

GENERAL SYNOD
CLERGY DISCIPLINE COMMISSION
ANNUAL REPORT FOR 2019

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 sixteenth annual report made by the Commission and covers its work in the year to 31 December 2019.

The House of Bishops received this report in July 2020.

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. 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 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.
3. The Commission met on two occasions in 2019: January and May. The Commission welcomed its new chair, the Right Honourable Dame Sarah Asplin DBE, with effect from the beginning of the year and a new Chief Legal Adviser (the Revd Alexander McGregor) following the retirement of Mr Stephen Slack

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.”

THE WORK OF THE COMMISSION IN 2019

Reform of the CDM: A two-tiered system

4. The Commission considered in detail the National Safeguarding Team's paper on the Clergy Discipline Measure which was submitted to the House of Bishops. The Commission endorsed the recommendation that a two-tiered process of dealing with complaints be established. The Commission acknowledged the need for a grievance procedure to separate out less severe complaints from those more serious matters which needed to be dealt with under the full force of the Measure.
5. Various possibilities were discussed by the Commission. A form of triage system which would distinguish between the level of seriousness of complaints was considered essential to allow a grievance procedure to operate effectively. An ombudsman style system was favoured, although it was agreed that there would need to be some form of penalty mechanism attached to ensure its efficacy.
6. The Commission took the view that a triage system would need to be adequately resourced if improvements in turnaround times were to be viable. Following implementation, it should not be onerous for registrars and others to adhere to the time limits already in place.
7. However, the Commission expressed reservations against creating another system which would avoid the basic responsibility of the bishop acting on the advice of the diocesan registrar to effectively deal with a complaint against a member of the clergy.
8. The disciplinary function should not be taken away from the diocesan bishop as it was a core function of the office that can trace its origins to the post-Apostolic period: it is a key part of the church and its doctrine.

The work of the President of Tribunals and Deputy President of Tribunals

9. The Commission noted the increased workload of the President and Deputy President (detailed in paragraph 31). The number of applications and the complexity of those applications had risen considerably.
10. The Commission queried whether this might be due misconceptions about the extent of the powers available to the President under the Measure.
11. The Commission agreed that there was need for a more effective grievance procedure to deal with the sizeable number of trivial complaints and vexatious litigants.

Independent Inquiry into Child Sexual Abuse

12. The Commission was briefed on the work of the Independent Inquiry into Child Sexual Abuse (IICSA) and took note of the preliminary hearing transcript. Although the Inquiry had produced an interim report, it had not commented on the operation of the CDM. This was expected to be contained in the final report.

13. The Committee welcomed the establishment of the Lambeth Palace Working Group and agreed that a subcommittee should be established to liaise with this group in order to formulate a response to IICSA's final report.

Education and Training

14. The Commission examined the possibility of organising a teaching day seminar for bishops on exercising quasi-judicial functions in their role as bishops. It also examined the manner in which complaints are made and various ways of assisting archdeacons with the provision of training in making complaints on behalf of vulnerable complainants. It noted that training days had been provided by the Designated Officer but were poorly attended.

Obtaining Evidence from Survivors of Abuse

15. The Commission agreed that focus should be on assisting archdeacons to make complaints on behalf of survivors rather than focusing on the individual complainants.
16. The Commission suggested that some training could be provided to archdeacons by on an electronic platform supplemented by further resources, but it recognized this would require funding and resourcing which were matters outside its control.

Online Application Forms

17. The Commission discussed the possibility of creating an online application system for applications to the President of Tribunals. This would have the advantage of clearly laying out the requirements for a review and making the process more user-friendly than the paper based statutory forms currently in use. The Commission considered that this would assist both lawyers and complainants alike.

Sheldon Community

18. The Chair met with a representative of the Sheldon Community. That community had commissioned a piece of research on the effects of the CDM process on members of the clergy. The Commission recognised that while all disciplinary procedures are stressful and painful, it was almost impossible to remove stress in a situation where somebody was being criticized in their professional capacity.

Proposal to remove limitation period

19. The Commission considered a request to remove the limitation period with respect to complaints about the response to reports of sexual abuse or failures to follow safeguarding policies in the same way as direct complaints about sexual abuse.
20. The Commission agreed that these types of case were better dealt with under the law as it stands, which allowed a better balance to be struck between the interests of the complainant and those of the respondent.

Proposal concerning the timing of a risk assessment

21. The Commission considered a proposal that a risk assessment might be undertaken *after* there had been a finding of misconduct against a cleric and then be used in a similar manner to a pre-sentence probation report.
22. The Commission noted that this matter was beyond its remit but that a risk assessment might be useful at the point when a period of prohibition was coming to an end and consideration was being given to whether the cleric should return to ministry.

