



Clergy Discipline Measure 2003

2003 No. 3

Disciplinary proceedings concerning matters not involving doctrine, ritual or ceremonial

7 Application

- (1) The following provisions of this Measure shall have effect for the purpose of regulating proceedings against a clerk in Holy Orders who is alleged to have committed an act or omission other than one relating to matters involving doctrine, ritual or ceremonial, and references to misconduct shall be construed accordingly.
- (2) Proceedings in relation to matters involving doctrine, ritual or ceremonial shall continue to be conducted in accordance with the 1963 Measure.

8 Misconduct

- (1) Disciplinary proceedings under this Measure may be instituted against any archbishop, bishop, priest or deacon alleging any of the following acts or omissions—
 - (a) doing any act in contravention of the laws ecclesiastical;
 - (b) failing to do any act required by the laws ecclesiastical;
 - (c) neglect or inefficiency in the performance of the duties of his office;
 - (d) conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders.
- (2) In the case of a minister licensed to serve in a diocese by the bishop thereof, the licence shall not be terminated by reason of that person's misconduct otherwise than by way of such proceedings.
- (3) No proceedings in respect of unbecoming conduct shall be taken in respect of the lawful political opinions or activities of any bishop, priest or deacon.

9 Limitation of time for institution of proceedings

No disciplinary proceedings under this Measure shall be instituted unless the misconduct in question, or the last instance of it in the case of a series of acts or

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omissions, occurred within the period of one year ending with the date on which proceedings are instituted:

Provided that, when the misconduct is one for which the person concerned has been convicted either on indictment or summarily, proceedings may be instituted within twelve months of the conviction becoming conclusive, notwithstanding that the aforesaid period of one year has elapsed:

And provided further that the president of tribunals may, if he considers that there was good reason why the complainant did not institute proceedings at an earlier date, after consultation with the complainant and the respondent, give his written permission for the proceedings to be instituted after the expiry of the said period of one year.

10 Institution of proceedings

(1) Disciplinary proceedings under this Measure may be instituted against any person who is subject to the jurisdiction of a disciplinary tribunal or the Vicar-General's court by virtue of section 6 above, by way of complaint made in writing, only as follows—

- (a) in the case of a priest or deacon, by—
 - (i) a person nominated by the parochial church council of any parish which has a proper interest in making the complaint, if not less than two-thirds of the lay members of the council are present at a duly convened meeting of the council and not less than two-thirds of the lay members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) a churchwarden of any such parish; or
 - (iii) any other person who has a proper interest in making the complaint;
- (b) in the case of a bishop, by—
 - (i) a person nominated by the bishop's council of the diocese concerned, if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) any other person who has a proper interest in making the complaint;
- (c) in the case of an archbishop by—
 - (i) a person nominated by the archbishop's council of his diocese if not less than two-thirds of the members of the council are present at a duly convened meeting of the council and not less than two-thirds of the members present and voting pass a resolution to the effect that the proceedings be instituted; or
 - (ii) any other person who has a proper interest in making the complaint.

(2) A complaint under this section shall be laid—

- (a) in the case of a priest or deacon, before the diocesan bishop concerned,
- (b) in the case of a bishop, before the archbishop concerned,
- (c) in the case of an archbishop, before the other archbishop,

and references in the following provisions of this Measure to the bishop by whom a complaint is received shall, in the case of proceedings against a bishop or archbishop, be construed as references to the archbishop or other archbishop respectively.

(3) A complaint made under this section shall be accompanied by written particulars of the alleged misconduct, and written evidence in support of the complaint shall be sent

to the bishop or archbishop, as the case may be, either with the complaint or at such later time as he may allow.

11 Preliminary scrutiny of complaint

- (1) When a complaint in writing has been made in accordance with section 10 above it shall be referred in the first instance to the registrar of the diocese or province concerned, as the case may be, who shall thereupon scrutinise the complaint in consultation with the complainant with a view to—
 - (a) forming a view as to whether or not the parochial church council or other person making the complaint has a proper interest in doing so or, if the complainant purports to be a churchwarden, establishing that he is such, and
 - (b) forming a view as to whether or not there is sufficient substance in the complaint to justify proceeding with it in accordance with the following provisions of this Measure,

and the registrar shall notify the respondent that the complaint has been referred to him.

- (2) Having scrutinised the complaint the registrar shall, within the period of twenty-eight days following its receipt by him or such longer period as he considers to be justified in the particular circumstances of the case, send a written report to the bishop by whom the complaint was received setting out the registrar's views and thereupon the bishop shall deal with the complaint in accordance with the following provisions of this Measure, having regard to the registrar's report:

Provided that the period of twenty-eight days referred to above shall not be extended as aforesaid more than once.

