

CLERGY DISCIPLINE MEASURE 2003: CODE OF PRACTICE

Issued by the Clergy Discipline Commission

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PREFACE

This Code of Practice offers general guidance on how formal allegations of misconduct against clergy of the Church of England are made and determined under the Clergy Discipline Measure 2003. The Code explains on what grounds an allegation can be made, by whom they can be made, and how they are to be made. It shows the proper procedures and it describes the various options which may be pursued if an allegation proves to be well-founded.

The Code is not intended to be, and cannot be, a detailed work on all aspects of the disciplinary procedures. 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 Measure and the Clergy Discipline Rules.

The Clergy Discipline Commission, which produced this Code, has responsibility also for giving guidance specifically to those who have particular functions to perform in connection with clergy discipline. In addition, its duties include giving advice to disciplinary tribunals and bishops as to the penalties which are appropriate in particular circumstances. Where relevant, this Code should be read in conjunction with the Commission's other guidance.

'Clergy Discipline procedures and the Professional Guidelines are designed to protect three parties: the accused, the accuser and the Church. It is important to mention the last of these because it can easily be forgotten that professional ethics are not simply a matter for individuals. While they undoubtedly exist to guide and protect individuals they also serve to safeguard the profession. They are an expression of mutual accountability and responsibility. When one clergyman or woman acts unprofessionally, he or she threatens to bring the Church as a whole into disrepute – witness the ripple effect of scandals. As Eric Mount has commented: "Moral responsibility includes being responsible people within institutions." Or in St Paul's words, "We are members one of another" (Ephesians 4.25).'

**Extract from the Guidelines for the Professional
Conduct of the Clergy**



The Rt. Hon. Dame Sarah Asplin DBE

Chair of the Clergy Discipline Commission

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STEPS IN FORMAL DISCIPLINARY PROCEEDINGS
UNDER THE CLERGY DISCIPLINE MEASURE 2003

References to the
CDM & Rules

A flowchart will appear here

MATERIALS

The Clergy Discipline Measure 2003 (as amended)

https://www.churchofengland.org/sites/default/files/2017-10/cdm-2003-as-amended-by-scdm-jan-2017-as-published_0.pdf

The Clergy Discipline Rules 2005 (as amended)

<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline/clergy-discipline-rules>

The Clergy Discipline Commission's Guidance on Penalties

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

The Clergy Discipline Commission's Statutory Guidance

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

Practice Directions issued by the President of the Tribunals

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

Guidelines for the Professional Conduct of the Clergy

<https://www.churchofengland.org/about/policy-and-thinking/guidelines-professional-conduct-clergy/guidelines-professional-conduct>

Canons of the Church of England

<https://www.churchofengland.org/about/policy-and-thinking/canons-church-england/canons-7th-edition>

Decisions of Tribunals

<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline/tribunal-decisions>

INTRODUCTION

Key

s = a section in the
Clergy Discipline
Measure 2003

r = a rule in the
Clergy Discipline
Rules 2005

Purpose of the Code of Practice

1. This Code of Practice is issued by the Clergy Discipline Commission under section 3 of the Clergy Discipline Measure 2003 (“the Measure”). The purpose of the Code is to provide guidance to all who are concerned in formal clergy discipline procedures under the Measure.
2. The Code does not have the force of law, but as a statutory code it must be taken into account at all times. Compliance with its provisions will be assumed to be in accordance with best practice. Using this Code is no substitute for referring to the Measure and to the *Clergy Discipline Rules 2005*, which together set out the procedures that must be followed.
3. The Clergy Discipline Commission comprises no more than 12 members appointed by the Appointments Committee of the Church of England, including at least two people from each House of the General Synod, and at least two people who hold particular judicial office or particular professional legal qualifications. The make-up of the Commission is designed to promote a wide representation of views and experience. As well as producing this Code of Practice, it has other specific statutory functions prescribed in the Measure, such as giving general advice to disciplinary tribunals, the courts of the Vicars-General, bishops and archbishops on the penalties which are appropriate in particular circumstances. The Commission cannot give guidance on penalties in individual cases.

Purpose of Discipline

4. The purpose of the administration of discipline is to deal with clergy who are found to have fallen below the very high standards required and expected of

them. For the individual member of the clergy who is subject to discipline, this involves:

- the imposition of an appropriate penalty
- pastoral support
- encouraging repentance and forgiveness
- whenever possible putting right that which is wrong
- attempting reconciliation
- moving on constructively from the past

5. The administration of discipline must have regard to the interests of justice for all who may be affected by the faults, failings or shortcomings of the clergy. It must also support the collective good standing of all faithful men and women who are called to serve in the ordained ministry, to ensure the clergy continue to be worthy of the great trust that is placed in them as ordained ministers by both the Church and the public.

6. This Code throughout refers to a member of the clergy against whom a formal allegation of misconduct is made as “the respondent”. This emphasises that the member of the clergy in question is responding to a formal allegation as part of the process of investigating and resolving any difficulties that may have arisen, rather than simply being called upon to “defend” past actions. The person who makes a formal allegation against a member of the clergy is referred to as “the complainant”.

Training

7. It is imperative that those involved in administering the Measure are properly trained. Each diocese should ensure that bishops, archdeacons, Diocesan safeguarding advisors (including assistants) and any other appropriate person receives the necessary training in order to carry out their functions under Measure. Likewise, the NST should ensure that caseworkers receive regular training. The Legal Office at Church House, Westminster can assist in the provision of training and materials.

Three stages for allegations of misconduct

8. The Measure, the Clergy Discipline Rules and the Code of Practice are all concerned with resolving formal matters within a formal disciplinary process. There are three stages, the first of which falls outside the scope of the Measure and any formal proceedings.
9. The **first stage** is the period before any formal proceedings are instituted under the Measure. The **second stage** begins when a formal allegation of misconduct is made to the bishop under the Measure and continues until the bishop has decided on the appropriate course to take. The **third stage** occurs if the bishop directs that there should be a formal investigation to see if there is a case to answer before a bishop's disciplinary tribunal.

Overriding Objective of the Clergy Disciplinary Procedures

10. The overriding objective when dealing with formal allegations of clergy misconduct under the provisions of the Measure is to deal with all allegations justly.
11. Dealing with an allegation justly includes, so far as reasonably practicable: r1
 - (i) ensuring that it is dealt with in a way that is fair to all relevant interested parties, including the complainant, the respondent, the respondent's family, the church, and members of the wider community,
 - (ii) dealing with the allegation of misconduct in ways which are proportionate to the nature and seriousness of the issues raised,
 - (iii) ensuring that the complainant and the respondent are on an equal footing procedurally,
 - (iv) ensuring that the complainant and respondent are kept informed of the procedural progress of the allegation of misconduct,
 - (v) avoiding undue delay,
 - (vi) avoiding undue expense.

12. When any person or body exercises any function in connection with clergy disciplinary matters, regard should be had to the overriding objective. The complainant and respondent are required to co-operate with any such person or body to further the overriding objective. Any failure to co-operate may result in adverse inferences being made against a party at any stage of the proceedings. r2

STAGE 1: BEFORE FORMAL PROCEEDINGS

Minor complaints

13. This Code of Practice gives guidance for the purposes of the Measure. The Measure is concerned with formal disciplinary proceedings which have been instituted in accordance with the law. It is not a 'complaints procedure' and it deals only with allegations of misconduct which are serious in nature.

14. However, a bishop will receive complaints from people who do not wish to invoke formal disciplinary procedures. Often, such complaints or grievances are not about serious matters of misconduct, and can be resolved informally without recourse to law if they are handled with sensitivity and without undue delay.

Minor complaints should not be the subject matter of formal disciplinary proceedings.

"In fact in the case of many minor complaints an apology or an informal rebuke may be all that is required and the full complaints process would not need to come into play"

"Under Authority"
GS 1217 at C.3

If a problem is initially ignored so that discontentment is allowed to continue, then there may be a danger that the problem becomes bigger, and consequently harder to resolve.

15. There may be occasions when no formal allegation under the Measure has yet been made but the bishop receives information about a priest or deacon which, if true, would amount to serious misconduct. The bishop will obviously wish to find out more about it. However, the bishop should be cautious about the extent of any direct involvement. The bishop should not do anything that could prejudice, or appear to prejudice, the fair handling of any formal allegation under the Measure that could be made subsequently. Instead, the bishop should consider asking an appropriate person, such as the archdeacon, to look into it.
16. The archdeacon or other person looking into the matter will need to form his or her own view about the appropriate action to take. The priest or deacon should normally be told why his or her conduct is in question, and that a colleague or friend may be present during any discussions about it.
17. If the archdeacon considers that it should be dealt with on a disciplinary level, but no formal allegation is likely to be made by anyone else, then the archdeacon should consider acting as complainant and making an allegation under the Measure; to avoid compromising the bishop's position in any subsequent disciplinary proceedings, he or she should not discuss it with the bishop, except to notify the bishop what action has been taken.
18. Where no formal allegation under the Measure has yet been made but the bishop receives information about the conduct of a priest or deacon which, if true, would involve the welfare of any child or vulnerable adult, the bishop should ask the diocesan child protection or safeguarding officer to investigate it; these investigations would usually be in co-operation with other relevant bodies, and may need to take place initially without informing the priest or deacon.

Procedure for the resolution of minor complaints

19. It is best practice for each diocese to publish a procedure for the resolution of complaints which are not serious enough to warrant proceedings under the Measure. At the very bottom of the scale this might simply be a meeting with an

archdeacon or the bishop. However, there will be other cases where a more formal process is required.

20. Any procedure should be transparent, fair to all involved and seek to resolve the issues in a proportionate manner. It should not normally involve lawyers and should seek to determine complaints in a timely fashion.
21. A suggested procedure formulated by the Ecclesiastical Law Society and endorsed by the Clergy Discipline Commission appears at **Appendix 'A'**.

STAGE 2: MAKING A FORMAL ALLEGATION OF MISCONDUCT

Who exercises discipline?

22. Under the Measure it is the duty of the diocesan bishop to administer discipline over clergy. It is also the responsibility of the bishop to provide care and support for clergy within the bishop's cure and for the laity. The performance of these duties may be delegated, but the diocesan bishop retains overall responsibility. Any disciplinary functions exercised under the Measure by others are exercised on the diocesan bishop's behalf. ^{s1}
23. Where the diocesan bishop has delegated disciplinary functions under section 13 of the Dioceses, Pastoral and Mission Measure 2007, a suffragan or assistant bishop may act for the diocesan bishop as appropriate.
24. 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 is advisable for a diocesan bishop to sign instruments of delegation in respect of at least two suffragan or assistant bishops. Each instrument can 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. Even where matters have been delegated, the diocesan bishop ultimately remains responsible for discipline.

Who can be disciplined under the Measure?

25. The Measure applies to all who are admitted to Holy Orders of the Church of England, whether archbishop, bishop, priest or deacon. This includes those who are actively involved in ministry as well as those who are not. It is not a prerequisite for the cleric to hold a licence before they are subject to the Measure. However, pre-ordination conduct does not fall within the Measure and the person in question must have been in Holy Orders when the alleged misconduct is said to have taken place.
26. If an allegation of misconduct is made under the Measure against a priest or deacon who has the bishop's written permission to officiate ("PTO"), the bishop can terminate the PTO. In serious cases of misconduct, however, the bishop should still deal with the matter under the Measure.
27. The Measure also applies to clergy admitted to Holy Orders of another church but who have the Archbishop's permission under the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 to officiate in the Church of England.
28. Disciplinary proceedings can be instituted or continued even if the respondent in question resigns his or her position.
29. 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 of misconduct that is outstanding will not fall away, and the deed of relinquishment does not take effect until the matter has been determined.

On what grounds can disciplinary proceedings be brought?

