

GENERAL SYNOD
REPORT OF THE LAMBETH WORKING GROUP ON THE CLERGY DISCIPLINE
MEASURE 2003

Introduction

1. The Clergy Discipline Measure came into force in 2006. Since then it has dealt with over 1,300 complaints against clerks in Holy Orders. In any given year the number of formal complaints represents less than 1% of clergy subject to Measure.
2. The Working Group on the operation of operation of the Measure, chaired by the Right Reverend Tim Thornton, Bishop at Lambeth, was formed in October 2019 at the request of the Archbishops of Canterbury and York. The work of the Group has built upon previous consultations carried out by the House of Bishops, the National Safeguarding Team and the Clergy Discipline Commission. The current membership of the Group is set out at Appendix 'A'
3. The purpose and scope of the Group's role has been threefold:
 - a. To identify amendments that should be made to the Clergy Discipline Measure 2003 or to the Rules and Code of Practice made under it, either generally or in relation to safeguarding;
 - b. To consider whether any other legislative change would be desirable in order to (i) strengthen the Church's ability to respond effectively to safeguarding concerns and (ii) enhance the manner in which they are dealt with by Church Officers and Church Bodies; and
 - c. To consider whether safeguarding matters relating to discipline should be dealt with outside of the existing CDM processes.
4. In respect of the first of those aims, at the April 2021 group of sessions General Synod passed amendments to the Clergy Discipline Rules 2005 and approved changes to the Code of Practice. Prior that to, having consider an interim paper from the Group in July 2020, the House of Bishops voted to replace the Clergy Discipline Measure.

5. Throughout December 2020 and January 2021 the Working Group carried out an extensive consultation on proposals for replacement. The Group received 99 written responses with 101 people attending a zoom consultation and 8 people engaging in one-to-one conversations. Participants included clergy (many of whom had been respondents to a CDM), complainants, senior diocesan staff, union representatives and other interested parties. The Group wish to thank all those who contributed to the Consultations and the many others who have responded as the Group has done its work.
6. The Working Group are hugely indebted to two bodies who have assisted in the shaping of these proposals. Firstly, the Sheldon Hub for highlighting powerfully the experience of clergy who have been subject to complaints under the Measure. Secondly, the Ecclesiastical Law Society's Working Party on the CDM, Chaired by the Vicar-General of the Province of York, Peter Collier QC, who have produced an incredibly detailed and thoughtful report.
7. There is also at this group of sessions a presentation regarding the wider issues relating to the role and nature of ordained ministry. Many of the concerns brought to the attention of the Working Group cannot and would not be resolved, or indeed affected at all, by any changes to the Clergy Discipline Measure. It is important to stress that the proposals for a new Measure are but one aspect of discipline. There is a need to review other areas of relationships within dioceses and there will be further work that needs to be done. The Working Group is clear that there is other work that still is outstanding relating to clergy and their development, support, and accountability. As well as that, there are two other areas of further work to highlight, firstly more work will be needed in the area of safeguarding to ensure the issues presented to us have been picked up by the appropriate groups within the church and secondly, there is a significant area of work to be done concerning discipline and lay people (including church officers).

Legislative Process

8. The proposals in this paper are not a comprehensive plan covering every aspect of a new system. The new measure will be supplemented by procedural rules and a code of practice which will govern the day-to-day operation of the Measure.

9. It is intended that the recommendations of the Working Group in this report will be taken forward by an implementation group who will bring forward proposals for legislative drafting to Synod in February 2022. Thereafter the first consideration of a new measure will take place at Synod in July 2022.

