

GENERAL SYNOD
CLERGY DISCIPLINE COMMISSION
ANNUAL REPORT FOR 2020

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 seventeenth annual report made by the Commission and covers its work in the year to 31 December 2020.

The House of Bishops received this report in June 2021.

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 four occasions in 2020: January; May; July; and October. At the beginning of the year, Mr Adrian Iles retired as Designated Officer having given many years of dedicated service to the CDC. His successor, Mr Edward Dobson was warmly welcomed. The Bishop of Lincoln, the Right Reverend Christopher Lowson stepped down as a member of the CDC during 2020. The Chair thanked him for his contribution.
4. The CDC was deeply saddened by the recent loss of two members of the Commission: Canon Carol Wolstenholme and the Revd Canon Jane Sinclair. Although their deaths

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.”

occurred in 2021, it would be remiss not to mention their contribution to the work of the CDC in 2020. The Deputy President, Sir Mark Hedley, announced his retirement at the end of 2020, and was replaced by His Honour Judge David Turner QC. The Chair and CDC owes Sir Mark a great debt of gratitude for his tireless patience, hard work and good humour.

THE WORK OF THE COMMISSION IN 2020

Reform of the CDM

5. The Commission, aware of the criticism of the Measure in its current form, made a concerted effort to improve the operation of the Measure insofar as this was possible within the limits of the primary legislation. With that in mind, the CDC made a series of proposals for reform of the Clergy Discipline Rules 2005 to the Rule Committee (RC) who, at the invitation of the Commission, prepared the Clergy Discipline (Amendment) Rules 2021. The RC endorsed the majority of the Commission's recommendations and these were subsequently embodied in the Clergy Discipline (Amendment) Rules 2021 and approved by the General Synod at the April group of sessions.
6. The proposals from the CDC were as follows: first, the requirement that complainants provide an email address when making an allegation of misconduct (formerly called a 'complaint'); second, a new provision that documents should be deemed to have been served upon respondents after certain periods to enable the calculation of statutory time limits and to improve efficiency; third, the introduction of word and page limits for various prescribed forms; fourth, the incorporation of existing practice directions on amending allegations and cross-examination of certain; and fifth, widening of the President's case management powers, in particular in respect of applications for permission to bring a CDM complaint out of time, so that applications are dealt with more expeditiously and proportionately to their subject matter.

Response to IICSA

7. The Commission studied the recommendations of the Independent Inquiry into Child Sexual Abuse (IICSA). Among its recommendations was a proposal to disapply the 12-month rule regarding complaints involving a safeguarding element. The CDC endorsed this recommendation which will need to be implemented by Measure. The CDC also discussed the reintroduction of the penalty of deposition from Holy Orders as part of the disciplinary framework for matters not involving doctrine, ritual or ceremonial (where it has been retained). This was a matter to be kept under review when considering alternative primary legislation in the future.
8. Following the publication of the IICSA report, a lacuna was identified regarding data on allegations of sexual misconduct involving vulnerable persons and minors and how they were dealt with. To remedy this, additional questions were added to the 2020 annual questionnaire sent to diocesan bishops and registrars. The results may be found in Appendix II and in the analyses below. The CDC agreed to keep these questions under review and to add additional questions in the future if this was thought necessary.
9. The CDC endorsed the work being carried out to bring forward the Safeguarding (Code of Practice) Measure. In accordance with one of IICSA's recommendations, this

replaces the current statutory requirement to “have due regard” with provision for a safeguarding code containing requirements with which a relevant person must comply together with guidance on how to do so. The Code will also bring together the safeguarding policies of the Church of England in one place.

Online applications and CDC website

10. Work was carried out on the clergy discipline section of the Church of England website to make the information on how to make a CDM complaint (now renamed ‘allegation of misconduct’ by the amended Rules) more accessible. A new layout was introduced with more information in a clearer style with diagrams of the process. The text of the information was amended to give emphasis to the fact that the CDM process is not a grievance procedure but rather the start of a formal legal process used for dealing with allegations of clerical misconduct of a non-trivial nature.
11. A new system was introduced enabling those wishing to make applications to the President of Tribunals to do so electronically using a webform. This system is now fully operational and it is the hope of the Commission that the system will prove to be useful to both dioceses and complainants in managing CDM allegations in the future.

