
The Clergy Discipline Measure 2003: A Canter Through its Provisions and Procedures

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The Clergy Discipline Measure 2003 came into force on 1 January 2006. It provides a new structure for dealing with formal complaints of misconduct against members of the clergy, except in relation to matters involving doctrine, ritual or ceremonial, which continue to be governed by the Ecclesiastical Jurisdiction Measure 1963. This paper concentrates on the new disciplinary procedures in respect of priests and deacons, rather than those for bishops and archbishops.

WHY A NEW DISCIPLINARY SYSTEM WAS NEEDED

The new procedures were first envisaged in *Under Authority*,² which was a report of a working party set up to review clergy discipline and the working of the ecclesiastical courts. *Under Authority* examined the system operating under the Ecclesiastical Jurisdiction Measure 1963 (EJM), outlined its perceived strengths and weaknesses, and made recommendations to the General Synod for a comprehensive change in the way that clergy discipline was to be handled.

The old system under the EJM was recognised as having a number of major disadvantages. It was complex, elaborate, expensive and slow. Consequently it was seldom invoked. There was a perception that, as a result of the shortcomings of the procedures under the EJM, proceedings were avoided by resignations of accused priests; this could be inappropriate and unfair, either because resignation was too lenient a sanction for serious matters, or because it was too harsh in less serious cases.

For proceedings against a priest or deacon, the first stage under the EJM was the laying before the diocesan registrar of a complaint charging an offence; the complaint had to be accompanied by a short affidavit verifying the truth of the matter. A complaint could be laid either by an authorised complainant (which meant a person authorised by the bishop to lay the complaint) or by six or more people on the electoral roll of the relevant parish. In addition, a complaint against a stipendiary curate licensed to a benefice could be laid by the

¹ Also the 'designated officer' for the purposes of the Clergy Discipline Measure 2003.

² GS 1217 (London, 1996).

incumbent. Once the complaint had been duly laid, the diocesan bishop provided both the complainant and the accused with a private interview. The bishop would then take one of two courses: he would either decide that no further steps should be taken in respect of the complaint, or he would refer the complaint for inquiry by an examiner, who would be selected from a panel of barristers or solicitors drawn up by a committee appointed by the diocesan synod. If the complaint was referred to an examiner, the parties produced affidavit evidence in support of their cases, and the maker of any affidavit could be required to attend the inquiry before the examiner to give oral evidence on oath. The purpose of the examiner's inquiry was to see if there was a case for the accused to answer. If the examiner decided there was, the accused was put on trial before the consistory court; if not, no further action was taken. Where there was a case to answer, the diocesan bishop would then appoint a person to 'promote' the complaint. The consistory court was usually presided over by the chancellor of the diocese, who sat with four assessors (two lay, two ordained), who were selected by ballot from a panel of six priests and six laymen drawn up by a committee appointed by the diocesan synod. The procedures and rules of evidence at trial were based on those of the Crown Court. The chancellor was the judge and summed up the case in open court, and the assessors acted as the jury. Where an accused person was found guilty of an offence the chancellor imposed a 'censure', that is, a penalty, which could include removal from any preferment and disqualification from holding any other preferment.

In addition to the legal costs of the defendant, which were usually funded by ecclesiastical legal aid, the bishop, a complainant, and the promoter of a complaint could all incur legal costs, which ultimately were paid for by the Church. This could include the costs of two contested hearings, and the use of leading and junior counsel on both sides. Individual cases could therefore be very expensive for the Church.

Under Authority identified other problems with the EJM disciplinary procedures. There was no satisfactory filter to put a stop to cases that should not be taken further. Although the bishop could determine at an early stage that no further step should be taken with a complaint, he was often not in a position to make that decision – the EJM gave him no criteria to apply and the parties were not obliged to produce detailed evidence for him to consider (and they did not produce such evidence unless the complaint was referred to the examiner). The examiner too had only limited power to stop a complaint going further, namely on the ground that there was no case to answer – the examiner could not halt proceedings on the basis that the allegations were not serious and would be more appropriately dealt with by other means. The four assessors appointed to the consistory court to determine the facts of a case, whether clergy or laity, were local, drawn from the diocese itself; by the time the case

reached the court it could be difficult to find suitable people to appoint who did not know the accused or who had not heard something about the case and discussed it, and similar problems could arise for the examiner and the chancellor if closely associated with the diocese. Hearings were heard in public and generally attracted much adverse publicity, which was harmful not only to the Church but also to the parties involved. Furthermore, treating the proceedings as criminal or quasi-criminal was anachronistic, and language such as ‘the accused’, ‘ecclesiastical offence’ and ‘guilt’ was seen as being unhelpful and unnecessary.

