

GENERAL SYNOD
CLERGY DISCIPLINE COMMISSION
ANNUAL REPORT FOR 2011

This report is made in fulfilment of the duty placed upon the Clergy Discipline Commission by section 3(3)(c) of the Clergy Discipline Measure 2003 to make an annual report to the General Synod, through the House of Bishops, on the exercise of its functions during the previous year. This is the eighth annual report made by the Commission and covers its work in the year to 31st December 2011.

The House of Bishops received this report in May 2012.

MEMBERSHIP

1. The Clergy Discipline Commission (“the Commission”) is constituted under section 3 of the Clergy Discipline Measure 2003 (“the Measure”), which provides for the appointment by the Appointments Committee of a Commission of not more than twelve persons, to include at least two from each House of the General Synod and at least two with legal qualifications specified in the Measure.¹ The Chair and Deputy Chair of the Commission are appointed by the Appointments Committee from amongst the legally qualified members after consultation with the Dean of the Arches and Auditor.
2. The Commission’s membership (set out in Appendix 1) did not change in 2011.
3. The members of the Commission wish to record their sincere gratitude to the Commission’s staff without whom it could not function at all: first, to Adrian Iles, the Designated Officer, for his excellent work in the formal investigation of, and reports on, complaints under the Measure, the presentation of cases to the disciplinary tribunals and the drafting of many documents; secondly, to Sarah Clemenson, the Secretary to the Commission, for all her work in dealing with the Commission’s correspondence, meetings, minutes and other matters.

THE WORK OF THE COMMISSION IN 2011

4. The Commission met on three occasions in 2011.
5. The draft Clergy Discipline (Amendment) Measure (“the draft (Amendment) Measure”) was given First Consideration at the February 2011 group of sessions of the Synod, and was committed to a Revision Committee. Through the Steering Committee, which included two members of the Commission and a former member, the Commission submitted to the Revision Committee a proposal for amendment, relating to an aspect of the operation of the Measure where there could be an appearance of bias: since the President and Deputy President of Tribunals are both members of the Commission, if a complaint were made under

¹ Defined in s.3(1)(b) to be “persons who have either a seven years general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge.”

the Measure by or against a Commission member and referred to the President or Deputy, there could be a risk of perceived bias if a ruling were given in favour of that member. There is no current provision in the Measure which enables the President or Deputy President to delegate their role to a third party in such a situation. Accordingly, the Commission proposed that the draft (Amendment) Measure should be amended to include a mechanism enabling the President and Deputy President to delegate their functions to a third party, drawn from the panel of legally qualified chairmen appointed under section 21(2)(c) of the Measure. The Revision Committee accepted the proposal and an amendment to this effect now stands part of the draft (Amendment) Measure in paragraph 3 of the Schedule.

6. Revisions to the Code of Practice were considered by the General Synod in February 2011 and approved, and are now in force. Most of the work by the Commission on the revised Code had been carried out before 2011 but at its January 2011 meeting the Commission gave further consideration to the proposed new section dealing with the relationship between disciplinary proceedings under the Measure and capability procedures under the Ecclesiastical Offices (Terms of Service) Regulations.
7. In the course of 2011, the Commission considered various practical issues relating to tribunal hearings. In particular, the Commission looked at how to address the situation in which the Chair, or a member of the tribunal panel, was taken ill or was otherwise temporarily unable to continue in their role. The Commission came to the conclusion that the Clergy Discipline Rules 2005 could be amended to allow greater flexibility with the aim of enabling the tribunal to continue where possible so that it could conclude its work. For example, the Commission considered that the Rules could be changed to permit another member of the tribunal to pronounce the tribunal's decision if the chair were unable to do so, and to enable the appointment of a replacement chair for a subsequent penalty hearing, if the chair were unable to continue following the main hearing. The Commission intends to invite the Rule Committee to consider amending the 2005 Rules in these and various other ways in the event that the draft Clergy Discipline (Amendment) Measure receives Final Approval, and in the meantime will continue work on its proposals.
8. The Commission also decided that the decisions of tribunals should be published on the Church of England website (the decisions were already in the public domain, but on a private website). The decisions can now be found on the following link:
<http://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline/tribunal-decisions>.
9. In 2011 the Commission looked at the discipline system as it relates to cases of self-disclosed misconduct. The Commission agreed that it would be undesirable to amend the Measure to introduce special, shortened procedures to deal with such cases, (due to the danger that respondents could fail to fully disclose the true extent of their misconduct), but it could nonetheless offer guidance to bishops and registrars on the topic, in particular to emphasise that an admission of misconduct should be reduced to writing, and that the written admission could subsequently form the basis of an archdeacon's complaint. To that end, a letter containing guidance was sent to all bishops in early 2012 (and copied to registrars).
10. In early 2011 the Commission was consulted by the Working Party of the Convocations that has been established to review the Guidelines for the Professional Conduct of the Clergy. The Commission made a number of recommendations to the Working Party, setting out various ways in which it believed the Guidelines could be improved. In particular, the Commission recommended that section 3, as it related to child protection, could be updated,

