progress

22. After the agreed interval, the appointed person must gather evidence on whether there has been any improvement, by reviewing with the office holder and those who have reported the problems whether improvement has taken place as hoped. If this review does not include the churchwardens, the appointed person may take their advice. (Any separate conversations with those who raised the matter or with churchwardens must be reported to the office holder.)
23. The appointed person must review the evidence and consult the human resource adviser. If there has been an improvement, he or she must inform the office holder and anyone who has raised the problem

8. Informal Warning

24. If the office holder's performance has not improved, the appointed person must alert the office holder in writing that their performance will be monitored over a specified period, and that, if there is a failure to improve, the formal stage may be commenced; a copy of the letter ('the informal warning') must be put on the office holder's personal file. The person(s) who reported the matter and others as appropriate may be asked to assist in the monitoring process.
25. At the end of the set period, the appointed person gathers information from the appropriate people and from the office holder and then decides whether or not there has been sufficient improvement and whether or not to move to the formal stage of the procedure. If the improvement has taken place, the appointed person writes to the office holder confirming this, and the informal warning, and notes of the meeting are placed in a sealed envelope in the personal file that will be retained permanently. This envelope must only be opened by the human resource adviser or the appointed person, and will only be used if it is necessary to demonstrate that appropriate action had been taken (for example, in the case of a later claim of discrimination).

4 THE FORMAL PROCEDURE

26. If informal action does not bring about an improvement, or the unsatisfactory performance is considered to be too serious to be classed as minor, the appointed person must recommend to the responsible bishop that the office holder be given a clear signal of the bishop's concern by the taking of formal action.
27. From now on, the human resource adviser – who will ensure that the process is properly followed – must be involved at every stage.

9. The right to be accompanied

28. Office holders have a right to be accompanied at all formal stages by a trade union representative or a colleague. A colleague could, where appropriate, be a clergy person from

another Church in communion with the Church of England (for example, where they are attached to a Local Ecumenical Project).

10. Formal procedure stage one - formal written warning

29. The first step in any formal process is to let the office holder know in writing the nature of the alleged incapability, and why it is not acceptable and invite them to a meeting to discuss the matter.
30. The appointed person, after taking advice from the human resource adviser, must write to the office holder requiring him or her to attend a meeting with a capability panel (for membership, see the Annex), giving at least 10 days' notice and providing:
 - information about the alleged incapability including copies of any documents which will be produced at the meeting;
 - details of the members of the panel; and
 - an invitation to the office holder to bring a colleague or trade union representative.
31. Anyone who has reported the capability problem and, as appropriate, the churchwardens or others who have been involved in monitoring the situation, might be invited to attend to provide information.
32. Where possible, the timing and location of the meeting should be agreed with the office holder. The meeting should be held in a private location with no interruptions.
33. An office holder who cannot attend a meeting should inform the appointed person in advance whenever possible. If the office holder fails to attend through circumstances outside his or her control and unforeseeable at the time the meeting was arranged (e.g. illness) the appointed person should arrange another meeting. A decision may be taken in the office holder's absence if the office holder fails to attend the re-arranged meeting without good reason.
34. If an office holder's colleague or trade union representative cannot attend on a proposed date, the office holder can suggest another date, so long as it is reasonable and is no more than seven calendar days after the date originally proposed by the appointed person. This seven-day limit may be extended by mutual agreement.
35. At the meeting, the appointed person must explain the nature of the issues to the office holder and go through the information that has been gathered.
36. The office holder must be given the opportunity to set out his or her case and answer any allegations that have been made. The office holder must also be allowed to respond, ask questions, and present information.
37. The office holder's colleague or trade union representative may ask questions and make representations; they may not answer questions on behalf of the office holder.

38. The members of the panel may themselves ask questions.
39. Following the meeting, the capability panel must decide whether or not there is a capability issue. If not, the matter goes no further.
40. If the panel has decided that there is a capability issue, it must then go on to consider whether a warning is justified or not. Before making any decision, the panel must take account of:
- the office holder's ministry as a whole;
 - the office holder's length of service;
 - actions taken in any previous similar case;
 - the explanations given by the office holder; and
 - whether the intended action is reasonable under the circumstances.
41. Notice of the result of the meeting must be given by the appointed person to the office holder within 7 days of the meeting. If the panel decides that no action is justified, the office holder must be informed in writing. If the panel decides that a formal warning should be given, the appointed person must write to the office holder notifying him or her of this, setting out:
- the performance problem;
 - the improvement that is required;
 - the timescale for achieving this improvement (normally between 3 and 6 months, depending on the nature of the issue);
 - the review date; and
 - any support that will be given to assist the office holder.
42. The office holder must be informed that the notification represents the first stage of a formal procedure and that failure to improve could lead to a final written warning and, ultimately to removal from the office they currently hold. The office holder must be informed of the right to appeal and how to exercise this. A copy of the appointed person's letter must be kept and used as the basis for monitoring and reviewing performance over the specified period and the responsible bishop must be informed in writing.
43. If the office holder appeals within 7 days of receiving the letter, the appointed person must invite the office holder to a meeting with the appeal panel giving at least 10 days' notice.
44. The appeal meeting must be attended by:
- the appointed person
 - the human resources adviser
 - the appeal panel (3 people)
 - the office holder and his or her companion.
- Depending on the nature of the appeal, the person(s) who made a complaint about the office holder's capability and witnesses (if any) may attend the appeal.
45. Notice must be issued within 7 days of the appeal meeting setting out the final decision.

11. Formal procedure – stage two: final formal written warning

46. At the end of the set period given in the first formal warning, the appointed person again must gather information as appropriate from those who have reported problems with the office holder's capability and others and from the office holder. The appointed person may decide that improvement has taken place; or that it is necessary to move to the next stage. He or she must inform the responsible bishop accordingly.
47. Within 14 days of the end of the period set for improvement in the first formal warning the appointed person will write to the office holder either that improved performance means that the capability procedure is being discontinued: or setting out the continued performance problem which leads him or her to continue to question the capability of the office holder, and inviting the office holder to a meeting with a second capability panel to discuss the matter, giving at least 10 days' notice.
48. The same procedure must be followed as that for the first formal panel meeting described above. Notice of the result of the meeting must be given to the office holder within 7 days of the meeting.
49. If the capability panel agrees that a final formal warning should be given, the diocesan bishop, who chairs the panel, must
- write to the office holder with a final formal warning, which he or she is told will be placed on the personal file; and
 - inform the office holder that if there is no satisfactory improvement within a specified time period (normally between 3 and 6 months), the outcome may be removal from the office they currently hold;
 - inform the office holder in writing of the right to appeal and how to exercise it.
- Where the diocesan bishop considers it appropriate, he may nominate a bishop from a different diocese to act on his behalf if he has been involved at an earlier stage.
50. If the office holder appeals within 7 days of receiving the letter, the appointed person must invite the office holder to a meeting with the appeal panel giving at least 10 days' notice.
51. The appeal meeting must be attended by:
- the appointed person
 - the human resources adviser
 - the appeal panel (3 people)
 - the office holder and his or her companion.
- Depending on the nature of the appeal, the person(s) who made a complaint about the office holder's capability and witnesses (if any) may attend the appeal.
52. Notice must be issued within 7 days of the appeal meeting setting out the final decision.

12. Formal procedure – stage three: removal from current office

53. If the responsible bishop considers that the required improvement has not taken place, he must write to the office holder requiring him or her to attend a formal hearing of the final capability panel, and notifying him or her that he or she has failed to meet required standards and that it is proposed to remove the office holder from their post. The office holder is given the opportunity of making a representation to the panel as to why he or she should not be dismissed.
54. If the panel decides that the office holder should be removed from their current office, the diocesan bishop must serve notice in writing on the office holder terminating his or her appointment with effect from the date of the expiry of three months after the date of the notice and stating in the notice the reason for the termination.
55. The bishop must also inform the office holder that he or she has the right to appeal within 7 calendar days of receiving the results of the panel. If the office holder appeals within 7 days of receiving the letter, the appointed person must invite the officeholder to a meeting with the appeal panel giving at least 10 days' notice.
56. The appeal meeting must be attended by:
- the appointed person,
 - the human resources adviser,
 - the appeal panel (3 people),
 - the office holder and his or her companion.
- Depending on the nature of the appeal, the person(s) who made a complaint about the office holder's capability and witnesses (if any) may attend the appeal.
57. Notice must be issued within 7 days of the appeal meeting setting out the final decision. There is no further right of appeal, but the office holder has the right to appeal to an Employment Tribunal.