Clergy Conduct Measure - Policy Intention

10. The policy intention behind these proposals focusses on five key areas:
- a. The **allocation** of complaints and allegations of misconduct to separate tracks.
 - b. The imposition of **statutory duties** to ensure professional support is in place for survivors, victims and complainants and effective pastoral support for respondents.
 - c. The **early investigation** of all complaints and allegations of misconduct.
 - d. **Independent oversight** of disciplinary functions with an emphasis on professional training for those administering any aspect of the Measure
 - e. The **proper resourcing** of diocesan and national bodies to ensure the efficient determination of complaints and allegations of misconduct

Complaints and Allegations of Misconduct

11. Since the CDM came into force in 2006, 43% of all cases have either been dismissed or subject to no further action. This has invariably left the complainant without resolution of the underlying issue. The respondent has also been subject to formal proceedings with the associated cost, stress and detrimental impact on ministry. The 1996 report on clergy discipline entitled '*Under Authority*' noted the need for a procedure as a "*means for a cleric to voice a grievance when his affairs had been mishandled*"¹. The same principle applies to members of the laity. The

¹ Para 5.37

Clergy Discipline Measure does not provide a process for dealing with these complaints.

12. The Working Group propose that a clear distinction is made between matters which are in substance formal '**allegations of misconduct**', and matters which are '**complaints**'.
13. The Group proposes that the resolution of **complaints** take place in an informal procedure that is administered normally regionally across dioceses.
14. **Allegations of misconduct** would be allocated to a central body who would oversee the investigation and, where referred to a tribunal, the prosecution of the case.

Defining misconduct

15. A clerk in Holy Orders exercises public ministry. In exercising that ministry the cleric gives a commitment to serve within certain boundaries. The complexity of modern ministry means that identifying the limits of acceptable conduct, and by implication misconduct, is not straight forward. Likewise, as a Church, we recognise that there will be times when we all fail to meet the standards expected of us, but in a way that does not attract the rigours of formal penalty. The Church's system of discipline must be flexible in responding to this challenge.
16. The Working Group recognises, therefore, the importance of clearly defining what constitutes a complaint and what constitutes an allegation of misconduct. The system must give clarity to complainants in the case they seek to bring and to respondents in the case they need to meet. Such detailed analysis is outside the parameters of the Working Group's remit. The implementation group will take forward the work of defining these terms.

The Role of the Diocesan Bishop

17. The focus of discipline should be the diocesan bishop, reflecting the theological and historical understanding of the role of the Ordinary. The bishop however is also the leader of the eucharistic community and is called, as the Shepherd, to care

for and to pastor the flock. This dual role can, on occasions, give rise to conflict. Any system of discipline within the Church must be fair and transparent, and neither pastor nor adjudicator must outweigh the other.

18. The Church has always taught that bishops do not act alone but are ministers within the community. Throughout history, structures have developed to assist in the administration of episcopal functions. These have included the designation by the bishop of the practical aspects of discipline to a particular person or body whilst retaining overall authority. The proposals contained in this report recommend the continued and, in places strengthened, assistance to the bishop in the exercise of discipline.

The Clergy Discipline Commission

19. The Working Group propose that oversight of the new Measure continues to rest with a reformed Clergy Discipline Commission. Membership of the Commission would be drawn from a wider pool and include both lay and clerical expertise, as well as groups with an interest in clergy discipline. The Group propose that at least one member of the House of Bishops would sit ex officio on the Commission.

20. The Commission's role will include more direct oversight of the tribunal process and oversight of training² for bishops, archdeacons, DSAs, panel assessors and any other person or body involved in administering the Measure. The Commission would continue to issue statutory guidance and a code of practice.

21. The current President and Deputy President of the Tribunals roles would be retained, but with an increase in the number of other available delegate to ensure cases are dealt with swiftly.

Stage 1 – Allocation of complaints and allegations of misconduct

22. Allocation of cases to the correct track will take place in the diocese by the diocesan bishop. There will be no formal report from the Registrar but where

² Improved training is an IICSA recommendation which has been adopted by the Church.

advice is needed it can be sought. The implementation group will consider the appropriate timescale in which allocation should take place, balancing the need for the bishop to consider matters fully and ensuring that cases proceed efficiently.

