

**GENERAL SYNOD**  
**THE DRAFT CODE OF PRACTICE ISSUED UNDER THE CLERGY DISCIPLINE**  
**MEASURE**

**Explanatory Notes**

**BACKGROUND**

1. The Clergy Discipline Measure 2003 ('the CDM') provides for the determination of allegations of misconduct (other than matters relating to doctrine, ritual or ceremonial) against clerks in Holy Orders.

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2. The Clergy Discipline Commission ("the Commission") is responsible for overseeing the operation of the CDM. Under section 39 it is the duty of the Commission to formulate guidance for the purposes of the CDM 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. Amendments cannot come into force until approved by the General Synod. 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. The Code was first issued in 2006 and has since been revised, with Synod's approval, in February 2011, and July 2013 and July 2016.

3. The Code does not have the force of law, but as a statutory code is must be taken into account at all time. Compliance with the code is considered to be best practice. It is not intended to be a comprehensive work on all aspects of the CDM – 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 CDM and the Rules.

4. The current Code can be accessed here:

[https://www.churchofengland.org/sites/default/files/2017-10/code-of-practice-as-published-jan-2017\\_0.pdf](https://www.churchofengland.org/sites/default/files/2017-10/code-of-practice-as-published-jan-2017_0.pdf)

## EXPLANATION OF PROPOSED REVISIONS

*Where the code has been amended the text appears in red*

### Presentational and formatting

5. The Code has been reformatted to be more user-friendly. The document is now 1.5 spaced and contains links to key materials such as the Measure, Rules, tribunal decisions and other statutory guidance (**page 10**). The Chair of the Commission, Dame Sarah Asplin, has provided a preface (**page 2**).

### Rule Amendments

6. Proposed amendments to the Clergy Discipline Rules 2005 have been laid before this group of sessions for debate and approval. The Code has been updated to take account of the proposed amended rules.

6.1. References to a 'complaint' have been replaced with 'allegation of misconduct'.

**6.2. Paragraph 63** gives guidance on a new rule which provides for 'deemed receipt' of document that are sent or delivered.

**6.3. Paragraphs 68-71** and **paragraphs 152-153** update the guidance to take account of an online system for submitted allegations and answers as well as the imposition of and word and page limits. More advice is given about the level of detail required in supporting evidence.

6.4. **Paragraph 97** explains the procedure for the simultaneous delivery of the allegation of misconduct to the registrar when the online system is used. Where a paper-based allegations is made, the bishop must now refer it to the registrar within one business day.

### Training

7. **Paragraph 7** provides that it is the responsibility of each diocese to ensure that all involved in the CDM processes are properly trained.

8. **Paragraphs 60 and 61** amends the code to emphasise the importance of giving assistance to those who may wish to bring an allegation of misconduct, or who are providing evidence in support of an allegation, and that they be properly trained for that purpose.

### **Procedure for the resolution of minor complaints**

**9. Paragraph 13** contains an additional line confirming that the CDM is not a 'complaints procedure' and is for the resolution of allegations of misconduct which are serious in nature.

**10. Paragraphs 19 – 21** set out that it is best practice for each diocese to publish a procedure for the resolution of complaints that did not fall under the CDM. A suggested procedure, formulated in consultation with the Ecclesiastical Law Society, appears at **Appendix 'A'**.

### **Delegation**

**11. Paragraph 24** confirms recently issued advice from the Commission that it is best practice for diocesan bishops to sign instruments of delegation in respect of at least two suffragan or assistant bishops to ensure that all matters under the CDM can be disposed of swiftly where a conflict arises.

### **Who is subject to the CDM?**

**12. Paragraphs 25 and 29** give further guidance in relation to the jurisdiction of the Measure. The Code now sets out that a cleric does not have to hold a current licence in order to be subject to the CDM, but that the Measure does not apply to pre-ordination conduct. Further, that where a respondent relinquishes his or her orders by deed under the Clerical Disabilities Act 1870 they cease to be subject to the Measure. However, any allegation that is outstanding will not fall away, and the deed of relinquishment does not take effect until the matter has been determined.

### **Grounds of misconduct**

**13. Paragraph 31** updates the statutory grounds of misconduct to include the failure to have due regard to the House of Bishops' guidance on safeguarding children and vulnerable adults as introduced under section 5 of the Safeguarding and Clergy Discipline Measure 2016.

**14. Paragraphs 32 and 33** expand on the meaning of "lawful political opinions or activities of a respondent" under section 8(3) CDM and makes reference to the 2

June 2014 declaration by the House of Bishops in respect of the British National Party.

