

GENERAL SYNOD

DRAFT CLERGY DISCIPLINE APPEAL RULES

Explanatory Memorandum

Introduction

1. The Clergy Discipline Measure ('the Measure') received Royal Assent in July 2003. It provides a new structure for dealing efficiently and fairly with formal complaints of misconduct against members of the clergy (except in relation to matters involving doctrine, ritual or ceremonial, which will continue to be governed by the Ecclesiastical Jurisdiction Measure 1963). As required by section 45 and to enable the Measure to come fully into force, detailed procedural rules ('the Clergy Discipline Rules'), were prepared by the Rule Committee and were approved by the General Synod in July of this year. Those rules have now been laid before Parliament as a statutory instrument. In July the General Synod also approved a Code of Practice produced by the Clergy Discipline Commission, with the approval of the Dean of the Arches and Auditor, giving general guidance for the purposes of the Measure. The Measure is anticipated to come fully into force on 1st January 2006.
2. The Clergy Discipline Rules provide procedural rules for all stages of formal complaint proceedings other than appeals from the bishop's disciplinary tribunal or from the Vicar-General's court. The explanatory memorandum for the Clergy Discipline Rules and the Code (GS 1585-1586 X) indicated that separate rules dealing with those appeals would be prepared by the Rule Committee and put before the General Synod in November.
3. The Rule Committee has now completed its work on the Appeal Rules. The Appeal Rules, as a statutory instrument, will have the force of law. They deal with the procedure to be followed on an appeal under the Measure (see paragraph 13 below) and are detailed and technical in nature. Because the Appeal Rules must be consistent with the Measure and cannot override it, the Rule Committee has had to work within the framework of the Measure.

A brief guide to the Clergy Discipline Measure 2003

4. All admitted to Holy Orders of the Church of England are covered by the Measure, whether deacon, priest, bishop, or archbishop, and whether or not in active ministry. Where the formal complaint concerns priests or deacons, the disciplinary structure is centred on the bishop, because in each diocese it is the bishop who is responsible for administering discipline. Where the formal complaint concerns the bishop, the structure is centred on the relevant archbishop.
5. The new procedures were first envisaged in Under Authority, GS 1217, published in 1996 by a working party set up on behalf of the General Synod to review clergy discipline and the working of the ecclesiastical courts. Under Authority examined the system at that time, outlined its perceived strengths and weaknesses, and made recommendations for a comprehensive change in the way that clergy discipline was to be handled. Those recommendations were discussed by the Synod in November 1996. An implementation group was set up to start the legislative process, which led in due course to the Final Approval of the Measure by the Synod in November 2000.
6. The new procedures under the Measure are not designed to deal with minor complaints (see Under Authority at C.3: "...in the case of many minor complaints an apology or an informal rebuke may be all that is required and the full complaints process would not need to come into play").
7. Under section 8 of the Measure there are four grounds for alleging misconduct against a member of the clergy ('the respondent'), namely: acting in breach of ecclesiastical law, failing to do something which should have been done under ecclesiastical law, neglecting to perform or being inefficient in performing the duties of office, and engaging in conduct that is unbecoming or inappropriate to the office and work of the clergy.
8. Under section 10 of the Measure, the disciplinary process is started by a formal written complaint, which is made to the bishop. The complaint must be made within one year of the misconduct in question, or within one year of the last occasion of misconduct where there is a series of acts or omissions amounting to misconduct (section 9). This period of one year can be extended by the President

of Tribunals (a new office created by section 4 of the Measure). The person making the complaint ('the complainant') must produce written evidence in support of the complaint (section 10(3)). The complaint and the evidence in support is referred in the first instance to the diocesan registrar for a preliminary scrutiny (section 11). The registrar checks to see if the complainant has the right to complain, and whether the allegations would amount to misconduct under the Measure if proved; the registrar makes a report on these matters for the bishop. On receipt of the registrar's report the bishop may dismiss the complaint if he decides that the complainant is not entitled to complain or if the issues raised do not justify further serious consideration as a disciplinary matter (section 11(3)).

