

**AMENDING CODE OF PRACTICE UNDER SECTION 39 OF THE CLERGY
DISCIPLINE MEASURE 2003**

This Amending Code of Practice is issued by the Clergy Discipline Commission under section 39 Clergy Discipline Measure 2003.

The Code of Practice previously issued by the Commission and approved by the General Synod on 9th July 2005 shall be amended as follows:

1. Paragraph 2

Leave out the last sentence and substitute “The Measure and the Rules can be downloaded through links at www.cofe.anglican.org/about/churchlawlegis/clergydiscipline.”

2. Paragraph 3

Leave out the last sentence.

3. Paragraph 4

After the words “ordained ministers” insert “by both the Church and the public”.

4. Paragraph 7

Leave out the words “or grievance”.

5. Paragraph 8

After the words “set up under it” insert “, and should only be about misconduct that is potentially sufficiently serious for referral to a bishop’s disciplinary tribunal. Proceedings under the Measure are not for the determination of grievances”.

6. Paragraph 17

Leave out the brackets before and after the words “and for the laity”.

After the words “disciplinary functions under section” leave out the words “10 of the Dioceses Measure 1978 or there is a relevant area scheme under section 11 of the Dioceses Measure 1978, the suffragan or area bishop” and substitute “13 of the Dioceses, Pastoral and Mission Measure 2007, a suffragan or assistant bishop”.

7. Paragraph 18

Leave out this paragraph.

8. Paragraph 23

Leave out the last sentence and substitute “A complaint should only be about alleged misconduct that is potentially sufficiently serious for referral to a bishop’s disciplinary tribunal. Proceedings under the Measure are not for the purpose of hearing grievances.”.

9. Paragraph 35

After the words “would also have a proper interest.” insert “Diocesan child protection or safeguarding officers have a proper interest when making complaints about alleged misconduct concerning children or vulnerable adults.”.

10. Paragraph 59

After “child protection agencies,” leave out the words “the Inland Revenue” and insert “HM Revenue and Customs”.

11. Paragraph 64

Leave out the words “or grievance”.

12. Paragraph 65

Leave out the words “or grievance”.

13. Paragraph 72

Leave out all the words after “informed in writing” and substitute “about the complaint, sent a copy (subject to editing if the circumstances in paragraph [] apply), and notified of the registrar’s function and the date when the registrar expects to submit the written report to the bishop. The registrar should include a letter from the bishop explaining about the care and support that will be provided on behalf of the bishop for the respondent (the bishop may use the pro-forma letter at appendix B5).”.

14. After paragraph 73

Insert as a new paragraph the words “Once a formal complaint is made it is inappropriate for the respondent to talk to the complainant about it; the complaint must be resolved through the formal disciplinary procedures. Any attempt by the respondent, either personally or through others, to put pressure on a complainant to withdraw a complaint is improper. That does not mean that the respondent cannot talk to the complainant about other matters that might need to be discussed, for example when the complainant is a churchwarden.”.

15. Paragraph 84

After the words “registrar’s report should” leave out “cover” and insert “advise on”.

Leave out the words “whether the respondent is subject to a conditional deferment, a conditional discharge, or appears on the Archbishops’ List under section 38 of the Measure and, if so, in what terms.”.

Before the words “When the report is sent” insert “The purpose of the report is to advise the bishop, but it is the bishop who makes the decision about these matters.”.

After the words “evidence in support.” insert “The registrar should inform the bishop in a separate letter whether the respondent is subject to a conditional deferment or conditional discharge, or appears on the Archbishops’ list under section 38 of the Measure and, if so, in what terms. A copy should be sent to the respondent.”.

16. Paragraph 91

After the words “functions to a suffragan” leave out “, bishop, with the consent of the diocesan synod” and insert “or assistant bishop”.

After the words “as well as actually done.” insert “This does not mean that the bishop needs to delegate simply because the bishop has prior knowledge of a problem having been kept informed about it as it develops. A bishop ought to be reasonably familiar with any difficulties there might be in the diocese and with its clergy. Nevertheless, there would need to be delegation to a suffragan or assistant bishop if, before a formal complaint is made, the bishop has previously taken action or given any indication that suggests he could already have made up his mind about the complaint.”.

After the words “Where a bishop” leave out “does delegate” and substitute “delegates”.

Remove all the words from “Where a bishop” to the end of paragraph 91 and insert into a new paragraph to follow paragraph 91.

17. Paragraph 92

After the words “reasonably practicable” leave out “after the Measure comes into effect, or”.

18. Paragraph 93

After the word “suffragan” insert “or assistant”.