5 OTHER ISSUES

13. Appeals

58. At every stage of the formal procedure, the office holder has the right to appeal to an appeal panel against a capability panel's decision. None of those on the original capability panel may serve on the appeal panel, although the appeal panel may ask members of the original panel to appear before it or provide information in writing.
59. If the office holder wishes to appeal, he or she must notify the appointed person within 7 days of receiving the results of the relevant panel meeting.
60. An office holder may chose to appeal on the ground that
- fresh information has come to light;

- the capability process was not used correctly.

14. Use of Grievance Procedure

61. It is open to an office holder to invoke the grievance procedure for any other reason than the handling of the capability procedure, but this may not have the effect of suspending the capability procedure, which will continue in place while the grievance is heard.
62. If the grievance is about the handling of the capability procedure, the office holder must use the appeal process above.
63. If an office holder raises a grievance that the appointed person is biased against him/her and produces evidence which seems to support this, it would be sensible to adjourn, deal with the grievance, and then re-convene.

15. Keeping records

64. It is important, and in the interest of all parties, to keep written records during the capability procedure. Records should include:
 - the concerns raised about the office holder's capability;
 - the office holder's response;
 - findings made and actions taken;
 - the reasons for actions taken;
 - whether an appeal was lodged;
 - the outcome of the appeal; and
 - subsequent developments.
65. Records must be treated as confidential.
66. Copies of meeting records must be given to the office holder, including copies of any formal minutes that have been taken. In certain circumstances (for example to protect a person supplying information) some information may be withheld.
67. At the point when any warning ceases to be in effect, the records relating to the capability proceedings must be placed in a sealed envelope on the office holder's personal file permanently retained. This envelope must only be opened by the human resource adviser or the appointed person, and will only be used if it is necessary to demonstrate that appropriate action had been taken (for example, in the case of a later claim of discrimination).
68. These records must be retained permanently.

16. Access to an Employment Tribunal

69. Office holders who are removed from office following the capability procedure have the right to take matters to an Employment Tribunal.

17. After removal from current office

70. Where the final capability panel considers that the office holder is unsuitable for his or her current position, and should be removed from it, it is important to continue to provide support and pastoral care. In some cases it might be appropriate to provide career counselling.

18. Membership of the panels

71. Details of the composition of the panels are given in the table in the annex. The office holder has the right to object to membership of the panel, but only on the grounds of alleged partiality. Those involved in dealing with capability procedures must have received appropriate training and be aware of people's cultural differences (particularly those relating to ethnicity), which, in some circumstances, could lead to wrong assumptions.
72. Membership of the capability panel may be the same at each stage but no member of the capability panel may sit on the appeal panel. Where necessary, for example because of illness or a member of the panel moving on to another diocese, the appointed person may ask a substitute of equal standing to serve.
73. A panel's decision may be reached by a majority of two out of three panel members (or, where there are four members on the panel, three out of four).

19. Use of a shortened procedure

74. There will be exceptional types of cases in which the procedure may be shortened, but the principles of natural justice and the opportunity to appeal against removal from the current office must not be jeopardised. They will include the following.
- (a) Cases where immediate improvement can be expected, through an easily acquired alternative pattern of behaviour or action likely to produce immediate effects. If the expected improvement does not occur, and there are no mitigating circumstances such as ill health or personal difficulties, the procedure could move through each stage fairly quickly.
 - (b) Cases arising during the first year of an office holder's tenure in any post or during the first three years of a title post, where it becomes clear that he or she is not suited to the post and so not capable of undertaking what is required. In the case of assistant curates, it will be important to bear in mind that they are still in a learning role, and that allowance for this needs to be made before the formal procedure is activated.
 - (c) Cases of ill health (see section 6 below)
75. In these very particular cases, the appointed person, with advice from the human resource adviser, may decide that a shortened procedure should be used. Only one stage of the procedure may be dropped. That is, there must always be an informal warning stage and a

formal warning stage with appeal rights, prior to holding a final capability meeting that might result in removal from office.

6 INCAPABILITY DUE TO SICKNESS, INJURY OR DISABILITY

20. Dealing with absence

76. When dealing with prolonged or repeated absence from work, it is important to establish the correct reason. If there is no acceptable reason, the matter, if serious, could be treated as a conduct issue and dealt with as a disciplinary matter under the Clergy Discipline Measure 2003.
77. If the office holder is unable to carry out the requirements of the post as a result of long-term or persistent short-term sickness injury or disability absence, or poor performance is caused by sickness, injury or disability, the law treats this as a capability issue and any eventual removal from office will be on the grounds of capability. So, if the absence or poor performance is serious, in certain cases it may be necessary (after taking specialist advice) to instigate the capability procedure.
78. As in other capability cases, a fair procedure must be followed and clearly documented to demonstrate that every attempt has been made to improve attendance or performance. In cases of long term or persistent sickness absence or poor performance as a result of illness, it may get to the stage when it needs to be made clear to the office holder that, however genuine the health problem, removal from their current office is a possibility because its duties are not being carried out.
79. The handling of incapability due to sickness or injury needs to be distinguished from other capability issues. The appointed person should take a sympathetic and considerate approach, and the needs of the office holder must be borne in mind. In every case there will be different circumstances and varying factors to take into account, so the procedure must be applied flexibly, for example by using the shortened procedure. However the basic principles of natural justice must be followed:
 - (i) evidence must be gathered;
 - (ii) the office holder must be offered the opportunity to comment;
 - (iii) a warning or the consequences of failing to improve must be given;
 - (iv) help and time must be given to improve;
 - (v) a hearing should be held, if practicable, at which progress is reviewed; and
 - (vi) a formal warning stage with appeal rights must take place.
80. Time limits should be set at every stage in sickness cases, even though, no specific time limits can be laid down in respect of particular stages of the procedure, as all cases involving sickness will be different and they will need to be established by agreement, after taking advice.
81. When thinking about how to handle these cases it is helpful to consider:-

- a. whether medical advice has been sought or an occupational health referral has been made;
 - b. whether, if the Disability Discrimination Act 2005 applies, steps have been taken to make reasonable adjustments to the working environment or the way the role is carried out;
 - c. whether in other cases of sickness absence steps have been taken to make temporary adjustments to the working environment of the way the role is carried out to ease the office holder back to full duties;
 - d. the likelihood of, and timescale for, a resumption of the full range of duties to the required standard;
 - e. whether alternative work outside the Church is available and what support might be required to enable the office holder to obtain such work;
 - f. the effect of the absence on the parish or other area of ministry;
 - g. how similar situations have been handled in the past.
82. In cases of extended sick leave, specialist advice may be required to ensure that the requirements of employment and ecclesiastical law are properly followed.
83. If the appointed person considers that poor performance may be the result of physical or mental illness, the issues need to be treated with sensitivity and care. The office-holder must be encouraged to seek professional advice: the Regulations contain a power for the bishop to direct an office-holder to undergo a medical examination where he has reasonable concerns about that person's health. There is also a power to grant special leave of absence in such circumstances.
84. In some cases, capability issues may remain, even though all reasonable adjustments have been made and support given, and this may result in removal from office. Where an office holder is a member of the Church of England Pensions Scheme or the Church of England Funded Pensions Scheme, he or she may qualify for ill health retirement if the Church of England Pensions Board is satisfied that a disability is likely to be permanent and prevent them from carrying out the duties of their office or doing any other remunerated work.

7 CURRENCY OF WARNINGS

85. As recommended by ACAS, different periods can apply for different types of warnings. Warnings should cease to be 'live' following the specified period of satisfactory conduct and must be disregarded for capability purposes after a specified period of satisfactory conduct or performance.
86. The following times apply.
- Papers which refer to possible formal action as a result of a possible capability issues ('the informal warning') must be placed in a sealed envelope on the personal file if the office holder's performance has demonstrated the necessary improvement.

- The first written and the second written warning should remain 'live' for 12 months (or more in exceptional circumstances, for example where a pattern emerges of an office holder's performance being satisfactory throughout the period the warning is in force, only to lapse very soon thereafter).

87. At the point when any warning ceases to be live, the records relating to the capability proceedings must be placed in a sealed envelope on the office holder's personal file and retained permanently. It must be explained to the office holder that the warnings, once spent, will not be used if the procedure has to be reactivated, but that they may be referred to in certain circumstances where it is necessary to demonstrate that appropriate action was taken by the bishop (for example in the event of an appeal to an Employment Tribunal).

The draft of these directions was approved by the General Synod of the Church of England on
[]200-

Church House London

David Williams
Clerk to the Synod

THE COMMON SEAL of the Archbishops' Council was affixed on
[]200-

Church House London

William Fittall
Secretary General

Annex One - Membership of panels to hear cases and appeals

Membership of the panel can be the same at each stage of the procedure but the membership of the appeal panel *must* be different from that of the original panel. If a named office-holder (e.g. a Chair or Prolocutor) is unable to act, he or she will nominate a substitute. Where necessary, for example because of illness or a member of the panel moving on to another diocese, the appointed person may ask a substitute of equal standing to serve.