23. In order to assist with allocation those making a complaint or allegation of misconduct will be asked to indicate what they consider to be the most appropriate track. The evidence received by the Working Group is that engaging with the person raising the complaint and in particular asking what outcome they seek makes for improved decision-making. The indication, however, will not be binding on the bishop who will be required to make a determination.
24. The assessment will take place on the basis of the matters contained in the case documents, taking the case at its highest, without considering an answer from the respondent. There will not normally be a need for the bishop to meet with the parties in order to allocate, although limited points of clarification may be sought. Upon allocation the Respondent will be given a copy of the complaint/allegation of misconduct, along with notice of the allocation. Legal aid will become available for allegations of misconduct only.
25. Allocation will not be irreversible, should the nature of the matters raised either become more serious or less serious as the investigation proceeds.
26. The bishop will be under a **statutory duty** to make a referral to other statutory agencies (e.g. Police, LADO etc) in appropriate cases.
27. **In safeguarding related cases the bishop will also be under a statutory duty to, immediately upon receipt, refer the matter to the DSA/DSO who will then respond under the Safeguarding Code of Practice. In most cases, the safeguarding process should run alongside the disciplinary proceedings.**
28. In **all cases** the bishop will be under a statutory duty to ensure the appropriate support is put in place for complainants/victims and respondents. This will include the appointment of an ISVA or like person for complainants etc, and pastoral support for respondents.

29. Where a matter is allocated as an allegation of misconduct a discretionary power to suspend will arise, exercisable upon statutory grounds.

Stage 2a – Complaints

Step 1: informal conversation with the Bishop

30. Some very low-level complaints may be able to be resolved by a simple conversation with the bishop, either with both parties present, or separately. At such a meeting there would be no legal representation. Notes would be taken. This step would only be used for the lowest level of complaint. The use of this option would not preclude moving onto step 2 if the matter was not resolved. Equally, the bishop may be of the view that step 1 would be inappropriate and refer the matter immediately to the lead assessor under step 2.

Step 2: Referral to an Assessor

31. Most complaints will likely be dealt with by an assessor.³ These assessors, organised regionally across groupings of diocese will be responsible for the processing and investigation of complaints. Responsibility for recruitment and training of assessors will rest with the Clergy Discipline Commission who will work closely with dioceses to ensure that membership of the panels properly represents the entire diversity of the church. Assessors will be both lay and clerical.

32. When a case is allocated as a complaint it will be referred to a lead assessor for the assessment of whether the complainant has a proper interest in bringing the complaint and that it has been allocated to the correct track. If the lead assessor were of the view that the matter is incorrectly allocated, the matter is referred back to the Bishop for re-consideration. The lead assessor may recommend to the bishop in writing that the complaint is summarily dismissed⁴.

³ The Lambeth Working Group is hugely indebted to the ELS Working Group who have formulated these proposals.

⁴ For example, the person may not have a proper standing to bring a complaint, or the subject matter may be so minor as to not even meet the definition of a 'complaint'.

33. The Lead Assessor will appoint a case assessor from the panel maintained by the Clergy Discipline Commission. This person will meet with the parties, obtain a response from the respondent and gather evidence as necessary. There would be no formal hearings, but a record of all meetings would be kept. The assessor would then prepare a report for the bishop and each party which would include recommendations for the resolution of the complaint. Recognising the central role of the bishop in administering discipline, it is proposed that the report would be advisory rather than binding, but with the clear expectation the bishops would follow the recommendations unless a clear and compelling reason existed.
34. In resolving the complaint, the focus would be on an 'outcome' rather than 'penalty' with an emphasis on the pastoral rather than punishment. Options would include dismissal of the complaint, no further action, mediation and conciliation, support and training, advice, and a formal written warning. Matters would be recorded in the blue file. There would be no appeal or review.
- The entire process would ordinarily be completed within 28 days.**

Stage 2b – Allegations of misconduct

35. It is clear to the Working Group that allegations of misconduct must be professionally analysed and independently investigated at the earliest opportunity. Delay and inaction are contrary to natural justice.
36. In order to achieve these aims all allegations of misconduct (not otherwise summarily dismissed as vexatious or repeat) will be referred to office of the Designated Officer ("DO").
37. The DO, or an assistant DO, will ensure that the allegation of misconduct is correctly allocated and that the maker has a proper interest. There will be a power to refer back to the bishop with advice if the case is more correctly categorised as a complaint.