There were, however, some positive aspects to the disciplinary procedures under the EJM; for instance, there was a power for the diocesan bishop to pronounce a censure on an accused at any time after a formal complaint was made, provided the accused consented and the complainant had been consulted about the proposed censure. A similar procedure has been continued under the Clergy Discipline Measure 2003.

BASIC PRINCIPLES OF THE NEW SYSTEM UNDER THE MEASURE

The new procedures under the Clergy Discipline Measure 2003 are designed to be fair and efficient. The central role of the diocesan bishop in administering discipline is recognised, and any body or person exercising disciplinary functions is required to have due regard to the bishop’s role.³ Most complaints will be dealt with by the bishop without a formal hearing but, where adjudication is required, there is now a new bishop’s disciplinary tribunal to hear cases,⁴ which does not use the language and practice of the criminal courts, and which is more in line with the disciplinary procedures of other professions. Timescales for the various stages of dealing with a complaint under the Measure are laid down to avoid delay. The procedures under the Measure are for complaints of misconduct that are of substance; minor or trivial matters, or mere grievances against a priest or deacon (referred to in the Measure as ‘the respondent’), should be dealt with by other means. It is the responsibility of the complainant to substantiate a complaint and to provide the evidence in support.

Procedural rules made pursuant to section 45 of the Measure start by setting out an ‘overriding objective’ (a concept which is familiar to those who practise in the High Court or the County Courts):

1. The overriding objective of these rules is to enable formal disciplinary proceedings brought under the Measure to be dealt with justly, in a way that is both fair to all relevant interested persons and proportionate to

³ Clergy Discipline Measure 2003, s 1.

⁴ *Ibid*, s 2.

the nature and seriousness of the issues raised. The rules are, so far as is reasonably practicable, to be applied in accordance with the following principles:

- (a) The complainant and the respondent shall be treated on an equal footing procedurally.
- (b) The complainant and the respondent shall be kept informed of the procedural progress of the complaint.
- (c) Undue delay is to be avoided.
- (d) Undue expense is to be avoided.⁵

THE CLERGY DISCIPLINE COMMISSION

A new body, the Clergy Discipline Commission, was created under the Measure, with responsibilities to oversee the implementation and operation of the disciplinary procedures.⁶ It has up to twelve members, including at least two people from each House of the General Synod, and at least two people who hold particular judicial office or particular legal qualifications. The make-up of the Commission is designed to promote a wide representation of views and experience. It is currently chaired by Lord Justice Mummery.

The Commission has a duty to formulate guidance for the purposes of the Measure generally, and to promulgate the guidance in a Code of Practice,⁷ which has to be approved by the General Synod.⁸ The Code points users in the right direction, and draws their attention to the relevant provisions in the Measure and the procedural rules made under it. The Code does not have the force of law, but compliance with its provisions is assumed to be in accordance with best practice.

The Commission has other specific statutory functions. It can give general advice on the penalties which are appropriate in particular circumstances, and can also give general policy guidance to those who exercise functions in connection with clergy discipline. It cannot, however, give guidance on individual cases, whether in respect of penalties or otherwise.

MAKING A COMPLAINT

All admitted to holy orders of the Church of England are covered by the Measure, whether deacon, priest, bishop or archbishop. The procedures set

⁵ Clergy Discipline Rules 2005, SI 2005/2022, r 1.

⁶ Clergy Discipline Measure 2003, s 3.

⁷ *Ibid*, s 39.

⁸ The present Code of Practice (London, 2006) was approved by the General Synod in July 2005 (GS 1585).

out in this article are concerned with complaints against priests and deacons; the procedures for complaints against bishops and archbishops are similar, although complaints against bishops are dealt with by the relevant archbishop and a complaint against an archbishop is considered by the other archbishop. Complaints against clergy in relation to matters of doctrine, ritual or ceremonial continue to be governed by the provisions of the EJM.

