

Review of Chapter 15: Disciplinary procedures

Recommendations

1. That the term “conduct unbecoming” as used in Chapter 15 be defined as conduct that calls into question the suitability of the respondent to retain office or membership.

2. That section 15.1 be amended to read (Proposed changes are in bold)

“(1) Discipline is the process by which the Church seeks to exercise the authority given by Christ, both in the guidance, control and nurture of its members, and in the correction of offenders. The Church exercises its this authority to discipline its ministers, elders, office bearers, church workers, members and associate members whose conduct is unbecoming. Unbecoming conduct is defined as conduct that calls into question the suitability of the respondent to retain office or alternatively membership of the church. The Church’s purpose in exercising discipline is to honour God by making clear the significance of membership in the body of Christ; to encourage behaviour consistent with that calling; to correct or restrain wrongdoing; and to restore the peace and unity of the church. Its intention is to be restorative rather than punitive.

- (2) In dealing with matters of discipline, the proceedings must be distinguished by Christian gentleness, impartiality, and faithfulness.

- (3) The Church's disciplinary procedures, as set out in this chapter, have been developed to assist it to deal consistently on a

step-by-step approach with complaints and to incorporate principles of natural justice. **This process is not a substitute for the secular judicial system; neither do these procedures diminish in any way the traditional biblical obligation to conciliate, mediate, and adjust points of difference as far as possible without recourse to judicial proceedings.**

(4) Persons exercising discipline must consider at every stage the possible effects of the procedure on the health and well-being of all those affected, including the congregation or faith community of which those persons are a part.

(5) Persons involved in exercising discipline must remember at all times and at all stages of the proceedings the importance of confidentiality.”

3. a. That each presbytery appoint a Pastoral Resolution Committee to deal with disputes, grievances and complaints of a nature that do not involve conduct that is unbecoming.

b. That a new subsection (6) be added to Chapter 15 Section 1 as follows -

“(6.) Other disputes, grievances and complaints of a nature that do not involve conduct that is unbecoming shall be referred to the Pastoral Resolution Committee of the Presbytery.”

c. That a definition be added to Book of Order Appendix 1 as follows-

“Pastoral Resolution Committee means a committee appointed by a presbytery under section 8.4(u).”

d. That Chapter 8 be amended by replacing the full stop at the end of subsection 8.4(t) with a comma and a new subsection 8.4(u) be added

as follows -

“(u) to appoint a Pastoral Resolution Committee.”

e. That Supplementary Provisions be drafted to provide guidance for the Pastoral Resolution Committees, the procedure to be modelled on the proceedings of the Disputes Tribunal.

4. That Section 15.7 Subsection (4) be deleted and Subsection (5) be amended to read as follows -

“(5) On receiving a complaint made under this section, the contact person, or the representative appointed under subsection 3(a) must forward it to the complaints officer within 10 working days.”

5. That a new section 15.7A be included to read as follows -

“15.7A Self Accusation

(1) Where no complaint has been made under 15.7, a person who considers that he or she has been involved in conduct that is unbecoming, may self-accuse by providing the details of the conduct (in writing) to the contact person and including a request that that person be subject to the Church's disciplinary procedures.

(2) Where a person self-accuses in accordance with sub-section (1) the disciplinary procedures set out in this chapter 15 shall be applied as if a complaint had been received under section 15.7(1).”Self-accusation.

6. That a new subsection (2) be added to section 15.9 to provide for a support person for the respondent, and read as follows –

“(2) The complaints officer must ensure that any respondent who wishes to be supported by a support person is so supported until the conclusion of the Church's

disciplinary procedures under this chapter.” And the following subsection be renumbered.

7. That the time limits in sections 15.10 and 15.11 be reduced from 21 working days to 15 working days.

8. That a new section 15.11A be added to allow the respondent to respond to the complainant's comments made under section 15.11 and read as follows -
- “15.11A Comment by respondent
- (1) A copy of any comment from the complainant to the assessors under section 15.11 must be delivered without delay to the respondent or to the respondent's nominated representative.
- (2) The respondent may respond in writing on the complainant's comment.
- (3) Any response from the respondent must be delivered to the assessors within 15 working days after the day when the copy of the comment was delivered to the respondent under subsection (1).
- (4) The assessors may decide whether to extend the time for a response to be delivered by the respondent.”