**15. Paragraphs 34** makes clear that minor allegations do not fall under the CDM and provides more content regarding “*grievances, disagreements, and/or minor acts or omissions*”.

**16. Paragraphs 38 and 39** gives practical guidance on the definition of ‘due regard’ and ‘cogent reasons’ for the purposes of the duty under section 5 section 5 of the Safeguarding and Clergy Discipline Measure 2016.

**17. Paragraph 42** refers to the case of **Armstrong v Robinson (2008)** which provides guidance on the existence and scope of the duty of office holders to follow House of Bishops’ policies in matters which pre-date October 2016.

**18. Paragraph 46** gives some further explanation as to what may constitute conduct unbecoming or inappropriate and the importance of the *Guidelines for the Professional Conduct of the Clergy*.

### **Who can start disciplinary proceedings?**

**19. Paragraphs 52** has been amended to reflect the practice that where an archdeacon is satisfied that there is a case of misconduct ordinarily they should bring the allegation, and not leave it to a private individual to do so. The archdeacon should also ensure that the evidence comes from the aggrieved person or persons and is not second hand.

**20. Paragraphs 53** clarifies that position with respect the children and those with a disability who wish to bring an allegation of misconduct.

**21. Paragraph 54** sets out the standing of the National Safeguarding Team to bring allegations of misconduct.

**22. Paragraphs 57 – 59** now sets out the statutory position in respect of bringing allegations of misconduct against non-parochial clergy.

### **Help and guidance**

**23. Paragraphs 60-61** make explicit the importance of ensuring that full and proper support is available for both complainants and other individuals in the CDM process.

**24. Paragraph 113** gives corresponding guidance for respondents.

### **Police and medical records**

**25. Paragraphs 75-78** give new guidance on the importance of requesting police and medical records at an early stage of the proceedings in order to avoid delays later on.

### **Applications for permission to bring an allegation out of time**

**26. Paragraphs 86-88** set out new guidance on the importance of making applications for permission to bring proceedings in a timely fashion. In all cases an application should be made as soon as reasonably practicable.

### **The role of the registrar**

**27. Paragraphs 99-104** significantly expands on the guidance provided to registrars during the preliminary scrutiny stage of proceeding and in particular on the meaning of '*sufficient substance*' when assessing if an allegation of misconduct should proceed or be dismissed.

**28. Paragraph 121** has been amended to re-emphasise the importance of registrars completing their preliminary scrutiny reports within the 28 days period. It further provides that a registrar should inform the Secretary to the President of the Tribunals in writing where an extension has been necessary, giving the reasons why.

### **Pastoral Care**

**29. Paragraph 109** suggests that in appropriate cases the bishop should consider directing that the notification to the respondent that an allegation of misconduct has been made should be hand delivered.

### **Dismissal/no further actions**

**30.Paragraph 144** provides guidance on when a bishop may dismiss an allegation where it is vexatious or it has already been dealt with by a prior formal allegation. In such cases the bishop must always take advice from the registrar.

**31.Paragraph 147** makes clear that where the bishop dismisses an allegation because it lacks sufficient substance for the purposes of the Measure, but is still concerned about the conduct of the cleric, appropriate and proportionate action outside of the Measure can be taken. This will likely be advice and/or an informal warning as to future behaviour.

**32.Paragraph 163** provides the same guidance on advice and warnings when no further action is taken on an allegation of misconduct.

### **Penalties**

**33.** The section on the penalties available to bishops and tribunals has been removed from the Code of Practice. It is set out in the **Clergy Discipline Commission's Guidance on Penalties**.

**34.Paragraphs 194 and 252** set out that the bishop and tribunal should refer to the Guidance on Penalties when considering the appropriate penalty.

### **Formal Investigation**

**35.Paragraph 223** has been updated to give more detailed guidance on the nature of the investigation carried out by the Designated Officer, with the specific reference obtaining evidence and considering lines of inquiry.

### **How the tribunal makes its decision**

**36.Paragraph 247** has been amended to reflect a change in the law regarding the meaning of '*balance of probabilities*' which no longer is described as having a 'degree of flexibility'.

**Confidentiality**

**37. Paragraphs 306-309** gives new guidance (which has also been issued separately by the Commission) on the importance of confidentiality and privacy in CDM proceedings. In particular it notes that all individuals, whether they are part of the proceeding or not, should refrain from making any statements or posts online, or in other public fora, in connection with the allegation.

**38. Paragraph 314** references two exceptions to the principle of confidentiality which are contained in separate statutory guidance issued by the Commission and relate to suspensions and confirmation to the media that an allegation has been made. In both cases the position remains that details of the allegation should not be made know.

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