

The Diocese of Exeter
Bishop's Guidelines for the Ordained Ministry
Section 8 - The Clergy Discipline Measure

The Clergy Discipline Measure came fully into force on 1st January 2006. 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). All admitted to Holy Orders of the Church of England are covered by the Measure, whether or not in active ministry. Where the formal complaint concerns priests or deacons, the disciplinary structure is centered on the Diocesan Bishop.

There are four grounds for alleging misconduct, 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.

The disciplinary process is started by a formal written complaint, which is made to the bishop. The person making the complaint ("the Complainant") must produce written evidence in support of the complaint and verify the complaint by a statement of truth. The complaint, and the evidence in support, is acknowledged by the bishop or the bishop's staff, and then referred by the bishop to the diocesan registrar for advice on whether the complainant is entitled to make the complaint, and whether the allegations are of sufficient substance to justify proceeding with it under the Measure. This is the 'preliminary scrutiny' stage.

Having received the registrar's advice, if the bishop considers that the Complainant is entitled to complain and that the complaint deserves further consideration, he will invite the priest or deacon about whom the complaint is made ('the Respondent'), to send a written answer verified by a statement of truth, together with evidence in support. The bishop will then decide the appropriate course to pursue. There are five courses available to the bishop.

- he can decide to take no further action;
- with the Respondent's consent the bishop can leave the complaint on record for up to five 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,
- he can appoint a neutral 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 pastoral breakdown in relationships between the parties,
- where a respondent admits misconduct he or she may ask the bishop to impose an appropriate penalty by consent,

- he can require the complaint to be formally investigated by the designated officer, who is a barrister employed in the Legal Office of the National Institutions of the Church of England.

In the minority of cases where the Designated Officer is asked to investigate, he will produce a report for the President of Tribunals, who will then decide if there is a case to answer. If there is no case to answer, no further steps are taken. If there is a case to answer, the President refers the complaint to a bishop's disciplinary tribunal which will consist of two members in Holy Orders and two actual communicant lay people, plus an experienced lawyer in the chair. The tribunal determines the complaint on a majority verdict, using the civil standard of proof, and if the tribunal finds that the respondent committed the misconduct complained about the tribunal can impose the same penalties that a bishop can impose by consent. The penalties range from a life-long prohibition from exercising any functions, to a rebuke. Most cases avoid a tribunal because Bishop and minister are agreed on the offence and the minister accepts the Bishop's penalty. Only when they disagree, such as when the minister claims they are innocent, would the case go to a tribunal.

Where a penalty is imposed under the Measure, either by the bishop or by the bishop's disciplinary tribunal, it will be recorded in the Archbishop's list, which is maintained at Lambeth Palace. The respondent will be informed of the particulars to be recorded, and may request the President of Tribunals to review and alter the entry.

The Measure also provides a separate procedure under which a member of the clergy who commits a criminal offence and receives a sentence of imprisonment may be liable to a penalty of removal from office, or prohibition from exercising any functions. A similar procedure is available if a respondent has had a decree of divorce or an order of judicial separation made against him or her and has committed adultery, behaved unreasonably or deserted the former spouse.

The whole process is most easily followed by reference to the diagram at the end of this document. However, this document can only provide a brief overview and for further information you should consult the Church House publication 'The Clergy Discipline Measure' which can also be found on and printed from the Church of England website at <http://www.cofe.anglican.org/about/churchlawlegis/clergydiscipline/codeofpractice.pdf>.

The home-page which provides further details about the Measure itself is <http://www.cofe.anglican.org/about/churchlawlegis/clergydiscipline>

The following are the guidelines issued jointly by the Bishop and The Diocesan Registry and which are designed to help if you have a formal complaint made against you under the Measure

Clergy Discipline Measure 2003

If you encounter a problem or complaint about your ministry you rightly expect to be able to ask for advice, guidance and support from your diocesan bishop and your archdeacon, and that would normally be so. However, if the problem or complaint might result in disciplinary action against you, they cannot be involved because each has a particular role under the Clergy Discipline Measure 2003 and that role may be compromised if they have already entered into conversations or correspondence on the matter in hand.

Because it is essential that advice, guidance and support are available to you, then under these circumstances these will usually be provided by a senior member of the clergy who has no juridical role in a disciplinary process, such as a recently retired Bishop or Archdeacon.

After discussion with the person appointed to provide support, you may want to speak to a lawyer who understands the Clergy Discipline Measure. The neighbouring diocesan registrars have agreed to give preliminary advice free of charge. Details of how to contact them are below.

If formal proceedings are instituted against you, then this involves the complainant making their complaint in a prescribed manner and providing written evidence in support. Within seven days of receiving the complaint, the registrar will write to you sending you copies of the complaint and the written evidence in support.

The Measure requires the bishop to refer the complaint to the diocesan registrar. The registrar who produces a report advising the bishop whether or not the complainant is entitled to make the complaint under the Measure and whether in the registrar's view there is sufficient substance to the complaint to justify proceeding with it. He normally has twenty-eight days in which to make this report.

The registrar submits his report to the bishop who must make a decision within four weeks. The bishop may decide to dismiss the complaint if the complainant is not entitled to make a complaint or there is not sufficient substance in the complaint to justify proceeding with it (although the complainant has a right to request the President of Tribunals to review a dismissal). Alternatively the bishop can decide that the matter should proceed, in which case he will send you a copy of the registrar's report and you must submit a written answer to the complaint within twenty-one days.

At this stage you would be very wise to seek proper legal advice and obtain help in completing the formal written answer to the complaint. If the complaint went this far then you would also be entitled to apply for clergy legal aid which may be available from the Central Church. Details of how you contact them are below and the Bishop of Exeter's Chaplain is also able to send you the details.

It is possible that a complaint against you might be brought by your Archdeacon. It is important to realise that there are very broadly two reasons why this can be the case. The first is that a very serious matter has come to light and the Archdeacon has no reasonable alternative. The second is that a number of smaller complaints are likely to be made and that these could give rise to several different cases under the Measure. Under these circumstances it is likely to be far easier to consider the complaints and far less effort and cost on your part to defend them if they are all gathered together and dealt with as such. The Archdeacon is likely to be the only person who is able to do this and although it creates a great deal of extra work for them, by doing so may actually be doing you a favour.

Solicitors who are prepared to give preliminary advice

Mr Tim Berry – Registrar of Bristol and Bath and Wells, 14 Market Place, Wells, Somerset, BA5 2RE tim.berry@harris-harris.co.uk telephone 01749 674747 fax 01749 834060

Mr Andrew Johnson – Registrar of Salisbury, Minster Chambers 42-44 Castle Street, Salisbury, Wiltshire SP1 3TX registry@salisbury.anglican.org telephone 01722 432 390 fax 01722 411566

Church of England Legal Aid

The Secretary,
Legal Aid Commission,
Church House,
Great Smith Street,
London SW1P 3NZ

**STEPS IN FORMAL DISCIPLINARY PROCEEDINGS
UNDER THE CLERGY DISCIPLINE MEASURE 2003**