Preventing unrepresented respondents from cross-examining survivors

23. The Commission noted the steps that it had already taken in this regard and a proposal was due to be sent to the Rule Committee

Archbishops' List

24. The Commission noted a request for members of the laity to be added to the Archbishops' List.
25. This was beyond the remit of the Commission and would need to be the subject of further exploration by the National Safeguarding Team.

Publicizing penalties: approval of revised guidance

26. The Commission agreed the revised guidance, which was circulated to bishops and registrars with a privacy notice template. Following a request from a bishop to depart from this guidance, the Commission was of the view that extremely cogent reasons for any departure from the agreed guidance should be given to ensure transparency and consistency across the dioceses.

ANNUAL ANALYSIS OF COMPLAINTS

27. 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 2.
28. In 2019, 217 complaints were made under the Measure against priests or deacons, as against 90 in 2018. The total number of respondents in respect of those cases was 154. This compares with the total number of clergy falling within the provisions of the Measure as at 31 December 2019 of nearly 20,000.² As in previous years, the number of clergy against whom a complaint was made remains very low – some 0.8% of the total number.
29. The 141% increase in complaints from 2018 to 2019 requires some explanation. The sudden deviation from the norm is due to the sizeable number of CDM complaints

² The statistics are the most recent available and are taken from *Ministry Statistics 2018*, published by the Research and Statistics Department of the Archbishops' Council in 2020 <https://www.churchofengland.org/sites/default/files/202006/Ministry%20Statistics%202019%20report%20FINAL.pdf> This number includes *inter alia*: 7,700 stipendiary clergy; 7,370 clergy with permission to officiate; 2870 self-supporting clergy & 1,020 ordained chaplains.

relating to allegations that parish websites failed to comply with safeguarding guidance (the complaint being that clergy failed to comply by not ensuring that safeguarding arrangements were clearly visible on the landing page of their parish website).

30. Notwithstanding the sudden increase in the number of complaints for 2019, it should be noted that was still a 43% increase in CDM complaints over the last decade: 63 complaints were made in 2008 and 90 were made in 2018.
31. Perhaps the most notable change over time relates to the number of applications to the President of Tribunals.³ Over the past five years, there has been a 156% increase: from 27 applications in 2014, to 69 in 2019.
32. 7% of dioceses had no complaints at all, compared with 31% in 2018, and 38% had six or more complaints compared with 9% in 2018. As in previous years, the majority of complaints (89%) were made by complainants other than archdeacons, churchwardens or persons nominated by a PCC, with archdeacons making up a further 13% of complainants, a decrease from 25% last year and 25% in 2017.
33. 16% of complaints were dismissed by the bishop in 2019 (a decrease from 24% in 2018) and no further action was taken in 22% of cases, an increase on the previous year (20%). A penalty by consent was imposed in 6% of the complaints (a decrease from 19% in 2018), 2% were conditionally deferred (the same as 2018), while 9% of the complaints were referred to the Designated Officer for formal investigation (a decrease from 17% the previous year). 16% 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 four complaints, four complaints were referred to a bishop's disciplinary tribunal, and two investigations were ongoing at the end of the year. Four complaints were concluded by a bishop's disciplinary tribunal in 2019.
34. 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.
35. Twelve complaints were made against bishops or archbishops in the course of 2019; one was dismissed, and no further action taken in six more. Eight complaints were outstanding at the year-end (compared to six in 2018).
36. Of those twelve complaints made to an archbishop, one was a complaint in respect of the other archbishop.
37. During the course of the year, the President and Deputy President of Tribunals considered 69 applications which included reviews and appeals.

**On behalf of the Commission
The Rt Hon. Dame Sarah Asplin (Chair)
July 2020**

³ The categories of application to the President of Tribunals are listed in Appendix 2 (page 9)

APPENDIX 1: 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 Dame Justice Sarah Asplin DBE*

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

Vacancy following the death of the 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 2