There are four grounds under the Measure for alleging misconduct against a 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.⁹ No proceedings in respect of unbecoming conduct may be taken in respect of any lawful political opinions or activities. In the case of a minister who is licensed to serve in a diocese by the bishop, the licence may not be terminated on the grounds of misconduct except by way of proceedings under the Measure – this gives priests-in-charge the same protection as incumbents, which they did not enjoy under the EJM.

The disciplinary process is started by a formal written complaint, which is made to the diocesan bishop. No anonymous complaints are accepted. The complaint must contain certain prescribed information, be signed and verified by a statement of truth,¹⁰ and have written evidence in support.¹¹ 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.¹² This period of one year can be extended by the President of Tribunals.¹³

To be entitled to complain, a complainant must have a ‘proper interest’, or be nominated to complain by a parochial church council with a proper interest, or be a churchwarden with a proper interest. The meaning of ‘proper interest’ is not defined in the Measure, but the Code of Practice advises that anyone who personally observes or experiences the alleged misconduct has a ‘proper interest’ to complain, as does the relevant archdeacon. A PCC or a churchwarden would have a proper interest in a complaint if the alleged misconduct took place in

9 Clergy Discipline Measure 2003, s 8.

10 See the Clergy Discipline Rules 2005, r 4. The schedule to the Rules contains forms that can be used for making a complaint.

11 Clergy Discipline Measure 2003, s 10.

12 Ibid, s 9.

13 The President of Tribunals is an office created by *ibid*, s 4, which provides that the chairman of the Clergy Discipline Commission shall be the President. Lord Justice Mummery is therefore currently the President of Tribunals.

the parish, or was committed by the incumbent or by a priest or deacon who was licensed to serve or was resident in the parish.¹⁴

THE BISHOP'S DECISION

On receipt of the complaint and the evidence in support, the bishop refers the matter to the diocesan registrar for advice on whether the complainant has a proper interest to make the complaint, and whether the allegations are of sufficient substance to justify proceeding with it under the Measure. The registrar prepares a report for the bishop within 28 days. This is the 'preliminary scrutiny' stage,¹⁵ a sieve so that minor or misconceived complaints are dealt with speedily and efficiently. If, having read the registrar's report, the bishop decides that the complainant is not entitled to complain or that the complaint is not of sufficient substance, the bishop will dismiss the complaint (it is the bishop's decision – the registrar merely advises the bishop). If the bishop does dismiss the complaint, the complainant may ask the President of Tribunals to review the dismissal, but the President will only reverse the bishop's decision if he considers that the dismissal is plainly wrong.

If a complaint is not dismissed by the bishop, the respondent is invited to send a written answer within 21 days. The answer must contain certain prescribed information and contain a declaration that the respondent believes the facts of the answer to be true.¹⁶ The answer should be accompanied by any written evidence upon which the respondent wishes to rely. The bishop has only 28 days from receipt of the registrar's report to decide how to resolve a complaint, although he may extend this period where necessary and he is likely to do so where the respondent takes the full 21 days to submit an answer.

There are then five courses available to the bishop:¹⁷

- i. He can decide to take no further action (in which case the complainant can ask for a review by the President of Tribunals, who will only overturn the decision if, as with a dismissal, he is satisfied it is plainly wrong);
- ii. 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. (Passage of time may

14 See the Code of Practice, paras 31 to 35. Slightly different provisions apply in the case of cathedral clergy and chaplains.

15 Clergy Discipline Measure 2003, s 11.

16 Clergy Discipline Rules 2005, r 17. A form (form 2) is provided in the schedule to the Rules for the respondent to use.

17 Clergy Discipline Measure 2003, s 12.

- make it difficult to investigate a complaint at a later date, so the Code of Practice suggests that a conditional deferment is most likely to be used where a respondent admits misconduct that is not serious, and which is out of character and unlikely to be repeated);
- iii. With the agreement of the complainant and the respondent, the bishop can appoint a conciliator to attempt to bring about conciliation;
 - iv. Where a respondent admits misconduct the bishop may impose an appropriate penalty with the respondent's consent;
 - v. The bishop may refer the complaint to a formal investigation by the designated officer.

