

Scottish Episcopal Church



Clergy Discipline Tribunal Rules

Adopted April 2013

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RULES OF THE CLERGY DISCIPLINE TRIBUNAL OF THE SCOTTISH EPISCOPAL CHURCH

These Rules should be read together with Canon 54 of the Code of Canons of the Scottish Episcopal Church. Together they regulate the procedure and conduct of the Clergy Discipline Tribunal of the Scottish Episcopal Church. The Rules are made by the Tribunal under Section 32 of Canon 54 and come into force on 29th April 2013. A number of terms used in these Rules are defined in Rule 21 of these Rules.

Part 1: General Provisions

1. *Overriding objective*

- (1) The overriding objective of these Rules is to enable proceedings brought under Canon 54 to be dealt with fairly and justly.
- (2) Dealing with proceedings fairly and justly includes:
 - (a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties;
 - (b) avoiding unnecessary formality and seeking flexibility in the proceedings;
 - (c) ensuring, so far as practicable, that parties have adequate time for the preparation of their case;
 - (d) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
 - (e) using any special expertise of the Tribunal effectively;
 - (f) avoiding unreasonable delay, having regard to the requirements of the proper consideration of the issues.
- (3) The Tribunal must seek to give effect to the overriding objective when it exercises any power under these Rules or interprets any part of these Rules.

- (4) Parties must help the Tribunal to further the overriding objective, and co-operate with the Tribunal generally.

2. *Constitution etc of the Tribunal*

- (1) The Tribunal shall be constituted in accordance with Sections 31 and 33 of the Canon.
- (2) The President of the Tribunal shall, after consulting with other members of the Tribunal, appoint a member from the Tribunal to be the Trial or Appeal President who shall preside over the Trial or Appeal, as the case may be.
- (3) Tribunal hearings will be heard in public unless the Tribunal otherwise directs.

3. *Procedure before the Tribunal*

- (1) The procedure at, and conduct of, any proceedings shall be at the discretion of the Tribunal.
- (2) The Tribunal, in exercising its discretion, shall have regard to the overriding objective, and afford each party a reasonable opportunity to present his or her case under conditions that do not place that party at a substantial disadvantage vis-à-vis the other party.
- (3) Without restricting the general power of the Tribunal to regulate its proceedings as appears fit, the Tribunal may:
 - (a) make any order;
 - (b) excuse parties from failure to comply with provisions of these Rules; or
 - (b) disapply or vary any provision of the Rules.
- (4) If situations arise where the Canon or these Rules make no explicit procedural provision, without prejudice to paragraphs (1) and (2) of this Rule, the Tribunal may adapt procedures from the Rules of the Court of Session or the Procedural Rules of the Upper Tribunal.

4. *Delegation*

The Tribunal may, in order to facilitate the expeditious conduct of proceedings, delegate to one of its members the power to take a decision on any incidental matter and any decision so taken shall be valid as if taken by the whole of that Tribunal.

5. *Alternative Dispute Resolution*

- (1) The Tribunal should seek, where appropriate:
 - (a) to bring to the attention of the parties the availability of any appropriate alternative procedure for the resolution of the dispute; and
 - (b) if the parties wish and provided it is compatible with the overriding objective, to facilitate the use of that procedure.

6. *Sending and delivery of documents*

- (1) Documents to be provided to the Tribunal or the Clerk to the Tribunal under these Rules shall be marked clearly “For the attention of the Clerk to the Clergy Disciplinary Tribunal” and sent by pre-paid post or hand delivered to the Office of the General Synod of the Scottish Episcopal Church, 21 Grosvenor Crescent, Edinburgh EH12 5EE, unless the Tribunal otherwise directs or permits.
- (2) If a party provides a fax number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method. Documents may also be delivered to parties by pre-paid postal delivery or hand delivery.

