GENERAL SYNOD

PROPOSALS FOR LEGISLATIVE CHANGE IN RESPONSE TO THE REPORT OF THE ARCHBISHOP'S CHICHESTER VISITATION

Background

1. The reports of the Archbishop of Canterbury's Commissaries to the Diocese of Chichester ('the Chichester Commissaries') made a number of proposals for legislative change to enable the Church of England to deal more effectively with safeguarding issues. In response to those reports the Archbishops' Council ('the Council') implemented a consultation on the issues raised.

2. The following were invited to take part in the consultation: diocesan bishops, suffragan bishops, diocesan safeguarding advisors, diocesan registrars, diocesan secretaries, diocesan chancellors, chairs of diocesan Houses of Clergy, archdeacons, the Dean of Arches and Auditor, the Vicars-General, the Ecclesiastical Judges Association and the Ecclesiastical Lawyers Association. In addition the consultation paper was distributed to all members of the General Synod (annexed to GS 1896).

3. A package of proposals for legislative change has now been prepared and approved by both the Council and the House of Bishops. The proposals take into account not just the recommendations of the Commissaries but also other submissions made in the course of the Council's consultation. The intention is to introduce legislation in July 2014 but given the importance and range of the proposals this report gives Synod the opportunity to consider the package in February before the legislation is prepared.

A. Canon C 8.2

4. 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'.

5. In practice this provision could enable a priest to minister when his authority to do so has been withdrawn on safeguarding grounds by a bishop, if an incumbent has given him permission to officiate within the incumbent's own parish – in giving permission the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,[1] and may only know as much about the priest as the priest chooses to disclose.

6. **It is proposed to amend Canon C 8.2 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.** This would ensure that only clergy who have already been vetted and authorised by a

[1] This is compiled by the Archbishops jointly under section 38 of the Clergy Discipline Measure and contains the names of those who have had a disciplinary penalty imposed against them.

diocesan bishop (whether in the diocese in question or in another diocese) can be permitted to officiate.

7. **To supplement this, Canon C 8 would be further amended to provide that a priest with a cure of souls shall not allow a minister to officiate or robe within his or her church or chapel, if the priest knows the minister does not have a bishop's permission or licence.** Consequently, if an incumbent were to allow such a priest to take any part in leading worship or to robe and knows there is no permission or licence from the bishop, the incumbent would be at risk of disciplinary proceedings in respect of his or her own conduct.

8. These proposals to amend Canon C 8.2 in this way were generally well received by a large majority of those who responded to the Council's consultation.

9. The Church of England Clergy Advocates indicated that they would support limited amendment of Canon C 8.2 to provide that before issuing an invitation under the canon, an incumbent would have a duty to enquire of his or her bishop's office if there is any reason why an invitation should not be issued. The difficulty with this suggestion, however, is that disgraced clergy may move from diocese to diocese – the local bishop would not necessarily know all relevant information about a particular cleric.

10. Opposition from a minority against the proposal to amend was on the grounds that Canon C 8.2 is a useful provision enabling the flexible temporary deployment of a minister, that amending it would cause greater inconvenience and hardship than the mischief to which the possible amendment is directed, and that instead, incumbents should be encouraged to make enquiries about visiting ministers whose background is not sufficiently well known to them.

11. So far as possible alleged inconvenience for the host incumbent is concerned, where an invited cleric is not well known it ought to be relatively easy to check on his or her status by asking the cleric to produce an up to date written licence or permission from a diocesan bishop, and then for the host incumbent to confirm with the relevant bishop's office that the licence or permission has not been withdrawn.

12. This would ensure risks are minimised, without causing too much work for the host incumbent or the relevant bishop's office. If dioceses were willing to prepare a data base of clergy who have a PTO and who are of good standing, then the whole process of making enquiries would be both strengthened and simplified.

B. Robes and vesture when clergy are prohibited or suspended

13. The Council put forward a proposal in its consultation paper to amend canon law, so that clergy prohibited under the Clergy Discipline Measure 2003 ('the CDM') are prevented from robing in church during the time of divine service. This proposal was generally well supported in the responses to the consultation, as was the suggestion that, in addition, suspended clergy should also be prevented from robing during divine service.[2] These proposals flow from recommendations made by the Chichester

[2] Prohibition from exercising any of the functions of Holy Orders can be for life or for a fixed period. Prohibition is a penalty that is imposed under the CDM at the conclusion of disciplinary proceedings when misconduct is admitted or proved. A suspension, on the other hand, is a neutral step which can be imposed

Commissaries, and the rationale behind them is that prohibited or suspended clergy should be prevented from holding themselves out as entitled to officiate.

