

GENERAL SYNOD
THE DRAFT CLERGY DISCIPLINE (AMENDMENT) RULES 2021
Explanatory Notes

The Clergy Discipline Rules 2005 provide the procedural framework for dealing with allegations of misconduct under the Clergy Discipline Measure 2003. These amendments are made for the carrying into effect of the provisions of the Measure and relate to the procedure and practice once an allegation has been made and referred for preliminary security by the registrar. The proposed amendments have been drafted to address issues around efficiency, clarity, case management, and vulnerable witnesses.

Background

1. The Clergy Discipline Rules 2005 provide the procedural framework for dealing with cases of misconduct under the Clergy Discipline Measure 2003 (“CDM”).
2. Section 83 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 gives the Rule Committee the power to make rules for the carrying into effect of the provisions of the CDM. This includes making provision for the procedure and practice where complaints are referred to a registrar under section 11 of the CDM. A referral under section 11 is the first procedural step in the life of an allegation of misconduct.
3. A copy of the existing rules can be accessed here:
<https://www.churchofengland.org/sites/default/files/2017-10/cdrules-as-amended-published-jan-2017.pdf>
4. The amendments have been drafted to address issues in the following areas:
 - **Efficiency:** The proposed rules allow for an online system for the submission of allegations of misconduct, answers to allegations, applications and appeals or reviews. Documents will be sent simultaneously to the bishop and registrar. Parties will be required, if they have one, to provide an email address so that

communication is quicker. There will be more clarity over when a document is deemed to have been received by a person.

- **Clarity:** Complaints will be referred to as ‘allegations of misconduct’ to more accurately reflect that the process is a formal legal one and not a ‘complaints procedure’. Word and page limits are proposed in order to ensure allegations and answers are concise and focussed on relevant material.
- **Case management:** The President of the Tribunals’ powers have been widened to allow for case management directions to be given on applications at an earlier stage. The President will be able to order a non-party, such as the police, to disclose records where they are relevant to an investigation into alleged misconduct. Obtaining relevant disclosure from non-parties is a current cause of significant delay in the process.
- **Vulnerable witnesses:** An existing practice direction has been incorporated into a proposed new rule to prohibit the cross-examination of certain vulnerable witnesses by a respondent without a lawyer.

Notes on the Rules

Rule 1 – Citation, commencement and interpretation

5. Paragraph (1) provides that the Rules may be cited as the Clergy Discipline (Amendment) Rules 2021.
6. Paragraph (2) provides for the coming into force of the Rules two months after the day on which they are laid before Parliament.

Rule 2 – Provision of an email address

7. Paragraphs (1) and (2) amend rules 4 (complainant) and 17 (respondent) respectively to require the provision of an email address, if the person has one.

Rule 3 – Timeline

8. This amendment provides that a complainant must include in their written complaint a timeline of the relevant events in chronological order.

Rule 4 – Limitation period

9. The existing rule 8 provides for an application to be made to the President of the Tribunals for permission to bring a complaint after the one year limitation period has expired. When an application is made the President of the Tribunals must allow the parties an opportunity to comment on it. This amendment allows for the President to give written directions for the management of an application before it is sent to the parties for consultation, in order to provide for the better management of the issues.

Rule 5 – Production of documents by person not party to the proceedings.

10. This new rule creates a new power for the President to order a person who is not party to the proceedings to produce (i.e. disclose) a document. At this stage of the process the parties to the proceedings are the complainant and the respondent.
11. Paragraph (1) of rule 28A provides that an application may only be made by the Designated Officer (“DO”) or the respondent. The DO is a lawyer who oversees the investigation into the complaint.
12. Paragraph (2) of rule 28A prohibits any application being made requiring the DO to produce documents. There are existing provisions which require the DO to disclose documents to the parties.
13. Paragraph (3) of rule 28A requires a statutory form to be used for all applications under this rule.
14. Paragraph (4) of rule 28A provides that an application can only be made during the formal investigative stage of the complaint under section 17 CDM. Prior to the investigation the issues in the case will be insufficiently clear to warrant applications; and once a case has been referred to a tribunal following the formal

investigative stage, the existing rule 34 provides the Chair with powers to order the production of documents from non-parties.

- 15.** Paragraph (5) of rule 28A provides that an application can be made without notice (i.e. without having been sent to the non-party) but that the President may direct that notice be given.
- 16.** Paragraph (6) of rule 28A sets out that the test for making an order under this rule. An order may be made where it appears to the President that the production of the documents specified or described in the application is relevant and necessary for dealing fairly with the allegation.
- 17.** Paragraph (7) of rule 28A requires that any order must specify or describe the documents or classes of documents which the person to whom the order is directed must produce.
- 18.** Paragraph (8) of rule 28A requires that any order must contain a penal notice which sets out the consequences of failing to comply with the order.
- 19.** Paragraph (9) of rule 28A requires that where an order has been made and the non-party was not given reasonable notice of the application, that person may apply to the President for the discharge or variation of the order, and that the order must allow for a period of not less than 14 days to allow such an application to be made.
- 20.** Paragraph (10) of rule 28A provides that a failure to comply without reasonable excuse with an order made under this rule is to be treated as a contempt. It gives the President the power to certify the failure and make a referral to the High Court.
- 21.** Paragraph (2) of the amending rule substitutes reference to section 81(3) Ecclesiastical Jurisdiction Measure 1963 with section 25(3) of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018.
- 22.** Paragraph (3) creates a new statutory form for applications under the rule.

