

A complaint has been made about me – what happens now?

Introduction

As befitting their calling, clergy are expected to maintain high standards of conduct and behaviour at all times. From time to time, however, there may be occasions when individuals appear to fall below those standards. Sometimes this can lead to a complaint being made by members of the church community or the public if they have a proper interest. The purpose of this leaflet is to provide you with some preliminary help and guidance if you are the subject of a complaint, whether informal or formal, genuine or unfounded.

Informal complaints

Two sorts of complaint, the informal and the formal, may be made against members of the clergy. An informal complaint, which may be made orally or in writing, is likely to relate to alleged misconduct that is not serious. The person making the complaint may have no wish to invoke formal procedures. You should nonetheless take the complaint seriously and deal with it promptly, since delay can often exacerbate a problem.

You should be prepared to offer an explanation for your actions, and where appropriate an apology. An offer to meet and discuss the complaint may be helpful, and it might be advisable to arrange such a meeting in the presence of a third party (who should of course be acceptable to both you and the person making the complaint). Although you and the complainant are free to choose whomever you wish, you may wish to consider your rural or area dean or the lay chair of your deanery synod in this capacity.

Formal complaints

The remainder of this leaflet deals with formal complaints made under the Clergy Discipline Measure 2003, and is intended as introductory guidance only. It is no substitute either for the detailed information provided in the Code of Practice, or for independent professional legal advice. The Code, the Measure, the Rules (including all the standard forms) and other supporting material are available on the Church of England website: <http://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline.aspx>. If you are unable to access the website, you can contact the Bishop's office for help in obtaining these documents.

Formal complaints, in contrast to informal complaints, must be made in writing, and follow the procedures laid down under the Clergy Discipline Measure. The Measure is intended for dealing with allegations of serious misconduct only. Just because a formal complaint has been made against you does NOT mean that you have committed misconduct or that the Bishop will assume that you have. Experience shows that many complaints are without substance, but whatever happens, the Bishop will ensure that throughout the process you are not on your own and that you will receive appropriate pastoral care and support.

A complaint cannot be brought more than one year after the alleged misconduct unless the complainant has first obtained permission from the President of Tribunals; if this applies in your case, the President will consult you before making a decision whether or not to allow the complaint to be made.

Who will provide pastoral care and support?

A formal complaint under the Measure can be stressful for all parties concerned and you will understandably experience a range of emotions. Your family may also be affected. As a matter of priority the Bishop will ensure that you receive appropriate care and support. Because the Bishop has a central role under the Measure in the administration of discipline and must be seen to be impartial, he cannot personally provide pastoral care and support for you whilst formal proceedings are under way, but he will make sure that suitable arrangements are made for your care and support which are acceptable to you, and also for the care and support of your family. Any pastor appointed by the Bishop will be specifically acting on his behalf, but all pastoral care and support will be completely confidential, so nothing discussed in a pastoral meeting will be reported back to the Bishop without your consent.

You may of course wish to turn to family, close friends or fellow clergy for additional informal support. It is worth bearing in mind the obvious point that the more people you tell about a complaint, the greater the danger of confidences being breached and stories getting distorted.

Who can provide legal advice?

If you are asked to respond to a complaint (or to an application for permission to make a complaint) you are strongly recommended to seek legal advice before you do respond. Because the Diocesan Registrar acts as the Bishop's legal adviser in matters relating to the Measure and in particular to potential complaints under it, he or she will not be able to advise you but instead can provide you with contact details of Registrars in neighbouring dioceses who can advise you. You can also obtain such details from the Secretary to the Church of England Legal Aid Commission (see below), or alternatively you could seek independent legal advice from a solicitor in private practice.

If you are asked by the bishop to respond to a complaint under the Measure, legal aid may be available from the Church, subject to financial assessment and certain restrictions. The Secretary to the Legal Aid Commission will be able to advise you on eligibility and how to apply. It is important that you contact the Secretary at the earliest opportunity, because legal aid certificates cannot be backdated.

If you are a member of a union you may also wish to explore the possibility of obtaining legal, financial or other assistance from the union.

What should I do?

You will be notified in writing by the Diocesan Registrar if a formal complaint is made against you. Your first response should be to compile a file with written details of the complaint and any correspondence or other relevant information. The Registrar will provide you with copies of the complaint and evidence in support, but you do not need to answer the complaint at this stage; the Bishop may decide that the complaint should be dismissed, in which case it will proceed no further under the Measure.