14. In respect of a further proposal from the Chichester Commissaries that clergy with the cure of souls should be prevented from allowing prohibited or suspended clergy from robing, that too received general approval in the consultation, although some responses argued that clergy should only be in breach if they *knowingly* do so, which seems a fair and reasonable qualification.

15. Consequently, **the Council proposes to introduce an Amending Canon (i) to prevent clergy from robing in church during the time of divine service when prohibited or suspended under the CDM from exercising the functions of their Orders, and (ii) to prevent ministers with a cure of souls who know of a prohibition or suspension from allowing the cleric in question to robe in church.**

C. Amending canon law in relation to risk assessments

16. The Chichester Commissaries proposed that bishops should be able to direct clergy to undergo risk assessments, and that failure to comply with the direction would be a disciplinary matter.

17. The proposal was well supported in consultation responses from diocesan safeguarding officers. A minority of diocesan safeguarding officers, however, do not agree with it – they argue that risk assessments need to be undertaken voluntarily if they are to achieve their goal of being useful tools to assess risk, because co-operation from the person being assessed is an important element of the process. They also contend that even if a cleric is compelled to attend, there could be an issue as to whether or not (s)he has co-operated with the process, and a view would need to be taken by those conducting the risk assessment as to whether the cleric had fully co-operated or not.

18. There was some support for compulsory risk assessments in consultation responses from the non-safeguarding fraternity, but also some significant opposition. For instance, the Church of England Clergy Advocates stated it "strongly resists" the introduction of mandatory risk assessments, but opposition was not confined to clergy or clergy representatives. Submissions were made that a system of compulsory risk assessments, although laudable, would not work in practice.

19. **Should a bishop be able to direct that a risk assessment be carried out?** Despite the initially attractive argument that risk assessments need to be undertaken voluntarily if they are to be of use, a pragmatic approach would suggest that unless there is the potential for compulsion, clergy who have anything to hide may simply refuse to take part, whereas the unwillingness of the subject to participate could be weighed as a factor for the assessor to take into account when analysing whether there is a risk, and if so the nature of the risk.

20. The Commissaries had recommended that a risk assessment should be commissioned if a cleric is *"credibly suspected"* of sexual abuse – a test which is rather narrow and

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by the bishop before any misconduct has been admitted or proved, pending the conclusion of disciplinary proceedings.

which attracted much criticism from many consultation responses. The alternative *'reasonably suspected of relevant conduct'* test, suggested in the consultation paper, did not receive universal approval either.

21. Some responses suggested that many kinds of behaviour which might trigger a risk assessment (eg recourse to pornography or inappropriate conduct short of sexual abuse) would amount to 'conduct unbecoming or inappropriate'. Hence, they argued, such behaviour would be misconduct within the scope of the CDM, and consequently, risk assessments would serve little or no purpose – where there was evidence of past misconduct, disciplinary proceedings rather than a risk assessment would be more appropriate.

22. Arguments such as these, however, appear to overlook the important premise that risk assessments should be *forward* looking – they are designed to assess *future risk*, not *past* misconduct. The key point is that there may be indications of questionable past sexual conduct by a cleric that are not provable in misconduct proceedings but which may, nonetheless, give a clear basis of concern as to *future risk*.

23. Risk assessments are, as their name indicates, essentially a tool for managing risk. They are not, and can never be, determinative of disputed past acts of misconduct, otherwise they would usurp the function of a disciplinary tribunal. A tribunal makes its determinations of *fact* having heard and considered live evidence, and in the light of its findings of fact, will conclude whether or not there has been misconduct.

24. This is to be contrasted with the work of a risk assessor. Matters of fact to be considered by an assessor may well be disputed by the cleric, but the assessor is in no position to make determinative findings on those disputed facts. What the assessor has to do is reach a view on whether there is a *future* risk of harm, taking into account all material considerations, and bearing in mind that certain facts may be disputed.