Practice directions and Guidance

12. In response to a recommendation made by a Bishop’s Disciplinary Tribunal, a new disclosure protocol was put in place akin to that used in the Crown Court. The issue of conflicts of interest arising for bishops and the exercise of discipline was also addressed by the Commission. The circumstances in which a bishop should refer such a complaint to the Designated Officer were clarified.

Capacity of Respondents

13. The Sheldon Community and others drew the attention of the CDC to the mental health of respondents in CDM proceedings and issues of mental capacity. The Commission considered very seriously the suggestion that the Measure is having a detrimental impact on the capacity of clergy subject to disciplinary proceedings and hopes that the interim reforms currently being implemented will go some way to removing unnecessary stress.
14. So far as incapacity to participate in legal proceedings is concerned, this must be assessed on the basis of medical evidence. The Commission noted that these situations are rare and agreed that respondents are generally presumed to have capacity unless the contrary is proven. Bishops’ Disciplinary Tribunals have the power to consider the question of whether a cleric has capacity to participate in proceedings and to give directions for the conduct of a matter accordingly.

Review by the Deputy President of Tribunals

15. The former Deputy President of Tribunals, Sir Mark Hedley conducted a review of recent decisions on applications by complainants to the President of Tribunals for review of bishops’ decisions to dismiss complaints or to determine that no further action is taken in respect of a complaint. He noted that evidently there were misunderstandings amongst bishops, registrars and administrators about the distinction between a bishop’s decision to dismiss a complaint and the decision take no further action. The former decision

(dismissal) is taken upon receipt of the registrar’s preliminary scrutiny report on whether the complainant has a proper interest and whether there is sufficient substance in the complaint to justify proceeding with it under the next stage set out in the Measure. It is to be distinguished from the bishop’s decision to take no further action at that next stage, which arises only after the respondent cleric has been invited submit an answer in response to a complaint of misconduct.

16. Sir Mark noted that there had never been a successful application to the President for a review of a bishop’s decision that no further action be taken in respect of a complaint; that was due to the limited scope of the President’s jurisdiction. However, in relation to dismissal of a complaint, four decisions were remitted to bishops over the past two years on the basis that the decision-making process was “plainly wrong” and the complaint should not simply have been dismissed at that stage in the process. This was often due to the bishop following conclusions arrived at by the registrar in preliminary scrutiny reports (PSR) and while, not inaccurate, it was stressed that the PSR is not an investigation, and due process must be followed. Where a complainant has a proper interest and there is sufficient substance in a complaint, decisions to dismiss at the earliest stage, without requiring the respondent to submit an answer to the allegation, were inappropriate. The process should not be short-circuited by the bishop.

COVID-19 and Tribunals

17. The CDC noted that only one disciplinary tribunal was held in 2020. Coronavirus precautions prevented gatherings in person for a considerable portion of the year. The Registrars of Tribunals considered that cross-examination was unsatisfactory using Zoom. In one matter a case management hearing took place using a virtual system. Thankfully, following a relaxation of restrictions, cases where priests are suspended are being prioritised and the backlog is being alleviated.

ANNUAL ANALYSIS OF COMPLAINTS

18. 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.
19. In 2020, 92 complaints were made under the Measure against priests or deacons, as against 217 in 2019. The total number of respondents in respect of those cases was 87. The total number of clergy potentially subject to the provisions of the Measure from most recently available data is 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.
20. The decrease in complaints from 2019 to 2020 must be put into context. In 2019 there was a significant increase in the number of CDM complaints relating to allegations that parish websites failed to comply with safeguarding guidance. Although there was a decrease in the number of complaints in 2020, it should be seen in the context of Covid-

² The statistics are the most recent available and are taken from *Ministry Statistics 2019*, 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_0.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.

