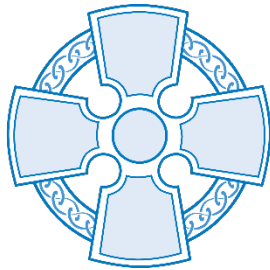


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I N W A L E S

The Disciplinary Tribunal of the Church in Wales – Guidance for those involved in the system

Guidance for those involved in the Tribunal system

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Introduction	2
An outline of the Process.....	2
The Referral itself.....	2
The initial process and the Preliminary Stage.....	4
The Hearing itself	6
Following the Hearing.....	6
Appeals.....	7
Practical Guidance in making a referral	7
Evidence.....	7
Advice.....	8

Introduction

1. This guidance has been prepared by the Registrar (the ‘administrator’) of the Disciplinary Tribunal, in consultation with the President (the ‘lead judge’) of the Tribunal.
2. It is primarily aimed at those who may make referrals to the Disciplinary Tribunal (that is the Archbishop, Diocesan Bishops and the Archbishop’s Registrar). However, it may also be helpful for those against whom a complaint has been made, or those who have drawn disciplinary concerns to the attention of their Bishop, in understanding the process. It may also be a useful guide for the members of the Disciplinary Tribunal themselves and those advising referrers in the drafting of a referral (such as Diocesan Registrars).
3. References in this guidance to a ‘Rule’ or ‘Rules’ is a reference to the [Rules of the Tribunals and Courts of the Church in Wales](#). References to Sections of Chapter IX are references to [Volume 1, Chapter IX](#) of the Constitution of the Church in Wales.

An outline of the Process

The Referral itself

4. A referral to the Disciplinary Tribunal must be made either by a Diocesan Bishop or by the Archbishop’s Registrar (Rule 96). The Bishop or Archbishop’s Registrar (as the case may be) is referred to in this guidance as the ‘referrer’.
5. Any referrer may make a referral to the Tribunal against anybody subject to the Tribunal’s jurisdiction. Whilst it would be usual for the relevant Diocesan Bishop to make the referral in respect of their own clergy, this is not a Constitutional requirement. Indeed, in some circumstances (where the relevant Bishop feels conflicted in some way) it may be more appropriate for another referrer (e.g. the Bishop of a neighbouring Diocese) to consider the matter and, if appropriate, make a referral.
6. There is no need for a formal complaint or grievance to have been made to the referrer by a third party before a disciplinary tribunal referral is made. Of course, a third party might bring a matter of concern to the referrer’s attention, formally or informally. But any referrer may make a referral to the Tribunal entirely of their own initiative.

7. A referral must be in writing and accompanied by all relevant materials on which the referrer relies. Practical advice to referrers in preparing referrals can be found later in the document.
8. The referral must be against a person subject to the Disciplinary Tribunal. This means a person who, **either** at the date of the referral or at the date of the alleged conduct is/was (Chapter IX, Section 9):
 - a. A Cleric who:
 - i. Holds a licence or PTO from a Bishop of the Church in Wales
 - ii. Is in receipt of a stipend, pension or other financial benefit (or is entitled to a deferred pension benefit) from the Church in Wales;
 - b. A Churchwarden or Sub-warden;
 - c. A lay member of the Church in Wales holding a licence, PTO or commission issued by or on behalf of a Bishop of the Church in Wales. This will include Readers, Licensed Lay Ministers and Commissioned Lay Ministers.
 - d. a person in training for an authorised ministry in the Church in Wales, sponsored for such training by a Bishop of the Church in Wales, and who had agreed in writing to be bound by the provisions of the Constitution relating to the Disciplinary Tribunal (before a referral is made, enquiries should be made with St Padarns that the relevant written agreement is on file).
9. The referral must state which of the grounds of misconduct is alleged (there may be a single ground or more than one ground). The grounds of misconduct are (Chapter IX, Section 9):
 - a. teaching, preaching, publishing or professing, doctrine or belief incompatible with that of the Church in Wales;
 - b. neglect of the duties of office, or persistent carelessness or gross inefficiency in the discharge of such duties;
 - c. conduct giving just cause for scandal or offence;
 - d. wilful disobedience to or breach of any of the provisions of the Constitution or of the Statement of Terms of Service published pursuant to the Clergy Terms of Service Canon 2010 [the latter only applies to those persons who are subject to the Terms of Service Canon. This does not include (a) Clergy with PTO (b) deaconesses, readers and lay workers who are self-supporting (unpaid) (c) ordinands and those in training and (d) Churchwardens/Sub-wardens];

- e. wilful disobedience to or breach of any of the rules and regulations of the Diocesan Conference of the Diocese in which such person holds office or resides;
- f. disobedience to any judgement, sentence or order of the Archbishop, a Diocesan Bishop, the Tribunal, or any Court of the Church in Wales;
- g. failure to comply with advice from the Provincial Safeguarding Panel without reasonable excuse.

