

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

**EXPLANATORY MEMORANDUM**

**Introduction**

1. The Clergy Discipline Measure ('the Measure') has been fully in force since 1<sup>st</sup> January 2006. It provides procedures which enable bishops to deal with the vast majority of formal complaints about clergy misconduct (other than complaints relating to doctrine, ritual or ceremonial, which come within the provisions of the Ecclesiastical Jurisdiction Measure 1963). For the small proportion of cases that cannot be resolved by bishops the Measure has established a modern tribunal system which is compliant with human rights legislation. A summary of the procedures under the Measure appears in the Annex to this paper.
2. The body responsible for overseeing the operation of the Measure in practice is the Clergy Discipline Commission ('the Commission'), which is constituted under section 3 of the Measure. The Commission has not more than twelve members, all appointed by the Appointments Committee, to include at least two from each House of the General Synod and at least two with legal qualifications. The Chair is the Right Honourable Sir John Mummery (Lord Justice Mummery) and its Deputy Chair is His Honour Judge John Bullimore.
3. Under section 39 of the Measure it is the duty of the Commission to formulate guidance for the purposes of the Measure generally, and with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice. The Commission may at any time amend or replace a code, again with the approval of the Dean of the Arches and Auditor. A code, or any amendments, cannot come into force until approved by the General Synod. When producing or revising a code, the Commission has to work within the framework of the Measure.
4. In July 2005 the General Synod gave approval to a Code of Practice under section 39 ('the Code') which has been in force since 1<sup>st</sup> January 2006. It explains on what grounds formal complaints can be made, by whom they can be made, and how they are to be made, and it describes the proper procedures for considering complaints. The Code is not intended to be a detailed work on all aspects of the complaint procedures – it would be far too long if it were. Instead it aims to be a relatively simple guide to point users in the right direction, and to draw their attention to the relevant provisions of the Measure and to the Clergy Discipline Rules (a statutory instrument) which deal with detailed and technical matters of

procedure. The Code concentrates on complaints against parochial clergy, who form the majority of those who are in active ministry.

### **The Commission's Consultation about the Measure in practice**

5. In October 2008 as part of its continual monitoring of the operation of the Measure in practice the Commission published a consultation paper setting out its views on certain issues. The paper was circulated for comment amongst diocesan bishops, diocesan registrars and secretaries, archdeacons, chairs of diocesan houses of clergy and laity, tribunal chairs, the provincial registrars, the Dean of the Arches and Auditor and the Vicars-General. A key part of the Consultation paper was in respect of the distinction between a bishop's pastoral and disciplinary functions, and the provision of suitable pastoral care for a respondent who is subject to disciplinary proceedings. The Commission received many helpful and construction contributions on this and other issues in the course of the consultation. Having considered and analysed all the contributions the Commission issued its response in June 2009, which was circulated to all those who had been included in the consultation. It was also circulated to members of the General Synod as GS 1747B.

6. In July 2009 the General Synod passed a motion in the following form:

*'That this Synod, whilst recognising the need for discipline in the exercise of the ordained ministry,*

- (a) note the concerns that exist about aspects of the Clergy Discipline Measure 2003 (especially as regards the perceived pastoral implication of the Code of Practice made under it);*
- (b) welcome the response by the Clergy Discipline Commission to the consultation on aspects of the Measure (circulated as GS 1747B); and*
- (c) invite the Archbishops' Council to seek a report from the Commission before the end of the quinquennium on whether there is a case for bringing forward, early in the lifetime of the next Synod, draft legislation to amend the Measure or amendments to the Code of Practice.'*

7. The Commission thereafter assessed what changes to the Measure and Code were needed and in June of this year duly reported to the Archbishops' Council with its proposals for amendments. Changes to the Measure will necessarily engage the full legislative process, including revisions to the Clergy Discipline Rules. This will obviously take some time to bring to fruition, but it is intended that a draft Measure will be put before Synod in February 2011 for First Consideration. Meanwhile, the Commission wishes to introduce its proposed changes to the Code as soon as possible. The most significant of these proposed changes to the Code were highlighted in the Commission's earlier consultation process.

