

WHEN THINGS GO WRONG

Information for Clergy who hold their *Office with Common Tenure* (and in some cases Freehold) terms

Resolve things informally

Whenever possible issues of concern should be discussed and resolved without the need to use a formal procedure at all. Attempting to resolve an issue quickly before it becomes a problem is obviously desirable but can only be achieved if the issue is minor and everyone is willing to listen to each other and do their part in putting things back on track.

This does not mean that to resolve every issue there will be an attempt to resolve it informally first, For instance the nature of the issue, background and previous discussions would be taken into account when considering how to manage an issue.

Clergy will note from the outlines of the Grievance Procedure and the Capability Procedure below that each of those procedures contain an 'Informal Stage'. To be clear there may be two routes of informal discussions to resolve an issue, one may not necessarily be followed by another. The archdeacon will make it known to the individual if the informal process that is being followed is outside of the Informal Stage contained within either the Grievance and Capability Procedures or within them.

What is important in this and in any process, however informal the process is to be* is that it should be:

- based on fair and reasonable processes and clarity of judgements and decisions
- managed within a clear time frame to ensure that any subsequent formal complaint cannot be deemed out of time
- tracked carefully
- properly documented.

*It should be remembered that any informal process may at a later date move into a formal process. Documentary evidence therefore may well be a key part in any assessment of a fair legal/formal process or of its timing – especially if this is related to a later CDM process, so at all stages of anything informal, proper paperwork, notes, records etc. should be kept.

Grievance procedure

Relevant to Common Tenure office holders only

Clergy have the right to seek redress if they have concerns that cannot be resolved during the normal course of their duties. Those in Common Tenure appointments have this right formally recognised in the Ecclesiastical Offices (Terms of Service) Measure 2009.

The **objective** of the grievance procedure, as detailed in the Grievance Code of Practice issued by the Archbishops' Council, is to deal with such complaints promptly, fairly, and consistently, with a focus on support such as mediation and conciliation wherever possible.

The **underlying principles** of the procedure are as follows:

- All grievances will be taken seriously and responded to fairly and quickly
- Grievances will be dealt with informally wherever possible
- Awareness of confidentiality at all times
- The focus will be on issues not personalities
- Account will be taken of the legitimate interests of all concerned
- Office holders will have the right of representation by a colleague or trade union representative at any meeting
- Grievances may be pursued without fear of sanction

This grievance procedure is available to all office holders under common tenure and is intended to provide a means of addressing grievances relating to the exercise of the office held, which may include issues relating to:

- the interpretation and application of terms and conditions of service
- housing
- ministerial development reviews
- continuing ministerial development
- (in the case of training posts) provision of suitable training and experience or the result of an assessment at the end of the training.

Please note that in the case of bullying and/ harassment, the diocesan '**Procedures for Making a Complaint of Bullying or Harassment**' procedures will be initially used to set out the informal steps you may want to take before making a formal complaint under this procedure.

The key stages of the grievance procedure are summarised below:

- **Informal stage** – wherever possible attempts should be made to address the person or body responsible for the matter directly and attempt to resolve the grievance informally.
- **Formal stage** – if the grievance has not been resolved informally or within a reasonable time period, the office holder may choose to proceed to the formal stage which is comprised of:
 - **Stage one** – the grievance needs to be set out in writing, describing what attempts have been made to resolve the matter informally and what the desired remedy is.
 - **Stage two** – the person handling the grievance will investigate the matter and then hold a meeting to discuss the issues. This will be followed by a letter detailing the decisions made regarding appropriate resolution.
 - **Stage three** – if the matter is not been resolved satisfactorily then the office holder may appeal in writing. They will then be invited to attend a meeting to

discuss the issues. The decision of the appeal body will be given in writing. There is no further right of appeal.

Full information on the procedure and guidelines are available from the Head of HR at the Diocesan office or from the CofE website, links below.

Grievance Procedure Code of Practice

<https://www.churchofengland.org/sites/default/files/2017-10/grievanceprocedure%20cop.pdf>

Grievance Procedure – supporting advice

<https://www.churchofengland.org/sites/default/files/2017-10/grievanceprocadvice%20SA.pdf>

Clergy, other than those in Common Tenure appointments, may refer to: 'A grievance procedure for Licensed Ministers' produced by the national church when they have concerns that cannot be resolved informally. This document is available from the Head of HR at the diocesan office Old Alresford Place.

Bullying and Harassment

As indicated above, formal procedures do exist in the Church for dealing with grievances and complaints about behaviours. However, it is felt that a complaint of bullying and harassment is a particularly sensitive matter to deserve special national guidance and diocesan procedure developed.

In our diocese we believe that the Church is required to foster and model relationships of the utmost integrity, truthfulness and trustworthiness. Abuse, harassment and bullying – however rare - will not be tolerated in the Diocese. All complaints of abuse, harassment and bullying will be taken seriously and thoroughly investigated.