25. The Council proposes that national standards for the regulation of how, when and by whom risk assessments are to be carried out will be drawn up. It is envisaged that regulations prescribing the required standards would be put before the House of Bishops for approval – that would ensure consistency in practice across the dioceses.

26. Commissioning risk assessments would be the exception, rather than the norm, and would only be directed where the bishop considered he was justified to do so in the particular circumstances of the case. The bishop would need to give reasons to justify his direction, but provided he did so and could show that he had acted proportionately in requiring a risk assessment, the intrusion into the private and family life of the cleric would not be incompatible with Article 8 of the European Convention on Human Rights.[3]

27. **What would be the sanction for failing to comply with a bishop's direction?** Since a bishop's direction would be given under canon law, disobedience would be

[3] 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.'

misconduct under section 8(1)(b) of the CDM as a "failing to do any act required by the laws ecclesiastical".[4] For this reason, the Clergy Discipline Commission, although in favour of compulsory risk assessments, recommends there should be some protection for the priest in question. The Commission considers that the priest should have a right to seek a review of the bishop's direction, and that it could be overturned by the President of Tribunals where the bishop was "plainly wrong" (a test that is similar to reviewing a bishop's dismissal of a complaint under the CDM).

28. **The Council therefore proposes that canon law be amended to enable the diocesan bishop, when he considers it justified in the particular circumstances of a case, to direct that a priest or deacon should 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 by a cleric to comply without good cause with a bishop's direction to undergo a risk assessment would be misconduct under the CDM, with the cleric having a right to seek a review by the President of Tribunals of the bishop's direction.**

29. **What action to be taken if a risk assessment identifies a safeguarding risk?** The Chichester Commissaries endorsed a recommendation that the secular Disclosure and Barring Service ('DBS') should be notified of the outcome of a risk assessment when risk was identified – this was so that the DBS could consider whether to include the cleric in a barred list under the Safeguarding Vulnerable Groups Act 2006.

30. The Council's consultation paper put forward three additional possible options:

    - the risk assessment could be used to inform and facilitate further enquiries and investigations to be carried out by or on behalf of the diocese (as well as passed on to the relevant secular authorities);

    - the bishop could be given power to restrict the ministry of the cleric where there was a safeguarding concern;

    - the bishop or a tribunal could be given the power to remove a cleric altogether from office if the risk assessment concluded there was a safeguarding risk.

31. The first possible option is not controversial, and no legislative change is required to adopt it.

32. The second possible option, namely to restrict a cleric's ministry, received very little support in responses to the consultation. This may be in recognition of the obvious difficulty that even if a cleric's ministry is restricted in some way, he or she would still be in ministry as a priest or deacon of the Church, with ostensible authority from the bishop. Children, vulnerable adults or other parishioners would not know that the cleric in question had limited authority and that he should not be engaging with them or working in that particular area of ministry. It is not, therefore, a workable option.

[4] A complaint would have to be made under the CDM – the relevant archdeacon would normally be an appropriate complainant.

33. The third possible option in the consultation paper involved the possibility of **removal from office**. This would involve a procedure whereby a cleric could be removed from office if a risk assessment concluded there was a risk of *future* misconduct, provided that an independent and impartial tribunal adjudged it was proportionate and reasonable to impose such an outcome.

34. This proposal was very heavily criticised in many responses to the consultation, and some of those that favoured it seem to have misunderstood the basis upon which it was proposed. In addition, a proportion of responses failed to comment on it.

35. Some of the responses that appeared to be in favour assumed that the method of removal from office would be by means of disciplinary proceedings under the CDM, using the risk assessment to prove that misconduct had been committed in the past. This misunderstanding blurs the division between proving *past* misconduct, and assessing *future* risk, and seems to overlook that a disciplinary tribunal under the CDM is concerned with *past* misconduct. If past misconduct can be proved before a tribunal, there is no need for a risk assessment – once a tribunal finds misconduct has been committed in respect of a child or an adult, it already has ample discretion to remove the priest from office and prohibit him or her for a substantial period of time or for life.

36. Opposition was strong in many responses, especially from clergy, to the proposal that an adverse risk assessment could lead to removal from office. Many pointed out the fundamental problem that under the proposal, an "offender" would be dealt with punitively before (s)he had offended. The outcome of an assessment would be determined by an expert's *prediction* about the future – an inexact science, and subject to human fallibility.