The initial process and the Preliminary Stage

10. The referral is passed to the President. The President will accept the reference unless there is a technical flaw with the paperwork. There are three types of such flaw (Rule 100):
 - a. The referral relates to a person who is not subject to the Disciplinary Tribunal;
 - b. The referral does not state a ground of misconduct; or
 - c. The referral is not accompanied by the written materials on which the referrer wishes to rely.

11. If the reference is refused it may be submitted again by the referrer once the flaw has been rectified. If the reference is accepted it is assigned to a legally-qualified member of the Disciplinary Tribunal ('the Preliminary Adjudicator') for the Preliminary Stage.

12. The role of the Preliminary Adjudicator is to make an assessment of whether:
 - a. The misconduct alleged, if proven, is of sufficient seriousness to justify a disciplinary penalty of at least a formal rebuke; and
 - b. There is a reasonable prospect of proving that the misconduct took place on the balance of probabilities.

13. In making this determination, the Preliminary Adjudicator has the benefit of:
 - a. The referral and the supporting evidence;
 - b. Any written evidence that the Respondent wishes to provide;
 - c. Submissions made by the Respondent in a meeting with the Preliminary Adjudicator; and
 - d. Any further evidence/material that the Preliminary Adjudicator has requested (Rule 106).

14. **It is not the job of the Preliminary Adjudicator to undertake an investigation into the allegations.** It is the job of the referrer to provide sufficient materials with their reference that allow the Preliminary Adjudicator to conclude that the misconduct is serious and that there is a reasonable prospect of concluding that it has occurred. Whilst the Preliminary Adjudicator may request further material under Rule 106, this will generally only be used to seek to clarify something that is not clear from the face of the papers. The power is not used to build a case against (or for) the Respondent.
15. This does not mean that the Tribunal expects a Crown Court-standard bundle with full witness statements. If the case proceeds to a full tribunal hearing a Proctor (a qualified lawyer) is appointed to prepare the case on behalf of the referrer. However (to repeat) the materials submitted must be sufficient to allow the Preliminary Adjudicator to conclude, without further investigation, that the Proctor will have a reasonable prospect of proving their case when the matter gets to a full hearing.
16. The 'bar' on the Preliminary Stage is set deliberately high. Full tribunal proceedings are time-consuming and expensive. They are always highly distressing for Respondents (who are - if a stipendiary cleric - at risk of losing their livelihood and home). They are often distressing for witnesses. The system is therefore designed to ensure that only serious matters, appropriately evidenced, are placed before it.
17. There is no appeal or review mechanism in respect of the Preliminary Adjudicator's decision. If they make a finding of 'no case to answer' the disciplinary process is at an end.¹ If they make a finding of a case to answer then the matter proceeds to a Full Tribunal Hearing.

Steps leading up to a full hearing

18. The Registrar will nominate a Proctor to present the case, on behalf of the referrer, before the Tribunal Panel. This will usually be either a Solicitor or junior Barrister in private practice, and is funded by the Representative Body.
19. Where a case proceeds to a full hearing, the Representative Body also makes limited funding available to a Respondent to seek legal advice and representation. This is subject to a cap (both in terms of hourly rate and in terms of overall cost). The Respondent may choose to supplement this funding themselves.
20. The Proctor must present a charge (full written particulars of the allegations against the Respondent) and all supporting evidence, including witness statements. Some of this paperwork will be lifted directly from the referral, some may come from further investigation by the Proctor. The Proctor may wish to

¹ Consideration is currently being given to a review mechanism for the decision of the Preliminary Adjudicator.

Speak with (a) the referrer and (b) others who contributed material to the bundle as part of their process of preparing their bundle of evidence.

