

GENERAL SYNOD**SAFEGUARDING: FOLLOW-UP TO THE CHICHESTER COMMISSARIES' REPORTS****FOREWORD BY THE ARCHBISHOPS OF CANTERBURY AND YORK**

Rowan Williams' decision in December 2011 to initiate a visitation of the Diocese of Chichester was the first time an Archbishop had taken action of that kind in the Church of England since the late nineteenth century. It reflected continuing and deep seated concerns about shortcomings in the way safeguarding arrangements had operated within the diocese.

The interim and final reports issued by the Commissaries in August 2012 and April 2013 showed the wisdom of that recourse to such a rarely used archiepiscopal power. The Commissaries' sombre and careful prose lays bare a painful story of individual wickedness on the part of abusers. It also highlights very serious and serial systemic failures by the Church as a whole in dealing properly with information about abuse as well as great suffering on the part of those who not only experienced abuse but then had to struggle for far too long before they were properly listened to.

The Commissaries have made many important recommendations not just for the Diocese of Chichester but also for the Church of England as a whole. While acknowledging that national policies have, over recent years, been improved and updated, there have been serious questions over how effectively policies have been implemented across the dioceses. They have also identified a number of areas where our present legal framework requires further attention. Since the publication of the interim report much work has been done by the National Safeguarding Adviser, the Joint Liaison Safeguarding Group, and the Clergy Discipline Commission, along with officers, exploring how best to respond to and enact the Commissaries recommendations. This work has also examined lessons learned from other cases in the Church and in wider Society.

Last month the House of Bishops and the Archbishops' Council considered the Commissaries' recommendations, and all the work that has followed. These conversations took place against the background of further stories which served as a reminder of the challenge both to put right past wrongs and to ensure that current best practice is applied consistently. This challenge is one for the whole Church of England. It is an issue for all of us.

It is right, therefore, that the General Synod should receive an account of the actions that the House and the Council have put in hand, have an opportunity to comment on the next steps, and be able to identify with the apology that we wish to offer unreservedly for the failure of the Church of England's systems to protect children, young people and adults from physical and sexual abuse inflicted by its clergy and others and for the failure to listen properly to those so abused. The sexual and physical abuse that has been inflicted by these people on children, young people and adults is and will remain a deep source of grief and shame for years to come.

As the Commissaries rightly observed: “All contemporary safeguarding policies and procedures in the Church should be a response to what we learn and see in Jesus himself... In witness to this faith and to our sense of obligation to children who are brought to Jesus through the care of the Christian community, the Church should set for itself the highest standards of care available to our society today. If that is true especially in relation to children, it ought also to be true for the care we offer to some of the most vulnerable adults in the modern world.”

We cannot overestimate the importance of responding appropriately today. Sadly for many this comes far too late. History cannot be rewritten, but those who still suffer now as a result of abuse in the past deserve this at least, that we hear their voices and take action to ensure that today’s safeguarding policies and systems are as robust as they can be. This work is an essential and prior Gospel imperative, for any attempts we make to grow the church, to seek the common good, and to reimagine the Church’s ministry.

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SAFEGUARDING: FOLLOW-UP TO THE CHICHESTER COMMISSARIES' REPORTS

Introduction

1. The Church of England has had a succession of policy statements on safeguarding from the 1990s onwards. These were

- Child Abuse Policy of the Church of England (1995).
- Child Protection Policy of the Church of England (1999)
- Protecting All God's Children (2004)

The current framework of safeguarding policies is as follows:

- Promoting a Safe Church (2006)
- Responding to Domestic Abuse (2006)
- Protecting All God's Children (2010)
- Responding Well to those who have been sexually abused (2011)
- plus the Interim Safeguarding Guidelines Relating to Safer Recruitment (2010) (currently being revised).

2. The Chichester Commissaries were appointed by the then Archbishop of Canterbury on 21st December 2011 to undertake the first visitation to a Church of England diocese since the 1890s. They issued two reports, in August 2012 and May 2013. These interim and final reports of the Chichester Commissaries may be downloaded at:

• <http://rowanwilliams.archbishopofcanterbury.org/articles.php/2604/archbishops-chichester-visitation-interim-report-published>

• <http://www.archbishopofcanterbury.org/articles.php/5055/archbishops-chichester-visitation-final-report-published>