37. A response from a bishop's safeguarding children advisor put it in these terms: *"risk assessments are speculative. That is not to suggest that their significance should be limited, but the assessor speculates on risk on the basis of past behaviour and prognosis for future behaviour. A risk assessment is dynamic; the risk can increase or decrease"*.

38. In many of the responses to the proposal there was recognition of the tension between the desire to prioritise the safeguarding of children and vulnerable adults, and the basic premise of justice that a person is presumed innocent – and therefore should not be subject to sanctions – until proved guilty.

39. Responses in opposition to the proposal included arguments that it was *"unethical"* to judge future behaviour on the basis of previous unproven behaviour, that there was a *"real potential for injustice"*, and that the proposal was *"fraught with difficulty"*. Some responses pointed out that any assessment would necessarily be subjective, whereas the consequences for a cleric who was assessed to be a risk, would be draconian, with loss of vocation, loss of stipend, and loss of family home – all on the basis of an expert's prediction.

40. Perhaps the key point is that no other profession has yet been identified where a practitioner can be removed from the post he or she holds and prohibited from following that vocation simply on the basis of an assessment that there is *future* risk of misconduct, <u>without actual past misconduct having been proved.</u>

41. Given the strong resistance to options 2 and 3 in the Council's consultation paper, **the Council proposes option 1 in paragraph 30 above – this will not involve legislative change beyond the proposal identified in paragraph 28 above.**

D. Churchwardens and PCC members

42. The Chichester Commissaries made no recommendations with regard to churchwardens or PCC members who present safeguarding risks. However, in the light of the basic premise behind their reports that the Church has a responsibility to ensure the protection of children and vulnerable adults when in contact with the Church, the position of churchwardens and other PCC members does need to be considered – particularly since under the House of Bishops' policy for safeguarding children (*"Protecting all God's Children"*) the PCC and incumbent are together responsible for ensuring that diocesan safeguarding policies are implemented.

43. 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.[5] Grounds for disqualification under the Charities Act include unspent convictions for offences of dishonesty or being an undischarged bankrupt. 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.

44. 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 Churchwardens Measure or in the Church Representation Rules to disqualify a person who is on a barred list under the Safeguarding Vulnerable Groups Act, nor is there any provision to disqualify from membership of a PCC, DCC or synod those who are convicted of offences against children.

45. The Council accordingly sought views in its consultation paper about extending these disqualification provisions. Proposals to do so were widely welcomed in the responses received, with very little opposition or disagreement. There was a suggestion in a few of the responses that disqualification should be extended to cover lay readers licensed under Canons E 4, E 5 and E 6 and lay workers licensed under Canon E 7. This would be a logical development, and consistent with the general principle that the Church needs to protect children and vulnerable adults when they come into contact with the Church.

46. **The Council therefore proposes that the Churchwardens Measure 2001 and the Church Representation Rules be amended so that: (i) a person who is on a barred list under the Safeguarding Vulnerable Groups Act 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 Schedule 1 to the Children and**

[5] Namely, offences which are mentioned in Schedule 1 to the Children and Young Persons Act 1933, as amended by the Sexual Offences Act 2003 and other legislation.

Young Persons Act 1933 is disqualified from being a member of a PCC, district council or synod (subject to a power for the diocesan bishop to waive this disqualification); and (iii) a bishop has power, pending criminal proceedings, to suspend a churchwarden[6] or member of a PCC or district council who is arrested on suspicion of committing an offence mentioned in schedule 1 to the Children and Young Persons Act.

47. **The Council further proposes that canon law be amended so that (i) a person who is on a barred list under the Safeguarding Vulnerable Groups Act may not be licensed as a lay reader or lay worker; (ii) any person convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 may not be licensed as a lay reader or lay worker (subject to a power for the diocesan bishop to waive this disqualification); and (iii) a bishop has power, pending criminal proceedings, to suspend a licensed lay reader or lay worker who is arrested on suspicion of committing an offence mentioned in schedule 1 to the Children and Young Persons Act.**

E. Other ways of reducing risk

48. The Council has approved three additional suggestions for reform. These were not canvassed in the consultation document because they did not arise from the Chichester Commissaries' report, but they would strengthen present safeguarding arrangements:

    (i) The imposition of a duty on relevant persons to have due regard to the House of Bishops' current safeguarding policies;

    (ii) The imposition of a duty on all diocesan bishops to appoint a safeguarding advisor;

    (iii) The imposition of a duty on relevant persons to undergo safeguarding training when required to do so by the bishop.