21. The President (or the Chair of the Panel if different) is likely to convene a meeting at an early stage to consider:
 - a. Seeking to narrow factual issues in dispute between the Proctor and Respondent at an early stage;
 - b. Setting a date and timetable for the hearing and any further preparatory steps (exchange of witness statements, agreement of the hearing bundle and so forth)
 - c. Confirming whether the hearing is to take place in person or by video conference.

The Hearing itself

22. The Hearing will usually take place at the RB Offices in Cardiff, although alternative venues will be considered where appropriate, taking into account the needs of the parties and the Panel.
23. Hearings are not open to the public unless the Tribunal rules otherwise (Rule 132).
24. The referrer is welcome to attend the hearing, but is not required to (unless they are giving witness evidence).
25. The Proctor and Respondent (or their lawyer if appointed) may wish to make precedent-based arguments from other cases previously before the Tribunal. To enable this, the Registrar gives access, on a confidential basis, to the previous decisions of the Tribunal. Precedents in other jurisdictions (for example the Clergy Discipline Tribunals in the Church of England) are also admissible, but not themselves of binding authority. Reference may also be made to any published guidance from other churches or jurisdictions (e.g. the Clergy Discipline Commission of the Church of England's 'Guidance on Penalties').

Following the Hearing

26. Following the hearing the Panel will produce a written judgment. This is distributed to the Proctor, Respondent and referrer, as well as the Respondent's Diocesan Bishop (if they are not the referrer) and to the President (if the President did not sit on the Panel). The Panel also produce one or more short summaries of the judgment for publication.

27. Brief summaries of penalties imposed by the Tribunal are published on the Church in Wales websites. That summary (or in some cases a slightly fuller summary) are reported to the Standing Committee of the Governing Body. If there is an appeal (see below), then publication would ordinarily be postponed pending such appeal being determined.

28. Penalties imposed by the Tribunal are entered onto the Archbishop's Registrar's List.

Appeals

29. Appeals from the Disciplinary Tribunal are restricted in scope to the following:

- a. An appeal by a referrer or Respondent on the basis of an error of law made by the Tribunal;
- b. An appeal by a referrer or Respondent on the basis of fresh evidence which has come to light since the decision of the Tribunal Panel; and
- c. An appeal by a Respondent (for any reason) against a sentence of deposition from Holy Orders.

30. Notice of an Appeal must be lodged with the Registrar of the Provincial Court within 28 days of the date of the decision being appealed.

Practical Guidance in making a referral

Evidence

31. As noted above, a referral should include all relevant information in the referrer's possession to assist the Preliminary Adjudicator in making a full and proper determination of the merits and seriousness of the referral.

32. By the time a matter reaches the referrer, it may already have been subject to detailed investigation (e.g. an Investigation by the Provincial Safeguarding Team). Reports from any relevant investigation are likely to be key documents to submit with a referral.

33. Some matters will require further investigation by or on behalf of the referrer before a referral is made. For example, allegations of financial impropriety may require an investigation and report by a suitably qualified person before the Preliminary Adjudicator could determine there is a reasonable prospect of a

serious finding of misconduct. This should therefore be undertaken in advance of a referral, as the Preliminary Adjudicator does not undertake investigation work.

Advice

34. The Head of Legal Services at the Representative Body is responsible for the administration of the Tribunal system, for providing procedural advice to participants and legal advice to the Preliminary Adjudicator and Tribunal Panel. This means that, for conflict of interest reasons, they cannot provide substantive (as opposed to procedural) advice in the preparation of a tribunal referral.
35. In exceptional cases (where the Head of Legal Services has been closely involved in a matter that then is the subject of a Tribunal referral) a deputy Registrar will be appointed to administer the referral. Nevertheless, the Head of Legal Services will not be available to draft (or substantively assist in the drafting of) a Tribunal referral itself.
36. Referrers may wish to seek assistance from the Diocesan Registrar (or Chancellor) in the preparation of more complex referrals. The Legal Department of the Representative Body may also be able to recommend other legal advisors with the necessary skills and experience to assist in appropriate cases. Generally, the costs of legal advice in the preparation of a referral are not borne by the Representative Body.
37. The Representative Body's Data Protection Manager is available to give advice on questions of the processing of personal data in compiling a tribunal referral (and to give practical assistance on the redaction of documents where appropriate).
38. Depending on the nature of the complaint, Provincial HR, IT, Property, Finance, and/or Safeguarding Teams may be able to provide relevant information and reports to assist in the compilation of a referral.

Other ways of dealing with complaints or grievances