

# **CLERGY DISCIPLINE COMMISSION**

## **GUIDANCE ON PENALTIES**

### **1. Introduction**

The purpose of the administration of discipline is to deal with clergy who are found to have fallen below the very high standards required and expected of them.<sup>1</sup> For the individual member of the clergy who is subject to discipline, this involves not just the imposition of an appropriate penalty, but also pastoral support, encouraging repentance and forgiveness, whenever possible putting right that which is wrong, attempting reconciliation, and moving on constructively from the past. There is also a wider picture in that the administration of discipline must have regard to the interests of justice for all who may be affected by the faults or failings or shortcomings of the clergy, support the collective good standing of all faithful men and women who are called to serve in the ordained ministry, and ensure the clergy continue to be worthy of the great trust that is put in them as ordained ministers.

The Clergy Discipline Measure 2003 ('the Measure') provides for a range of penalties to be imposed in cases of clergy misconduct, and requires the Clergy Discipline Commission to give general advice to bishops, archbishops, disciplinary tribunals and the courts of the Vicars-General as to the penalties which are appropriate in certain circumstances.<sup>2</sup> Advice is given in the interests of justice so that there will be consistency in the penalties imposed. In giving advice on penalties, the Clergy Discipline Commission is not laying down prescribed penalties which must be imposed, but seeks to provide guidelines. Those who have a duty to determine an appropriate penalty should take into account this guidance before exercising their discretion. A suggested penalty should be the starting point for deliberations, but a bishop, archbishop, tribunal or court of the Vicar-General can impose a penalty outside the guidelines if satisfied that to do so would be appropriate in all the circumstances having also considered any aggravating features or mitigating circumstances.

Any penalty imposed should be in due proportion to the misconduct, having taken into account and given due weight to all material circumstances including the particular facts of the misconduct. The period of time that the misconduct lasted,<sup>3</sup> and whether any harm was caused, are relevant factors – the longer the period of time during which the misconduct was committed, and the greater the harm caused, the more serious the misconduct becomes. On the other hand, any personal or other mitigating circumstances must be taken into account, including whether a respondent has readily admitted the misconduct, and has demonstrated repentance, remorse and a willingness to learn from past errors. An important factor in mitigation would be a frank admission of misconduct at the earliest opportunity, and an attempt by the respondent to put right, in so far as is possible, the consequences of the misconduct. However, with serious matters a penalty is still necessary even if remorse is shown and a frank admission is made at an early stage;

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<sup>1</sup> See paragraph 4 of the Code of Practice, published by the Clergy Discipline Commission in accordance with section 39 of the Clergy Discipline Measure 2003.

<sup>2</sup> See section 3(3)(a) of the Measure.

<sup>3</sup> See the judgment of the Arches Court of Canterbury in *The Reverend David Gilmore (2011)*, at paragraph 47.

similarly, an attempt to put right the wrong does not absolve the original misconduct. The age of the respondent may be a material factor (for example youth and inexperience) in arriving at an appropriate penalty.<sup>4</sup>

These guidelines assume that it is the first time that disciplinary proceedings have been taken against a respondent. If that is not the case, a more severe penalty can be considered.

By virtue of their office, great trust is placed in the clergy by members of the Church and by the wider community. Clergy are expected to be worthy of this trust, and are required to uphold Christian values in their pastoral ministry, in performing other duties, and in the conduct of their private lives. Gross breaches of trust and serious abuses of office should normally be dealt with by imposing the more severe penalties of removal from office and/or prohibition (either for life or for a limited period). Personal difficulties which may result from a penalty are not a test as to what is an appropriate penalty – the reputation of the clergy is more important than the impact on any individual member.<sup>4</sup>

Racist treatment of others can be deeply hurtful and divisive. Intentional racist conduct, whether towards parishioners or others, is clearly incompatible with the canonical requirement for clergy to make themselves wholesome examples and patterns to the flock of Christ. Intentional racism, whether by word of mouth or deed, is a serious aggravating feature in any case.

Other unfair discrimination is likely to be a serious aggravating feature.