49. The focus of these three suggestions is *prevention* – i.e. trying to prevent or reduce the risk of harm to children or vulnerable adults, rather than responding to the consequences afterwards if something has gone wrong.

50. **<u>Duty to have due regard to the House of Bishops' safeguarding policies:</u>** The House's policies are set out in publications such as *Promoting a Safe Church* and *Protecting All God's Children*. They are couched in terms of being guidance, and they aim to highlight good practice and standards. It is not at present mandatory for clergy to follow them.[7]

[6] Powers for bishops to suspend churchwardens were originally included in the Churchwardens Measure 2001 before it was enacted, but were dropped as a result of resistance in Parliament. The Council considers it is now time to revisit this issue specifically in relation to offences against children.

[7] In August 2008 a tribunal upheld a complaint under the CDM against an incumbent that he was in neglect in the performance of the duties of his office when he deliberately ignored the House's guidance in *Protecting All God's Children*. Although an important case, its application is limited to clergy with the cure of souls.

51. A 'duty to have due regard' is a concept used in at least six other Measures[8]. Where there is a duty to have due regard to guidance, the person under the duty is not free to disregard it as (s)he chooses but is required to follow the guidance unless there are cogent reasons for not doing so. The requirement that cogent reasons must be shown for any departure from it sets a high standard that is not easily satisfied. Such a duty would need to be introduced by Measure, rather than by Amending Canon, so that it can bind laity as well as those in Holy Orders.

52. It would not be practicable to impose a stricter duty than a 'duty to have due regard' because the safeguarding policies of the House cover a range of matters, including some that are good practice and advice, rather than being mandatory – they would therefore be problematic to enforce strictly.

53. **A duty to have due regard to the House's various safeguarding policies would be imposed on all clerks in Holy Orders authorised to officiate under Canon C 8.2 and C 8.3, all diocesan, suffragan and assistant bishops, all licensed lay readers and lay workers, all churchwardens and PCCs.**

54. Consideration has been given to whether the duty to have regard to the House's policies should be extended to include all workers and volunteers such as Sunday school teachers, choir leaders, organists, and pastoral visitors. This would be neither necessary nor practicable within the context of the House's safeguarding policies. *Protecting All God's Children* places the responsibility of implementing the House's child protection policy at parish level on the PCC and incumbent together, and not on individual workers. It is the responsibility of the PCC and incumbent to ensure that all those who work with children or the vulnerable are appropriately recruited according to safe recruitment practice, trained and supported, and that safeguarding procedures and good practice are regularly reviewed.

55. **Duty on diocesan bishops to appoint a safeguarding advisor:** All dioceses seem to have taken steps voluntarily to appoint diocesan safeguarding advisors, but there appears to be great variation in the roles they take on and the amount of work expected of them. Some of this variety is, no doubt, justifiable in relation to local circumstances, but there is currently no mechanism to impose any general, national requirements.

56. **As a sign that the Church takes safeguarding issues seriously, the Council believes (and the House of Bishops agrees) that a duty should be imposed on a diocesan bishop to appoint a diocesan safeguarding officer, with all appointments to be made in accordance with national regulations, approved by the House of Bishops.** It would then be for the House of Bishops to regulate the minimum standards with which all dioceses would have to comply. Imposing a duty

[8] Section 1 of the Care of Churches and Ecclesiastical Jurisdiction Measure 1991 imposes a duty to have due regard to the role of a church as a local centre of worship and mission; section 1 of the Cathedrals Measure 1999 imposes a duty to have due regard to the fact that the cathedral is the seat of the bishop and a centre of worship and mission; section 1 of the CDM imposes a duty to have due regard to the role of the bishop; section 1 of the Dioceses Pastoral and Mission Measure 2007 and section 1 of the Mission and Pastoral Measure 2011 both impose a duty to have due regard to the furtherance of the mission of the Church of England; and sections 1 and 22 of the Care of Cathedrals Measure 2011 impose duties to have due regard. A duty "to have due regard to" is also a familiar concept in secular legislation, such as the Equality Act 2010.

on diocesan bishops to make appointments in accordance with certain regulatory requirements would not be a novel development – they are already under such duties in relation to the appointment of chancellors and registrars.