It should be noted that, apart from the options of taking no further action or of referring the complaint to the designated officer for an investigation, all the courses of action open to the bishop under section 12 of the Measure require the consent of the respondent. Nonetheless, it is expected that the large majority of complaints will be dealt with by the bishop, either because the complaint does not merit any action being taken under the Measure, or because the respondent recognises that the complaint is justified and, wishing to put matters right and move on constructively from the past, admits misconduct. So far (at the time of writing, July 2006) this expectation has been borne out by experience.

Offering conciliation (which here means the same as mediation) as a means of resolving a formal disciplinary complaint is an innovation for the Church. It may be particularly useful where there has been a pastoral breakdown in relationships between the parties, or where a complainant is seeking recognition of an error and an apology from the respondent. The conciliation is not conducted by the bishop, but by an impartial qualified conciliator who is appointed by the bishop with the consent of both parties.¹⁸ Conciliation processes can be flexible to suit the needs of a case, and can involve others who are not actual parties to the complaint, where that would be helpful. If a conciliation is achieved between the parties, the conciliator reduces the agreed points into writing, prepares a written report for the bishop containing recommendations on how to resolve the complaint, and obtains the parties' signatures to both the agreement and the recommendations. This is then submitted to the bishop, who must accept the agreement and pursue any agreed course, provided the bishop could have pursued that course under section 12 of the Measure had there been no conciliation. If an attempt at conciliation is unsuccessful, the parties may agree that another conciliator be appointed or that further time be made available to reach agreement; failing that, the bishop must pursue one of the other four courses under section 12.

¹⁸ Ibid, s 15.

No penalty may be imposed by the bishop on a respondent without his or her consent, and, necessarily, it may be imposed only where the respondent admits the validity of the complaint or part of the complaint. Before the penalty is imposed, the bishop is required to invite both the respondent and the complainant to make written representations within 14 days about the particular penalty that the bishop has in mind.¹⁹ The complainant therefore has a right to be consulted, but his or her consent to the penalty is not needed. Any of the penalties that could be imposed by a bishop's disciplinary tribunal following a hearing may be imposed by the bishop with consent, and the bishop may accept the respondent's resignation. Once there is agreement between the bishop and the respondent as to the appropriate penalty, the respondent must formally give consent to it in writing.²⁰ If the agreed penalty is prohibition for life or resignation, the respondent and the bishop have a further seven days after agreement for further reflection, and during that time either can withdraw their consent by notice in writing. If consent were withdrawn by one of them, the bishop would then refer the complaint to the designated officer, which would lead to a hearing before the bishop's disciplinary tribunal to fix a penalty for the admitted misconduct. The Code of Practice emphasises that no pressure should be used by the bishop to obtain the respondent's admission to the complaint or the respondent's consent to the proposed penalty. The time limits provide the respondent with sufficient opportunity to consider the matter fully and to take appropriate advice.

THE BISHOP'S DISCIPLINARY TRIBUNAL

The option for the bishop of directing that the complaint is to be formally investigated is intended only for those cases that cannot be satisfactorily dealt with by any other means. This includes cases where the respondent denies a credible complaint, where conciliation has been rejected or failed, or where the respondent will not consent to an appropriate penalty. The designated officer carries out the investigation. It does not take the form of a preliminary hearing, but can be conducted by personal interviews, telephone, letters and e-mail. Both the complainant and the respondent have a duty to co-operate with the investigation.²¹ Having inquired into the matter, the designated officer produces a report for the President of Tribunals, who decides if there is a case to answer

¹⁹ *Ibid*, s 16.

²⁰ The Clergy Discipline Rules 2005, r 27, requires the respondent's consent to be given in a prescribed form (form 7 in the schedule), signed by the respondent.

²¹ There is a specific duty under *ibid*, r 28 to co-operate with the designated officer. There is also a wider duty under r 2 to co-operate with any person, tribunal or court exercising any function under the Measure and, if the parties fail to do so, adverse inferences may be made against them at any stage of the proceedings.

under the Measure.²² If there is a case to answer, the President will refer the matter to the bishop's disciplinary tribunal and will specify which allegations of misconduct are to be determined. If he decides there is no case to answer, no further steps are taken under the Measure in respect of the complaint. Compared with its predecessor, namely preliminary hearings before an examiner, a formal investigation under the Measure is efficient, quick and cost-effective.

