

DRAFT CODE OF PRACTICE
UNDER SECTION 39 OF THE CLERGY DISCIPLINE MEASURE 2003

Code of Practice: Contents

Paragraph No.

Diagram of disciplinary procedures

Preface by the Chairman of the Clergy Discipline Commission

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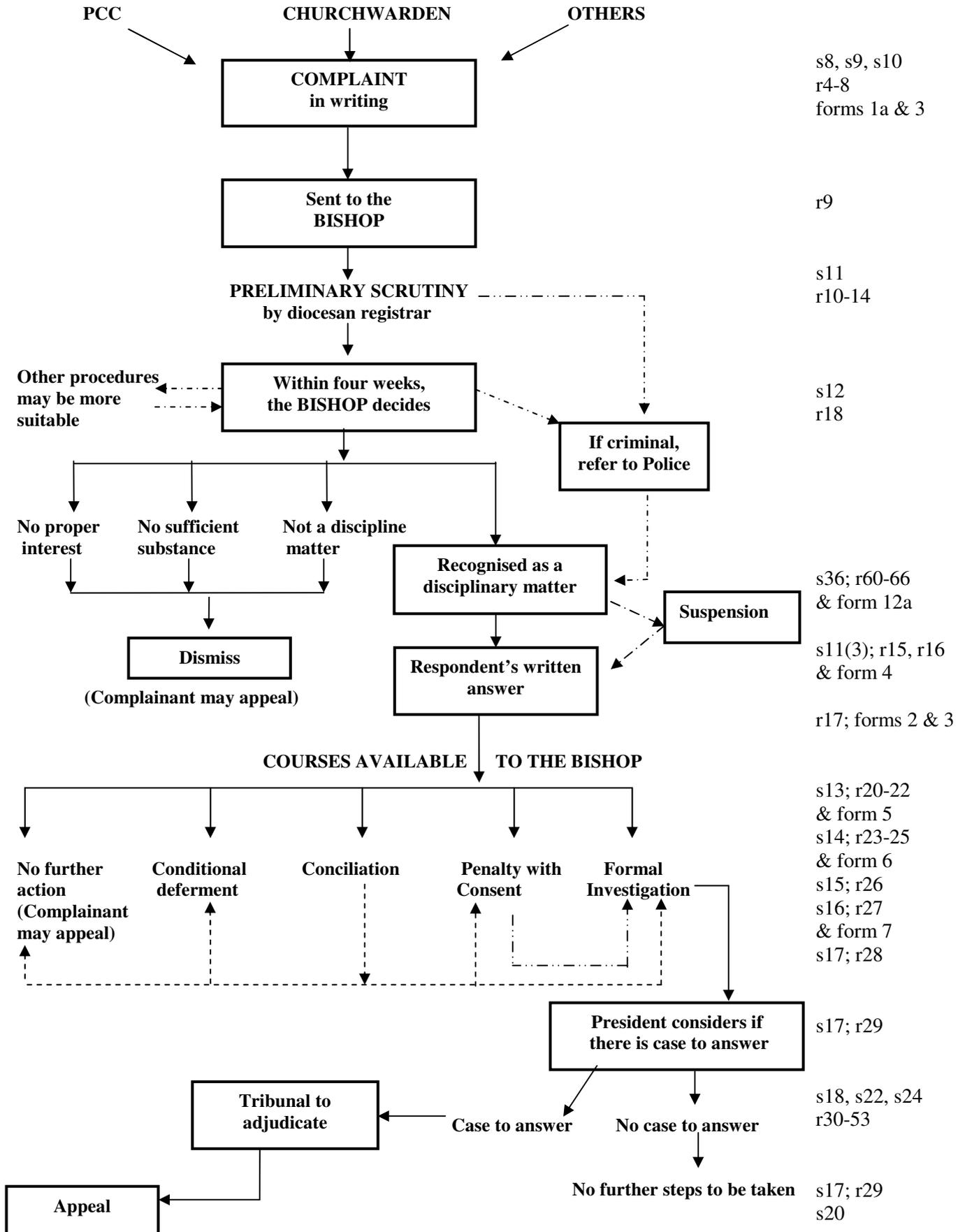
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**STEPS IN FORMAL DISCIPLINARY PROCEEDINGS
UNDER THE CLERGY DISCIPLINE MEASURE 2003**

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Preface

This Code of Practice offers general guidance on how formal complaints of misconduct against clergy of the Church of England are made and determined under the Clergy Discipline Measure 2003. The Code explains on what grounds formal complaints can be made, by whom they can be made, and how they are to be made. It shows the proper procedures for considering complaints, and it describes the various options which may be pursued if a complaint proves to be well-founded.

The Code is not intended to be, and cannot be, a detailed work on all aspects of the complaint procedures – it would be far too long if it were. Instead, it aims to be a relatively simple guide, to point users in the right direction, and to draw their attention to the relevant provisions of the Measure and the Clergy Discipline Rules.

The Code (in accordance with the Measure) does not cover complaints relating to matters involving doctrine, ritual or ceremonial. Nor does it cover minor complaints or grievances, which are better dealt with informally without recourse to legal procedures.

The Clergy Discipline Commission, which produced this Code, has responsibility also for giving guidance specifically to those who have particular functions to perform in connection with clergy discipline. In addition, its duties include giving advice to disciplinary tribunals and bishops as to the penalties which are appropriate in particular circumstances. Such guidance and advice is not suitable for inclusion in this general Code of Practice, but will be included in other publications produced by the Commission from time to time.

The Right Honourable Lord Justice Mummery
Chairman of the Clergy Discipline Commission

INTRODUCTION

Purpose of the Code of Practice

1. This Code of Practice is issued by the Clergy Discipline Commission under section 3 of the Clergy Discipline Measure 2003 (“the Measure”). The purpose of the Code is to provide guidance to all who are concerned in formal clergy discipline procedures under the Measure.
2. The Code does not have the force of law, but compliance with its provisions will be assumed to be in accordance with best practice. Using this Code is no substitute for referring to the Measure and to the *Clergy Discipline Rules 2005*, which together set out the procedures that must be followed. The Measure and the Rules can be purchased from The Stationery Office, PO Box 29, St Crispins, Duke Street, Norwich, NR3 1GN (telephone 0870 600 5522), or from Church House Publishing, Church House, Great Smith Street, London SW1P 3NZ (telephone 020 7898 1451), or can be downloaded from www.c-of-e.anglican.org.
3. The Clergy Discipline Commission comprises no more than 12 members appointed by the Appointments Committee of the Church of England, including at least two people from each House of the General Synod, and at least two people who hold particular judicial office or particular professional legal qualifications. The make-up of the Commission is designed to promote a wide representation of views and experience. As well as producing this Code of Practice, it has other specific statutory functions prescribed in the Measure, such as giving general advice to disciplinary tribunals, the courts of the Vicars-General, bishops and archbishops on the penalties which are appropriate in particular circumstances. The Commission cannot give guidance on penalties in individual cases. The members of the Commission are listed in appendix C to the Code.

Key to Useful References:

s = a section in the Clergy Discipline Measure 2003

r = a rule in the *Clergy Discipline Rules*

s39

s3

Purpose of Discipline

4. The purpose of the administration of discipline is to deal with clergy who are found to have fallen below the very high standards required and expected of them. For the individual member of the clergy who is subject to discipline, this involves:
 - the imposition of an appropriate penalty
 - pastoral support
 - encouraging repentance and forgiveness
 - whenever possible putting right that which is wrong
 - attempting reconciliation
 - moving on constructively from the past
- There is also a wider picture in that the administration of discipline must:
- have regard to the interests of justice for all who may be affected by the faults, failings or shortcomings of the clergy, including the complainant and the interests of the wider church
 - support the collective good standing of all faithful men and

- women who are called to serve in the ordained ministry
- ensure the clergy continue to be worthy of the great trust that is put in them as ordained ministers.

5. This Code throughout refers to a member of the clergy against whom a formal complaint is made as “the respondent”. This emphasises that the member of the clergy in question is responding to a formal complaint as part of the process of investigating and resolving any difficulties that may have arisen, rather than simply being called upon to “defend” past actions. The person who makes a formal complaint against a member of the clergy is referred to as “the complainant”.

Three Stages for Complaints

6. The Measure, the Clergy Discipline Rules and the Code of Practice are all concerned with resolving formal complaints within a formal disciplinary process. There are, however, three stages to a complaint, the first of which falls outside the scope of the Measure and any formal proceedings.

7. The **first stage** of a complaint or grievance is the period before any formal proceedings are instituted under the Measure. The **second stage** begins when a formal complaint is made to the bishop under the Measure and continues until the bishop has decided on the appropriate course to take. The **third stage** occurs if the bishop directs that there should be a formal investigation to see if there is a case to answer before a bishop’s disciplinary tribunal. (If the complaint is referred to a tribunal there is a right of appeal for the member of the clergy from the tribunal’s decision.)

8. **Disciplinary proceedings against the clergy (i.e. stages 2 and 3) may only take place in accordance with the Measure, and the procedures set up under it.**

s7

BEFORE FORMAL PROCEEDINGS ARE INSTITUTED; “Stage 1”

9. This Code of Practice gives guidance for the purposes of the Measure. The Measure is concerned with formal disciplinary proceedings which have been instituted in accordance with the law. However, a bishop will receive complaints from people who do not wish to invoke formal disciplinary procedures. Often, such complaints or grievances are not about serious matters of misconduct, and can be resolved informally without recourse to law if they are handled with sensitivity and without undue delay. **Minor complaints should not be the subject matter of formal disciplinary proceedings.** (*“In fact in the case of many minor complaints an apology or an informal rebuke may be all that is required and the full complaints process would not need to come into play”**). If a problem is initially ignored so that discontentment is allowed to continue, then there may be a danger that the problem becomes bigger, and consequently harder to resolve.
10. There may be occasions when no formal complaint under the Measure has yet been made but the bishop receives information about a priest or deacon which, if true, would amount to serious misconduct. The bishop will obviously wish to find out more about it. However, the bishop should be cautious about the extent of any direct involvement. The bishop should not do anything that could prejudice, or appear to prejudice, the fair handling of any formal complaint under the Measure that could be made subsequently. Instead, the bishop should consider asking an appropriate person, such as the archdeacon, to look into it.
11. The archdeacon or other person looking into the matter will need to form his or her own view about the appropriate action to take. The priest or deacon should normally be told why his or her conduct is in question, and that a colleague or friend may be present during any discussions about it.
12. If the archdeacon considers that it should be dealt with on a disciplinary level, but no formal complaint is likely to be made by any one else, then the archdeacon should consider acting as complainant and making a complaint under the Measure; to avoid compromising the bishop’s position in any subsequent disciplinary proceedings, he or she should not discuss it with the bishop, except to notify the bishop what action has been taken.
13. Where no formal complaint under the Measure has yet been made but the bishop receives information about the conduct of a priest or deacon which, if true, would involve the welfare of any child, the bishop should ask the diocesan Child Protection Officer to investigate it; these investigations would usually be in co-operation with other relevant bodies, and may need to take place initially without informing the priest or deacon.

“Under Authority”
GS 1217 at C.3

AFTER FORMAL PROCEEDINGS ARE INSTITUTED; “Stage 2”

*“The needs of the cleric in trouble must be handled fairly, promptly, and if at all possible, compassionately. But none of these concerns must be allowed to override the paramount concern of God’s people for proper protection, and grounds for confidence in their leaders.”**

*“Under Authority”
GS 1217 at 4.15

Overriding Objective of the Clergy Disciplinary Procedures

14. **The overriding objective when dealing with formal allegations of clergy misconduct under the provisions of the Measure is to deal with all complaints justly.** r1

15. **Dealing with a complaint justly includes, so far as reasonably practicable:**
 - (i) **ensuring that it is dealt with in a way that is fair to all relevant interested parties, including the complainant, the respondent, the respondent’s family, the church, and members of the wider community,**
 - (ii) **dealing with the complaint in ways which are proportionate to the nature and seriousness of the issues raised,**
 - (iii) **ensuring that the complainant and the respondent are on an equal footing procedurally,**
 - (iv) **ensuring that the complainant and respondent are kept informed of the procedural progress of the complaint,**
 - (v) **avoiding undue delay,**
 - (vi) **avoiding undue expense.**

16. When any person or any body exercises any function in connection with clergy disciplinary matters, regard should be had to the overriding objective. The complainant and respondent are required to co-operate with any such person or body to further the overriding objective. Any failure to co-operate may result in adverse inferences being made against a party at any stage of the proceedings. r2

Who exercises discipline?

