

GENERAL SYNOD

CLERGY DISCIPLINE COMMISSION

ANNUAL REPORT FOR 2018

This report is made in fulfilment of the duty placed upon the Clergy Discipline Commission by section 3(3)(c) of the Clergy Discipline Measure 2003 to make an annual report to the General Synod, through the House of Bishops, on the exercise of its functions during the previous year. This is the fifteenth annual report made by the Commission and covers its work in the year to 31 December 2018.

The House of Bishops received this report in May 2019.

MEMBERSHIP AND FUNCTIONS

1. The Clergy Discipline Commission (“the Commission”) is constituted under section 3 of the Clergy Discipline Measure 2003 (“the Measure”), which provides for the appointment by the Appointments Committee of a Commission of not more than twelve persons, to include at least two from each House of the General Synod and at least two with legal qualifications specified in the Measure.¹ The Chair and Deputy Chair of the Commission are appointed by the Appointments Committee from amongst the legally qualified members after consultation with the Dean of the Arches and Auditor.
2. During the course of 2018 the Venerable Jackie Searle was consecrated as Bishop of Crediton and stood down from the Commission. Fr Christopher Smith, Vicar of St Alban the Martyr, Holborn (London) was appointed to replace her with effect from 1 January 2019 for the remainder of her term of office until 2020. The terms of office for the Chair and President of Tribunals Sir Andrew McFarlane, the Deputy Chair and Deputy President Sir Mark Hedley, the Ven. Moira Astin, Mr Martin Follett, Dr Jamie Harrison, and the Revd Canon Jane Sinclair came to an end. Sir Mark Hedley, the Ven. Moira Astin, Dr Jamie Harrison and the Revd Canon Jane Sinclair were reappointed for further terms of five years from 1 January 2019. Having been appointed President of the Family Division of the High Court of Justice Sir Andrew MacFarlane announced he would not seek a further term of office as Chair and President. The Right Honourable Dame Sarah Asplin was appointed as his successor for a five-year term from 1 January 2019. Mr Martin Follett retired as diocesan registrar and Mrs Caroline Mockford, Provincial and Diocesan Registrar for York, was appointed to replace him with a five-year term from 1 January 2019. Most unexpectedly and tragically, Mrs Mockford passed away in March 2019. The membership of the Commission is set out as at 31 December 2018 in Appendix 1. The membership of the Commission is set out as at 1 January 2019 at Appendix 2.
3. The Chair and Deputy Chair sit respectively as the President and Deputy President of Tribunals. In those capacities they exercise certain judicial functions under the Measure. The Commission itself, however, has no judicial role in respect of individual cases. It has

¹ Defined in s.3(1)(b) to be “persons who have either a seven years general qualification within the meaning of the Courts and Legal Services Act 1990 (c. 41) or who have held or are holding high judicial office or the office of Circuit judge.”

a general responsibility to monitor disciplinary procedures under the Measure in practice, and its specific duties include formulating guidance for the purposes of the Measure generally, issuing general policy guidance to persons exercising disciplinary functions, and giving general advice as to appropriate penalties.

THE WORK OF THE COMMISSION IN 2018

Independent Inquiry into Child Sexual Abuse

4. Throughout the year, the Commission was briefed on the work of the Independent Inquiry into Child Sexual Abuse in relation to the Anglican Church, and in particular with regard to the inquiry's interest in the Clergy Discipline Measure. The Commission noted that the Designated Officer under the Measure was invited to give written and oral evidence to the Inquiry.

Pastoral Support

5. The Commission considered the issue of pastoral care for clergy involved in CDM proceedings, including the provision of pastoral care after a disciplinary penalty had been imposed.
6. The Commission acknowledged that the provision of pastoral care and support was a particularly challenging issue to get right. The Commission discussed how best to provide guidance. It approved and issued a pro-forma letter that bishops could use to send to those who provided pastoral support on their behalf to respondent clergy, setting out the scope and expectations of the role – a copy of the pro-forma letter was to be sent to the respondent receiving the pastoral support.

Cross Examination

7. The Commission considered cases about alleged sexual misconduct towards a complainant or witness where the respondent was acting in person without legal representation. It was recognised that cross-examination in these circumstances could be a particularly stressful experience for a witness, and that the right to cross-examine should be restricted. The Commission noted that in criminal proceedings persons who were charged with sexual offences were prohibited from cross-examining in person a witness in relation to whom the offence was alleged to have been committed.
8. The Commission agreed that the Clergy Discipline Rules would in due course need to be amended to restrict the right to cross examine in person, but pending such amendment and in the interests of dealing with the issue immediately, the Chair, as President of Tribunals, agreed to issue a practice direction which was published in May 2018. It restricted the right of a respondent to cross examine in person a witness where the alleged misconduct was of a sexual nature towards that witness, where the misconduct (whether sexual or not) was towards a witness who was a child at the time, and in any other case where the witness's evidence was likely to be impaired if cross-examined by the respondent in person. The practice direction made provision for such cross-examination to be carried out by a legal representative.