The general administration of disciplinary tribunals in a province is under the direction and supervision of the Registrar of Tribunals (each province has its own registrar).²³ The Registrar of Tribunals is also responsible for ensuring that appropriate case-management directions are given to the parties for the just disposal of the proceedings in accordance with the overriding objective, and may refer any matter of difficulty or dispute to the chairman of the tribunal that will hear the complaint. It is a fundamental principle that neither side should be taken by surprise by the other in relation to the evidence that is given at a hearing or by any legal submissions that are made. The rules are designed to ensure that issues are identified at an early stage, and that evidence in support is provided to the other side well in advance of a hearing. If this principle is not observed, the tribunal may exercise its discretion to exclude evidence or legal submissions if the other party is disadvantaged by not having had prior notice.²⁴

A bishop's disciplinary tribunal is chaired by a senior lawyer appointed by the President of Tribunals from those who have been nominated to the appropriate provincial panel as chairmen by the relevant archbishop, unless the President decides to chair the tribunal himself or asks the Deputy President to do so. A tribunal will sit locally in the diocese. The other four members of a tribunal are also appointed by the President from the provincial panel, being two in holy orders, and two who are communicant lay members of the Church. The provincial panel from which the tribunal members are appointed has representatives from every diocese in the province. Each diocesan bishop in the province, after consultation with the bishop's council, nominates to the panel two people who have served for at least seven years in holy orders and two communicant lay members. The term of service on the panel is six years, with half of the panel nominees retiring every three years. A panel nominee is eligible to serve a second term of six years. No person who has been nominated by the bishop of the diocese concerned may be appointed by the President to sit on a tribunal for that diocese. In addition to the diocesan nominations, the archbishop for

22 Clergy Discipline Measure 2003, s 17.

23 *Ibid*, s 5.

24 Code of Practice, para 186.

the province may nominate to the panel five people who have served in holy orders for at least seven years and five communicant lay members.

Before appointing the members of a tribunal from the panel, the President notifies the respondent of the identity of those whom he proposes to appoint.²⁵ Within 14 days of being notified, a respondent may make written representations to the President about the suitability of any of the proposed members of the tribunal.

The respondent may be legally represented before a disciplinary tribunal and can apply for ecclesiastical legal aid under the Church of England (Legal Aid) Measure 1994. Indeed, respondents may apply for legal aid at a much earlier stage of the complaint proceedings (for example, for the purpose of submitting an answer to a formal complaint), and are encouraged to do so. The complainant is not, however, entitled to instruct legal representatives for the tribunal hearing. Instead, the complainant's case is put by the designated officer.²⁶ This does not mean that the designated officer is counsel for the complainant; on the contrary, at all times the designated officer is independent from the complainant, the respondent and the bishop, whether carrying out an investigation or appearing before the tribunal.²⁷ The duty as advocate to put the case is analogous to the position of counsel for the Crown in a criminal trial, who puts the case for the victim but who does not represent the victim and who acts impartially throughout.

In accordance with the overriding objective, the tribunal will conduct the hearing in the manner it considers most appropriate to the issues before it and to the just handling of the complaint generally. It is required to set a timetable for the hearing,²⁸ so that the case is conducted in an efficient and effective manner. The parties will be expected to keep to the timetable and ensure that the hearing finishes within the allotted time. Both the complainant and the respondent are entitled to give evidence, and the designated officer and the respondent, or the respondent's legal representative, are entitled to call witnesses (provided relevant case-management directions have been complied with). If a respondent admits misconduct (whether before or at a hearing), the tribunal may make a finding of misconduct on the basis of the admission without considering any further evidence.

Hearings will normally be in private but, if the respondent requests the tribunal to sit in public, then it must do so.²⁹ The tribunal has a discretion of its own motion to sit in public if satisfied that it would be in the interests of justice.

25 Clergy Discipline Measure 2003, s 22.

26 Clergy Discipline Measure 2003, s 18(1). This is very cost-effective when compared with the system under the EJM, where the promoter of a case would instruct a solicitor and counsel in private practice to put the case.