17. Under the Measure it is the duty of the diocesan bishop to administer discipline over clergy. It is also the responsibility of the bishop to provide care and support for clergy within his cure (and for the laity). The performance of these duties may be delegated, but the diocesan bishop retains overall responsibility. Any disciplinary functions exercised under the Measure by others are exercised on the diocesan bishop’s behalf. Where the diocesan bishop has delegated disciplinary functions under section 10 of the Dioceses Measure 1978 or there is a relevant area scheme under section 11 of the Dioceses Measure 1978, the suffragan or area bishop may act for the diocesan bishop as appropriate. s1

18. **Although the bishop has responsibility for both discipline and pastoral care, when formal proceedings under the Measure have been instituted, it is crucial during “stage 2” that the bishop must**

personally avoid all pastoral involvement with anyone connected with the proceedings including the complainant and the respondent. This is in the interests of fairness to both parties, because otherwise there is a risk that the bishop's impartiality could appear as a result to be compromised.

Who can be disciplined under the Measure?

19. The Measure applies to all who are admitted to Holy Orders of the Church of England, whether archbishop, bishop, priest or deacon. This includes those who are actively involved in ministry as well as those who are not. s8
20. If a complaint is made under the Measure against a priest or deacon who has the bishop's written permission to officiate (a "PTO" is normally given to retired clergy), the bishop can, nonetheless, terminate the PTO for misconduct without taking any action under the Measure (unlike a licence, which cannot be terminated for misconduct except by way of proceedings under the Measure). In serious cases of misconduct, however, the bishop may choose to deal with it under the Measure, so that that person's name may be included in the Archbishops' List (*see paragraphs 227 to 232*). s8(2)
21. The Measure also applies to clergy admitted to Holy Orders of another church but who have the Archbishop's permission under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 to officiate in the Church of England.
22. Disciplinary proceedings can be instituted or continued even if the respondent in question resigns his or her position.

On what grounds can disciplinary proceedings be brought?

23. Disciplinary proceedings may only be brought where misconduct under the Measure is alleged to have occurred. A single act or omission, if serious enough, can amount to misconduct. s8
24. There are four grounds under the Measure for alleging misconduct, namely: s8(1)
 - the respondent has acted in breach of ecclesiastical law,
 - the respondent has failed to do something which he or she should have done under ecclesiastical law,
 - the respondent has neglected to perform, or been inefficient in performing, duties of his or her office,
 - the respondent has engaged in conduct that is unbecoming or inappropriate to the office and work of the clergy, but no complaint may be made about the lawful political opinions or activities of a respondent (such as taking part in peaceful public marches or protests).

What is not covered by the Measure?

25. Allegations of misconduct against clergy relating to doctrine (i.e. what the

clergy believe, and preach, teach or express) or ritual or ceremonial matters (i.e. how the clergy conduct public worship) do not fall within the provisions of the Measure, and any appropriate proceedings would have to be taken under the Ecclesiastical Jurisdiction Measure 1963. s7; r3

What are acts or omissions contrary to Ecclesiastical Law?

26. These are not defined in the Measure but reference has to be made to the many principles of ecclesiastical law, which can be found in Acts of Parliament, Measures and Canons of the Church of England, statutory instruments, custom, and case law. s8(1)(a) & (b)
27. There are many duties imposed upon the clergy under ecclesiastical law. Failing to comply with any of those duties or doing something that is forbidden by ecclesiastical law could be a ground for alleging misconduct.

What is neglect or inefficiency?

28. Neglect or inefficiency can be misconduct for the purposes of disciplinary proceedings. They are not defined in the Measure, and it is not practical to give detailed guidance on what amounts to misconduct here as the circumstances could be infinitely variable. If sufficiently serious, conduct on a single occasion could be neglect of the duties of office under the Measure, but generally neglect or inefficiency will amount to misconduct only if they occur over a period of time. s8(1)(c)

What is unbecoming or inappropriate conduct?

29. The Measure does not define unbecoming or inappropriate conduct, but clergy in their conduct and everyday living are expected to be examples of what is acceptable in Christian behaviour. Members of the church and the wider community look towards the clergy to set, and conform to, appropriate standards of morality and behaviour. s8(1)(d)
30. In particular the clergy should live their lives in a way that is consistent with the Code of Canons (principally C26, C27 and C28). Canon C26 is particularly relevant. It requires the clergy to be diligent to frame and fashion their lives according to the doctrine of Christ, and to make themselves wholesome examples and patterns to the flock of Christ. Furthermore they are not to pursue unsuitable occupations, habits or recreations which do not befit their sacred calling, or which are detrimental to the performance of their duties or justifiably cause offence to others.

Who can start disciplinary proceedings?

31. There are three categories of those who are entitled to complain about a priest or deacon, namely, a Parochial Church Council (PCC), a churchwarden, and any other person. A PCC and a churchwarden must be of a parish which has “a proper interest” in making the complaint and any other person who complains must also have “a proper interest”. s10(1)

32. Examples of where the parish of a PCC or of a churchwarden has a proper interest in making a complaint would include where the alleged misconduct takes place within that parish, or is committed by the incumbent, or by a priest or deacon who is licensed to serve or is resident in that parish. If a churchwarden, having made a complaint, ceases to hold that office before the complaint is finally determined, he or she is nonetheless entitled to pursue the complaint despite standing down as churchwarden.
33. As an officer of the bishop, a churchwarden has traditionally been entitled to draw the bishop's attention to anything in the parish which requires the bishop's intervention. However, this right must **not** be exercised in relation to any matters that are relevant to a complaint made by the churchwarden under the Measure, or relevant to a formal complaint that the churchwarden is considering making. **Any formal complaint by a churchwarden against a priest or deacon must only be dealt with by using the proper procedures under the Measure and the Rules.**
34. For a PCC to complain it must nominate someone (who need not be a member of the PCC) to make the complaint. At least two-thirds of its lay members must be present at a duly convened meeting of the PCC, and at least two-thirds of the lay members present must vote in favour of a resolution that the proceedings be instituted. s10(1)(a)(i)
35. Examples of others who may have a proper interest in making a complaint include anyone who personally observes or experiences the alleged misconduct, or the relevant archdeacon. A person making a complaint on behalf of anyone under a disability with a proper interest, or a parent or guardian making a complaint on behalf of a child with a proper interest, would also have a proper interest.

Who can make complaints in respect of non-parochial clergy?

36. Special provisions apply in relation to cathedral clergy, chaplains of prisons, hospitals, universities, schools and extra-parochial institutions, armed forces chaplains, and ministers holding certain licences. Reference should accordingly be made to section 42 of the Measure to determine who is entitled to lay a complaint against these members of the clergy, and to whom the complaint is made. s42
r91-96
forms 1d, 1e, 1f, 1g

Will help be available for complainants to make a formal written complaint?

37. Complainants may need help to make a written complaint and to prepare written evidence in support of their complaints. If not given the help they need they could be unfairly discouraged or precluded from making or pursuing their complaints.
38. Every diocese should be alert to this, and there should be a person designated to ensure that appropriate help is made available to any

complainant who needs it.

39. Appropriate help could include listening to a complainant and then transcribing the complaint and the evidence in support (using the complainant's own words and phraseology so far as possible). Special help should be made available to any complainant with a disability.
40. Note: It is most important that any assistance and advice should be given by someone who is not otherwise involved in the particular complaint and who has no close ties with the respondent. If this principle is not observed the fairness of the proceedings could be called into question.

How is a complaint made?

41. **A complaint must be made in writing and must contain a statement signed by the complainant declaring that the complainant believes the facts of the complaint are true.** Complainants are expected as a general rule to make their complaints against priests and deacons using form 1a at appendix B1 of this Code, because it will be useful to help them set out all required information. Where the form is not used the complaint must nonetheless contain the same information as if form 1a had been used, and must include the declaration of truth. If a formal complaint does not set out all the required information, or omits the declaration of truth, it is good practice for the complainant to be sent form 1a, and invited to complete and sign it where necessary. s10(1)
r4
form 1a
42. The complaint must specify the name and address of the complainant. **No anonymous complaints will be considered under the Measure.** r4(2)(a)(ii)
43. The complainant must indicate his or her entitlement to make the complaint (for example, as a person duly nominated by the PCC). Where nominated by a PCC, a certified copy of the appropriate resolution passed by the council, as required by the Measure, must be attached to the complaint. r4(2)(b)
44. The complaint must set out the grounds for complaining. That means that the complaint should state the nature of the alleged misconduct concerned, and summarise the facts of the matter, including details of all material dates and the identities where known of any people referred to in the complaint. r4(2)(a)(v) & (vi)
45. The complainant must provide written evidence to support the allegation. This written evidence can be in the form of a statement or statements signed by the complainant or other witnesses testifying in detail to the matters complained about. Letters or other material, such as photographs, may be submitted with the written evidence if relevant. s10(3)
r6
form 3
46. The evidence in support should normally accompany the written complaint. The purpose of submitting evidence at this stage is to demonstrate that the complaint is made with good cause. The evidence should therefore go into details about the matters complained about and r7(1)

the relevant actions and conversations witnessed, and should specify material dates, times, locations, and identities where known of any people referred to. Where the maker of any statement does not personally know the truth of any matters referred to in the statement (for example because he or she was told about these things by someone else) then the statement should indicate what those matters are, and identify the source of the information or evidence. If evidence in support of the complaint is inadequate, then the complaint is likely to be dismissed by the bishop following preliminary scrutiny.

47. If the complainant is not in a position to send evidence or all the evidence at the time of making the complaint, then the complainant should give reasons in writing explaining why there is no accompanying evidence or why it is incomplete, and request the bishop to grant further time to supply it. Permission to extend time for the submission of evidence in support is likely to be given only where the complainant can demonstrate that it has not so far been reasonably practicable to obtain the evidence. Justifiable reasons for failing to supply the written evidence at the time of making the complaint could include illness or incapacity. r7(2)
48. If a formal complaint is made and signed by two or more people, they should nominate one of themselves to be the correspondent, so that letters and notices need to be sent only to that complainant. r5

To whom is a complaint made?

49. A complaint against a priest or deacon (including archdeacons and all cathedral clergy) should be made to the bishop of the diocese where the priest or deacon held office when the alleged misconduct occurred. s10(2)
s6(1)(a)
50. However, if a priest or deacon is alleged to have officiated as a minister in a diocese without authority a complaint should be made to the bishop of that diocese. If such a complaint is properly made then any other similar proceedings in a different diocese are to be discontinued, and no new proceedings concerning the same matter can be started elsewhere. There can only be one set of proceedings under the Measure against a respondent in respect of any one matter. s6(1)(b)
s6(3)
51. Subject to *paragraphs 49 and 50 above* a complaint may also be made to the bishop of the diocese where the priest or deacon resided when the alleged misconduct occurred, unless similar proceedings are already under way elsewhere. Any proceedings brought on the basis of residence are to be discontinued if a complaint is properly made elsewhere in respect of the same matter. s6(1)(a)
s6(3)
52. A list of addresses and contact details of the diocesan bishops for each province appears in appendix A to this Code.

When can a complaint be made?

53. A complaint must normally be made within one year from the date of the s9

alleged misconduct or, if there is a series of acts or omissions which together constitute the misconduct, within one year of the last incident. If a formal complaint is made after this period has expired, the bishop should inform the complainant that an application can be made to the President of Tribunals to extend the time for making the complaint.

54. This period of one year can be extended by the President of Tribunals if there is good reason why the complaint was not made within that time and provided the respondent would not suffer serious prejudice as a result of the delay. An application to the President should be made in writing on the form provided in the *Clergy Discipline Rules 2005*. Before deciding whether to allow a complaint to be pursued out of time the President will consult both the complainant and the respondent.

s9
r8

form 1c

55. Justifiable reasons for failing to institute proceedings (i.e. failing to make a complaint) within the permitted time could include:

- the complainant did not know, and could not reasonably be expected to discover, either the material facts of the alleged misconduct or the identity of the respondent, or
- the complainant has been suffering from a significant mental or physical illness or disability during the relevant period, or
- where the making of the complaint followed the conclusion of criminal proceedings against the respondent, or
- where the complainant (particularly if he or she is a child) has been manipulated or abused by the respondent.