Misconduct which amounts to a criminal offence should normally be investigated and resolved by the relevant secular authorities before any related disciplinary proceedings under the Measure are resolved.<sup>5</sup> Such misconduct is likely to be worse than non-criminal misconduct, and this should be reflected in the penalty imposed under the Measure. The penalty is in response to the seriousness of the misconduct, and is not a second punishment for the crime. Where a sentence of imprisonment is imposed by a court of law in the United Kingdom a member of the clergy should normally expect to be removed from office by the bishop and to receive an order of prohibition.<sup>6</sup>

Penalties can be imposed by the bishop or archbishop with the respondent's consent, or by a bishop's disciplinary tribunal or the Vicar-General's court following a hearing.<sup>7</sup> All penalties will be recorded in the Archbishops' list.<sup>8</sup>

## **2. Range of penalties that the bishop or archbishop can impose by consent<sup>9</sup>**

- (a) Prohibition for life:<sup>10</sup> This is the most serious penalty that can be imposed. It prevents the respondent without limit of time from exercising any functions as a

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<sup>4</sup> See the judgment of the Chancery Court of York in *The Reverend David King (2008)*, at paragraph 31, approved by the Arches Court of Canterbury in *The Reverend David Gilmore (2011)*, at paragraph 45.

<sup>5</sup> See paragraphs 58 to 60 of the Code of Practice.

<sup>6</sup> Under s30 of the Measure there is a different disciplinary procedure for those who have been convicted of an offence and received a sentence of imprisonment. See paragraphs 163 to 166 of the Code of Practice.

<sup>7</sup> A bishop or bishop's disciplinary tribunal determines proceedings against priests or deacons. The archbishop or the court of the Vicar-General determines proceedings against bishops.

<sup>8</sup> See paragraphs 236 to 241 of the Code of Practice.

<sup>9</sup> See paragraphs 145 to 154 of the Code of Practice.

member of the Church of England clergy. It should be imposed only where there appears to be no realistic prospect of rehabilitating the respondent back into ministry because the misconduct is so grave.

- (b) Limited prohibition:<sup>11</sup> This prevents the respondent from exercising any functions as a member of the clergy for a specific period of time. It is suitable for serious cases where there is a realistic prospect that the respondent, with appropriate pastoral and other support, could in the future resume normal duties of ministry.
- (c) Resignation:<sup>12</sup> The respondent relinquishes the preferment held at the time, but this does not prohibit him or her from seeking to serve in Holy Orders elsewhere. In serious cases, resignation could be combined with prohibition for life or limited prohibition.
- (d) Injunction:<sup>13</sup> An injunction requires a respondent to do, or to refrain from doing, a specified act, and is usually limited in time. More than one injunction can be imposed upon the respondent arising out of the same complaint. An injunction may be appropriate for cases where a respondent is generally capable of performing his or her normal duties but ought to be stopped from dealing with a particular aspect of those duties. The injunction must be worded with sufficient clarity so that there is no doubt as to what the respondent is required to do or is prohibited from doing. Any breach of an injunction is an act of misconduct under the Measure, and could result in further disciplinary proceedings.
- (e) Rebuke:<sup>14</sup> This is the least serious of the penalties. It can be used for acts or omissions of a less serious nature which fall within the definition of misconduct. As with all other penalties, it is recorded in the Archbishops' list.

Conditional deferment:<sup>15</sup> One of the courses that a bishop may pursue is to deal with a complaint by way of conditional deferment. This is only available when the respondent consents to the bishop taking this course of action. It means that the complaint is kept on file for up to five years, but no other action is taken on it by the bishop unless a further complaint of misconduct is made within that period. Conditional deferment is most likely to be suitable where the respondent admits the misconduct, and where such misconduct is not serious but is out of character and unlikely to be repeated.

### **3. Range of penalties that a tribunal or Vicar-General's court can impose**<sup>16</sup>

- (a) Prohibition for life: See under 2(a) above.
- (b) Limited prohibition: See under 2(b) above.

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<sup>10</sup> See paragraphs 157 to 161, and 204 of the Code of Practice.

<sup>11</sup> See paragraphs 157 and 205 of the Code of Practice.