9. That a new sub-section (1)(e) be added to section 15.14 allowing the assessors to direct that a complaint not involving conduct that is unbecoming be dealt with by the Pastoral Resolution Committee and read as follows -
- “(e) if a complaint is considered by the assessors to not involve conduct that is unbecoming, the assessors may direct that the complaint be dealt with by the Pastoral Resolution Committee.”

10. a. That guidelines for disciplinary committees regarding “oversight” as referred to in section 15.14 (10(d) be

provided in the Supplementary Provisions.

b. That Assessors be required to send full reasons for their decisions to the disciplinary committee undertaking the oversight to assist them in determining what appropriate actions should be taken to help restore a respondent to full participation in the faith community of the Church.

11. That chapter 15 Section 1, as amended be adopted ad interim and be remitted for consideration in accordance with the special legislation procedure found in Chapter 14.9 of the Book of Order

Report

1 Introduction

In September 2009 the convenor of the Assembly Nominating Committee advised as follows:

"I am writing to indicate that the Council of Assembly has approved you to be members of the Commission re the review of chapter 15 of the Book of Order disciplinary processes for the church – members being Mrs Marie Callendar, Rev Luisa Fruean, Sir Robin Gray, Rev Alastair Smales, Mr Peter Whiteside, Rev Reg Weeks as convenor and Mr Bruce Corkill as a corresponding member.

The task of the Commission is to review the Book of Order disciplinary processes as required by decision [08.069] -

That the General Assembly appoint a widely representative Commission to:

- a) Review chapter 15 of the Book of Order in light of [the presbytery's concerns]; and,*
- b) Propose to the next General Assembly regulations by which a Session/Parish Council and/or a Presbytery/District Council may hear and determine appropriate complaints and exercise appropriate discipline;"*

In discharging its responsibilities the Commission sought and received responses from presbyteries, contact persons, presbytery disciplinary commissions, interested church members and appropriate officers of the General Assembly both of the Presbyterian Church of Aotearoa New Zealand and the Presbyterian Church (USA).

The Commission wishes to thank all those who put time and effort in to making submissions on issues related to the review.

It was clear from the collated responses that only a few of the larger presbyteries had actual experience with cases of discipline. It was also noted that some of the concerns had arisen under the provisions of the initial (2006) version of Chapter 15, and had been largely dealt with under the changes made by the 2008 Assembly.

However, a significant theme in the responses was the issue which prompted the Ashburton Presbytery to seek a review in the first place, namely that the present Chapter 15 requires all issues to be dealt with by a national process which is too complicated and legalistic for many of the less serious issues which in the past had been under the purview of the church council, or the presbytery. The Commission therefore saw it as a key task to draw boundaries around what could, and should be dealt with locally and what needs to be dealt with nationally.

2 A key task

- 2.1 The Commission noted that Chapter 15.2 uses the term “**conduct unbecoming**” as the basis for establishing a complaint without saying clearly what sort of conduct was indicated. The Commission proposes this term be defined as conduct which calls into question the suitability of the respondent to retain office or membership. Inevitably the interpretation of such a definition will be subjective, and may be modified to a certain degree by the climate of moral and social opinion of the day. Nonetheless we believe that Scripture, tradition, common Church usage, and such Assembly formulations as the Code of Ethics will provide guidelines robust enough to produce an even handed outcome to the processing of a complaint under Chapter 15.
- 2.2 The Commission also believes that such a definition provides the basis for deciding at an early stage, which issues are of such a nature as to require the processes already established in Chapter 15, and which would best be dealt with by a process more immediate, flexible, and relatively local yet providing an optimum degree of objectivity. It is therefore our recommendation that a Pastoral Resolution Committee should be appointed by each presbytery to deal with disputes, grievances and complaints of a nature that do not involve conduct that is unbecoming, and yet require a greater element of neutrality than may be present in a church council. Supplementary provisions will be required to provide guidance for the Pastoral Resolution Committees. Their procedures could best be modelled on the proceedings of the Disputes Tribunal. It has elsewhere been strongly recommended that where presbyteries or Te Aka Puaho are required to deal with a case of sexual misconduct a commission be appointed. A presbytery may decide that the Pastoral Resolutions Committee be commissioned on occasion to act in such situations, or establish it as a standing commission to handle all matters under Chapter 15