Please follow the link below to access the national Church 'Dignity at Work' guidance

<http://www.churchofengland.org/media/1167938/dignity%20at%20work%20booklet.pdf>

The Diocese of Winchester anti-bullying and harassment procedure, entitled Diocese of Winchester Procedures for making a complaint of bullying or harassment has been approved by Bishop's Staff Team and it is available from the Head of HR at the Diocesan Office or from the link below.

Diocese of Winchester Procedures for making a complaint of bullying or harassment : [add web link](#)

Support leaflet - I think I have been the target of bullying or harassment, what can I do?

[Add web link](#)

Support leaflet - I have been accused of bullying or harassment, what can I do? [Add web link](#)

Capability procedure

Relevant to Common Tenure office holders only

The capability code of practice is designed to come into operation when there are concerns about whether an office holder is managing or coping. It is designed to be **supportive and developmental**. Any concerns will be taken seriously but it is important that there are real grounds for the concerns. The code of practice provides guidelines to enable a thorough investigation and consideration of concerns as well as a framework for support and development with the aim of resolving any substantiated concerns.

It is recommended that initially an informal investigation into perceived concerns is carried out and it is hoped that most issues will be resolved at this stage.

When a potential capability situation is identified it is in everyone's interests to establish the situation at the earliest opportunity. The Bishop will expect that the cleric engages fully in the process to ensure that the situation is addressed quickly.

The capability procedure will not be used in trivial or unsubstantiated cases, and can only be invoked by the Bishop, Archdeacon or someone specifically designated on their behalf.

The formal procedure contains many built in safeguards including:

- The right to be informed in advance, and in writing, of the nature of the performance issue, the procedure to be followed, and the possible actions that may be taken,
- The involvement of a panel, not an individual, at every formal stage,
- The requirement to take human resources advice,
- The right to be supported by a friend or trade union representative during the formal stages of the process.
- The right to respond to all points raised
- The right of appeal

The procedure will normally consist of 3 formal stages but can be discontinued at any point if the required improvements are made.

In exceptional cases stage one of the formal procedure may be bypassed but should this be the case, the requirements of natural justice will always prevail and appropriate pastoral support and care will always be provided.

Copies of the Capability Code of Practice and the supporting advice issued alongside it can be obtained from the Head of HR at the Diocesan office or from the CofE website.

Capability Procedure Code of Practice

<http://www.churchofengland.org/media/56741/10%204%2027%20capability%20code%20of%20practice%20-%20final.pdf>

Capability Procedure – supporting advice

<http://www.churchofengland.org/media/56745/10%203%2026%20capability%20supporting%20advice.pdf>

Respondent in Employment Tribunal Proceedings

It is hoped that any dispute or grievance will be resolved internally before an office holder makes an application to an Employment Tribunal.

If an issue cannot be resolved any other way, information on how to make a claim and how the process works can be obtained from www.direct.gov.uk

The body to be treated for the purposes of the Ecclesiastical Offices (Terms of Service) Regulations 2009 as the respondent in any proceedings brought before an Employment Tribunal will be detailed clearly in the office holder's Statement of Particulars.

Clergy Discipline Measure

The Clergy Discipline Measure 2003 (that came into effect in 2006) provides a structure for dealing efficiently and fairly with formal complaints of misconduct against any member of the clergy.

All admitted to holy orders in the Church of England are covered by the Measure, whether or not in licensed ministry.

A disciplinary process can only be started by a formal written complaint of misconduct, which is made to the Bishop. There are four grounds on which misconduct may be alleged, 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, or
- engaging in conduct that is unbecoming or inappropriate to the office and work of the clergy.

The steps are:

- The complainant must produce written evidence in support of the complaint, and verify the complaint by a statement of truth.
- The complaint and evidence in support are referred by the Bishop to the diocesan registrar for advice.
- Having received the registrar's advice, the Bishop may decide that the complaint should be dismissed, in which case it will proceed no further under the Measure.

- If on the other hand the bishop considers that the complainant has a proper interest in complaining and that the complaint deserves further consideration, the bishop will invite the Priest or Deacon about whom the complaint is made to send a written answer verified by a statement of truth, together with evidence in support.
- The Bishop will then decide which of five possible courses of action available to the bishop under the Measure is the appropriate one to pursue.
 - a. take no further action;
 - b. record the complaint conditionally for a period of up to five years, such that if another complaint is made within that time and is dealt with under paragraphs c, d or e below, the two complaints may then be dealt with together;
 - c. refer the complaint to a conciliator in an attempt to obtain agreement between the complainant and the respondent as to how the complaint should be resolved;
 - d. impose a disciplinary penalty (but only with the consent of the respondent); or
 - e. require the complaint to be formally investigated by the Designated Officer, a barrister employed in the Church of England Legal Office.

Full details on the Disciplinary Measure including the process are available from the Head of HR at the Diocesan Office or found by following the link below

<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline>

Document Owner: Head of Human Resources

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