

CLERGY DISCIPLINE MEASURE 2003 PRACTICE DIRECTION

AMENDMENTS TO ALLEGATIONS OF MISCONDUCT THAT HAVE BEEN REFERRED TO A TRIBUNAL

Sir John Mummery, 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 (in this Practice Direction referred to collectively as 'the tribunal').
2. Under section 17 of the Measure the President of Tribunals ('the President') may refer a complaint to the tribunal if he decides that there is a case for a respondent to answer. In accordance with rule 29(2) of the Clergy Discipline Rules 2005 the President specifies in writing which allegation or allegations of misconduct within the ambit of section 8(1) of the Measure are to be determined. In addition the President's written decision will include descriptive particulars of the nature of the alleged misconduct.
3. Under rule 30 directions may be given with or without a hearing by the Registrar or the Chair at any stage for the just disposal of the proceedings in accordance with the overriding objective.
4. Under rule 103 where there has been an irregularity or error of procedure, the President, the Registrar, the Chair or the tribunal may give directions to cure or waive the irregularity.

Amending the allegation

5. **At any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced its determination, any irregularity on the face of the written allegation may be cured under rule 103.**
An illustrative example is provided in the Annex to this Practice Direction.
6. **At any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced its determination, the Registrar or Chair may give directions under rule 30 that the descriptive particulars of the allegation of misconduct be amended to meet the circumstances of the case.**
An illustrative example is provided in the Annex to this Practice Direction.

The general test to apply

7. **The general test to apply is that the amendments in question:**
- a. **are necessary for the just disposal of the proceedings in accordance with the overriding objective and meet the circumstances of the case, and**
 - b. **can be made without injustice either to the respondent or to the complainant having regard to the merits of the case.**

21 May 2008

Sir John Mummery

ANNEX

Example under paragraph 5 of the Practice Direction:

The following allegation of misconduct is referred to the tribunal: that on Sunday 1st January 2008 the respondent consecrated and administered the holy sacrament of the Lord's Supper in contravention of the laws ecclesiastical in that he was an ordained deacon but had not been duly ordained priest in accordance with the provisions of Canon C 1 as required by Canon B 11.

The allegation of misconduct is irregular on its face in two respects.

- (i) No Sunday fell on 1st January 2008.
- (ii) The reference to Canon B 11 is an error – it should refer to Canon B 12.

Provided the test in paragraph 7 of the Practice Direction is satisfied, under rule 103 the first irregularity may be cured by correcting the date, and the second irregularity may be cured by substituting Canon B 12 for Canon B 11.

Example under paragraph 6 of the Practice Direction:

The following allegation of misconduct is referred to the tribunal: that the alleged conduct of the respondent was unbecoming or inappropriate to the office and work of a clerk in Holy Orders in that he had an adulterous relationship with [name], a married parishioner, between about 1st January 2007 and 31st December 2007 .

If the evidence adduced falls short of proving adultery with the named parishioner, but proves that there was nonetheless a close relationship with the married parishioner which was unbecoming or inappropriate within the meaning of s8(1)(c) of the Measure, provided the test in paragraph 7 of the Practice Direction is satisfied the Registrar or Chair may direct that the particulars describing the relationship be amended to meet the circumstances of the case by substituting 'unprofessional and intimate' for 'adulterous'.