

CLERGY DISCIPLINE MEASURE 2003 PRACTICE DIRECTION

CROSS EXAMINATION BY RESPONDENTS IN PERSON

Sir Andrew McFarlane, President of Tribunals, issued the following Practice Direction pursuant to section 4(2) of the Clergy Discipline Measure 2003:-

Introduction and Background

1. This Practice Direction is issued in accordance with the overriding objective to enable formal disciplinary proceedings brought under the Clergy Discipline Measure ('the Measure') to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to the nature and seriousness of the issues raised. It applies to a bishop's disciplinary tribunal and to the court of the Vicar-General.
2. In this Practice Direction:
 - (a) "Tribunal" means a bishop's disciplinary tribunal or court of the Vicar-General,
 - (b) "Chair" means the Chair of a bishop's disciplinary tribunal or a Vicar-General, as the case may be;
 - (c) "Registrar" means the relevant Registrar of Tribunals or the relevant Provincial Registrar, as the case may be;
3. A respondent to a complaint may normally instruct a legal representative to put the respondent's case at a hearing before a tribunal or may conduct his or her own case in person.
4. In certain criminal proceedings there are restrictions imposed on a defendant to cross-examine a witness in person; there are cases before a tribunal where a respondent should likewise not be permitted to cross-examine a witness in person, and any cross-examination should be conducted by a legal representative. Such cases before a tribunal fall into three categories:
 - (a) Where the alleged misconduct is conduct of a sexual nature towards the witness in question;
 - (b) Where the misconduct in question (whether sexual or not sexual) was towards a witness who was a child at the time of the alleged conduct; and
 - (c) Any other case where the witness's evidence is likely to be impaired if cross-examined by the respondent in person, or improved if the respondent does not cross-examine the witness.
5. This Practice Direction directs a Chair to restrict the right of a respondent to cross-examine a witness in person in such cases.

The Direction

6. **A respondent may not cross-examine a witness in person where:**
 - (a) **The alleged misconduct is conduct of a sexual nature towards that witness, or**
 - (b) **The alleged misconduct is conduct towards the witness who was a child at the time of the misconduct, or**
 - (c) **The witness's evidence is likely to be impaired if the witness is cross-examined by the respondent in person, or improved if the respondent does not cross-examine the witness in person.**

7. **In determining whether the quality of evidence given by a witness is likely to be diminished if cross-examined by a respondent in person, or likely to be improved if the witness is not cross-examined by the respondent in person, the Chair is to have regard to all relevant circumstances including:**
 - (a) **Any views expressed by the witness as to whether or not the witness is content to be cross-examined by the respondent in person;**
 - (b) **The nature of the questions likely to be asked, having regard to the issues in the proceedings;**
 - (c) **Whether there has been any relationship, and if so the nature of that relationship, between the witness and the respondent.**

8. **Where it appears to the Chair that paragraph 6(a) or (b) or (c) apply:**
 - (a) **A direction declaring that to be the case must be given;**
 - (b) **The respondent must be invited to arrange for a legal representative to act for the respondent for the purpose of cross-examining the witness in question; and**
 - (c) **A direction must be given to the respondent to notify the Registrar by the end of such period as may be specified whether a legal representative is to act for the respondent for the purpose of cross-examining the witness in question.**

9. **If by the end of the specified period in paragraph 8(c) above the respondent has not notified the Registrar, the Chair must consider whether it is in the interests of justice for the witness to be cross-examined, and if it is, the tribunal must appoint a legal representative to cross-examine the witness in the interests of the respondent, but the person so appointed is not responsible to the respondent.**