19 when public worship was suspended for a significant period. In 2018, there were 90 complaints; in 2017 there were 101. That the figure should be as high as 92 in a year where the activity of the clergy was severely constrained is noteworthy.

21. The number of applications to the President of Tribunals remained constant with no decrease in applications despite the pandemic (69).³ As noted in previous reports, the President has seen a significant increase in the number of applications in recent years (156% over the past five years).
22. 24% of dioceses had no complaints at all, compared with 7% in 2019, and 7% had six or more complaints compared with 38% in 2019. As in previous years, the majority of complaints (63%) were made by complainants other than archdeacons, churchwardens or persons nominated by a PCC, with archdeacons making up a further 32% of complainants, an increase from 13% last year (26% in 2018).
23. 21% of complaints were dismissed by the bishop in 2019 (an increase from 16% in 2019) and no further action was taken in 20% of cases, a decrease on the previous year (22%). A penalty by consent was imposed in 26% of the complaints (a substantial increase from 6% in 2019), 8% were conditionally deferred (2% in 2019),
24. Following formal investigation, the President or Deputy President of Tribunals decided there was no case to answer in respect of 7 complaints, 8 complaints were referred to a bishop's disciplinary tribunal, and 2 investigations were ongoing at the end of the year. 1 complaint was concluded by a bishop's disciplinary tribunal in 2020.
25. There were five 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.
26. 27 complaints were made against bishops or archbishops in the course of 2020 (compared with 12 in 2019); 22 were dismissed, no further action taken in 2 more; and one penalty by consent was imposed. Ten complaints were outstanding at the year-end (compared to 8 in 2019). Of those 27 complaints made to an archbishop, 5 were complaints in respect of the other archbishop.
27. New questions were added to the annual questionnaire in 2020. These related to allegations of sexual misconduct against a child or vulnerable adult. In 2020, there were seven cases in which misconduct in this category was admitted by the cleric concerned. In 14 cases, there was a police investigation at some point in the process. The most common stage for the making of an admission was when the cleric was required by the bishop to submit an answer to the complaint. The most common penalty in cases of this nature was prohibition for life.

**On behalf of the Commission
The Rt Hon. Dame Sarah Asplin (Chair),
May 2021**

³ The categories of application to the President of Tribunals are listed in Appendix 2

APPENDIX 1: MEMBERSHIP OF THE COMMISSION AS AT 1st JANUARY 2020

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

Mrs Louise Connacher*#

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	
	2020 (2019)	% of
Formal complaints made to bishops	92 (217)	42 dioceses
<i>Dioceses with no complaints made</i>	10 (3)	24% (7%)
<i>Dioceses with between 1 and 5 complaints made</i>	29 (25)	69% (60%)
<i>Dioceses with 6 or more complaints made</i>	3 (16)	7% (38%)
Of the total (92), the following numbers of complaints were made by:	2020 (2019)	% of Total
<i>a person nominated by a PCC under s10(1)(a)(i)</i>	1 (1)	1% (0.4 %)
<i>a churchwarden under s10(1)(a)(ii)</i>	2 (1)	2% (0.4 %)
<i>an archdeacon under s10(1)(a)(iii)</i>	29 (29)	32% (13 %)
<i>another person under s10(1)(a)(iii)</i>	58 (193)	63% (89 %)
Number of complaints delegated under s13 Dioceses, Pastoral and Mission Measure to a suffragan bishop for determination	18 (37)	20% (17 %)
Action taken in 2020 in relation to complaints made in 2020 or earlier		
<i>Dismissed by the bishop under s11(3)</i>	19 (34)	21% (16%)
<i>No further action under s12(1)(a) & s13</i>	18 (47)	20% (22%)
<i>Conditional deferment under s12(1)(b) & s14</i>	7 (5)	8% (2%)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	3 (0)	3 (NIL %)
<i>Penalty by consent under s12(1)(d) & s16</i>	24 (13)	26% (6%)
<i>Formal investigation under s12(1)(e) & s17</i>	12 (19)	13% (9%)
<i>Withdrawn (rule 59(1)(a))</i>	4 (53)	4% (24%)

