

WORKING PARTY ON CLERGY DISCIPLINE AND ECCLESIASTICAL COURTS

A SUBMISSION TO THE GENERAL SYNOD WORKING PARTY ON CLERGY DISCIPLINE AND THE ECCLESIASTICAL COURTS

1. INTRODUCTION

1.1 This paper has been compiled by a Working Party established by the Ecclesiastical Law Society for the purpose of examining clergy discipline and the ecclesiastical courts and is submitted to the General Synod Working Party on the same subject.*

1.2 This Working Party has met on three occasions and has considered comments and representations made by members of the ELS. The membership of the ELS Working Party and a list of contributors to this paper appear as an Appendix to this paper. The ELS working party is unanimous in the recommendations contained in this paper. The General Committee of the ELS commends this paper as a responsible view of a Working Party of the Society and deserving careful consideration of the General Synod Working Party but it should not be taken as representing the opinion of the members of the General Committee.

1.3 This paper commences with a discussion on the ecclesiology of clergy discipline. It deals next with the merits and demerits of the mechanisms currently in existence for the discipline of the clergy. This is followed by a short resumé of similar systems in secular fields. The paper concludes with a list of proposals for reform including, in outline form, an alternative system for dealing with the discipline of the clergy. A brief summary of the recommendations made in this paper is to be found in part 7.

2. THE ECCLESIOLOGY OF CLERGY DISCIPLINE

2.1 Before considering the minutiae of present disciplinary proceedings, it is prudent to place the discipline of the clergy in an appropriate historic and theological context. Christ tells us:

*'If your brother commits a sin, go and take the matter up with him, strictly between yourselves, and if he listens to you, you have won your brother over. If he will not listen, take one or two others with you, so that all facts may be duly established on the evidence of two or three witnesses. If he refuses to listen to them, report the matter to the congregation; and if he will not listen even to the congregation, you must then treat him as you would a pagan or a tax gatherer.'*¹

From this primitive Matthean procedure to the synods of the Patristic era to the medieval institute of the judicial and extra-judicial appeal, procedures have been invoked which constitute formalised ways of leading an offender against the discipline and mores of the community to sincere repentance.² A personal and spiritual dimension of conversion needs to be kept at the forefront of our minds, i.e. any process taken against a delinquent cleric must always be proportionate and essentially medicinal rather than punitive.

2.2 Where the situation requires a more serious response, the medicinal must give way to the disciplinary for the sake of the rest of the community. This may mean

* The General Committee commends this Report as deserving careful attention although it cannot be taken as representing the views of the Committee as a whole.

¹ Matthew 18 vv 15-17 (N.E.B). See also Hebrews 12 v 14; Colossians 1 v 28 and 1 Corinthians 5 vv 11-13.

² A survey of the history of administrative procedures see Kevin Matthews 'The Development and Future of Administrative Tribunals' in *Studia Canonica* 18 (1984) 15-59.

the deprivation of certain rights or even of certain spiritual goods and services so that further scandal is avoided and the delinquent understands that the authorities in the church have a prior responsibility to safeguard the common good of the faithful, i.e. their rights to the word of God preached with integrity or to a liturgy which is celebrated in accord with the liturgical laws of the church.

2.3 The fundamental unit of the Church is the diocese and the responsibility for the maintenance of discipline within that diocese lies, in the first instance, with the diocesan Bishop. It is therefore essential that the role and function of the Bishop be expressed and understood. He is not merely an administrator or manager of human resources. Rather he,

*'shares with his fellow Bishops a special responsibility to maintain and further the unity of the church, to uphold its discipline and to guard its faith . . . He is to be merciful, but with firmness, and to minister discipline, but with mercy.'*³

Canon C18(7) provides that:

'Every Bishop shall correct and punish all such as be unquiet, disobedient or criminous within his diocese according to such authority as he has by God's word and is committed to him by the laws and ordinances of this realm.'

It is difficult to improve upon the statement which is to be found in the 1983 Roman Catholic Code of Canon Law, Canon 1341 of which reads:

'The ordinary is to start a judicial or an administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction or reproof, nor by any methods of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.'