The appointed person must not be a member of the Panel.

Office holder	Parochial and cathedral clergy (except Dean), including NSMs, OLMs, (stipendiary) readers and other licensed clergy	Dean or Archdeacon	Bishop	Archbishop
Informal Warning	Normally <i>Appointed Person</i> but Suffragan Bishop or Dean if Appointed person unable to act	Diocesan Bishop	Archbishop	The senior bishop in the other province
First Formal Warning	Suffragan Bishop or Dean with 1 cleric ¹ and 1 layperson ¹	Diocesan Bishop with 1 cleric ¹ and 1 layperson ¹	Archbishop with 1 cleric ³ and 1 layperson ²	The senior bishop in the other province with 1 cleric ⁴ and 1 layperson from the other province ⁴
Appeal	Suffragan Bishop or Dean not involved with first formal warning, with Chair of Diocesan House of Clergy and Chair of Diocesan House of Laity.	Other Diocesan Bishop ³ With 1 cleric ² and 1 layperson ²	Other Archbishop with 1 cleric ³ And 1 layperson ³	The Other Archbishop with 1 cleric ⁴ and 1 layperson from the other province ⁴
Final Formal Warning	Diocesan Bishop with Suffragan Bishop or Dean, 1 cleric ¹ and 1 layperson ¹	Diocesan Bishop with 1 cleric ¹ and 1 layperson ¹	Archbishop with 1 cleric ³ and 1 layperson ³	The senior bishop in the other province with 1 cleric ⁴ and 1 layperson from the other province ⁴

Office holder	Parochial and cathedral clergy (except Dean), including NSMs, OLMs, (stipendiary) readers and other licensed clergy	Dean or Archdeacon	Bishop	Archbishop
Appeal	Suffragan Bishop or Dean not involved with first formal warning, with Chair of Diocesan House of Clergy and Chair of Diocesan House of Laity	Other Diocesan Bishop ³ with 1 cleric ² and 1 layperson ²	Other Archbishop with 1 cleric ⁴ and 1 layperson ⁴	The Other Archbishop with 1 cleric ⁴ and 1 layperson from the other province ⁴
Final capability panel	Diocesan Bishop with Suffragan Bishop or Dean and 1 cleric ³ and 1 layperson ³	Diocesan Bishop with 1 cleric ³ and 1 layperson ³	Archbishop with 1 cleric ³ , 1 layperson ³ , and Prolocutor of the Province	Other Archbishop with 1 cleric ⁴ and 1 layperson ⁴ from the other province and Prolocutor of the Province
Appeal	Diocesan Bishop ³ with 1 cleric ² and 1 layperson ²	Other Diocesan Bishop ³ with Suffragan Bishop ³ and 1 layperson ²	Other Archbishop with Prolocutor of other Province, Vicar General of the other Province and the Chair of General Synod House of Laity	Dean of the Arches, a senior bishop nominated by the Dean, the Prolocutor of the other Province and the Chair of the General Synod House of Laity

¹ Nominated from another parish by the Diocesan Bishop

² Nominated from another diocese by another Diocesan Bishop

³ From another diocese nominated by the Archbishop of the Province (the Vicar General where the complaint is against a priest in the Diocese of Canterbury or York)

⁴ From another diocese appointed by the other Archbishop.

Capability Procedure –supporting advice

Revised April 2009

This note has been issued by the Archbishops' Council for information and to assist the development of good practice. It does not constitute formal guidance or directions under the Ecclesiastical Offices (Terms of Service) Legislation.

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SUMMARY OF PROCEDURE

1 INTRODUCTORY

1. Capability in ministry is supremely important to the Church. The great majority of those serving the Church do so to a high standard. In the few cases where an office holder's performance is below an acceptable standard, it is necessary to take additional steps to ensure that he or she has been made fully aware of what is required of them, and that proper resources have been made available to give them the opportunity – through training, counselling and other means – to equip themselves to improve their performance. This is best done by dealing with problems of poor performance promptly before they become too serious to be remedied.
2. Office holders receive general support in their ministry in a variety of ways: pastoral care and guidance from bishops, archdeacons and others, as well as the challenge and nourishment that comes by participating in training, continuing ministerial education (CME) and ministerial development review (MDR). In a minority of situations where office holders experience significant difficulties, there should be a procedure for the Church to offer focussed support that will enable all involved to assess fully what is happening and what needs to be improved. Where necessary, after a suitable time is dedicated to reasonable improvement, this procedure allows the question to be considered whether someone is capable of continuing in his or her current office.
3. Although such cases will be rare, they can be damaging both to the office holder concerned and to others affected. This procedure has been developed to ensure that there is a just way of proceeding which puts the emphasis first on supporting an office holder in the expectation that he or she will be able to recover and restore their ministry and, only where recovery proves impossible, to remove them from their current office. Having a procedure helps to promote fairness and consistency in the treatment of individuals. People know where they stand and what to expect.
4. Evidence of conflict in a parish, or a fall in congregational numbers, or a failure of the congregation to pay the parish share or the non-achievement of agreed objectives may have nothing to do with the capability of an office holder. Indeed, sometimes courageous, prophetic ministry has such consequences. However, there are situations when such evidence is symptomatic of a ministry going awry. The capability procedure provides one fair and clear way of assessing this. In such cases, careful examination may often reveal specific areas where the office holder needs to improve his or her performance. It can, however, sometimes demonstrate that the situation has come about for reasons unrelated to the office holder's capability.
5. Lack of capability implies a mismatch between the requirements of the role and the person doing it. Following good practice from the start can help to avoid such a mismatch, for example by:

- instituting appointments procedures that seek to test, transparently, the candidate against the requirements of the role;
 - articulating expectations through clearer descriptions of the requirements of the particular office; and
 - entering into regular, sensitive but frank discussion on how work is being done.
6. In some cases, it should be possible to address the mismatch by providing the appropriate training, although this requires a willingness on the part of the office holder concerned to participate in training.

1. Basic principles

7. The principal objective of a capability procedure is to help people to improve and to deal with problems of poor performance before they become too serious to be remedied. Having a procedure helps to ensure that there is a just way of supporting an office holder in the expectation that s/he will be able to recover and restore their ministry. Where sufficient recovery is not achieved, the procedure provides a just and clear way of removing someone from their current office.
8. The formal procedure should not be used where someone's performance is adequate but capable of improvement. In such cases those concerned may benefit from additional CME and development opportunities, but it would not be necessary to instigate the procedure.
9. A mere statement that unsatisfactory performance exists is never enough to justify removal from the appointment. In order to be fair in the eyes of the law, removal from office for unsatisfactory performance must be preceded by a significant effort to identify the problem and the reason for it, and there will have to be evidence of attempts to turn the situation around. Only when all reasonable efforts have been made, should removal from the particular office be considered.
10. Things can - and should – be kept at a low level in the early stages of the procedure, which should not be regarded as a process that, once started, can only end in tears. In most cases, it can, and should, be used in part rather than all the way through. In many cases, the procedure may come to a halt if the appointed person decides that the required improvement has taken place.
11. Issues of underperformance should be addressed promptly before they become acute. Immense harm can be done to the Church's mission if a problem is allowed to get the point that an office holder is doing damage in the parish or failing to behave appropriately when they meet members of the public who are seeking marriage or baptism or are involved with schools in the parish.

12. Where relationships are under strain (possibly because of a mismatch of expectations) mediation can be particularly effective, and result in an outcome that is acceptable to everyone. However, it is most likely to be effective if it used early on before problems have become acute and people have become entrenched in their position.

2. The relationship between capability and Ministerial Development Review (MDR)

13. Ministerial Development Review (MDR) is a requirement under the Ecclesiastical Offices (Terms of Service) Regulations 200.... This review is the regular opportunity for discussing with an office holder his or her well-being, and development; and for adjusting and clarifying the expectations of the role. It is about ministerial development and opportunities for continuing ministerial education and is not a vehicle for dealing with capability issues.
14. Although MDR may identify areas where the office holder can improve, it will only be in the rare number of cases where the performance is below the acceptable standard and action to bring the performance up to an acceptable standard has not resulted in sufficient improvement that there is a capability issue.
15. This means that MDR must not be used as a substitute for the capability procedure: if there is a issue of capability, it is necessary to go through the initial stages of the procedure, and make it clear to the office holder that their performance is not of an acceptable standard, and that the formal procedure will be activated unless their performance improves. That said, it would be open to question whether the capability procedure had been properly followed if the written record of the MDR did not provide evidence that issues about performance and the need to improve had been raised with the office holder.
16. Potential removal from a particular office on capability grounds must never be a surprise. It is necessary to ensure that the office holder understands that their performance is not at an acceptable standard, and could lead to removal from office unless their performance improves. These conversations must take place, not only during the regular discussions of how the role is being done and more general ministerial development discussions, but also as the issues arise. A written record must be made of these conversations, and evidence retained that removal from office was the last resort, including details of offers of help with improving their performance.
17. Ministerial development review (MDR) and capability procedures are thus entirely separate processes but there is a link. They are both about helping people to develop their performance and so both must reflect a consistent message about an individual's development needs. However, MDR is not a vehicle for moving someone into a capability procedure. Everyone benefits from help to improve what they do (MDR) but very few have a capability problem and will become subject to a capability procedure.