3. The Chichester Commissaries point out in their final report that 'the task continuing to face both the Diocese of Chichester and the wider National Church is a considerable one and will not be achieved, even with the greatest expedition, except by a long and persistent journey of commitment.'
4. In recent months a number of further cases of abuse have come to light in other dioceses of the Church of England, many going back a number of years. In particular, the case of the former Dean of Manchester, on which the Archbishop of York has announced an independent enquiry, underlines the seriousness of the challenge facing the Church of England.
5. Since the publication of the interim report of the Chichester Commissaries, the Joint Safeguarding Liaison Group has held a series of discussions. This work has developed in cooperation with the Clergy Discipline Commission, which has focused on the Commissaries' recommendations about the Clergy Discipline Measure 2003 ('the CDM'). The output from these discussions takes two main forms, namely:

- **Possible legislative changes** in the form of amendments to the CDM itself and to the wider legislative framework, (such as the Code of Practice and the Clergy Discipline Rules made under the CDM); and
 - **Proposed wider non-legislative changes** arising out of the Chichester Commissaries' other recommendations (which also endorsed the previous recommendations made by Baroness Elizabeth Butler-Sloss in her report entitled 'Historic Cases Review of Roy Cotton and Colin Pritchard' dated 19th May 2011).
6. Both strands of work have been discussed and endorsed by the House of Bishops and the Archbishops' Council. Both bodies have expressed support for concrete actions to move forward in these areas. The Synod is now being asked to do the same.
7. It is anticipated that further work will come to light in the coming months. The very nature of this work means that this cannot always be predicted. The House of Bishops and the Archbishops' Council are committed to taking whatever action may be required so that the Church of England can have legitimately claim excellence in its safeguarding practice.

Possible legislative Changes

8. The possible areas of legislative change, which have been identified in light of discussions surrounding the Chichester Commissaries' reports, involve:
- Removal of the 12 month limitation period for the bringing of complaints under the CDM in sexual abuse cases
 - Extending the bishop's power of suspension under the CDM
 - Amending the law in relation to risk assessments
 - Preventing prohibited clergy from robing
 - Extending the circumstances in which churchwardens and PCC members can be suspended and/or removed from office
 - Amending Canon C 8.
9. The House and the Council have agreed that given their importance and, in some respects, their sensitivity, these matters should be the subject of a consultation over the course of the summer, with a view to the introduction of draft legislation as soon as possible, so that the necessary legislation receives Final Approval in the course of the current quinquennium. The consultation document is attached in the Appendix.
10. Two further proposed changes to the legislative framework are already being brought to the Synod at the July group of sessions. The first of these is the proposal to amend the Code of Practice under the CDM to clarify when a complaint can be made under the Measure notwithstanding an acquittal in criminal proceedings. The second proposal is for an amendment to the Clergy Discipline Rules made under the CDM so that victims will be able to withhold their contact details from respondents when making complaints.

Wider Non-Legislative Changes

11. These take the form of actions proposed by the commissaries where changes to practice but not legislative changes are needed. The general actions which are being proposed are as follows:
 - The undertaking of an audit of safeguarding provision in every diocese
 - The review of risk assessment procedures
 - The development of core material and expectations around attendance for safeguarding training.
12. Most of these actions will require increased national resources at least in the short term (and possibly in the long term as well) and the audit itself may show the need for many dioceses to increase their resourcing on safeguarding. The Synod is asked to note that the Archbishops' Council has now allocated additional funds at national level for the national work. This will be in addition to any funding which will need to be found by the dioceses to support increased work on safeguarding.
13. The non-legislative actions can be broken down in more detail as follows:
 - **Changes to the culture of the Church** - Implementing cultural changes to any organisation is a complex task and does not happen quickly. However, this process can be facilitated by identifying areas where cultural change should happen. The proposal for an audit of diocesan safeguarding is intended to address both the more and less obvious areas where cultural change needs to happen.
 - **Ensuring that existing and new safeguarding policies are properly implemented at diocesan level** – Further work needs to be done to support safeguarding advisers in the effective roll-out of these policies.
 - **Ensuring that every diocese has adequate safeguarding expertise with a professional adviser and an effective safeguarding group** – There will be a need for national advisers to provide bishops with a checklist to carry out an immediate review of provision, including an assessment of diocesan websites and an audit of their current provision and future needs.
 - **The roll-out of a national programme of safeguarding training** – This will require the development of training material at national level and advice to dioceses on how to use this material, who should attend, and encouraging dioceses to commit to the necessary training.
 - **Introduction of best practice guidance on responding to serious situations** – This includes putting in place adequate resource at diocesan level to respond quickly to serious situations and developing guidance for dioceses on best practice in such situations. This will also require resource at national level to address situations which require national attention.
 - **Development of guidance on safe working practices** – this guidance is being worked on by the Joint Safeguarding Liaison Group.
 - **Review of risk assessment processes** – this will need to be developed and agreed at national level before it is rolled out at diocesan level, and will require additional national resource to ensure that risk assessment processes are consistent, robust, of a high standard and compliant with human rights requirements.