57. If the duty to appoint safeguarding advisors is imposed on diocesan bishops by canon, and the duty is framed in terms of making an appointment in accordance with regulations approved by the House of Bishops, then it would be relatively easy to make amendments to the minimum standards to be complied with if necessary as safeguarding best practice continues to develop.

58. **Duty to undergo safeguarding training:** For clergy subject to common tenure there is already a duty to participate in arrangements approved by the diocesan bishop for their continuing ministerial education. The bishop must have regard to any guidance issued by the Council when approving arrangements, and he is under a duty to use all reasonable endeavours to ensure that every office holder in the diocese on common tenure has the opportunity to take part in such education.[9]

59. This existing legislative provision can be used to ensure that clergy on common tenure receive appropriate safeguarding training, but it does not cover clergy with the freehold or those with permission to officiate.

60. To fill the lacuna, **the Council proposes an Amending Canon to provide that all clerks in Holy Orders authorised to officiate under Canon C 8.2 and C 8.3 are to be under a duty to participate in arrangements approved by the diocesan bishop for their instruction or training with regard to the protection of children and vulnerable adults. Failure to comply would potentially be a disciplinary offence. Licensed lay readers and licensed lay workers would be required to undergo similar training. Canons E 4 to E 8 which deal with their licensing would be amended to impose an obligation on the diocesan bishop to ensure that licensed readers and workers receive safeguarding instruction or training before they are licensed, and that there are arrangements in place for their continuing instruction and training.**

F. Removal of 12 month CDM limitation period in sexual misconduct cases

61. The justification for limitation periods, which restrict the ability to launch legal proceedings, is twofold – justice requires a fair and expeditious investigation because delayed justice is justice denied,[10] and second, because over the course of time memories fade, witnesses die or move away, and documents are lost making it more difficult to achieve justice. Whereas, if a person knows (s)he has been wronged, (s)he should normally be expected to seek the appropriate remedy without significant delay.

62. The Chichester Commissaries recommended that the limitation period for bringing a complaint under the CDM should be removed for all complaints alleging sexual abuse (i.e. sexual misconduct committed in respect of children and vulnerable adults).

[9] Regulation 19 of the Ecclesiastical Offices (Terms of Service) Regulations 2009.

[10] Article 6 of the European Convention on Human Rights, which is incorporated into English Law by the Human Rights Act, provides that in the determination of civil rights and obligations or of any criminal charge everyone is entitled to a fair hearing "within a reasonable time", albeit time does not generally start to run under Article 6 until proceedings start or a charge is put to a defendant.

63. In the responses to the consultation there was universal agreement that the 12 month limitation period should be removed altogether for complaints of sexual misconduct in relation to children. Replacing the existing limitation period with a longer period, for example 6 or 10 or even 15 years, is generally recognised as being arbitrary, and can still result in victims of serious child sexual abuse being inhibited from presenting complaints.

64. 'Vulnerable adults': There was no consensus, however, over whether the limitation period should be removed in respect of vulnerable adults.[11] Some of those in favour of removing it recognised the difficulty of defining 'vulnerable adult' satisfactorily, but suggested that the definition used in *Promoting a Safe Church* (GS Misc 837), although imperfect, should be the way forward[12]. Others favoured the "No Secrets" definition provided by the Home Office and Department of Health for use by local authorities.[13]

65. Either of these definitions would create some potential anomalies for CDM purposes. For example, under either definition prisoners would not be treated as 'vulnerable', neither would a bereaved parishioner who was seeking pastoral support – yet they might both be regarded as being in potentially vulnerable positions. Conversely, a person of sound mind with a physical disability could be classified as 'vulnerable' despite being able to understand when he or she has been wronged and being quite capable of making a complaint within time.

66. Some responses pointed out that any test of 'vulnerability' would need to be applied at the moment when the alleged misconduct was committed. If a vulnerable person thereafter ceased to be vulnerable, the usual 12 month limitation period would start to run – but a bishop when considering a complaint would not know at what point in time the complainant ceased to be 'vulnerable'. The bishop would not therefore know whether the complaint should be barred for being brought outside the limitation period, if permission to make the complaint has not previously been obtained from the President of Tribunals. This could present practical problems.