and section 10.5 expanded in relation to the guidance on financial activities (specifically to say more about the need for accurate record keeping and transparency). Since the Guidelines are often referred to during tribunal hearings, the Commission also suggested to the Working Party that they should undergo wider scrutiny, and that input from the House of Bishops should be sought about their contents.

11. Throughout the year the Commission considered the provision of training in respect of the Measure, particularly for new bishops and archdeacons. It discussed the format of the training day due to take place in May 2012.

ANNUAL ANALYSIS OF COMPLAINTS

12. The annual analysis of complaints made under the Measure, recording by whom complaints were made and how they were dealt with, is presented in Appendix 2.
13. In 2011, 66 complaints were made under the Measure against priests or deacons, as against 68 in 2010. The total number of distinct respondents in respect of those cases was 66. This compares with the total number of clergy falling within the provisions of the Measure as at 31st December 2010 of around 19,000 (including approximately 11,600 licensed stipendiary and non-stipendiary clergy, 1,600 chaplains and clergy in other ministries, and an estimated 5,500 active retired clergy).²
14. Almost a third of dioceses (28%) had no complaints at all, and none had more than 6 complaints. As in previous years, the vast majority of complaints (76%) were made by complainants other than archdeacons, churchwardens or persons nominated by a PCC, with archdeacons making up a further 21% of complainants.
15. Over a third of complaints (34%) were dismissed by the bishop, and no further action taken in a further 16%. A penalty by consent was agreed in 11% of the complaints, 5% were conditionally deferred, and only 8% of the complaints were referred to the Designated Officer for formal investigation (compared with a quarter in 2010). (25% of the complaints made in 2011 were outstanding at the year-end.) Following formal investigation, 1 complaint was referred to a bishop's disciplinary tribunal, and the President of Tribunals decided that there was no case to answer in respect of a further 4 complaints.
16. 1 complaint was heard by a bishop's disciplinary tribunal and 1 appeal was heard in the Arches Court of Canterbury in 2011.
17. 5 complaints were made against bishops in the course of 2011, of which 5 were dismissed³ and 1 was outstanding at the year-end. No complaints were brought against either Archbishop.

On behalf of the Commission

Sir John Mummery (Chair)
April 2012

² The statistics are the most recent available and are taken from *Church Statistics 2009/10 (GS Misc 1000)*, published by the Research and Statistics Department of the Archbishops' Council in July 2011.

³ This includes one outstanding complaint from 2010.

APPENDIX 1: MEMBERSHIP OF THE COMMISSION AS AT 31ST DECEMBER 2011

Appointed under section 3(1)(b) – ‘legally qualified’

Chair (and President of Tribunals)

The Right Hon Lord Justice Mummery*

Deputy Chair (and Deputy President of Tribunals)

His Honour Judge John Bullimore*

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

The Right Reverend Dr Peter Forster, Bishop of Chester+^
The Right Reverend Christopher Hill, Bishop of Guildford+^

Revd Moira Astin (Oxford)+^
Revd Canon Celia Thomson (Gloucester)+^

Dr Anna Thomas-Betts (Oxford)+^
Mr David Mills (Carlisle)+^

Other members appointed under section 3

Mr Niall Blackie (Diocesan Registrar of Lichfield)*#
The Venerable Annette Cooper, the Archdeacon of Colchester*^
The Reverend Canon Cynthia Dowdle*
Mr Michael Sayers (former Secretary of the Council on Tribunals)*#

- ^ Member of the General Synod.
- * Appointed to 31st December 2013.
- + Appointed to 31st December 2015.
- # Legally qualified other than those appointed under section 3(1)(b).