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

<i>Complaints against Priests and Deacons</i>	Total	
	2019 (2018)	% of
Formal complaints made to bishops	217 (90)	42 dioceses
<i>Dioceses with no complaints made</i>	3 (13)	7 % (31%)
<i>Dioceses with between 1 and 5 complaints made</i>	25 (26)	60% (62%)
<i>Dioceses with 6 or more complaints made</i>	16 (4)	38% (9%)
Of the total (217), the following numbers of complaints were made by:	2019 (2018)	% of Total
<i>a person nominated by a PCC under s10(1)(a)(i)</i>	1 (2)	0.4% (2%)
<i>a churchwarden under s10(1)(a)(ii)</i>	1 (0)	0.4% % (0%)
<i>an archdeacon under s10(1)(a)(iii)</i>	29 (23)	13% (25%)
<i>another person under s10(1)(a)(iii)</i>	193 (65)	89% (72%)
Number of complaints delegated under s13 Dioceses, Pastoral and Mission Measure to a suffragan bishop for determination	37 (16)	17% (18%)
Action taken in 2019 in relation to complaints made in 2019 or earlier		
<i>Dismissed by the bishop under s11(3)</i>	34 (26)	16% (24%)
<i>No further action under s12(1)(a) & s13</i>	47 (21)	22% 20%
<i>Conditional deferment under s12(1)(b) & s14</i>	5 (2)	2 % (2%)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (1)	NIL (1%)
<i>Penalty by consent under s12(1)(d) & s16</i>	13 (20)	6% (19%)
<i>Formal investigation under s12(1)(e) & s17</i>	19 (18)	9% (17%)

<i>Withdrawn (rule 59(1)(a))</i>	53 (1)	24% (1%)
<i>No decision as at 31st December 2019</i>	35 (19)	16% (18%)

New complaints involving misconduct towards a vulnerable adult (sec 6 SCDM 2016)	6 (n/a)
New complaints involving misconduct of a sexual nature towards a child	6 (n/a)
Number of complaints referred unsuccessfully to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	1 (0)
Penalties by consent imposed under s12(1)(d) & s16	
<i>Prohibition for life (with or without resignation)</i>	2 (2)
<i>Limited prohibition (with or without resignation)</i>	4 (14)
<i>Resignation without prohibition including revocation of licence</i>	0 (1)
<i>Injunction</i>	0 (1)
<i>Rebuke</i>	5 (3)
<i>Injunction and Rebuke</i>	0 (1)
Cases referred for formal investigation under s12(1)(e) & s17	
<i>President of Tribunals decided 'No case to answer'</i>	4 (7)
<i>President referred complaint to bishop's disciplinary tribunal</i>	4 (6)
<i>President not decided as at 31st December 2019</i>	0 (0)
<i>Formal investigation ongoing as at 31st December 2019</i>	2 (3)
<i>No further steps taken under s16(3A) (penalty by consent)</i>	1 (2)
Number of cases determined by a tribunal	4 (3)
Complaints withdrawn from a tribunal or otherwise terminated	1 (0)
Number of suspensions imposed (total)	22 (15)

<i>Suspensions under s36(1)(a) in course of complaint proceedings</i>	9 (8)
<i>Suspensions under s36(1)(b) following arrest</i>	7 (2)
<i>Suspensions under s36(1)(c) following conviction</i>	1 (1)
<i>Suspensions under s36(1)(d) following inclusion in a barred list</i>	0 (0)
<i>Suspensions under s36(1)(e) following determination that the cleric presents a significant risk of harm</i>	5 (4)
<i>Suspensions under s36A pending determination of an application to bring proceedings out of time</i>	0 (0)
<i>Applications, reviews & appeals to the President/Deputy President of Tribunals</i>	69 (68)
<i>Application to bring a complaint out of time (s9)</i>	20 applications 2 dismissed
<i>Review of a dismissal (s11(4))</i>	15 applications 1 not upheld
<i>Referral of a decision of no further action (s13(3))</i>	21 applications all upheld
<i>Consulted by bishop re penalty in case of divorce/conviction (s30(2))</i>	7 applications 1 remitted
<i>Bishop applies for extension: 2 yr. limit for imposing penalty (s30; r.67A)</i>	1 application 1 granted
<i>Appeal against notice of suspension (s36(6))</i>	1 appeal 1 unsuccessful
<i>Sec 37 - Rule 86 - Suspension of Bishop</i>	1 appeal 1 unsuccessful
<i>Review of inclusion of entry in list under s38(1)(a) to (d) (s38(2))</i>	3 applications 1 variation of entry

Cases where a penalty of prohibition or removal from office was imposed under s30(1)(a) following conviction and sentence of imprisonment	2 (4)
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	2019 (2018)
<i>in respect of a bishop</i>	12 (24)
<i>in respect of the other archbishop</i>	1 (0)
Action taken in 2019 in relation to complaints made in 2019 or earlier	
<i>Dismissed under s11(3)</i>	1 (13)
<i>No further action under s12(1)(a) & s13</i>	6 (4)
<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>	1 (0)
<i>Withdrawn (rule 59(1)(a))</i>	2 (5)
<i>No decision as at 31st December 2019</i>	8 (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	1 (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)