2.4 In legal terms, the diocesan Bishop's primary responsibility for discipline is provided for by his position as Ordinary of his diocese.⁴ The proper forum for the commencement of any formal proceedings is the court of a person's Ordinary and the proper appeal is to that Ordinary's immediate Visitor.

2.5 In any consideration of clergy discipline one must bear in mind the fact:

- (a) that the Bishop is both pastor and disciplinarian;
- (b) that first recourse must always be had to fraternal correction or reproof and/or pastoral care, and
- (c) the imposition of penalties should only be undertaken where the primary method of correction is insufficient to repair the scandal, restore justice and reform the offender.

3. MERITS AND DEMERITS OF PRESENT SYSTEM

3.1 It is not intended to devote any of this paper to a discussion of the present system. An exhaustive and critical description is to be found in Hill, *Ecclesiastical Law* (Butterworths, 1995) at Chapter VI, 'Church Courts'.⁵ The relevant canons are reproduced (in their present form) in the materials accompanying the chapter as is the *Ecclesiastical Jurisdiction Measure 1963* (as amended) and an extract from the judgment in *Burridge v. Tyler* [1992] 1 All ER 437. A simple diagram indicating the procedure for dealing with offences is to be found at page 352.

3.2 The greatest merit of the present system of clergy discipline is that it is scrupu-

³ Preface to the Ordination of a Bishop. ASB 1980 page 388.

⁴ A similar position is held by the person or body which is Ordinary of a non-diocesan unit. Throughout this paper the term 'Bishop' means the diocesan bishop or, *mutatis mutandis* the Ordinary equivalent to a diocesan Bishop.

⁵ See in particular pages 349 to 356. See also Chapter IV 'Clergy' at pages 226 to 231 covering clergy discipline, vacation of benefices, retirement and removal of priests.

lously fair to the accused.⁶ The demerits of the present system are, first, that it is exceptionally costly. Sums in excess of £350,000 have been mentioned in relation to the *Tyler* case. Secondly the procedure is lengthy and unwieldy. In the *Tyler* case, formal complaints were made in February of 1990 but the accused did not vacate the vicarage until June of 1992. Thirdly the proceedings are held in public. This may cause humiliation to the accused and/or to witnesses. In any event it creates a media circus (not limited to the tabloid market) which would be better avoided.

3.3 It is because of a combination of these foregoing reasons that proceedings under the EJM are rarely commenced. It follows from the relatively unusual nature of the proceedings that diocesan authorities may be ill-equipped to deal with the bureaucratic technicalities involved. This may lead to appeals which add further to costs and delay as in the *Tyler* case. Furthermore, anecdotal evidence suggests that dioceses are not geared up to provide effective pastoral care to the parishioners affected by the proceedings.

3.4 As to the nature of the proceedings themselves their format is analogous to a jury trial in the Crown Court. Of necessity, therefore, the proceedings are adversarial and combative. This may create a polarisation of issues and drive a rift between those directly involved in the proceedings as well as the parishioners who must live with the consequences of the hearing (whatever the verdict) often with little or no pastoral care and support.

4. OTHER MODELS

4.1 *The Canon and Civil Law Tradition*

4.1.1 The analogy with the common law jury trial is of comparatively recent origin, stemming from the decline of the civil lawyers as a separate profession in the nineteenth century and the subsequent appearance of the common lawyer in the ecclesiastical courts. Apart from the ecclesiastical courts, the High Court of Chivalry and the Courts of the Universities of Cambridge and Oxford are the only courts whose procedure is, in theory, still based on civil law.

4.1.2 The University Courts are particularly instructive because they provide a living insight from within our own civil procedural tradition. The substantive law they administer is a separate body of law from the common law.⁷ They deal with members of a body whose rights, duties and status depend upon their relationship with that body, and where there can be no convenient dividing line between 'internal rules' for members and a separate 'contract of employment'. The penalties imposed are largely in terms of effects on membership of and relationship to the body.⁸

4.1.3 The main practical points which can be drawn from looking at the civil law tradition in general and the University Courts in particular are:

- (a) Proceedings are inquisitorial in nature, with more emphasis on written procedures. There is more widespread use of examination of witnesses on commission by court officials and correspondingly less reliance on oral procedure.
- (b) Common law rules of evidence obviously have no place.
- (c) Each court usually has an independent advocate as a promoter or advocate-general to bring proceedings, and often to decide whether proceedings are brought.
- (d) The courts normally sit *in camera*.
- (e) Whichever court hears the case at first instance there is only one appeal which is final.
- (f) Members of the body of the appropriate level often form part of the court.