7. *Accompanying persons and Representatives*

- (1) A party may be accompanied by another person at a hearing.
- (2) A party may appoint a representative to represent that party in the proceedings.
- (3) If a party appoints a representative, that party must send to the Clerk of the Tribunal and any other party written notice of the representative’s name and address, unless the Tribunal dispenses with that requirement.
- (4) A person who receives due notice of the appointment of a representative:
 - (a) must provide to the representative any document which is required to be provided to the represented party, and need not provide that document to the represented party; and

(b) may assume that the representative is and remains authorised as such until otherwise notified by the representative or represented party.

8. Expenses

- (1) The Tribunal shall have power to make an order for expenses as it thinks fit.
- (2) In exceptional circumstances the Tribunal may order that all or part of the Accused's reasonable legal expenses, as agreed or as taxed by the Auditor of the Court of Session, be met from the funds of General Synod (as a reasonable expense incurred by the Clergy Discipline Tribunal). Such an order will only be made where, in the opinion of the Tribunal, fairness requires it, because the Accused would be unable to participate effectively in the Tribunal hearing without such an order. The Tribunal, in determining whether exceptional circumstances exist justifying such an order, shall have regard to the particular facts and circumstances of the case and:

- (a) the importance of what is at stake for the Accused in the proceedings;
- (b) the complexity of the relevant law and procedure;
- (c) the Accused's capacity to represent him or herself effectively.

Part 2: Directions and procedural hearings

9. Directions

- (1) The Tribunal may make Directions as to the conduct of, or in respect of any matter arising in, proceedings before it.
- (2) Directions may be made or varied on the initiative of the Tribunal, or on the application of a party.
- (3) Any application by a party in advance of a Tribunal or Appeal shall be made in writing to the Clerk of the Tribunal specifying the Direction sought, and a copy shall be sent by that party to any other party and the Tribunal. Directions sought in the course of a Trial or Appeal may be made to the Tribunal without such notification in writing to the Clerk.

- (4) The Tribunal may give or vary Directions, including as to procedure for determination of an application for a Direction, at a hearing, a telephone hearing, or in writing. Any Direction shall be given or confirmed in writing, and a copy sent to all parties.

10. Procedural hearings

- (1) The Tribunal may of its own motion, or on the motion of any party, hold a procedural hearing.
- (2) The Clerk of the Tribunal shall in good time advise parties of the date, place and time of any procedural hearing, and the substance of matters to be determined.
- (3) The Tribunal may make any order at a procedural hearing in order to do justice between the parties.
- (4) In particular, at a procedural hearing the Trial Tribunal may, after giving due consideration to any representation of the parties, make an order:
 - (a) excluding one or more offences contained in the Notice of Trial from proceeding to Trial;
 - (b) ordaining that one or more of the offences libelled in the Notice of Trial be dealt with separately from any other offence or offences;
 - (c) precluding the leading of evidence of any matter contained in the Notice of Trial or in any Answers;
 - (d) ordaining a party or parties to produce any documents in their possession or held by a third party on their behalf;
 - (e) ordaining parties to lodge witness statements;
 - (f) for the recording of evidence at the trial; and
 - (g) continuing the procedural hearing to a date to be appointed by the Clerk of the Tribunal.
- (5) In particular, at a procedural hearing the Appeal Tribunal may, after giving due consideration to any representation of the parties, make an order:

- (a) allowing or refusing the appellant cleric to lead additional evidence, or to do so in respect of specified matters only;
 - (b) stipulating the additional witness or witnesses from whom, or the additional document or documents in respect of which, evidence may be allowed, and on such conditions as it thinks fit;
 - (c) where leave to lead an additional witness is allowed, ordaining the appellant party within a specified period of time to provide a detailed statement of the matters to which each additional witness is to speak in support of the Appeal;
 - (d) where leave to produce additional documents as evidence is allowed, ordaining the appellant party within a specified time to produce any further documents relied on and in respect of which leave has been allowed; or
 - (e) continuing the procedural hearing to a date to be appointed by the Clerk of the Tribunal.
- (6) Any order pronounced by the Tribunal shall where appropriate specify the time within which the order should be implemented, and any other matter relating to compliance with the order.

