

1/03 Review of Church Ordinances and abuse matters

16/05 Review of discipline ordinances

(A supplementary report from a committee appointed by the Synod.)

Background

1. By resolution 1/03, the Synod appointed a committee consisting of Mr Michael Orpwood QC, Mr Garth Blake SC, Mr Neil Cameron, Mr Philip Gerber and Mr Robert Wicks to –
 - (a) review the Tribunal Ordinance 1962, the Church Discipline Ordinance 2002 and the Relinquishment of Holy Orders Ordinance 1994 in light of recent experience and the basic principles contained in the proposed national Model legislation for dealing with abuse matters, and consistent with Biblical teaching, and
 - (b) prepare any draft amending ordinances for consideration by the Synod in 2004.
2. The committee prepared a bill for the Discipline Ordinance 2005 which was introduced at Synod in 2005. Following the introduction of the bill, the Synod adjourned further debate on the bill and requested members of the Synod and the Safe Ministry Board provide comments about the bill to the Diocesan Secretary by 31 March 2006.
3. By resolution 16/05 the Synod also requested that the committee consider incorporating in the bill the appointment of an individual or the utilisation of a mechanism to overtly promote independence, fairness and integrity within the disciplinary process.
4. The committee has reviewed the comments provided by Synod and Safe Ministry Board members and has considered the request in resolution 16/05. In response, the committee has prepared a revised bill for the Discipline Ordinance 2006. The revised bill has been prepared in a marked up form to show changes the committee considers should be made to the bill.
5. In preparing the revised bill, the committee undertook further consultation with some regional councils and at a special meeting on 17 July 2006 to which all Synod members were invited. The committee wishes to record its appreciation for the comments and suggestions about the bill that were made at those meetings.
6. In December 2005, the committee was saddened by the death of its chairman, Mr Michael Orpwood QC. Mr Philip Gerber was appointed chairman in Michael's place.
7. This report outlines the more significant changes which have been made to the bill since its introduction at Synod in 2005. It also

addresses the request made by the Synod in resolution 16/05. The report should be read in conjunction with the initial report which accompanied the bill at Synod in 2005.

Response to 16/05 Review of disciplinary ordinances

8. The committee has considered the suggestion made by Synod in resolution 16/05 regarding the promotion of independence, fairness and integrity within the disciplinary processes of the Ordinance.

9. The committee considers that the Ordinance as currently drafted achieves the requisite level of independence, fairness and integrity. In reaching this view the committee noted that there are 2 broad ways in which these concerns can be accommodated, namely –

- Appointing members from outside the Church on the various committees and bodies involved in the disciplinary processes under the Ordinance.
- Appointing an external body to undertake the role of ombudsman in respect of the disciplinary processes under the Ordinance.

10. In relation to the appointment of members from outside the Church, the committee notes that the ordinance already provides for the Professional Standards Committee (“PSC”) to include at least one person who is not a member of this Church (clause 108(3)). Given the pivotal role of the PSC and the committee’s expectation that the significant majority of complaints made under the Ordinance will be resolved by the PSC without resort to a Tribunal, the committee considers that the external membership on the PSC achieves an appropriate degree of transparency in the processes under the Ordinance.

11. The committee considers that the cost of appointing an external body to function as an ombudsman is not justified. The committee considers that the constitutional right of review of decisions of the Diocesan Tribunal by the Appellate Tribunal and the right of review established under clause 72 of the Ordinance in respect of the decisions of the Disciplinary Tribunal achieve an appropriate degree of accountability and fairness in decisions made under the Ordinance.

Proposed changes to the 2005 version of the Ordinance

Align meanings of child abuse and sexual abuse with Faithfulness in Service

12. In the 2005 version of the Ordinance “child abuse” and “sexual misconduct” are defined in clause 2 to mean conduct which would be regarded as such by right thinking members of the Church in this Diocese. The committee considers this definition to be unhelpful.

13. It is proposed to use the terms “child abuse” and “sexual abuse” in the 2006 version of the Ordinance and for these terms to have the

same meaning as in the code of conduct adopted by the Synod in 2004, *Faithfulness in Service*.

Limit scope of lay discipline under the ordinance to persons holding positions of leadership in the Diocese

14. Under the 2005 version of the Ordinance, the scope of discipline extended to all lay people employed by church bodies (including schools and other diocesan organisations). While the committee is mindful of managing reputational issues across the Diocese generally, on reflection, the committee considers that the scope of jurisdiction under the 2005 version of the Ordinance would be too broad. Such a jurisdiction would be likely to duplicate disciplinary processes undertaken by schools and other diocesan organisations and could raise legal problems concerning the employment relationship between schools/organisations and any employees being disciplined under the Ordinance.

15. The committee therefore considers that the scope of disciplining lay church workers under the Ordinance should be confined to persons holding any position of leadership within the Diocese. A position of leadership includes –

- an office,
- membership of a body incorporated by or under the Bodies Corporate Act,
- a church warden,
- membership of a parish council,
- membership of any other board, committee or council established by the Synod, the Standing Committee or regional council or a parish council, or
- a chief executive officer (or equivalent office) of an organisation constituted by an ordinance of the Synod or the Standing Committee,
- an officer of the kind specified in part 6 of the of the Church Administration Ordinance 1990, or
- an appointment by a rector, curate in charge, church warden or parish council or by any delegate or agent of such a person or body of persons.