30. Disciplinary proceedings may only be brought where misconduct under the Measure is alleged to have occurred.

31. There are five grounds under the Measure for alleging misconduct, namely:

- the respondent has acted in breach of ecclesiastical law, s8(1)(a)
- the respondent has failed to comply with the duty under section 5 of the Safeguarding and Clergy Discipline Measure 2016 (duty to have due regard to the House of Bishops’ guidance on safeguarding children and vulnerable adults). s8(1)(aa)
- the respondent has failed to do something which he or she should have done under ecclesiastical law, s8(1)(b)
- the respondent has neglected to perform, or been inefficient in performing, duties of his or her office, s8(1)(c)
- the respondent has engaged in conduct that is unbecoming or inappropriate to the office and work of the clergy. s8(1)(d)

32. No allegation of misconduct under the last of the five grounds may normally be made about the lawful political opinions or activities of a respondent. These may include, for example, taking part in peaceful public marches or protests or attending peaceful political meetings or gatherings. s8(3)

33. On the 02 June 2014 the House of Bishops made a declaration under section 8(4) of the Measure in respect of the National Front and the British National Party:

“The effect of the declarations will not be to prevent a cleric from merely expressing support for a particular policy or policies of the BNP or the National Front (for example, an economic or transport policy), but it will prevent a cleric from taking the further step of joining either party or speaking in support of it generally, or encouraging others to join or support it generally.”

Support for either party, whether expressed privately or publicly, would be unbecoming or inappropriate conduct for clergy under the new provision. This is because under Canon C 26.2 a cleric's duty to fashion his or her life according to the doctrine of Christ extends to both professional and private life."

What is not covered by the Measure?

34. Minor allegations not amounting to serious misconduct are not covered by the Measure. It is not possible to give a definitive list of what might be a 'minor allegation', but generally speaking grievances, disagreements, and/or minor acts or omissions, however genuine, are likely to fall outside the scope of the Measure.
35. Allegations of misconduct against clergy relating to doctrine (i.e. what the clergy believe, and preach, teach or express) or ritual or ceremonial matters (i.e. how the clergy conduct public worship) do not fall within the provisions of the Measure, and any appropriate proceedings would have to be taken under the Ecclesiastical Jurisdiction Measure 1963. ^{s7}

What are acts or omissions contrary to Ecclesiastical Law?

36. These are not defined in the Measure but reference has to be made to the many principles of ecclesiastical law, which can be found in Acts of Parliament, Measures and Canons of the Church of England, statutory instruments, custom, and case law. ^{s8(1)(a) and (b)}
37. There are many duties imposed upon the clergy under ecclesiastical law. Failing to comply with any of those duties or doing something that is forbidden by ecclesiastical law could be a ground for alleging misconduct.

What is the duty to have 'due regard' to the House of Bishops' guidance on safeguarding children and vulnerable adults?

s8(1)(aa)

38. Where a person is subject to a duty to have 'due regard' to guidance the law requires that person to follow that guidance *unless* there are cogent reasons for not doing so. This does not mean that the person is free to choose whether or not to follow the guidance.
39. 'Cogent reasons' are ones that are clear, logical and convincing. When applied, which will be rare, they must be based on case-specific advice from both the diocesan safeguarding adviser and the diocesan registrar. A disciplinary tribunal will scrutinise the reasons given with great care. The onus will be on the respondent to show that they had cogent reasons for not following the guidance.

What is neglect or inefficiency?

40. Neglect or inefficiency can be misconduct for the purposes of disciplinary proceedings. They are not defined in the Measure, and it is not practical to give detailed guidance on what amounts to misconduct here as the circumstances could be infinitely variable. s8(1)(c)
41. If sufficiently serious, conduct on a single occasion could be neglect of the duties of office under the Measure, but generally neglect or inefficiency will amount to misconduct only if they occur over a period of time.
42. In the case of ***Armstrong v Robinson (2008)*** the tribunal gave 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.

What is unbecoming or inappropriate conduct?

43. The Measure does not define unbecoming or inappropriate conduct, but clergy in their conduct and everyday living are expected to be examples of what is acceptable in Christian behaviour. Members of the church and the wider s8(1)(d)

community look towards the clergy to set, and conform to, appropriate standards of morality and behaviour.

44. In particular the clergy should live their lives in a way that is consistent with the Code of Canons. **Canon C26** is particularly relevant. It requires the clergy to be diligent to frame and fashion their lives according to the doctrine of Christ, and to make themselves wholesome examples and patterns to the flock of Christ.
45. Furthermore they are not to pursue unsuitable occupations, habits or recreations which do not befit their sacred calling, or which are detrimental to the performance of their duties or justifiably cause offence to others.
46. In addition, the **Guidelines for the Professional Conduct of the Clergy**, issued by the Convocations of the Provinces of Canterbury and York set out the standards of behaviour expected of all clerks in Holy Orders. The Guidelines are not a definitive code but can be used as a basis for assessing the appropriateness of clerical conduct.

Who can start disciplinary proceedings?

47. There are three categories of those who are entitled to bring an allegation of misconduct about a priest or deacon, namely, a Parochial Church Council (PCC), **s10(1)** a churchwarden, and any other person. A PCC and a churchwarden must be of a parish which has “a proper interest” in making the allegation and any other person who complains must also have “a proper interest”.
48. Examples of where the parish of a PCC or of a churchwarden has a proper interest in making an allegation of misconduct would include where the alleged misconduct takes place within that parish, or is committed by the incumbent, or by a priest or deacon who is licensed to serve or is resident in that parish. If a churchwarden, having made an allegation, ceases to hold that office before the allegation is finally determined, he or she is nonetheless entitled to pursue the allegation despite standing down as churchwarden.

49. As an officer of the bishop, a churchwarden has traditionally been entitled to draw the bishop's attention to anything in the parish which requires the bishop's intervention. However, this right must **not** be exercised in relation to any matters that are relevant to an allegation made by the churchwarden under the Measure, or relevant to a formal allegation that the churchwarden is considering making. **Any formal allegation by a churchwarden against a priest or deacon must only be dealt with by using the proper procedures under the Measure and the Rules.**
50. For a PCC to complain it must nominate someone (who need not be a member of the PCC) to make the allegation of misconduct. At least two-thirds of its lay members must be present at a duly convened meeting of the PCC, and at least two-thirds of the lay members present must vote in favour of a resolution that the proceedings be instituted. s(10)(1)(a)(i)
51. Examples of others who may have a proper interest in making an allegation of misconduct include anyone who personally observes or experiences the alleged misconduct.
52. The relevant archdeacon will almost always have a proper interest in bringing an allegation. Where the archdeacon is satisfied that there is a case of misconduct ordinarily they should bring the case, and not leave it to the private individual concerned to do so. The archdeacon should ensure however that the evidence comes from the aggrieved person or persons. Where the archdeacon feels that he or she may be unable to bring an allegation due to a conflict, they may delegate to another archdeacon in the diocese. The reasons why should be set out in the Form.
53. A person making an allegation on behalf of anyone with a disability with a proper interest, or a parent or guardian making an allegation on behalf of a child with a proper interest, would also have a proper interest. Generally, a person under the age of 18 years should not be the complainant. Where a parent or guardian

cannot or is unwilling to bring an allegation the archdeacon or diocesan safeguarding officer should consider bringing the allegation.

54. Diocesan child protection or safeguarding officers have a proper interest when making allegations about alleged misconduct concerning children or vulnerable adults, and a friend or relative of a person who has been sexually abused will have a proper interest to make an allegation especially if asked to do so by that person.
55. The National Safeguarding Team has a proper interest in bringing allegations about safeguarding breaches and misconduct concerning children or vulnerable adults. They have a particular role in leading and coordinating cases involving bishops, persons of high national profile and complex inter-diocesan cases.

Who can bring allegation of misconduct in respect of non-parochial clergy?

56. The Measure applies to all clergy, regardless of how and where they exercise their ministry. Special provisions about how to bring an allegation of misconduct apply in relation to cathedral clergy, chaplains of prisons, hospitals, universities, schools and extra-parochial institutions, armed forces chaplains, and ministers holding certain licences. r92
57. In the case of clergy serving in a cathedral church proceedings may only be instituted by a person nominated by the cathedral council or any other person if the diocesan bishop concerned determines that that person has a proper interest. The diocesan bishop must make that determination before the allegation is made and the bishop's determination must be referenced in the Form. r93
58. In the case of a chaplain of a prison, hospital, university, school or other institution, proceedings may be instituted only by a person duly authorised by the diocesan bishop concerned to institute such proceedings. The diocesan r94-96

bishop must make that determination before the allegation is made and the bishop's determination must be referenced in the Form.

59. In the case of a chaplain of one of the armed forces of the Crown, a minister who has a licence from the archbishop of the province, or a minister who has a licence from the University of Oxford or Cambridge - proceedings may be instituted only if the Archbishop of Canterbury determines that the person concerned has a proper interest in making the allegation (the allegation should be sent to the archbishop of Canterbury). The archbishop must make that determination before the allegation is made and the bishop's determination must be referenced in the Form.

Will help be available for complainants to make a formal written allegation?

60. Complainants, especially where they are private individuals, may need help to make a written allegation and to prepare written evidence in support. If not given the help they need they could be unfairly discouraged or precluded from making or pursuing the matter. When an archdeacon or another person brings an allegation instead of the private individual the latter may still need help and assistance in putting together their evidence.
61. Every diocese should have at least one designated person to ensure that appropriate help is made available to any complainant who needs it. This person should have a proper understanding and experience of the Measure and should have received training. The Legal Office at Church House, Westminster can assist in the provision of training and materials.
62. Appropriate help could include listening to a complainant and then transcribing the evidence in support (using the complainant's own words and phraseology). Special help should be made available to any complainant with a disability.

Note: *It is most important that any assistance and advice should be given by someone who is not otherwise involved and who has no close ties with the*

respondent. If this principle is not observed the fairness of the proceedings could be called into question.

Sending and receiving documents

- 63.** Where a document is required to be sent or delivered to a person it must be done **r101 and 101A** by using one of the methods sets out in rule 101. A document will be ‘deemed received’ by a person in accordance with the table in rule 101A. Any period of time for carrying out an act thereafter will run from the next day.

Example 1: The President sends an application under rule 8 to the respondent for comment by first class post on Tuesday 2 March. The document is ‘deemed received’ by the respondent on the 4 March. Under rule 8(2) the respondent must make any written comments within 21 days. That period starts on the 5 March and expires on the 25 March. The respondent must ensure that any comments are deemed received by the 25 March.

Example 2: The President sends an application under rule 14A to the complainant for comment by email timed at 4:45pm on Friday 8 June. The document is ‘deemed received’ by the respondent on the Monday 11 June. Under rule 8(2) the complainant must make any written comments within 21 days. That period starts on the 12 June and expires on the 2 July. The complainant must ensure that any comments are deemed received by the 2 July.

How is an allegation of misconduct made?

- 64. An allegation of misconduct must be made in writing and must contain a statement signed by the complainant declaring that the complainant believes the facts are true.**
- 65.** There are two ways to bring an allegation. The first is by using the online system which can be accessed on the Church of England’s website. Alternatively, an allegation may be made using a paper-based form 1a. No other form is allowed under the Measure.

66. The Form must specify the name and address of the complainant. **No anonymous allegations will be considered under the Measure.** A complainant may, however, request that the complainant’s contact details should not be disclosed to the respondent, giving reasons for the request. Where such a request is made the complainant’s contact details will be withheld from the respondent and deleted from all documents sent to the respondent, unless the registrar directs otherwise. If the registrar directs that the complainant’s contact details should be disclosed to the respondent the registrar will forthwith notify the complainant of this in writing, explaining why; the allegation will then lapse, unless the complainant informs the registrar within 14 days that the complainant wishes the matter to proceed, even though the complainant’s contact details will not be withheld. r4(2)(a)(ii)
r4(3)-(5)
67. The complainant must indicate his or her entitlement to make the allegation (for example, as a person duly nominated by the PCC). Where nominated by a PCC, a certified copy of the appropriate resolution passed by the council, as required by the Measure, must be attached to the form. r4(2)(a)(iv)
r4(2)(b)
68. The form must set out the grounds for complaining. That means stating the nature of the alleged misconduct concerned, and summarising the facts of the matter, including details of all material dates and the identities where known of any people referred to in the allegation. A timeline of key dates must be included. There is a 3000 word limit and the number of exhibits must not exceed 25 pages (including the content of any webpages). In rare cases the bishop can allow for an increase to the word limit and/or the page limit where there are exceptional circumstances which justify doing so. r4(2)(a)(viii)
r101B
69. Applications to increase or disapply the word and/or page limit should be made in writing to the bishop setting out clearly and concisely why there are exceptional circumstances to justify the removal. There is no statutory form. An application should ordinarily be made before an allegation of misconduct is r101B(6)

brought so that it can be determined by the bishop prior to the drafting of the allegation. However, where necessary, the application can be included with the submitted allegation, although in such cases the complainant risks parts of the evidence not being taken into account should the bishop not remove or increase the word limit.