38. The Respondent will be asked to provide formal written Answer within a statutory time period.
39. Where the Respondent admits the misconduct, the case would be referred back to the Bishop for the imposition of a penalty. The Bishop will also seek written representations from the complainant, respondent and DO prior to imposing a penalty. In appropriate cases the bishop would also seek advice from the DSA. There will be no requirement for the consent of the Respondent to the penalty. A right of appeal against the penalty would exist.
40. Where the allegation is denied, a formal investigation will take place. The Church is already able to draw upon the expertise of fully qualified people to exercise this role. Some, like DSA/DSO, already perform this function. In appropriate cases independent professional investigators will be used from a list maintained by the Clergy Discipline Commission.

Stages 3 and 4 – Tribunals and Appeals

41. The forum for the determination of allegations of misconduct will remain the Bishop's Disciplinary Tribunal. Independent scrutiny of allegations will continue to be carried out by the President of the Tribunals (or deputy/delegate) who will decide whether the matter should be referred to a tribunal.
42. It is proposed that the administrative functions of the tribunal be overseen by a single **Clerk to the Tribunals**. Further consideration will be given as to whether the current Provincial Registrar of the Tribunal system is to be retained and, if so, in what form. The tribunal would consist of three members, a legally qualified chair, one clerk in Holy Orders and one lay person. A final hearing would ordinarily take place within **30 weeks** of the case having been referred for determination, save for very complex matters. Where the Respondent admits the allegations at any time before the tribunal begins to hear the case, the matter may be referred back to the Bishop for the imposition of a penalty.

43. The Working Group recommend the re-introduction of the penalty of deposition from Holy Orders, to operate as it currently does under sections 50-53 of the Ecclesiastical Jurisdiction Measure 1963.⁵
44. There are further matters related to tribunals, such as the use of special measures for vulnerable witnesses etc. which are not suitable for this paper, but which the implementation group will carry forward into recommendations for legislative drafting.
45. The right to appeal, as currently exists under the CDM, would remain. An applicant would first seek permission to appeal from the Dean of the Arches alone. The Court of Arches would sit as the appellate court with the Dean, one other judge from a list maintained by the Clergy Discipline Commission, and one diocesan bishop.

Ancillary points

46. **Limitation period.** In line with the commitment given to the IICSA, there would be no limitation period on bringing cases that had a safeguarding element. The implementation group will give consideration to whether a limitation period should remain for *any* type of case.
47. **Bishops and Archbishops.** The process for Bishops and Archbishops would be the same as above, save that complaints or allegations of misconduct against bishops would be laid before the Archbishop of the Province. Complaints or allegations of misconduct against an Archbishop would be laid before the President of the Tribunals. The Court of the Vicar-General would continue to have jurisdiction to hear episcopal and archiepiscopal cases.
48. **Chairs of the Disciplinary Tribunals:** The Chair would no longer be nominated by the Archbishops but appointed by the Appointments' Committee of General Synod, in consultation with the President of the Tribunals.

⁵ This is an IICSA commitment.

49. **Archbishops' List:** The List would remain but be limited to recording finds of misconduct only. Provision would be made for the removal of certain entries a specified period of time or occurrence of an event.

50. **Legal Aid:** Legal aid on a means-tested basis would be available for all respondents who are subject to an allegation of misconduct as soon as they receive notification of allocation.