Delays

9. The Commission continued to consider the issue of delay in CDM proceedings. It discussed the responses to a questionnaire that it had commissioned to all diocesan registrars consulting them on delays in disciplinary proceedings in relation to priests and deacons. The results suggested that, once a complaint was brought under the CDM, it

normally proceeded reasonably expeditiously, but that there were frequently long delays before a formal complaint was made under the CDM.

10. The Commission consulted the two Registrars of Tribunals as to what steps could be taken to avoid undue delay in the minority of cases that were referred to a tribunal for determination. It considered whether there should be a restriction on the ability of the respondent to challenge the suitability of proposed members but agreed that this could be arbitrary and unfair. It also considered whether an extra tribunal member from both the clergy and laity should always be appointed in reserve in case a tribunal member was unexpectedly unable to take part. The Commission was not in favour of the proposal indicating that the current practice ensured an appropriate balance of members in relation to matters such as gender and ethnicity.
11. Another possible proposal was to reduce the number of tribunal members to three, in the hope that that would make it easier to fix dates for a hearing. However, the Commission did not accept that this would necessarily significantly expedite disciplinary proceedings. Moreover, there was the risk that with only three members, the Chair might have a disproportionate influence on the other members of the tribunal. Furthermore, the Commission felt that a tribunal of five members rather than just three was more appropriate to determine issues that could lead to loss of a respondent's vocation, income and home.
12. A potential cause of delay could be the time taken to prepare the decision of the Tribunal. The Commission issued guidance to Tribunal Chairs reminding them to give their written decisions in a timeous fashion following a hearing.

Archbishops' List

13. The Commission discussed a proposal to amend the Clergy Discipline Rules to allow for names to be removed from the Archbishop's list after a period of time where the original penalty was a rebuke. The Commission declined to recommend any change to the current practice, on the basis that the list existed for the purposes of the appointments process and enabled a receiving bishop to see if a candidate for appointment had been disciplined in the past – the receiving bishop could then find out more from the diocese where the candidate was serving.

Publication of Penalties

14. Although there was a legal requirement for the decisions of tribunals to be published, there was no requirement pertaining to the publication of penalties imposed by bishops. The Commission's approach to publication had always been that the Church should be transparent about its disciplinary system. It had previously issued guidance encouraging dioceses to publish on their websites penalties that were imposed by bishops. The Commission reviewed this guidance in light of the General Data Protection Regulation (GDPR) which came into force in May 2018. The Commission was satisfied that its policy was GDPR compliant but took the opportunity to revise the detail of the guidance, including providing examples of how penalty announcements should be worded.

Archdeacons

15. The Commission considered the important role often played by Archdeacons in presenting complaints, and it wished to encourage the provision of training for Archdeacons in relation to the CDM. It noted that a training day led by the Designated Officer had been laid on in May 2018.

ANNUAL ANALYSIS OF COMPLAINTS

16. The annual analysis of complaints made under the Measure, recording by whom complaints were made and how they were dealt with, is presented in Appendix 3.
17. In 2018, 90 complaints were made under the Measure against priests or deacons, as against 101 in 2017. The total number of respondents in respect of those cases was 75. This compares with the total number of clergy falling within the provisions of the Measure as at 31 December 2017 of over 20,000 (including approximately 10,800 licensed stipendiary and non-stipendiary clergy, 1,070 chaplains and clergy in other ministries, and an estimated 7,200 active retired clergy and those holding a permission/licence to officiate).² As in previous years, the number of clergy against whom a complaint was made remains very low – some 0.4% of the total number.
18. 31% of dioceses had no complaints at all, compared with 21% in 2017, and 9% had six or more complaints. As in previous years, the majority of complaints (72%) were made by complainants other than archdeacons, churchwardens or persons nominated by a PCC, with archdeacons making up a further 25% of complainants, a decrease from 28% last year.
19. 24% of complaints were dismissed by the bishop in 2018 (an increase on 18% in 2017) and no further action was taken in 21% of cases, an increase on the previous year (19%). A penalty by consent was imposed in 19% of the complaints, 2% were conditionally deferred, while 17% of the complaints were referred to the Designated Officer for formal investigation. 18% of the complaints made in 2018 or earlier were in the process of being dealt with by dioceses at the year-end. Following formal investigation, the President or Deputy President of Tribunals decided there was no case to answer in respect of seven complaints, six complaints were referred to a bishop's disciplinary tribunal, and three investigations were ongoing at the end of the year. Three complaints were concluded by a bishop's disciplinary tribunal in 2018.
20. There were four cases where a penalty of prohibition or removal from office was imposed under section 30(1)(a) of the Measure following conviction and sentence of imprisonment.
21. Twenty-four complaints were made against bishops or archbishops in the course of 2018; thirteen were dismissed, and no further action taken in four more. Six complaints were outstanding at the year-end (the same figure at the end of 2017).
22. Of those twenty-four, none were complaints against the Archbishops.
23. During the course of the year, the President and Deputy President of Tribunals considered 68 applications and reviews.