- (3) On receipt of the registrar's report the bishop may dismiss the complaint and, if he does so, he shall give written notice of the dismissal to the complainant and the respondent, together with a copy of the report.
- (4) On receipt of a notice of dismissal the complainant may request the president of tribunals to review the dismissal, and the president may then uphold the dismissal or, if he considers the dismissal to be plainly wrong, reverse it and direct the bishop to deal with the complaint in accordance with section 12 below.
- (5) Where the registrar proposes to extend the period of twenty-eight days referred to in subsection (2) above, he shall, before doing so, consult the complainant and the respondent.
- (6) The registrar may delegate any or all of his functions under this section to such person as he may designate.

12 Courses available to bishop

- (1) If the complaint is not dismissed under section 11(3) above the bishop shall, within the period of twenty-eight days following the receipt by him of the registrar's report under section 11(2) above or the president of tribunal's direction under section 11(4), as the case may be, or such longer period as he considers to be justified in the particular circumstances of the case, determine which of the following courses is to be pursued—
 - (a) he may take no further action, in which case the provisions of section 13 below apply; or
 - (b) he may, if the respondent consents, direct that the matter remain on the record conditionally, in which case the provisions of section 14 below apply; or

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- (c) he may direct that an attempt to bring about conciliation in accordance with section 15 below is to be made; or
 - (d) he may impose a penalty by consent in accordance with section 16 below; or
 - (e) he may direct that the complaint is to be formally investigated in accordance with section 17 below.
- (2) Where the bishop proposes to extend the period of twenty-eight days referred to in subsection (1) above he shall, before doing so, consult the complainant and the respondent.

13 No further action

- (1) Where the bishop determines that there is to be no further action the following provisions of this section shall apply.
- (2) The bishop shall reduce his determination to writing and shall give a copy of it to the complainant and the respondent.
- (3) The complainant may refer the complaint to the president of tribunals and, if the president considers that the bishop's determination was plainly wrong, he may direct the bishop to pursue such of the courses specified in section 12(1)(b) to (e) above as he considers appropriate, in which case the bishop shall proceed accordingly.

14 Conditional deferment

- (1) Where the bishop, with the consent of the respondent, determines that the matter is to be recorded conditionally the following provisions of this section shall apply.
- (2) The complaint and the bishop's determination shall be notified to the archbishop concerned and remain on a record maintained by the diocesan registrar concerned for such period not exceeding five years as the bishop may determine and, subject to subsection (3) below, no further action shall be taken.
- (3) Notwithstanding the provisions of section 9 above, if another complaint is made under section 10 above against the respondent and that complaint is dealt with under paragraph (c), (d) or (e) of section 12(1) above, the recorded complaint may be dealt with under any of those paragraphs together with the other complaint.
- (4) The bishop shall reduce his determination to writing and give a copy of it to the complainant and the respondent. He shall also supply them with a statement explaining the effect of subsections (2) and (3) above.

15 Conciliation

- (1) Where the bishop determines that an attempt to bring about conciliation is to be made he shall afford the complainant and the respondent an opportunity to make representations and, if both of them agree to the appointment of a conciliator, an appointment shall be made under subsection (2) below.
- (2) The appointment of a conciliator shall be by the bishop with the agreement of the complainant and the respondent.
- (3) The bishop shall not appoint any person to be a conciliator unless he is satisfied that there is no reason to question the impartiality of that person.

- (4) A conciliator appointed under this section shall use his best endeavours to bring about a conciliation between the complainant and the respondent and—
- (a) if, within the period of three months following his appointment or such further period as he may, with the agreement of the complainant and the respondent, allow a conciliation is brought about, he shall submit a report on the case to the bishop, together with such recommendations as he may wish to make;
 - (b) if a conciliation is not brought about but the complainant and the respondent agree that another conciliator should be appointed, the bishop may appoint that other person as the conciliator for the purposes of this section;
 - (c) if a conciliation is not brought about and the complainant and the respondent do not agree as aforesaid, he shall refer the matter back to the bishop.
- (5) If—
- (a) the complainant and the respondent do not agree to the appointment of a conciliator or as to the person to be appointed, or
 - (b) the matter is referred back to the bishop by the conciliator under subsection (4) (c) above,
- the bishop shall proceed to deal with the complaint under paragraph (a), (b), (d) or (e) of section 12(1) above.