67. A significant number of responses to the consultation suggested that a preferable course is for any issues of vulnerability or abuse of power to be a factor for the President to consider when dealing with an application to make a complaint out of time. This would ensure consistency across the dioceses, without precluding vulnerable adults from making complaints. If there is good reason for delay in making a complaint, the President would still be able to grant permission to bring the complaint out of time – as is currently the law.

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[11] If the limitation bar were not removed, it would not mean that complaints alleging sexual abuse of vulnerable adults could not be brought outside the period of 12 months from the date of the misconduct – it would merely mean that any complainant wishing to bring such a complaint would have to obtain permission from the President of Tribunals to make the complaint out of time, as is the case now.

[12] *"Any adult aged 18 or over who, by reason of mental or other disability, age, 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."*

[13] The "No Secrets" definition of vulnerable adult is: "A person aged 18 years or over who is or may be in need of community care services by reason or mental or other disability, age or illness, and who is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation." "No Secrets" sets out a code of practice for the protection of vulnerable adults. It provides government guidance on developing and implementing multi-agency policies and procedures to protect vulnerable adults from abuse.

68. All abusive misconduct: A small minority of responses to the consultation advocated removing the limitation period altogether in respect of any kind of abuse, whether sexual, physical, spiritual, or emotional, and whether committed on a child or any adult (vulnerable or not) – the argument being that any person subjected to abuse is vulnerable at the moment of abuse.

69. The Clergy Discipline Commission, however, is firmly opposed to removing the limitation period in respect of all types of abuse. It sees insurmountable difficulties in attempting to define satisfactorily the term 'abuse'. The Commission fears that any definition of abuse could be applied inconsistently across the different dioceses, and noted that removing the limitation bar in respect of all abusive misconduct would go significantly beyond the recommendations of the Chichester Commissaries.

70. **The Council, having weighed the conflicting considerations proposes that the Clergy Discipline Measure be amended so that the limitation period be removed for complaints about sexual misconduct committed on children, and additionally for complaints about sexual misconduct committed on vulnerable adults.**[14]

G. Extending the bishop's power of suspension

71. Clergy: The Chichester Commissaries recommended that diocesan bishops should have immediate power to suspend a cleric when a credible allegation relating to a safeguarding issue is made, notwithstanding a formal complaint not having yet been brought. The Clergy Discipline Commission, on the other hand, whilst open to the proposal of giving bishops increased powers of suspension, is firmly of the view that any such powers should be exercisable only within the complaint procedures of the Clergy Discipline Measure.

72. The Commission's recommendation, which has been adopted by the Council, is that **a diocesan bishop should have 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. The proposed new power of suspension, subject to certain conditions identified by the Commission to protect the respondent, would apply in all cases where an application for permission to make a complaint out of time is made, not just in complaints relating to children or vulnerable adults.**

73. The rationale for this recommendation is that 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 out of time was being considered by the President; in such cases the bishop should have power to suspend when necessary.

74. The power of suspension would be subject to the following conditions, identified by the Clergy Discipline Commission:

    i. The bishop would only suspend if he formed the view that suspension is necessary in all the circumstances of the case pending the President's decision;

[14] It would be preferable if the legislation provided for the term "vulnerable adult" to be prescribed by secondary legislation, so that it can be more easily amended if required in the light of experience.

ii. Because a suspension would normally have serious implications for the priest concerned and the parish, before imposing a suspension the bishop would receive written advice from his registrar on a) whether the person making the complaint has a proper interest; b) whether there is 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;

iii. The suspended priest would have a right to appeal to the President against a suspension;

iv. A suspension would be limited to 3 months, subject to revocation or renewal by the bishop;

v. A suspension would be automatically terminated if the President refuses the application for permission to make the complaint out of time.

vi. If the President grants the application to make a complaint out of time, the suspension would be renewable under the existing provisions of the CDM.

75. This proposed new power received very wide support from those who responded to the consultation.

76. Licensed lay readers and lay workers: Under canon E 6.3 a bishop may, for any good and reasonable cause, summarily revoke a licence for a lay reader who is not subject to common tenure, and a similar provision in E 8.5 applies in respect of lay workers. Before terminating the licence the bishop must give the reader or lay worker sufficient opportunity of showing reason to the contrary, and there is a right of appeal to the archbishop.