70. The complainant must provide written evidence to support the allegation. This written evidence must be made using Form 3 and signed by the person making the statement. Supporting material, such as photographs, text messages, letters/e-mails or other evidence should be submitted with the written evidence. s10(3)

71. Where there is evidence from a third party, e.g. a person who at the relevant time received disclosure of the alleged misconduct, this should be included with the allegation in the form of a separate witness statement using Form 3 from the relevant person. The evidence should go into detail about the matters complained about and the relevant actions and conversations witnessed, and should specify material dates, times, locations, and identities where known of any people referred to. Where the maker of any statement does not personally know the truth of any matters referred to in the statement (for example because he or she was told about these things by someone else) then the statement should indicate what those matters are, and identify the source of the information or evidence. If evidence in support is inadequate, then the allegation is likely to be dismissed by the bishop following preliminary scrutiny.

72. If the complainant is not in a position to send evidence or all the evidence at the time of making the allegation, then the complainant should give reasons in writing explaining why there is no accompanying evidence or why it is incomplete, and request the bishop to grant further time to supply it. Permission to extend time for the submission of evidence in support is likely to be given only where the complainant can demonstrate that it has not so far been reasonably practicable to obtain the evidence. Justifiable reasons for failing to supply the written evidence at the time of making the allegation could include illness or r7(2)

incapacity or that they have requested the evidence from a third party (such as medical or police records) and are waiting for it to arrive.

- 73.** If a formal allegation of misconduct is made and signed by two or more people, they should nominate one of themselves to be the correspondent, so that letters and notices need to be sent only to that complainant. r5
- 74.** A witness who provides a statement in support may request that his or her contact details should not be disclosed to the respondent, giving reasons for the request. Where such a request is made the witness's contact details will be withheld from the respondent and deleted from the copy of the witness statement sent to the respondent, unless the registrar directs otherwise. If the registrar directs that the witness's contact details should be disclosed to the respondent the registrar will forthwith notify both the witness and the complainant of this in writing, explaining why; the statement will not then be used in the proceedings, unless the complainant informs the registrar within 14 days that the complainant wishes the statement to be used in support of the allegation, even though the witness's contact details will not be withheld.

Police and medical records

- 75.** The person who experienced the alleged misconduct may have needed medical treatment as a result of it. In some cases the misconduct may have been reported to the police who then carried out an investigation. **Any relevant medical or police records should normally be included with the allegation of misconduct.**
- 76.** Medical records might include GP notes or letters referring the person to particular course of treatment. In some cases it might include a formal medical report.
- 77.** Police material will normally include a record of interview (either written or by video), the investigating officers' notebooks, and written statements. There may

also be correspondence from the CPS on whether or not a criminal charge is being brought.

- 78.** A request for this information from the relevant authority should be made at the earliest opportunity. It can sometimes take many months for these records to be disclosed and allegations should not be delayed whilst waiting for evidence. **Archdeacons, diocesan safeguarding advisors and NST caseworkers should make sure they are familiar with the data protection regime and are able to assist persons in requesting this information.** It is best practice for this to be a standing item on the agenda of any meeting between diocesan or national staff and a lay complainant.

To whom is an allegation of misconduct made?

- 79.** An allegation against a priest or deacon (including archdeacons and all cathedral clergy) should be made to the bishop of the diocese where the priest or deacon held office when the alleged misconduct occurred. **s10(2)(a)**
s6(1)(a)
- 80.** However, if a priest or deacon is alleged to have officiated as a minister in a diocese without authority an allegation should be made to the bishop of that diocese. If such an allegation is properly made then any other similar proceedings in a different diocese are to be discontinued, and no new proceedings concerning the same matter can be started elsewhere. There can only be one set of proceedings under the Measure against a respondent in respect of any one matter. **s6(1)(b)**
s6(3)
- 81.** An allegation may also be made to the bishop of the diocese where the priest or deacon resided when the alleged misconduct occurred, unless similar proceedings are already under way elsewhere. Any proceedings brought on the basis of residence are to be discontinued if an allegation is properly made elsewhere in respect of the same matter. **s6(1)(a)**
s6(3)

When can an allegation of misconduct be made?

82. An allegation must normally be made within one year from the date of the alleged misconduct or, if there is a series of acts or omissions which together constitute the misconduct, within one year of the last incident. s9

83. This period of one year can be extended by the President of Tribunals if there is **good reason** why the allegation was not made within that time and provided the respondent would not suffer serious prejudice as a result of the delay. An application to the President must be made in writing either by using the online system or a paper version of Form 1c. A complainant may request in the form that the complainant's contact details should not be disclosed to the respondent, giving reasons for the request. Where such a request is made the complainant's contact details will be withheld from the respondent and deleted from documents sent to the respondent in the course of the application, unless the President directs otherwise. If the President directs that the complainant's contact details should be disclosed to the respondent the President will forthwith notify the complainant of this in writing, explaining why; the application will then lapse, unless the complainant informs the President within 14 days that the complainant wishes the application to proceed, even though the complainant's contact details will not be withheld. s9; r8
r8(1A)-(1C)

84. Before deciding whether to allow an allegation to be pursued out of time the President will consult both the complainant and the respondent. The application must set out clearly and concisely the reasons why the matter was not brought within the one year time limit. Any supporting evidence should be attached to the application. Justifiable reasons for failing to institute proceedings within the permitted time *could* include:

- the complainant did not know, and could not reasonably be expected to discover, either the material facts of the alleged misconduct or the identity of the respondent, or

- the complainant has been suffering from a significant mental or physical illness or disability during the relevant period, or
- where the making of the allegation followed the conclusion of criminal proceedings against the respondent, or
- where the complainant (particularly if he or she was a child at the time of the alleged misconduct) has been manipulated or abused by the respondent.

85. Serious prejudice to a respondent caused by a delay in making an allegation *could* include one or more of the following circumstances:

- where a material witness has meanwhile died or has become incapable of giving evidence through infirmity,
- where a material witness is now overseas or cannot be traced after the lapse of time,
- where material documents (whether electronic or otherwise) have been lost or destroyed,
- where a long delay has made it significantly more difficult for witnesses to recall the events in question.

Note: If the respondent has been convicted in the criminal courts in respect of the misconduct, then the period of one year for making the allegation begins to run when any appeal against that conviction has been finally concluded, or when time for appealing has expired. This time limit of 12 months after conviction cannot be extended. The one year time limit for making an allegation does not apply where the misconduct in question is conduct of a sexual nature towards (a) a child, or (b) an adult if the President considers the adult was a vulnerable adult at the time of the conduct.

s9, s40(1)

s9(2)-(4)

r14A

s43(1)

When should an application for permission to bring an allegation out of time be made?

86. The Commission has issued statutory guidance (available on the Church of England website) on the importance of making applications for permission to

bring an allegation out of time in a timely fashion. In all cases an application should be made as soon as reasonably practicable.

- 87.** Where there is an ongoing police investigation or criminal proceedings, a complainant is not precluded from either bringing an allegation of misconduct 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 aspect to be determined first and any matter will be paused until the criminal matter has ended.
- 88.** 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 an allegation. In cases where permission for an out of time allegation is being sought this should be made expeditiously alongside the core group process.

What about disciplinary proceedings for employed clergy?

See r91, 93 & 94

- 89.** Some clergy are employed as chaplains by hospitals, schools, or prisons, or as staff with bodies such as diocesan boards of finance, BMOs or church plants. Other clergy may be licensed to serve as chaplains in Her Majesty's armed forces. In those circumstances, as well as being subject to the discipline of the Church of England, they will also be subject to such separate disciplinary procedures as may apply under the terms of their employment or service, as the case may be. Where an allegation under the Measure is made about such clergy, it would normally be appropriate to wait for the outcome of any disciplinary action that is taken by the secular body, before the matter is dealt with.

What happens if the allegation concerns criminal conduct?

- 90.** Any criminal matters should be investigated and resolved by the relevant secular authorities (e.g. the police, child protection agencies, HM Revenue & Customs) before any related disciplinary proceedings under the Measure are resolved.

91. If an allegation is made to the bishop which concerns serious criminal conduct, but no-one has so far alerted the secular authorities, the bishop should encourage the complainant to report the matter to the appropriate authority. The bishop should also indicate that if the complainant does not do so, then it would be the bishop's duty to report it.

92. If an allegation is made against a priest or deacon concerning matters in connection with which he or she has already been arrested on suspicion of committing a criminal offence, it would normally be appropriate to await the outcome of any criminal proceedings before dealing with the matter.

r19 & s30

What happens if the allegation relates to marital misconduct?

93. A formal allegation relating to alleged matrimonial misconduct against a priest or deacon who is respondent to a petition for divorce or judicial separation alleging adultery, desertion, or behaviour such that the petitioner cannot reasonably be expected to live with the respondent, should not normally be dealt with until the proceedings for divorce or judicial separation have been resolved.

r19 & s30

How can time for dealing with an allegation be extended until the other related proceedings have finished?

94. Time for dealing with the allegation of misconduct can be extended in two ways. First, it is open to the registrar to extend the period for sending the report to the bishop following the preliminary scrutiny; this period can be extended until 28 days after the registrar is notified of the final outcome of the other proceedings. Alternatively, after he has received the registrar's report, the bishop can extend the period for determining which course to pursue to deal with the allegation.

s11(2) & s11(5)

r13, r19(1)

s12(2)

r18, r19(2)

Receiving an allegation of misconduct

95. When an allegation is received which is not set out in one of the forms the bishop should take steps to ascertain from the person complaining whether it is intended to be a formal allegation for disciplinary purposes; if it is so intended,

the complainant must be invited to resubmit the allegation using the correct form, either in writing or using the online system, and to be advised that written evidence must be provided in support.

96. If the matter is not intended by the person complaining to be a formal allegation for disciplinary purposes, it should be dealt with as a stage 1 matter.

Acknowledgment of the formal allegation

97. When a formal allegation of misconduct is made, the bishop should acknowledge in writing to the complainant that it has been received. Where the allegation has been made using the online system, it will simultaneously be sent to the diocesan registrar (“the registrar”). Where the allegation has been sent by another permitted means the bishop should send it to the registrar within one business day. If the bishop is absent when the allegation is received, a person authorised by the bishop should acknowledge receipt, and inform the complainant that it will be seen by the bishop when the bishop returns. r9

98. The acknowledgment from the bishop should: r9(1)

- state the date of receipt
- explain that the matter has been or will be referred to the registrar for preliminary scrutiny, and that the registrar will normally be expected to report back to the bishop within 28 days
- briefly summarise the bishop’s options under section 12 of the Measure on receiving the registrar’s report
- indicate that the bishop hopes to decide the appropriate course to take within 28 days of receiving the registrar’s report, and will notify the complainant in writing of the decision
- state that the respondent will be informed of the allegation
- indicate that the complainant and respondent should not discuss the matter.

Note: The pro-forma letter appended at B1 to this Code may be used by the bishop to acknowledge receipt of the allegation. However, where it alleges criminal

conduct, the acknowledgment should inform the complainant that the matter may not be dealt with until any connected criminal proceedings have been concluded.

What is the role of the registrar?

99. The registrar’s role is to produce a report advising the bishop on two questions: firstly, whether the person alleging misconduct is entitled to make the allegation under section 10 of the Measure, and secondly, whether there is sufficient substance to justify proceeding with it. s11
r10-14

100. In the special category cases outlined at paragraph 56 the registrar should that the necessary declarations by the bishop/archbishop have been made.

What does sufficient substance mean?

101. 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 with a view to -

"forming a view as to whether or not there is sufficient substance in the [allegation of misconduct] to justify proceeding with it in accordance with the following provisions of this Measure"

s11(1)(b)

102. In determining whether or not the matter is of 'sufficient substance' the registrar must form a view as to whether the allegation 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.

103. 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. The test for sufficient substance does not include a threshold of there being a realistic prospect of removal from office.

104. In applying the test of 'sufficient substance' the following may be of assistance:

- The preliminary scrutiny stage is not a fact finding exercise.
- The analysis is carried out without any answer from the respondent.
- The complainant's case should be taken at its highest and the allegations presumed to be credible.
- Consideration should be given as to whether the misconduct alleged falls within one or more of the grounds in section 8 of the Measure.
- Allegations based upon grievances, disagreements, and/or minor acts or omissions, however genuine, are not of sufficient substance and should be dismissed.