16 Penalty by consent

- (1) Where the bishop considers that the imposition of a penalty by consent might be appropriate, he shall afford the complainant and the respondent an opportunity to make representations and, if the respondent consents to the imposition of a penalty under this section and he and the bishop agree as to the penalty, the bishop shall, subject to subsection (2) below, proceed accordingly and thereafter no further step shall be taken in regard thereto.
- (2) Where it is agreed that prohibition for life or resignation is the appropriate course the respondent or the bishop may, within the period of seven days following the date of the agreement, withdraw his agreement and the prohibition or resignation shall not be implemented in pursuance of this section.
- (3) If the consent of the respondent to the imposition of a penalty under this section is not obtained or he and the bishop are unable to reach agreement as to the nature of the penalty, the bishop shall proceed to deal with the complaint under paragraph (e) of section 12(1) above.
- (4) The bishop shall notify the complainant of any action taken in pursuance of this section and shall also notify the archbishop of the province concerned and the registrar of the diocese concerned of any penalty agreed in pursuance of subsection (1) above.

17 Formal investigation

- (1) Where the bishop directs that the complaint is to be formally investigated, he shall refer the matter to the designated officer and it shall then be the duty of that officer to cause inquiries to be made into the complaint.
- (2) After due inquiries have been made into the complaint the designated officer shall refer the matter to the president of tribunals for the purpose of deciding whether there

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is a case to answer in respect of which a disciplinary tribunal or the Vicar-General's court, as the case may be, should be requested to adjudicate.

- (3) If the president of tribunals decides that there is a case for the respondent to answer he shall declare that as his decision and refer the complaint to a disciplinary tribunal or the Vicar-General's court, as the case may be, for adjudication.
- (4) If the president of tribunals decides that there is no case for the respondent to answer he shall declare his decision, and thereafter no further steps shall be taken in regard thereto.
- (5) The president of tribunals shall reduce his decision to writing and shall give a copy of it to the complainant, the respondent, the bishop and the designated officer.

18 Conduct of proceedings

- (1) In disciplinary proceedings under this Measure it shall be the duty of the designated officer or a person duly authorised by him to conduct the case for the complainant.
- (2) In any such proceedings the president of tribunals may direct—
 - (a) that the complaint is to be withdrawn, whereupon no further action shall be taken in the proceedings; or
 - (b) that an attempt or further attempt to bring about conciliation is to be made, whereupon the provisions of section 15 above shall apply.
- (3) In any such proceedings—
 - (a) the standard of proof to be applied by the tribunal or court shall be the same as in proceedings in the High Court exercising civil jurisdiction;
 - (b) the determination of any matter before the tribunal or court shall be according to the opinion of the majority of the members thereof and shall be pronounced in public together with its reasons therefor;
 - (c) the hearing shall be in private, except that the tribunal or court, if satisfied that it is in the interests of justice so to do or the respondent so requests, shall direct that the hearing shall be in public in which case the tribunal or court may, during any part of the proceedings, exclude such person or persons as it may determine.

19 Imposition of penalty

- (1) Upon a finding by a disciplinary tribunal or the Vicar-General's court in disciplinary proceedings that the respondent committed the misconduct complained of, the tribunal or court may—
 - (a) impose on the respondent any one or more of the penalties mentioned in section 24 below; or
 - (b) defer consideration of the penalty, and for that purpose may adjourn the proceedings; or
 - (c) impose no penalty.
- (2) Before imposing a penalty the disciplinary tribunal or court may invite—
 - (a) in the case of a disciplinary tribunal, the bishop of the diocese concerned, or
 - (b) in the case of the Vicar-General's court, the archbishop concerned or, if the respondent is an archbishop, the other archbishop,

to express in writing his views as to the appropriate penalty and the tribunal or court shall have regard to any such views in imposing the penalty, if any and the views of the bishop or archbishop, as the case may be, shall be conveyed in writing to the respondent:

Provided that, if the bishop or archbishop has given evidence in the proceedings, he shall not be consulted.

- (3) In this section any reference to a penalty includes a reference to an order for conditional discharge under section 25 below.

20 Right of appeal

- (1) In disciplinary proceedings under this Measure—
- (a) the respondent may appeal against any penalty imposed on him, and
 - (b) the respondent on a question of law or fact, and the designated officer, on a question of law, may appeal against any finding of the disciplinary tribunal or the Vicar-General's court,
- to the Arches Court of Canterbury (where the proceedings take place in the province of Canterbury) or the Chancery Court of York (where the proceedings take place in the province of York).
- (2) Proceedings on an appeal under subsection (1) above shall be heard and disposed of by all the judges of the court mentioned in section 3(2) (a), (b) and (c) of the 1963 Measure.