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The United Reformed Church The ministerial disciplinary process

Guidelines for the Secretary and Convenor of the Assembly Commission

This is an advisory document made available by the Mission Council's ministerial incapacity and discipline (MIND) advisory group. It does not carry the authority of the General Assembly and, in every respect, it is subject to the disciplinary process.

The disciplinary process was approved by General Assembly in 1997 in order to provide the Church with a means of resolving issues affecting the conduct of ministers of the United Reformed Church which could not be resolved by any other means. Subsequently church related community workers have been brought within the scope of the process.

The minister's/CRCW's conduct is to be judged applying the standard of proof of 'balance of probabilities' against the promises made at ordination/commissioning.

A flowchart has been prepared which charts the progress of a disciplinary case from start to finish. This can be found on the Church's website www.urc.org.uk.

Note that the disciplinary process applies to Ministers of Word and Sacrament and to church related community workers (CRCWs). For brevity these notes refer, on the whole, to ministers. You should take it that all such references apply also to CRCWs.

Introduction

1. These guidelines are intended to assist with practical points which will arise as you move through an individual case. At the very outset, you should establish a dialogue and be ready to consult each other at any time.

Before the hearing

2. The paragraph is addressed to the secretary. Your involvement begins with the receipt of the referral notice. You must study paragraph C.1 of the disciplinary process as to the steps to be taken and the people to be informed. Forms have been prepared to assist you and the ones relevant to the commission stage and the hearing are those found in groups B, C and D of the schedule of forms. You must keep a ready supply of these. As each point in the procedure is reached, it will be your responsibility to prepare and send to the parties a duly completed form to provide

them with information or to notify them of something which is required from them at that particular point in the proceedings. In the latter case, you should also send to each of the parties a blank of the relevant response form for completion by the recipients and return. You should study these forms carefully, so that, as soon as you receive a copy of the referral notice in any case, you will be aware of exactly what is required from you at each point. In this way you will be able to keep the process moving expeditiously and be ready to assist the parties with any procedural queries.

3. Once the members of the Assembly commission have been appointed, the secretary is involved with them and with the parties under the procedure set out in paragraphs C.3, C.4 and C.5 of the disciplinary process.
4. It is important for each member of the Assembly commission to be provided with a copy of the latest versions of both the disciplinary process and the guidelines for the Assembly commission. As these people are all volunteers, it is not reasonable to expect them to print out these lengthy documents from the church's website and the secretary should request the disciplinary process contact at Church House (currently Mandy Adams in ministeries) to supply each member with a copy of these documents.
 - 4.1 **Venue for the hearing.** At an appropriate point in the process and after consultation with all parties the secretary will arrange a venue, date and time for the hearing.
 - 4.2 The venue ought to be such as to preserve the confidentiality of the hearing. This means that it should not be on URC premises within the synod in which the minister is serving, nor, probably, at Church House.
 - 4.3 Currently the normal venue is in central London. There may on occasion be exceptional circumstances when the hearing has to be held outside London – for example when an imprisoned minister wishes to be present.
 - 4.4 Wherever the hearing takes place, there must be available on the premises:
 - A good sized room for the actual hearing
 - Two smaller rooms, one for the use of the mandated group and the other for the use of the minister and friend. In the more complex cases, these rooms will need to be big enough to accommodate the witnesses called by the two parties
 - Facilities for morning coffee, a light lunch and afternoon tea
 - The special needs of people with disabilities must be taken into account when you plan and administer hearings. The Council on Tribunals has published a Checklist and Code of Practice called '*Access for Disabled People Using Tribunals*' which you should consult.

5. The Assembly commission guidelines deal in detail with the procedural steps between the issue of the referral notice and the hearing. Experience has shown that in almost every case some unusual factor will arise which may not sit easily with the rules of procedure. So here are four golden rules to help you:
- Do not be pressured or panicked into agreeing a course of action which you have not fully thought through and which might have unexpected, and possibly unpleasant, consequences. It is very rare that the answer to any question has to be given instantaneously without a period of at least 24 hours for reflection and consultation. Unless therefore the point is a simple one and you feel very confident that you can give an immediate answer, tell the enquirer that you will consider the matter and promise to contact him/her again as soon as you are able to provide a clear response.
 - This leads on to the second golden rule about the importance of consultation. The secretary and convenor should never feel alone and unsupported and should be in regular consultation with each other. If a point has arisen with which you do not feel that you can deal adequately by yourselves, you should consult more widely with all or any of the persons below:
 - (i) the remaining members of the Assembly commission
 - (ii) the legal adviser
 - (iii) the press officer, where any issue of publicity arises
 - (iv) the Deputy General Secretary Ministries of the Church (in addition to the press officer), but only where the issue is serious and involves the Church as a whole and/or where a complainant is threatening to go to the press with a story which could damage the good name of the Church or where such a story has already broken.