56. Serious prejudice to a respondent caused by a delay in making a complaint could include one or more of the following circumstances:

- where a material witness has meanwhile died or has become incapable of giving evidence through infirmity,
- where a material witness is now overseas or cannot be traced after the lapse of time,
- where material documents (whether electronic or otherwise) have been lost or destroyed,
- where a long delay has made it significantly more difficult for witnesses to recall the events in question.

57. Note: If the respondent has been convicted in the criminal courts in respect of the misconduct, then the period of one year for making the complaint begins to run when any appeal against that conviction has been finally concluded, or when time for appealing has expired. This time limit of 12 months after conviction cannot be extended.

s9, s40(1)

What about disciplinary proceedings for employed clergy?

58. Some clergy are employed as chaplains by hospitals, schools, or prisons, or as staff with bodies such as diocesan boards of finance. Other clergy may be licensed to serve as chaplains in Her Majesty's armed forces. In those circumstances, as well as being subject to the discipline of the Church of England, they will also be subject to such separate disciplinary

(See r91, 93 & 94)

procedures as may apply under the terms of their employment or service, as the case may be. Where a complaint under the Measure is made about such clergy, it would normally be appropriate to wait for the outcome of any disciplinary action that is taken by the secular body, before the complaint is dealt with.

What happens if the complaint concerns criminal conduct?

59. Any criminal matters should be investigated and resolved by the relevant secular authorities (e.g. the police, child protection agencies, the Inland Revenue) before any related disciplinary proceedings under the Measure are resolved.
60. If a complaint is made to the bishop which concerns serious criminal conduct, but no-one has so far alerted the secular authorities, the bishop should encourage the complainant to report the matter to the appropriate authority. The bishop should also indicate that if the complainant does not produce within 14 days written confirmation from the appropriate authority that it has been reported, then it would be the bishop's duty as a member of the public to report it.
61. If a complaint is made against a priest or deacon concerning matters in connection with which he or she has already been arrested on suspicion of committing a criminal offence, it would normally be appropriate to await the outcome of any criminal proceedings before dealing with the complaint.

r19
(see s30)

What happens if the complaint relates to marital misconduct?

62. A formal complaint relating to alleged matrimonial misconduct against a priest or deacon who is respondent to a petition for divorce or judicial separation alleging adultery, desertion, or behaviour such that the petitioner cannot reasonably be expected to live with the respondent, should not normally be dealt with until the proceedings for divorce or judicial separation have been resolved.

r19
(see s30)

How can time for dealing with a complaint be extended until the other related proceedings have finished?

63. Time for dealing with the complaint can be extended in two ways. First, it is open to the registrar to extend the period for sending the report to the bishop following the preliminary scrutiny; this period can be extended until 28 days after the registrar is notified of the final outcome of the other proceedings. Alternatively, after he has received the registrar's report, the bishop can extend the period for determining which course to pursue to deal with the complaint.

s11(2) & 11(5)
r13, r19(1)

s12(2)
r18, r19(2)

Preliminary scrutiny of the complaint

Confirming whether a formal complaint is being made

64. When a complaint or grievance is received which is not set out in the form at appendix B1, the bishop through a member of his staff should take steps to ascertain from the person complaining whether it is intended to be a formal complaint for disciplinary purposes; if it is so intended, it is good practice for the complainant to be invited to resubmit the complaint using the form at B1 and to be advised that written evidence (if not so far submitted) must be provided to support any formal complaint. r4
s10(3)
r6 & r7
65. If the complaint or grievance is not intended by the person complaining to be a formal complaint for disciplinary purposes, it should be dealt with as a stage 1 matter (*see paragraphs 9 to 13 above*).

Acknowledgment of the complaint

66. When a formal complaint is made, the bishop should acknowledge in writing to the complainant that the complaint has been received, and refer it to the diocesan registrar (“the registrar”) within 7 days. If the bishop is absent when the complaint is received, a person authorised by the bishop should acknowledge receipt, and inform the complainant that it will be seen by the bishop when the bishop returns. r9
67. The acknowledgment from the bishop should: r9(1)
- state the date of receipt of the complaint
 - explain that the complaint will be referred to the registrar for preliminary scrutiny, and that the registrar will normally be expected to report back to the bishop within 28 days
 - briefly summarise the bishop’s options under section 12 of the Measure on receiving the registrar’s report
 - indicate that the bishop hopes to decide the appropriate course to take within 28 days of receiving the registrar’s report, and will notify the complainant in writing of the decision
 - state that the respondent will be informed of the complaint and, unless in exceptional circumstances the registrar decides otherwise, that the respondent will also be informed now of the identity of the complainant
 - where the identity of the complainant is disclosed to the respondent, indicate that the complainant and respondent should not discuss the complaint.

The pro-forma letter appended at B3 to this Code may be used by the bishop to acknowledge receipt of the complaint. However, where the complaint alleges criminal conduct, the acknowledgment should inform the complainant that the complaint may not be dealt with until any connected criminal proceedings have been concluded.

What is the role of the registrar?

68. The registrar’s role is to produce a report advising the bishop about the

status of the complainant (i.e. whether he or she is entitled to make the complaint under section 10 of the Measure), and whether in the registrar's view there is sufficient substance in the complaint to justify proceeding with it. s11
r10-14

69. Sufficient substance means that, on the face of the complaint and the written evidence in support : s11(1)
r12(1)
- the allegations, if proved, would amount to misconduct coming within one or more of the grounds listed in *paragraph 24 above*, and
 - the issues raised are not trivial but justify further serious consideration being given to the complaint.

70. Registrars may be approached for advice by PCC's, churchwardens or others who have made a formal complaint, or are thinking of making a complaint. Clergy who are respondents to a complaint may also ask registrars for advice. **A registrar should not, however, give legal advice in relation to a complaint to anyone except the bishop**, because of the risks of a conflict of interest which would otherwise arise. The registrar's staff should be alert to such risks. Consequently, if a complainant, PCC, churchwarden or respondent contacts the registrar's office, the registrar and staff must not give them advice about the merits of any particular complaint or potential complaint, but should refer them elsewhere for such advice (e.g. to a registrar of a neighbouring diocese). It would, however, be appropriate for staff simply to give information about the procedures under the Measure for making a formal complaint, and to supply an enquirer with any explanatory literature.

Can the registrar delegate?

71. Any or all of the registrar's functions may be delegated to others as the registrar thinks fit, (but this would not affect the time limit imposed under section 11(2) of the Measure for sending the report to the bishop). Being acquainted with a complainant or respondent through previous professional dealings as registrar would not normally be a reason for delegating to another person. But where a registrar is a close personal friend of one of the parties, or has any other conflict of interest, the registrar can ask someone else, for example the registrar of another diocese, to carry out the preliminary scrutiny. s11(6)

Who notifies the respondent about a complaint?

72. Within 7 days of the registrar receiving the complaint and written evidence in support, the respondent will normally be informed in writing and sent copies (subject to editing if the circumstances in *paragraph 73* apply). The respondent will be notified of the date when the registrar expects to submit the written report to the bishop. s11(1)
r10
73. A respondent is normally entitled to know the identity of anyone who makes a complaint. Where appropriate, a registrar may, if there are exceptional circumstances and it would be in the interests of justice, r10(2)-(4)

withhold from the respondent any details which would reveal the identity of the complainant, a child or a witness; if so the registrar must immediately notify the bishop that this has been done. Where the complainant's identity is disclosed, the respondent should be told not to discuss the complaint with the complainant. If the complainant's identity is not disclosed to the respondent at this stage, it must however be disclosed later if the bishop decides not to dismiss the complaint having received the registrar's written report. r10(4)

74. The respondent should be informed in writing by the registrar of the limited purpose of the preliminary scrutiny. The respondent should also be informed that there is no need to make any submissions at this stage in response to the complaint, but that there will be an opportunity later to respond in detail to the complaint if it proceeds. The pro-forma letter at appendix B4 may be used by the registrar for this purpose. s11(1) r10(1)

Help and advice for respondent clergy

75. Following a complaint the respondent should be encouraged to seek help and advice. Every diocese should identify an appropriate person to offer practical help and advice, as well as identify where the respondent may obtain legal advice.
76. Note: A respondent should not ask for legal advice from the registrar for the diocese where the complaint has been made. This is to avoid a conflict of interest – because the registrar advises the bishop (especially during the preliminary scrutiny), it is inappropriate for the registrar to advise anyone else in relation to the same complaint. A respondent can, however, seek legal advice from a registrar for a different diocese.

Consulting the complainant

77. The registrar should consult the complainant to clarify anything which needs to be clarified relating to the complaint. This should normally be done in writing or by e-mail, with copies of all correspondence sent to the respondent. It is not the function of the registrar to carry out a detailed investigation into the complaint (*see paragraphs 68 and 69 above*), and any questions raised by the registrar should be for the sole purpose of clarification. s11(1) r11
78. The gist of any oral communications with the complainant (whether over the telephone or in person) should be recorded in written memoranda, and copied to the respondent. r11
79. On no account should pressure be put upon a complainant by a registrar to withdraw or modify a complaint.
80. Where a complainant claims to be nominated by a parochial church council, the registrar should check that a certified copy of the resolution in favour of the institution of proceedings and of the nomination of the complainant has been submitted to confirm that the complainant has been r12(1) & r4(2)(b) s10(1)(a)(i)

duly nominated in accordance with section 10(1)(a)(i) of the Measure. Where a complainant purports to act in the capacity of churchwarden, the registrar should make appropriate enquiries of the diocesan office to confirm the status of the complainant. s10(1)(a)(ii)

81. If the registrar or the registrar's staff believe or suspect that the complainant requires assistance in making the complaint, the registrar or a member of staff should inform the complainant about where assistance can be obtained (*see paragraph 38 above*).

What if more time is needed for the preliminary scrutiny?

82. Complaints should be dealt with without undue delay. For this reason time limits are imposed under the Measure for certain stages in the disciplinary procedure to be completed.

83. The registrar has 28 days from date of receipt of the complaint to consider it, make enquiries and communicate with the parties as appropriate, and submit the report to the bishop. If this time is insufficient the registrar may extend it once only where justified in the particular circumstances of the case. Before doing so, the registrar should inform the parties in writing that further time is needed and the reasons for this, and invite them to comment on whether time for the report should be extended. In deciding whether to extend the time for submission of the report, and if so, by how long, the registrar should take the views of the parties into account. Registrars should, whenever possible, strive to keep within the initial 28 day period. s11(2)
r12(1)
s11(5)
r13

What should be in the registrar's report?

84. The registrar's report should cover the following areas:
- whether the complainant has a proper interest in making the complaint s11(1)
r12(1)
 - an analysis of whether, in the registrar's view, the complaint with the evidence in support has sufficient substance to justify disciplinary proceedings,
 - whether the respondent is subject to a conditional deferment, a conditional discharge, or appears on the Archbishops' List under section 38 of the Measure, and if so, in what terms. s14, s25
s38
- When the report is sent to the bishop the registrar should attach to it the complaint and the evidence in support. r12(2)
85. If, contrary to the advice that submissions are not necessary at this stage (*see paragraph 74 above*), the respondent sends the registrar a response to the complaint, the registrar should send it on to the bishop without comment. The registrar should acknowledge in writing receipt of the response, and inform the respondent that it has been forwarded to the bishop and that there will be an opportunity for the respondent to reply in full if the bishop does not dismiss the complaint. r10(1)(c)
86. Whilst it is not the function of the registrar to give in the report recommendations or guidance to the bishop on the appropriate course of

action to take to deal with the complaint, the registrar, as the bishop’s legal advisor, may at any time advise the bishop on any matters of law or procedure relating to the complaint.

- 87. If more than one complaint is made by a complainant about the same respondent, the registrar’s report should normally deal with all those complaints, even if they concern separate and unconnected incidents. r14(1)
- 88. If two or more complainants complain separately about the same incident(s) involving the same respondent, the registrar should normally prepare a single report to deal with all complaints. r14(3)
- 89. If two or more complainants complain separately about different incidents involving the same respondent, the registrar should normally prepare separate reports in respect of each complainant.