On behalf of the Commission

The Rt Hon. Dame Sarah Asplin (Chair)

May 2019

² The statistics are the most recent available and are taken from *Ministry Statistics 2017*, published by the Research and Statistics Department of the Archbishops' Council in 2018.

APPENDIX 1: MEMBERSHIP OF THE COMMISSION AS AT 31ST DECEMBER 2018

Appointed under section 3(1)(b) – ‘legally qualified’

Chair (and President of Tribunals)

The Rt Hon Lord Justice McFarlane*

Deputy Chair (and Deputy President of Tribunals)

Sir Mark Hedley*

Appointed under section 3(1)(a) – ‘at least two from each House of the General Synod’

The Rt Revd Nicholas Baines, Bishop of Leeds+^

The Rt Revd Christopher Lowson, Bishop of Lincoln+^

The Revd Canon John Sinclair (Newcastle)+^

Vacancy following the consecration of The Ven. Jackie Searle as Bishop of Crediton

Canon Carol Wolstenholme OBE (Newcastle)+^

Mr David Mills MBE (Carlisle)+^

Other members appointed under section 3

Mr Martin Follett (Diocesan Registrar of Exeter and Truro)*#

The Revd Canon Jane Sinclair*

The Ven. Moira Astin, Archdeacon of Reigate*

Dr Jamie Harrison (Durham)*^

^ Member of the General Synod.

* Appointed to 31st December 2018.

+ Appointed to 31st December 2020.

Legally qualified other than those appointed under section 3(1)(b).

APPENDIX 2: MEMBERSHIP OF THE COMMISSION AS AT 1st JANUARY 2019

Appointed under section 3(1)(b) – ‘legally qualified’

Chair (and President of Tribunals)

The Rt Hon Lord Justice Sarah Asplin*

Deputy Chair (and Deputy President of Tribunals)

Sir Mark Hedley*

Appointed under section 3(1)(a) – ‘at least two from each House of the General Synod’

The Rt Revd Nicholas Baines, Bishop of Leeds+^

The Rt Revd Christopher Lowson, Bishop of Lincoln+^

The Revd Canon John Sinclair (Newcastle)+^

The Reverend Christopher Smith (London)+^

Canon Carol Wolstenholme OBE (Newcastle)+^

Mr David Mills MBE (Carlisle)+^

Other members appointed under section 3

Mrs Caroline Mockford (Provincial and Diocesan Registrar for York)*#

The Revd Canon Jane Sinclair*

The Ven. Moira Astin, Archdeacon of Reigate*

Dr Jamie Harrison (Durham)*^

^ Member of the General Synod.

* Appointed to 31st December 2023.

+ Appointed to 31st December 2020.

Legally qualified other than those appointed under section 3(1)(b).

APPENDIX 3: ANALYSIS OF FORMAL COMPLAINTS MADE UNDER THE MEASURE AND HOW THEY WERE DEALT WITH

Complaints against Priests and Deacons

	2018 (2017)	%
Formal complaints made to bishops (total)	90 (101)	
<i>Dioceses with no complaints made</i>	13 (9)	31% (21%)
<i>Dioceses with between 1 and 5 complaints made</i>	26 (31)	62% (74%)
<i>Dioceses with 6 or more complaints made</i>	4 (2)	9% (5%)
Of the total, the following numbers of complaints were made by:		
<i>a person nominated by a PCC under s10(1)(a)(i)</i>	2(0)	2% (0%)
<i>a churchwarden under s10(1)(a)(ii)</i>	0 (0)	0% (0%)
<i>an archdeacon under s10(1)(a)(iii)</i>	23 (28)	26% (28%)
<i>another person under s10(1)(a)(iii)</i>	65 (73)	72% (72%)
Number of complaints delegated under s13 Dioceses, Pastoral and Mission Measure to a suffragan bishop for determination	16 (9)	18% (9%)
Action taken in 2018 in relation to complaints made in 2018 or earlier		
<i>Dismissed by the bishop under s11(3)</i>	26 (21)	24% (18%)
<i>No further action under s12(1)(a) & s13</i>	21 (23)	20% (19%)
<i>Conditional deferment under s12(1)(b) & s14</i>	2 (2)	2% (2%)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	1 (0)	1% (0%)
<i>Penalty by consent under s12(1)(d) & s16</i>	20 (23)	19% (19%)
<i>Formal investigation under s12(1)(e) & s17</i>	18 (8)	17% (7%)
<i>Withdrawn (rule 59(1)(a))</i>	1 (0)	1% (0%)
<i>No decision as at 31st December 2018</i>	19 (41)	18% (35%)