27 Clergy Discipline Rules 2005, r 106.

28 *Ibid*, r 39.

29 Clergy Discipline Measure 2003, s 18(3), so as to be compatible with the European Convention on Human Rights, Article 6.

The Code of Practice at paragraph 189 provides an example of when this might happen, namely, where there has been false speculation or rumours about a case, so that it would be fairer to the parties to have a public hearing. When a hearing is held in public, the tribunal may nonetheless exclude any person or persons from attending any part of the proceedings. It may be necessary to do so to protect the interests of a child or the private lives of any witnesses, including the complainant.

The standard of proof applied by the tribunal is the same as in proceedings in the High Court exercising civil jurisdiction, that is, upon the balance of probability. This is a flexible standard according to the seriousness of the complaint, so that the more serious the complaint the stronger should be the evidence before the tribunal concludes that the complaint is established on the balance of probability. The tribunal makes its decision by way of a majority and announces its decision in public.³⁰ Additionally, it must record its decision in writing with reasons, including any minority views.³¹

PENALTIES

Where misconduct is admitted or proved, a tribunal may invite the bishop (unless he has given evidence in the course of the proceedings) to make written representations on the appropriate penalty, including any mitigating or other circumstances that the bishop may feel are appropriate to draw to the attention of the tribunal. The tribunal is not bound to follow any recommendation that the bishop may make, but should take it into account.³²

The tribunal may impose one or more of the following penalties:

- i. *Prohibition for life*: This is the most serious penalty that can be imposed. It prevents the respondent, without limit of time, from exercising any functions as a member of the clergy of the Church of England;
- ii. *Limited prohibition*: This prevents the respondent from exercising any functions as a member of the clergy for a specific period of time. It is suitable for serious cases where there is a realistic prospect that the respondent, with appropriate pastoral and other support, could in the future resume normal duties of ministry;
- iii. *Removal from office*: This penalty removes the respondent from the preferment held at the time, but does not prohibit him or her from serving in another post. In serious cases, removal would be combined with prohibition for life or limited prohibition;

30 Clergy Discipline Measure 2003, s 18(3).

31 Clergy Discipline Rules 2005, r 50.

32 Clergy Discipline Measure 2003, s 19(2).

- iv. *Revocation of licence*: For members of the clergy who do not have the freehold but who hold a licence from the bishop (for example, priests-in-charge), it may be appropriate to terminate the licence so that they no longer minister in that place. Revocation of a licence does not prevent them from seeking to serve elsewhere. In serious cases, revocation would be combined with prohibition for life or limited prohibition;
- v. *Injunction*: An injunction requires a respondent to do, or to refrain from doing, a specified act, and is usually limited in time. More than one injunction can be imposed upon the respondent arising out of the same complaint. An injunction may be appropriate for cases where a respondent is generally capable of performing his or her normal duties but ought to be stopped from dealing with a particular aspect of those duties. Any breach of an injunction is an act of misconduct under the Measure, and could result in further disciplinary proceedings;
- vi. *Rebuke*: This is the least serious of the penalties. It can be used for acts or omissions of a less serious nature that fall within the definition of misconduct.

A tribunal may decide not to impose a penalty having taken into account all the circumstances of the misconduct and the respondent's character. Where it does not impose a penalty, it has the option of making an order discharging the respondent, subject to the condition that there must be no more misconduct by the respondent within a period not exceeding two years. If the respondent does commit further misconduct within that period the tribunal dealing with it on the subsequent occasion may, in respect of the earlier misconduct, impose any penalty that could have been imposed originally.³³ The provincial registrar maintains a record of conditional discharges.

APPEALS

The respondent has the right of appeal on a question of law or fact against any finding of the tribunal and against any penalty imposed by a tribunal. The complainant has no right of appeal, but the designated officer may appeal on a question of law against any finding. Appeals are heard by the Arches Court of Canterbury or the Chancery Court of York, depending on where the proceedings took place. The appellate court is presided over by the Dean of the Arches and Auditor, and its other members are appointed by the President from the relevant provincial panel (two in holy orders and two communicant lay members).³⁴

³³ Ibid, s 25.

³⁴ Ibid, s 20, Sch 1. See also the Clergy Discipline Appeal Rules 2005, SI 2005/3201, which make procedural provision in respect of such appeals.