19. Before paragraph 96

Insert two new paragraphs:

“The well-being of the whole Church in the diocese is the bishop’s responsibility, and the bishop is the chief pastor of all within that diocese, whether laity or clergy. Consequently, the bishop has the duty of pastoral care for both complainant and respondent, as well as the parish.”; and,

“Since the bishop is also responsible for administering discipline over clergy in the diocese it is all the more important that the bishop should take care not to be seen to be taking sides. **This means the bishop should not personally give pastoral care to anyone connected with the disciplinary proceedings**, unless the bishop delegates the disciplinary function to a suffragan or assistant bishop. This is in the interests of fairness to both parties, because otherwise there is a risk that the bishop’s impartiality could appear as a result to be compromised. **However, the bishop should ensure that appropriate care and support is provided for all those who need it, and the bishop should explain it is given expressly on the bishop’s behalf.**”.

20. Paragraph 96

At the end of the paragraph insert “When the registrar informs the respondent that the complaint has been made, the registrar should include a letter from the bishop explaining about the care and support that will be provided on behalf of the bishop for the respondent. The pro-forma letter at appendix B5 may be used by the bishop for this purpose.”.

21. After paragraph 96

Insert three new paragraphs:

“A rural or area dean, other experienced clergy including retired bishops or retired archdeacons, or an appropriate lay person could be suitable to provide care and support in place of the bishop, provided they are not involved with the complaint. In some circumstances a suffragan bishop or archdeacon may be appropriate provided there has been no prior involvement in the complaint or the problems behind the complaint. The bishop will use his discretion and judgment when deciding in any given case whom to offer to the respondent to provide care and support, but any appointment must be acceptable to the respondent. It is important that the respondent must be able to trust the person appointed. If the respondent is not content with the person proposed by the bishop then the bishop should seek to appoint another person who would be acceptable. It should be explained to the respondent by both the bishop and the person providing care and support on the bishop’s behalf that all pastoral discussions are completely confidential so there will be no reporting back to the bishop about what has been said (unless the respondent expressly wants the bishop to be informed).”; and,

“The bishop should ensure as appropriate that suitable support is offered on his behalf to others who are involved in the complaint (including the complainant, PCC, and churchwardens), but such support must only be given by those who are not otherwise concerned in the disciplinary proceedings.”; and,

“As explained in *paragraph [] above*, whilst the bishop is dealing with a complaint, the bishop must not personally give pastoral support to a complainant

or respondent. That does not mean that the bishop is cut off from them and unable to meet either of them. On the contrary, the bishop should indeed meet the complainant or respondent if it could help the bishop decide on the appropriate course to determine the complaint. The purpose of the meeting, however, will be to discuss the complaint, not to give personal pastoral care and support or to put the parties under any pressure to adopt a certain course of action (*see, for instance, paragraphs [], [] & [] below*). A member of the bishop's staff should attend and record the matters discussed. The bishop should bear in mind at all times the importance of being perceived by both the complainant and the respondent to be acting fairly and impartially.”.

22. Paragraphs 97 to 99

Leave out these paragraphs.

23. Paragraph 101

After the words “to merit a” insert “formal”.

After the word “rebuke” insert “under the Measure”.

After the words “disciplinary procedures” insert “outside the Measure”.

24. After paragraph 108

Insert a new paragraph:

“A copy of the answer and evidence in support should be sent to the complainant by the bishop.”.

25. After paragraph 119

Insert as a new paragraph:

“If the bishop considers on the evidence that there has been misconduct, but decides to take no further action on the complaint under the Measure because it is not of sufficient seriousness, the bishop may nonetheless advise and warn the respondent in writing as to future behaviour. A copy of the advice and warning should be kept in the respondent's personal file (known as the blue file) for an appropriate period. No record of it will be entered in the Archbishops' list.”.

26. Paragraph 122

Leave out the words “and where such misconduct is not serious but is out of character and unlikely to be repeated” and substitute “but the misconduct is out of character and unlikely to be repeated, and does not warrant removal from office or a period of prohibition”.

27. Paragraph 130

Leave out the words “agreeing something they may later regret” and substitute “making an agreement”.

28. Paragraph 150

Leave out this paragraph.

29. Before paragraph 151

Insert a new paragraph:

“There is an important difference between a resignation offered unconditionally in response to a complaint, and a resignation that takes effect as a penalty by consent under the provisions of section 16 of the Measure. A respondent is entitled to resign when a complaint is made and the bishop cannot refuse to accept the resignation. However, the bishop should warn the respondent that the circumstances of the resignation will be entered in the Archbishops’ list under section 38(1)(d) of the Measure, and furthermore that unless the resignation takes effect as a penalty by consent under the Measure in respect of admitted misconduct, the complaint process will normally continue and a penalty could still be imposed.”.

30. Paragraph 151

Before the words “a priest or deacon” leave out “If” and substitute “Similarly, if”.

31. Paragraph 152

After the words “prohibition is contemplated” insert “by the bishop as the appropriate penalty by consent”.

32. Paragraph 154

After the words “If resignation is contemplated” insert “as a penalty by consent”.