Number of complaints referred unsuccessfully to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (2)
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Penalties by consent imposed under s12(1)(d) & s16	
<i>Prohibition for life (with or without resignation)</i>	2 (6)
<i>Limited prohibition (with or without resignation)</i>	14 (9)
<i>Resignation without prohibition including revocation of licence</i>	1 (3)
<i>Injunction</i>	1 (0)
<i>Rebuke</i>	3 (2)
<i>Injunction and Rebuke</i>	1 (3)
Cases referred for formal investigation under s12(1)(e) & s17	
<i>President of Tribunals decided 'No case to answer'</i>	7 (2)
<i>President referred complaint to bishop's disciplinary tribunal</i>	6 (3)
<i>President not decided as at 31st December 2018</i>	0 (2)
<i>Formal investigation ongoing as at 31st December 2018</i>	3 (7)
<i>No further steps taken under s16(3A) (penalty by consent)</i>	2 (1)
Number of cases determined by a tribunal	3 (4)
Complaints withdrawn from a tribunal or otherwise terminated	0 (1)
Number of suspensions imposed (total)	15 (18)
<i>Suspensions under s36(1)(a) in course of complaint proceedings</i>	8 (10)
<i>Suspensions under s36(1)(b) following arrest</i>	2 (6)
<i>Suspensions under s36(1)(c) following conviction</i>	1 (0)
<i>Suspensions under s36(1)(d) following inclusion in a barred list</i>	0 (1)
<i>Suspensions under s36(1)(e) following determination that the cleric presents a significant risk of harm</i>	4 (1)
<i>Suspensions under s36A pending determination of an application to bring proceedings out of time</i>	0 (0)

Cases where a penalty of prohibition or removal from office was imposed under s30(1)(a) following conviction and sentence of imprisonment	4 (7)
Cases where a penalty of removal from office or prohibition was imposed under s30(1)(b) following decree of divorce or order for judicial separation	1 (1)
Cases where a penalty of removal from office or prohibition was imposed under s30(1)(c) following inclusion in a barred list	0 (1)

Complaints against Bishops and Archbishops

Formal complaints made to archbishops	2018 (2017)
<i>in respect of a bishop</i>	24 (5)
<i>in respect of the other archbishop</i>	0 (2)
Action taken in 2018 in relation to complaints made in 2018 or earlier	
<i>Dismissed under s11(3)</i>	13 (2)
<i>No further action under s12(1)(a) & s13</i>	4 (2)
<i>Conditional deferment under s12(1)(b) & s14</i>	0 (0)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (0)
<i>Penalty by consent under s12(1)(d) & s16</i>	0 (0)
<i>Formal investigation under s12(1)(e) & s17</i>	0 (0)
<i>Withdrawn (rule 59(1)(a))</i>	5 (0)
<i>No decision as at 31st December 2018</i>	6 (6)
Number of complaints unsuccessfully referred to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (0)
Number of Vicar-General's courts held	0 (0)
Number of suspensions imposed	0 (0)

Cases where a penalty of removal from office or prohibition was imposed under s31(1)(a) following conviction and sentence of imprisonment	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(b) following decree of divorce or order for judicial separation	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(c) following inclusion in a barred list	0 (0)

<i>Applications and reviews before the President/Deputy President of Tribunals</i>	
<i>Application to bring a complaint out of time (s9)</i>	27 (18 granted)
<i>Review of a dismissal (s11(4))</i>	24 (2 reversed)
<i>Referral of a decision of no further action (s13(3))</i>	10 (0 overturned)
<i>Consulted by bishop re penalty in case of divorce/conviction (s30(2))</i>	(4)
<i>Appeal against notice of suspension (s36(6))</i>	1 (0 revoked)
<i>Review of inclusion of name in list under s38(1)(a) to (d) (s38(2))</i>	2 (0 excluded)