3 Review

- 3.1 While the Commission was required to review Chapter 15, it saw that task as being one of identifying the degree to which Chapter 15 was achieving its purpose, and what modifications may improve the process, rather than devising or advocating a different process. In general terms it is the Commission's finding that the 2008 version appears to function satisfactorily for those cases where the basis of a complaint of conduct unbecoming is established. It is particularly assisted where presbyteries have established a disciplinary commission. However, a number of submissions particularly from presbytery disciplinary commissions, as well as discussions with the national complaints officer, alerted us to areas where improvements might be made.
- 3.2 A number of changes are proposed and they are presented in this report in the order they occur in the clauses of Chapter 15 itself. To show the overall effect on the process a copy of the Chapter as amended appears as an appendix to this report.

Section 15.1

The Commission decided after consideration of the Presbyterian Church (USA) regulations to augment the introduction by clarifying various aspects such as the source of the Church's authority and its intention in having such regulations.

Section 15.7

This subsection required a procedure more convoluted than necessary in the case where a presbytery or Te Aka Puaho decides to initiate a complaint. The proposed amendments will leave the initiative in the hands of the person appointed to act on behalf of the court.

Section 15.7A - Self-accusation

A new procedure, based on the Presbyterian Church (USA) regulations, is proposed to give a person prepared to self-accuse the opportunity to bring themselves before the Church for discipline. Such a procedure would allow the person who self-accuses to take the initiative in trying to resolve a situation where a complaint is likely to be brought against that person in relation to the relevant conduct. Such a complaint, if received, could then be dealt with in light of the disciplinary procedure to which the respondent has already been subject.

Section 15.9

A proposed new sub-section (2) is to provide for a support person for the respondent.

Sections 15.10 and 15.11 - Time limits

It was felt by the Commission, and confirmed through submissions that the time frame for the process can produce unnecessary delays. The proposal is that the time limits in these sections be reduced from 21 working days to 15 working days. These limits should help keep the process moving without causing undue pressure on the people involved.

Section 15.11A - Respondent allowed to respond

As a matter of natural justice a new section is proposed to allow the respondent to respond to the complainant's comments made under section 15.11.

Section 15.12A – Church council informed

It was felt this provision needs to be revised in order to provide an element of discretion to meet the circumstances of any particular case.

Section 15.14(1)(d) - Oversight

Submissions made clear that there is a need for guidelines for disciplinary committees regarding "oversight" (as referred to in section 15.14 (1) (d)) The Commission's view is that these could best be provided in the Supplementary Provisions.

Further, it is important that assessors send full reasons for their decisions to the disciplinary committee undertaking the oversight so as to assist them in determining what appropriate actions should be taken to help restore a respondent to full participation in the faith community of the Church.

Section 15.14(1)(e)

If the proposed Pastoral Resolution Committee is adopted then a new sub-section should be added to allow the assessors to direct that a complaint not involving conduct that is unbecoming be dealt with by the Pastoral Resolution Committee of the relevant presbytery.

4 Conclusion

If the above changes seem relatively minor, that is because in the main Chapter 15 provides a clear, robust and fair process for dealing with complaints of such a nature that if proven the respondent is likely to lose his or her position, and possibly not only current income but future status. These are serious issues both for the complainant and for the respondent.

However, such a process is too complex for the resolution of many of the pastoral issues which occur in the day to day life of parishes. Without a satisfactory alternative such issues are likely to fall by the wayside and those concerned to raise such issues left with no opportunity or medium of resolution. The Commission is strongly of the view that the proposed Pastoral Resolutions Committee provides the appropriate mechanism to deal with such issues, leaving the disciplinary processes of Chapter 15 for the serious cases.

Of the proposed changes, only those proposed in relation to Chapter 15 Section 1 are required to be sent down for consideration by presbyteries and there is a recommendation to that effect. The other proposals contained in our report may be determined by this Assembly.

