

**AMENDING CODE OF PRACTICE
UNDER THE CLERGY DISCIPLINE MEASURE 2003**

EXPLANATORY MEMORANDUM

Introduction

1. The Clergy Discipline Measure 2003 ('the CDM') has been fully in force since 1st January 2006. It provides procedures which enable bishops to deal with the vast majority of formal complaints about clergy misconduct (other than complaints relating to doctrine, ritual or ceremonial, which come within the provisions of the Ecclesiastical Jurisdiction Measure 1963). For the small proportion of cases that cannot be resolved by bishops the CDM has established a modern tribunal system which is compliant with human rights legislation.
2. The body responsible for overseeing the operation of the CDM in practice is the Clergy Discipline Commission ('the Commission'), which is constituted under section 3 of the CDM. Under section 39 of the CDM it is the duty of the Commission to formulate guidance for the purposes of the CDM generally, and with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice. The Commission may at any time amend or replace a code, again with the approval of the Dean of the Arches and Auditor. A code, or any amendments, cannot come into force until approved by the General Synod. In July 2005 the General Synod gave approval to a Code of Practice under section 39 ('the Code') which has been in force since 1st January 2006. The Code was revised, with Synod's approval, in February 2011, and July 2013.
3. When producing or revising a code, the Commission has to work within the framework of the CDM and the Clergy Discipline Rules ("the Rules") which is a statutory instrument dealing with detailed and technical matters of procedure. The Code is not intended to be a comprehensive 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 CDM and the Rules. The Code concentrates on complaints against parochial clergy, who form the majority of those who are in active ministry.
4. The Commission is proposing to make further revisions to the Code by way of an Amending Code. Many of the revisions arise out of changes to the law made by the Safeguarding and Clergy Discipline Measure 2016 ("the 2016 Measure") when it comes into force, and by procedural changes contained in the proposed Clergy Discipline (Amendment) Rules 2016 (GS 2033). Other revisions clarify existing guidance in the Code.
5. Copies of the Code as amended by the Amending Code (GS Misc 1140) can be downloaded from <http://www.churchofengland.org/about-us/structure/general-synod.aspx>. Hard copies of GS Misc 1140 can be requested in advance from Mr Andrew Brown, Head of Synod Support (andrewj.brown@churchofengland.org).

Explanation of proposed revisions to the Code

Paragraph references below refer to paragraphs in the existing Code of Practice

6. **Paragraph 34:** This clarifies that a complaint about sexual abuse can be made by a friend or relative of the person who has been sexually abused.
7. **Paragraph 56:** The amendment here reflects a change made by section 7 of the 2016 Measure which removes the limitation period of one year for complaints of sexual misconduct towards children and vulnerable adults. Under section 7 the President of Tribunals will have the task of determining whether an adult was vulnerable at the time of the misconduct complained about.
8. **Paragraph 59:** The guidance will no longer advise the bishop to wait 14 days before reporting criminal conduct to the secular authorities if the complainant has not already done so. Safeguarding cases in particular may require swifter action.
9. **Paragraph 99:** Guidance in the Code about providing pastoral support for a respondent does not presently specifically refer to an application to the President of Tribunals for permission to make a complaint out of time. The revision here will clarify that if the bishop becomes aware that an application has been made to the President of Tribunals for permission to make a complaint out of time, the bishop should ensure appropriate pastoral support is available to the respondent.
10. **Paragraphs 108 & 109, and 122 & 123:** Section 10 of the 2016 Measure will amend sections 11 and 13 of the CDM so as to enable the President of Tribunals to ask a bishop to reconsider a decision to dismiss a complaint, or a decision to take no further action, as the case may be. Paragraphs 108 and 109 relate to dismissals of a complaint, and paragraphs 122 and 123 relate to decisions to take no further action; the revisions to them are consequential upon the amendment in section 10 of the 2016 Measure.
11. **Paragraphs 147 & 157:** The proposed changes here have been added to set out good practice – namely, that a respondent should be encouraged by the bishop to take legal advice before accepting a penalty by consent.
12. **Paragraphs 164 & 169:** This clarifies that the duty on the bishop to consult the President of Tribunals under section 30 of the CDM only arises if the bishop proposes to impose a penalty following a criminal conviction or divorce, as the case may be. The bishop does not have to consult the President when considering whether or not a penalty should be imposed – if the bishop decides not to impose a penalty there is no requirement under section 30 to consult the President.
13. **Paragraph 194:** Where a complaint has been referred to a tribunal, the President of Tribunals under section 18 of the CDM may, upon application by a party, direct that the complaint be withdrawn. Neither the CDM nor the Rules require the President to consult the other party or the bishop before giving such a direction. The Code hitherto has advised that the other party should be invited by the President to make written observations – the proposed revision will result in the bishop also being invited to submit observations.

14. **New paragraphs after paragraph 221:** The 2016 Measure gives bishops new powers of suspension. Two proposed paragraphs to be inserted in the Code after paragraph 221 refer to those powers. The first new paragraph is relevant to suspensions imposed when an application is made to the President of Tribunals for permission to make a complaint out of time. The second new paragraph is concerned with suspensions following receipt of information from the police or local authority in safeguarding cases.
15. **Paragraphs 222:** The revisions here are consequential upon the new power referred to above which enables the bishop to impose a suspension when an application is made to the President of Tribunals for permission to make a complaint out of time.
16. **Paragraph 223:** This reflects proposed amendments to the Rules contained in the Clergy Discipline (Amendment) Rules 2016 (GS 2033). Copies of notices of suspension will no longer be served on relevant persons; instead those persons will be given written notification that a suspension has been imposed. The reason for the change is that copies of notices of suspension could disclose details that are confidential, especially in safeguarding cases; relevant persons generally need to know that there has been a suspension – they do not need to know details that are confidential.

Paragraph 223, as revised, will clarify that a priest or deacon's congregation should be informed when a suspension is imposed. This generally happens in practice, but the Code will now cover it expressly.
17. **Paragraph 234:** This is consequential upon a proposed amendment to the Rules contained in the Clergy Discipline (Amendment) Rules 2016 (GS 2033).
18. **Paragraph 255:** Section 1(9) of the 2016 Measure amended the Church of England (Legal Aid) Measure 1994 so that legal aid may be available in respect of an appeal by a cleric to the President of Tribunals against a suspension imposed on the basis of information received from a local authority or the police in a safeguarding case. Paragraph 255 as amended will draw attention to the availability of legal aid in such cases.
19. **Appendix A:** Contact details for diocesan bishops and legal officeholders are being brought up to date where appropriate.
20. **Appendix B4:** A new paragraph is added to the pro-forma letter from the registrar to a respondent in which the respondent is notified about a complaint. The new paragraph refers to an explanatory leaflet produced by the Commission, and a copy of the leaflet will be enclosed. The new paragraph also advises that more detailed guidance can be found in the Code.

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