- **Improved policy and practices on responding well to survivors** – This will require additional resource at national level to help dioceses respond better and to recruit and train Authorised Listeners.
- **Safeguarding standards for ministers from other denominations** – This is dependent on the implementation of the Protection of Freedoms Act 2012 after which further guidance can be developed.
- **Further clarity on the issue of confidentiality**, including with regard to the Confessional, where some additional guidance may be needed.

Synod Motion

14. The motion before the Synod accordingly acknowledges and apologises for past wrongs and seeks endorsement from the Synod for legislative and non-legislative progress to be made during the period of this Quinquennium.
15. If the Synod passes the motion, it is expected that the consultation on possible legislative changes will run until the end of September 2013. Draft legislation will then be finalised during the remaining 3 months of the year. The aim is to bring the draft legislation in its final form for approval by the Synod in February 2014.
16. Meanwhile, if the Synod endorses the motion, additional time and resources will be committed to carrying out the non-legislative programme outlined above during 2013, 2014 and beyond.

Consultation Paper on possible legislative changes arising out of the Chichester Commissaries' reports

1. The reports of the Archbishop of Canterbury's Commissaries to the Diocese of Chichester made a number of proposals for legislative change to enable the Church of England to deal more effectively with safeguarding issues.
2. These have been discussed by the Joint Safeguarding Liaison Group, the Clergy Discipline Commission and the Legal Office. In the light of that initial consideration the Archbishops' Council has concluded that some legislative changes are needed. Its intention is to bring draft legislation to the Synod in February 2013.
3. Before reaching a final view on all the elements of the legislation, the Council would be grateful for comments on the analysis in this paper of the various areas flagged up by the Commissaries and the suggestions it offers for possible ways forward. Comments should be sent to SafeguardingCDM@churchofengland.org by 30 September. It would be helpful if you could indicate your role when responding (eg as diocesan registrar, Bishop's chaplain, diocesan safeguarding adviser).

A. Removal of the CDM 12 month limitation period in sexual abuse cases

4. The Commissaries have recommended that the limitation period for the bringing of complaints under the Clergy Discipline Measure 2003 ('the CDM') should be removed for complaints alleging sexual abuse.
5. Under the CDM a complaint may be made if misconduct has occurred in the previous 12 months, or, where there has been a series of acts, if the last act of misconduct took place in the previous 12 months. The rationale for this restriction is twofold: first, justice requires a fair and expeditious investigation because justice delayed is justice denied; and second, over the course of time memories fade and evidence may be lost, so a cleric could be prejudiced in defending an allegation of misconduct where there has been delay.
6. In appropriate cases under current provisions a complainant may apply to the President of Tribunals for permission to make a complaint out of time, i.e. where the alleged misconduct took place more than 12 months before. The President may grant permission where he considers there has been a good reason for the delay.
7. The limitation period of 12 months has attracted criticism in relation to safeguarding cases because experience shows that sexual abuse may often not be reported by child victims for 20 years or more. If victims do eventually come forward but are then required to make an application for permission to bring the complaint out of time, they may be deterred from pursuing the complaint.
8. The Clergy Discipline Commission (which has responsibility for overseeing the disciplinary system) fully accepts that in the vast majority of complaints, i.e those that do not relate to sexual abuse, it is appropriate that complaints should be made within 12 months, subject to the power of the President to extend time where justice requires. However, the Commission recognises that there are good grounds for excluding child sex abuse cases from the requirement that a complaint should be brought within that period.