Part 3: Productions and Witnesses for Trial hearings

11. Productions

- (1) A list of documents and any real evidence upon which parties intend to rely, together with copies of documents (marked with the numbering on the list and paginated) and the real evidence referred to in that list, shall be lodged with the Clerk of the Tribunal not later than 14 days before the date of the Trial unless the Tribunal directs otherwise.
- (2) At the same time as lodging the list and documents referred to in it, a party shall send copies of the list and documents to every other party.
- (3) A production which is not lodged in accordance with paragraphs (1) or (2) above, as the case may be, shall not be used or put in evidence at the Trial unless:
 - (a) with the consent of parties; or

(b) with the leave of the Tribunal, having regard to all circumstances concerning non-compliance with paragraphs (1) and (2) above and on such conditions, if any, as to the conduct of the Trial or expenses, as the Tribunal thinks fit.

12. Witnesses

- (1) Subject to the following provisions of this Rule, parties shall be entitled to examine or have examined witnesses in support of their case.
- (2) Not later than 14 days before the date of the Trial, each party shall:
 - (a) lodge with the Clerk of the Tribunal a list of the witnesses whom he or she proposes to call to give evidence at the Trial; and
 - (b) at the same time as lodging the list of witnesses send a copy of that list to every other party.
- (3) Evidence of a person whose name was not included on a list of witnesses may not be taken at the Trial, unless:
 - (a) by consent of parties; or
 - (b) with the leave of the Tribunal, having regard to all circumstances concerning non-compliance with paragraphs (1) and (2) above and on such conditions, if any, as to the conduct of the Trial or expenses as the Trial Tribunal thinks fit.
- (4) It shall be the duty of each party to ensure that his or her witnesses, if any, are:
 - (a) in attendance in the vicinity of the place for Trial; and
 - (b) available when called to give evidence.
- (5) No witness at a Trial shall, except with the leave of the Tribunal, be present during the Trial proceedings prior to the giving of his or her evidence.
- (6) The Tribunal may on its own motion or on the motion of any party, ordain parties to lodge statements from their witnesses, and may direct that any such statement will stand as the witness's evidence in chief.

- (7) Where evidence is given orally, it shall be given on oath or solemn affirmation.
- (8) Any witness who gives oral evidence may be cross-examined.

Part 4: Other provision

13. *Hearings in a party's absence*

If a party fails to attend a hearing, the Tribunal may proceed with the hearing if satisfied that:

- (a) the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) it is in the interests of justice to proceed with the hearing.

14.. *Standard of proof*

Whether the commission of any offence has been established shall be determined on a balance of probabilities.

15. *Questions of law and law of Evidence*

- (1) Any question of law arising in the course of the Trial or Appeal shall be determined by the Trial or Appeal President, as the case may be.
- (2) The Scottish Civil Law of Evidence shall apply to proceedings brought under the Canon.

16. *Votes of the Tribunal members*

Each member of the Trial Tribunal or Appeal Tribunal, as the case may be, shall have an equal vote in the determination of any matter by it.

Part 5: Appeals

17. Appeals

- (1) Appeals shall be conducted in accordance with Section 38 of the Canon and any Directions made by the Appeal Tribunal.
- (2) Subject to Rules 3 and 15(2), productions which were lodged in accordance with Rule 11 before the Trial Tribunal upon which a party wishes to rely in the course of an Appeal, may be further lodged before the Appeal Tribunal by either party, in accordance with the provisions of Rule 11.
- (3) Where the Accused proposes to lead additional evidence in the course of an Appeal:
 - (a) leave from the Appeal Tribunal must be sought to do so in respect of each additional witness and each additional document sought to be relied upon;
 - (b) there shall be lodged at the same time as the Note of Appeal:
 - i.a copy of any additional document in respect of which leave is sought;
 - and
 - ii.a statement of the matters to which each additional witness in respect of whom leave is sought would speak.
 - (c) each witness statement lodged in accordance with the sub-paragraph b. shall be of sufficient detail to enable the Appeal Tribunal to determine whether or not leave should be granted in respect of that witness.
 - (d) leave will only be granted if the additional evidence was not available and could not reasonably have been made available at the trial, and may be granted subject to any conditions the Appeal Tribunal sees fit.
- (4) It shall be incompetent to appeal solely in respect of an order of the Trial Tribunal in relation to expenses.