Reg Weeks

Convener

Appendix

Chapter 15 (with proposed amendments in bold)

15.1 Background

- (1) **Discipline is the process by which the Church seeks to exercise the authority given by Christ, both in the guidance, control and nurture of its members, and in the correction of offenders.** The Church exercises its this authority to discipline its ministers, elders, office bearers, church workers, members and associate members whose conduct is unbecoming. **Unbecoming conduct is defined as conduct that calls into question the suitability of the respondent to retain office or alternatively membership of the Church. The Church's purpose in exercising discipline is to honour God by making clear the significance of membership in the body of Christ; to encourage behaviour consistent with that calling; to correct or restrain wrongdoing; and to restore the peace and unity of the church. Its intention is to be restorative rather than punitive.**
- (2) In dealing with matters of discipline, the proceedings must be distinguished by Christian gentleness, impartiality, and faithfulness.
- (3) The Church's disciplinary procedures, as set out in this chapter, have been developed to assist it to deal consistently on a step-by-step approach with complaints and to incorporate principles of natural justice. **This process is not a substitute for the secular judicial system; neither do these procedures diminish in any way the traditional biblical obligation to conciliate, mediate, and adjust points of difference as far as possible without recourse to judicial proceedings.**
- (4) Persons exercising discipline must consider at every stage the possible effects of the procedure on the health and well-being of all those affected, including the congregation or faith community of which those persons are a part.
- (5) Persons involved in exercising discipline must remember at all times and at all stages of the proceedings the importance of confidentiality.
- (6) **Other disputes, grievances and complaints of a nature that do not involve conduct that is unbecoming shall be referred to the Pastoral Resolution Committee of the Presbytery.**

*Defined terms: associate member, Church, church worker, congregation, elder, faith community, member, minister, office bearer. **Pastoral Resolution Committee.***

Who are Involved in disciplinary procedures

15.2 Grounds for the exercise of discipline

- (1) Conduct unbecoming of a minister, elder or other office bearer, or church worker of the Church or a member or associate member of a congregation may result in discipline being exercised.
- (2) Discipline is exercised on the basis of a complaint lodged and processed in accordance with this chapter.

Defined terms: associate member, Church, church worker, complaint, congregation, elder, member, minister, office bearer.

15.3 Who may be subject to discipline

- (1) Ministers, elders, other office bearers, church workers and members and associate members of a congregation, may be subject to the discipline of the Church.
- (2) If a disciplinary process is commenced against a person who is a minister or an elder, other office bearer or church worker and that person resigns before the process is completed, the process may be completed despite the resignation.
- (3) If a disciplinary process is commenced against a person who is a member or associate member of a congregation and the person ceases to be a member or associate member before the process is completed, the process may be continued despite the person ceasing to be a member or associate member.

Defined terms: associate member, Church, church worker, congregation, elder, member, minister, office bearer.

15.4 Who exercises discipline

The Church's primary courts of discipline are presbyteries and Te Aka Puaho.

Defined terms: Church, court, presbytery, Te Aka Puaho. Complaint proceedings for exercise of discipline by assessors. Preliminary: Contact and support persons

15.5 Appointments for the disciplinary process

- (1) Each primary court of discipline must appoint contact persons who are commissioned to
 - (a) receive complaints, and
 - (b) advise and assist complainants, whether or not the allegations are yet in writing, and
 - (c) supply complainants with a copy of chapter 1 and this chapter of the Book of Order.
- (2) Contact persons may, if requested by a complainant or potential complainant, assist that person to formulate his or her complaint in writing.
- (3) A contact person may offer to the complainant the names of suitable persons available to act as a support person for him or her, and the contact person may, if he or she chooses to, act as a support person.

Defined terms: Book of Order, complaint, complainant, contact person, support person.

15.6 Appointment of officers by Council of Assembly to deal with complaints

- (1) The Council of Assembly must appoint a complaints officer whose duty is to receive complaints forwarded by contact persons and to take action in respect of them in accordance with this chapter of the Book of order.
- (2) The Council of Assembly must also appoint a panel of assessors from whom assessors may be appointed in respect of particular complaints. That panel must contain a number of assessors who are legally qualified, but not all assessors need be so qualified. The panel must include both men and women.
- (3) The Council of Assembly must also appoint a panel of persons from whom a disciplinary commission may be constituted to hear any complaints which are referred to such a commission in accordance with this chapter. That panel must contain a number of persons who are legally qualified, but not all members of the panel need be so qualified. The panel must include both men and women.