9. If the bishop determines that the complaint is to be dealt with as a disciplinary matter he will, within four weeks of receiving the registrar's report, decide which course to take; the bishop can extend this four-week period if necessary. There are five courses available to the bishop under section 12 of the Measure:
 - (a) He can decide to take no further action;
 - (b) With the respondent's consent, the bishop can leave the complaint on the record for up to 5 years (known as a 'conditional deferment'); if during that time another complaint of misconduct is made against the respondent then this first matter may be dealt with at the same time and in the same way as the later complaint;
 - (c) The bishop can appoint a conciliator with the agreement of the complainant and the respondent to attempt to bring about a conciliation; this may be particularly useful where there has been a breakdown in relationships between the parties;
 - (d) Where a respondent admits misconduct the bishop may impose an appropriate penalty with the respondent's consent; and
 - (e) Where there is no admission of misconduct, or no agreement over the appropriate penalty, or an attempt at conciliation fails, the bishop may refer the complaint to a formal investigation. A report is prepared by the legally qualified Designated Officer and is submitted to the President of Tribunals who decides if there is a case to answer.

10. If, following the formal investigation, there is no case to answer, no further steps are taken under the Measure. If there is a case to answer then the President refers the complaint to the bishop's disciplinary tribunal (section 17). The complainant's case will be conducted by the Designated Officer. The tribunal will consist of five people (two laity, two clergy, and a legally qualified chair) selected by the President of Tribunals from the relevant provincial panel. The two provincial panels will be appointed by the Clergy Discipline Commission (section 21). The tribunal will replace the Consistory Court as the forum for hearing contested disciplinary cases. Under the Measure a tribunal will determine the complaint on a majority verdict using the civil standard of proof (section 18). Complaints against bishops are subject to similar procedures, although the Vicar-General's court, rather than the bishop's disciplinary tribunal, hears any case to be answered.
11. Under section 24 various penalties can be imposed under the Measure for misconduct. These can be imposed by the bishop with the consent of the respondent, or by the bishop's disciplinary tribunal (or Vicar-General's court). The penalties range from a life-long prohibition from exercising any functions, to a rebuke.
12. If a penalty is imposed under the Measure, either by the bishop or by the bishop's disciplinary tribunal, it will be recorded in the Archbishops' list (section 38) to be kept at Lambeth Palace. A copy of the list will be kept at Bishopthorpe. Under the Measure, the respondent will be informed of the particulars to be recorded, and may request the President of Tribunals to review the entry. The President will be able to direct, if appropriate, that the entry on the list should be amended, or removed.

Right of appeal under the Measure

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13. The respondent has a right of appeal on a question of law or fact against any finding of the disciplinary tribunal or the Vicar-General's court and the Designated Officer has a right of appeal on a question of law. The respondent may also appeal against a penalty. A complainant has no right of appeal against any findings of the tribunal or Vicar-General's court. An appeal is made to the Arches Court of Canterbury, or to the Chancery Court of York, according to the relevant province in which the proceedings in the disciplinary tribunal or the Vicar-General's court have been held. Both appellate courts are presided over by the Dean of the Arches and Auditor ('the

Dean'), and comprise two people in holy orders appointed by the prolocutor of the House of Clergy of the relevant province, and two communicant lay members with judicial experience appointed by the Chairman of the House of Laity after consultation with the Lord Chancellor.

Consultation on the Appeal Rules

14. The Rule Committee, which is chaired by the Dean, has undertaken a consultation on the Appeal Rules. All diocesan registrars, the Ecclesiastical Law Association, the Ecclesiastical Judges Association, the Ecclesiastical Law Society and the Vicar-General for York were invited to take part in the consultation. The Rule Committee is grateful to those who responded, and has revised the Appeal Rules to take account of the representations made.