THE ARCHBISHOPS' LIST

Where a tribunal imposes a penalty, or where a penalty is imposed by the bishop with the consent of the respondent, it is recorded in the Archbishops' List.³⁵ The list is compiled and maintained by the archbishops jointly and contains five parts, (a) to (e); a penalty is entered in part (a). The other parts of the list are:

- (b) for those who have been deposed from holy orders under the EJM;
- (c) for those who executed a deed of relinquishment under the Clerical Disabilities Act 1870;
- (d) for those who have resigned following the making of a formal complaint;
- (e) for those who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) that might affect their suitability for holding preferment.

The Archbishops' List is kept at Lambeth Palace, with a copy at Bishopthorpe. It is not open to public inspection – only diocesan bishops, diocesan and provincial registrars, and the President of Tribunals have access to it. It is subject to procedures set out in the Measure and in the Clergy Discipline Rules 2005, which give a listed person the right to make representations in respect of the entry and the particulars recorded, as well as the right to ask the President of Tribunals to review the entry. The President on a review can require any entry in the list to be removed or amended.³⁶

OTHER MATTERS

Whilst a complaint is being considered the bishop may suspend a respondent from exercising or performing without his permission any right or duty relating to the respondent's office. This power of suspension arises only after the preliminary scrutiny stage, and is effected by serving a prescribed written notice of suspension on the respondent.³⁷ The notice informs the respondent that no view has been formed as to whether the complaint of misconduct is true, and that he or she will not be prejudiced in the steps to be taken under the Measure in respect of the complaint. Suspension should therefore be viewed as a neutral act. Indeed, it can be helpful to the respondent to allow him or her to withdraw from the daily duties and pressures of parish ministry whilst the complaint is being dealt with. Any right to a stipend and housing is not affected during the suspension. A suspension lasts for three months or until

³⁵ Clergy Discipline Measure 2003, s 38.

³⁶ *Ibid.*, s 38; Clergy Discipline Rules 2005, rr 75, 76.

³⁷ Clergy Discipline Measure 2003, s 36. See also the Clergy Discipline Rules 2005, r 60, schedule, form 12a.

the proceedings under the Measure are concluded, whichever happens first; if the proceedings have not finished within three months, the bishop may serve one or more further notices of suspension. If the respondent contests a suspension he has a right of appeal to the President of Tribunals. The bishop also has a power of suspension if a priest or deacon is arrested on suspicion of committing a criminal offence; such a suspension is likewise for three months, or until the criminal proceedings are concluded if earlier, and can be extended if necessary until the proceedings come to an end.

Under the EJM, where there had been particular proceedings in secular courts the bishop had the power to deprive a priest of his preferment without further trial. Equivalent procedures are to be found in the Clergy Discipline Measure 2003.³⁸ If a priest or deacon is convicted of a criminal charge and receives a sentence of imprisonment (including a suspended sentence), the bishop may remove that person from office and impose a prohibition order (either for life or for a limited period) without further proceedings. Removal from office or prohibition will not automatically result from a sentence of imprisonment. The bishop retains a discretion at all times, but must first of all consult the President of Tribunals to ascertain his views about the seriousness of the criminal charge and the matters relating to it. Then he must invite the respondent to send him written representations about the proposal. If the penalty is imposed, the respondent may ask the Archbishop of the relevant province to review the bishop's decision.

There are similar discretionary powers for the bishop to remove from office or to impose a prohibition order where a marriage is dissolved or is subject to a decree of judicial separation, provided the divorce court was satisfied that the respondent priest or deacon committed adultery, behaved unreasonably or deserted the petitioner. The Code of Practice reminds bishops to bear in mind that most marriages are dissolved as a result of uncontested proceedings on paper, and some respondents may choose not to contest disputed allegations so as to avoid expense and litigation over sensitive and personal issues. Again, there is the right for the respondent to ask the Archbishop to review the bishop's decision to impose a penalty.

Further information about the Church's disciplinary procedures (including access to the Code of Practice and links to download the Measure and the Rules) can be obtained from <<http://www.cofe.anglican.org/about/churchlawlegis/clergydiscipline/>>, accessed 28 September 2006.

38 Clergy Discipline Measure 2003, ss 30, 31.