

Report to DC 25/9/08.

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REPORT OF PROFESSIONAL STANDARDS WORKING PARTY

Terms of Reference

- 1 Review the existing ordinance and comment on its appropriateness/ effectiveness in light of recent Professional Standards matters.
- 2 What is an appropriate level of legal assistance for Respondents & Complainants? And what level of assistance can the Diocesan budget support?
- 3 The suspension of clergy is a very public act that gives rise to various interpretations some of which may well remain prejudicial to the respondents even if they are cleared. Is there another way of dealing with matters such as the recent matter given it was not criminal or involving children?
- 4 Is the Bishop required to accept the recommendation of the Professional Standards Board? For example, if the Bishop felt the recommendation of the Board was too lenient what options are available to him? Protocol for media announcements.

Introduction

The Working Party has met on a number of occasions during 2008. We have carefully considered the Professional Standards Ordinance and the document Faithfulness in Service. Several submissions have been received and considered.

It became clear to the Working Party that "Recent Professional Standards Matters", for reasons of confidentiality would not be open to discussion by the Working Party, nor would it be appropriate to seek contact with any complainants or respondents in Professional Standards matters. The Working Party has, however, interviewed one representative each of the Professional Standards Committee and Professional Standards Board, with a view to learning in general terms their evaluation of their processes.

The Working Party has not sought to re-draft the (national) legislation and code of practice.

We note that a proposed re-draft was submitted to Diocesan Council by a Diocesan Council member and that this was forwarded by the Diocesan Manager to the General Synod Office.

There are, however, some issues that we would seek to raise for consideration.

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1. The breadth of issues that may give rise to references to the Professional Standards Committee.

The Working Party notes that *Faithfulness in Service* casts a very wide net.

One result could be that trivial or malicious complaints might be encouraged.

Another, that a church authority could be faced with investigating, for example, a complaint of tax avoidance. It is not clear what this would include or how the Professional Standards Committee or Board would be expected to deal with such a complaint.

The Working Party notes that the definition of 'church worker' to whom *Faithfulness in Service* applies includes a large number of voluntary lay people. What protection is there against their private business dealings becoming a matter for reference?

The only check against trivial or malicious complaints is the Professional Standards Committee accepting or rejecting the reference. A rejected reference may still entail intrusion into the privacy of a church member.

In light of all this, we note that 'good' appointments to the PSC & PSB are crucial to the successful implementation of the Ordinance.

We hope that it may be possible over time for the PSC & PSB to create some record of 'types of matters' that are commonly referred to the Board or not so that Synod or at least Diocesan Council have a capacity to review the application of the Ordinance.

There is a fine line between legislating for the protection of the vulnerable and legislating for what could become a 21st century Anglican equivalent of a Jewish 'Ritual Purity' code.

2. Confidentiality

Confidentiality is an overwhelming requirement for the appropriate application of the Professional Standards Ordinance. The Working Party is concerned whether adequate provision is made to ensure confidentiality is maintained and whether amendment of the Ordinance is required in order to protect the privacy and identity, not only of respondents, complainants or witnesses, but also of Board members in a particular matter. Failure to maintain confidentiality should be considered a serious breach of the ordinance and itself be capable of reference to and of being dealt with by the Professional Standards Committee and Board. An amendment to the ordinance to include this specific requirement for confidentiality is recommended. The reasons are obvious but can be stated in summary as the need to:

- a. Protect the personal lives of persons being considered by the PSC and Board.
- b. Protect the privacy of the persons who are named in and have made the reference to the PSC and Board.
- c. Ensure innuendo and gossip does not cloud the consideration of the reference to the PSC and Board.
- d. Maintain the integrity of the operation and application of the ordinance by the PSC and Board.

3. Expeditious consideration of references

Failure to deal promptly with matters referred increases the likelihood of breaches in confidentiality, unfairness due to extended interim action including suspensions from a ministry situation, increased and unnecessary stress on participants, and increased financial costs.

One such delay was reported to us. This was a consequence of implementing the Ordinance without having in place all the required personnel to constitute PSC and PSB. This underlines the necessity to have fill vacancies promptly.

4. Legal assistance

The Working Party is not able to advise on what is affordable. We would offer, however, some principles that we consider should be applied to policy about financial assistance. Those principles are as follows:

- a. Equality - if financial assistance for legal representation is available, it should be available to all participants except witnesses, that is, those whose conduct is being examined and those seeking to have their conduct examined.
- b. Assistance should not be offered above the rate generally applicable to Legal Aid matters in the public court system for the Local Court and/or care jurisdiction that is at a rate of \$150.00 per hour with a set fee for preparation.
- c. Assistance should ensure that there is fairness in the application of legal representation - this will maintain the integrity of matters before the Board and prevent systems abuse through the process.
- d. Assistance should be made in such a way that Board consideration continues to be non-adversarial in nature and not burdened by legal technicalities.
- e. The principle and requirement for reconciliation within the Body of Christ is to be encouraged wherever possible.

5. Suspension

Occasions may arise when it is necessary to suspend a licensed person from a ministry while a matter is investigated.

Some principles that the Working Party consider should be applied to suspensions include:

- a. The purpose of suspension is to ensure protection of the vulnerable and this should be the paramount consideration. If there is another way (than suspension) this should be pursued. This could include temporary transfer or secondment.
- b. The PSC or PSB, in making a recommendation to suspend a ministry needs to consider the seriousness of the alleged offence and the likelihood of repetition of an alleged offence during the inquiry.
- c. The PSC or PSB, in making a recommendation to suspend a ministry needs to consider the likelihood that the matter can be dealt with expeditiously. The capacity to minimise delay will help ensure that suspension during an inquiry does not become a punishment.

6. Authority of the Bishop

The Chancellor of the Diocese, His Honour Judge Lincoln, advises as follows:

“Clause 76 of the Professional Standards Ordinance 2005-2007 empowers the Bishop to give effect to a recommendation of the Professional Standards Board. It is a matter for the Bishop whether or not he gives effect to the recommendation.

The Bishop can, if he sees fit, give effect to Clause 76 but should he choose not to do so he can act under his general powers given by Clause 4 of the Diocesan Council Ordinance 1929-03.”

6. Protocol for Media announcements

The Working Party is of the view that media announcements should occur only when absolutely necessary. That is, the need to maintain confidentiality is, as stated above, an overwhelming requirement for the appropriate application of the Professional Standards Ordinance.

The Bishop, in consultation with the Director of Professional Standards, is the only person who should make any statement.

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Written advice announcing suspensions or proceedings of the PSC or PSB should be avoided. Confidentiality cannot be guaranteed, even when information is circulated in confidence.

Temporary transfer or secondment, or a temporary ban on specific contacts by those subject to allegations may help avoid the need for announcements.