18. MDR is about ensuring office holders are as equipped as they can be for the role to which they are called. It is about frank and supportive discussion of that role, how it has been done in the recent past, what needs to be done in the future and whether this means that the office holder has development needs which can be provided by training, education, mentoring, secondments, networking and in myriad other ways. It will identify where an office holder may have a gap in his/her skills and/or behaviours and allow for reflection on how past matters have been dealt with and whether, with hindsight, they would be dealt with differently. “How did I deal with those people, that meeting, that problem? How would I deal with them next time?”
19. MDR is also about affirmation and a celebration of what has gone well. Constructive discussion of what has not gone so well is also affirming. Where an issue has been identified that requires development or improvement, this is noted and a plan to support the improvement agreed.
20. Capability procedures, by contrast, are the formal measures taken to warn an office holder that his or her performance is not satisfactory and are only entered into once a good deal of supportive training, development, mentoring and so on has already been instigated but is failing to help achieve the goal of improvement. Training does not stop during the capability process, but, at regular intervals, the office holder is formally reminded of the potential seriousness of not reaching the required standard. The required standard will be evident from the role description and person specification, the agreed objectives set in the MDR process, the Ordinal and the Canons, and will have been articulated during the MDR.
21. The role description and objectives arising from it are not fixed, and will change and develop over time. For example, changes could be instigated by the office holder, after discussion with the PCC, or might arise following discussions at MDR. On other occasions, they could be a response to pastoral strategy initiatives sponsored by the bishop with whom in most cases the office holder will share the cure of souls. The critical point is that additional demands should not be placed on office holders without appropriate consultation.

3. The relationship with the Clergy Discipline Measure

22. This procedure is only intended to deal with capability issues. It is not intended to deal with issues amounting to misconduct under the Clergy Discipline Measure 2003. If, therefore, in the course of the capability procedure matters come to light which appear to amount to misconduct, the capability procedure may be suspended, so that disciplinary proceedings can be begun. In no circumstances may capability procedures and proceedings under the Clergy Discipline Measure be operated simultaneously in respect of the same particular issue.

23. Participation in MDR and appropriate CME is a requirement under the Terms of Service Regulations. Some individual CME needs will be identified during the MDR process, and some CME will be a diocesan requirement for all office holders, for example on safeguarding. A wilful or serious refusal to participate in either CME or MDR technically amounts to misconduct under the Clergy Discipline Measure. However, failing to undertake MDR or CME needs to be explored, and, if shortcomings are identified, they will probably best be handled under the capability procedure, at least initially, as such refusal may well indicate underlying issues, or result in a failure to perform duties to an acceptable standard.
24. Similarly, neglect of duties or prolonged or repeated absence from work without acceptable reason should not normally be the subject of proceedings under the Clergy Discipline Measure unless serious.

4. The scope of the procedure

25. Cases likely to attract the capability procedure also need to be distinguished from those in which people are fulfilling the basic requirements of the post, but no more, and are doing 'just well enough'. In such cases, those concerned may well benefit from further development, without any need to institute the formal stages of the capability procedure.
26. The procedure must not be used to pursue trivial matters, which are best resolved informally.
27. Legally, ill health is a capability issue and must be dealt with under this procedure if there is a possibility that it might lead to removal from office. See Section 6 of the procedure.

2 APPLYING THE PROCEDURE

5. Pastoral Support

28. The diocesan bishop has ultimate responsibility for the welfare of clergy within the diocese and for ensuring that they receive appropriate pastoral support. Pastoral support needs to be available for office holders whose performance is the subject of a capability procedure, but also for other people involved, for example:
 - other clergy in an area deanery or team or group ministry who may feel that they are having to cover the work of the office holder, or whose relationship with the office holder has come under strain;
 - churchwardens and other people (particularly where they have raised a capability issue and relationships are coming under strain);
 - archdeacons and others operating the procedure.

29. This does not necessarily mean that the bishop has to provide pastoral support personally. The important thing is to make arrangements to ensure that it is provided by *someone*. In some circumstances, pastoral support is more likely to be well received if it comes from a source that is independent of the bishop, so that the office holder can be reasonably confident that what is said will remain confidential. For example, it might be possible for dioceses to have reciprocal arrangements with a neighbouring diocese to provide support.
30. At all stages, it is important to ensure that information is given only to those who need to know, and that those involved realize the need for confidentiality. Breach of confidentiality could undermine the position of the office holder involved. Nevertheless, office holders and complainants must be aware that confidentiality and anonymity are not, and cannot be, guaranteed.

6. *Written records*

31. It is important to keep written records of issues raised informally and the conversations held. This will ensure that it is possible to tell when a pattern might be emerging, and that there is clarity about what has been raised with the office holder.
32. When the procedure has come to an end (whether because performance has improved, or the office holder has vacated their office for whatever reason) the appointed person should ensure that their papers are passed to the bishop's office so that they can be placed on the clergy blue file. They should 'thin' the papers first, and delete duplicate or unimportant material. It is important, however, to preserve a clear audit trail that provides a permanent record of what action was taken (for example, written records of conversations where performance issues were raised, MDR summaries, and courses of action agreed with the office holder). Spent warnings should be retained permanently on file in a sealed envelope. For further information on the treatment of spent warnings see section 7 of the procedure (currency of warnings).
33. Where a potential capability issue has proved to be trivial or unsubstantiated or not an issue of capability (for example where it was the result of unrealistic expectations on the part of the parish), the records should again be retained permanently in a sealed envelope.
34. Lambeth Palace has recently issued revised guidance notes for bishops and bishops' secretaries on confidential files on clergy. This is available at www.cofe.anglican.org/about/librariesandarchives.
35. In particular, it is necessary to bear in mind what it says below about the Data Protection Act (DPA) and subject access.

10. The DPA confers a right of access by an individual to see personal data held about him or her. This does not mean, however, that clergy can simply walk into the bishop's office and demand to see their files. Under the DPA, a subject access request must be made in writing and a fee of up to £10 can be charged.
11. Once the fee has been paid and the data controller has received any information needed from the applicant, the data controller has 40 days to respond to the request. The information should be supplied in the form of copies unless that would involve disproportionate effort.
12. Not all personal data held should necessarily be disclosed on a subject access request, and bishops' offices should seek advice from the diocesan registrar. In particular, care must be taken in relation to any information which relates to an identifiable third party. Such information should not normally be disclosed without the third party's consent, unless it is reasonable in all the circumstances to do so. There are also exemptions which permit data to be withheld where disclosing it would prejudice the prevention or detection of crime, or the proper exercise of functions designed to protect the public from professional misconduct or incompetence.

7. Discussions with colleagues

36. It clearly makes sense, especially at the information gathering stage, for the appointed person to consult and collaborate with senior colleagues. This may involve discussion at the bishop's staff meeting. However, this needs to be done with some care in order to ensure that
 - (a) confidentiality is preserved;
 - (b) the information is soundly based rather than merely anecdotal; and
 - (c) those hearing an appeal or the second stage of a procedure have not been prejudiced.

8. Recording and monitoring

37. The bishop should be encouraged to consider making someone responsible for recording, monitoring and analysing the number and nature of capability cases that get as far as the formal stage. In particular, it will be important to look out for trends or changes, such as an increase in the number of capability cases, or whether the same parish/deanery/person is repeatedly involved (whether as the subject of the procedure, or as someone who persistently refers capability issues to the archdeacon). This is particularly important, as this could indicate weak appointment processes or parishioners who were over-zealous about raising issues of concern.

9. Composition of Capability Panels

38. Where appropriate and possible, Capability Panels should
- contain both men and women;
 - include someone from the same ethnic background as the office holder whose capability is the subject of the procedure;
 - include someone whose theological tradition is similar to that of the office holder whose capability is the subject of the procedure.
39. The appointed person must not chair or be a member of the Capability Panel.