Part 6: Miscellaneous

18. *Tribunal member unable to remain*

(1) In the event that any member of the Tribunal is unable for whatever reason (including suspension under Section 31 of the Canon) to remain as a member of the applicable Tribunal, the President of the Tribunal (or if it is the President who is so unable, a Bishop member of the Tribunal) shall make whatever provision he or she in his or her sole discretion determines is appropriate for the due conduct of the Trial or Appeal. In particular, provision may be made to:

- (a) appoint another member of the Tribunal to sit with the remaining members of the applicable Tribunal; or
- (b) direct that the remaining members of the applicable Tribunal hear the proceedings; or
- (c) adjourn the proceedings; or
- (d) direct that in its subsequent deliberations the applicable Tribunal should or should not have regard to part or the whole of any evidence already led in the proceedings; or
- (e) direct that evidence in relation to specific offences be retained, disregarded, or heard of new.

19. *Role of the Clerk*

- (1) The Clerk of the Tribunal shall, as directed by the Tribunal, make due provision for maintaining a file of all papers relating to any proceedings before it, including every order made by the applicable Tribunal in the course of proceedings.
- (2) The Clerk of the Tribunal shall maintain a record of the verdict and sentence pronounced by the Trial Tribunal, the decision of any subsequent Appeal, and of any written opinion produced relative thereto by the applicable Tribunal.

20. Forms

- (1) Where there is a reference to the use of a form in the Rules or in the Canon, that form in the appendix to the Rules or the Canon, or a form substantially to the same effect, shall be used with such modification as circumstances may require.

21. Clerical mistakes and accidental slips or omissions

The Tribunal may at any time correct any clerical mistake or other accidental slip or omission in a decision or record of a decision by:

- (a) sending notification of the amended decision, or copy of the amended record, to all parties; and
- (b) making any necessary amendment to any information published in relation to the decision or record.

22. Interpretation etc.

- (1) In these Rules, the following expressions shall, unless the context otherwise requires, have the following meanings respectively assigned to them:

“Accused” means a person against whom an accusation has been made in accordance with Section 3 of the Canon;

“Appeal” means an appeal under Section 38 of the Canon;

“Appeal Tribunal” means the Tribunal constituted in accordance with Section 33(b) of the Canon;

“the Canon” means Canon 54 of the Code of Canons of the Scottish Episcopal Church;

“the Clerk of the Tribunal” has the meaning assigned in Section 31 of the Canon;

“document” has the meaning assigned in Section 9 of the Civil Evidence (Scotland) Act 1988;

“Note of Appeal” has the meaning assigned in Section 38 of the Canon;

“party” means the Procurator of the Church and/or any Accused as the context requires;

“Rules” means these rules, the Rules of the Clergy Discipline Tribunal of the Scottish Episcopal Church;

“Procurator” means the person appointed under Section 20 of the Canon to try accusations on behalf of the Church;

“the President of the Tribunal” means the member of the Tribunal so nominated under Section 31 of the Canon;

“proceedings” means proceedings under the Canon and includes any Trial or Appeal or any procedural hearing under these rules;

“Trial Tribunal” means the Tribunal at first instance constituted in accordance with Section 33(a) of the Canon;

“Tribunal” means the Tribunal constituted in accordance with Section 33 of the Canon, and that expression in these Rules may include the Trial Tribunal or the Appeal Tribunal, or both, as the case may be, as the context requires.

(2) Unless the context otherwise requires, any expression used in these Rules shall have the same meaning as assigned to that expression in the Canon.

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