The Bishop’s role

- 90. It is a fundamental principle of clergy discipline that the diocesan bishop at all times is responsible for administering discipline over the clergy within the bishop’s cure. Where others perform any disciplinary function they do so only on the bishop’s behalf. s1
For the exercise of disciplinary functions when the see is vacant, see s8 Church of England (Miscellaneous Provisions) Measure 1983
- 91. However, if the bishop has, or may have, a conflict of interest in relation to a complaint (for example, where a complainant, respondent, or witness is a relative or a close personal or professional friend of the bishop, or where the bishop has been closely involved at the informal stage - i.e. “stage 1” - or has already been involved when determining an appeal by an employed respondent against a decision of the diocesan board of finance), then the bishop should not personally deal with it. The bishop should in such cases delegate the disciplinary functions to a suffragan bishop, with the consent of the diocesan synod. This should happen even if the bishop believes that any personal interest or involvement would not affect his judgment or way of dealing with a complaint – it is important that justice is perceived to be done, as well as actually done. Where a bishop does delegate the disciplinary functions in a case, the bishop should notify the respondent, complainant and the registrar of the reasons for doing so. s10 Dioceses Measure 1978
- 92. To avoid any delays in dealing with a complaint whilst the consent of the diocesan synod to delegation is sought, bishops should as soon as reasonably practicable after the Measure comes into effect, or after taking office, sign a single instrument with the consent of the diocesan synod for disciplinary functions to be delegated in any case where the bishop certifies in writing that there is a conflict of interest. s10 Dioceses Measure 1978
- 93. Where there is conflict of interest for the bishop, but there is no suffragan bishop to delegate to, the bishop should refer the complaint to the Designated Officer for a formal investigation, unless the registrar’s report following preliminary scrutiny advises the bishop either that the complainant does not have a proper interest or that there is not sufficient s17(1)
r28

substance in the complaint to justify proceeding with it. In those circumstances the bishop could dismiss the complaint under s11(3) of the Measure; the complainant would have a right to request a review by the President of Tribunals of the bishop's decision.

r15
s11(4) & r16

94. For clergy whose parish is under the oversight of a Provincial Episcopal Visitor the diocesan bishop remains the focus of discipline, but may consult the Provincial Episcopal Visitor in such instances as the diocesan bishop thinks fit.

Episcopal Ministry
Act of Synod 1993

95. The bishop, when administering discipline, should have regard to the separate interests of the complainant, the respondent, the respondent's family, the local church and community, and the wider church and community.

What care and support will be given during disciplinary proceedings?

96. The bishop should be alert to the needs of the respondent and the respondent's close family for care and support. This may be needed, and should be made freely available, from the moment a complaint is notified to the respondent and throughout the course of disciplinary proceedings, including after the proceedings have been concluded.

97. After a complaint is made the bishop should also ensure that appropriate support is offered to others who are involved (including the complainant, PCC, and churchwardens), but such support must only be given by those who are not otherwise concerned in the disciplinary proceedings. **A diocesan bishop must avoid personal involvement in the giving of care and support where formal disciplinary proceedings have been commenced (unless the bishop's functions under the Measure have been delegated by the bishop to another person) in case the bishop's impartiality appears as a result to be compromised.**

98. Care and support must therefore be provided by someone other than the bishop, and that person must not otherwise be involved or become involved in the disciplinary proceedings. If this principle is not strictly observed the integrity of the disciplinary proceedings is at risk of being irreparably damaged. A suffragan or area bishop, archdeacon, rural or area dean, other experienced clergy or an appropriate lay person could all be suitable to provide care and support in place of the bishop, provided they are not involved in the proceedings.

99. At the same time that the registrar informs the respondent that the complaint has been made, the bishop should explain to the respondent in writing that the bishop cannot personally provide the respondent with care and support, and name the person who will be asked to do so instead. The pro-forma letter at B5 may be used by the bishop for this purpose

s11(1)
r10(1)

What can the bishop do on receipt of the registrar's report?

100. The bishop is entitled, as the bishop thinks fit, to accept or reject the

registrar's views set out in the report following on from the preliminary scrutiny. Having considered the registrar's views contained in the report, it is the decision of the bishop alone as to which course to pursue under sections 11(3) or 12 of the Measure.

Dismissal by the bishop of a complaint under section 11(3)

101. Having considered the registrar's report following preliminary scrutiny, the bishop may, within 28 days of receiving it, dismiss the complaint under section 11(3) of the Measure. Such action would be appropriate where the bishop is satisfied that:

s11(3)
r15

- the complainant does not have a proper interest in making the complaint, within the meaning of section 10 of the Measure, or
- there appears to be no sufficient substance in the complaint to justify proceeding with it; this would apply if the complaint were trivial, or if the bishop forms the view that the alleged misconduct, if true, would probably not be grave enough to merit a rebuke, or it could be dealt with more appropriately under non-disciplinary procedures.

102. The bishop should have regard to the contents of the registrar's report, but must exercise his own judgment in deciding on the appropriate course of action, and he cannot delegate making the decision to anyone else (unless there is a conflict of interest, *see paragraphs 91 to 93 above*).

103. Both the complainant and respondent should be sent notice in writing of the dismissal of the complaint under section 11(3) of the Measure, together with a copy of the registrar's report. A summary of the bishop's reasons for dismissing it should be included in the notice, together with an explanation that the complainant has the right to ask the President of Tribunals to review the bishop's decision.

s11(3)
r15(1)
r15(2)

Complainant's right to request a review of a dismissal under s11(3)

104. A complainant is entitled to request the President of Tribunals in writing to review a dismissal under section 11(3) of the Measure. The request should be made within 14 days of receipt of the notice of dismissal, and should set out the reasons for challenging the bishop's decision, and be accompanied by a copy of the complaint and evidence in support, the registrar's report and the bishop's notice of dismissal. A form is provided by the *Clergy Discipline Rules 2005* for complainants to use, and will help them to set out the required information. No new or further evidence may be submitted by the complainant with a request for a review. The President will notify the bishop and the respondent that the review has been requested.

s11(4)
r16(1)
form 4
r16(2)
r16(3)

105. The President will consider the registrar's report and the bishop's notice of dismissal within 28 days. The President's role is to review the bishop's decision. No fresh or new evidence will be considered by the President when reviewing the bishop's decision.

r16(4)

106. The decision to dismiss the complaint can be reversed only if the President

is satisfied that the bishop was plainly wrong, i.e. that the bishop's decision was not within the range of reasonable decisions. It is not an appeal on the merits, and the President will not simply substitute his or her own view for that of the bishop; the President will reverse it only if the bishop's decision to dismiss was one that could not reasonably have been made in all the circumstances put before the bishop. If the President does reverse the bishop's decision then the bishop will be directed to deal with the complaint by considering the appropriate course of action to pursue under section 12 of the Measure.

s11(4)

r16(4)

The respondent's answer to the complaint

107. When the complaint is not dismissed under section 11(3) or the President under section 11(4) reverses a dismissal, the respondent should be notified in writing that the complaint has not been dismissed, sent a copy of the registrar's report, and requested to submit a written answer to the complaint within 21 days. The answer should be in the form at appendix B2 or in a document which is similar, and should state which matters are admitted and which are contested, and should be accompanied by written evidence in support. This written evidence can be in the form of a statement or statements signed by the respondent or other witnesses testifying in some detail to the matters complained about. Letters or other material, such as photographs, may be submitted with the written evidence if relevant.
108. If the respondent admits any misconduct, details should be given in the answer of any matters relied upon by way of mitigation.

r17(1)

form 2

r17(2)(c)

r17(3) & (4)

form 3

What courses can the bishop take?

s12(1)

Can the bishop suspend whilst the complaint is considered?

109. If, having received the registrar's report, the bishop decides not to dismiss the complaint under section 11(3) of the Measure, the bishop may consider suspending the respondent from exercising or performing any ministerial right or duty without permission whilst the complaint is considered further. The bishop may also suspend a respondent who is arrested on suspicion of committing a criminal offence. A suspension should be imposed only if necessary. See further at *paragraphs 209 to 223 below*.

s36(1)

r60-66

How long can the bishop take to decide what to do?

110. The bishop should attempt to decide on the appropriate course of action within 28 days of receiving the registrar's report. If more time is needed the bishop should consult the complainant and respondent to ascertain their views on the extension of time, but their consent is not needed for any extension of time. When the bishop decides to extend the period of time for considering what course to pursue he will inform the complainant and the respondent in writing.

s12(1)

s12(2)

r18(1)

r18(3)

Who can the bishop meet when deciding what to do?

111. When considering what action to take, the bishop may meet or interview separately the complainant and the respondent. The bishop may also meet or interview any other person who may be able to assist the bishop in deciding how to proceed. The complainant should be informed in advance of the reason for a meeting or interview, and should bring a friend or an advisor (and must be encouraged to do so). The respondent should likewise be informed in advance of the reason for the meeting or interview with sufficient time to prepare for it, and should bring a colleague, advisor or friend (and must be encouraged to do so). Whenever the bishop meets a complainant, respondent or any other person, a member of the bishop's staff should attend and record the matters discussed. A copy of the note of the meeting should be sent promptly after the meeting to the persons who were present at it.
112. At no stage should any pressure be put on a complainant to withdraw or modify a complaint. Equally, no pressure should be put on a respondent, and a bishop should not engage in "plea bargaining" with the respondent, (i.e. the bishop should not accept an admission by the respondent to a lesser allegation of misconduct on condition that a more serious complaint is not proceeded with).

Decision to take no further action

113. A decision to take no further action under the Measure is suitable where the misconduct is admitted by the respondent but is of a technical or minor nature, or where, having seen the respondent's answer and evidence in support, the bishop decides there was clearly no misconduct. s12(1)(a)
s13
114. This is also suitable where the bishop considers there may have been misconduct, but that the misconduct is only of a technical or minor nature, and would not merit any sanction under the Measure being imposed taking into account any mitigating factors.
115. A decision to take no further action should be put into writing by the bishop setting out the reasons and sent to both the complainant and respondent. s13(2)
r20
116. The letters to the complainant and the respondent should explain the complainant's right to refer the bishop's decision to take no further action to the President of Tribunals for a review. The letters should also explain the limited nature of the review. r20
s13(3)
The pro-forma letter appended at B6 can be used by the bishop as the letter to the complainant.
117. Any such reference by the complainant to the President for a review should be in writing, and should be sent within 14 days of receipt of the bishop's decision. The reference should be accompanied by the bishop's written decision, plus a copy of the complaint and the respondent's answer and evidence in support of each, and the registrar's report. The reference r21(1)
r21(2)

should explain why the complainant believes the bishop was wrong. A form is provided by the *Clergy Discipline Rules 2005* for complainants to use, and will help them set out the required information. form 5

118. Within 28 days of receipt of the reference the President will consider the complainant's request and the documents submitted with it. The President's role is to review the bishop's decision. No fresh or new evidence will be considered by the President. r22
r21(4)

119. The bishop's decision to take no further action can be overruled only if the President is satisfied that the bishop was plainly wrong, and in those circumstances the President has a discretion to direct the bishop to attempt such other courses permitted under section 12 of the Measure as the President considers appropriate (namely, conditional deferment, reference to conciliation, penalty by consent, or formal investigation). s13(3)
r22

Decision that there should be a conditional deferment

120. Conditional deferment is only available when the respondent consents to it as a course of action. Before the respondent consents, the bishop must explain the meaning and effect of a conditional deferment and be satisfied that the respondent understands fully the implications. s12(1)(b)
s14

121. A conditional deferment means that the complaint is kept on file in the diocese for a period of up to 5 years (the length of time is in the bishop's discretion). No other action is taken in respect of the complaint unless a further complaint of misconduct is made against the respondent within that period of deferment. s14(2)
s14(3)

122. No pressure should be put upon a respondent to consent to a conditional deferment. The passage of time may make it difficult to investigate a complaint at a later date, so in practice a conditional deferment is most likely to be used where a respondent admits the misconduct, and where such misconduct is not serious but is out of character and unlikely to be repeated.

123. Having obtained the respondent's consent in writing to a conditional deferment, the bishop must put the decision into writing, setting out the period of deferment, and informing the respondent that if a further complaint is made during that period and proceeds by way of conciliation, penalty by consent or formal investigation, then the original complaint may be dealt with alongside the further complaint. r23
form 6
r24

124. A copy of the bishop's written decision together with the complaint and the respondent's answer, if any, should be sent to the archbishop; the conditional deferment will be noted by the provincial registrar. A copy of the bishop's written decision should be given to both the complainant and the respondent, together with a written explanation of the meaning and effect of a conditional deferment. r25

125. It is the duty of the registrar to keep and maintain an accurate record of r25(1)(c)

conditional deferments; the entry should contain a summary of the nature of the complaint with relevant dates and set out the period of deferment. The registrar should also keep all relevant papers relating to that complaint. Only diocesan bishops and registrars have access to records of conditional deferments. r25(2)

126. The complainant has no right of appeal or review in respect of the bishop's decision to impose a conditional deferment.

