

STATUTORY GUIDANCE

Issued by the Clergy Discipline Commission

February 2021

INTRODUCTION

The Clergy Discipline Commission is established under section 3 of the Clergy Discipline Measure 2003. Amongst its various functions the Commission has responsibility for issuing guidance to persons exercising functions in connection with clergy discipline.

The guidance herein is issued under section 3(3)(b) of the Measure. It should be read alongside the Measure, the Rules, and the Code of Practice.

The Commission's Guidance on Penalties is published as a separate document.

The Clergy Discipline Commission
January 2021

CONTENTS

<u>Statutory Guidance</u>	page
Publicity for Clergy Discipline Proceedings	3
Appendix I: Privacy Notice Template	6
Appendix II: Examples of penalty announcements	9
Delegation by Diocesan Bishop of the Disciplinary Function	11
The meaning of 'sufficient substance'	12
Applications for permission to bring an allegation of misconduct out of time	14
Confidentiality and privacy	15

PUBLICITY IN CLERGY DISCIPLINE PROCEEDINGS

Publicising penalties

1. Paragraph 264 of the Code of Practice emphasises it is important that the Church should be open about any misconduct that is proved to have taken place. Tribunals therefore announce their decisions in public, giving reasons for their decision. **The same principle applies to penalties that are imposed by bishops. Consequently, paragraph 265 of the Code provides that if a penalty is imposed other than after a determination by a tribunal, the penalty and brief particulars of the misconduct should be announced publicly.**
2. An appropriate means which the Commission recommends for the diocese to publicise the imposition of penalties, would be to set up a Clergy Discipline page on the diocese's website. **All penalties should be recorded on it, whether imposed by the bishop or by a bishop's disciplinary tribunal for the diocese.** The name of the cleric, the penalty, the date imposed and a summary of the nature of the misconduct should be included in the entry. The summary should be as brief as possible but must provide accurate information about the nature of the misconduct.
3. To protect the privacy of others, the brief summary should avoid identifying or referring to anyone other than the cleric concerned.
4. **Appendix II** contains illustrations of how announcements can be worded, as well as examples of inappropriate brief summaries of misconduct.
5. The Commission recommends that, generally, an entry in a particular case should be removed from the diocesan website after 5 years, save in the following cases:
 - (i) a rebuke – the entry should be removed at the end of 1 year;
 - (ii) an injunction – the entry should be removed at the end of the period during which the injunction has been operative;

(iii) removal from office – the entry should be removed where the cleric re-enters ministry before the period of 5 years has expired.

(iv) prohibition – the entry should be removed at the end of the prohibition if the period is longer than 5 years.

6. To comply with the General Data Protection Regulation, when imposing a penalty the bishop must serve the cleric with a privacy notice so that the cleric is informed that the penalty will be published. **Appendix I** has a template that can be used for this purpose.
7. In particularly serious allegations, such as safeguarding cases, the diocese is encouraged to consider issuing a separate statement to the media, referring to the high standards required and expected of clergy, the serious or shocking nature of the misconduct, and apologising for any harm caused to those affected by the misconduct.
8. The Commission assumes that, as a matter of practice, the diocese will notify a congregation direct in all cases where a cleric is removed from office or has his or her licence revoked at the end of disciplinary proceedings. The announcement should state the penalty, the date when it was imposed, and provide a brief summary of the nature of the misconduct – to protect the privacy of others, the brief summary should avoid identifying or referring to anyone other than the cleric concerned.

Publicity before a penalty is imposed

9. Whilst proceedings are under way, there is normally no good reason for the Church to disclose publicly the existence or details of an allegation of misconduct, and the proceedings should be confidential. Although the media may be particularly interested in allegations of misconduct against the clergy, coverage in advance of a determination can be misleading, unfairly damage the reputations of the parties, and damage the Church both locally and nationally. This is particularly the case where an allegation is without foundation and the bishop either dismisses it or decides to impose no penalty. The public does not need to know that an allegation in any particular case has been presented – it

merely needs to know that if one is made, it will be dealt with in accordance with the due process of law.