9. **The Commission is in favour of completely removing the limitation period within which to make a complaint in relation to sexual abuse committed on children.** The Commission feels that to replace the existing limitation period with a longer period, for example 6 or 10 or 15 years, would be arbitrary, and may still result in victims of serious sexual abuse being prevented from presenting complaints.
10. The Commissaries did not differentiate in their report between sexual abuse committed against children, and sexual abuse committed against vulnerable adults. Whilst in principle it would be desirable also to remove the limitation period in relation to complaints about the sexual abuse of vulnerable adults, the Clergy Discipline Commission has identified a potential difficulty in doing so. Whereas a child is easily defined, the definition of ‘vulnerable adult’ in the Safeguarding Vulnerable Groups Act is complex and could not readily be used as the reference point for decisions about time limits under the Clergy Discipline Measure.
11. The one definition that might possibly work- though it is quite a narrow one- is the one in the House of Bishops’ policy document- *Promoting a Safe Church (GS Misc 837)*- namely ‘*any adult aged 18 or over who, by reason of mental or other disability, age or other illness or other situation is permanently or for the time being unable to take care of himself, or to protect him or herself against significant harm or exploitation.*’
12. It would be helpful to have views on whether the removal of the limitation period should be confined to cases involving children or whether removing it for vulnerable adults as thus defined would be workable. In cases where the limit still applied it would of course continue to be possible for complaints to be brought out of time where the President of Tribunals considered there was a good reason why it was not made at an earlier date.
13. Implementing any removal of the limitation period will require legislation to amend the Clergy Discipline Measure and consequential changes to the Clergy Discipline Rules.

B. Extending the bishop’s CDM power of suspension

14. In the final report on the Chichester visitation, the Commissaries urged that diocesan bishops be given a wider *power* of suspension in safeguarding cases, in respect of both children and vulnerable adults.
15. Under the existing provisions of the CDM a power of suspension may be imposed in the course of a complaint when the complaint has reached the preliminary scrutiny stage – i.e. once the diocesan registrar has produced a preliminary report for the bishop. In urgent cases a suspension can be imposed quickly because the registrar will produce a report within 24 hours when required to do so. However, no early suspension can currently be imposed in cases where misconduct took place outside the limitation period of 12 months, because in such cases an application must first be made to the President of Tribunals for permission to make the complaint out of time – in practice this delays matters by about 3 months.
16. The Commissaries have therefore recommended that in such cases the bishop should be able to impose a suspension in sexual abuse cases when credible evidence of abuse is received by the bishop notwithstanding a complaint has not yet been made – this would apply to cases involving ‘vulnerable adults’ as well as children.

17. If the limitation period in sexual abuse cases involving children were lifted in accordance with the Clergy Discipline Commission's proposal at A. above, there would be no practical need to extend the bishop's powers to suspend in those cases – the bishop would be able to impose a suspension at an early stage when the complaint was made, without having to wait for the outcome of an application for permission to make the complaint out of time. But this would not resolve the problem of delay in relation to sexual abuse cases involving vulnerable adults, although as explained above, there would be difficulties in defining satisfactorily what is meant by 'vulnerable adult' in this context.
18. These difficulties would be avoided if the bishop's powers of suspension were extended to cover all cases where the alleged misconduct had been committed more than 12 months beforehand, provided suspension was necessary. There may be complaints, not just in relation to sexual abuse, where the bishop would have real concerns if the priest in question remained in ministry whilst an application seeking permission to make the complaint was being considered by the President. The bishop in such circumstances might form the view that it was necessary to suspend the priest as soon as possible.
19. **The Clergy Discipline Commission favours the following extension to a bishop's power to suspend:**
 - The bishop to have the power to suspend whenever a written application is submitted to the President of Tribunals for permission to make a complaint out of time and the bishop forms the view that suspension is necessary in all the circumstances of the case pending the President's decision;
 - Because a suspension would normally have serious implications for the priest concerned and the parish, before imposing a suspension the bishop to receive written advice from his registrar on (a) whether the person making the complaint has a proper interest; (b) whether there is credible evidence at this stage that the complaint is of sufficient substance; and (c) whether a suspension is necessary in all the circumstances of the case pending the President's decision;
 - The suspended priest to have a right to appeal to the President against a suspension;
 - A suspension to be limited to 3 months, subject to revocation or renewal by the bishop;
 - A suspension to be automatically terminated if the President refuses the application for permission to make the complaint out of time;
 - If the President grants the application to make a complaint out of time, the suspension to be renewable under the existing provisions of the CDM.
20. Implementing these proposals will require primary legislation to amend the Clergy Discipline Measure followed by consequential changes by statutory instrument to the Clergy Discipline Rules.

C. Amending the law in relation to risk assessments

21. The Commissaries have recommended that any cleric '*credibly suspected*' of sexual abuse should undergo a professional safeguarding assessment to gauge whether there is a risk of future sexual misconduct. Such risk assessments would be unnecessary where

misconduct can be proved, because under the CDM a cleric who has committed misconduct can be removed from ministry and prohibited for as long as necessary; there is no need in such cases to prove *future* risk of misconduct.