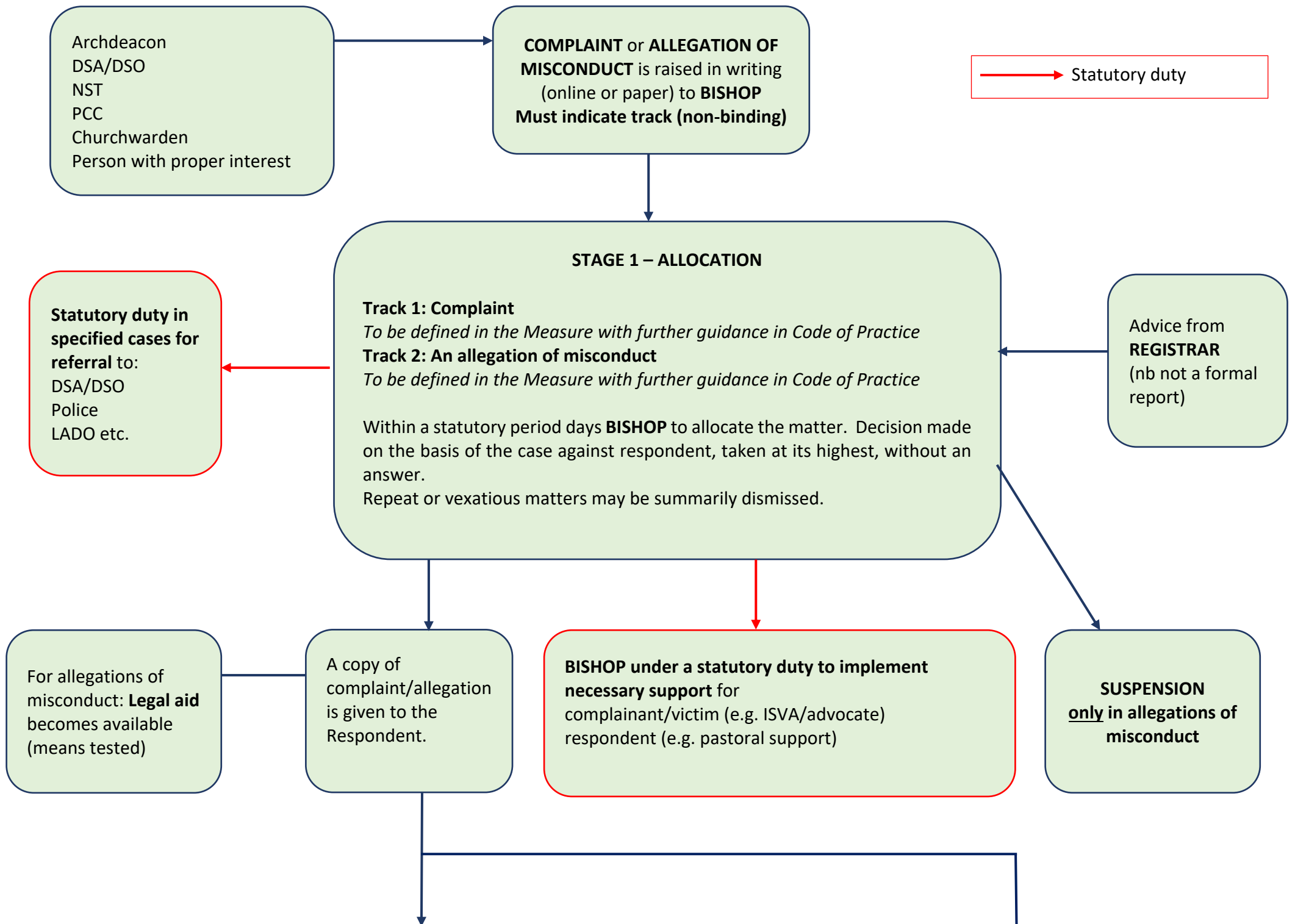
The Right Reverend Tim Thornton

The Bishop at Lambeth

June 2021

Appendix 'A'- Membership of the Working Party as at June 2021

The Rt Revd Timothy Thornton	Bishop at Lambeth (Chair)
Anthony Clarke	Provincial Safeguarding Adviser, Lambeth Palace
Abbey Clephane-Wilson	Diocesan Safeguarding Advisor, Diocese of Manchester
Louise Connacher	Provincial Registrar, Diocese of York
Kevin Connelly	Executive Assistant (Metropolitan), Lambeth Palace
Emily Denne	Advisor for Survivor Engagement, NST
Edward Dobson	Senior Advisory Lawyer and Designated Officer, Legal Office
Thomas Foot	Safeguarding Administrative Assistant, Lambeth Palace (NST)
The Rt Revd John Inge	Bishop of Worcester
Stuart Jones	Diocesan Registrar, Dioceses of Norwich and London
Jo Kind	MACSAS
The Revd Canon Judith Knight	Director of Resources and Safeguarding, Diocese of Gloucester
Suzie Long	Director of Human Resources and Safeguarding, Diocese of London
Zena Marshall	Interim National Director of Safeguarding, NST
The Revd Alexander McGregor	Head of the Legal Office
Colin Perkins	Diocesan Safeguarding Adviser, Diocese of Chichester
The Venerable Mark Steadman	Archdeacon of Stow and Lindsey



STAGE 2a (step 1) – COMPLAINTS

Step 1: Informal conversation with the BISHOP

No penalties

No lawyers

Chaplain to take notes

Bishop has discretion of whether to place matter on blue file

STAGE 2a (step 2) – COMPLAINTS

Step 2: Referral to Panel Assessors [this is the ELS model]

28 day procedure

Referral to regional **LEAD ASSESSOR** for assessment on proper interest and whether it is correctly allocated. **LEAD ASSESSOR may recommend to Bishop that complaint is summarily dismissed.**

Assessor appointed who meets with complainant and respondent, gathers evidence/clarifications as necessary. Respondent may accept the complaint at any stage. Findings of fact, as necessary, are made. No formal hearings, but minutes of meetings taken. No legal representation, but right to be accompanied.

Options for resolution, incl. dismissal of the complaint, no further action, mediation/conciliation, support/training/, advice, formal written warning. NB pastoral approach and not penalties but 'outcomes'. All recorded on blue file.

