

GRIEVANCE PROCEDURE CODE OF PRACTICE – SUPPORTING ADVICE

This advice is issued by the Archbishops' Council for information and to assist the development of good practice, and is referred to in paragraph 1.2 of the grievance procedure. It does not constitute formal guidance under the Ecclesiastical Offices (Terms of Service) Measure 2009.

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1. Recording and monitoring

The bishop¹ may wish to consider making an appropriate person 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, underlying discontent which may need to be addressed or potential discriminatory behaviour.

2. Training

- 2.1 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.
- 2.2 The archdeacon should take advice from the Human Resource Adviser. Archdeacons may find it helpful to undertake equal opportunities and cultural awareness training.

3. Groups hearing stage three grievances (part 3, paragraph 10.1 of the procedure)

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:

- the membership of such groups should, where practicable, include 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 representation of the relevant traditions within the group or to ask for an 'expert panel member' who can advise.

4. The right to be accompanied

If an office holder and/or respondent wishes to be accompanied, they should bear in mind that

- they should make a request to be represented (normally in writing) and should inform the person investigating the grievance whom they have chosen

¹ An area or suffragan bishop may exercise the functions of the diocesan bishop under this procedure where he has been given authority by the diocesan bishop so to do.

- 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/respondent should be allowed to address the meeting to
 - put the office holder's/respondent's case
 - ask questions of any witness if the office holder so wishes
 - sum up the case on behalf of the office holder /respondent
 - respond on the office holder's/respondent's behalf to any view expressed
- 'colleague' should be interpreted flexibly: it does not have to be an ordained person and could be a reader or a churchwarden. Nor does it have to be someone within the same team or deanery. A colleague might in certain circumstances include a member of another church in a local ecumenical project or partnership
- the office holder and the respondent may confer with their companions, and should be allowed to do so in private so long as this does not unreasonably disrupt or delay the hearing
- the companion should not be permitted to
 - answer questions on behalf of the office holder /respondent
 - address the meeting if the office holder /respondent does not wish it
 - prevent the archdeacon from explaining the position.

5. Provision of pastoral support

Bishops may need to consider making independent, confidential pastoral support available to

- those taking out a grievance
- those who are the subject of a grievance
- those who are having to deal with grievances.

6. Resources

ACAS – www.acas.org.uk

Mediation

See Annex 2

Bridge Builders – Mennonite Model

Church Disputes Mediation by James Behrens (Gracewing 2003)

Centre for Effective Dispute Resolution (CEDR)

Annex 1

Basic Principles

- a) Every 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 companion to someone who has brought a grievance.
- c) Where the grievance involves the alleged actions of a respondent, whether an individual or a body, it is necessary to ensure that the respondent 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 may be invoked by the office holder.
- d) Office holders and respondents have the right to be accompanied at all meetings concerning the grievance by a trade union official or a lay or ordained 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 raised against a respondent who is also in holy orders, it will be necessary to keep a record of the grievance in a sealed envelope on the personal files of both the respondent and the person making the grievance.

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

- Mediation should not be seen as committing people in advance to whatever the outcome of the process is, but does require willingness by all concerned to participate in trying to find a mutually acceptable solution
- The emphasis is on 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
- The focus is on the future - rebuilding relationships rather than apportioning blame
- It acknowledges feelings as well as facts, in order to allow participants to let go of anger/upset and move forward.

Mediation works by

- giving those involved an opportunity to step back and think about how they could put the situation right
- encouraging participants to be aware of the need to look at their own behaviour as well as that of other people
- enabling participants to come up with their own practical solution
- allowing people to rebuild relationships as they work together to find an agreement.

Mediation is most likely to work when

- it is used early on
- those in dispute are willing to take part and want it to work
- those in dispute are prepared to be open and honest
- 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

1. The procedure is intended to provide a means to address 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
 - 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.
2. 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 decisions taken under the faculty jurisdiction; statutory rights of objection in respect of proposals for certain housing transactions or for pastoral reorganisation, and applications to Employment Tribunals in certain cases as provided for in Regulation 33 of the Ecclesiastical Offices (Terms of Service) Regulations 2009.
3. Grievances concerned with work under a contract of employment (with an outside body such as the National Health or Prison Service or a theological college, or with the Diocesan Board of Finance) should be dealt with under the grievance procedures of the relevant employing body.
4. Regulation 15 of the Ecclesiastical Offices (Terms of Service) Regulations 2009 provides 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.
5. This procedure may be invoked by an individual undergoing a capability inquiry, but that inquiry will not be suspended while the grievance is considered. If the grievance relates to the handling of the capability procedure, the appeal process under that procedure should be used rather than this procedure.

Bullying and harassment

1. 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/draesc/dignity/dignity.doc>.
2. 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.
3. 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 (CDM). In coming to a view on whether to instigate proceedings under the CDM, the archdeacon should refer to the CDM Code of Practice, especially paragraphs 23 and 24.
4. 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 2003, then before taking the formal procedure further, the archdeacon should seek the consent of the office holder before contacting the respondent. The respondent should be given the opportunity to be accompanied at any meeting to discuss the allegations. The bishop is likely to want the grievance heard by a panel rather than an individual in cases where discrimination is alleged or inferred.

Suggested checklist for holding a stage three hearing

1. Written submission of case and witness statements should be made available to the parties as soon as reasonably possible and in good time before the meeting.
2. The office holder and the person accompanying him or her should state his/her case and call any witnesses. Witnesses will remain outside the meeting room unless they are giving evidence.
3. The person or group conducting the hearing ('the adjudicator(s)'), and the respondent and the person accompanying him or her may 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 the adjudicator(s) or the respondent.
5. The respondent and the person accompanying him or her shall be entitled to reply to the office holder's case and may call witnesses.
6. The adjudicator(s), the office holder and the person accompanying him or her may question the respondent's witnesses.
7. The respondent and the person accompanying him or her may re-examine his/her witnesses on any matters referred to in their examination by the adjudicator(s) or the office holder
8. The adjudicator(s) may at any time in the hearing ask either party to elucidate or amplify any statement made. The adjudicator(s) can also call other witnesses or persons to give evidence or clarify a point.
9. The adjudicator(s) may, at their discretion, adjourn a hearing in order for either party to produce further evidence.
10. The adjudicator(s) 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.
11. The decision shall be communicated in writing to both parties and, where appropriate, representatives as soon as possible and in any event normally within seven working days after the hearing.
12. If the office holder or the respondent to the grievance fails to attend the hearing, the adjudicator(s) may consider the appeal in the absence of that party, except where there is an adjournment by consent, or the adjudicator(s) decide in their discretion that

it would be reasonable to adjourn. In the event of such an adjournment, the adjudicator(s) should, in fixing a new date, as far as practicable, have regard to the convenience of the office holder.