22. The procedures envisaged by the Commissaries would generally only be needed where a cleric has not been convicted in a criminal court of any sexual offences, has not had a complaint of sexual misconduct proved against him under the CDM, and has not been entered on a barred list under the Safeguarding Vulnerable Groups Act ('SVGA') as amended by the Protection of Freedoms Act 2012.¹
23. Three questions need to be considered. First: when should a risk assessment be sought? Second: should it be obligatory for a cleric to co-operate with the risk assessment process? Third: What action should be taken if a risk assessment identifies a safeguarding risk?
24. When should a risk assessment be sought? The trigger suggested by the Commissaries for a risk assessment to be commissioned is if the cleric is '*credibly suspected*' of sexual abuse. This is quite a narrow test. An alternative approach would be to enable a bishop to commission a risk assessment where the priest was reasonably suspected of having committed 'relevant conduct', with 'relevant conduct' being defined to include for example, possession or use of indecent pornographic material (not just involving children), inappropriate conduct (not just sexual misconduct) towards children (and possibly also vulnerable adults), and inappropriate physical contact with any person.
25. Should a cleric be obliged to co-operate? To make the risk assessment process effective there would need to be a power for the bishop to compel a cleric to co-operate in the risk assessment process – otherwise, for obvious reasons, many would choose not to take part and the process would be frustrated.
26. Because risk assessments involve intrusive enquiries into the private life of the person being assessed, the provisions of Article 8² of the European Convention on Human Rights would need to be satisfied when compelling a cleric to take part. To justify in law the need to seek a risk assessment the bishop would need to be able to argue that where a cleric was reasonably suspected of having committed 'relevant conduct', it was proportionate to require the cleric to undergo a risk assessment.
27. The means by which a cleric could be compelled to co-operate with a risk assessment would be to amend canon law. Canon law could provide that where the diocesan bishop had grounds for reasonably suspecting a cleric in the diocese of having committed any 'relevant conduct' the bishop would be able to write to the cleric setting out those grounds, and direct that the cleric must undergo a risk assessment in accordance with national best practice procedures approved by the House of Bishops or, perhaps, the General Synod.

¹ When the Clergy Discipline (Amendment) Measure 2013 comes into force later this year a bishop will have power to remove from office and prohibit (a) a cleric who has been convicted of a serious sexual offence whether or not a prison sentence has been imposed by the criminal court, and (b) a cleric who has been included by the Disclosure and Barring Service on the children's barred list or the adults' barred list.

² Article 8.1: 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

Article 8.2: 'There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.'

28. A failure by the cleric without reasonable excuse to comply with the bishop's direction under canon law would be misconduct under section 8(1)(b) CDM (failing to do any act required by the laws ecclesiastical).
29. What action should be taken if a risk assessment identifies a safeguarding risk? The Commissaries have endorsed a recommendation of Dame Butler-Sloss that the secular Disclosure and Barring Service ('DBS') should be notified of the outcome of a risk assessment when risk is identified (so that the DBS can consider including that person in a barred list).
30. But apart from that, the Commissaries' reports leave the question unanswered – they simply conclude in the interim report³ that consideration should be given to the position of a cleric holding a freehold or having common tenure where a safeguarding risk is identified.
31. Apart from using the report to notify the DBS, there are three other possible courses of action that could be considered.
32. The first, uncontroversial, course would be to use the risk assessment report to inform and facilitate further enquiries and investigations in respect of the priest or deacon concerned. The report could open up new lines of enquiry that in due course might uncover evidence which could be used to support a CDM complaint or a criminal prosecution.
33. A second possible course might be to use the risk assessment as a tool to enable the bishop to restrict the areas of ministry in which the cleric in question is authorised to work – for example, by the bishop imposing on the cleric a restriction preventing him from working with children. Legislation would be required to give the bishop power to do this.
34. There would, however, be at least three problems with this proposal:
 - First, clergy would understandably question whether it was fair to have their ministry restricted in this way when the DBS, whose specific statutory function is to assess safeguarding risk, has not seen fit to bar them.⁴
 - Secondly, the effectiveness of any such restrictions would be open to doubt because the cleric in question would still be in ministry, with ostensible authority from the bishop, albeit actually limited, to engage in work as a priest or deacon – the public, and in particular a child or a vulnerable adult, would not be able to distinguish a cleric with limited authority from any other.
 - Thirdly, ministry with children and vulnerable adults will often form a significant part of the work of most parish clergy – if clergy are prevented from undertaking that part of their work, then others would have to do it for them. In parishes served by one priest alone, that would be most problematic.
35. A third possible course would be to take the proposal described in paragraph 33 above a step further by enabling the bishop or a tribunal to terminate a cleric's preferment where a risk assessment concluded that the cleric was a potential safeguarding risk.