Decision in favour of conciliation

127. Conciliation can be particularly appropriate when pastoral or personal relationships have been damaged and there appears to be an opportunity for them to be restored through constructive dialogue. It may also be appropriate where it appears the complainant is seeking recognition of error by the respondent and an apology. In these circumstances conciliation offers the hope of re-establishing trust and confidence. s12(1)(c)
s15

128. Conciliation is a voluntary and confidential process in which an impartial third party (the conciliator) helps the complainant and the respondent to achieve agreement on how the complaint can be resolved.

129. For a conciliation to be successful, both sides have to understand the process and take part willingly. Before deciding that conciliation is appropriate the bishop should explain to both sides the nature of conciliation hearings and invite them to make representations as to whether or not conciliation should be pursued. Only if both sides agree can the bishop appoint a conciliator. s15(1)
r26(1)
s15(2)

130. The bishop should emphasise that:

- agreeing to a conciliation is not a sign of weakness by a party, nor an admission of guilt,
- the conciliator's function is not to judge or decide the issues, but to help the parties achieve an agreement,
- parties will not be pressurised by the conciliator into agreeing something they may later regret,
- conciliation is an attempt to bring the parties together so that they themselves can agree on a suitable outcome of the complaint.

131. Conciliation may be particularly appropriate where the complaint of misconduct is indicative of a breakdown in the underlying relationship, especially the relationship between a priest and the PCC or a churchwarden.

132. Not all disputes are suitable for conciliation, for instance, conciliation is unsuitable for any complaint where the bishop considers that the appropriate penalty, if the complaint is proved, would be prohibition (including limited prohibition) or resignation.

133. If the parties agree to a conciliation, the bishop will need to appoint a conciliator (or joint conciliators, if appropriate). It is of fundamental

- importance that the conciliator should be impartial, acceptable to both parties, and professionally qualified. Before making the appointment the bishop should notify the parties in writing of the name or names of possible conciliators, briefly summarise their suitability, experience and qualifications for the task, and invite the parties to indicate within 14 days which names they would each agree to be appointed. If both parties agree on a person to be appointed, then the bishop should appoint the conciliator in question, provided the bishop has no reason to question that person's impartiality. r26(2) s15(3)
134. There is a variety of people whom the bishop can appoint to be a conciliator. Experience shows that dioceses throughout the country use a wide range from within the church to mediate in all kinds of other disputes. Archdeacons, rural deans, retired clergy, and diocesan staff, may all be suitable, provided they are professionally qualified as conciliators; furthermore, there are no fees payable for using their services. Outside agencies can provide trained conciliators but they normally charge fees; any fees charged would normally fall for the diocesan board of finance to pay.
135. On appointing a conciliator in relation to a complaint the bishop should send the conciliator copies of all the relevant papers in the case. r26(3)
136. Conciliation processes can be flexible, to suit the needs of the case. If conciliation is achieved, the conciliator should reduce the agreed points into writing and obtain the signatures of the complainant and the respondent. r26(4) r26(6)(a)(i)
137. If conciliation is achieved, the conciliator submits a written report to the bishop with recommendations based on the parties' agreement on how to resolve the complaint. The report should be submitted within three months of the conciliator's appointment, although this can be extended if it seems desirable to the conciliator and the parties agree. The bishop then notifies the parties in writing that he accepts the agreement and that he will pursue any agreed course (provided he could have pursued that course under section 12 of the Measure if he had not instead directed the conciliation attempt). s15(4) r26(6)(a)(ii) s15(4)(a) r26(5) r26(6)(b)
138. If a complainant and respondent are unable to agree that a complaint should be referred to a conciliator, or cannot agree on who the conciliator should be, the bishop will proceed with one of the other courses under section 12 of the Measure (namely, take no further action, conditional deferment, penalty by consent, formal investigation). s15(5) r26(9)
139. If conciliation is not successful, but the parties agree that further exploration with a different conciliator may be fruitful, the bishop may appoint another conciliator. If they cannot agree to further conciliation, the bishop shall proceed with one of the other courses under section 12 of the Measure. s15(4)(b) r26(7)

Decision to impose penalty by consent – general considerations

140. A penalty by consent can only be imposed where the respondent admits the validity of the complaint or part of the complaint. Consequently, it should not even be raised as a suitable option with the respondent until he or she has admitted that the complaint or part of the complaint is valid. s12(1)(d)
s16
141. No pressure should be used by the bishop to obtain either the respondent's admission to the complaint, or the respondent's consent to the appropriate penalty. The bishop's view that a complaint may be clearly made out and requiring an obvious particular penalty must not lead to an overbearing approach towards the respondent.
142. The bishop should bear in mind that the respondent may feel in a weakened or vulnerable position, and liable to agree to matters which may be regretted after considered reflection. The bishop should also bear in mind that there may be mitigating circumstances relating to the misconduct, which should be explored in full with the respondent before any decision is made.
143. It is for the bishop to indicate an appropriate penalty, and for the respondent to accept or reject it. It is unfair and inappropriate to require the respondent to propose a suitable penalty.
144. All penalties set out in section 24 of the Measure can be imposed by consent, namely, prohibition for life, limited prohibition, removal (or resignation if by consent), revocation of licence, injunction, or rebuke. s24
r27(2)
145. Plea-bargaining between the bishop and the respondent (*see paragraph 112 above*) must form no part of the process of considering and imposing a penalty by consent.
146. Before the bishop imposes a penalty by consent, the complainant and respondent must be given an opportunity to make written representations. The bishop should notify them of the penalty that is in mind, together with any mitigating circumstances that the bishop has found persuasive, and invite them to make written representations in response within 14 days. Before confirming the penalty the bishop should have regard to any such representations. s16(1)
r27(3)
147. The respondent's consent to a penalty must be given in writing in a form for that purpose. r27(4)
form 7
148. Within 7 days of receiving the respondent's written consent to the penalty (provided it is not resignation or prohibition), the bishop must send to the respondent written confirmation of the agreed penalty. Within 14 days of sending the written confirmation to the respondent, the bishop should notify the complainant, the archbishop of the relevant province and the diocesan registrar in writing of the penalty imposed. r27(4)
r27(6) & (7)
149. If the respondent does not consent to a proposed penalty, the bishop must s16(3), r27(8)

refer the complaint to the Designated Officer for a formal investigation.

Decision to impose penalty by consent – resignation or prohibition

150. If a resignation is offered after a complaint is made, but before the complaint has been properly considered, the bishop should decline to accept the resignation. Only after the bishop has considered the complaint in accordance with the Measure and this part of the Code, should a resignation, if tendered again, be accepted by the bishop.
151. If a priest or deacon resigns before a complaint is made, any later complaint relating to pre-resignation conduct should be determined in disciplinary proceedings in due course. If the misconduct in question is adjudged to warrant prohibition or any other penalty, such a penalty may still be imposed notwithstanding the earlier resignation.
152. Where resignation or prohibition is contemplated, the respondent must be given sufficient time, which should be up to 14 days, to consider all the consequences before agreeing to it. In particular the respondent must be given the opportunity to consult his or her spouse (if married) and other close family members, and be encouraged to do so. It is important that decisions about resignation should not be made in the heat of the moment when a respondent may be feeling under stress.
153. Where the respondent agrees to accept prohibition for life, or resignation, there is an automatic 7-day moratorium (i.e. a “cooling off period”) during which the respondent is entitled as of right to withdraw consent to the penalty. The penalty will only take effect at the end of the 7-day period if the respondent has not withdrawn consent in writing. If consent is withdrawn then the bishop must refer the complaint to the Designated Officer for a formal investigation. s16(2)
r27(5)

(see s17(1), r28)
154. If resignation is contemplated the bishop must be personally satisfied that it is the appropriate penalty and not merely expedient. Resignation may be too weak a response where prohibition is called for, and too harsh a penalty where a lesser sanction would be suitable (such as an injunction).
155. When the 7-day “cooling off” period has expired the bishop should write to the respondent confirming the agreed penalty. In the case of resignation, no deed or letter of resignation from the respondent is required to implement it, because the respondent will already have signed a form (provided in the Clergy Discipline Rules) agreeing to the penalty of resignation. r27(5)(b)

form 7
156. Within 14 days of sending the written confirmation to the respondent the bishop should give written notice of the penalty to the complainant, the archbishop of the relevant province, and the relevant diocesan registrar. r27(6) & (7)

Decision in favour of formal investigation

157. This option is intended to be used only for those cases which cannot be

satisfactorily dealt with by any other means. This will include cases where the respondent denies a complaint of substance (so taking no action is not a proper option under section 12(1)(a)), or where conciliation has been rejected or failed, or where the respondent will not consent to the penalty which the bishop considers to be appropriate.

s12(1)(e)
s17
r28

What happens if there is a criminal conviction?

158. If a criminal charge results in a conviction and a sentence of imprisonment (including a suspended sentence) the bishop may remove that person from office or impose a prohibition order (either for life or for a limited period) without further proceedings. Under the Measure the bishop has a two-year period within which to act from the date the sentence of imprisonment becomes conclusive, but the bishop should consider the matter and take action as soon as reasonably practicable. A sentence of imprisonment becomes conclusive when any appeal is concluded or dismissed or abandoned. If there is no such appeal then the two-year period starts to run from the expiration of the time limited for appeal.

s30(1)
r67-69

s30(3)

s40

159. Removal from office or prohibition will not automatically result from a sentence of imprisonment. The bishop retains a discretion at all times, but must first of all consult the President of Tribunals to ascertain his views about the seriousness of the criminal charge and the matters relating to it. The bishop must then inform the respondent in writing of details of the proposed penalty and invite him or her to send written representations within 28 days. If either the bishop or the respondent so desires, and if practicable, a meeting between them should be arranged during this 28-day period; the respondent should have a colleague, advisor or friend present. A member of the bishop's staff should attend and record the matters discussed, and a copy of the note of the meeting should be sent to the respondent promptly after the meeting. At the end of the 28-day period the bishop should write to the respondent stating whether the penalty of removal from office or prohibition is being imposed.

s30(2)
r68

r69

160. Where a sentence of imprisonment has been imposed by a court of law in the United Kingdom the respondent should normally expect to be removed from office and to receive an order of prohibition (either for life or for a limited period). This may not, however, apply if the sentence of imprisonment is imposed by a foreign court – the bishop will need to take note of the judicial system in question, and consider whether a conviction and sentence of imprisonment would have resulted if proceedings had been brought in a United Kingdom court.

161. A respondent has the right to ask the archbishop of the relevant province to review the decision to impose a penalty of removal or prohibition. Any review must take into account representations of the respondent as well as the bishop's reasons for imposing the penalty, and all other relevant circumstances. The archbishop will conduct the review with or without a hearing, and may uphold or reverse the bishop's decision as he thinks fit, after considering all representations and the circumstances of the case.

s30(2)
r70-72

162. If a criminal charge results in a conviction but there is no sentence of imprisonment, (for example, where a community service order or a fine are imposed) then disciplinary proceedings under the Measure can take their course in the normal way.

What happens if there is an acquittal at a criminal trial?

163. Where a criminal charge against a priest or deacon alleges facts which would amount to misconduct if proved, and he or she is acquitted following a criminal trial, any complaint under the Measure alleging exactly the same matters as the criminal charge should not normally be proceeded with in disciplinary proceedings. There may, however, be other matters of misconduct arising out of or in connection with the circumstances of the criminal charge, which properly can, and should, be dealt with in disciplinary proceedings.

Example: In a criminal trial for theft of money from the church collection plate, a priest or deacon could admit taking the money, but contend that it was to meet an urgent personal debt and that the money was going to be paid back when he or she was able to do so. If the prosecution results in an acquittal, a complaint under the Measure alleging theft by the respondent would not be permitted to proceed. However, a complaint made by a churchwarden that, in breach of trust, the priest or deacon had used the church's money for private purposes, could be dealt with under the Measure.

What happens if there are divorce proceedings?