105. Registrars may be approached for advice by PCC's, churchwardens or others who have made a formal allegation, or are thinking of making a formal allegation. Clergy who are respondents may also ask registrars for advice. **A registrar should not, however, give legal advice in relation to anyone except the bishop**, because of the risks of a conflict of interest which would otherwise arise. The registrar's staff should be alert to such risks. Consequently, if a complainant, PCC, churchwarden or respondent contacts the registrar's office, the registrar and staff must not give them advice about the merits of any particular allegation or potential allegation, but should refer them elsewhere for such advice (e.g. to a registrar of a neighbouring diocese).

106. It would, however, be appropriate for staff simply to give information about the procedures under the Measure for making a formal allegation, and to supply an enquirer with any explanatory literature or direct them to the diocesan appointed person for supporting complainants.

Can the registrar delegate?

107. Any or all of the registrar's functions may be delegated to others as the registrar **s11(6)** thinks fit, (this does not affect the time limit imposed under section 11(2) of the

Measure for sending the report to the bishop). Being acquainted with a complainant or respondent through previous professional dealings as registrar would not normally be a reason for delegating to another person. But where a registrar is a close personal friend of one of the parties, or has any other conflict of interest, the registrar can ask someone else, for example the registrar of another diocese, to carry out the preliminary scrutiny.

Who notifies the respondent about an allegation of misconduct?

- 108.** Within 7 days of the registrar receiving the allegation and written evidence in support, the respondent will be informed in writing, sent a copy (with contact details of the complainant or witness deleted if appropriate), and notified of the registrar’s function and the date when the registrar expects to submit the written report to the bishop. The registrar should include a letter from the bishop explaining about the care and support that will be provided on behalf of the bishop for the respondent (the bishop may use the pro-forma letter at appendix **B3**). In exceptional circumstances the registrar may for no longer than is necessary delay notifying the respondent that an allegation has been made. s11(1), r10
r10(2) & (3)
r10(2)
- 109.** In appropriate cases of pastoral concern the bishop should consider hand delivery of the notification to the respondent by a suitable person, such as the Area Dean or an Archdeacon (but not where that Archdeacon is the complainant).
- 110.** A respondent is entitled to know the identity of anyone who makes an allegation, but should be told not to discuss the matter with the complainant.
- 111.** Once a formal allegation is made it is inappropriate for the respondent to talk to the complainant about it; the matter must be resolved through the formal disciplinary procedures. Any attempt by the respondent, either personally or through others, to put pressure on a complainant to withdraw an allegation is improper and may amount to misconduct under the Measure. That does not mean that the respondent cannot talk to the complainant about other matters

that might need to be discussed, for example, when the complainant is a churchwarden.

- 112.** The respondent should be informed in writing by the registrar of the limited purpose of the preliminary scrutiny. The respondent should also be informed that there is no need to make any submissions at this stage in response to the allegation, but that there will be an opportunity later to respond in detail to the allegation if it proceeds. The pro-forma letter at appendix B2 may be used by the registrar for this purpose. r10(1)

Help and advice for respondent clergy

- 113.** Following an allegation the respondent should be encouraged to seek help and advice. Every diocese **must** maintain a list of appropriate persons to offer practical help, advice and pastoral support, as well as identify where the respondent may obtain legal advice. It is good practice for the bishop to nominate a person as soon as the allegation is made and ensure that contact is made between that person and the respondent. Deanery Chapters are well placed to provide support and practical assistance for those clergy within their area who are responding to an allegation of misconduct.

Note: A respondent should not ask for legal advice from the registrar for the diocese where the allegation has been made. This is to avoid a conflict of interest – because the registrar advises the bishop (especially during the preliminary scrutiny), it is inappropriate for the registrar to advise anyone else in relation to the same allegation. A respondent can, however, seek legal advice from a registrar for a different diocese.

Consulting the complainant

- 114.** The registrar should consult the complainant to clarify anything which needs to be clarified relating to the alleged misconduct. This should normally be done in writing or by e-mail, with copies of all correspondence sent to the respondent. It is not the function of the registrar to carry out a detailed investigation into the S11(1), r11

allegation and any questions raised by the registrar should be for the sole purpose of clarification.

115. The gist of any oral communications with the complainant (whether over the telephone or in person) should be recorded in written memoranda, and copied to the respondent. r11

116. On no account should pressure be put upon a complainant by a registrar to withdraw or modify an allegation of misconduct.

117. Where a complainant claims to be nominated by a parochial church council, the registrar should check that a certified copy of the resolution in favour of the institution of proceedings and of the nomination of the complainant has been submitted to confirm that the complainant has been duly nominated in accordance with section 10(1)(a)(i) of the Measure. Where a complainant purports to act in the capacity of churchwarden, the registrar should make appropriate enquiries of the diocesan office to confirm the status of the complainant. r4(2)(b)

118. If the registrar or the registrar's staff believe or suspect that the complainant requires assistance in making an allegation, the registrar or a member of staff should inform the complainant about where assistance can be obtained.

What if more time is needed for the preliminary scrutiny?

119. Matters should be dealt with without undue delay. For this reason time limits are imposed under the Measure for certain stages in the disciplinary procedure to be completed.

120. The registrar has 28 days from date of receipt of the allegation to consider it, make enquiries and communicate with the parties as appropriate, and submit the report to the bishop. In almost all cases the period of 28 days will be more than sufficient. s11(2), r12(1)

121. Exceptionally the 28 day period may be extend by the registrar, but only once. Before doing so, the registrar should inform the parties in writing that further time is needed and the reasons for this, and invite them to comment on whether time for the report should be extended. This consultation should take place well before the expiry of the initial 28 day period. In deciding whether to extend the time for submission of the report, and if so, by how long, the registrar should take the views of the parties into account. Registrars should also inform the Secretary to the President of the Tribunals in writing that an extension has been necessary and the reasons why. s11(5), r13(1)

What should be in the registrar’s report?

122. The registrar’s report should advise on the following areas:

- whether the complainant has a proper interest s11(1)(a)
- an analysis of whether, in the registrar’s view, the allegation has sufficient substance to justify disciplinary proceedings. s11(1)(b)

123. The report should be concise and focussed on the above two questions. The purpose of it is to advise the bishop, but it is the bishop who makes the decision about these matters. When the report is sent to the bishop the registrar should attach to it the allegation and the evidence in support. r12(2)

124. The registrar should inform the bishop in a separate letter whether the respondent is subject to a conditional deferment or conditional discharge, or appears on the Archbishops’ list under section 38 of the Measure and, if so, in what terms. A copy should be sent to the respondent. s14 & s25

125. If, contrary to the advice that submissions are not necessary at this stage the respondent sends the registrar a response to the allegation, the registrar should send it on to the bishop without comment. The registrar should acknowledge in writing receipt of the response, and inform the respondent that it has been r10(1)(c)

forwarded to the bishop and that there will be an opportunity for the respondent to reply in full if the bishop does not dismiss the matter.

- 126.** Whilst it is not the function of the registrar to give in the report recommendations or guidance to the bishop on the appropriate course of action to take to deal with the allegation, the registrar, as the bishop's legal advisor, may at any time advise the bishop on any matters of law or procedure.
- 127.** If more than one allegation is made by a complainant about the same respondent, the registrar's report should normally deal with all the matters, even if they concern separate and unconnected incidents. **r14(1)**
- 128.** If two or more complainants complain separately about the same incident(s) involving the same respondent, the registrar should normally prepare a single report to deal with all the allegations. **r14(3)**
- 129.** If two or more complainants complain separately about different incidents involving the same respondent, the registrar should normally prepare separate reports in respect of each complainant.

The Bishop's role

- 130.** It is a fundamental principle of clergy discipline that the diocesan bishop at all times is responsible for administering discipline over the clergy within the bishop's cure. Where others perform any disciplinary function they do so only on the bishop's behalf. **s1**
- 131.** However, if the bishop has, or may have, a conflict of interest (for example, where a complainant, respondent, or witness is a relative or a close personal or professional friend of the bishop, or where the bishop has been closely involved at the informal stage - i.e. "stage 1" - or has already been involved when determining an appeal by an employed respondent against a decision of the diocesan board of finance), then the bishop should not personally deal with it.

The bishop should in such cases delegate the disciplinary functions to a suffragan or assistant bishop. This should happen even if the bishop believes that any personal interest or involvement would not affect his judgment or way of dealing with the alleged misconduct – it is important that justice is perceived to be done, as well as actually done. This does not mean that the bishop needs to delegate simply because the bishop has prior knowledge of a problem having been kept informed about it as it develops. A bishop ought to be reasonably familiar with any difficulties there might be in the diocese and with its clergy. Nevertheless, there would need to be delegation to a suffragan or assistant bishop if, before a formal allegation is made, the bishop has previously taken action or given any indication that suggests he could already have made up his mind about the matter.

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132. Where a bishop delegates the disciplinary functions in a case, the bishop should notify the respondent, complainant and the registrar of the reasons for doing so.

133. Where there is conflict of interest for the bishop, but there is no suffragan or assistant bishop to delegate to, the bishop should refer the matter to the Designated Officer for a formal investigation, unless the registrar’s report following preliminary scrutiny advises the bishop either that the complainant does not have a proper interest or that there is not sufficient substance in the allegation to justify proceeding with it. In those circumstances the bishop could dismiss the matter under s11(3) of the Measure; the complainant would have a right to request a review by the President of Tribunals of the bishop’s decision.

s17(1), r28

**r15
s11(4), r16**

134. For clergy whose parish is under the oversight of a Provincial Episcopal Visitor the diocesan bishop remains the focus of discipline, but may consult the Provincial Episcopal Visitor in such instances as the diocesan bishop thinks fit.

135. The bishop, when administering discipline, should have regard to the separate interests of the complainant, the respondent, the respondent’s family, the local church and community, and the wider church and community.

What care and support will be given during disciplinary proceedings?

136. The well-being of the whole Church in the diocese is the bishop's responsibility, and the bishop is the chief pastor of all within that diocese, whether laity or clergy. Consequently, the bishop has the duty of pastoral care for both complainant and respondent, as well as the parish.

Canon C18

137. Since the bishop is also responsible for administering discipline over clergy in the diocese it is all the more important that the bishop should take care not to be seen to be taking sides. **This means the bishop should not personally give pastoral care to anyone connected with the disciplinary proceedings,** unless the bishop delegates the disciplinary function to a suffragan or assistant bishop. This is in the interests of fairness to both parties, because otherwise there is a risk that the bishop's impartiality could appear as a result to be compromised. **However, the bishop should ensure that appropriate care and support is provided for all those who need it, and the bishop should explain it is given expressly on the bishop's behalf.**

138. The bishop should be alert to the needs of the respondent and the respondent's close family for care and support. This may be needed, and should be made freely available, from the moment the respondent is notified and throughout the course of disciplinary proceedings, including after the proceedings have been concluded. When the registrar informs the respondent that the allegation has been made, the registrar should include a letter from the bishop explaining about the care and support that will be provided on behalf of the bishop for the respondent. The pro-forma letter at appendix B3 may be used by the bishop for this purpose. If the bishop becomes aware that an application has been made to the President for permission to make an allegation of misconduct out of time, the bishop should ensure that appropriate pastoral support is available for the respondent.

s11(1), r10(1)

139. A rural or area dean, other experienced clergy including retired bishops or retired archdeacons, or an appropriate lay person could be suitable to provide care and support in place of the bishop, provided they are not involved in some other way. In some circumstances a suffragan bishop or archdeacon may be appropriate provided there has been no prior involvement in the matter. The bishop will use his discretion and judgment when deciding in any given case whom to offer to the respondent to provide care and support, but any appointment must be acceptable to the respondent. It is important that the respondent must be able to trust the person appointed. If the respondent is not content with the person proposed by the bishop then the bishop should seek to appoint another person who would be acceptable. It should be explained to the respondent by both the bishop and the person providing care and support on the bishop's behalf that all pastoral discussions are completely confidential so there will be no reporting back to the bishop about what has been said (unless the respondent expressly wants the bishop to be informed).