The alleged misconduct giving rise to a formal complaint must constitute one or more of the following:¹

- i. an act in breach of ecclesiastical law;
- ii. a failure to do an act required by ecclesiastical law;
- iii. neglect or inefficiency in the performance of the duties of office;
- iv. conduct unbecoming or inappropriate to the office and work of the clergy.

The Registrar will usually scrutinise the complaint within 28 days and advise the Bishop in writing as to whether the person bringing the complaint is eligible to do so, and whether the alleged misconduct is sufficiently serious to warrant disciplinary proceedings under the Measure. Upon receipt of that written report, the Bishop will decide whether or not to dismiss the complaint. Where the Bishop does not dismiss the complaint but decides that it should proceed to the next stage, he will write to you and ask you to answer the complaint within 21 days. You may request the Bishop to allow more time if you need it.

How do I answer a formal complaint?

Your answer to the complaint should be in writing on Form 2, containing a signed statement of truth and detailing which allegations are contested by you and which are not. Any witness statements should be submitted on Form 3 at the same time as your answer, and accompanied by any further evidence such as photographs or literature. Remember, you are strongly recommended to seek legal advice before submitting your answer.

Completing the forms

The standard forms all contain helpful guidance notes in the margin and these should be read and followed carefully. You may find the following additional advice useful:

- before doing anything else, collect **all** your evidence together;
- group the evidence together in order of date and time;
- prepare a first draft of your answer and statement in your own words;
- write in paragraphs numbered consecutively and in date and time order;
- state if parts of your statement are not within your own personal knowledge (for example because you have been told about them by someone else) and, if so, identify the sources of your information;
- if you accept any part of the complaint you should provide details of anything that may help to explain or mitigate your actions;
- read your draft over and then put it to one side for several hours or longer to give you time to reflect on what you have written;
- return to your draft and re-read it. Make any necessary alterations so that it is as accurate as you can make it;
- complete the final version of the answer and statement, copying from the draft;
- make sure all the evidence you want to rely on is attached to your answer and statement (for example, statements in support from other people, or copies of letters or emails);
- keep a copy of your answer and evidence in support.

If you need help to complete the forms please contact one of the diocesan volunteers appointed to provide free confidential assistance. However, please note that the diocesan volunteers are not acting in

¹ Complaints concerning matters of doctrine, ritual or ceremonial are not dealt with under the 2003 Measure, but continue to be subject to the provisions of the Ecclesiastical Jurisdiction Measure 1963.

a legal capacity and will not be able to give you legal advice or advise you on the merits of your answer or on the seriousness or implications of the complaint. Such advice must be obtained from your legal adviser.

What happens next?

When you are ready, your answer and all supporting evidence should be sent to the Bishop. The Bishop may wish to meet you and your adviser to talk about the complaint and your answer. If he considers that the misconduct is of a minor or technical nature or that there was no misconduct at all he may decide to take no further action. Alternatively, and only with your consent:

- the complaint could be conditionally deferred for up to five years; this means that if no other valid complaint is made during that time then no further action will be taken;
- the complaint could be referred to a qualified conciliator to see if it can be resolved by agreement between you and the complainant;
- one or more of the following penalties could be imposed: a rebuke, an injunction, revocation of any licence you have to serve in the diocese, removal from any preferment you hold, prohibition from ministry for a specific time or prohibition for life.

If the Bishop considered a complaint could not be dealt with satisfactorily by any of these means he could refer it for formal investigation by the Designated Officer. The Designated Officer would look into the complaint and prepare a report for the President of Tribunals, who would decide if the complaint should be heard by a Bishop's Disciplinary Tribunal. A tribunal would consist of five members from outside the diocese, with a legally qualified chair, two members of the clergy and two communicant lay members. It would hear evidence from both sides before making a decision, and if it concluded that the complaint was proved then it could impose penalties similar to those above. If the President decided that the complaint should not be heard by a tribunal, then no further action would be taken on it under the Measure.

Contact details for Legal Aid

Mr Stephen York, Secretary to the Church of England Legal Aid Commission
The Legal Office, Church House, Great Smith Street, London SW1P 3AZ
Tel: 020 7898 1703, email stephen.york@churchofengland.org