164. If a marriage is dissolved or is subject to a decree of judicial separation, and the court hearing the petition for divorce or judicial separation is satisfied that a priest or deacon has committed adultery, behaved unreasonably or deserted the petitioner, then the bishop may remove the respondent from office or impose a prohibition order (either for life or for a limited period) without further proceedings. Under the Measure the bishop has a two-year period within which to act from the date of the decree absolute, but should consider the matter and take action as soon as reasonably practicable. s30(1) s30(3)

165. The bishop retains a discretion at all times, but must consult the President of Tribunals to ascertain his views about the seriousness of the matrimonial conduct in question. The bishop must inform the respondent in writing of the details of the proposed penalty, and invite him or her to send written representations within 28 days. If either the bishop or the respondent so desires, a meeting between them should be arranged during this 28-day period. The respondent should have a colleague, advisor or friend present at the meeting. A member of the bishop's staff should attend and record the matters discussed, and a copy of the note of the meeting should be sent to the respondent promptly after the meeting. At the end of the 28-day period the bishop should write to the respondent stating whether the penalty of removal from office or prohibition is being imposed. s30(2) r68 & 69

166. Removal from office or prohibition will not automatically result from a decree absolute of divorce or decree of judicial separation involving adultery, unreasonable behaviour or desertion. Most decrees absolute and decrees of judicial separation are granted as a result of uncontested proceedings on paper so that the evidence in support of the petition is not questioned or tested, although it is accepted by the court. Furthermore, some respondents, recognising that their marriage has broken down irretrievably and could be dissolved against their will in any event after a period of 5 years separation, may choose not to contest allegations in a divorce petition, even if not accepted – this avoids legal expense and argument over sensitive and personal issues. The bishop should bear this in mind as a factor when considering what disciplinary action to take.

167. A respondent has the right to ask the archbishop of the relevant province to review any decision of removal from office or prohibition. Any review must take into account representations of the respondent as well as the bishop's reasons for imposing the penalty, and all other relevant circumstances. The archbishop will conduct the review with or without a hearing, and may uphold or reverse the bishop's decision as he thinks fit, after considering all representations and the circumstances of the case. s30(2)
r70-72

Duty of clergy to report

168. There is a duty upon a priest or deacon to report to the bishop within 28 days of being arrested on suspicion of committing an offence, and of being convicted for an offence. s33(1)

169. There is also a duty upon a priest or deacon to report to the bishop within 28 days if a decree absolute has been made dissolving his or her marriage or if an order of judicial separation is made. s34

170. An omission to so report is deemed to be a failure to do an act which is required by ecclesiastical law. It is therefore misconduct under the Measure, and is likely to lead to further disciplinary action. s33(2) & s34

THE BISHOP'S DISCIPLINARY TRIBUNAL; "Stage 3"

What is a formal investigation?

171. When the Designated Officer is directed by the bishop to carry out a formal investigation, the Designated Officer will enquire into the complaint and then refer the matter in writing to the President so that the President can decide if there is a case to answer. The investigation will not take the form of any preliminary hearing. Any inquiries in the course of the investigation may be conducted by telephone, correspondence (including e-mail) or by personal interview with anyone involved in the matter. s12(1)(e)
s17(1) & (2)
r28
172. It is the duty of the complainant and the respondent to co-operate with the Designated Officer when the inquiries are made. They should answer any reasonable inquiries, and if they decline to do so, adverse inferences may be made against them when the President decides whether there is a case to answer, and also if they give evidence at any subsequent disciplinary hearing. r2
r28(3)
173. The gist of any oral communications with the complainant, respondent or any witness should be recorded by the Designated Officer in written memoranda, but the Designated Officer's records are privileged from disclosure to any party to the complaint. If, however, any new relevant information is revealed by or on behalf of one of the parties in the course of the inquiries, the Designated Officer will pass that information on to the other party and ask that other party to comment on it. r28(4)
174. The Designated Officer should inform the parties and the bishop of the date when the report to the President is expected to be sent, and notify them when it has been sent.
175. It is recommended that the report from the Designated Officer should cover the following areas:
- The substance of the complaint
 - The substance of the respondent's answer to the complaint
 - A summary of the evidence submitted in the case
 - An analysis of any relevant legal issues
 - Any other matters which the Designated Officer wishes to bring to the attention of the President.
176. A copy of the registrar's report for the purposes of preliminary scrutiny should be annexed to the Designated Officer's report when it is submitted to the President of Tribunals.
177. The contents of the Designated Officer's written report to the President are confidential and the report will not be disclosed to the complainant, respondent, bishop or any other person.

178. The President of Tribunals will consider the Designated Officer's report and decide whether there is a case for the respondent to answer. If there is a case to answer, the President will refer the complaint to a disciplinary tribunal. s17(3)
r29

179. The President's decision as to whether there is a case to answer will be put into writing and copies sent to the complainant, the respondent, the bishop, and the Designated Officer. If there is a case to answer the President's written decision will specify which allegations of misconduct are to be dealt with at the disciplinary hearing. If there is no case to answer, the President will give reasons for the decision. r29(1)
r29(2)
r29(3)

Appointment of the members of the tribunal

180. The President will not appoint members of the tribunal unless satisfied there is no reason to question their impartiality. In appointing a tribunal from the provincial panel the President will be sensitive to relevant gender and ethnic backgrounds. Before proposed members of the tribunal are appointed, the respondent should be notified in writing of their names, their diocese, and the capacity in which they are to be appointed. s22(1) & (2)
r37

181. The respondent may make representations to the President about the suitability of any of those who are to be appointed to the tribunal. If the President considers there is any substance in the respondent's representations suggesting that a particular person is not suitable, the President should appoint another person instead. r37(2)

182. When members of the tribunal are selected for appointment to hear a complaint they should be given a list of the names and addresses of the complainant, the respondent and all witnesses. Any person selected should be invited to state if they know any of those on the list and, if so, to give details of how they know them. The President may then direct the replacement of anyone who in the President's view may not appear to be impartial.

183. Under no circumstances should members of the tribunal carry out any private enquiries of their own concerning the complaint or discuss it with anyone else. Furthermore, they should take care to avoid receiving any information or comments from the media or other sources about a case in which they are involved.

Conduct of proceedings

184. Proceedings should be conducted in the spirit of co-operation and in accordance with the overriding objective. This includes parties co-operating with each other during preliminary procedural stages. The objective is to deal with disciplinary proceedings expeditiously as well as fairly. If a party fails to co-operate then an adverse inference may be made against that party. r1
r2(1)
r2(2)

185. The case for the complainant is conducted by the Designated Officer or

- other legally qualified person duly instructed by that officer. The Designated Officer is a barrister or solicitor of the Legal Office of the National Institutions of the Church of England, and acts wholly independently from the complainant, the respondent and the bishop. s18(1), r106
r30(4), r44, r47(c)
186. It is a fundamental principle of disciplinary proceedings that neither side should be taken by surprise by the other in relation to the evidence that is to be given at a hearing or by any legal submissions that are made. Any failure to observe this principle may result in the tribunal exercising its discretion to exclude evidence or legal submissions if the other party is disadvantaged by not having had prior notice. (See r33(1), r33(2))
(see r39)
187. The Designated Officer or the respondent may at any stage after the proceedings have been referred for a formal investigation apply in writing with stated reasons to the President asking for a direction that the complaint be withdrawn. Before making any decision the President should send a copy to the other party and invite the other party to make written observations on the application. s18(2)(a)
r58
188. If it appears to the President at any stage after the proceedings have been referred for a formal investigation that a conciliation could be brought about, he may require that an attempt, or a further attempt at conciliation, as the case may be, should be made. If so, reference should be made to the section in this Code dealing with conciliation (*see paragraph 127 onwards*). s18(2)(b)
s15
189. Hearings before a tribunal are normally to be held in private, but will be held in public if the respondent so requests or if the tribunal considers that it would be in the interests of justice to hold it in public (for example where there has been false speculation or rumours about a case, it could be deemed fairer to the parties to have a public hearing). s18(3)(c)
r40
190. If a hearing is held in public the tribunal may in the exercise of its discretion, and having heard any representations from or on behalf of the Designated Officer and the respondent, exclude any members of the public from any part of the proceedings. In particular, it may be necessary to exclude members of the public to protect the interests of any child, or the private lives of any witnesses including the complainant. s18(3)(c)
r40
191. The tribunal may, in accordance with the overriding objective, conduct the hearing in any way it considers appropriate having regard to the nature of the complaint and the issues. The parties will normally be entitled to give evidence, call witnesses, question witnesses called by the other party, and address the tribunal on all relevant matters. Oral evidence at a hearing will be given on oath or affirmation, and will be recorded. r39
r44
r45
192. A hearing may be adjourned whilst in progress. This will only be done where necessary, and for good reason, because any adjournment causes delay in dealing with the proceedings, which is undesirable. Furthermore, adjournments are expensive and it can be difficult to re-arrange a hearing to ensure that parties, tribunal members, legal representatives and r41

witnesses can all attend when required. Where a timetable is provided for the conduct of a hearing, parties should therefore strive to keep within it, so that proceedings do not overrun.

How the tribunal makes its decision

193. The standard of proof to be applied in any disciplinary hearing is the civil standard. This means that a complaint is to be proved on a balance of probability, but there is a degree of flexibility when applying that standard. The more serious the complaint the stronger should be the evidence before the tribunal concludes that the complaint is established on the balance of probability. s18(3)(a)
194. The tribunal makes its decision by way of majority vote, and must give its written reasons in support and be signed by each member. This can be done at the conclusion of a hearing, or the tribunal may adjourn and reconvene at a later date to give its decision, and the person chairing the tribunal may on that occasion sit alone. The announcement of the decision must always be made in public, although details disclosing the identity of anyone involved in the case may be withheld in the interests of justice. This is particularly relevant to protect the interests of children, or the private lives of any witnesses including the complainant. s18(3)(b)
r50(1)
r50(2)
s18(3)(b)
r50(4)
195. If the tribunal is not unanimous, it should publish one decision or judgment containing the reasoned decision of both the majority and the minority, and be signed by each member. r50(3)

What penalty can be imposed by a tribunal?

- s24
196. Before imposing a penalty a tribunal may invite the bishop to make written representations on the appropriate penalty, including any mitigating or other circumstances which the bishop may feel appropriate to draw to the attention of the tribunal. The tribunal will send a copy of the bishop's views to the respondent and to the Designated Officer. The tribunal is not bound to follow any recommendation that the bishop may make, but it should take into account the bishop's views. If the bishop has given evidence in the course of the proceedings then the tribunal must not consult him about the appropriate penalty. s19(2)
r51, r52
197. Prohibition for life: This is the most serious penalty that can be imposed. It prevents the respondent without limit of time from exercising any functions as a priest or deacon. It should be imposed only where there appears to be no realistic prospect of rehabilitating the respondent back into ministry. s24(1)(a)
198. Limited prohibition: This is suitable for serious cases where the tribunal is satisfied there is a realistic prospect that the respondent, with appropriate pastoral and other support, could in the future resume normal duties of ministry. s24(1)(b)
199. Removal from office: This penalty removes the respondent from the s24(1)(c)

preferment held at the time, but does not prohibit him or her from serving as a clerk in Holy Orders in another post. In serious cases, removal would be combined with prohibition for life or limited prohibition.

200. Revocation of licence: For clergy who hold a licence from the bishop, it may be appropriate to terminate the licence so that they no longer minister in the same place. Revoking the licence does not prevent them from seeking to serve in Holy Orders elsewhere. In serious cases, revocation would be combined with prohibition for life or limited prohibition. s24(1)(d)
201. Injunction: An injunction requires a respondent to do or refrain from doing a specified act, and is usually limited in time. More than one injunction arising out of the same complaint can be imposed upon the respondent by a tribunal. An injunction may be appropriate for cases where priests or deacons are generally capable of performing their normal duties but ought to be stopped from dealing with a particular aspect of their duties. Any breach of an injunction is an act of misconduct under the Measure, and could result in further disciplinary proceedings. s24(1)(e)
s29
202. Rebuke: This is the least serious of the penalties. s24(1)(f)
203. Conditional discharge: A tribunal may decide not to impose any immediate penalty having taken into account all the circumstances of the misconduct and the respondent's character, but if it does so it has the option of making an order discharging the respondent subject to the condition that there must be no more misconduct by the respondent within a period not exceeding two years. If the respondent does commit further misconduct within that period then the disciplinary tribunal dealing with the new matter on the subsequent occasion may, in respect of the earlier misconduct, impose any penalty that could have been imposed originally. The provincial registrar maintains a record of conditional discharges, and only diocesan bishops and registrars have access to it. s25(1)
s25(4)
r53

OTHER MATTERS

What happens to the proceedings if a respondent dies?