140. The bishop should ensure as appropriate that suitable support is offered on his behalf to others who are involved (including the complainant, PCC, and churchwardens), but such support must only be given by those who are not otherwise concerned in the disciplinary proceedings.

141. Whilst the bishop is dealing with an allegation, the bishop must not personally give pastoral support to a complainant or respondent. However, that does not mean that the bishop is cut off from them and unable to meet either of them. On the contrary, the bishop should indeed meet the complainant or respondent if it could help the bishop decide on the appropriate course to determine the matter. The purpose of the meeting, however, will be to discuss the allegation, not to give personal pastoral care and support or to put the parties under any pressure to adopt a certain course of action. A member of the bishop's staff should attend and record the matters discussed. The bishop should bear in mind at all times the importance of being perceived by both the complainant and the respondent to be acting fairly and impartially.

What can the bishop do on receipt of the registrar's report?

142. The bishop is entitled, as the bishop thinks fit, to accept or reject the registrar's views set out in the report following on from the preliminary scrutiny. Having considered the registrar's views contained in the report, it is the decision of the bishop alone as to which course to pursue under sections 11(3) or 12 of the Measure. s11(2)

Dismissal by the bishop of an allegation under section 11(3)

143. Having considered the registrar's report following preliminary scrutiny, the bishop may, within 28 days of receiving it, dismiss the allegation under section 11(3) of the Measure. Such action would be appropriate where the bishop is satisfied that: r15

- the complainant does not have a proper interest, within the meaning of section 10 of the Measure, or
- there appears to be no sufficient substance to justify proceeding with it; this would apply if the matter were trivial, minor, or if the bishop forms the view that the alleged misconduct, if true, would not be grave enough to merit a formal rebuke under the Measure, or it could be dealt with more appropriately under non-disciplinary procedures outside the Measure.

144. A further reason for dismissing the allegation may be where the bishop is satisfied that it is vexatious or that it concerns alleged misconduct which has already been the subject of a previous formal allegation. An allegation will be normally vexatious where it is without substance and is brought for the sole purpose of annoyance or causing a financial cost (e.g. legal fees) to the respondent. The bishop must always take advice from the registrar before dismissing an allegation on one or both of these bases.

145. The bishop should have regard to the contents of the registrar's report, but must exercise his own judgment in deciding on the appropriate course of action, and

he cannot delegate making the decision to anyone else (unless there is a conflict of interest).

146. Both the complainant and respondent should be sent notice in writing of the dismissal of the allegation under section 11(3) of the Measure, together with a copy of the registrar’s report. A summary of the bishop’s reasons for dismissing it should be included in the notice, together with an explanation that the complainant has the right to ask the President of Tribunals to review the bishop’s decision.

r15(1)

r15(2)

147. Where the bishop dismisses an allegation because it lacks sufficient substance for the purposes of the Measure, but the conduct of the cleric in question nevertheless raises cause for concern, the bishop may take appropriate and proportionate action outside of the Measure. This might include advice or an informal warning as to future behaviour. The matter will usually be recorded on the clergy ‘blue’ file. No record of it will be entered in the Archbishops’ list.

Complainant’s right to request a review of a dismissal under s11(3)

148. A complainant is entitled to request the President of Tribunals in writing to review a dismissal under section 11(3) of the Measure. The request should be made within 14 days of receipt of the notice of dismissal, and should set out the reasons for challenging the bishop’s decision, and be accompanied by a copy of the allegation and evidence in support, the registrar’s report and the bishop’s notice of dismissal. The request must be made using the online system or in writing using Form 4. No new or further evidence may be submitted by the complainant with a request for a review. The President will notify the bishop and the respondent that the review has been requested.

s11(4), r16

r16(2)

149. The President will consider the registrar’s report and the bishop’s notice of dismissal within 28 days. The President’s role is to review the bishop’s decision. No fresh or new evidence will be considered by the President when reviewing the bishop’s decision. The President can uphold the dismissal, reverse it, or remit

r16(4)

the matter back to the bishop with a direction that the bishop is to reconsider the dismissal.

- 150.** The decision to dismiss the allegation can be reversed or remitted back to the bishop for reconsideration only if the President is satisfied that the bishop was plainly wrong, i.e. that the bishop's decision was not within the range of reasonable decisions. It is not an appeal on the merits, and the President will not simply substitute his or her own view for that of the bishop. If the President does reverse the bishop's decision then the bishop will be directed to deal with the matter by considering the appropriate course of action to pursue under section 12 of the Measure.

s11(4)

r16(4)

The respondent's answer to an allegation of misconduct

- 151.** When the allegation is not dismissed under section 11(3) or the President under section 11(4) reverses a dismissal, the respondent should be notified in writing that the allegation has not been dismissed, sent a copy of the registrar's report, and requested to submit a written answer within 21 days.

r17(1)

- 152.** The answer must be made using the online system or in writing in the Form 2 and should state which matters are admitted and which are contested, and should be accompanied by written evidence in support. This written evidence must be made using Form 3 and signed by the respondent or other witnesses testifying. Supporting material, such as photographs, text messages, letters/e-mails or other evidence should be submitted with the written evidence. There is a 3000 word limit and the number of exhibits must not exceed 25 pages (including the content of any webpages). In rare cases the bishop can allow for an increase to the word limit and/or the page limit where there are exceptional circumstances which justify doing so. In such cases the bishop may set a new limit.

r17(2)(c)

r17(3) & (4)

- 153.** Applications to increase or disapply the word and/or page limit should be made in writing to the bishop setting out clearly and concisely why there are exceptional circumstances to justify the removal. There is no statutory form. An

r101B(6)

application should ordinarily be made before the answer is submitted so it can be determined by the bishop prior to the drafting of the response. However, where necessary, the application can be included with the answer, although in such cases the respondent risk parts of the evidence not being taken into account should the bishop not remove or increase the word limit.

154. A witness who provides a statement in support may request that his or her contact details should not be disclosed to the complainant, giving reasons for the request. Where such a request is made the witness's contact details will be withheld from the complainant and deleted from the copy of the witness statement sent to the complainant, unless the registrar directs otherwise. If the registrar directs that the witness's contact details should be disclosed to the complainant the registrar will forthwith notify both the witness and the respondent of this in writing, explaining why.

155. If the respondent admits any misconduct, details should be given in the answer of any matters relied upon by way of mitigation. If necessary, a separate statement in mitigation can be submitted using Form 3.

156. A copy of the answer and evidence in support should be sent to the complainant by the bishop. r17(6)

Can the bishop suspend?

157. If, having received the registrar's report, the bishop decides not to dismiss the allegation under section 11(3) of the Measure, the bishop may consider suspending the respondent from exercising or performing any ministerial right or duty without permission whilst the matter is considered further. A suspension should be imposed only if necessary. s36(1)
r60-66

How long can the bishop take to decide what to do?

158. The bishop should decide on the appropriate course of action within 28 days of receiving the registrar's report. If, in exceptional circumstances, more time is

needed the bishop should consult the complainant and respondent to ascertain their views on the extension of time, but their consent is not needed for any extension of time. When the bishop decides to extend the period of time for considering what course to pursue he will inform the complainant and the respondent in writing. s12(1)
s12(2), r18

Who can the bishop meet when deciding what to do?

159. When considering what action to take, the bishop may meet or interview separately the complainant and the respondent. The bishop may also meet or interview any other person who may be able to assist the bishop in deciding how to proceed. The complainant should be informed in advance of the reason for a meeting or interview, and should bring a friend or an advisor (and must be encouraged to do so). The respondent should likewise be informed in advance of the reason for the meeting or interview with sufficient time to prepare for it, and should bring a colleague, advisor or friend (and must be encouraged to do so). Whenever the bishop meets a complainant, respondent or any other person, a member of the bishop’s staff should attend and record the matters discussed. A copy of the note of the meeting should be sent promptly after the meeting to the persons who were present at it.

160. The purpose the meeting is not to investigate the misconduct but to enable the bishop to seek points of clarification in order to enable him or her to make a decision under section 12 of the Measure.

161. At no stage should any pressure be put on a complainant to withdraw or modify an allegation. Equally, no pressure should be put on a respondent to admit the alleged misconduct, and a bishop should not engage in “plea bargaining” with the respondent, (i.e. the bishop should not accept an admission by the respondent to a lesser allegation of misconduct on condition that a more serious allegation is not proceeded with).

Decision to take no further action

- 162.** A decision to take no further action under the Measure is suitable where s12(1)(a), s13
- the misconduct is admitted by the respondent but is of a technical or minor nature,
 - having seen the respondent's answer and evidence in support, the bishop decides there was clearly no misconduct,
 - having seen the respondent's answer and evidence in support, the bishop considers there may have been misconduct, but that the misconduct is only of a technical or minor nature, and would not merit any sanction under the Measure being imposed taking into account any mitigating factors.
- 163.** If the bishop considers on the evidence that there has been misconduct, but decides to take no further action, the bishop may nonetheless advise and warn the respondent. A copy of the advice and warning should be kept in the respondent's personal file (known as the blue file) for an appropriate period. No record of it will be entered in the Archbishops' list.
- 164.** A decision to take no further action should be put into writing by the bishop setting out the reasons and sent to both the complainant and respondent. s13(2), r20
- 165.** The letters to the complainant and the respondent should explain the complainant's right to refer the bishop's decision to take no further action to the President of Tribunals for a review. The letters should also explain the limited nature of the review. r20
- s13(3)
- The pro-forma letter appended at B4 can be used by the bishop as the letter to the complainant.
- 166.** Any such reference by the complainant to the President for a review should be made using the online system or in writing using Form 5, and should be sent within 14 days of receipt of the bishop's decision. The reference should be accompanied by the bishop's written decision, plus a copy of the allegation and the respondent's answer and evidence in support of each, and the registrar's r21

report. The reference should explain concisely why the complainant believes the bishop was wrong.

167. Within 28 days of receipt of the reference the President will consider the complainant's request and the documents submitted with it. The President's role is to review the bishop's decision. No fresh or new evidence will be considered by the President. The President can uphold the bishop's decision, overrule it, or remit the matter back to the bishop with a direction that the bishop is to reconsider the decision to take no further action. r22
r21(4)

168. The bishop's decision to take no further action can be overruled or remitted back to the bishop for reconsideration only if the President is satisfied that the bishop was plainly wrong. Where the President overrules the bishop the President has a discretion to direct the bishop to attempt such other courses permitted under section 12 of the Measure as the President considers appropriate (namely, conditional deferment, reference to conciliation, penalty by consent, or formal investigation). s13(3), r22

Decision that there should be a conditional deferment

169. Conditional deferment is only available when the respondent consents to it as a course of action. Before the respondent consents, the bishop must explain the meaning and effect of a conditional deferment and be satisfied that the respondent understands fully the implications. s12(1)(b), s14

170. A conditional deferment means that the allegation is kept on file in the diocese for a period of up to 5 years (the length of time is in the bishop's discretion). No other action is taken unless a further allegation of misconduct is made against the respondent within that period of deferment. s14(2)
s14(3)

171. No pressure should be put upon a respondent to consent to a conditional deferment. The passage of time may make it difficult to investigate alleged misconduct at a later date, so in practice a conditional deferment is most likely

to be used where a respondent admits the misconduct, but the misconduct is out of character and unlikely to be repeated, and does not warrant removal from office or a period of prohibition.

172. Having obtained the respondent's consent in writing to a conditional deferment, the bishop must put the decision into writing, setting out the period of deferment, and informing the respondent that if a further allegation is made during that period and proceeds by way of conciliation, penalty by consent or formal investigation, then the original matter may be dealt with alongside the further allegation. r23, r24

173. A copy of the bishop's written decision together with the allegation and the respondent's answer, if any, should be sent to the archbishop; the conditional deferment will be noted by the provincial registrar. A copy of the bishop's written decision should be given to both the complainant and the respondent, together with a written explanation of the meaning and effect of a conditional deferment. r25

174. It is the duty of the registrar to keep and maintain an accurate record of conditional deferments; the entry should contain a summary of the nature of the misconduct with relevant dates and set out the period of deferment. The registrar should also keep all relevant papers relating to that matter. Only diocesan bishops and registrars have access to records of conditional deferments. r25(1)(c)
r25(2)

175. The complainant has no right of appeal or review in respect of the bishop's decision to impose a conditional deferment.