THE CLERGY DISCIPLINE APPEAL RULES

15. There are 44 rules, plus a schedule of forms for use in appeal proceedings.
16. Rules 1 and 2 set out the overriding objective, and impose a duty on parties to co-operate to further the overriding objective. Failure to co-operate may result in an appeal being struck out.
17. Rules 3 and 4 set out who has the right to appeal, on what grounds, and to which court.
18. Rules 5 to 7 provide that an appeal is to be made in a written notice of appeal, that it must contain certain information, and that it must have attached to it a copy of the decision which is being appealed. A special form, form A1, is provided in the schedule which may be used as a notice of appeal. The use of the form is preferable although not compulsory; if it is not used, the notice of appeal must contain the same information as if the form had been used. (The Rule Committee is in favour of providing forms because it believes it will help appellants to supply the required information.) Form A2 is a notice of appeal for use by the Designated Officer when appealing on a question of law.
19. To ensure that appeals are made expeditiously and undue delay avoided, an appeal must, in accordance with rule 8, be made within 28 days of the tribunal's decision or the imposition of any penalty (whichever is the later to occur). Permission to appeal out of time may be obtained from the Dean under rule 9, using form A3 to make the application. The Dean will determine the application in writing having given the other party to the appeal an opportunity to make representations.
20. Rule 10 provides that a penalty imposed by a tribunal is not to take effect, and no corresponding entry is to be made in the Archbishops' List (see paragraph 12 above), until any appeal has been disposed of.
21. Under rules 11 and 12 directions for case management (known as 'interim directions') will normally be given by the Provincial Registrar, but any matters of difficulty or dispute may be referred to the Dean. Directions will be given to ensure that the parties are ready for the appeal hearing. In appropriate cases, to save time and money, directions hearings lasting no more than about half-an-hour may be conducted over the telephone.

22. If an appellant does not pursue an appeal with due diligence, the appeal can be struck out by the Dean or the appellate court under rule 13, and an appeal hearing may proceed under rule 14 in the absence of a party who has been notified about it. These rules are consistent with the principle that proceedings should be pursued and disposed of without undue delay.
23. Rule 15 provides for fixing the date and place of the appeal hearing.
24. Rules 16 to 18 make provision in relation to evidence. There will be no automatic right in an appeal to recall witnesses who gave evidence before the tribunal. An appellant will have to make an application to the Dean for permission to recall a witness, and will need to state why it is considered necessary to do so. No evidence which was not before the tribunal may be put before the appellate court unless permission is obtained from the court or from the Dean. Any application for permission to put in new evidence should be made using form A4, and an applicant will need to explain why the evidence was not before the tribunal, and why it is relevant and important to the issues.
25. Under rule 19 the appellate court or the Dean may allow an appeal to be withdrawn, or a notice of appeal to be amended, on such terms as may be just.
26. The hearing of the appeal is dealt with in rules 20 to 25. An appellant is not entitled without permission from the appellate court or the Dean to challenge any findings of the tribunal which are not set out in the notice of appeal (otherwise the other party to the appeal would be at a disadvantage). Hearings may be adjourned if necessary. If permission for oral evidence has been granted, then the evidence is to be given on oath or solemn affirmation. A witness may be compelled by the appellate court to attend personally. Members of the public will normally be admitted to an appeal hearing, although the appellate court will have a discretion to exclude them if to do so would be desirable to protect the private life of any person, or would be in the interests of a child, or otherwise in the interests of justice. Furthermore, on similar grounds, the name and any other identifying details of any person involved in the proceedings may be ordered by the appellate court not to be published. Anyone who disrupts a hearing may be excluded.

27. Rules 27 to 32 make provision in relation to the powers of the appellate court and the determination of the issues before it. The appellate court will have wide powers to ensure that justice is done and is seen to be done, including the power to impose a greater penalty than the tribunal below if the circumstances justify it. As with tribunals below, the determination of an appeal will be according to the majority of members, and will be pronounced in public (although the name or identifying details of any person may be omitted from the pronouncement on the same grounds as described in paragraph 26 above relating to the exclusion of the public from a hearing).
28. Rules 33 to 44 deal with various miscellaneous matters. These include prescribing how an application in the course of appeal proceedings is to be made and responded to (and see forms A5 and A6), how documents are to be sent or delivered to the other party and to the court, the power to extend certain time limits for complying with the Appeal Rules, the ability of the Designated Officer to authorise another person to carry out his functions, provision for what happens in the event of the death of the complainant or respondent, and providing for irregularities or errors of procedure, the revision of forms, interpretation of the Appeal Rules, and the date the Appeal Rules are to come into force. Finally, where a respondent brings an appeal and his or her conduct is unreasonable in the course of those appeal proceedings, rule 34 provides that such a person may be ordered to pay towards the costs incurred by the Central Board of Finance arising out of the appeal including any legal aid funding that has been made available for that person.

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