

Revisions to the Complaints and Discipline Procedures – Appeals to the Conference

Basic Information

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Status of Paper	Final
Action Required	Decision
Draft Resolution	The Council agrees with the points of principle raised in this report as they relate to the process for bringing an appeal, and the size of the appeal body, and directs that the necessary amendments to Standing Orders be brought to the Conference of 2010.
Alternative Options to Consider, if Any	To retain existing procedures.

Summary of Content

Subject and Aims	To agree principles that will enable alterations to Standing Orders.
Main Points	To amend: <ul style="list-style-type: none"> - grounds of appeal to the Methodist Conference; - size of the Committee of the Conference called to hear appeals.
Background Context and Relevant Documents (with function)	Earlier revisions to the Complaints and Discipline procedures. Reflections in light of recent experience.
Consultations	Chairs of Discipline Committees and Appeal Committees. Those with experience of presiding in a judicial capacity. Complaints and Discipline Liaison Group. Relevant good practice.

Summary of Impact

Standing Orders	Various in Part 11, especially SO 1144(1) and SO 1145(2)(a).
Faith and Order	Proposals are consistent with the theological basis of procedures adopted by the Conference in 2007.
Financial	A more efficient use of the resources of the whole Connexion.
Personnel	N/A
Legal	Proposals better reflect judicial practice.
Wider Connexional	Providing a better use of resources, clarity of process, and a less intimidating appeals structure.
External (e.g. ecumenical)	N/A
Risk	Note to make amendments to the appeals process fails to honour the principles established in 2006 and 2007. The present size of the appeal body does not reflect best practice in discipline matters.

Revisions to the Complaints and Discipline Procedures – Appeals to the Conference

1 Background

- 1.1 Revisions to the complaints and discipline procedures in both 2006 and 2007 introduced a number of far ranging changes. Such was the scale of the review begun in May 2005 that most aspects of the process were, in some way, amended in light of experience and good practice. The only part of the procedures that was not altered (save for consequential amendments required as a result of changes to earlier parts of the procedure) was that of the final appeal to the Methodist Conference. Primarily this was for no other reason that there had been no appeals to the Conference for many years. Consequently, there was no memory of how well the standing orders gave effect to the decisions of the Conference and very little indication as to how effective they would be in light of changes made elsewhere in the procedure. In light of two appeals to the Conference in 2009 (one being withdrawn two weeks before the hearing) minor amendments were made to the relevant Standing Orders in 2009. These changes saw the introduction of a pre-hearing meeting; provided for greater clarity with regard to the membership of the Committee as well as the process for objecting to the membership of those appointed to hear the appeal; and gave a definition of the term President for the purposes of this section of the standing orders. These revisions have already aided preparations being undertaken for an appeal to be heard in May 2010.
- 1.2 In light of a more considered reflection on the experiences of 2009, and as part of the preparations for the forthcoming appeal, it is considered wise to make a number of further amendments to the procedures so as to ensure a more robust process which reflects the principles established in the reports of 2006 and 2007. When hearing appeals the Conference, or the committee of the Conference so appointed is acting in a judicial capacity [SO1145(11)(c)(i)]. It is therefore vital that our procedures reflect good practice for such procedures. The credibility of our appeals process has not kept pace with the development of good practice as recognised by either legal or employment processes.
- 1.3 Additionally the 2006 report of the Complaints and Discipline Review Group established the principle that the review of the procedures should ensure ‘that the resources of the Connexion as a whole are used in the best way.’ Recent experience has shown the appeal process to be wanting in this regard. Consequently the proposals that follow are concerned not with removing a right, but with providing a system which better serves the church and the parties. There is duty upon the Church for any right of appeal to be a considered, efficient and timely process which serves to enshrine basic principles of justice and oversight in ways that do not undermine the well being of complainants or respondents. To ensure this is the case the Council is asked to approve, in principle, changes to two aspects of the current process.