APPENDIX 2: ANALYSIS OF FORMAL COMPLAINTS MADE UNDER THE MEASURE AND HOW THEY WERE DEALT WITH

Complaints against Priests and Deacons

	2011 (2010)	%
Formal complaints made to bishops (total)	66 (68)	
<i>Dioceses with no complaints made</i>	12 (15)	28% (35%)
<i>Dioceses with between 1 and 5 complaints made</i>	31 (27)	72% (63%)
<i>Dioceses with 6 or more complaints made</i>	0 (1)	0% (2%)
Of the total, the following numbers of complaints were made by:		
<i>a person nominated by a PCC under s10(1)(a)(i)</i>	0 (1)	0% (1%)
<i>a churchwarden under s10(1)(a)(ii)</i>	2 (0)	3% (0%)
<i>an archdeacon under s10(1)(a)(iii)</i>	14 (18)	21% (26%)
<i>another person under s10(1)(a)(iii)</i>	50 (49)	76% (72%)
Number of complaints delegated under s13 Dioceses, Pastoral and Mission Measure to a suffragan bishop for determination	10 (19)	
Action taken in 2011 in relation to complaints made in 2011 or earlier		
<i>Dismissed by the bishop under s11(3)</i>	25 (16)	34%
<i>No further action under s12(1)(a) & s13</i>	12 (6)	16%
<i>Conditional deferment under s12(1)(b) & s14</i>	4 (2)	5%
<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (2)	0%
<i>Penalty by consent under s12(1)(d) & s16</i>	8 (9)	11%
<i>Formal investigation under s12(1)(e) & s17</i>	6 (18)	8%
<i>Withdrawn (rule 59(1)(a))</i>	0 (1)	0%
<i>No decision as at 31st December 2011</i>	18 (17)	25%

Number of complaints referred unsuccessfully to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (0)
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Penalties by consent imposed under s12(1)(d) & s16	
<i>Prohibition for life (with or without resignation)</i>	0 (8)
<i>Limited prohibition (with or without resignation)</i>	3 (7)
<i>Resignation without prohibition including revocation of licence</i>	0 (0)
<i>Injunction</i>	0 (0)
<i>Rebuke</i>	2 (0)
<i>Injunction and Rebuke</i>	3 (0)
Cases referred for formal investigation under s12(1)(e) & s17	
<i>President of Tribunals decided 'No case to answer'</i>	4 (4)
<i>President referred complaint to bishop's disciplinary tribunal</i>	1 (3 [*])
<i>President not decided as at 31st December 2011</i>	0 (10)
<i>Formal investigation ongoing as at 31st December 2011</i>	1 (0)
Number of cases determined by a tribunal	1 (2 [†])
Number of suspensions imposed (total)	6 (14)
<i>Suspensions under s36(1)(a) in course of complaint proceedings</i>	3 (5)
<i>Suspensions under s36(1)(b) following arrest</i>	5 (9)
Cases where a penalty of prohibition or removal from office was imposed under s30(1)(a) following conviction and sentence of imprisonment	3 (2)
Cases where a penalty of removal from office or prohibition was imposed under s30(1)(b) following decree of divorce or order for judicial separation	1 (2)

* One complaint referred to a tribunal was subsequently withdrawn; and a case referred to a tribunal in 2009 was also withdrawn in the course of 2010.

† One case determined by a tribunal was outstanding from 2009; a third case referred to a tribunal was not heard in the course of 2010.

Complaints against Bishops and Archbishops

Formal complaints made to archbishops	2011 (2010)
<i>in respect of a bishop</i>	5 (7)
<i>in respect of the other archbishop</i>	0 (0)
How complaints were dealt with	
<i>Dismissed under s11(3)</i>	5 [‡] (2)
<i>No further action under s12(1)(a) & s13</i>	0 (0)
<i>Conditional deferment under s12(1)(b) & s14</i>	0 (0)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (0)
<i>Penalty by consent under s12(1)(d) & s16</i>	0 (0)
<i>Formal investigation under s12(1)(e) & s17</i>	0 (0)
<i>Withdrawn (rule 59(1)(a))</i>	0 (1)
<i>No decision as at 31st December 2011</i>	1 (4)
Number of complaints unsuccessfully referred to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (0)
Number of Vicar-General's courts held	0 (0)
Number of suspensions imposed	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(a) following conviction and sentence of imprisonment	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(b) following decree of divorce or order for judicial separation	0 (0)

[‡] One complaint was outstanding from 2010.