204. Any proceedings in respect of an unresolved complaint are automatically terminated on the death of the respondent. r54

What happens to the proceedings if the complainant dies or becomes seriously ill?

205. On the death, serious illness or incapacity of a complainant who has been nominated by a parochial church council to make the complaint, the council may nominate another person to pursue the complaint. If the council does not nominate another person within 28 days of being invited to do so by the bishop, then any person claiming to have a proper interest in making the complaint may apply in writing to be substituted as complainant. Such an application should be made to the bishop, unless the complaint has already been referred by the bishop to the Designated Officer for a formal investigation, in which case the application should be made to the President. r55
206. On the death, serious illness or incapacity of a complainant who has not been so nominated, any person claiming to have a proper interest may request in writing to be substituted as the complainant. The request should be sent to the bishop to whom the original complaint was submitted, unless the complaint has meanwhile been referred to the Designated Officer for a formal investigation, in which case the request must be sent to the President. r56
207. A person will only be substituted as complainant if he or she can demonstrate a proper interest in the complaint, and if it is in the interests of justice in all the circumstances. see s10(1)(a)
r56(3)
208. If no other person is nominated or substituted, as the case may be, the President may direct that the complaint is withdrawn, and then no further action will be taken in the proceedings. r57

Suspension of a priest or deacon

209. A respondent may be suspended by the bishop once a complaint has reached the stage when the bishop is deciding what course of action to take (*see paragraph 109 above*). A priest or deacon may also be suspended if arrested on suspicion of committing a criminal offence. s36(1)
r60, r61
210. A suspension pending resolution of proceedings should be imposed by the bishop only if necessary, and preferably by agreement with the respondent. Except when the bishop regards the case as particularly urgent and serious, the bishop should attempt to arrange a meeting beforehand to explain the reasons to the respondent. The respondent should be told in advance of the reason for the meeting and should attend with a colleague, advisor or friend (and must be encouraged to do so). A member of the bishop's staff should be present and record the matters discussed, and a copy of the note

of the meeting should be sent to the respondent promptly after the meeting.

211. Suspension does not mean the bishop has formed any view that the complaint of misconduct or allegation of criminal conduct is true, or likely to be true, and no respondent will be prejudiced in the investigation of the complaint as a result of being suspended. See form 12a & form 13a
212. The scope of suspension can extend to all ministerial rights and duties of the respondent, including those relating to public worship, administering the sacraments, baptism, confirmation, marriage, burial, visiting the sick, other pastoral work, preaching and teaching, and administrative duties. The suspension can also cover any rights or duties that are incidental to the office held by the respondent. Consequently, without the bishop's permission, a suspended priest would not normally be able to attend any church functions or PCC meetings, vote in any elections to the diocesan synod, exercise powers of patronage, or perform any deanery duties if appointed as a rural dean or area dean. For exercise of powers of patronage during a suspension see s20 Patronage (Benefices) Measure 1986 & s9 (& s8) Church of England (Miscellaneous Provisions) Measure 1983
213. During a period of suspension a respondent's right to a stipend and housing is to continue unaffected.
214. When considering whether to impose a suspension the bishop should take into account the interests of the respondent, the respondent's family, the complainant, any witnesses who may be called upon to testify in the course of proceedings, the local church and community, and the wider church and community. When taking into account the interests of the local church and community the bishop should in particular consider whether their pastoral, liturgical and other needs can be provided for adequately in the absence of the respondent.

Giving notice of suspension

215. If a bishop does decide to suspend he must, by a notice in writing in a form prescribed by the *Clergy Discipline Rules 2005*, inform the respondent of the suspension and also of the terms of suspension, i.e. precisely what rights and duties are suspended, and the period of suspension. A suspension lasts for 3 months, but expires within that time if meanwhile disciplinary or criminal proceedings end. If, however, such proceedings have not meanwhile finished by the end of the period of suspension, the bishop may extend the suspension by further periods of 3 months. r60, r61, r62 form 12a, form 12b s36(3)
216. Where a suspension is imposed after a complaint has been made, the bishop should inform the complainant about the suspension, and must notify the other persons named in the *Clergy Discipline Rules 2005*, such as the archdeacon and the rural or area dean. r63
217. A bishop may at any time in writing revoke a suspension. s36(2), r64
218. Where a notice of suspension is served on a priest or deacon, the bishop

should ensure that appropriate arrangements are put in place to provide for the pastoral, liturgical and other needs for the parish concerned, having consulted the churchwardens and the incumbent or priest-in-charge. The rural or area dean should also be consulted. s36(4)

219. Whilst a notice of suspension remains in force the respondent must not interfere with anyone performing the services of a church under such an arrangement (and this means all services, duties, tasks or ministrations, not just services of public worship). If there were any such interference, this would be a grave matter of misconduct, and further appropriate disciplinary action would be taken against the respondent. s36(5)

220. During a period of suspension, a respondent, or the respondent's close family, may have increased need for care and support; the bishop should be alert to this, and ensure that appropriate support is offered and made available. A bishop must not personally provide such care and support, for risk of compromising the fairness and impartiality of the disciplinary proceedings. Providing care and support should be delegated to suffragan or area bishops, archdeacons, rural or area deans and other experienced clergy, or appropriate members of the laity, but not to anyone who is involved in the disciplinary proceedings.

221. When a period of suspension ends the bishop should provide appropriate support to help the respondent to return to normal duties.

Appeal against suspension during proceedings

222. There is a right of appeal against the imposition of a suspension, or a further period of suspension. The appeal has to be made in writing to the President of Tribunals within 14 days of receipt of the notice of suspension, and the grounds of the appeal should be set out clearly. The suspension will not meanwhile be stayed but will take effect pending the determination of an appeal. s36(6)
r66
r66(5)

223. The bishop exercises discretion in deciding whether or not to impose a suspension, or further periods of suspension. The President may consider afresh the decision to suspend and substitute his own view for that of the bishop, and either confirm or revoke the suspension. r66(3)

Appeals from the tribunal

(See the *Clergy Discipline Appeal Rules*)

224. A respondent has the right of appeal against any penalty imposed by the bishop's disciplinary tribunal. A respondent may also appeal on a question of law or fact against any finding of the tribunal. s20(1)

225. There is a right of appeal for the Designated Officer against any finding of the tribunal, but only in relation to a question of law. s20(1)

226. All appeals in the province of Canterbury are heard by the Arches Court of Canterbury, and all appeals in the province of York are heard by the Chancery Court of York. s20(2)

The Archbishops' List

227. The Archbishops' List is compiled and maintained jointly by the archbishops, and is kept at Lambeth Palace. A copy of the list is kept by the Archbishop of York at Bishopthorpe. It is not open for public inspection, but is available to the President and diocesan bishops and registrars. s38
r74
r74(3)
228. There are five categories of names in the list: (a) those on whom a penalty under the Measure has been imposed (or those who were liable to a censure under the Measure's predecessor, the Ecclesiastical Jurisdiction Measure 1963); (b) those who were deposed from Holy Orders under the Ecclesiastical Jurisdiction Measure 1963; (c) anyone who has executed a deed of relinquishment under the Clerical Disabilities Act 1870, (d) anyone who has resigned following the making of a formal complaint, and (e) those who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment (i.e. any office or position requiring the discharge of spiritual duties). s38(1)
229. Within 21 days of being included in the list under categories (a) to (d) a person is informed of the inclusion and of the particulars recorded. The included person may then request the President of Tribunals to review the matter, and the archbishop of the relevant province may make written representations to the President in response to the request. The President, having reviewed the inclusion, may direct that the person is to continue to be included in the list or is to be excluded, and if to remain included may direct that the recorded particulars be amended. s38(2)
r75
230. When the archbishops are proposing to include in the list someone falling under category (e) in *paragraph 228 above*, all reasonable steps are to be taken to inform that person of the particulars proposed to be recorded, and to invite him or her to send comments or representations in response to the proposal. If the archbishops, having received and taken into account any response that might be made, decide to include the person on the list, then he or she may request the President to review the decision. The archbishop of the relevant province may then make representations to the President about the matter. Having considered the request and any representations in response, the President can uphold or reverse the archbishops' decision or require the particulars recorded on the list to be amended. s38(3)
r76
231. Where a name is included in the archbishops' list under categories (d) or (e) in *paragraph 228 above* the inclusion is reviewed by the archbishops after 5 years. The included person is invited to send written comments or representations for the purposes of the review. The bishop of the diocese in which the person resides or holds office, and the bishop of any diocese which was concerned when the person's name was included, are consulted. Upon review, the archbishops may agree to leave the entry of the name on the list unamended, or keep the name in the list but amend the s38(4)
r78

particulars recorded, or remove the name altogether from the list.

232. The inclusion of a name under categories (d) and (e) may also be reviewed at any time if the bishop of a diocese requests a review, or after 5 years following an earlier review if the person included requests a review. s38(4)
r79, r80

Complaints against bishops and archbishops

233. Formal complaints under the Measure may be made in respect of bishops and archbishops. For the most part the procedure is similar, but not identical, to complaints about priests and deacons, and reference should be made to the Measure and the *Clergy Discipline Rules 2005* for full details. s10(1)(b) & (c)
r81 to 90
234. A complaint in respect of a bishop would normally be made to the archbishop of the province where the bishop held office when the alleged misconduct occurred. A complaint against an archbishop would be made to the other archbishop. s10(2)
235. Complaints in respect of bishops would be referred to the registrar of the province (not the diocesan registrar) for the purposes of preliminary scrutiny, and to the registrar of the other province if the complaint is about an archbishop. r82(3)
236. A formal hearing of a complaint against a bishop or archbishop (i.e. during “stage 3”) would be before a Vicar-General’s court, rather than before a bishop’s disciplinary tribunal. s6(2) & r106

Removal of prohibition for life and deposition

237. A respondent who is prohibited for life under the Measure, or who has been subject to a censure of deprivation and disqualification or deposed under the previous Ecclesiastical Jurisdiction Measure 1963, may apply to have nullified that particular penalty, censure or deprivation. s26
r97
238. The only grounds under the Measure on which the respondent may apply are that new evidence has come to light affecting the facts on which the prohibition or deposition was based, or that the proper legal procedure leading to the prohibition or deposition was not followed. s26(1)
239. An application by a priest or deacon is made to the archbishop. The application should be in writing and state the reasons why it is made. It should also state how and when the respondent became aware of the new evidence or discovered that the proper legal procedure may not have been followed. The application should be made promptly once the respondent realises there are grounds to make it. r97(1)
240. If there is new evidence it should be submitted with the application (whether in the form of signed witness statements, photographs, audio or other material). The new evidence will only be taken into account if it is credible and could not have been obtained with reasonable diligence for use at the original hearing.

241. The archbishop on receiving the application and accompanying evidence may invite any person involved in the original proceedings to make written representations within 21 days. A copy of any representations received will be sent by the archbishop to the respondent making the application. r97(2)
242. The archbishop may decide the application with or without a hearing and, after consulting the Dean of the Arches and Auditor, will declare whether or not the prohibition or deposition is nullified. If it is nullified then it is treated as if it had never been imposed. s26(2)
r97(3) & (4)
243. The decision by the archbishop on the application for removal of the prohibition for life or deposition is put into writing with reasons, and a copy is sent to the respondent making the application and to the provincial registrar. r97(4)

Removal of limited prohibition

244. A respondent who has been prohibited under the Measure (or inhibited under the Ecclesiastical Jurisdiction Measure 1963) for a specific time from exercising any functions may apply to the Dean of the Arches and Auditor, sitting with the Vicar-General for each province, for the prohibition (or inhibition) to be removed. s27
r98
245. The application may only be made by a priest or deacon with the consent and support of, and on a joint application with, the bishop. Before deciding whether to support the respondent, the bishop should, if practicable, confidentially consult the original complainant about the application and its implications. If the penalty was imposed in relation to a matrimonial breakdown the respondent's former spouse should be consulted if practicable. s27
r98(1)
246. The application may be dealt with on paper or at a hearing. Copies of the written decision are sent to the respondent and bishop jointly making the application, and to the provincial registrar. r98(2)
r98(3)

Legal Aid

247. At a tribunal hearing the case for a complainant is conducted by the Designated Officer; the complainant is not therefore entitled to legal aid.
248. Legal aid may be available for a respondent during "stages 2" and "3". The scheme for legal aid funding is prescribed in the Church of England (Legal Aid) Measure 1994 and the Church of England (Legal Aid) Rules 1995; it is administered by the church's Legal Aid Commission.
249. Under the funding scheme there is no absolute right to legal aid. Before deciding whether to grant any legal aid, and if so, to what extent, the Legal Aid Commission considers all the circumstances of the matter, including any other financial resources which are available to the respondent.