Consultation is essentially a flexible two-way process. There will be occasions, however, where the need to consult will take the form of a request for advice on a specific issue, rather than more general discussion. In such a situation, the request would normally proceed from the convenor to the secretary and from the secretary to the legal adviser, rather than in the reverse order.

- The third golden rule is that the rules of procedure are there to provide a framework, not a straitjacket (see particularly paragraphs A.2 and A.3 of the disciplinary process). So, in dealing with purely procedural points, you do not need to be hidebound. Be prepared to relax the strict rules so long as this will not prejudice either party and if you think that this will help the case to proceed smoothly.
- Fourthly you need to be aware of a hidden danger. Sometimes one of the parties will consult you about what seems at first to be an innocuous point of procedure. However, as the discussion proceeds, you begin to realise that you are being invited to express opinions about the merits of the case. You may even find yourself offering some advice as to how that party should best present the case, (e.g. choice of witnesses or mode of presentation).

Do not fall into this trap! Always remain completely objective and restrict the help which you provide to the purely procedural. Why is this so important? Because the very essence of

the disciplinary process is natural justice and a fair hearing for both parties. So for the secretary or the convenor to offer help over and above the purely procedural gives one party a distinct advantage over the other and seriously jeopardises the prospect of a fair hearing.

To assist persons/bodies who will be critically involved in the process, Mission Council has appointed the following persons to give appropriate guidance on request:

- minister - currently the Revd David Skitt
- Synod Moderator – currently the Revd Peter Poulter
- mandated group - currently the Revd Alison Davis

The secretary will need to be ready to give David's/Peter's/Alison's contact details to the minister/Synod Moderator/mandated group if they are requested, at the same time emphasising that they will give informal guidance only and not legal advice.

7. Special procedures apply where the minister is subject to a criminal charge or investigation. These are set out in paragraph E.7 of the disciplinary process and are fully explained in the guidelines for the Assembly commission. It is worth noting here, however, that it is up to the secretary to ensure that the disciplinary process case is immediately adjourned pending the outcome of the criminal matter and that it is re-activated as soon as the latter has been disposed of.
8. Sometimes when the case is in progress, an individual will write directly to the secretary of the Assembly commission about the case. This action is based on a failure to appreciate that neither the Church itself nor the Assembly commission actually conducts the investigation. Depending on the contents of the letter, you might consider it appropriate, with the writer's permission, to send copies of the letter to the parties. If you felt that a potentially serious situation had arisen, you might feel that you should consult the Deputy General Secretary (unless s/he called in the mandated group). In any case, you would be very well advised to discuss the letter first with the legal adviser and be guided by him/her as to what your course of action should be. Most importantly, you should not yourself inform the members of the Assembly commission of the existence of the letter.
9. In cases where there has been little or no response from the minister in the preliminary stages and in particular where the minister has not confirmed that s/he is aware of the hearing date, the secretary should attempt to contact the minister before the hearing date. If you still cannot obtain a response, you should consult with the convenor who will need to consider (possibly after discussion with the other members of the Assembly commission) whether to postpone the hearing for further enquiries to be made.
10. If the Assembly commission should decide to refer the case back to the person who initiated it with the recommendation that the Incapacity Procedure should be invoked, the secretary should pay particular attention to paragraphs E.5.3.1/21 of the disciplinary process which set out the detailed procedure to be followed. S/he will also find paragraph 3.14 of the guidelines for the Assembly commission helpful.

The hearing

11. Setting up the room for the hearing
 - There must be along one wall a table long enough to accommodate the five members of the Assembly commission.
 - Depending on the size and shape of the room, tables for the other participants must be arranged in a circle or rectangle around and facing the commission. Take care to avoid an unduly adversarial lay-out.
 - On the left of the commission, there should be a table for two, to accommodate the secretary and the legal adviser.
 - On the left of the secretary and legal adviser, there should be a table for the minister and his/her friend.
 - There should be a table for the three members of the mandated group.
 - Between the two parties and opposite the convenor of the Assembly commission, there should be a small table for each witness to sit at when called into the room to give evidence (each witness should only be present in the room whilst presenting his/her evidence).
 - A further small table will probably be required in the middle of the room, on which to set up the recording equipment.

12. At the beginning of the hearing, the convenor should:
 - Explain housekeeping arrangements, such as fire escapes, health and safety matters, breaks, lunch arrangements, etc.
 - Identify the persons present
 - Introduce him/herself and the members of the Assembly commission to the parties and explain the role of anyone else who is present (see paragraph E.12.1 of the disciplinary process)
 - State that every member of the Assembly commission and of the mandated group has confirmed that he/she has no 'interest' in the disciplinary matter about to be heard and that no objection to the involvement of any such persons in the hearing has been received from the parties (see paragraph C.3 of the disciplinary process). If an objection has been received but not sustained, the convenor should state this
 - Explain carefully the purpose of the hearing (see paragraph E.1 of the disciplinary process), the procedure to be followed (see paragraphs E.13 to E.18 of the disciplinary process) and what will happen when the hearing has been concluded and the parties have left (see paragraph E.18 of the disciplinary process)
 - Check that the members of the Assembly commission and the parties all have copies of the pre-hearing documents
 - Give a general warning that, unlike a court of law, the hearing before the Assembly commission does not enjoy absolute privilege under the laws of defamation, and consequently that any malicious statement made during the hearing which is untrue might amount to slander