Rule 6 – Cross examination of witnesses

- 23.** The new rule 45A puts a practice direction currently in operation on a statutory footing.
- 24.** Paragraph (1) of the new rule prohibits a respondent from cross-examining a witness in person where the alleged misconduct is conduct of sexual nature towards that witness or the conduct towards the witness took place when that witness was a child (even if they are now an adult). This provision applies automatically, without the need for an application or order.
- 25.** Paragraph (2) prohibits a respondent from cross-examining a witness where it appears to the tribunal that the quality of evidence given by the witness would be likely to be diminished if the cross-examination were conducted by the respondent in person and would be likely to be improved if a direction under this Rule were to be given, and that it would not be contrary to the interests of justice to give such a direction.
- 26.** Paragraph (3) provides that the DO may apply in writing to the Chair for a direction that paragraph (2) applies and that the application must be sent or delivered to the respondent at the same time.
- 27.** Paragraph (4) provides that the respondent may, within 14 days, make representations upon the application in writing to the Chair and that they and must be sent or delivered to the DO at the same time as they are made to the Chair.
- 28.** Paragraph (5) sets out the factors to be taken into account when the Chair determines an application made under paragraph (3).
- 29.** Paragraph (6) sets out that, where the Chair is satisfied that any of the grounds in paragraphs (1)(a) or (b) or (2) apply, the Chair must direct that to be the case, invite the respondent to arrange for legal representation for the purpose of cross-examination, and require the respondent to notify the Registrar of Tribunals by the end of a specified period whether a legal representative has been instructed so to act.

30. Paragraph (7) allows that if at the end of the specified period the respondent has not given notice that a legal representative has been appointed the Chair must consider whether it is in the interests of justice for the witness to be cross-examined and if the Chair considered it is, the tribunal must appoint a legal representative to cross-examine the witness.
31. Paragraph (8) notes that where a legal representative is appointed by the Tribunal that person acts in the interests of the respondent but is not responsible to the respondent (as if the respondent were that person's client).

Rule 7 – Renaming “complaints” as “allegations of misconduct”

32. This amendment allows for the words “allegation of misconduct” to have the same meaning as “complaint”, which is currently used, in order to better describe that the CDM as being a formal legal process and not a ‘complaints procedure’.

Rule 8 – Online facility for processing allegations

33. The amendments to this rule facilitate the use of an online facility (in due course to be operated through the Church of England website) for the uploading documents electronically. The present system provides that all complaints, answers and applications must be paper-based. The President has the power under rule 101(1)(d) to direct that documents may be sent by another manner, including electronic means. Paragraph (1) provides that where such a direction is in force the online system may be used.
34. Paragraph (2) widens the scope of the rule to encompass all documents that might be sent, not just those required to be sent.
35. Paragraph (3)(a) amends rule 9 by requiring the bishop to send the complaint to the registrar for preliminary scrutiny within one business day after having received it, instead of within 7 days. Paragraph (3)(b) provides that where the online system is used this will not be necessary as delivery to the bishop and registrar will be simultaneous.

Rule 9 – Service of documents

36. The new rule 101A creates a provision for deemed service in order to give clarity to when a person is regarded as having ‘received’ a document under the rules. The relevant methods of service and deemed dates are set out in the table.

Rule 10 – Word and page limits

37. This provides for a new rule 101B which imposes a limit of 3000 words on the documents set out in the tables under paragraphs (1) and (2)

38. Paragraph (3) limits the total number of pages that may be attached to each statutory form in the schedule to 25, size A4 in a legible form.

39. Paragraph (4) provides that where documents include a link to a webpage, the number of words contained in the webpage count towards the 3000 word limit.

40. Paragraph (5) provides that any link to a webpage counts towards the 25 page limit as if the webpage has been printed in a legible form.

41. Paragraph (6) allows that a relevant officer may disapply or increase the word or page limit where the person who submitted the document applies and the relevant officer is satisfied that there are exceptional circumstances which justify doing so.

42. Paragraph (7) defines ‘relevant officer’ as the bishop, in the case of a form which makes an allegation of misconduct or answers one, and in any other case, the President.

Rule 11 – Powers of the President

43. This amends rule 102A by allowing the President to give directions on her own initiative rather than solely upon an application, appeal or request.

Rule 12 – Amendments to allegations of misconduct

44. The new rule 103A puts a further practice direction currently in operation on a statutory footing. Paragraph (1) allows for the Registrar of Tribunals to direct that an allegation be amended where an application has been made in writing before the commencement of the hearing. Note that under the existing rule 30(2) the

Registrar of Tribunals may refer any matter of difficulty or dispute to the Chair of the Tribunal.

45. Paragraph (2) give a corresponding power to the Chair, once the hearing of the allegation has begun and before the pronouncement of the determination. It allows that applications may be made orally as oppose to solely in writing.

Rule 13 – Use of statutory forms

46. The amendments require parties to use the statutory forms (save when the online system is used) removing the ability to submit documents which are “*substantially to the like/same effect*”.

Rule 14 – Minor corrections

47. These amendments provide some minor corrections to the nomenclature of paragraphs within the Rules.

March 2021

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