³ Paragraph 10 of the "Recommendations in relation to the National Church".

⁴ There are two barred lists – the children's barred list and the vulnerable adults' barred list. A person is barred from 'regulated' activity relating to children if he is included in the 'children's barred list' and a person is barred from regulated activity relating to vulnerable adults if he is included in the adults' barred list.

36. The rationale would be that the cleric in question could not be trusted to undertake work with children or vulnerable adults, and that where ministry to such people was fundamental to the post held by the cleric, the cleric would be unable to perform satisfactorily the duties of his office and so should be removed. If this third course were to be adopted, primary legislation would be required, and provisions in the ‘Terms of Service’ legislation and in the Clergy Discipline Measure 2003 would need to be amended.
37. An obvious difficulty of the possible course described in the two preceding paragraphs is that it would enable a priest to be removed from office where no misconduct had been proved, there had been no criminal conviction, and the DBS had not seen fit to include the priest in a barred list. The risk assessment would determine whether there was a *future* risk of misconduct and would be dependent on expert *opinion*, which, of course, is not infallible. This would accordingly be a very significant step to take.
38. As a result, any procedure of this kind would, rightly, have to include substantial safeguards for clerics subjected to it. Indeed, the provisions of Article 6⁵ of the European Convention on Human Rights would need to be satisfied – this would require access to an independent and impartial tribunal to adjudge whether it was proportionate and reasonable to remove the cleric from office based on a mere assessment of future risk. Satisfying a tribunal on this point would necessarily be difficult.
39. The Archbishops’ Council has not as yet reached a view on whether attempting to create a procedure of this kind would be workable and proportionate to the issue which it would be designed to address. It intends to study further what arrangements exist in relation to others-for example teachers and social workers- and also to consider the human rights issues further. It would also be grateful for any views received on how best to guard against risk while adequately safeguarding the rights of individual members of the clergy.
40. A change to canon law will be needed so that a bishop can direct a cleric to undergo a risk assessment and so that failure by the cleric without reasonable excuse to comply with the direction and to co-operate with the assessment can constitute misconduct under the Clergy Discipline Measure, making him or her liable to disciplinary proceedings. Processes for the removal of a cleric from office following completion of a risk assessment would require legislation by Measure.

D. Robes and vesture

41. The Commissaries have recommended that:
 - (a) clergy who have been prohibited or suspended, or who have no licence or permission to officiate, should be prevented from robing or wearing clerical vestments in church;
 - (b) it should be a disciplinary matter to allow a prohibited or suspended cleric to robe or wear clerical vestments in church; and
 - (c) clergy who are prohibited or suspended should not be permitted to wear any clerical dress on any occasion.

⁵ Article 6.1: ‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing with a reasonable time by an independent and impartial tribunal established by law...’

42. The rationale behind the recommendations appears to be that clergy who do not have authority from the bishop to officiate should not be permitted to hold themselves out as if they were so authorised by the bishop.
43. There would, however, be a difficulty with the Commissaries' recommendations in so far as they are intended to prevent clergy who did not have authority from the bishop to officiate from wearing clerical dress (as opposed to vesture), because that would prevent retired clergy in good standing from wearing any clerical attire in church. There is no legal definition of the expression, but clerical 'dress' or 'attire' would be regarded as including a priest's clerical shirt and collar. This is where the difficulty lies – clerics wear 'dog collars' because they have been ordained deacon or priest, not because they hold preferment or a permission to officiate. A proposal that would prevent retired clergy from wearing clerical collars as members of the congregation would be contentious.
44. Furthermore, imposing a restriction on the wearing of clerical dress (as opposed to vesture), even if it were limited to clergy who had been prohibited or suspended, could be ineffective as a measure designed to protect the public. There is no distinctive uniform for Church of England clergy – a cleric in a black shirt and priest's collar could be Anglican, Roman Catholic, or Methodist, or belong to any number of small catholic or protestant sects that have no connection with the Church of England. Indeed, there is nothing to stop any member of the public from impersonating a priest by buying a cleric's shirt and collar, and wearing it. Against that backdrop, it would seem irrational if retired clergy in good standing were not able to worship in church wearing clerical attire.
45. In so far as vesture is concerned, introducing a provision to forbid a *prohibited* cleric from robing in church would be relatively straightforward, and could be done by canon. This would be in relation to any prohibition, not just where prohibition has been imposed following misconduct raising safeguarding concerns. Since, however, there would be no effective sanction available against a person who is already subject to a long period of prohibition for serious misconduct, such a provision would in practice need to be supplemented, as the Commissaries propose, by a prohibition on priests with the cure of souls from knowingly allowing such clergy to robe in their church.
46. It is arguable that, as the law stands, clergy who have been suspended should not undertake any role that would involve wearing clerical vesture in church. It would, however, be possible to make it explicit that they should not do so, though there would be some tension with the fact that the notice of suspension served on a respondent expressly states that suspension does not mean any view has been formed as to whether the complaint of misconduct is true or likely to be true.
47. Before coming to a conclusion the Council would be interested in hearing views on whether
 - The canons should be amended both to make it unlawful for a prohibited cleric to wear clerical robes during divine service and for priests with the cure of souls from knowingly allowing such clergy to robe in their church
 - It should be made unlawful for suspended clergy to robe during divine service.