⁶ See in particular the two appeals in the recent case of *Burridge v. Tyler*.

⁷ The domestic law of the University as opposed to the canon law of England.

⁸ In recent years issues of plagiarism and cheating have been widely ventilated in the University Courts.

4.2 *Secular models*

4.2.1 Useful analogies can be drawn from the disciplinary tribunals of other professions: solicitors, barristers, medical practitioners, accountants etc. In addition there are parallels with certain statutory tribunals such as the Industrial Tribunal, Employment Appeal Tribunal, VAT Tribunal, Mental Health Review Tribunal, Criminal Injuries Compensation Board, Planning Enquiries etc. A detailed discussion of each and all of these models is beyond the scope of this paper.

4.2.2 It is, however, possible to extract the following practical points which are common to the each of these secular models.

- (a) Hearings are usually conducted in private.
- (b) There are few formal rules of evidence and a wide discretion is given to the tribunal to regulate its own proceedings.
- (c) Generally 'peers' participate as full judges although the chairman is usually legally qualified.
- (d) Rights of appeal are limited, usually on points of law only.
- (e) An individual is entitled to be represented by an advocate although costs are either expressly not recoverable or limited in amount. A party may be ordered to pay costs in circumstances where that person has behaved unreasonably or, for example, by wilful failure to comply with procedural directions has caused increased costs.
- (f) Decisions are often not expressed on the day of the hearing but handed down in written form shortly thereafter.

5. PROPOSALS FOR REFORM

5.1 In the opinion of this Working Party a major overhaul of the EJM 1963 is necessary to create an appropriate mechanism for the discipline of clergy which is quicker, cheaper and less cumbersome than that which presently exists yet which preserves for the clerk the principle of fairness that lies at the root of the present system. It is also proposed that the same procedures for the discipline of clergy should apply to beneficed and unbeneficed clergy alike.⁹

5.2 What is proposed is a two stage process. Initially there should be an inquiry by an Archdeacon, the nature of which should in essence be investigative,¹⁰ informal and pastoral. The Archdeacon should be given the opportunity to make recommendations to the Bishop. Only if the Archdeacon recommends court process and the Bishop so agrees should proceedings be commenced. These proceedings should be more akin to an industrial tribunal than a Crown Court trial and from them an appeal will lie on any question of law. Such appeal shall be final. There is already a proliferation of church courts¹¹ and to add to this number would be unnecessarily bureaucratic and costly. It is therefore proposed to modify the composition and procedures of the present courts to produce a unified system, simple to understand and operate. However, whilst, for sound reasons of ecclesiology, the diocesan *courts* should be utilised it would

⁹ Different provisions apply to assistant curates and priests exercising a bishop's licence. This is discussed in Hill '*Ecclesiastical Law*' (op cit.) at pp. 224–6. The employment status of such persons has been discussed in a number of recent industrial tribunal cases including the *Coker* litigation which is awaiting determination by the Employment Appeal Tribunal. The working party commends a uniformity of approach in clergy discipline irrespective of whether or not the clerk is beneficed.

¹⁰ This is preferred to 'inquisitorial' which expression has acquired sinister overtones.

¹¹ Some 13 at present.

¹² It is anticipated that within a relatively short period of the implementation of these recommendations a number of archdeacons, chancellors, registrars, promoters and advocates will emerge with the necessary expertise and experience to form specialist panels which can be called upon as required.