Decision in favour of conciliation

176. Conciliation can be particularly appropriate when pastoral or personal relationships have been damaged and there appears to be an opportunity for them to be restored through constructive dialogue. It may also be appropriate s12(1)(c), s15

where it appears the complainant is seeking recognition of error by the respondent and an apology. In these circumstances conciliation offers the hope of re-establishing trust and confidence.

177. Conciliation is a voluntary and confidential process in which an impartial third party (the conciliator) helps the complainant and the respondent to achieve agreement on how the issues can be resolved.

178. For a conciliation to be successful, both sides have to understand the process and take part willingly. Before deciding that conciliation is appropriate the bishop should explain to both sides the nature of conciliation hearings and invite them to make representations as to whether or not conciliation should be pursued. Only if both sides agree can the bishop appoint a conciliator.

s15(1), r26(1)

s15(2)

179. The bishop should emphasise that:

- agreeing to a conciliation is not a sign of weakness by a party, nor an admission of guilt,
- the conciliator's function is not to judge or decide the issues, but to help the parties achieve an agreement,
- parties will not be pressurised by the conciliator into making an agreement
- conciliation is an attempt to bring the parties together so that they themselves can agree on a suitable outcome.

180. Conciliation may be particularly appropriate where the allegation of misconduct is indicative of a breakdown in the underlying relationship, especially the relationship between a priest and the PCC or a churchwarden.

181. Not all disputes are suitable for conciliation, for instance, conciliation is unsuitable for any misconduct where the bishop considers that the appropriate penalty, if the matter is proved, would be prohibition (including limited prohibition) or resignation.

- 182.** If the parties agree to a conciliation, the bishop will need to appoint a conciliator (or joint conciliators, if appropriate). It is of fundamental importance that the conciliator should be impartial, acceptable to both parties, and professionally qualified. Before making the appointment the bishop should notify the parties in writing of the name or names of possible conciliators, briefly summarise their suitability, experience and qualifications for the task, and invite the parties to indicate within 14 days which names they would each agree to be appointed. If both parties agree on a person to be appointed, then the bishop should appoint the conciliator in question, provided the bishop has no reason to question that person's impartiality. r26(2)
s15(3)
- 183.** There is a variety of people whom the bishop can appoint to be a conciliator. Experience shows that dioceses throughout the country use a wide range from within the church to mediate in all kinds of other disputes. Archdeacons, rural deans, retired clergy, and diocesan staff, may all be suitable, provided they are professionally qualified as conciliators; furthermore, there are no fees payable for using their services. Outside agencies can provide trained conciliators but they normally charge fees; any fees charged would normally fall for the diocesan board of finance to pay.
- 184.** On appointing a conciliator the bishop should send the conciliator copies of all the relevant papers in the case. r26(3)
- 185.** Conciliation processes can be flexible, to suit the needs of the case. If conciliation is achieved, the conciliator should reduce the agreed points into writing and obtain the signatures of the complainant and the respondent. r26(6)
- 186.** If conciliation is achieved, the conciliator submits a written report to the bishop with recommendations based on the parties' agreement on how to resolve the allegation. The report should be submitted within three months of the conciliator's appointment, although this can be extended if it seems desirable to s15(4), r26
s15(4)(a), r26(5)

the conciliator and the parties agree. The bishop then notifies the parties in writing that he accepts the agreement and that he will pursue any agreed course (provided he could have pursued that course under section 12 of the Measure if he had not instead directed the conciliation attempt).

r26(6)(b)

187. If a complainant and respondent are unable to agree that a matter should be referred to a conciliator, or cannot agree on who the conciliator should be, the bishop will proceed with one of the other courses under section 12 of the Measure (namely, take no further action, conditional deferment, penalty by consent, formal investigation).

s15(5), r26(9)

188. If conciliation is not successful, but the parties agree that further exploration with a different conciliator may be fruitful, the bishop may appoint another conciliator. If they cannot agree to further conciliation, the bishop shall proceed with one of the other courses under section 12 of the Measure.

s15(4)(b), r26(7)

s15(5), r26(8)

Decision to impose penalty by consent – general considerations

189. A penalty by consent can only be imposed where the respondent admits the misconduct or part of the misconduct. Consequently, it should not even be raised as a suitable option with the respondent until he or she has so admitted.

s12(1)(d), s16

190. No pressure should be used by the bishop to obtain either the respondent's admission, or the respondent's consent to the appropriate penalty. The bishop's view that misconduct may be clearly made out and requiring an obvious particular penalty must not lead to an overbearing approach towards the respondent.

191. The bishop should bear in mind that the respondent may feel in a weakened or vulnerable position, and liable to agree to matters which may be regretted after considered reflection. The bishop should also bear in mind that there may be mitigating circumstances relating to the misconduct, which should be explored

in full with the respondent before any decision is made. The respondent should be encouraged to take legal advice before consenting to a penalty.

192. It is for the bishop to indicate an appropriate penalty, and for the respondent to accept or reject it. It is unfair and inappropriate to require the respondent to propose a suitable penalty.

193. All penalties set out in section 24 of the Measure can be imposed by consent, namely, prohibition for life, limited prohibition, removal (or resignation if by consent), revocation of licence, injunction, or rebuke. **r27(2)**

194. Before proposing a penalty the bishop must consider the Clergy Discipline Commission's Guidance on Penalties.

195. Plea-bargaining or negotiation between the bishop and the respondent must form no part of the process of considering and imposing a penalty by consent.

196. Before the bishop imposes a penalty by consent, the complainant and respondent must be given an opportunity to make written representations. The bishop should notify them of the penalty that is in mind, making clear that at this stage it is not yet a final decision. The bishop must also identify the aggravating and mitigating circumstances that the bishop has found identified, and invite them to make written representations in response within 14 days. Before confirming the penalty the bishop should have regard to any such representations and make any adjustments to the penalty as appropriate. **s16(1), r27(3)**

197. The respondent's consent to a penalty must be given in writing in Form 7.

198. Within 7 days of receiving the respondent's written consent to the penalty (provided it is not resignation or prohibition), the bishop must send to the respondent written confirmation of the agreed penalty. Within 14 days of sending the written confirmation to the respondent, the bishop should notify the **r27(4)**
r27(4)

complainant, the archbishop of the relevant province and the diocesan registrar in writing of the penalty imposed.

r27(6) & (7)

199. If the respondent does not consent to a proposed penalty, the bishop must refer the matter to the Designated Officer for a formal investigation. Where an allegation is referred to the Designated Officer, it is still open to the bishop and respondent to agree a penalty by consent if the respondent at any stage in writing admits misconduct. Where a penalty by consent is agreed no other steps will be taken in the proceedings.

s16(3), r27(8)

s16(3A), r27(9)

Decision to impose penalty by consent – resignation or prohibition

200. There is an important difference between a resignation offered unconditionally, and a resignation that takes effect as a penalty by consent under the provisions of section 16 of the Measure. A respondent is entitled to resign when an allegation of misconduct is made and the bishop cannot refuse to accept the resignation. However, the bishop should warn the respondent that the circumstances of the resignation will be entered in the Archbishops' list under section 38(1)(d) of the Measure, and furthermore that unless the resignation takes effect as a penalty by consent under the Measure in respect of admitted misconduct, the process will normally continue and a penalty could still be imposed.

201. Similarly, if a priest or deacon resigns before a formal allegation is made, any later allegation relating to pre-resignation conduct should be determined in disciplinary proceedings in due course. If the misconduct in question is adjudged to warrant prohibition or any other penalty, such a penalty may still be imposed notwithstanding the earlier resignation.

202. Where resignation or prohibition is contemplated by the bishop as the appropriate penalty by consent, the respondent must be given sufficient time, which should be up to 14 days, to consider all the consequences before agreeing to it. In particular the respondent must be given the opportunity to consult his

or her spouse (if married), other close family members, and his or her legal advisor, and be encouraged to do so. It is important that decisions about resignation should not be made in the heat of the moment when a respondent may be feeling under stress.

203. Where the respondent agrees to accept prohibition for life, or resignation, there is an automatic 7-day moratorium (i.e. a “cooling off period”) during which the respondent is entitled as of right to withdraw consent to the penalty. The penalty will only take effect at the end of the 7-day period if the respondent has not withdrawn consent in writing. If consent is withdrawn then the bishop must refer the matter to the Designated Officer for a formal investigation. s16(2), r27(5)

204. If resignation is contemplated as a penalty by consent, the bishop must be personally satisfied that it is the appropriate penalty and not merely expedient. Resignation may be too weak a response where prohibition is called for, and too harsh a penalty where a lesser sanction would be suitable (such as an injunction). s16(3), r27(8)

205. When the 7-day “cooling off” period has expired the bishop should write to the respondent confirming the agreed penalty. In the case of resignation, no deed or letter of resignation from the respondent is required to implement it, because the respondent will already have signed a form agreeing to the penalty of resignation. r27(5)(b)

206. Within 14 days of sending the written confirmation to the respondent the bishop should give written notice of the penalty to the complainant, the archbishop of the relevant province, and the relevant diocesan registrar. r27(6) &(7)

Decision in favour of formal investigation

207. This option is intended to be used only for those cases which cannot be satisfactorily dealt with by any other means. This will include cases where the respondent denies an allegation of substance (so taking no action is not a proper option under section 12(1)(a)), or where conciliation has been rejected or failed, s12(1)(e), s17
r28

or where the respondent will not consent to the penalty which the bishop considers to be appropriate.

What happens if there is a criminal conviction?

- 208.** If a priest or deacon is convicted in England and Wales of any criminal offence which is not a summary only offence, or receives a sentence of imprisonment (including a suspended sentence) for any offence (including summary only offences) the bishop may remove that person from office or impose a prohibition order (either for life or for a limited period) without further proceedings. Under the Measure the bishop has a two-year period within which to act from the date the sentence of imprisonment becomes conclusive, but the bishop should consider the matter and take action as soon as reasonably practicable. A sentence of imprisonment becomes conclusive when any appeal is concluded or dismissed or abandoned. If there is no such appeal then the two-year period starts to run from the expiration of the time limited for appeal. Where the bishop does not at any relevant time know of the conviction the President may extend the two-year period. s30(1)
r67-69
s30(3)
s40
s30(3A), r67A
- 209.** Removal from office or prohibition will not automatically result from a sentence of imprisonment. The bishop retains a discretion at all times, but, if the bishop is proposing to impose a penalty, the bishop must first of all consult the President of Tribunals to ascertain the President's views about the seriousness of the criminal charge and the matters relating to it. The bishop must then inform the respondent in writing of details of the proposed penalty, send him or her a copy of the bishop's letter to the President and the President's response, and invite the respondent to send written representations within 28 days. If either the bishop or the respondent so desires, and if practicable, a meeting between them should be arranged during this 28-day period; the respondent should have a colleague, advisor or friend present. A member of the bishop's staff should attend and record the matters discussed, and a copy of the note of the meeting should be sent to the respondent promptly after the meeting. At the end of the s30(2), r68
r69

28-day period the bishop should write to the respondent stating whether the penalty of removal from office or prohibition is being imposed.

210. Where a respondent has been convicted of a serious offence or a sentence of imprisonment has been imposed by a court of law in the United Kingdom the respondent should normally expect to be removed from office and to receive an order of prohibition (either for life or for a limited period). This may not, however, apply if the criminal proceedings took place in a foreign court – the bishop will need to take note of the judicial system in question, and consider whether a similar conviction or sentence of imprisonment would have resulted if proceedings had been brought in a United Kingdom court.

211. A respondent has the right to ask the archbishop of the relevant province to review the decision to impose a penalty of removal or prohibition. Any review must take into account representations of the respondent as well as the bishop's reasons for imposing the penalty, and all other relevant circumstances. The archbishop will conduct the review with or without a hearing, and may uphold or reverse the bishop's decision as he thinks fit, after considering all representations and the circumstances of the case.

s30(2), r70-72

What happens if there is an acquittal at a criminal trial?

212. Where a criminal charge against a priest or deacon alleges facts which would amount to misconduct if proved, and he or she is acquitted following a criminal trial, any allegation under the Measure alleging exactly the same matters as the criminal charge can be proceeded with in disciplinary proceedings if a review of all the evidence in support indicates that, notwithstanding the acquittal, there are good prospects of successfully proving the alleged misconduct. Although the standard of proof in disciplinary proceedings is easier to satisfy than in criminal courts, a tribunal will, nonetheless, look for persuasive, reliable and cogent evidence before it can be satisfied that a serious act of misconduct has been committed.