E. Canon C 8.2

48. The Commissaries have made no recommendation with regard to Canon C 8.2. Canon C 8.2 currently provides that a minister with the cure of souls may allow a minister whom he considers to be of good life and standing to minister within his or her church or chapel for a period of not more than seven days within 3 months without reference to the bishop – but there is no definition in the canon for the meaning of ‘good life and standing’.⁶
49. In practice this provision can enable a priest to minister when his authority to do so has been withdrawn on safeguarding grounds by a bishop, provided an incumbent has given him permission to officiate within the incumbent’s own parish – in giving permission the incumbent will not have had access to the priest’s blue file, or to the Archbishops’ list,⁷ and may only know as much about the priest as the priest chooses to disclose.
50. If Canon C 8.2 were amended, by expressly providing that only ministers who already hold a licence or permission to officiate from a diocesan bishop (whether from the local diocesan bishop or from a diocesan bishop in another diocese) can be given temporary local permission by a priest with a cure of souls, then it would ensure that only clergy who have already been vetted and authorised by a diocesan bishop (whether in the diocese in question or in another diocese) could be permitted to officiate.
51. To supplement this, Canon C 8 could be further amended to provide that a priest with a cure of souls shall not allow a minister, who does not have a bishop’s permission or licence, to officiate within his or her church or chapel. Consequently, if an incumbent did allow such a priest to take any part in leading worship, he himself would be at risk of disciplinary proceedings in respect of his own conduct.
52. The Council would be interested in views on amending Canon C 8 so that
 - only clergy with a diocesan bishop’s licence or permission may be invited to officiate by a priest with a cure of souls, and
 - clergy who have a cure of souls shall not allow clergy without a diocesan bishop’s permission or licence to officiate within their own church or chapel.

F. Churchwardens and PCC members

53. The Commissaries did not make any recommendations with regard to churchwardens or PCC members who may present safeguarding risks. However, in the light of the basic premise behind the Commissaries’ report that the Church has a responsibility to ensure the protection of children and vulnerable adults when in contact with the Church, it is clearly necessary to consider the position of churchwardens and other PCC members – particularly since under the House of Bishops’ policy for safeguarding children (*“Protecting all God’s children”* 2010) the PCC and incumbent are together responsible for ensuring that diocesan safeguarding policies are implemented.

⁶ The Commissaries have taken a different view of the meaning and effect of Canon C 8.2 – in footnote 32 of the interim report they suggest that a minister may be allowed by a priest with the cure of souls to officiate in his parish only if the minister already has a current licence or permission to officiate in another diocese, but that is not the view of the Legal Office.

⁷ This is compiled by the Archbishops jointly under section 38 CDM and contains the names of those who have had a disciplinary penalty imposed against them.