¹³ A precedent for the issuing of such rules is to be found in the *Incumbents (Vacation of Benefices) Measure 1977* (as amended), the *Care of Churches and Ecclesiastical Jurisdiction Measure 1991* and the *Care of Cathedrals Measure 1990*.

not be objectionable to select the *personnel* to operate those courts on a provincial basis.¹²

5.3 What follows is a broad outline of the procedure to be adopted. Where indicated appropriate rules should be issued.¹³ Where the complaint relates to a Bishop or Archdeacon, the procedure will require certain adaptations. These are noted below.

5.4 *Complaint*

5.4.1 Any individual, (i) who complains in writing to the Bishop concerning the conduct within the diocese of any clerk in holy orders or the conduct anywhere of any clerk in holy orders licensed by such bishop; and (ii) whom the bishop deems to have sufficient interest, may have his complaint investigated.

5.4.2 The complaint may be made on one or more of the following grounds:¹⁴

- (a) breach of ecclesiastical law or divergence from doctrine¹⁵
- (b) conduct unbecoming the office and work of a clerk in holy orders
- (c) culpable neglect of duty or pastoral responsibility.

5.4.3 If he decides that the complaint should be investigated, the bishop shall appoint an Archdeacon (or acting Archdeacon)¹⁶ to investigate the complaint and shall communicate the same to the complainant and the clerk concerned.

5.4.4 If the Bishop declines to make such an appointment, he shall give his reasons for so doing in writing to the complainant and to the clerk concerned within 21 days of receipt of the complaint.¹⁷

5.4.5 If no Archdeacon has been appointed or no notice declining to make an appointment delivered to the complainant within 21 days of receipt of the complaint the complainant shall have the right to renew his complaint in writing to the Archbishop of the Province who shall exercise such power and discretion as is vested in the Bishop herein.

5.5 *Investigation*

5.5.1 The Archdeacon (or acting Archdeacon) shall investigate the complaint in accordance with rules issued by the General Synod of the Church of England.¹⁸

5.5.2 He shall interview the complainant and the clerk and, if he deems fit, persons likely to be witnesses.

5.5.3 Where such an interview is conducted, the substance of the interview should be recorded by the Archdeacon or, if the clerk prefers, a third party agreeable to him. Such record should be signed by those present.

5.5.4 The purpose of the investigation should be to establish (a) the facts, (b) the circumstances of the alleged offence and, if appropriate, (c) the question of moral imputability.

5.5.5 Within 21 days of his appointment (or such further time as the Bishop may

¹⁴ Automatic deprivation should continue in its present form (subject to any necessary modifications in relation to divorce law) in respect of certain proceedings in secular courts. See *Ecclesiastical Jurisdiction Measure 1963*, ss. 55–7.

¹⁵ When the final draft of this paper was considered by the General Committee of the Ecclesiastical Law Society a significant majority of those present considered that the composition of any clergy disciplinary tribunal which had to consider a matter of *doctrine* should be differently constituted as is the case at present. The working party remains of the opinion that its recommendation at 5.6.17 is appropriate and adequate.

¹⁶ In many cases it will be appropriate to involve an Archdeacon from another archdeaconry (or indeed diocese) who will be unknown to the individuals concerned and better able to deal impartially with the complaint. It should be noted that, as is the case under the *Care of Churches and Ecclesiastical Jurisdiction Measure 1991*, an acting archdeacon need not even be a priest. It is anticipated that there would be many occasions in practice where a lawyer might be better able to discharge this role.

¹⁷ Proper provision will have to be made for occasions when there is a Vacancy in See.

¹⁸ These rules should cover pastoral issues as well as legal ones.

allow not exceeding 8 weeks) the Archdeacon shall furnish the Bishop with his recommendations in writing. At the same time a copy of the Archdeacon's recommendations shall also be sent to the complainant and to the clerk.

5.5.6 The Archdeacon may recommend (a) that no action be taken in relation to the complaint, (b) that some specified penalty be imposed in relation to the clerk or (c) that court process¹⁹ be initiated.