There may, alternatively, be other matters of misconduct arising out of or in connection with the circumstances of the criminal charge, which can, and should, be dealt with in disciplinary proceedings.

Example 1: In a criminal trial for theft of money from the church collection plate, a priest or deacon could admit taking the money, but contend that it was to meet an urgent personal debt and that the money was going to be paid back when he or she was able to do so. If the prosecution results in an acquittal, an allegation under the Measure alleging theft by the respondent may well not succeed. However, an allegation made by a churchwarden that, in breach of trust, the priest or deacon had used the church's money for private purposes, would succeed under the Measure.

Example 2: A married priest could be acquitted of sexually assaulting a female member of his congregation, where his defence is that the woman consented to the sexual activity so no crime was committed. Nevertheless, his conduct would clearly have been unbecoming and inappropriate to the office and work of a clerk in Holy Orders, and disciplinary proceedings under section 8(1)(d) of the Measure would succeed.

What happens if there are divorce proceedings?

- 213.** If a marriage is dissolved or is subject to an order of judicial separation, and the court hearing the petition for divorce or judicial separation is satisfied that a priest or deacon has committed adultery, behaved unreasonably or deserted the petitioner, then the bishop may remove the respondent from office or impose a prohibition order (either for life or for a limited period) without further proceedings. Under the Measure the bishop has a two-year period within which to act from the date of the decree absolute or order, but should consider the matter and take action as soon as reasonably practicable. Where the bishop does not at any relevant time know of the decree or order the President may extend the two-year period.
- s30(1), r68-69
- s30(3)
- s30(3A), r67A

214. The bishop retains a discretion at all times, but must consult the President of Tribunals to ascertain the President's views about the seriousness of the matrimonial conduct in question if the bishop is proposing to impose a penalty. The bishop must inform the respondent in writing of the details of the proposed penalty, send him or her a copy of the bishop's letter to the President and the President's response, and invite the respondent to send written representations within 28 days. If either the bishop or the respondent so desires, a meeting between them should be arranged during this 28-day period. The respondent should have a colleague, advisor or friend present at the meeting. A member of the bishop's staff should attend and record the matters discussed, and a copy of the note of the meeting should be sent to the respondent promptly after the meeting. At the end of the 28-day period the bishop should write to the respondent stating whether the penalty of removal from office or prohibition is being imposed.

s30(2), r68

r69

215. Removal from office or prohibition will not automatically result from a decree absolute of divorce or decree of judicial separation involving adultery, unreasonable behaviour or desertion. Most decrees absolute and decrees of judicial separation are granted as a result of uncontested proceedings on paper so that the evidence in support of the petition is not questioned or tested, although it is accepted by the court. Furthermore, some respondents, recognising that their marriage has broken down irretrievably and could be dissolved against their will in any event after a period of 5 years separation, may choose not to contest allegations in a divorce petition, even if not accepted – this avoids legal expense and argument over sensitive and personal issues. The bishop should bear this in mind as a factor when considering what disciplinary action to take.

216. A respondent has the right to ask the archbishop of the relevant province to review any decision of removal from office or prohibition. Any review must take into account representations of the respondent as well as the bishop's reasons for imposing the penalty, and all other relevant circumstances. The archbishop

s30(2), r70-72

will conduct the review with or without a hearing, and may uphold or reverse the bishop's decision as he thinks fit, after considering all representations and the circumstances of the case.

Barred clergy under the Safeguarding Vulnerable Groups Act

217. Clergy whose names are entered on the children's barred list or the adults' barred list established under the Safeguarding Vulnerable Groups Act are liable to be removed from office by the bishop and prohibited. Before imposing such a penalty the bishop must consult the President of Tribunals. The procedure thereafter is similar to that as set out above in relation to matrimonial breakdowns, including the respondent's right to ask the archbishop of the relevant province to review the bishop's decision. s30, r68

Duty of clergy to report

218. There is a duty under section 33 of the Measure upon a priest or deacon to report to the bishop within 28 days of being arrested on suspicion of committing an offence, and of being convicted for an offence. There is also a duty under section 34 upon a priest or deacon to report to the bishop within 28 days if a decree absolute has been made dissolving his or her marriage or if an order of judicial separation is made. The bishop must be informed by the priest or deacon as to whether he or she was respondent in the proceedings, and if so, whether any finding of adultery, unreasonable behaviour or desertion was made. s33(1)
s34

219. By virtue of section 34A a priest or deacon is under a duty to notify the bishop if included in a barred list under the Safeguarding Vulnerable Groups Act, and to inform the bishop of the reasons for inclusion. s34A

220. An omission to so report is deemed to be a failure to do an act which is required by ecclesiastical law. It is therefore misconduct under the Measure, and is likely to lead to further disciplinary action. s33(2) & s34

STAGE 3: THE BISHOP'S DISCIPLINARY TRIBUNAL

What is a formal investigation?

- 221.** When the Designated Officer is directed by the bishop to carry out a formal investigation, the Designated Officer will enquire into the allegation and answer, and then refer the matter in writing to the President so that the President can decide if there is a case to answer. In doing so the Designated Officer acts independently of the parties. **s12(1)(e), s17 r28**
- 222.** The investigation will not take the form of any preliminary hearing. Any inquiries in the course of the investigation may be conducted by telephone, correspondence (including e-mail) or by personal interview with anyone involved in the matter.
- 223.** The parameters of the investigation will be set by the Designated Officer with reference to the issues contained within the submitted documents. The purpose of the Designated Officer's report is to assist the President of the Tribunals in deciding whether there is a case to answer. Should the complainant or respondent wish the Designated Officer to consider particular lines of inquiry, including the obtaining of evidence, they should make that request.
- 224.** It is the duty of the complainant and the respondent to co-operate with the Designated Officer when the inquiries are made. They should answer any reasonable inquiries, and if they decline to do so, adverse inferences may be made against them when the President decides whether there is a case to answer, and also if they give evidence at any subsequent disciplinary hearing. **r2, r28(3)**
- 225.** The gist of any oral communications with the complainant, respondent or any witness should be recorded by the Designated Officer in written memoranda, but the Designated Officer's records are privileged from disclosure to any party. If, however, any new relevant information is revealed by or on behalf of one of the **r28(4)**

parties in the course of the inquiries, the Designated Officer will pass that information on to the other party and ask that other party to comment on it.

226. The Designated Officer should inform the parties and the bishop of the date when the report to the President is expected to be sent, and notify them when it has been sent.

227. It is recommended that the report from the Designated Officer should cover the following areas:

- The substance of the allegation
- The substance of the respondent's answer
- A summary of the evidence submitted in the case
- An analysis of any relevant legal issues
- Any other matters which the Designated Officer wishes to bring to the attention of the President.

228. A copy of the registrar's report for the purposes of preliminary scrutiny should be annexed to the Designated Officer's report when it is submitted to the President of Tribunals.

229. The contents of the Designated Officer's written report to the President are confidential and the report will not be disclosed to the complainant, respondent, bishop or any other person.

230. The President of Tribunals will consider the Designated Officer's report and **s17(3), r29** decide whether there is a case for the respondent to answer. The President will take into account whether the alleged misconduct is sufficiently serious for referral to a bishop's disciplinary tribunal. If there is a case to answer and the alleged misconduct is sufficiently serious, the President will refer the matter to a disciplinary tribunal.

231. The President’s decision as to whether there is a case to answer will be put into writing and copies sent to the complainant, the respondent, the bishop, and the Designated Officer. If there is a case to answer the President’s written decision will specify which allegations of misconduct are to be dealt with at the disciplinary hearing. If there is no case to answer, the President will give reasons for the decision.

r29(1)

r29(2)

r29(3)

232. Where the President decides not to refer a matter to a tribunal, the bishop may, if appropriate, and having regard to the reasons given by the President, advise and warn the respondent in writing as to future behaviour. A copy of the advice and warning should be kept in the respondent’s personal file (known as ‘the blue file’) for an appropriate period. No record of it will be entered in the Archbishop’s list.

s38

Appointment of the members of the tribunal

233. The President will not appoint members of the tribunal unless satisfied there is no reason to question their impartiality. Those who have been nominated to the provincial panel have been recognised as possessing social awareness and cultural sensitivity, and a respect for people from different backgrounds. In appointing a tribunal from the provincial panel the President will be sensitive to relevant gender and ethnic backgrounds. Where the complainant or the respondent is from a minority ethnic background the President will usually seek to appoint at least one member of the tribunal from a similar ethnic group or background if practicable. Before proposed members of the tribunal are appointed, the respondent should be notified in writing of their names, their diocese, and the capacity in which they are to be appointed.

s22(2)

234. The respondent may make representations to the President about the suitability of any of those who are to be appointed to the tribunal. If the President considers there is any substance in the respondent’s representations suggesting that a particular person is not suitable, the President should appoint another person instead.

s22(2), r37(1)

r37(2)

235. The President may at any stage invite the respondent to make representations about the suitability of two proposed reserve members of the tribunal, one ordained and one lay, whom the President would appoint as appropriate in the event that a previously selected tribunal member were unable to hear the allegation.

236. When members of the tribunal are selected for appointment to hear an allegation they should be given a list of the names and addresses of the complainant, the respondent and all witnesses. Any person selected should be invited to state if they know any of those on the list and, if so, to give details of how they know them. The President may then direct the replacement of anyone who in the President's view may not appear to be impartial.

237. Under no circumstances should members of the tribunal carry out any private enquiries of their own or discuss it with anyone else. Furthermore, they should take care to avoid receiving any information or comments from the media or other sources about a case in which they are involved.

Conduct of proceedings

238. Proceedings should be conducted in the spirit of co-operation and in accordance with the overriding objective. This includes parties co-operating with each other during preliminary procedural stages. The objective is to deal with disciplinary proceedings expeditiously as well as fairly. If a party fails to co-operate then an adverse inference may be drawn against that party.

r1
r2(1)
r2(2)

239. The case for the complainant is conducted by the Designated Officer or other legally qualified person duly instructed by that officer. The Designated Officer is a barrister or solicitor of the Legal Office of the National Institutions of the Church of England, and acts wholly independently from the complainant, the respondent and the bishop.

s18(1), r106

240. It is a fundamental principle of disciplinary proceedings that neither side should be taken by surprise by the other in relation to the evidence that is to be given at a hearing or by any legal submissions that are made. Any failure to observe this principle may result in the tribunal exercising its discretion to exclude evidence or legal submissions if the other party is disadvantaged by not having had prior notice.

241. The Designated Officer or the respondent may at any stage after the proceedings have been referred for a formal investigation apply in writing with stated reasons to the President asking for a direction that the allegation be withdrawn. **s18(2)(a), r58**

242. If it appears to the President at any stage after the proceedings have been referred for a formal investigation that a conciliation could be brought about, he may require that an attempt, or a further attempt at conciliation, as the case may be, should be made. If so, reference should be made to the section in this Code dealing with conciliation. **s18(2)(b), r58 s15**

243. Hearings before a tribunal are normally to be held in private, but will be held in public if the respondent so requests or if the tribunal considers that it would be in the interests of justice to hold it in public (for example where there has been false speculation or rumours about a case, it could be deemed fairer to the parties to have a public hearing). **s18(3)(c), r40**

244. If a hearing is held in public the tribunal may in the exercise of its discretion, and having heard any representations from or on behalf of the Designated Officer and the respondent, exclude any members of the public from any part of the proceedings. In particular, it may be necessary to exclude members of the public to protect the interests of any child, or the private lives of any witnesses including the complainant. **s18(3)(c), r40**

245. The tribunal may, in accordance with the overriding objective, conduct the hearing in any way it considers appropriate having regard to the nature of the **r39**

alleged misconduct and the issues. The parties will normally be entitled to give evidence, call witnesses, question witnesses called by the other party, and address the tribunal on all relevant matters. Oral evidence at a hearing will be given on oath or affirmation, and will be recorded.

r44
r45

246. A hearing may be adjourned whilst in progress. This will only be done where necessary, and for good reason, because any adjournment causes delay in dealing with the proceedings, which is undesirable. Furthermore, adjournments are expensive and it can be difficult to re-arrange a hearing to ensure that parties, tribunal members, legal representatives and witnesses can all attend when required. Where a timetable is provided for the conduct of a hearing, parties should therefore strive to keep within it, so that proceedings do not overrun.

r41

How the tribunal makes its decision

247. The standard of proof to be applied in any disciplinary hearing is the civil standard. This means that an issue in dispute is to be proved on the balance of probabilities.

s18(3)(a)

248. The tribunal makes its decision by way of majority vote, and must give its written reasons in support. This can be done at the conclusion of a hearing, or the tribunal may adjourn and reconvene at a later date to give its decision, and the person chairing the tribunal may on that occasion sit alone. The announcement of the decision must always be made in public, although details disclosing the identity of anyone involved in the case may be withheld in the interests of justice. This is particularly relevant to protect the interests of children, or the private lives of any witnesses including the complainant.

s18(3)(b), r50(1)

r50(2)

s18(3)(c)

r50(4)

249. If the tribunal is not unanimous, it should publish one decision or judgment containing the reasoned decision of both the majority and the minority.

r50(3)

What penalty can be imposed by a tribunal?