77. There is no provision currently for the bishop to be able to impose a suspension whilst he considers whether to revoke the licence, whereas in serious cases a bishop might wish to suspend if he had the power to do so. To fill this lacuna, **it is proposed that canons E 6 and E 8 should be amended to enable a bishop to suspend a licensed lay reader and licensed lay worker.**

78. Amending Canon no. 31 (which received Final Approval at the November 2013 group of sessions) will, when promulgated, enable a bishop on the grounds of misconduct to terminate the licences of readers and lay workers who have common tenure. This too will need to be supplemented by a power of suspension pending revocation of the licence.

Conclusions and recommendations for legislative change

79. The following proposals are commended to Synod, that:

i. **Canon C 8.2 be 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. And to supplement this, Canon C 8 to be further amended to**

provide that a priest with a cure of souls shall not allow a minister to officiate or robe within his or her church or chapel, if the priest knows the minister does not have a bishop's permission or licence.

ii. **An Amending Canon be introduced (i) to prevent clergy from robing in church during the time of divine service when prohibited or suspended under the CDM from exercising the functions of their Orders, and (ii) to prevent ministers with a cure of souls who know of a prohibition or suspension from allowing the cleric in question to robe in church.**

iii. **Canon law be amended to enable the diocesan bishop, when he considers it justified in the particular circumstances of a case, to direct that a priest or deacon should 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 by a cleric to comply without good cause with a bishop's direction to undergo a risk assessment would be misconduct under the CDM, with the cleric having a right to seek a review by the President of Tribunals of the bishop's direction.**

iv. **The Churchwardens Measure 2001 and the Church Representation Rules be amended so that: (i) a person who is on a barred list under the Safeguarding Vulnerable Groups Act 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 Schedule 1 to the Children and Young Persons Act 1933 is disqualified from being a member of a PCC, district council or synod (subject to a power for the diocesan bishop to waive the disqualification); and (iii) a bishop has power, pending criminal proceedings, to suspend a churchwarden[15] or member of a PCC or district council who is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act.**

v. **That canon law be amended so that (i) a person who is on a barred list under the Safeguarding Vulnerable Groups Act may not be licensed as a lay reader or lay worker; (ii) any person convicted of an offence mentioned in Schedule 1 to the Children and Young Persons Act 1933 may not be licensed as a lay reader or lay worker (subject to a power for the diocesan bishop to waive the disqualification); and (iii) a bishop has power, pending criminal proceedings, to suspend a licensed lay reader or lay worker who is arrested on suspicion of committing an offence mentioned in Schedule 1 to the Children and Young Persons Act.**

vi. **A duty to have due regard to the House of Bishops' various safeguarding policies be imposed on all clerks in Holy Orders authorised to officiate under Canon C 8.2 and C 8.3, all diocesan, suffragan and assistant bishops, all licensed lay readers and lay workers, all churchwardens and PCCs.**

[15] Powers for bishops to suspend churchwardens were originally included in the Churchwardens Measure 2001 before it was enacted, but were dropped as a result of resistance in Parliament. The Council considers it is now time to revisit this issue specifically in relation to offences against children.

vii. **A duty be imposed by canon law on a diocesan bishop to appoint a diocesan safeguarding officer, with all appointments to be made in accordance with national regulations, approved by the House of Bishops.**

viii. **An Amending Canon to provide that all clerks in Holy Orders authorised to officiate under Canon C 8.2 and C 8.3 are to be under a duty to participate in arrangements approved by the diocesan bishop for their instruction or training with regard to safeguarding matters. Failure to comply would potentially be a disciplinary offence.**

ix. **Licensed lay readers and licensed lay workers be required to undergo similar safeguarding instruction and training. Canons E 4 to E 8 would be amended to impose an obligation on the licensing bishop to ensure that licensed readers and workers receive such instruction or training before they are licensed, and that there are arrangements in place for their further instruction and training.**

x. **The Clergy Discipline Measure be amended so that the limitation period be removed for complaints about sexual misconduct committed on children, and additionally for complaints about sexual misconduct committed on vulnerable adults.**

xi. **Diocesan bishops to have 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. The proposed new power of suspension would apply in all cases where an application for permission to make a complaint out of time was made.**

xii. **Canons E 6 and E 8 be amended to enable a bishop to suspend a licensed lay reader and licensed lay worker.**

Bishop of Southwell and Nottingham
13 January 2014