5.5.7 The range of specified penalties shall comprise the following:

- (a) **Formal rebuke** which shall be in writing and shall be delivered privately to the clerk with a copy sent to the complainant and, if deemed fit, to the secretary of the PCC with an instruction that it be included in the minutes of the next meeting of the PCC for information only and that no question, discussion or debate as to its contents shall be permitted.
- (b) **Monition** requiring the clerk to do or refrain from doing the act or acts which gave rise to the complaint. This shall be in writing and communicated as in (a) above.
- (c) **Suspension** from office for such period as may be specified for the purpose either of providing further counselling for the clerk or 'in-service' training to meet specified shortcomings.
- (d) **Transfer** to some other office or employment.

5.5.8 If the Bishop declines to accept the recommendation of the Archdeacon, he shall give his reasons for so doing in writing to the Archdeacon, the complainant and the clerk.

5.5.9 The Bishop may only impose the penalties outlined at paragraph 5.5.7 herein (in the absence of the institution of court process) if the clerk consents to him so doing.

5.6 *Court Process*

5.6.1 If the Bishop elects to initiate court process he shall within 14 days of receipt of the Archdeacon's recommendations appoint an individual from a panel (maintained by General Synod in accordance with its rules) to promote the complaint.

5.6.2 The promoter shall within 14 days of his appointment draft and serve upon the accused Articles of Offence to which the respondent clerk shall within 21 days thereafter serve an Answer in accordance with rules issued by General Synod.

5.6.3 The hearing shall be convened as soon as is reasonably practicable and shall be in the Consistory Court which, for these purposes, shall comprise a chancellor (or deputy chancellor) appointed by the Bishop from a panel made up in accordance with rules issued by General Synod together with a clerk in holy orders and a lay person selected by ballot from a panel maintained by each province in accordance with such rules.

5.6.4 Each of the persons so selected shall be furnished by the Registrar of the diocese with the name of the respondent clerk, the complainant and those persons likely to be witnesses together with the recommendations furnished to the Bishop by the Archdeacon. If it appears to either person that he is acquainted with the respondent clerk, the complainant or a potential witness or might otherwise be regarded as connected with the parish concerned then he shall notify the chancellor that he is unable to act and another person shall be selected by ballot in his place. In case of any doubt the matter shall be referred to the chancellor for his determination.

5.6.5 The respondent clerk shall have the right to object to either of the persons selected under paragraph 5.6.3 on the ground of partiality and such objection shall be heard and determined by the chancellor as soon as is practicable.

5.6.7 Witness statements shall be exchanged in accordance with rules issued by General Synod.

¹⁹ See paragraphs 5.6 et seq.

5.6.8 Save where the Court directs otherwise, all proceedings shall be *in camera* and neither the press nor the public shall have access.²⁰

5.6.9 The Court shall consider the findings and recommendations of the Arch-deacon and shall give to those matters such weight as it considers just.

5.6.10 The respondent clerk may appear in person or by an advocate. The remuneration of advocates shall be met by General Synod's Legal Aid Fund which shall be administered on a standard fee basis in accordance with rules issued by General Synod after consultation with the Lord Chancellor's Department. The Court shall have power to order a party to pay part or all of the costs of the Court and/or of the other party where that party has behaved unreasonably in relation to the court process or by wilful default has failed to comply with procedural directions of the Court thereby increasing costs.

5.6.11 The Court shall apply the criminal standard of proof namely that it is satisfied beyond reasonable doubt as to the respondent clerk's guilt.

5.6.12 The Court shall be free to regulate its own procedure subject to the requirements set forth herein and to rules issued by General Synod.

5.6.13 The Judgment of the Court (which shall include its findings of fact) shall be in the form of a written statement in accordance with rules issued by General Synod and shall be delivered within 14 days of the conclusion of the hearing.

5.6.14 The Judgment (and the Judgment only) shall be made public save that the Court, if it deems fit, may withhold the identity of the complainant and/or any witnesses.

5.6.15 The Court shall have power to pass any of the sentences specified at paragraph 5.5.7 herein in respect of any offence which it finds proved and, in addition, may impose a sentence of:

- (e) **Inhibition** from the exercise of orders for such period as may be specified.
- (f) **Deprivation** from the holding of any office or bishop's licence and disqualification from holding any future preferment or being granted a licence thereafter.