54. Section 2 of the Churchwardens Measure 2001 provides that a person is disqualified from being elected or serving as a churchwarden if disqualified from being a charity trustee under section 72(1) Charities Act 1993 (now section 178(1) Charities Act 2011) unless subject to a waiver from the Charity Commissioners, or if convicted of certain offences in relation to children.⁸ Grounds for disqualification under the Charities Act include unspent convictions for offences of dishonesty or being an undischarged bankrupt.
55. A person is also disqualified under section 2 of the 2001 Measure from holding office as churchwarden if disqualified by the bishop as a result of a pastoral breakdown under section 10(6) Incumbents (Vacation of Benefices) Measure 1977. These provisions are largely reflected in rule 46A of the Church Representation Rules 2011, and are in part extended to cover any member of a PCC, district church council or synod. There is no provision, however, in the Churchwarden's Measure or in the Church Representation Rules to disqualify a person who is on a barred list under the SVGA.
56. The Council would be grateful for views on amending section 2 of the Churchwardens Measure 2001 and rule 46A of the Church Representation Rules so that those who are barred⁹ under the SVGA are disqualified from holding office as churchwarden or serving on a PCC, district church council or synod. This would require primary legislation to amend section 2, and a statutory instrument to amend the Church Representation Rules.
57. One possible difficulty with implementation is that a PCC would not be entitled to apply under the SVGA to the Disclosure and Barring Service for information as to whether any of its members had been barred. Enforcement of the disqualification would therefore be largely dependent upon self-disclosure – individual PCC members would be expected after election to apply to the DBS for enhanced disclosure, but they could not be compelled to do so.
58. Views are also sought about disqualifying all persons (i.e. not just churchwardens) from being members of the PCC if convicted of an offence mentioned in section 1 of the Children and Young Persons Act.
59. Additionally, consideration needs to be given as to whether a bishop, pending criminal proceedings, should have power to suspend a churchwarden or PCC member who is arrested on suspicion of committing an offence mentioned in schedule 1 to the Children and Young Persons Act 1933. Although powers for bishops to suspend churchwardens were originally included in the Churchwardens Measure before it was enacted but were dropped as a result of resistance in Parliament, it may now be time to revisit this issue specifically in relation to offences against children.

Other changes recommended by the Commissaries

60. The Commissaries have made a number of non-legislative recommendations relating to guidance, training and best practice in safeguarding matters. They also urge that consideration should be given to applying necessary safeguarding checks in respect of those from other churches who are permitted to officiate or preach in Anglican churches under the provisions of Canons B 43 and 44. The Joint Safeguarding Liaison Group, under the leadership of the Bishop of Southwell and Nottingham as co-chair of

⁸ Namely, offences which are mentioned in schedule 1 to the Children and Young Persons Act 1933.

⁹ See footnote 5 above.

this ecumenical group, is working on these areas to develop and implement suitable changes.

Summary

61. The Council would be grateful for views on the following issues:

- 1: Amending the CDM to remove the limitation period for a complaint alleging misconduct of a sexual nature involving a child- and possibly vulnerable adults as defined in GS Misc 837, so that a complaint may be made notwithstanding more than 12 months has lapsed since the misconduct occurred (paragraphs 4-13).**
- 2: Amending the CDM so that the bishop has power to suspend a priest or deacon whenever a written application seeking permission to make a complaint out of time is submitted by a complainant to the President of Tribunals, provided the bishop forms the view that suspension is necessary pending the President's decision (paragraphs 13-20).**
- 3: Amending canon law to enable the bishop to direct that a priest or deacon must submit to a risk assessment to determine whether there is a significant risk that the cleric may commit in the future misconduct of a safeguarding nature; failure to comply with the direction without reasonable excuse would be misconduct under the CDM (paragraphs 21-40).**
- 4: Amending canon law to prevent clergy from robing in church during the time of divine service when they are prohibited under the CDM from exercising any of the functions of their Orders and to prevent clergy with the cure of souls from allowing them so to robe. In addition the Council would be grateful for views on whether it should be unlawful for suspended clergy to robe during divine service (paragraphs 41-47).**
- 5: Amending Canon C 8 so that (i) only clergy with a bishop's licence or permission may be invited by a priest with the cure of souls to officiate, and (ii) clergy who have a cure of souls shall not allow clergy without a bishop's licence or permission to robe or officiate within their own church or chapel (paragraphs 48-52).**
- 6: Amending the Churchwardens Measure 2001 and the Church Representation Rules so that: (i) a person who is on a barred list under the SVGA is disqualified from serving as churchwarden or as a member of a PCC, district council or synod; (ii) any person convicted of an offence mentioned in section 1 of the Children and Young Persons Act 1933 is disqualified from being a member of the PCC; and (iii) a bishop has power, pending criminal proceedings, to suspend a churchwarden or member of a PCC who is arrested on suspicion of committing an offence mentioned in schedule 1 to the Children and Young Persons Act (paragraphs 53-59).**

Legal Office

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