10. Issues to consider before starting the procedure

40. When assessing capability, it is important to review the role description and any recently set objectives in order to check whether the reason for questioning the capability of the office holder is that expectations are unclear or unrealistic.
41. In some cases, a timely offer of help or advice can resolve an issue before it becomes acute or leads to pastoral breakdown. It will usually be found helpful to attempt to resolve issues at the low key informal stages of the procedure, where possible.
42. Sometimes a capability issue will arise, not because someone is ill-suited for ministry, but because they are in the wrong post. However, it is important not to jump to premature conclusions that the office holder will never be able to carry out the requirements of the post to an acceptable standard. The emphasis must be on how they need to improve their performance and what action can be taken to equip them to carry out the duties of their current office.
43. It is important not to undervalue the diversity of talents that people bring to ministry. It should not be assumed that everyone will be good at everything. Sometimes an office holder's capability may be subject to question, not because they are unable to do the job, but because the questioner has made assumptions (for example, about what constitutes appropriate behaviour for a particular gender) or because the office holder's cultural upbringing or ethnic background is different from that of the majority. Those operating the procedure need to take account of the possible impact of such differences and how they may best be handled.
44. The appointed person should normally discuss the case with a human resource adviser before taking further action. The human resource adviser must be present at each stage of the formal procedure.
45. Where the facts are disputed at any stage of the procedure, the standard of proof should be 'the balance of probabilities' and not 'beyond reasonable doubt'.

3 SPECIFIC ISSUES

11. Alternative Posts

46. Lack of capability in one particular office does not necessarily mean that the office holder is not capable of exercising any ministerial function. Removal from one particular office on capability grounds does not remove a cleric from holy orders or disqualify him or her from being appointed to another office.
47. Regulation 29 (6) of the Ecclesiastical Offices (Terms of Service) Regulations 200... allows office holders, who have been removed from one office on capability grounds to be appointed to another office on a probationary basis, and states that
‘an office may be designated as a probationary office if the office holder has been removed from a previous office by a final adjudication under the capability procedures and the office designated as a probationary office under this paragraph is the first office occupied by the office holder after her or her removal from office’.
48. The power in Regulation 29 allows a bishop to appoint a person to a probationary office on a fixed or limited term basis. So the appointment may be terminated on the expiry of the fixed term or the occurrence of the specified limiting event (for example, the failure of the office holder to complete some recommended training satisfactorily within a certain period, or subject to a satisfactory assessment).
49. As the appointment cannot be terminated before the ending of the fixed term without starting the capability procedure, the bishop should bear this in mind when setting the length of the fixed term, which can be renewed for further period or periods.
50. The probationary nature of the office must be recorded in the statement of particulars, along with the date on which it is to end (if a term is specified) or the particular event that will bring it to an end (if one is specified).
51. Except in the limited circumstances prescribed in Canon C8.2, clerics are unable to carry out any ministerial function unless the bishop has granted them a licence or permission to officiate. Before granting a licence or permission to officiate to a cleric who has been removed from office for incapability, or appointing them to another office, the bishop must satisfy himself that their new duties are demonstrably different in nature from those in their previous post or that there is some other good reason why the previous lack of capability is no longer an issue. He should consult the human resources adviser before offering someone who has been removed from office because of capability another post or granting them a licence or permission to officiate.

52. Whilst the bishop may well wish to assist the office holder to find another appointment, a move cannot usually be guaranteed, as the bishop does not generally have the power to make appointments without the agreement of the patron and the parish representatives.
53. Office holders whose capability in a particular role is coming under question may benefit from career counselling and coaching, to improve their understanding of their strengths and weaknesses and the kind of parish that would be appropriate for their particular talents. This is particularly likely to be helpful if the problem has been caused by being in the wrong post, and it is unlikely that capability would be an issue in another appointment.
54. Resources are available from a variety of sources such as Ministry Development Officers. Office holders are most likely to benefit from this approach when it is tried at an early stage. In exploring these possibilities, it is important not to make assumptions about someone's long term capability in a post, which is a distinct issue from whether they would benefit from a move.
55. Another option might be to have an interview with the Clergy Appointments Adviser (CAA). If office holders are to derive the full benefit from this, they need to prepare thoroughly and provide detailed and accurate information.

12. Right to be accompanied

56. Office holders have the right to bring a colleague or trade union representative to accompany them to the all formal stages of the procedure. Their companion should have an awareness of the context in which the issue of capability is being raised. The companion must not be someone who would prejudice the hearing or who might have a conflict of interest (for example if they might be called as a witness).
57. If an office holder/third party wishes to be accompanied, they should make a request to be represented (this does not have to be in writing) and should inform the appointed person whom they have chosen.
58. A colleague might in certain circumstances include a clergyperson from another church in the same local ecumenical project or partnership.
59. The office holder has no legal right to be accompanied during the informal stage of the procedure, although the appointed person may often find it helpful for a companion to attend and allow them to do so.
60. Whether a request for a particular individual is appropriate will depend on the circumstances of the individual case. The chair of the capability panel will have the final decision, and may use their discretion.

61. The companion should be allowed to address the meeting to
- Put the office holder's/third party's case
 - Sum up the case on behalf of the office holder /third party
 - Respond on the office holder's/third party's behalf to any view expressed.
62. The companion may
- Confer with the office holder /third party during the hearing
 - Participate as fully as possible including asking witnesses questions.
63. The companion has no right to
- Answer questions on behalf of the office holder /third party
 - Address the meeting if the office holder /third party does not wish it
 - Prevent the appointed person from explaining the position.

13. Temporary Improvements

64. Sometimes there will be cases where there is a temporary improvement during the period while someone's capability is under review. However, once the procedure is halted and the warning has expired, the underperformance may start again. This may keep happening. In such a case, the office holder will have been informed that the expired warnings (which will have been placed in sealed envelopes on the office holder's personal file) may not be used to shorten the procedure, and it will be necessary to start the procedure each time from scratch. One way of dealing with this is to require the improvement in performance to be demonstrated over a sustained period, that is, longer than 12 months (the duration of the formal warning). If such a case got to the point of removing someone from their current office, the expired warnings could be used as evidence of a continuing lack of capability in the event of an application to an Employment Tribunal.

14. Capability and sickness

65. It is important to deal with cases of long-term sickness in a fair and sensitive manner, explain carefully why the procedure has been implemented (if it is appropriate to do so), and to emphasise that the procedure has been used for all cases, including sickness.
66. There are a number of appropriate remedies in the case of long term sickness, depending on the circumstances of the particular case. They include the following.
- *Changes to the role or making other adjustments* that would enable the person to carry out the role. This might, for example, involve installing stair lifts or

providing alternative computer technology, or it might mean making arrangements for some of the duties of the office to be covered for a limited period. It is important to be imaginative and explore possibilities here, and bear in mind the requirements of the Disability Discrimination Act to make reasonable adjustments if they will enable a person with a disability to carry out the requirements of the office.

The Government's Access to Work scheme supports people whose health and disability affects the way they do their jobs. It might pay towards equipment needed at work or adapting premises, or a support worker. For further details contact the Disability Employment Adviser at the local Jobcentre.

- *Providing alternative work to which the office holder may be more suited.* Sometimes it may be that the particular office causes the ill health, and it would be beneficial for the office holder to consider a move. See the section above on alternative posts.
 - *Ill health retirement* may be an option in cases where the condition is permanent and there is no likelihood of a return to work either in the current office (whether to full duties or duties adjusted after mutual agreement) or in an alternative position (whether in priestly ministry or not).
 - *Removal from the current office* requires the use of the capability procedure. It might be used in a case where the office holder was no longer capable of carrying out the duties of their current office and was unlikely to achieve an acceptable standard in another ministerial appointment, but ill health retirement pension was not available, as there was a reasonable possibility of them finding alternative work and they were a long way from retirement age. Using the procedure would include consideration by a capability panel (although it might in certain circumstances be appropriate to use the shortened procedure, which would miss out one stage).
67. It is important to bear in mind the impact on the parish and the need for cover. Uncertainty over a sustained period can be very damaging, especially if (because of a need for confidentiality) there does not appear to be a cut off point or a timescale for resolving that uncertainty. This is likely to become more difficult over time, as people find that the office holder's absence from work results in increased demands on them.
68. Clergy may sometimes need to be reminded that Regulation 27 of the Ecclesiastical Offices (Terms of Service) Regulations 20** requires clergy to inform the officer nominated by the bishop if they are unable to carry out the duties of their office for reasons of sickness. Regular discussion of sickness and the reasons for it after the office holder has returned to work should help to create a climate where discussion of sickness and the surrounding issues is made easier.