Written report to **BISHOP** who implements recommendations. Bishop may deviate from recommendations, only where clear and compelling reason to do so.

No appeal or review.

STAGE 2b – ALLEGATIONS OF MISCONDUCT

Referral to the office of Designated Officer. Allegation analysed for (i) proper interest and (ii) whether it is correctly allocated. If lawyer is of the view that it is on the wrong track refer back to the Diocese with advice.

Respondent asked to provide an Answer within a specified time period. If allegation is admitted – **refer back to BISHOP for the imposition of penalty.** Right of appeal against penalty.

If allegation is denied **INVESTIGATION** to take place. Use of professional investigation services where appropriate.

Confidential report for the President of Tribunals who decides whether there is a case to answer.

If there is case to answer – a written allegation is laid and Respondent given an opportunity to formally admit or deny.

```
graph TD; A[ ] --> B[STAGE 3 – Tribunal]; B --> C[Stage 3 – Penalties]; C --> D[STAGE 4 - Appeals];
```

STAGE 3 – Tribunal

Within 2 weeks of referral – a **CHAIR OF THE TRIBUNAL** is appointed by the President and directions are issued.

CLERK TO THE TRIBUNAL to oversee administrative functions of hearings.

Parties may request an oral directions hearing in complicated cases.

Final hearings to take place within **30 weeks**, unless Chair determines case is highly complex.

Where the respondent admits the misconduct at any stage up until the tribunal begins to hear the case, refer back to Bishop for penalty (with right of appeal).

Full tribunal: panel of three – legally qualified chair sitting with one clerk in Holy Orders and one lay person.

Stage 3 – Penalties

Deposition from Holy Orders

Prohibition from exercising ministry for life

Prohibition from exercising ministry for a limited period

Removal from office/revocation of licence.

Injunction

Formal Rebuke

STAGE 4 - Appeals

Permission to appeal determined by the Dean of the Arches alone.

DO right of appeal on matters of law and unduly lenient penalty.

Respondent right of appeal on matters of law and fact.

Appeal heard by panel of three: Dean plus one other judge and one bishop.