10. Subject to this general principle of confidentiality whilst allegations are being processed, the Commission recommends there are two circumstances when the diocese should disclose that an allegation has been made and that it is being investigated:

a. Where a cleric is suspended under the Clergy Discipline Measure, his or her absence will usually need to be explained to the local congregation. Any such explanation should be truthful, and will therefore need to disclose if an allegation has been made, for example: *'The Reverend [name] has been suspended pending an allegation of misconduct made under the Clergy Discipline Measure. Suspension does not mean the bishop has formed any view that the allegation is true. The matter is being investigated.'* When the suspension comes to an end, that too should be announced to the congregation.

b. Where the media already know that an allegation has been made and seek confirmation about it from the diocese, denying what is already in the public domain would be fruitless and merely lead to the Church appearing to be secretive. If approached by the media, the Commission suggests the diocese should disclose that an allegation under the CDM has been made against the cleric in question, and that it is duly being considered in accordance with the appropriate statutory procedures. The details of the matter should not be revealed publicly at that stage.

11. Where there is a police investigation connected with the alleged misconduct, the diocese should liaise with the police before any public announcement is made.

Revised: March 2019

Appendix 1

Privacy Notice Template

Publication of a penalty under the Clergy Discipline Measure - Privacy Notice

1. Data controller

The data controller is:

[Title of the Bishop]

[Address required]

This privacy notice is provided to explain what to expect when you consent to a penalty as a result of disciplinary proceedings under the Clergy Discipline Measure 2003. It explains why and how the Bishop will publish your personal information about the penalty.

2. Why the Bishop publishes your personal data

Personal information is published to enable the Bishop to carry out his/her responsibilities in relation to the disciplinary process under the Clergy Discipline Measure 2003. The Clergy Discipline Commission's Code of Practice emphasises that it is important for the Church to be open about any misconduct that is proved to have taken place and this will include publishing the penalty to which you consent. Penalties are published:

- to reassure members of the public that the Church has an effective disciplinary process in place and that appropriate penalties will be imposed where misconduct has been committed; and
- to protect members of the public from dishonesty, malpractice, seriously improper conduct, unfitness or incompetence by alerting the public to clergy who have committed misconduct.

3. The information the Bishop will publish

The information the Bishop will publish for this purpose is:

- Your name.
- The penalty (including date imposed).
- Summary of the nature of the misconduct.

4. The lawful basis for publishing your information

The Bishop publishes your personal data, including some “special categories” of personal data and personal data relating to criminal convictions and offences where applicable, on the following lawful bases:

Personal data

- **Public interest:** The Bishop processes your information to perform a task carried out in the public interest.

Special categories & information relating to criminal convictions and offences

- **Substantial public interest** (protecting the public against dishonesty, malpractice etc.): The Bishop will publish your information for reasons of substantial public interest. This condition is met where it is necessary for the exercise of a “protective function”, as defined in paragraph 11, Part 2 of Schedule 1 to the Data Protection Act 2018, including the protection of members of the public against seriously improper conduct.

Publication is in accordance with the Clergy Discipline Commission’s Code of Practice, a copy of which can be found here:

<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline/code-practice-and-other-guidance>.

5. Sharing your information

The Bishop will be sharing your data with the public by publishing the information (e.g. on the diocesan website).

6. How long do we keep your information?

Your penalty information will be published for 5 years except in the following cases:

- A rebuke – the entry will be removed at the end of 1 year;
- An injunction – the entry will be removed at the end of the period during which the injunction has been operative;
- Removal from office – the entry will be removed where the cleric re-enters ministry before the period of 5 years has expired; or

- Prohibition – the entry will be removed at the end of the prohibition if the period is longer than 5 years.

7. Your rights

Subject to exemptions, you have the following rights regarding your personal data:

- The right to be informed about any data we hold about you;
- The right to request a copy of your personal data which we hold about you;
- The right to request that we correct any personal data if it is found to be inaccurate or out of date;
- The right to request your personal data is erased where it is no longer necessary for us to retain such data;
- The right, where there is a dispute in relation to the accuracy or processing of your personal data, to request a restriction is placed on further processing;
- The right to object to the processing of your personal data;
- The right to obtain and reuse your personal data to move, copy or transfer it from one IT system to another *[only applicable for data held online]*

If you wish to exercise these rights, please contact *[insert name of relevant contact]* using the contact information provided below.