69. In cases of long term sickness, the appointed person will find it important to have regular meetings with the office holder or their representative to discuss the likelihood of, and timescales for, a possible return to work. Discussion of these matters is not always easy, and there may be concerns in certain circumstances that this will have an adverse effect on the office holder's health. However, keeping someone in suspense and leaving them unclear where they stand can also be productive of stress, and is not kind in the long run either to the individual or to the people they serve.
70. Regulation 28 of the Ecclesiastical Offices (Terms of Service) Regulations 20** gives the bishop power where there are reasonable grounds for concern about the physical or mental health of an office holder to direct that the office holder undergoes a medical examination. In cases of long term sickness, it will be useful to consult the HR adviser about referring the office holder to an occupational health adviser. This will help to address the following points:
- whether there is an underlying medical condition;
 - whether sickness absence is likely to improve;
 - when the office holder is likely to be fit to return to work if currently absent;
 - whether there are any health & safety issues;
 - any recommended work restrictions or adjustments considered appropriate to the workplace and their duration;
 - whether further review is recommended and by whom;
 - whether the office holder is likely to be within the scope of the Disability Discrimination Act (DDA);
 - if the DDA applies then what reasonable adjustments are required and what is their likely duration.
71. Particular care is needed in communicating sickness cases, as office holders may want to keep the nature of their illness confidential. However, churchwardens, other members of the parish staff team, and the area dean (who may be involved in trying to organise cover) need to be kept informed about the likelihood of, and timescales for, a possible return to work.

Archbishops' Council
April 2009

SUMMARY OF PROCEDURE

This is a summary to assist in understanding the overall shape of the procedure. It should not be read in isolation from the whole procedure.

Informal stages

1. Informal warning

Issues are often easier to resolve if handled informally. Full use should be made of the informal and early stages of the procedure. In every case, informal action, including the issuing of an informal warning, should have taken place before the formal procedure is started.

Formal stage one – Formal Written Warning

2. Inform office holder of problem in writing

The appointed person:

- consults the HR adviser;
- writes to the office holder, setting out the alleged conduct or characteristics or other circumstances, which leads him or her to question the capability of the office holder;
- invites the officeholder to a meeting with a capability panel to discuss the matter, giving at least 10 days' notice.

3. Hold a capability meeting to discuss problem, decide on outcome and action.

The **capability meeting** is attended by:

- the appointed person,
- the human resources adviser,
- the capability panel (3 people),
- the person(s) who made a complaint about the office holder's capability and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of meeting either to dismiss the matter; or to issue a first written warning setting out:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement (normally not less than 3 months);
- a review date; and
- any support that will be given to assist the office holder.

The office holder has the right to appeal within 7 days of receiving the notice.

4. Appeal meeting

The appointed person invites the officeholder to a meeting with the appeal panel giving at least 10 days' notice.

The Appeal Meeting is attended by:

- the appointed person,
- the human resources adviser,
- the appeal panel (3 people),
- the person(s) who made a complaint about the office holder's capability and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of the appeal meeting setting out the final decision.

Formal stage two – Final Formal Written Warning

5. Review performance at set date and inform office holder of outcome.

Within 14 days of the end of the period set for improvement in the first written warning, the appointed person

- gathers evidence
- issues a written notice to the office holder
 - *either* that improved performance means that the Capability Procedure is being discontinued
 - *or* that there is alleged conduct or characteristics or other circumstances, which lead him or her to continue to question the capability of the office holder, and that the officeholder should attend a meeting with a second capability panel to discuss the matter, giving at least 10 days' notice.

6. Hold meeting to discuss problem, decide on outcome and action.

The Second Capability Meeting is attended by:

- the appointed person,
- the human resources adviser,
- the capability panel (3 people),
- the person(s) who made a complaint about the office holder's capability and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of the meeting either to dismiss the matter; or to issue a final written warning setting out:

- the performance problem;
- the improvement that is required;
- the timescale for achieving this improvement (normally not less than 3 months);
- a review date; and
- any support that will be given to assist the office holder.

The office holder has the right to appeal within 7 days of receiving the notice.

7. Appeal meeting

The Appeal Meeting must take place within 1 month of request for appeal

The appointed person invites the office holder to a meeting with the appeal panel giving at least 10 days' notice

The Appeal Meeting is attended by:

- the appointed person,
- the human resources adviser,
- the appeal panel (3 people),
- the person(s) who made a complaint about the office holder's capability and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of appeal meeting setting out the final decision.

Formal stage three – Removal from office

8. Review performance at the set date and inform office holder of outcome

Within 14 days of the end of the period set for improvement in the final written warning, the appointed person

- gathers evidence
- issues a notice to the office holder
 - *either* that improved performance means that the capability procedure is being discontinued;
 - *or* that there is alleged conduct or characteristics or other circumstances, which leads him or her to contemplate removing the office holder from their current office and invites the office holder to a meeting with a final capability panel to discuss the matter, giving at least 10 days' notice.

9. Hold meeting to discuss problem, decide on outcome and action.

The Final Capability Meeting is attended by:

- the appointed person,
- the human resources adviser,
- the final capability panel (3 people),
- the complainants and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of meeting either to dismiss the matter; or to issue a notice of removal from office setting out:

- the reasons for removal from office;
- the date on which the removal from office will come into effect;
- the appropriate period of notice

The office holder has the right to appeal within 7 days of receiving the notice

10. Appeal meeting

The appointed person invites the officeholder to a meeting with the appeal panel giving at least 10 days' notice.

The Final Appeal Meeting is attended by:

- the appointed person,
- the human resources adviser,
- the final appeal panel (3 people),
- the complainants and witnesses (if any),
- the office holder and his or her companion.

Notice is issued within 7 days of the appeal meeting setting out the final decision

There is no further right of appeal within the Capability Procedure. The office holder must now be removed from their current office. He or she has the right to appeal to an Employment Tribunal.

**CURRENT DRAFT OF THE GRIEVANCE PROCEDURE PROVIDED FOR
ILLUSTRATION**

Revised April 2009

**This code of practice is issued by the Archbishops' Council under clause 8 of the
Ecclesiastical Offices (Terms of Service) Measure 2009. Anyone dealing with
grievances must have regard to this code of practice.**

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PART 1 INTRODUCTORY

Those who feel they have been disadvantaged should have the opportunity to have their concerns addressed. Ideally, they should be aired and resolved quickly to the satisfaction of all concerned without recourse to formal proceedings. On occasions where this is not possible, a procedure is needed to give office holders the right to seek redress and be sure that their complaints will be dealt with promptly, fairly and consistently. Reconciliation is a desired outcome, but never at the expense of sweeping things under the carpet.

1. Principles

1. People need to feel confident there is a way of raising their concerns that is confidential and fair. The aim of this procedure is:
 - to respond to grievances fairly, quickly and as near as possible to the point of origin;
 - to ensure the focus is on the issues rather than personalities;
 - to take account of the legitimate interests of all concerned;
 - to allow grievances to be pursued without fear of sanction.

2. The basic principles of the procedure are as follows.
 - Any grievance should be treated seriously
 - No-one should be disadvantaged for raising a grievance
 - A grievance should be dealt with informally wherever possible.
 - Proceedings should be kept confidential.
 - Even during the informal stage, a written record should be made.
 - Office holders raising a grievance should be allowed to bring a colleague or trade union representative to any meeting.
 - Attempts should always be made to resolve grievances as swiftly as possible, although it is recognised that, where a number of people are involved, it can take time to gather all the necessary evidence.
 - Mediation or conciliation should be considered at every stage.

For further details, see Annex 1

2. Mediation

3. It is central to the teaching of Jesus that those who are reconciled to God must be open to being reconciled to those who have offended them or those they have offended. Reconciliation involves clarification of what has happened, how it is perceived by the other person and acknowledgement of the depth of anger and hurt. Reconciliation, for both parties, involves the rebuilding of damaged relationships. Reconciliation should be the desired outcome. In practice, mediation will be used most often where attempts have been made to resolve the matter informally, but it becomes apparent that the aggrieved party does not regard the outcome of informal action to have been satisfactory. However, it is

important to consider how mediation and conciliation might be used to bring this about at every stage of the procedure (for example, at the outset or where the first formal stage has not resulted in a mutually acceptable outcome). For more about mediation, see Annex 2.

3. Scope

4. This grievance procedure is available to all office holders under Common Tenure and is intended to give an opportunity to raise grievances relating to the exercise of the office held, which may include issues relating to:
 - the interpretation and application of terms and conditions of service;
 - housing;
 - ministerial development reviews;
 - continuing ministerial education; and
 - (in the case of training posts) provision of suitable training and experience or an assessment at the end of the training that the cleric was not suitable for a post of responsibility.

For further information on the scope of the procedure, including where its use is not appropriate, see Annex 3.

In the case of bullying, the diocesan anti-bullying and harassment policy will set out the informal steps which office holders may take before making a formal complaint under this procedure. See Annex 4 for further details.