Defined terms: assessor, Book of Order, complainant, complaint, complaints officer,

contact person, Council of Assembly, disciplinary commission, member. Process for initiating complaints

15.7 Lodging of complaint

- (1) A complaint must be in writing signed by the complainant and must be made to a contact person appointed by the primary court of discipline having jurisdiction. If a complaint or allegation designed to be a complaint are made to any member of a primary court of discipline who is not a contact person, the member of the primary court must direct the complainant to a contact person.
- (2) No action is to be taken on an anonymous complaint.
- (3) Where no complaint has been made but a presbytery, Te Aka Puaho, a union district council or a church council considers that it ought to lay a complaint against a person, it must
 - (a) appoint a representative to pursue the complaint and adopt the role of the complainant in respect of that matter, and
 - (b) indemnify that person in respect of his or her conduct in good faith as complainant.
- ~~(4) Where a complaint is initiated under subsection (3), the representative appointed must forward the complaint to a contact person as provided for other cases.~~
- (4) On receiving a complaint made under this section, the contact person **or the representative appointed under subsection (3)(a)**, must forward it to the complaints officer within 10 working days.

Defined terms: church council, complainant, complaint, complaints officer, contact person, court, presbytery, Te Aka Puaho, working day.

15.7A Self Accusation

- (1) **Where no complaint has been made under 15.7, a person who considers that he or she has been involved in conduct that is unbecoming, may self-accuse by providing the details of the conduct (in writing) to the contact person and including a request that that person be subject to the Church's disciplinary procedures.**
- (2) **Where a person self-accuses in accordance with sub-section (1) the disciplinary procedures set out in this chapter 15 shall be applied as if a complaint had been received under section 15.7(1).**

15.8 Appointment and procedures of assessors for particular complaints

- (1) Within 10 working days of receiving a complaint under section 7, the complaints officer must, after obtaining details of the complaint from the contact person, appoint from the panel of assessors appointed by the Council of Assembly under section 6 a panel of not fewer than 3 and not more than 5 assessors to deal with the complaint.
- (2) The complaints officer must ensure that one assessor is legally qualified.
- (3) No person who is associated with the congregation with which either the complainant or the respondent is associated may be appointed to the panel of assessors that is to deal with the complaint.

Defined terms: assessor, complainant, complaint, complaints officer, congregation, contact person, Council of Assembly, respondent, working days.

15.9 Service of complaint and other documents

- (1) The appointed assessors must ensure that within 5 working days of receiving a written complaint, a copy of the complaint and of chapter 1 and this chapter of the Book of Order are delivered to the respondent.
- (2) **The complaints officer must ensure that any respondent who wishes to be supported by a support person is so supported until the conclusion of the Church's disciplinary procedures under this chapter.**
- (3) All documents required to be delivered under this chapter must be delivered either in person or by registered mail or courier with delivery acknowledged by signature. If none of these means of delivery can be effected, then delivery may be effected by leaving any such documents with a person who is believed on reasonable grounds to be in a position to pass the documents on to the respondent.

Defined terms: assessor, Book of Order, complaint, respondent, working day.

15.10 Response by respondent

- (1) The respondent should make a written response to the complaint.
- (2) A response must be delivered to the assessors within ~~24~~ **15** working days after the day on which the complaint was delivered to the respondent under section 9.
- (3) The assessors may decide whether to extend the time for a response to be delivered by the respondent.

Defined terms: assessor, complaint, respondent, working day.

15.11 Comment by complainant

- (1) A copy of any response from the respondent to the assessors must be delivered without delay to the complainant or to the complainant's nominated representative.
- (2) The complainant may comment in writing on the response.
- (3) Any comment from the complainant must be delivered to the assessors within ~~24~~ **15** working days after the day when the copy of the response was delivered to the complainant under subsection (1).
- (4) The assessors may decide whether to extend the time for comment to be delivered by the complainant.

Defined terms: assessor, complainant, respondent, working day.