<sup>12</sup> See paragraphs 155 to 161 of the Code of Practice.

<sup>13</sup> See paragraph 208 of the Code of Practice.

<sup>14</sup> See paragraph 209 of the Code of Practice.

<sup>15</sup> See paragraphs 125 to 131 of the Code of Practice.

<sup>16</sup> See paragraphs 203 to 210 of the Code of Practice.

- (c) Removal from office:<sup>17</sup> This penalty removes the respondent from the preferment held at the time, but does not prohibit him or her from serving as a clerk in Holy Orders in another post. In serious cases, removal could be combined with prohibition for life or limited prohibition.
- (d) Revocation of licence:<sup>18</sup> For members of the clergy who hold a licence from the bishop, it may be appropriate to terminate the licence so that they no longer minister in that place. Revoking the licence does not prevent them from seeking to serve in Holy Orders elsewhere. In serious cases, revocation could be combined with prohibition for life or limited prohibition.
- (e) Injunction: See under 2(d) above.
- (f) Rebuke: See under 2(e) above.

Conditional discharge:<sup>19</sup> A tribunal or court may decide not to impose a penalty having taken into account all the circumstances of the misconduct and the respondent's character. Where it does not impose a penalty, it has the option of making an order discharging the respondent subject to the condition that there must be no more misconduct by the respondent within a period not exceeding two years. If the respondent does commit further misconduct within that period the disciplinary tribunal or court dealing with it on the subsequent occasion may, in respect of the earlier misconduct, impose any penalty that could have been imposed originally.

#### **4. Misconduct involving money**

Stealing from a third party is an act of dishonesty, and brings the church into disrepute. It is also dishonest for clergy to meddle with the church's money, including collection plate offerings and fees for occasional offices such as weddings and funerals. Stealing, including not declaring and appropriating fees, is a serious act of misconduct and could deserve removal from office and prohibition. Depending on the sum involved, prohibition for a period of up to 4 or 5 years could be appropriate. Where theft is systematic and takes place over a prolonged period of time, or where it involves a serious breach of trust, there may be little realistic prospect of reintroducing the respondent back into ministry, and prohibition for life should usually follow.

At the lower end of the scale is the cleric who on a single occasion takes money belonging to the church, intending to repay it, and does repay it quickly without any prompting. This is a breach of trust because church monies are wrongfully used for private purposes, but there is no financial loss to the church and a rebuke may be appropriate. If it were to happen on more than one occasion, removal from office with a limited prohibition could be appropriate.<sup>20</sup>

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<sup>17</sup> See paragraph 206 of the Code of Practice.

<sup>18</sup> See paragraph 207 of the Code of Practice.

<sup>19</sup> See paragraph 210 of the Code of Practice.

<sup>20</sup> Disciplinary proceedings for misconduct arising out of a breach of trust could take place even where there has been an earlier acquittal in a criminal court in respect of a charge of theft. See the example in paragraph 167 of the Code of Conduct.

## **5. Sexual misconduct**

Sexual misconduct is usually a deliberate and damaging failure to comply with the high standards of Christian behaviour required of clergy. Depending on the circumstances, the misconduct may also be a criminal offence. Clergy who commit sexual misconduct should be dealt with firmly, and in a way which will protect those who could be harmed if the respondent were otherwise to be allowed to remain in ministry.<sup>21</sup>

Indecent assault on children is a gross violation, and can cause insecurity and lasting trauma to the victims. Removal from office and prohibition for life are normally called for. The same is likely to apply to indecent assaults on adults.

Adultery is destructive of marriages, and is hurtful and disturbing for the children of the families affected. If the adultery is with a person within the cleric's area of pastoral responsibility, that can be an aggravating factor because issues of vulnerability, exploitation and abuse of position arise. Removal from office and prohibition, either for life or for a limited time, are usually appropriate in cases of adultery. It does not, however, follow that sexual misconduct falling short of adultery should automatically attract a lesser penalty.<sup>22</sup>

Downloading or otherwise possessing child pornography is a serious and damaging offence. Every indecent photograph of a child is an image of a child being abused or exploited. Downloading such photographs continues the injury done to the victim through further dissemination of the pictures. Children suffer shame and distress continuing into adulthood from the knowledge that indecent images of them are in circulation. Anyone convicted of possessing child pornography should be regarded as complicit with the original abuse involved in the making of the images. There can be no realistic expectation that a convicted cleric could be safely restored into ministry. Removal from office and prohibition for life should normally be imposed.