4. Outline of the procedure

5. The key stages of the procedure are as follows. It is important to read this overview in conjunction with the detailed explanation of the procedure that follows in sections 5-8 and which includes information about rights of representation and timescales:
 - a) Informal

It is usually desirable to **attempt to resolve the grievance informally** by raising it directly with the person responsible for the matter which has given rise to concern at the earliest possible juncture (although, sometimes this is not appropriate, for example, in cases of bullying.) The informal stage requires making an attempt to address the concerns seriously and promptly, as grievances that are properly resolved at this stage result in the least damage to feelings and working relationships. However, the person raising the grievance has the right, to proceed straight to the formal stage if they wish, but may find it helpful to discuss the implications of doing this with the HR adviser or their union representative first.
 - b) Formal

If the grievance has not been resolved informally or within a reasonable time period, the office holder may proceed to the formal stage.

Stage one

- (i) He or she will need to **set out their grievance in writing**, describing what attempts have been made to resolve the matter informally and what is the desired remedy.

Stage two

- (ii) The person handling the grievance (usually the archdeacon) will need to investigate the matter. This will include obtaining a statement from any third party at whom the grievance is directed. The archdeacon will invite the office holder to attend **a meeting to discuss the grievance**. The third party may be invited to attend and express a view. The archdeacon will write to the office holder with a decision about steps that have or will be taken to resolve the matter.

Stage three

- (iii) If the office holder remains dissatisfied or the matter remains unresolved, he or she may move to the **appeal** stage by informing the archdeacon in writing and giving reasons. The office holder will be invited to a meeting with a senior member of the clergy or a panel to discuss his or her grievance. Any third party will also be invited to attend. The decision of the appeal body will be given in writing. There is no further right of appeal.

PART 2 DETAILED PROCEDURE

5. Informal resolution

6. Attempts should always be made to resolve matters by informal approaches. An office holder should in the first instance discuss his or her grievance with the person responsible for the matters which have given rise to concerns, for example the relevant diocesan officer or the incumbent or team rector. If this is not appropriate or is unsuccessful, the office holder should raise the matter with the rural or area dean, with the person responsible for his or her ministerial development review or with another suitable person, in order to explore whether and how the matter might be resolved informally.
7. Once a grievance has been raised, it is vital to try to address the office holder's concerns as promptly as possible. A swift response demonstrates that the grievance is taken seriously, and can sometimes nip a difficult situation in the bud.
8. At the conclusion of the informal stage, it will normally be appropriate to agree for any remedial arrangements and for a period of time for them to take effect

before the office holder will be able to pursue the action formally (for example 28 days, with a provision for this to be extended by mutual agreement). However, this will not prevent the office holder from moving to the formal stage earlier than this, if, exceptionally, it becomes evident that the other party is failing to observe their part of the remedial arrangements.

PART 3 THE FORMAL PROCEDURE

9. If an informal approach proves incapable of resolving the grievance, or it has not been resolved within the agreed deadline, then the formal grievance procedure, set out below may be invoked by the office holder. **The HR adviser must be involved at every formal stage of the procedure.**

6. Stage one

10. The office holder must set out the grievance in writing, including (a) what remedies he or she might find acceptable as routes to a resolution and (b) details of any informal steps that have been taken to try and resolve the matter. He or she should send the statement to the archdeacon unless the archdeacon is directly concerned. In this case, the matter should be referred to the diocesan bishop, who has ultimate responsibility for ensuring that the grievance is heard

7. Stage two

11. In certain cases, the archdeacon or diocesan bishop may feel that the matter can be more appropriately handled by some other person (for example the person who chairs the Diocesan Parsonages Board or a suffragan or area bishop) and may, after consulting the office holder, refer the matter accordingly. In the following sections of this document, references to ‘the archdeacon’ include any other person dealing with the matter.
12. The archdeacon shall make appropriate enquiries into the matters raised in the statement of grievance and invite the office holder to attend a meeting to discuss the grievance. This meeting should be held as soon as possible, and within a maximum of 28 days after the archdeacon has received the grievance in writing, although this deadline can be extended by mutual agreement. An office holder has the right to be accompanied at the meeting by a colleague or trade union representative.
13. If the grievance is directed at a particular person or body, that person or body should be invited to express a view, and that view must be taken into account at the meeting. It will be necessary to take a judgement on whether it is appropriate to see the parties separately. Whilst it will almost always be necessary to bring the parties together at some point, to do so prematurely when the issue centres on behaviour and relationships may risk inflaming rather than resolving the

grievance Any third party also has the right to be accompanied by a colleague or trade union representative.

14. As soon as possible, and not more than 14 days after the meeting, the archdeacon shall inform the office holder in writing of his or her decision as to whether there is substance in the matters raised in the statement of grievance and, if so, what steps he or she has taken, is taking or proposes to take to resolve the matter.
15. The archdeacon shall at the same time notify the office holder of the office holder's right to take the matter to stage 3 if the office holder is dissatisfied with the decision or if the matter is not resolved.

8. Stage three

16. An office holder wishing to move to this stage of the procedure shall inform the archdeacon in writing, stating his or her reasons for wishing to do so. The archdeacon shall refer the matter to a senior member of the clergy (a bishop, the dean of the cathedral, or another archdeacon) or to a small group including one such person. The office holder shall be invited to attend a meeting with that person or group to discuss the grievance. This meeting should be held as soon as possible, and within a maximum of 28 days after the archdeacon has been informed that the office holder wishes to take the matter to stage 3, although this deadline can be extended by mutual agreement An office holder has the right to be accompanied by a colleague or trade union representative at the meeting, as does any third party attending.
17. As soon as possible, and not more than 14 days after the meeting, the office holder shall be informed in writing of the decision as to what steps or further steps have been, are being, or are proposed to be taken to resolve the matter.
18. Sometimes, despite everyone's best efforts, a grievance may remain unresolved. In such cases it may be possible to acknowledge that and move on.
19. For how to handle cases where there is an allegation of bullying, see Annex 4

THE COMMON SEAL of the Archbishops' Council was affixed on
[]200-

Church House London

William Fittall
Secretary General

Basic Principles

- a) Any grievance should be treated seriously because of its significance to the person concerned.
- b) No-one should be disadvantaged, for example in relation to new appointments or access to training, by bringing a grievance or by acting as a 'colleague' to someone who has brought a grievance.
- c) Where the grievance involves the alleged actions of a third party, whether an individual or a body, it is necessary to ensure that the third party has the opportunity to express a view and that that view is taken into account. If an informal approach proves incapable of resolving the grievance, the formal procedure set out above may be invoked by the office holder.
- d) Office holders and third parties have the right to be accompanied **at all meetings** concerning the grievance by a trade union official or a colleague.
- e) It is important, and in the interests of all parties, to keep written records during the grievance process. Records should include:
 - the nature of the grievance raised;
 - a copy of the written statement of grievance;
 - the archdeacon's decisions and the actions;
 - whether the matter was taken to the further stage and if so the outcome;
 - and
 - subsequent developments.
- f) Records should be treated as confidential and kept securely in a sealed envelope on the relevant file. Where the grievance is about a third party, it will be necessary to keep a record of the grievance in a sealed envelope on both personal files.
- g) It will often be appropriate to have an HR adviser present at meetings, but not always. There may be other demands on the HR adviser's time, and their expertise may not be relevant in every case (such as a dispute about housing).

Mediation

What is mediation?

Mediation is a well-established process for resolving disagreements in which an impartial third party (the mediator) helps people in dispute to find a mutually acceptable resolution.
(HM Court Services definition)

Reconciliation involves clarification of what has happened, how it is perceived by the other person and acknowledgement of the depth of anger and hurt. Reconciliation, for both parties, involves the rebuilding of damaged relationships

Agreeing to participate in mediation does not deprive the office holder of the right to pursue a matter further via the grievance procedure.

Principles

- collaborative problem solving between those in dispute - 'win/win'
- mediation is a voluntary process
- unlike arbitration, the third party has no power to impose or even formally recommend a solution
- focus on the future - rebuilding relationships rather than apportioning blame
- acknowledging feelings as well as facts to allow participants to let go of anger/upset and move forward

How does it work?

- gives those involved an opportunity to step back and think about how they could put the situation right
- participants may need to look at their own behaviour as well as that of other people
- enables participants to come up with their own practical solution
- allows people to rebuild relationships as they work together to find an agreement

Difference between mediation and conciliation

“Conciliation is the same as mediation but the term conciliation is used when an employee is making, or could make, a specific complaint against their employer to an employment tribunal.”

(ACAS definition)

Mediation should not be seen as committing people in advance to whatever the outcome of the process is, but does require a willingness by all concerned to participate in trying to find a mutually acceptable solution.

Agreements reached through mediation are not legally binding whereas those reached through conciliation are.