8. Complaints or concerns

If you have any concerns or queries about how the Bishop handles your personal data, please contact *[insert name of relevant contact]* at: *[address]*

You have the right to make a complaint at any time to the Information Commissioner at

<https://ico.org.uk/concerns/> or:

Information Commissioner's Office

Wycliffe House

Water Lane Wilmslow Cheshire SK9 5AF

Tel: 0303 123 1113 (local rate)

Appendix II

Examples of how penalty announcements can be worded on websites:

<u>Name</u>	<u>Penalty</u>	<u>Date imposed</u>	<u>Brief summary</u>
[Full name]	Resignation and prohibition for [X] years	1 st March 2019	Adultery with a parishioner
[Full name]	Resignation	2 nd March 2019	Inappropriate and unprofessional relationship with a parishioner
[Full name]	Resignation and prohibition for [Y] years	3 rd March 2019	Sexual relationship with a married parishioner
[Full name]	Rebuke	4 th March 2019	Inappropriate disclosure of confidential information
[Full name]	Resignation	5 th March 2019	Neglect in failing to account accurately to the diocese for fees
[Full name]	Removal from office and prohibition for life	6 th March 2019	Dishonest misappropriation of fees
[Full name]	Rebuke and injunction	7 th March 2019	Inappropriate conduct at a funeral
[Full name]	Removal from office and prohibition for [Z] years	8 th March 2019	Convicted of theft
[Full name]	Revocation of licence and prohibition for life	9 th March 2019	Convicted of indecent assault on a minor
[Full name]	Revocation of licence	10 th March 2019	Matrimonial misconduct <i>or:</i> Matrimonial unreasonable behaviour

[Full name]	Removal from office and prohibition for life	11 th March 2019	Included in a barred list under the Safeguarding Vulnerable Groups Act 2006
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Examples of inadequate or inappropriate summaries of misconduct

“Domestic violence”: This discloses that the respondent has been violent within the home – it does not respect the privacy of the spouse or children.

“Adultery with the organist”: This does not respect the privacy of the organist, who will be readily identifiable.

“Sexual misconduct”: This is too vague – it might lead to unfair rumours or assumptions that the cleric’s misconduct was towards children. It does not state whether the misconduct was in respect of an adult, a parishioner or a minor.

“Financial misconduct”: This is too vague. Unfair assumptions against the cleric could be made because it does not reveal whether the misconduct was dishonest or merely neglectful.

DELEGATION BY DIOCESAN BISHOPS OF THE DISCIPLINARY FUNCTION

1. Section 13 of the Dioceses, Pastoral and Mission Measure 2007 enables a diocesan bishop by a signed instrument to delegate functions to a suffragan or assistant bishop. An instrument of delegation may provide for the discharge of a delegated function to be subject to such conditions as may be specified in the instrument. The disciplinary function under the Clergy Discipline Measure is a function that may be delegated under section 13 of the 2007 Measure.
2. The Clergy Discipline Measure Code of Practice draws attention to the provisions relating to delegation by a diocesan bishop. In particular, paragraph 93 of the Code encourages each diocesan bishop to sign an instrument so that disciplinary functions may be delegated to a suffragan or assistant bishop where the bishop certifies in writing that there is a conflict of interest in a particular case – this should be done as soon as reasonably practicable after taking office and with the consent of the diocesan synod.
3. To ensure there is always a bishop who is able to discharge delegated disciplinary functions (so that cover is provided, for instance, where a suffragan see becomes vacant, or an assistant bishop is ill or otherwise unable to act) it would be advisable for a diocesan bishop to sign instruments of delegation in respect of at least two suffragan or assistant bishops. Each instrument could provide that the disciplinary function is to be exercised by the relevant suffragan or assistant bishop only in relation to such named clerks in Holy Orders as may be specified by the diocesan bishop in writing from time to time to that other bishop.

Issued: August 2020

THE MEANING OF 'SUFFICIENT SUBSTANCE'

1. The Commission has become aware that some difficulty has arisen over the meaning of 'sufficient substance' as referred to in section 11(1)(b) of the Measure.
2. There are two stages at which allegations of misconduct are filtered. The first is the preliminary scrutiny report, in which the registrar must form a view as to whether the matter is of 'sufficient substance'. The second is limited to those cases which are referred for formal investigation under section 17. In deciding whether or not to refer a matter to a tribunal the President applies a further threshold test. The two stages should not be confused.
3. The meaning of 'sufficient substance' must be read in the full context of the Measure. Section 11(1)(b) requires the registrar to scrutinise the allegation of misconduct with a view to -

*"forming a view as to whether or not there is sufficient substance in the complaint to **justify proceeding with it in accordance with the following provisions of this Measure**" [emphasis added].*