## **EXPLANATION OF THE PROPOSED AMENDMENTS TO THE CODE**

**Paragraph numbers in GS 1808 and below refer to paragraphs in the existing Code of Practice, which, if required, can be downloaded from [www.cofe.anglican.org/about/churchlawlegis/clergydiscipline](http://www.cofe.anglican.org/about/churchlawlegis/clergydiscipline). Members of Synod should refer to GS Misc 967 to see the form the Code of Practice will take if amended by GS 1808.**

8. **Paragraph 4:** This will be amended to make it clear that it is not just the Church which places great trust in its clergy, but also members of the public.
9. **Paragraphs 7, 8, 23, 64, 65:** These will be amended to emphasise that disciplinary proceedings should only be brought in relation to misconduct that is sufficiently serious to justify a hearing before a bishop's disciplinary tribunal, and that the Measure is not for the determination of grievances.
10. **Paragraph 17:** This will be updated to take account of the enactment of the Dioceses, Pastoral and Mission Measure 2007 and of the repeal of the Dioceses Measure 1978.
11. **Paragraph 18:** This paragraph about pastoral care and support has been revised and moved to the section entitled '*What care and support will be given during disciplinary proceedings*' (paragraphs 96-99).
12. **Paragraph 35:** This will be amended to clarify that diocesan child protection and safeguarding officers have a proper interest when making complaints about alleged misconduct concerning children or vulnerable adults.
13. **Paragraph 72:** The Measure provides in section 11 that the diocesan registrar must notify a respondent that a complaint has been referred to him, which is the first formal notice to a respondent that a complaint has been made. The proposed amendment to the Code is intended to encourage the practice of sending with the registrar's letter a letter from the bishop describing the care and support that will be provided on behalf of the bishop.
14. **A new paragraph after 73:** This new paragraph is to advise respondents that it is improper to talk to a complainant about a complaint or to put pressure on a complainant to withdraw. Complaints need to be resolved using the appropriate procedures of the Measure. However, the revised Code will confirm that a respondent and complainant may properly discuss other matters – this may be particularly necessary when the complainant is a churchwarden, and normal day to day matters appertaining to the church and the parish need to be dealt with.
15. **Paragraph 84:** The changes to this paragraph are in two parts. First, it will make clear that the registrar *advises* the bishop, but it is the bishop who decides whether a complainant has a proper interest to make the complaint and whether it is of sufficient substance to justify proceeding with it under the Measure. The other change is to recommend that where a respondent is already subject to a conditional deferment (see 4.(b) in the Annex), a conditional discharge (see 7. in the Annex) or on the archbishops' list (see 8. in the Annex), the bishop should be advised of this by the registrar in a separate letter rather than in the preliminary

scrutiny report. This information is personal to the respondent, but if it were reported in the preliminary scrutiny report the complainant would be able to see it.

16. **Paragraph 91:** The proposed changes give further advice about when the bishop needs to delegate his disciplinary function, and also take account of the Dioceses, Pastoral and Mission Measure 2007 which enables the bishop to delegate to an assistant bishop.
17. **Paragraphs 96-99:** The aspect of the procedures under the Measure that has been the subject of particular criticism is the stress laid in the Code on the need for a clear distinction between the bishop's disciplinary function and his pastoral function: concern has been expressed by some that clergy might feel isolated from their bishop when a complaint is made. The Commission therefore looked very carefully at this issue, which was accordingly a central part of the Commission's consultation and review.
18. The requirement to keep the disciplinary and pastoral functions distinct from one another is not derived from the Measure itself but from general principles of law, embodied both in English common law and in Article 6 of the European Convention on Human Rights, which has been incorporated into English law by the Human Rights Act 1998. Essentially the principle that has to be observed is that the bishop, as decision maker in the disciplinary process, must neither be biased, nor *appear* to be biased, or as Article 6 puts it, the bishop must be "*independent and impartial*". If a bishop were to give pastoral care personally to a respondent in complaint proceedings, there would be a real risk that he would be perceived by the complainant to be biased when determining how the complaint should be resolved.
19. Whilst continuing to recognise the importance of these principles, the Commission also recognises that parts of the Code have sometimes been interpreted in ways that were not intended and with too little regard to the practical ways in which the disciplinary and pastoral functions can be kept apart. The proposed revisions therefore contain more practical guidance on how to keep the bishop's two relevant functions distinct and why it is important to do so, whilst ensuring that appropriate care and support is provided.
20. To that end the section entitled "What care and support will be given during disciplinary proceedings?" has been substantially revised. The proposed amendments explain that the bishop is chief pastor of all within the diocese – laity and clergy alike – and must not appear to take sides. The revised Code makes it clear that the bishop should ensure that appropriate care and support will be provided for those who need it, that such help is given expressly on the bishop's behalf, and that the respondent should receive a letter from the bishop about this at the outset when being notified that a complaint has been made. (The letter is at B5 of the Code, and is itself revised slightly to take account of the revisions to the main text of the Code.) The revised Code confirms that the bishop may meet a respondent or complainant when he is considering the complaint and that he is not therefore cut off from the parties, but makes it clear that any such meeting is to discuss the complaint and is not a pastoral meeting. The revised Code explains that the bishop has a wide discretion in deciding who is suitable to provide care and support for the respondent, and makes recommendations as to whom those

persons could be. It makes it clear that the proposed pastor must not otherwise be involved in the complaint and must be acceptable to the respondent, and that all pastoral discussions are completely confidential and will not therefore be reported back to the bishop unless the respondent expressly desires that they should be.