When is mediation most likely to work?

- when it is used early on
- when those in dispute are willing to take part and want it to work
- when those in dispute are prepared to be open and honest
- when those in dispute are willing to consider continuing to have a relationship in the future

Mediation should not be used to divert an office holder into accepting a compromise in a situation where their grievance takes the form of a specific accusation of unacceptable conduct (such as bullying or discriminatory behaviour) and where disciplinary examination of that person's actions would be appropriate.

Mediation works less well when:

- people feel coerced into taking part
- there has been a low level of trust over a long period of time
- there is an abuse of power
- the mediator is not seen by the parties as impartial
- where there are systemic problems

Resources

- Bridge Builders – Mennonite Model
- Church Disputes Mediation by James Behrens (Gracewing 2003)
- trained mediators already available

www.acas.org.uk

The Scope of the procedure

The procedure is intended to give an opportunity to raise grievances relating to the exercise of the office held, which may include issues relating to:

- the interpretation and application of terms and conditions of service;
- housing;
- ministerial development reviews;
- continuing ministerial education; and
- (in the case of training posts) provision of suitable training and experience or an assessment at the end of the training that the cleric was not suitable for a post of responsibility.

The procedure may not be used where other forms of appeal or representation are available, or have been exhausted, for example appeals against disciplinary or capability decisions or those taken in the faculty jurisdiction, rights of objection in respect of proposals for certain housing transactions or for pastoral reorganisation, and applications to Employment Tribunals in certain cases provided for in the Ecclesiastical Offices (Terms of Service) Regulations 200*.

Grievances concerned with work under a contract of employment (with an outside body such as the National Health or Prison Service or a college, or with the Diocesan Board of Finance) should be dealt with under the grievance procedures of the relevant employing body.

The Ecclesiastical Offices (Terms of Service) Regulations do, however, provide that, if there is a dispute about the performance of the respective obligations of the relevant housing provider and the office holder which cannot be resolved by the grievance procedures, it shall be referred for arbitration by a single arbiter appointed by agreement between the relevant housing provider and the office holder, or, failing agreement, by the President of the Royal Institution of Chartered Surveyors; and the decision of any arbiter so appointed shall be final.

This procedure may be invoked by an individual undergoing a capability procedure, but that procedure will not be suspended while the grievance is considered. If the grievance relates to the handling of the capability procedure, the appeal process should be used rather than this procedure.

Bullying and Harassment

It is expected that all dioceses should have a policy to deal with bullying and harassment. For guidance on drawing up such a policy, see *Dignity at Work* - <http://www.cofe.anglican.org/lifeevents/ministry/workofmindiv/dracsc/dignity/dignity.doc>

Where the grievance involves the alleged bullying by a third party, the diocesan anti-bullying and harassment policy will set out informal steps which the office holder can take before making a formal complaint. If an informal approach proves incapable of resolving the grievance, the formal procedure set out above may be invoked by the office holder.

If allegations are referred to the archdeacon which concern repeated physical, verbal or emotional bullying by a person in holy orders, then the archdeacon may take the view that the matter should properly be dealt with under the Clergy Discipline Measure 2003. In this case, he or she may stay the formal procedure to allow a complaint under that Measure to be made. If the allegations do not appear to the archdeacon to be of sufficient gravity to warrant a complaint of misconduct, or if the alleged bullying was carried out by a lay person, who is not subject to the Clergy Discipline Measure, then before taking the formal procedure further, the archdeacon shall seek the consent of the office holder before contacting the other party. The third party is entitled to be accompanied at any meeting to discuss the allegations.

**Grievance Procedure – supporting advice
Revised April 2009**

This note has been issued by the Archbishops' Council for information and to assist the development of good practice. It does not constitute formal guidance or directions under the Ecclesiastical Offices (Terms of Service) legislation.

CONTENTS

1. Recording and monitoring
2. Training
3. Groups hearing stage three grievances
4. The right to be accompanied
5. Provision of pastoral support
6. Resources

ANNEX ONE

SUGGESTED CHECKLIST FOR HOLDING A STAGE THREE HEARING

1. Recording and monitoring

1. The bishop may wish to consider making someone responsible for recording, monitoring and analysing the number of and reasons for grievances. In particular, it will be important to look out for trends or changes, such as an increase in the number of grievances, or whether the same parish/deanery/person is repeatedly involved (whether as the subject or the instigator of the grievance). This is particularly important, as this could indicate weak appointment processes etc.

2. Training

2. People responsible for dealing with grievances need to be competent. They must be familiar with the provisions of the grievance procedure and know how to conduct a hearing. It may be helpful to provide archdeacons and other senior clergy with training in handling grievances including dealing with issues of cultural sensitivity.

3. The archdeacon should take advice from the HR adviser or from ACAS (who provide a helpline accessible to both those in the position of employer and employee on 08457 47 47 47); a code of practice is also available from their website). Archdeacons may find it helpful to undertake equal opportunities and cultural awareness training.

3. Groups hearing stage three grievances (part 3 paragraph 16 of the procedure)

4. Where grievances are heard by small groups during the third stage of the procedure, it will be helpful to make them as representative as possible, in particular:

- such groups should contain both men and women
- where the complaint has been made by or about someone from a minority ethnic background, it might be helpful to include a member from the same background
- where theological tradition might be an issue, it may also be helpful to include on the panel people of similar, respective traditions or to ask for an 'expert panel member' who can advise.

4. The right to be accompanied

5. If an office holder/third party wishes to be accompanied, they should bear in mind that

- they should make a request to be represented (this does not have to be in writing) and should inform the person investigating the grievance whom they have chosen;

- it should not be someone with an interest in the case who might be called as a witness;
- whether a request is reasonable will depend on the circumstances of the individual case;
- it would not be reasonable to insist on being accompanied by someone who would prejudice the hearing or who might have a conflict of interest;
- where possible, the person accompanying the office holder should have a say in the date and time of a hearing;
- the person accompanying the office holder should be allowed to address the meeting to
 - put the office holder's/third party's case
 - sum up the case on behalf of the office holder /third party
 - respond on the office holder's/third party's behalf to any view expressed;
- a colleague could, where appropriate, be a clergyperson from another Church (for example, where they are attached to a Local Ecumenical Project)
- the office holder or the third party or the person accompanying them may
 - confer with the office holder /third party during the hearing
 - participate as fully as possible including asking witnesses questions
- the companion has no right to
 - answer questions on behalf of the office holder /third party
 - address the meeting if the office holder /third party does not wish it
 - prevent the archdeacon from explaining the position.

5. *Provision of pastoral support*

6. Bishops may need to consider ensuring that independent, confidential pastoral support is available for
- those taking out a grievance
 - those who are the subject of a grievance
 - those who are having to deal with grievances (depending on their nature and number).

6. *Resources*

ACAS – www.acas.org.uk

Mediation

Bridge Builders – Mennonite Model

Church Disputes Mediation by James Behrens (Gracewing 2003)

Centre for Effective Dispute Resolution (CEDR)

Dignity at Work (Anti-bullying)

<http://www.cofe.anglican.org/lifeevents/ministry/workofmindiv/dracsc/dignity/dignity.doc>

Suggested checklist for a stage three hearing

1. Written submission of case and witness statements should be made available to the parties 5 working days before the meeting.
2. The office holder and the person accompanying him or her shall state his/her case and call any witnesses.
3. The members of the panel and the archdeacon shall be invited to question any witnesses.
4. The office holder and the person accompanying him or her may re-examine his/her witnesses on any matters referred to in their examination by members of the panel or the archdeacon.
5. The archdeacon shall state his/her case and call any witness as appropriate.
6. The members of the panel and the office holder and the person accompanying him or her shall be entitled to question any witnesses called.
7. The archdeacon may re-examine his/her witnesses on any matter referred to in their examination by members of the committee or the office holder and the person accompanying him or her.
8. The office holder and the person accompanying him or her shall be entitled to reply to the archdeacon's case.
9. The panel may at any time in the hearing ask either party to elucidate or amplify any statement made. The panel can also call other witnesses or persons to give evidence or clarify a point.
10. The panel may, at their discretion, adjourn a hearing in order for either party to produce further evidence.
11. The panel shall fully consider the grievance in private in the light of any relevant conditions of service and any further advice which they may seek on questions of interpretation of conditions of service etc.
12. The decision shall be communicated in writing to both parties and the appropriate representative as soon as possible, and not later than seven working days.
13. If either party to the grievance fails to attend the hearing, the panel shall consider the appeal in the absence of that party, except where there is an adjournment by consent,

or the panel decides in their discretion it would be reasonable to adjourn. In the event of such an adjournment, the panel shall, in fixing a new date, as far as practicable have regard to the convenience of the party who appeared before the original hearing.