250. Details about eligibility for legal aid, the Commission's procedures and an application form can be obtained from the Secretary of the Legal Aid Commission at the Legal Office, Church House, Great Smith Street, London SW1P 3NZ.

Publicity and Media Relations

251. It is important that the Church should be open about any misconduct that is proved to have taken place. Tribunals therefore announce their determination of complaints in public, giving reasons for their decision, although details disclosing the identity of anyone involved in the case may be withheld in the interests of justice (*see paragraph 194 above*).

252. If a penalty is imposed on a priest or deacon other than after a determination by a tribunal, the penalty and brief particulars of the misconduct should be announced publicly. Details disclosing the identity of any child, or where necessary to protect their private lives the identity of any others involved in the complaint (except the respondent), should be withheld from the announcement to the public.

253. The media may be particularly interested in complaints of misconduct against the clergy. Unfortunately, media coverage in advance of any determination of the complaint can be speculative and misinformed, which can damage not only the complainant and the respondent, but also the local church or community and the wider church. For this reason, it is advisable for anyone involved in a complaint who is approached by the media to refer the enquirer straightaway to the appropriate communications officer, which will normally be the diocesan communications officer. If, however, the complaint has been referred to the Designated Officer for a formal investigation, then the media should instead be directed to the Communications Division at Church House, Great Smith Street, London SW1P 3NZ.

June 2005

Appendix A

Contact details for diocesan bishops and legal officeholders

Province of Canterbury

The Archbishop of Canterbury: [address, phone no. & email]

[Each diocesan bishop in alphabetical order]

Province of York

The Archbishop of York: [address & phone no. & email]

[Each diocesan bishop in alphabetical order]

Legal Officeholders

The President of Tribunals

The Deputy President of Tribunals

The Dean of the Arches and Auditor

The Registrar of Tribunals for the province of Canterbury

The Registrar of Tribunals for the province of York

The Designated Officer

Appendix B

BI: Form 1a, Rule 4

**Complaint under the Clergy Discipline Measure 2003
about a priest or deacon**

*When your complaint is received by the bishop your name and address will be disclosed to the person you complain about ("the respondent") unless there are **exceptional circumstances**; if you believe there are very good reasons why your identity should not **at this stage** be revealed to the respondent, state below what those reasons are.*

***Telephone & e-mail details are optional, but it could be helpful to the registrar and bishop to have them*

Important Note: If the bishop does not dismiss your complaint the bishop will send it to the respondent for a response. At that stage your identity will be disclosed to the respondent.

State the name of the person you wish to complain about, and the position held by that person at the relevant time.

State how you are entitled to make the complaint – fill in the gaps where appropriate, & tick one box only.

*If you have been nominated by the PCC you **MUST** attach a certified copy of the resolutions required under s10(1)(a)(i) of the Clergy Discipline Measure*

For example, you would have a proper interest, if you have personally observed or experienced the alleged misconduct.

To the Bishop of

My full name is:

My contact address, including postcode, is:

.....
.....
.....
.....

****My contact telephone number is:**

****My e-mail address is:**

I request the registrar to consider not disclosing my identity to the respondent at this stage, for the following exceptional reasons:

.....
.....
.....
.....

I wish to make a complaint of misconduct against –

Name:.....

Position held.....

I am entitled to make this complaint because:

I have been nominated by the Parochial Church Council of which has a proper interest in making the complaint, and I attach a certified copy of the resolution passed by the Parochial Church Council under s.10(1)(a)(i) of the Clergy Discipline Measure

I am a churchwarden of the parish of which has a proper interest in making the complaint

I have a proper interest in making the complaint because:

.....
.....
.....
.....

B2: Form 2, Rule 17

Clergy Discipline Measure 2003
Respondent's answer to a Complaint

IMPORTANT NOTICE: IF THIS ANSWER IS NOT RETURNED WITHIN 21 DAYS THE BISHOP / ARCHBISHOP MAY NONETHELESS PROCEED TO DETERMINE WHICH COURSE TO PURSUE UNDER THE MEASURE IN RESPECT OF THE COMPLAINT

**Delete as appropriate*

To the *Bishop/*Archbishop of

My full name is

My contact address, including postcode, is:

.....
.....
.....

My telephone number is:.....

***E-mail address is optional*

****My e-mail address is:**

My place of ministry is:

Enter the name of the complainant and the date the complaint was made

**I have read the complaint of
dated.....**

Please tick **one box only, and enter reasons where appropriate.*

* **I admit the misconduct alleged in the complaint**

or

* **I admit the following misconduct alleged in the complaint:**

.....
.....
.....

but deny the other alleged misconduct because:

.....
.....
.....
.....

or

* **I deny the misconduct alleged in the complaint because:**

.....
.....
.....
.....
.....

If you admit part but not all the alleged misconduct, please state here the misconduct which is admitted

Briefly summarise your reasons for denying the other alleged misconduct

Briefly summarise your reasons for denying the alleged misconduct

B3: Pro-forma Letter of Acknowledgment

Complainant's name & address

Concerning a Complaint of Misconduct about *The Reverend [Name]*

Dear *[Name of Complainant]*,

I acknowledge receiving on *[date]* your letter of complaint dated *[.....]* about *The Reverend [Name]*. Your complaint will be given full consideration and dealt with in the most appropriate way according to the procedures laid down by law.

The first stage in dealing with your complaint will be to refer it to the diocesan registrar. The registrar will advise me about whether you have a proper interest in making the complaint (in other words, whether you are entitled in law to make the complaint). The registrar will also advise me about whether there is sufficient substance in the complaint to justify instituting disciplinary proceedings. The registrar is normally expected to report back on these matters within 28 days, and at the latest within 56 days. I will then read that report to enable me to decide on the proper course to take.

After considering the registrar's report, I could, if you do not have a proper interest or there is not sufficient substance, dismiss the complaint with a written explanation to you in writing of the reason for dismissal. If the complaint is not dismissed then I would decide which of the following courses is the most appropriate:

- (i) no further action be taken, in which case I would notify you of the reasons for this,
- (ii) the matter to remain on the record conditionally for a fixed period of up to 5 years, (this means that no further action would be taken in respect of your complaint unless a further complaint of misconduct were made against *The Reverend [Name]* during that period),
- (iii) an attempt to be made at conciliation between you and *The Reverend [Name]*, to explore how the complaint could be resolved by agreement,
- (iv) an appropriate penalty to be imposed on *The Reverend [Name]* with *his/her* consent, (but I would not decide on this course of action without first consulting you),
- (v) the complaint to be formally investigated by an officer of the Church and then, if appropriate, referred to a Bishop's Disciplinary Tribunal for determination at a full hearing.

I hope to decide the appropriate course to take within 28 days of receiving the registrar's report, and will notify you in writing of the decision.

While the complaint proceeds you should not discuss it with *The Reverend [Name]* who will now be informed that a complaint has been made.

[You may wish to receive care and support at this time. I will not personally be able to give it to you, because, as bishop, I must remain impartial. However, I have asked [.....] to provide you with care and support on my behalf, and (s)he will be contacting you shortly. His/her contact details are: [address, phone no. etc]

B4: Pro-forma Registrar's letter of notification to the Respondent

Respondent's name & address

Concerning a complaint under the Clergy Discipline Measure 2003

Dear *[Name of Respondent]*,

The Bishop of *[.....]* has referred to me for preliminary scrutiny a complaint made against you by *[name of complainant] [a complainant]*. A copy of that complaint and of the evidence in support is enclosed so that you may be aware of what is happening.

The purpose of the preliminary scrutiny is limited to considering the complaint so that I can send the bishop a written report setting out my views on:

- (i) whether the complainant has, within the meaning of s10 of the Clergy Discipline Measure 2003, a proper interest in making the complaint, and,
- (ii) whether there is sufficient substance in the complaint to justify proceeding with it.

There is no need for you to make any submissions at this stage in response to the complaint. If the complaint proceeds beyond the preliminary scrutiny stage you will have the opportunity to respond in detail with evidence in support within a further 21 day period.

I expect to send my report to the bishop by *[date]*.

[Either]

While the complaint proceeds you should not discuss it with *[name of complainant]*.

[Or, in exceptional circumstances]

The complainant has asked me not to disclose the complainant's identity at this stage, and I have agreed. I have therefore erased from the papers sent to you any details which would reveal it. However, if the complaint proceeds beyond preliminary scrutiny, you will then be told the name of the complainant so that you can respond properly to the complaint. The reasons I agreed at this stage not to disclose the complainant's identity are as follows:

B5: Pro-forma Bishop's letter to the Respondent

Respondent's name & address

Concerning a complaint under the Clergy Discipline Measure 2003

Dear *[Name of Respondent]*,

A formal complaint has been made against you by *[name of complainant]*. The details of that complaint are being sent to you by the diocesan registrar so that you may know more about it.

You *[and your family]* may wish to receive care and support at this time, and so I will ensure that you have all the support and care that you may need. I will not personally be able to give it to you, because, under the terms of the Measure, I have a central role as diocesan bishop in the administration of discipline, and I must therefore remain impartial. Consequently, I have asked *[Name]* to provide you with care and support on my behalf, and (s)he will be contacting you very shortly.

I trust you will get in touch with *[Name]* whenever you need to, and I strongly encourage you to do so. *His/her* address, phone number and e-mail details are:
[address etc]

B6: Pro-forma Bishop' letter – no further action

Complainant's name & address

Concerning a Complaint of Misconduct against *The Reverend [Name]*

Dear *[Name of Complainant]*,

I am grateful to you for bringing this matter to my attention. The diocesan registrar has now reported back to me, and *The Reverend [Name]* has sent an answer in response to your complaint together with evidence in support. Having very carefully considered the whole matter, I have decided that it is not appropriate to take any further action on your complaint.

The reasoning for my decision is as follows: *[etc]*

You are however entitled within 14 days of receiving this letter to ask the President of Tribunals to review my decision if you are dissatisfied with it. The request should be in writing, and you should explain in it why you believe I am wrong. Any request for a review should be accompanied by copies of:

- (i) your complaint,
- (ii) the answer from *The Reverend [Name]*,
- (iii) the evidence in support of the complaint and the answer,
- (iv) the registrar's report, and
- (v) this letter.

A form is provided by the Clergy Discipline Rules 2005 for you to use, and it will help you set out the required information (a copy can be obtained from). You are not permitted to send any new or fresh evidence in support of your complaint. The President of Tribunals will only overrule my decision to take no further action if he is satisfied that I am plainly wrong.

Any request for a review of my decision should be sent to The President of Tribunals, c/o The Legal Office, Church House, Great Smith Street, London SW1P 3NZ.

Appendix C

Membership of the Clergy Discipline Commission

Appointed under section 3(1)(b) of the Clergy Discipline Measure – ‘legally qualified’

The Right Hon Lord Justice Mummery - Chairman & future President of Tribunals

His Honour Judge John Bullimore* - Deputy Chairman & future Deputy President of Tribunals

Appointed under section 3(1)(a) – ‘at least two from each House of the General Synod’

The Right Reverend Christopher Hill, the Bishop of Guildford*

The Right Reverend Michael Hill, the Bishop of Bristol*

The Reverend Geoffrey Harbord (Sheffield)*

The Venerable Alan Hawker, the Archdeacon of Malmesbury (Bristol)*

Mrs Patricia Dyer (Southwark)*

Mr James Humphery (Salisbury)#*

Other members appointed under section 3

Mr Niall Blackie, Joint Diocesan Registrar of Lichfield#

The Venerable Annette Cooper, the Archdeacon of Colchester

The Reverend Canon Dr Judy Hunt*

Mr Michael Sayers (former Secretary of the Council on Tribunals)#

Legally qualified other than those appointed under section 3(1)(b).

* Member of the General Synod.