2 Grounds for an Appeal

- 2.1 The grounds for an initial appeal to a Connexional Appeal Committee, by either the Presenting Officer or the respondent, against the decision of a Connexional Discipline Committee are set out in SO1140(2);
- (i) there was a material procedural irregularity in the initial hearing;
 - (ii) the initial committee made a mistake about a relevant point of law or of the constitution or discipline of the Church;
 - (iii) the initial committee erred in its conclusion on the question whether such of the words, acts or omissions complained of as it found to have been established:
 - (a) amounted to a serious breach of the discipline of the Church or disregard of a resolution of the Conference or the usage of the Church as generally understood; or

(b) seriously impaired or might seriously have impaired the mission, witness or integrity of the Church, having regard to the respondent's office or standing in relation to the Church;

(iv) the initial committee erred in its interpretation of the doctrines of the Church;

(v) the penalty imposed was too severe or too lenient, as being either disproportionate to the gravity of the charge as found established, or unjustly inconsistent with that previously imposed in similar cases, or was not available;

(vi) in the light of events occurring since the decision, or of evidence of which the person appealing could not reasonably be expected to have been aware at that time, substantial doubt has been cast upon the correctness of the decision.

2.3 Apart from two very specific reasons (that the Appeal Committee has ruled there should be a rehearing [SO 1144(5)] or that the President has ruled that the penalty was too severe, [SO 1140(5)] the grounds for an appeal to the Conference as set out in SO 1144(1) are exactly the same as those set out in SO1140(2). Such a situation effectively permits for an appeal to be reheard with no requirement to produce new grounds for the appeal. The ACAS code of conduct, however, permits for only one appeal and consequently it is very unusual for any tribunal process dealing with a person's livelihood to have a dual appeal in the way presently permitted by our practice. To remove the Appeal Committee and have the Conference hear all appeals would be undesirable and unwise in terms of procedure, and clearly conflict with the previously stated concern to use resources in the best way and have appropriately constituted committees. To remove the Conference from the appeal process is equally difficult for it would remove the traditional right of ministers and members to appeal to the Conference on certain issues. As the final source of authority, and therefore the highest church court in Methodism, it is both a right and privilege to have access to it.

2.4 Having regard for the use of resources, it is therefore proposed to retain this two tier appeal process but to modify it to reflect the situation in the civil courts and to build in to the process the need to be granted leave by the Appeal Committee to make any further appeal to the Conference. Such a permission is already required when the Presenting Officer (the advocate who formulated the charge based on the complaint) is seeking to appeal [SO 1145(2)]. This would mean that an Appeal Committee would, as part of its judgment, indicate whether or not it was permitting an appeal to the Conference. In enshrining such a principle in Methodism we would be honouring the right of access to the Conference whilst also ensuring that the Conference deals only with those matters that would be considered to be of importance for the whole Connexion. Such matters would be points of principle that affect our policies and processes or are considered so important that they require the Conference to consider them and make a ruling.

2.5 Nothing proposed here would alter the requirement that an appeal concerning an interpretation of doctrine be heard by the full Conference [SO 1145(1)(a)].

3 Size of the Committee appointed under SO 1145(2)

3.1 Unless an appeal to the Conference is made later than three weeks before the opening of the relevant session of the next or current Conference, the appeal must be dealt with by the following Conference ([SO 1145 (1)(b)]). All other appeals, unless relating to doctrinal matters, must be heard by a committee of 30 persons drawn from the membership of the preceding Conference. [SO 1145(2)(a) & (b)] In keeping with good practice and in accord with the composition of judicial tribunals discharging a similar function the size of a Connexional Discipline Committee and an Appeal Committee was reduced from 7 members to 5. The 2006 report noted that in other similar areas of work a committee of 7 would be regarded as undesirable and potentially oppressive. A Committee of 5 has been shown to be a more effective body providing a far less intimidating encounter to those who are often nervous and in

unfamiliar settings. The size of the committee of the Conference remained untouched at 30. This is an unusually large and rather impractical number for a body of this nature and does not accord with the good practice of bodies that take on such a significant role in terms of having the power to remove ministers from Full Connexion. Whilst it might be argued that such an important function should be taken by a large number of people, in legal terms such an argument is not sustainable and fails to take note of the need for such a body to be small enough to engage in effective questioning and scrutiny. A body of 30 is not only off putting for the parties, but can mean that members of the Conference are less likely to seek clarification and articulate concerns at the very time when absolute clarity is needed both in terms of process and facts.

- 3.2 To reflect a clearer commitment to avoiding a potentially oppressive size it is prudent to reduce the number of the committee of the Conference appointed under SO 1145(2)(a) from 30 to 15.
- 3.3 These proposals are made in light of consulting the ACAS good practice guide and further to comments from experienced tribunal chairs reflecting on judicial principles.

RESOLUTION

The Council agrees with the points of principle raised in this report as they relate to the process for bringing an appeal and the size of the appeal body, and directs that the necessary amendments to Standing Orders be brought to the Conference of 2010.