- Read out the referral notice, ensuring that it is the final version which is before the hearing.
13. It is the convenor's responsibility to hold things together so that the hearing proceeds in an orderly manner. You must remain in control, but do not act in a dictatorial or oppressive manner and, above all, make sure that everyone involved in the hearing is treated with courtesy. You must be particularly alert to prevent any attempt at browbeating or intimidation.
 14. The secretary must also be alive to the dangers outlined in the last paragraph and it is your particular role to advise the commission if you believe that either party is infringing the rules governing the conduct of the hearing, e.g. if a spokesperson is attempting to 'lead' a witness or is intimidating witnesses for the other side or attempting to introduce irrelevant material.
 15. When the hearing is concluded and the parties have been dismissed, the convenor and the other members of the commission must retire to consider their decision **in the absence of the secretary and legal adviser**. The Assembly commission guidelines go into considerable detail at section 5 to explain the commission's role at this stage and the decisions open to it.
 16. It cannot be stressed too strongly that **the convenor in particular** must fully understand all of this because neither the secretary nor the legal adviser will be present during the commission's deliberations to point out any errors. It is true that you can always call them in for advice, but you do not have to do this and consequently the built-in safeguard of their presence to pick up on any mistakes cannot be guaranteed. Any misunderstandings by you of the scope of the commission's decision making could have serious repercussions in the form of a miscarriage of justice and/or an acrimonious appeal and some criticism of your role as the convenor of the Assembly commission. **So please take heed and make sure that both the commission's decision itself and the manner in which it is recorded are in every particular correctly based on the principles set out in paragraphs A.1.4, F.1, F.2 and F.3 of the disciplinary process!**

After the hearing

17. The secretary must inform certain people of the decision. This is set out in paragraphs F.5 and F.6 of the disciplinary process. Firstly, of course, the parties need to be told – this must be done within 10 days (paragraph F.5.1 of the disciplinary process). At the same time the General secretary, the Synod Moderator, the Synod Clerk, the Press Officer and the Secretary for Ministries must be informed, as must the General Assembly representative in a case arising under paragraph B.3.2 of the disciplinary process (paragraph F.6.1 of the disciplinary process). When all possibility of an appeal is past, the secretary must inform any outside organisations about the result, and about any guidance

appended to the decision which the Assembly commission has expressly stated its wish to be passed on (see paragraph F.6.4 of the disciplinary process). In this context 'outside organisation' means: any body or organisation outside the Church by which the minister is employed or with which the minister holds any position or post or has any involvement, paid or unpaid, where such body or organisation would have a reasonable and proper expectation of being made aware of the particular step(s) being taken (paragraph A.5 of the disciplinary process)'. This will be an organisation with which the minister has a relationship, perhaps directly through the work of his/her church or because s/he is, for example, chaplain to a hospital, school or prison or is involved with any of the uniformed organisations such as Scouts or Guides.

18. In the event of an appeal, the secretary must inform the General Secretary and pass on to him/her the papers relating to the Assembly commission hearing (paragraph G.1.2.1 of the disciplinary process). S/he must also inform the persons referred to in paragraph F.6.1 of the disciplinary process (i.e. those listed in the fourth sentence of paragraph 17 above) that an appeal has been lodged (paragraph G.1.2.2 of the disciplinary process).

Miscellaneous

19. Under paragraph J.3 of the disciplinary process all the costs of operating the process are borne by the Church centrally, as are the reasonable and proper costs of the parties, including the attendance of a minister's 'supporter' under paragraph E.10.1 of the disciplinary process, but excluding the costs of any representation at the hearing. On the question of what constitutes 'reasonable and proper costs', the MIND advisory group has given the following guidance: that the minister may claim for the 'reasonable' costs of any pre-hearing visits to his/her presenter or supporter. On all these matters, the secretary has the right to question seemingly excessive claims and to exercise discretion as regards their payment.
20. The secretary is responsible for keeping a record of all decisions taken by the Assembly commission and by the Appeals commission (See paragraph J.4 of the disciplinary process).
21. To assist the MIND advisory group, the secretary must provide an **anonymous** synopsis of all cases passing through the disciplinary process, including a verbatim record of the decision and of any guidance appended to the decision, but with all names and identifying information removed.
22. At the conclusion of the case (whether because a notice of non-continuance has been issued or because the Assembly commission (or Appeals commission) has delivered its decision), the mandated group will provide a written report of its conduct of the case (see paragraph H.4 of the disciplinary process). The secretary should remove from this all names and identifying information and then forward

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it to the MIND advisory group together with the synopsis described in paragraph 21 above.

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