15.11A Comment by respondent

- (1) **A copy of any comment from the complainant to the assessors under section 15.11 must be delivered without delay to the respondent or to the respondent's nominated representative.**
- (2) **The respondent may respond in writing on the complainant's comment.**
- (3) **Any response from the respondent must be delivered to the assessors within 15 working days after the day when the copy of the comment was delivered to the respondent under subsection (1).**
- (4) **The assessors may decide whether to extend the time for a response to be delivered by the respondent."**

15.12 Interim standing down from office or membership

- (1) At any time after receiving a complaint, the assessors may direct that the respondent must
 - (a) stand down temporarily from exercising the duties associated with any office or offices held by the respondent,
 - (b) refrain from participating as a member or associate member of any congregation.
- (2) Before giving a direction under subsection (1), the assessors must give the complainant and respondent an opportunity to be heard.
- (3) At any such hearing, the parties to the complaint may be represented by legal counsel.
- (4) Whenever the assessors give a direction under this section, the assessors must without delay inform the Assembly Executive Secretary who must inform the appropriate primary court of discipline which must without delay inform the appropriate church council.

15.12A Church council to be advised of complaint

Where a complaint has been made against a minister or a church worker, the minister or church worker shall **promptly inform a senior officer of the relevant church council that a complaint has been made, and provide a summary of the nature of that complaint; the officer may, if appropriate, provide such information to the church council.**~~and, at the same time provide details of the circumstances and nature of the complaint.~~

Defined terms: Assembly Executive Secretary, assessor, associate member, church council, complainant, complaint, court, member, respondent.

15.13 Consideration of complaint

- (1) The assessors must, within 20 working days, as calculated in accordance with subsection (2), consider the complaint, any response by the respondent, and any comment by the complainant.
- (2) Unless the assessors permit an extension of time, the period of 20 working days begins
 - (a) if the respondent does make a response, on the date of receiving the complainant's comments on the response, or
 - (b) if the respondent does not make a response, on the last date by which the respondent's comments would have been delivered under section 10, or
 - (c) if the complainant does not make a comment on the respondent's response, on the last date by which the complainant would have delivered any such response.

Defined terms: assessor, complainant, complaint, respondent, working day

15.14 Determination of the complaint by assessors

- (1) The assessors must determine the matter as follows:
 - (a) if the complaint is considered by the assessors to be unsustainable or trivial and not worthy to proceed further, they must dismiss it, but not before giving the complainant the opportunity to be heard,
 - (b) if the conduct to which the complaint relates occurred more than 5 years before the complaint was made, the assessors must dismiss the complaint, except that the assessors may, in their unlimited discretion, extend (or refuse to

extend) that period of time if they first give both the complainant and the respondent the opportunity to be heard,

(c) if a complaint does not relate to sexual misconduct, the assessors must consider the suitability of mediation and, if they think it appropriate, may direct that a mediation process be undertaken,

(d) if a complaint does not relate to sexual misconduct, the assessors may direct that the complaint be dealt with by the exercise of oversight by the relevant presbytery or Te Aka Puaho.

(e) if a complaint is considered by the assessors to not involve conduct that is unbecoming, the assessors may direct that the complaint be dealt with by the Pastoral Resolution Committee of the relevant presbytery or Te Aka Puaho.

(2) If a complaint does relate to sexual misconduct and has not been dismissed under paragraph (a) or (b) of subsection (1), or if in any other case the assessors do not consider action under any paragraph of subsection (1) to be appropriate, the assessors must

(a) direct that a charge of conduct unbecoming the respondent be laid and referred to the complaints officer for the appointment of a disciplinary commission to deal with the matter, or

(b) refer the matter to the New Zealand Police.

Defined terms: assessor, complainant, complaint, complaints officer, disciplinary commission, presbytery, respondent, Te Aka Puaho

15.15 Notification of decision of assessors

Within 5 working days of making a determination under section 14, the assessors must notify their determination in writing to

(a) the complainant,

(b) the respondent,

(c) the contact person,

(d) the relevant presbytery, or Te Aka Puaho, as appropriate,

(e) The Assembly Executive Secretary, and

(f) the complaints officer.

Defined terms: Assembly Executive Officer, assessor, complainant, complaints officer, contact person, presbytery, respondent, Te Aka Puaho, working day.

There are no further proposed amendments to Chapter 15 beyond this point