5.6.16 The Bishop shall impose such sentence.²¹

5.6.17 The foregoing procedure shall apply whether or not the offence involves (or may involve) any issue of doctrine, ritual or ceremonial.²² Where such matters are (or may be) involved the Court, of its own motion, may summon witnesses expert in the relevant field.

5.7 Appeals

5.7.1 Either the promoter or the respondent clerk may appeal on any question of law and/or on sentence.

5.7.2 Such appeal shall be made in writing within 14 days of delivery of Judgment.

5.7.3 The appeal shall be determined as soon as is reasonably practicable by the Court of the Arches or Chancery Court of York (as appropriate)²³ which, for these purposes, shall comprise the Dean or Auditor sitting with two Chancellors appointed by him.

5.7.4 The Court of Arches shall have power to quash or vary any part of the Judgment of the Consistory Court and/or to vary sentence (to include increasing the same). The Court of Arches shall further have power to remit any matter for reconsideration by the Consistory Court.

²⁰ Such privacy will not infringe the provisions of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms being ecclesiastical proceedings governed by internal norms.

²¹ The working party expressly rejects any suggestion that the Bishop shall have any discretion at this stage of the proceedings. Having elected to initiate court process the Bishop should be bound by its conclusion.

²² Note, however, footnote 15 ante which summarises a reservation expressed by the General Committee of the Ecclesiastical Law Society.

²³ Hereafter, for convenience, referred to merely as The Court of Arches.

5.7.5 There shall be no further appeal from the Court of Arches.

5.7.6 Save with the leave of the Court of Arches, no further evidence shall be admitted on the appeal.

5.8 *Proceedings against Bishops and Archbishops*

5.8.1 In the case of a complaint against a Bishop which is to be made to the Archbishop of the Province, if an inquiry is to be undertaken it shall be conducted by another Bishop of the Province.

5.8.2 If the Bishop recommends to the Archbishop that court process should be initiated then such process shall be heard in the first instance by the Court of Arches or Chancery Court of York (as appropriate) comprising the Dean or Auditor sitting with one Chancellor and one Bishop each of whom shall be appointed by the Dean or Auditor.

5.8.3 The appeal from this tribunal shall be to three persons who hold or have held High Judicial Office appointed by the Lord Chancellor.

5.8.4 In the case of a complaint against an Archbishop such complaint shall be made to the Archbishop of the other Province who shall appoint a Bishop (also of the other Province) to carry out the investigation.

5.8.5 If court proceedings are initiated they shall be heard in the first instance by a tribunal constituted as at paragraph 5.8.3 herein.

5.8.6 An appeal will lie to the Privy Council.

6. GENERAL POINTS

6.1 It may be that after the investigation, the Archdeacon is of the opinion that the procedure under the *Incumbents (Vacation of Benefices) Measure 1977*²⁴ (as amended) ought to be followed. If such an eventuality is thought likely then provision should be made for this being a fourth option as regards his recommendations (see paragraph 5.5.6). It is doubtful whether such option will be of any practical utility. If it were to be exercised, however, it is considered appropriate for compensation payments under the 1977 Measure to be made discretionary and not mandatory as they are at present. See further paragraph 6.7 below.

6.2 Both the Measure envisaged to bring the proposed reforms into effect and the rules to be made thereunder will require careful and thoughtful drafting. The rules should embody the fundamental principles enunciated in this report namely, (i) fraternal correction and pastoral care, (ii) fairness, (iii) speed, and (iv) economy.

6.3 Inhibition may be appropriate during criminal process and, in exceptional circumstances, during the currency of the investigation. The Bishop should maintain his right (as at present) to inhibit a clerk pending criminal process and/or investigation. In addition, however, the Archbishop should have the right to inhibit a Bishop of his province and the Lord Chancellor the right to inhibit an Archbishop.

6.4 There is undoubtedly a close connection between the issues to be addressed by this working party and those being considered by the Clergy Conditions of Service Steering Committee. This paper is concerned solely with clergy discipline and the ecclesiastical courts and every effort has been made not to trespass upon the province of related but separate bodies. Two matters, however, are considered to be of such importance as to merit specific—though perforce brief—treatment.