4. Reference to "*the following provisions of this Measure*" means taking one of the courses available to the bishop under section 12. Prior to making a decision under section 12 the bishop seeks an Answer from the Respondent pursuant to Rule 17.
5. Accordingly, in determining whether or not an allegation is of 'sufficient substance' the registrar must form a view as to whether it justifies an answer from the respondent and, if so, whether or not it warrants the bishop taking one of the courses of action under section 12.
6. The registrar should not form a view as to whether or not it is likely that the matter would be referred to a tribunal by the President. Likewise, for the avoidance of doubt, the test for sufficient substance does not include a threshold of there being a realistic prospect of removal from office.

- 7.** In applying the test of ‘sufficient substance’ the following may be of assistance:
- a. The preliminary scrutiny stage is not a fact finding exercise.
 - b. The analysis is carried out without any answer from the respondent.
 - c. The complainant’s case should be taken at its highest and the allegations presumed to be credible.
 - d. Consideration should be given as to whether the misconduct alleged falls within one or more of the grounds in section 8 of the Measure.
 - e. Complaints based upon grievances, disagreements, and/or minor acts or omissions, however genuine, are not of sufficient substance and should be dismissed.
- 8.** In all cases the final decision rests with the bishop who must exercise their own judgment. Where a matter is dismissed due to not being of sufficient substance, but the conduct alleged nevertheless gives the bishop cause for concern, the bishop may take appropriate and proportionate action outside of the Measure.

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APPLICATIONS FOR PERMISSION TO BRING AN ALLEGATION OF MISCONDUCT OUT OF TIME

1. All allegations of misconduct under the Measure must be brought in a timely fashion and, where possible, within the limitation period as prescribed by section 9.
2. Where an application for permission to bring an allegation of misconduct out of time is made it must be brought as soon as reasonably practicable after the person making the allegation becomes aware of the alleged misconduct. Significant delays, without good reason, between the date of knowledge of the alleged misconduct and the making of an application may result in the application being dismissed.
3. Where there is an ongoing police investigation or criminal proceedings, a complainant is not precluded from either bringing an allegation within time, or making an application for permission to bring an allegation out of time. However, it will almost always be appropriate for the criminal matter to be determined before progressing the allegation – see Rules 18 and 19.
4. Where a core group has been established this should not be a cause of delay in the bringing of an allegation or the making of an application for permission to bring an allegation out of time. In almost all cases it will not be necessary for the core group to have concluded prior to the bringing of the allegation. In cases where permission to bring an allegation out of time is being sought this should be made expeditiously alongside the core group process.
5. Applications should always set out clearly and concisely why there is a ‘good reason’ for not instituting proceedings at an earlier date and, where available, provide supporting evidence.

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CONFIDENTIALITY AND PRIVACY IN CLERGY DISCIPLINE PROCEEDINGS

1. Allegations of misconduct under the CDM are private and confidential. This is to ensure that matters are dealt with fairly and that the process is not prejudiced. It extends to complainants, respondents and witnesses.
2. Due to the nature of allegations, individuals concerned will have a reasonable expectation of privacy and confidence at common law¹. In addition, their personal data will be subject to data protection law. In certain cases the provisions of section 1 of the Sexual Offences (Amendment) 1992 may also apply (anonymity of victims of certain offences)
3. The default position is that all hearings will take place in private, unless one of the reasons provided for in rule 40 applies.
4. **Accordingly, all matters relating to an allegation should be kept strictly private and confidential.** This includes written documents and material which, save for legal representatives, should not be shared with third parties.
5. In particular, individuals (regardless whether or not they are a party) should refrain from making statements, posts, comments or similar on social media, websites, print media or other public fora which in any way reference the details of the allegation, the individuals involved, or give an opinion as to the merits or otherwise of the proceedings.
6. Where an allegation has been referred for determination before a tribunal or court, the Chair may certify that an act or omission, in connection with the proceedings or an order, committed by *any person* is a contempt and refer the matter to the High Court.
7. The Commission has previously issued statutory guidance (see page 3) concerning publicity in CDM cases. That guidance sets out two exceptions where the existence of an allegation may be disclosed without the detail being made public.

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¹ see *Richard v British Broadcasting Corpn* [2019] Ch 168 and *ZX v Bloomberg LP* [2020] EWCA Civ 611.