<i>No decision as at 31st December 2020</i>	19 (35)	20% (16%)
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New complaints involving misconduct towards a vulnerable adult (sec 6 SCDM 2016)	7 (6)
New complaints involving misconduct of a sexual nature towards a child	6 (6)
Sexual misconduct (child & vulnerable adult) involving a police investigation at any stage	6 (n/a)
Number of complaints referred unsuccessfully to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	3 (1)
Penalties by consent imposed under s12(1)(d) & s16	
<i>Prohibition for life (with or without resignation)</i>	5 (2)
<i>Limited prohibition (with or without resignation)</i>	11 (4)
<i>Resignation without prohibition including revocation of licence</i>	2 (0)
<i>Injunction</i>	2 (0)
<i>Rebuke</i>	3 (5)
<i>Injunction and Rebuke</i>	4 (0)
Cases referred for formal investigation under s12(1)(e) & s17	
<i>President of Tribunals decided 'No case to answer'</i>	7 (4)
<i>President referred complaint to bishop's disciplinary tribunal</i>	8 (4)
<i>President not decided as at 31st December 2020</i>	0 (0)
<i>Formal investigation ongoing as at 31st December 2020</i>	2 (2)
<i>No further steps taken under s16(3A) (penalty by consent)</i>	6 (1)
Number of cases determined by a tribunal	1 (4)
Complaints withdrawn from a tribunal or otherwise terminated	0 (1)
Number of suspensions imposed (total)	23 (22)

<i>Suspensions under s36(1)(a) in course of complaint proceedings</i>	2 (9)
<i>Suspensions under s36(1)(b) following arrest</i>	9 (7)
<i>Suspensions under s36(1)(c) following conviction</i>	0 (1)
<i>Suspensions under s36(1)(d) following inclusion in a barred list</i>	1 (0)
<i>Suspensions under s36(1)(e) following determination that the cleric presents a significant risk of harm</i>	11 (5)
<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 (69)
<i>Application to bring a complaint out of time (s9)</i>	24 (20) applications 10 (2) dismissed
<i>Review of a dismissal (s11(4))</i>	26 (15) applications 2 (1) not upheld
<i>Referral of a decision of no further action (s13(3))</i>	11 (21) applications All (all) upheld
<i>Consulted by bishop re penalty in case of divorce/conviction (s30(2))</i>	1 (7) applications 0 (1) remitted
<i>Bishop applies for extension: 2 yr. limit for imposing penalty (s30; r.67A)</i>	0 (1) applications 0 (1) granted
<i>Appeal against notice of suspension (s36(6))</i>	6 (1) appeals 6 (1) unsuccessful
<i>Sec 37 - Rule 86 - Suspension of Bishop</i>	0 (1) appeal

	0 (1) unsuccessful
<i>Review of inclusion of entry in list under s38(1)(a) to (d) (s38(2))</i>	2 (3) applications 0 (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	6 (2)
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 (0)

Complaints against Bishops and Archbishops

Formal complaints made to archbishops	2020 (2019)
<i>in respect of a bishop</i>	27 (12)
<i>in respect of the other archbishop</i>	5 (1)
Action taken in 2020 in relation to complaints made in 2020 or earlier	
<i>Dismissed under s11(3)</i>	22 (1)
<i>No further action under s12(1)(a) & s13</i>	2 (6)
<i>Conditional deferment under s12(1)(b) & s14</i>	1 (0)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (0)
<i>Penalty by consent under s12(1)(d) & s16</i>	1 (0)
<i>Formal investigation under s12(1)(e) & s17</i>	3 (1)
<i>Withdrawn (rule 59(1)(a))</i>	0 (2)
<i>No decision as at 31st December 2020</i>	10 (8)

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	0 (1)
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)