6.5 **Parson's freehold**—The debate on this subject is already at an advanced stage. Divergent views, firmly and sincerely held have been passionately expressed. Ultimately, Synod, the Ecclesiastical Committee and Parliament itself will have to form their own views on whether the parson's freehold is the inalienable right of the parish priest affording protection, *inter alia*, from the capriciousness of the bishop or whether it is a quaint anachronism which is harmful to effective man-

²⁴ On the broader issues concerning this subject see paragraph 6.7 below.

agement and pastoral care. Whether it is retained or replaced by fixed term contracts or some other model is immaterial so far as clergy discipline and the church courts are concerned.

6.6 The ultimate sanction of the church court is to deprive a clerk of his office. It is of no consequence whether that is a freehold of office or one for a term of years. What matters is the provision of a swift, cheap and fair system of removing from office a person unfit to hold it. Where the present system falls into disrepute is not that the parochial clergy enjoy the parson's freehold²⁵ but that the mechanism for removing such clergy is slow, expensive and so procedurally complex as to deter its invocation in all but exceptional cases. Once the system is properly reformed so as to be truly effective, the nature and effect of the parson's freehold will cease to be a contentious issue for the Church of England.

6.7 **Vacation of Benefices**—It is well known that there are two procedures which may be utilised by a bishop which have as a possible consequence the removal of a priest. The first is the criminal process under the *Ecclesiastical Jurisdiction Measure 1963* which forms the subject matter of this paper and the deliberations of this working party. The second arises in the case of 'serious pastoral breakdown' and is governed by the *Incumbents (Vacation of Benefices) Measure 1977* (as amended).²⁶

6.8 A recurring theme (expressed in extremely trenchant terms) in the representations made by contributors to this paper has been the inadequacy of the procedures under the 1977 Measure despite their recent revision. They, too, are inordinately expensive, lengthy, protracted and cumbersome to operate. No workable definition is supplied for the expression 'serious pastoral breakdown' and, if it was not present when proceedings were launched it can virtually be guaranteed by the time they are determined (if that ever happens). What is more, the compensation provisions would place so heavy a burden on the church as to act as a powerful disincentive to any bishop contemplating such a course.

6.9 Were the procedure for the discipline of the clergy to be reformulated along the lines recommended in this paper it is anticipated that the speed, cheapness and efficiency of the proposed system will lead to greater use of the church courts for matters of clergy discipline but with a swifter resolution and a more formalised system of pastoral care for those affected. This would render obsolete what little practical utility there is in the provincial enquiry created by the 1977 Measure (as amended).

6.10 However, because the Vacation of Benefices procedure touches upon issues of clergy discipline there would be considerable advantage if the General Synod working party were to address the correlation of the two systems and, further, to consider whether or not they might properly be merged. Of particular interest is:

- (a) whether pastoral inadequacy on the part of a clerk should form the basis of disciplinary proceedings;
- (b) whether lay office holders (churchwardens, treasurers, PCC secretaries or members, deanery synod representatives, organists, administrators, etc.) ought to be made subject to similar provisions leading to deprivation of office;
- (c) whether compensation should be paid to dispossessed office holders (including clergy) and, if so, in what circumstances.

6.11 All these matters are beyond the terms of reference of the General Synod working party. They nonetheless touch and concern the issues to be addressed.

²⁵ Although it will be noted that the number of such persons is decreasing, hence the rationale for introducing identical procedures for beneficed and unbeneficed clergy alike.

²⁶ See the *Incumbents (Vacation of Benefices) (Amendment) Measure 1993* which made major changes to the earlier measure. This is fully discussed in Hill 'Ecclesiastical Law' (op cit.) at pages 227 to 230.

Much could be gained from the broadening of the terms of reference and, in the event that the working party elects so to do, the writers of this paper will endeavour to make their services available and to offer such assistance as may be deemed appropriate.

7. SUMMARY OF RECOMMENDATIONS

7.1 The procedures which presently exist for the discipline of clergy are cumbersome, expensive, lengthy and lacking in pastoral support.