21. **Paragraph 101:** The revised Code would refer specifically to *formal* rebukes under the Measure, and would distinguish formal rebukes from advice and warnings given to a respondent by the bishop outside the formal procedures of the Measure (see 23. & 29. below).
22. **A new paragraph after 108:** The proposed new paragraph to be inserted at the end of the section headed “The respondent’s answer to the complaint” draws attention to the requirement of rule 17(6) in the Clergy Discipline Rules that a copy of the respondent’s answer and evidence in support must be sent to the complainant.
23. **A new paragraph after 119:** In the course of the Consultation about the operation of the Measure in practice, representations were made to the Commission that complaints could be stalemated by uncooperative respondents who deny misconduct, when they know that they have committed misconduct but realise that it is not sufficiently serious to be referred to a tribunal. The Commission considered various different proposals to deal with this. One proposal, which the Commission rejected, was to amend the Measure to make available to the bishop a range of limited penalties to impose when he was satisfied on the evidence that there had been misconduct, with a right of appeal for the respondent to the President of Tribunals. The Commission, however, considered it was undesirable that the bishop should be able to impose a penalty that could be recorded on the Archbishops’ list when the alleged misconduct was disputed by the respondent. Instead the Commission considers that such cases should be dealt with by bishops outside the Measure, by writing to respondents advising and warning them about future behaviour. Because no further action is being taken under the Measure no entry relating to the misconduct would be made in the Archbishops’ list.
24. **Paragraph 122:** The proposed revision of this paragraph removes the unintentional implication that complaints could be proceeded with under the Measure even if the alleged misconduct is not serious.
25. **Paragraphs 150-154:** There have been cases where a respondent has resigned in response to a complaint with no intention of returning to ministry, but the resignation has been refused by the bishop and the bishop has imposed a suspension on the respondent until the complaint has been dealt with under the Measure. The consequence is that the parish cannot take steps to fill the position that is effectively vacant, the respondent is not released to undertake secular employment elsewhere, and stipend continues to be payable in respect of duties that are not being performed.
26. The proposed revisions to the Code distinguish between resignations made outside the Measure, and resignations made under the Measure. The revised Code explains that a respondent is entitled to resign when a complaint is made, but the bishop should warn the respondent that the circumstances of the resignation will

be entered in the Archbishops' list as a resignation following the making of a complaint, and that a penalty could still be imposed unless the resignation takes effect as a penalty by consent under the Measure (which necessarily requires the bishop to decide that resignation is a suitable penalty and that a period of prohibition is not appropriate).

27. **Paragraphs 159 and 165:** The changes would make it clear that there is no requirement for the bishop to consult the President about imposing a penalty following a sentence of imprisonment or divorce proceedings (see 9. in the Annex), unless the bishop is actually considering imposing a penalty.
28. **Paragraph 178:** As revised this will reflect more accurately the President of Tribunal's practice and the Commission's policy that only cases that are sufficiently serious should be referred to a bishop's disciplinary tribunal for a hearing.
29. **A new paragraph after 179:** If the President decides not to refer a complaint to a tribunal because the allegation of misconduct is not sufficiently serious, the bishop can nonetheless advise and warn the respondent as to future behaviour (and see 23. above).
30. **Paragraph 180:** The Code as revised will reflect the practice of the President when appointing members to sit on a bishop's disciplinary tribunal.
31. **A new paragraph after 181:** This proposal could avoid delay in the event that a member of a tribunal has to stand down, for example on health grounds. A suitable replacement would already have been identified, saving time.
32. **Paragraph 220:** This amendment is principally for clarification purposes.
33. **Paragraph 237:** Removing the reference to a censure of deprivation and disqualification reflects more accurately the relevant provision in section 26 of the Measure.
34. **New section on the relationship with the capability procedure:** Since the Code was first issued, legislation in respect of clergy terms of service has been passed, including, in particular, (under the Ecclesiastical Offices (Terms of Service) Regulations) provisions introducing a capability procedure to improve the performance of clergy who fail to meet the minimum standards required of them. One of the grounds for bringing a complaint under the Clergy Discipline Measure is neglect or inefficiency in the performance of the duties of office, so guidance is now required in the Code on the relationship between the capability procedure and disciplinary proceedings.
35. The proposed guidance in the revised Code highlights the different aims of capability and disciplinary proceedings – the first being concerned with improving performance where it falls below an acceptable minimum standard, the second with taking disciplinary action in respect of misconduct. The revised Code emphasises that there should be flexibility between the two procedures so that cases are dealt with in the most appropriate way, but subject to the qualification that disciplinary proceedings are only appropriate if the alleged misconduct is

potentially sufficiently serious for referral to a bishops' disciplinary tribunal. The Commission has concluded that guidance in the Code should not be prescriptive, and that cases should be considered on an individual basis according to their respective merits.