33. Paragraph 159

After the words “a discretion at all times, but” insert “, if the bishop is considering imposing a penalty, the bishop”.

Leave out the word “his” and substitute “the President’s”.

34. Paragraph 165

Leave out the word “his” and substitute “the President’s”.

After the words “conduct in question” insert “if the bishop is considering imposing a penalty”.

35. Paragraph 178

After the words “respondent to answer” insert “, taking into account whether the alleged misconduct is potentially sufficiently serious for referral to a bishop’s disciplinary tribunal”.

After the words “If there is a case to answer” insert “and the alleged misconduct is sufficiently serious”.

36. After paragraph 179

Insert a new paragraph:

“Where the President decides not to refer a complaint to a tribunal, the bishop may, if appropriate, and having regard to the reasons given by the President, advise and warn the respondent in writing as to future behaviour. A copy of the advice and warning should be kept in the respondent’s personal file (known as ‘the blue file’) for an appropriate period. No record of it will be entered in the Archbishop’s list.”.

37. Paragraph 180

After the words “no reason to question their impartiality.” insert “Those who have been nominated to the provincial panel have been recognised as possessing social awareness and cultural sensitivity, and a respect for people from different backgrounds.”.

After the words “gender and ethnic backgrounds.” insert “Where the complainant or the respondent is from a minority ethnic background the President will usually seek to appoint at least one member of the tribunal from a similar ethnic group or background if practicable.”.

38. After paragraph 181

Insert a new paragraph:

“The President may at any stage invite the respondent to make representations about the suitability of two proposed reserve members of the tribunal, one ordained and one lay, whom the President would appoint as appropriate in the event that a previously selected tribunal member were unable to hear the complaint.”.

39. Paragraph 220

After the words “disciplinary proceedings” insert “(unless the bishop has delegated the disciplinary function to a suffragan or assistant bishop)”.

Before the words “bishops, archdeacons, rural or area deans” leave out the word “area” and substitute “assistant”.

40. Paragraph 223

After the word “his” insert “or her”.

41. Paragraph 237

Leave out the words “or who has been subject to a censure of deprivation and disqualification”.

42. After paragraph 250

Insert as a new heading “Relationship with Capability Procedure”, and thereunder insert four new paragraphs:

“The capability procedure under the Ecclesiastical Offices (Terms of Service) Regulations (“the Regulations”) is intended to help office holders improve their performance where it falls below an acceptable minimum standard, whereas the Clergy Discipline Measure (“the Measure”) is concerned with disciplinary proceedings for misconduct.”; and,

“One of the grounds for bringing disciplinary proceedings under the Measure is neglect or inefficiency in the performance of the duties of office. The Measure is appropriate for cases where there are serious, deliberate or wilful failures. The Regulations are appropriate for cases where the respondent’s skill, aptitude, attitude, health or other physical or mental capabilities are in question. Whether it is more appropriate to deal with alleged neglect or inefficiency under the Regulations, or under the Measure, will need to be determined on a case by case basis.”; and,

“It is in the interests of justice for there to be flexibility between capability procedures under the Regulations and disciplinary proceedings under the Measure, so that cases are dealt with in the most appropriate way. Where appropriate, a complaint under the Measure may be dismissed or withdrawn so that a capability procedure can be instigated, and a capability procedure may be stayed so that a complaint under the Measure can be made.”; and,

“A capability procedure under the Regulations and disciplinary proceedings under the Measure should not normally be actively pursued simultaneously with a respondent in respect of substantially the same conduct (although they can proceed at the same time if the conduct in question is different or, exceptionally, if the overlap between them is not significant or if a capability procedure has almost been concluded when a complaint under the Measure is made). Consequently, where a capability procedure is under way and a complaint is made under the Measure in respect of substantially the same conduct, the disciplinary proceedings should normally take precedence and be concluded first. The bishop should then decide whether it is in the interests of justice to proceed with the stayed capability procedure.”.

43. Paragraph 253

Leave out the last sentence.

44. Appendix A

Update the contact details for diocesan bishops and legal officeholders.

45. Appendix B3

Leave out the words “letter of” and substitute “written”.

Leave out the words “, and at the latest within 56 days”.

After the words “If the complaint is not dismissed” insert “, I would invite *The Reverend [Name]* to answer the complaint in writing, and”.

46. Appendix B5

After the words “must therefore remain” insert “, and be seen to remain,”.

After the words “contacting you very shortly” insert a new paragraph:

“Any discussions you have with *[Name]* will be completely confidential. I will not be informed about them unless you so request.”.

At the end insert a new paragraph:

“If you do not believe *[Name]* would be suitable to give you the care and support you need, please let me know and I will ask someone else.”.

47. Appendix C

Leave out this appendix.

48. Consequential changes

Amend the Contents page, marginal notes and paragraph numbers consequentially upon the amendments identified above.

On behalf of the Commission

**John Mummery
Chairman**

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