## **6. Misconduct in ministry**

Cases of misconduct in the course of carrying out normal duties of ministry may often be suitable for resolution by conciliation.<sup>23</sup> This is particularly so where pastoral or personal relationships have been damaged but not irreparably damaged. Bishops, when deciding on the appropriate course to take in misconduct proceedings, are always encouraged to consider whether a particular case could benefit from an attempt at conciliation. The guidance given below is on the assumption that conciliation in the particular case is not suitable, for whatever reason, or has been tried but has failed to produce a satisfactory outcome.

Misconduct such as persistent rudeness to parishioners, lateness without good reason, or a failure to comply with formal requirements such as keeping the register book of services may all merit a rebuke, with or without an injunction to ensure that there is no repetition. Conditional deferments or discharges could also be appropriate. If the misconduct were

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<sup>21</sup> See the judgment of the Arches Court of Canterbury in *The Reverend David Gilmore* (2011), at paragraph 42.

<sup>22</sup> See the judgment of the Chancery Court of York in *The Reverend David King* (2008), at paragraph 19.

<sup>23</sup> See paragraphs 132 to 144 of the Code of Practice.

to be repeated in defiance of an injunction, removal from office would be likely to follow.

Clergy will meet parishioners in need of pastoral support who are distressed, lonely, sick, elderly, or otherwise vulnerable. There is an intrinsic imbalance in relationships between clergy, who are in a position of trust and responsibility, and those who turn to them for help. Consequently, it is a serious matter if clergy exploit the trust placed in them, and develop inappropriate relationships with people in their pastoral care. Such inappropriate relationships include close emotional or intimate relationships falling short of sexual misconduct, and relationships where clergy take inappropriate advantage of the financial generosity of the person in their care. Where there are serious pastoral abuses, removal from office and limited prohibition will usually be appropriate.

Anyone who seeks pastoral guidance and advice from a member of the clergy is entitled to expect that the cleric concerned will not pass on to a third party confidential or personal information, without his or her consent or other lawful authority. Any failure by a member of the clergy to observe this principle can cause distress to the person concerned and is damaging to the position of trust enjoyed by clergy. Depending on the gravity of the circumstances and nature of the disclosures, removal from office could be appropriate in the most serious cases.

## **7. Misconduct in private life**

Misconduct in private or family life can take many different forms. No guide on penalties can comprehensively cover all possible situations. What follows is guidance in relation to particular examples of misconduct that can be used as indicative of the appropriate penalty for other types of behaviour.

Drunkenness without any aggravating features should normally be met with a rebuke or a conditional deferment or discharge. But it may be a sign that the cleric has a particular problem for which help is needed; a bishop should be alert to this and take steps to provide the appropriate pastoral support.

Being convicted for driving with an alcohol concentration above the prescribed limit is to be regarded as a serious matter. Parliament has set a prescribed limit of alcohol for drivers, on the basis that drivers who are above it are unlikely to be fit to drive. Other road users are knowingly put at risk by drunken drivers. Depending on the circumstances, including the level of intoxication and whether any injury was caused, removal from office and prohibition for one or two years could be appropriate.

Being in unlawful possession of a controlled drug is a criminal offence and would be a serious failing by any ordained minister. The penalty will depend on the type of drug, the amount involved and all the surrounding circumstances, but for a class A drug removal from office and prohibition should normally follow.

The penalty for violence in the home will depend on the nature of the violence, and all the surrounding circumstances. Violence in the home is destructive of family life and damaging to the victims. It should not be tolerated, and removal from office and prohibition for a specific period of time or for life should normally follow.

Engaging without authorisation in a trade, profession or other activity which adversely affects the performance of the duties of office of a member of the clergy is inconsistent with the responsibilities of ministry. An injunction to stop such conduct should normally be imposed, together with a rebuke.

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