16. This change is reflected in the definition of “church worker” under clause 2 of the 2006 version of the Ordinance.

17. The change largely re-instates the position which currently exists under the Church Discipline Ordinance 2002. However the definition in the 2006 version of the ordinance expressly includes chief executive officers (or equivalent office holders) of diocesan organisations as holding a position of leadership in the Diocese.

Rationalisation of the basis upon which complaints can be made against clergy and lay church workers

18. An underlying principle in the 2005 version of the Ordinance was that clergy and lay church workers should be subject to equivalent standards of conduct and discipline. The 2006 version of the Ordinance reinforces this principle by amending the Offences Ordinance 1962 to specify offences committed by lay church workers which may be heard and determined by the Disciplinary Tribunal (see clause 96A).

19. The committee has also included “sexual abuse” and “child abuse” as offences which may be heard by either the Diocesan Tribunal (clergy) or the Disciplinary Tribunal (lay church workers). The committee has removed provisions in the 2005 version of the Ordinance which permitted complaints to be made against church workers alleging sexual misconduct (now sexual abuse) and child abuse which are not directly tied to a relevant offence.

Obligation to report knowledge or reasonable suspicion of child abuse

20. Clause 8A of the 2006 version of the Ordinance establishes an obligation on lay and clerical church workers to report to the Director of Professional Standards knowledge or reasonable suspicion of child abuse by another church worker.

21. A member of clergy (licensed by the Archbishop or resident in the Diocese) or a lay church worker (who holds an authority under the Deaconesses, Readers and Other Lay Persons Ordinance for the purposes of undertaking paid work) commits an offence if that person fails to make such a report without reasonable excuse.

Obligation to co-operate with investigation

22. Under the 2005 version of the Ordinance a person against whom a complaint is made was to provide a detailed report to the person investigating the complaint if required to do so by notice in writing from the investigator. Under clause 22(1)(a) of the 2006 version of the Ordinance a person against whom a complaint is made must instead respond to a question or series of questions posed by the investigator if required to do so by notice in writing. The person must otherwise assist or co-operate with the investigation of the complaint in any manner specified in the notice (clause 22(1)(b)).

23. Clauses 23(1) and (2) of the 2006 version of the Ordinance also provide that a member of clergy (licensed by the Archbishop or resident in the Diocese) or a lay church worker (who holds an authority issued under the Deaconesses, Readers and Other Lay Persons Ordinance for the purposes of undertaking paid work) commits an offence for failing to comply with a notice to answer questions without reasonable excuse. Such a person also commits an offence if he or she wilfully misleads or obstructs the investigator in the exercise of his or her powers under the Ordinance (clause 23(3)).

Limiting scope of declarations of exempt conduct

24. Under Chapter 6 of the Ordinance a lay person may make a full disclosure to the Archbishop in writing that he or she has committed an offence before being issued with an authority under the Deaconesses, Readers and Other Lay Persons Ordinance. Upon such a disclosure being made, the Archbishop may, with the concurrence of the Professional Standards Committee, declare that the conduct cannot be the subject of a complaint or charge under the Ordinance.

25. It is considered desirable to limit the category of lay people eligible for a declaration of exempt conduct to lay people who are authorised for the purposes of undertaking paid work (clause 24(2)(b)).

Director, Professional Standards Committee and Tribunals

26. Clause 98(1) of the 2006 version of the Ordinance provides that the Archbishop may appoint the Director taking into account any recommendation of the Safe Ministry Board. Under clause 106(4) the Director is given the right to attend and speak at meetings of the PSC.

27. The term of office of members of the PSC has been limited to 3 years (clause 103A). The members of the PSC are to include a person who is certified by the Safe Ministry Board as having qualifications or experience (other than legal or clerical) appropriate to the role of a PSC member (clause 103(2)(c)).

28. For the purpose of hearing and determining charges alleging child abuse, sexual abuse or an offence under clause 8A, a Tribunal is to include at least one man and one woman (clauses 110(2) and 120(4)).

Recommendations

29. The committee recommends that –
- (a) the following are printed for the forthcoming session of the Synod –
 - (i) the revised form of bill for the Discipline Ordinance 2006, and
 - (ii) this report, and
 - (iii) the report which accompanied the bill for the Discipline Ordinance 2005 introduced at Synod in 2005, and
 - (b) the following procedural motion be moved at the Synod “by request of the Standing Committee” –
 - “Synod –
 - (a) agrees to substitute the revised form of bill for the Discipline Ordinance 2006 printed for Synod members this year for the

bill for the Discipline Ordinance 2005 introduced at last year's session of the Synod, and

- (b) suspends so many of the rules of the Synod as would prevent this arrangement."

Response of the Standing Committee

30. The Standing Committee adopted each of the recommendations of the committee specified in paragraph 29. The revised form of bill for the Discipline Ordinance 2006 is printed separately in a form marked to show the proposed revisions.

PHILIP GERBER
Chairman of the Committee

24 July 2006