7.2 Any system which is proposed to replace the present procedures should strike the proper balance between pastoral correction and penalty.

7.3 The jurisdiction to correct and to discipline rests with the Ordinary hence (in the first instance) the bishop deals with the clergy of the diocese, the archbishop with the bishops of his province and the Queen in Council with the archbishops.

7.4 No new court or tribunal should be established.

7.5 The existing diocesan and provincial courts should be utilised and their composition and procedures modified accordingly. Particular archdeacons, chancellors, registrars, etc. should develop a specialism in the operation of these procedures on a provincial or regional basis.

7.6 Strict timetabling is necessary to ensure prompt investigation of complaint and swift resolution of court process.

7.7 Provision should be made for proper and effective pastoral care to be exercised in the parish affected during the inquiry, court process and thereafter.

7.8 Proceedings should not normally be heard in public.

7.9 Costs should be strictly regulated and standard fees imposed.

7.10 The nature of the proceedings should be identical whether or not the offence alleged involves a matter of doctrine, ritual or ceremonial.²⁷

7.11 Every accused (whether priest, bishop or archbishop) shall have a right to appeal to one higher tribunal whose determination shall be final.

7.12 General Synod will be required to draw up rules dealing with:

- (a) the manner in which the Archdeacon's investigation is to be carried out.
- (b) the pastoral support of (i) the complainant (ii) the clerk (iii) the parishioners and (iv) their families during the course of the Archdeacon's investigation and the court process.
- (c) the composition and maintenance of the panel of promoters.
- (d) the drafting of Articles of Offence, Answers, Witness Statements and matters preparatory to the hearing.
- (e) the composition and maintenance of panels of (i) clergy and (ii) laity who shall sit along with chancellors at hearings together with guidance as to when such persons ought not to act.
- (f) the charging of professional fees.
- (g) the content of written judgments.

²⁷ Note, however, footnote 15 (*supra*).

APPENDIX

The Working Party established by the Ecclesiastical Law Society for the purpose of researching and drafting this paper comprised the following:

Convener:	Mark Hill	LL.B., LL.M. (Canon Law), A.K.C., barrister, Deputy Chancellor of the Diocese of Winchester and author of 'Ecclesiastical Law', Butterworths (1995)
Members:	Paul Barber	M.A. (Cantab), barrister
	Fr Richard Barrett	B.D., J.C.L., tribunal official of Northampton Diocese
	Revd Paul Benfield	LL.B., B.Th., barrister, Vicar in the United Benefice of All Saints, St Anne, St Michael and St Thomas, Lewes
	Revd David Sherwood	LL.M. (Canon Law), solicitor, Vicar of St Mary's, Kenton
	Revd Michael Smith	M.A., B.D. (Oxon), formerly Rector of Silverton

The working party met on 2 April, 10 May and 16 June 1995. All members of the society were invited to express their views and written representations (some of which have been independently furnished to the General Synod Working Party) or other comments were received from:

Christina Bennett, solicitor
 Richard Bloor, joint registrar of the Diocese of Leicester
 John Burgess, archdeacon of Bath
 Michael Burridge, solicitor
 Rupert Bursell, chancellor of the Dioceses of Durham and St Albans
 Quentin Edwards, chancellor of the Diocese of Chichester
 David Faull, registrar of the Diocese of London
 Thomas Hoyle, registrar of the Diocese of Blackburn
 Michael Johnson, barrister and VAT Tribunal Chairman
 Robert Ombres, O.P.
 James Patrick, barrister
 John Rees, solicitor
 George Spafford, chancellor of the Diocese of Manchester
 John Spokes, Q.C.
 Stephen Trott, rector of Pitsford with Boughton

This paper is a distillation of the views, opinions and anecdotal experiences expressed (both formally and informally) by members of the Ecclesiastical Law Society together with the results of the researches of the members of the ELS working party. Although there was near unanimity as to the failings of the present structures, a diversity of opinion was recognised as to the best method of improving upon them. This paper reflects the broad consensus which exists. Whilst individual contributions may have contained statements of opinion or aspiration which are at variance with those contained in the final draft, the members of the working party were unanimous as to the contents of this paper.