36. **Paragraph 253:** This amendment is to reflect the usual practice, that it is diocesan communication departments which normally deal with the media.

On behalf of the Clergy Discipline Commission  
Sir John Mummery  
Chair

September 2010

## Annex

### A summary of the procedures under the Clergy Discipline Measure

1. All admitted to Holy Orders of the Church of England are covered by the Measure, whether deacon, priest, bishop, or archbishop, and whether or not in active ministry. Where the formal complaint concerns priests or deacons, the disciplinary structure is centred on the bishop, because in each diocese it is the bishop who is responsible for administering discipline. Where the formal complaint concerns the bishop, the structure is centred on the relevant archbishop.
2. There are four grounds under the Measure for alleging misconduct against a member of the clergy (“the respondent”), namely: acting in breach of ecclesiastical law, failing to do something which should have been done under ecclesiastical law, neglecting to perform or being inefficient in performing the duties of office, and engaging in conduct that is unbecoming or inappropriate to the office and work of a clerk in Holy Orders. Disciplinary proceedings under the Measure should only be about alleged misconduct that is potentially sufficiently serious for referral to a bishop’s disciplinary tribunal.
3. The disciplinary process is started by a formal written complaint, which is made to the bishop. The complaint must be made within one year of the alleged misconduct in question, or within one year of the last occasion of misconduct where there is a series of acts or omissions amounting to misconduct. This period of one year can be extended by the President of Tribunals (an office which is held by the Chair of the Commission).
4. The person making the complaint (“the complainant”) must produce written evidence in support of the complaint. The complaint with the evidence in support is referred in the first instance to the diocesan registrar for preliminary scrutiny. The registrar checks to see if the complainant has the right to complain, and whether the allegations would amount to misconduct under the Measure if proved; the registrar makes a report on these matters to the bishop and copies of the report are given to the complainant and respondent. On receipt of the registrar’s report, if the bishop decides that the complainant is not entitled to complain, or if the issues raised do not justify further serious consideration under the Measure, the bishop may dismiss the complaint.
5. If the complaint is not dismissed at this stage, the bishop invites the respondent to put in a written Answer to the complaint, and upon receipt of that decides which course to take. There are five courses available to the bishop under the Measure:
  - (a) He can decide to take no further action;
  - (b) With the respondent’s consent, the bishop can leave the complaint on the record for up to 5 years (known as a ‘conditional deferment’); if during that time another complaint of misconduct is made against the respondent then this first matter may be dealt with at the same time and in the same way as the later complaint;

- (c) With the agreement of the complainant and the respondent, the bishop can appoint a conciliator to attempt to bring about a conciliation; this may be particularly useful where there has been a pastoral breakdown in relationships between the parties;
  - (d) Where a respondent admits misconduct the bishop may impose an appropriate penalty with the respondent's consent; and
  - (e) Where there is no admission of misconduct, or no agreement over the appropriate penalty, or an attempt at conciliation fails, the bishop may refer the complaint for a formal investigation. A report is prepared by the legally qualified Designated Officer and is submitted to the President of Tribunals who decides if there is a case to answer.
6. If, following the formal investigation, the President decides that there is no case to answer, no further steps are taken under the Measure. If, on the other hand, he decides there is a case to answer, the President refers the complaint to the bishop's disciplinary tribunal. A tribunal consists of five people (two laity, two clergy, and a legally qualified chair) who are selected by the President from the relevant provincial panel, the members of which are nominated by the diocesan bishops and archbishop of that province.
  7. Complaints against bishops are subject to similar procedures. The main differences are that the complaints are made to the relevant archbishop, the preliminary scrutiny is conducted by the provincial registrar, and the Vicar-General's court hears any case to be answered.
  8. Various penalties can be imposed under the Measure for misconduct. These can be imposed by the bishop with the consent of the respondent, or by the bishop's disciplinary tribunal. The penalties range from a life-long prohibition from exercising any functions, to a rebuke. A tribunal may also make a conditional discharge order for a period of up to two years, which means that no penalty is imposed provided the respondent commits no further misconduct during that period.
  9. If a penalty is imposed under the Measure, either by the bishop or by the bishop's disciplinary tribunal, it is recorded in the 'Archbishops' list' which is compiled and maintained jointly by the archbishops.
  10. The Measure also provides a separate procedure whereby a member of the clergy, who commits a criminal offence and receives a sentence of imprisonment, may be liable to a penalty of removal from office or to prohibition from exercising any functions of his or her Orders. A similar procedure is available if a respondent has had a decree of divorce or an order of judicial separation made against him or her and has committed adultery, behaved unreasonably or deserted the former spouse.

**Published by the General Synod of the Church of England  
and on sale at the Church House Bookshop**

**31 Great Smith Street, London SW1P 3BN**

**Copyright © The Archbishops' Council 2010**

**£3**