250. Before imposing a penalty a tribunal may invite the bishop to make written representations on the appropriate penalty, including any mitigating or other circumstances which the bishop may feel appropriate to draw to the attention of the tribunal. This will be particularly relevant in cases where the Tribunal is considering removing the respondent from office. s24
s19(2), r51

251. The tribunal will send a copy of the bishop's views to the respondent and to the Designated Officer. The tribunal is not bound to follow any recommendation that the bishop may make, but it should take into account the bishop's views. If the bishop has given evidence in the course of the proceedings then the tribunal must not consult him about the appropriate penalty.

252. In all cases the Tribunal should have reference to the Clergy Discipline Commission's Guidance on Penalties.

OTHER MATTERS

What happens to the proceedings if a respondent dies?

253. Any proceedings in respect of an unresolved allegation are automatically terminated on the death of the respondent. r54

What happens to the proceedings if the complainant dies or becomes seriously ill?

254. On the death, serious illness or incapacity of a complainant who has been nominated by a parochial church council to make the allegation, the council may nominate another person to pursue the matter. If the council does not nominate another person within 28 days of being invited to do so by the bishop, then any person claiming to have a proper interest in making the allegation may apply in writing to be substituted as complainant. Such an application should be made to the bishop, unless the matter has already been referred by the bishop to the Designated Officer for a formal investigation, in which case the application should be made to the President. r55

255. On the death, serious illness or incapacity of a complainant who has not been so nominated, any person claiming to have a proper interest may request in writing to be substituted as the complainant. The request should be sent to the bishop to whom the original allegation was submitted, unless the matter has meanwhile been referred to the Designated Officer for a formal investigation, in which case the request must be sent to the President. r56

256. A person will only be substituted as complainant if he or she can demonstrate a proper interest in the allegation, and if it is in the interests of justice in all the circumstances. r56(3)

257. If no other person is nominated or substituted, as the case may be, the President may direct that the allegation is withdrawn, and then no further action will be taken in the proceedings. r57

Suspension of a priest or deacon

258. A respondent may be suspended by the bishop once an allegation has reached the stage when the bishop is deciding what course of action to take. A priest or deacon may also be suspended if arrested on suspicion of committing a criminal offence. Where an allegation of misconduct is made to the bishop of diocese where the alleged misconduct took place, but the cleric in question is licenced in another diocese, the power to suspend is exercisable by the bishop of the diocese in which the respondent holds licence. s36(1)

259. A suspension pending resolution of proceedings should be imposed by the bishop only if necessary, and preferably by agreement with the respondent. Except when the bishop regards the case as particularly urgent and serious, the bishop should attempt to arrange a meeting beforehand to explain the reasons to the respondent. The respondent should be told in advance of the reason for the meeting and should attend with a colleague, advisor or friend (and must be encouraged to do so). A member of the bishop's staff should be present and

record the matters discussed, and a copy of the note of the meeting should be sent to the respondent promptly after the meeting.

260. Suspension does not mean the bishop has formed any view that the allegation of misconduct or allegation of criminal conduct is true, or likely to be true, and no respondent will be prejudiced in the investigation of the matter as a result of being suspended.

261. The scope of suspension can extend to all ministerial rights and duties of the respondent, including those relating to public worship, administering the sacraments, baptism, confirmation, marriage, burial, visiting the sick, other pastoral work, preaching and teaching, and administrative duties. The suspension can also cover any rights or duties that are incidental to the office held by the respondent. Consequently, without the bishop's permission, a suspended priest would not normally be able to attend any church functions or PCC meetings, vote in any elections to the diocesan synod, exercise powers of patronage, or perform any deanery duties if appointed as a rural dean or area dean. During a period of suspension a respondent's right to a stipend and housing is to continue unaffected.

262. When considering whether to impose a suspension the bishop should take into account the interests of the respondent, the respondent's family, the complainant, any witnesses who may be called upon to testify in the course of proceedings, the local church and community, and the wider church and community. When taking into account the interests of the local church and community the bishop should in particular consider whether their pastoral, liturgical and other needs can be provided for adequately in the absence of the respondent.

263. If a priest or deacon is convicted of certain criminal offences or included on a barred list under the Safeguarding Vulnerable Groups Act, the bishop may **r61A & r61B**

impose a suspension pending consideration of whether a penalty of removal from office or prohibition should be imposed.

264. Where an application is made to the President by a complainant for permission to make an allegation of misconduct out of time, the bishop may impose a suspension on a priest or deacon pending determination of the application. If the President dismisses the application the suspension will end. s36A

265. The bishop may also impose a suspension if satisfied, on the basis of information provided by a local authority or the police, that a priest or deacon presents a significant risk of harm to a child or vulnerable adult – such a suspension can be imposed where an allegation under the Clergy Discipline Measure has not been made. s36(1)(e)

Giving notice of suspension

266. If a bishop does decide to suspend he must, by a notice in writing in a form prescribed by the *Clergy Discipline Rules 2005*, inform the respondent of the suspension and also of the terms of suspension, i.e. precisely what rights and duties are suspended, and the period of suspension. A suspension lasts for 3 months, but expires within that time if meanwhile disciplinary or criminal proceedings end, the application to the President is dismissed or if a penalty is imposed, as the case may be. If, however, such proceedings have not meanwhile finished, the application has not been determined or a penalty has not been imposed by the end of the period of suspension, the bishop may extend the suspension by further periods of 3 months. r60(2), r61(2),
r61(A), r61(B)
r61C, r61D & r62

s36(3) & (3A)

267. Where a suspension is imposed, the bishop must notify certain persons named in the *Clergy Discipline Rules 2005* of the suspension, such as the archdeacon and the rural or area dean. The bishop may also notify any other person whom the bishop considers should be notified of the suspension. The priest's or deacon's congregation should normally be notified when a suspension has been imposed. r63

268. A bishop may at any time in writing revoke a suspension.

s36(2), r64

269. Where a notice of suspension is served on a priest or deacon, the bishop should ensure that appropriate arrangements are put in place to provide for the pastoral, liturgical and other needs for the parish concerned, having consulted the churchwardens and the incumbent or priest-in-charge. The rural or area dean should also be consulted.

s36(4)

270. Whilst a notice of suspension remains in force the respondent must not interfere with anyone performing the services of a church under such an arrangement (and this means all services, duties, tasks or ministrations, not just services of public worship). If there were any such interference, this would be a grave matter of misconduct, and further appropriate disciplinary action would be taken against the respondent.

s36(5)

271. During a period of suspension, a respondent, or the respondent's close family, may have increased need for care and support; the bishop should be alert to this, and ensure that appropriate support is offered and made available. A bishop must not personally provide such care and support, for risk of compromising the fairness and impartiality of the disciplinary proceedings (unless the bishop has delegated the disciplinary function to a suffragan or assistant bishop). Providing care and support should be delegated to suffragan or assistant bishops, archdeacons, rural or area deans and other experienced clergy, or appropriate members of the laity, but not to anyone who is involved in the disciplinary proceedings.

272. When a period of suspension ends the bishop should provide appropriate support to help the respondent if returning to normal duties.

Appeal against suspension during proceedings

273. There is a right of appeal against the imposition of a suspension, or a further period of suspension. The appeal has to be made in writing to the President of

s36(6), r66

Tribunals within 14 days of receipt of the notice of suspension, and the grounds of the appeal should be set out clearly. The suspension will not meanwhile be stayed but will take effect pending the determination of an appeal.

r66(5)

274. The bishop exercises discretion in deciding whether or not to impose a suspension, or further periods of suspension. The President may consider afresh the decision to suspend and substitute his or her own view for that of the bishop, and either confirm or revoke the suspension.

r66(3)

Appeals from the tribunal

275. A respondent may seek leave to appeal against any penalty imposed by the bishop's disciplinary tribunal. A respondent may also seek leave to appeal on a question of law or fact against any finding of the tribunal. Leave to appeal may be granted either by the tribunal or by the appropriate appellate court. The Designated Officer may seek leave to appeal against any finding of the tribunal, but only in relation to a question of law.

s20

276. The Clergy Discipline Appeal Rules 2005 (as amended) apply to all appeals.

277. All appeals in the province of Canterbury are heard by the Arches Court of Canterbury, and all appeals in the province of York are heard by the Chancery Court of York.

The Archbishops' List

278. The Archbishops' list is compiled and maintained jointly by the archbishops, and is kept at Lambeth Palace. A copy of the list is kept by the Archbishop of York at Bishopthorpe. It is not open for public inspection, but is available to the President, diocesan bishops, registrars and the Designated Officer.

s38

r74

r74(3)

279. There are six categories of names in the list: (a) those on whom a penalty under the Measure has been imposed (or those who were liable to a censure under the Measure's predecessor, the Ecclesiastical Jurisdiction Measure 1963); (b) those

s38(1)

who were deposed from Holy Orders under the Ecclesiastical Jurisdiction Measure 1963; (c) anyone who has executed a deed of relinquishment under the Clerical Disabilities Act 1870; (d) anyone who has resigned following the making of a formal allegation; (dd) anyone whose name is included in a barred list under the Safeguarding Vulnerable Groups Act; and (e) those who, in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment (i.e. any office or position requiring the discharge of spiritual duties).

280. Within 21 days of being included in the list under categories (a) to (dd) a person is informed of the inclusion and of the particulars recorded. The included person may then request the President of Tribunals to review the matter, and the archbishop of the relevant province may make written representations to the President in response to the request. The President, having reviewed the inclusion, may direct that the person is to continue to be included in the list or is to be excluded, and if to remain included may direct that the recorded particulars be amended. s38(2), r75

281. When the archbishops are proposing to include in the list someone falling under category (e) all reasonable steps are to be taken to inform that person of the particulars proposed to be recorded, and to invite him or her to send comments or representations in response to the proposal. If the archbishops, having received and taken into account any response that might be made, decide to include the person on the list, then he or she may request the President to review the decision. The archbishop of the relevant province may then make representations to the President about the matter. Having considered the request and any representations in response, the President can uphold or reverse the archbishops' decision or require the particulars recorded on the list to be amended. s38(3), r76

282. Where a name is included in the Archbishops' list under categories (d) or (e) the inclusion is reviewed by the archbishops after 5 years. The included person is

invited to send written comments or representations for the purposes of the review. The bishop of the diocese in which the person resides or holds office, and the bishop of any diocese which was concerned when the person's name was included, are consulted. Upon review, the archbishops may agree to leave the entry of the name on the list unamended, or keep the name in the list but amend the particulars recorded, or remove the name altogether from the list. s38(4), r78

283. The inclusion of a name under categories (d) and (e) may also be reviewed at any time if the bishop of a diocese requests a review, or after 5 years following an earlier review if the person included requests a review. s38(4), r79, r80

Allegations of misconduct against bishops and archbishops

284. Formal allegations under the Measure may be made in respect of bishops and archbishops. For the most part the procedure is similar, but not identical, to allegation about priests and deacons, and reference should be made to the Measure and the *Clergy Discipline Rules 2005* for full details. s10(1)(b) & (c) r81-90

285. An allegation in respect of a bishop would normally be made to the archbishop of the province where the bishop held office when the alleged misconduct occurred. An allegation against an archbishop would be made to the other archbishop. s10(2)

286. Allegations in respect of bishops would be referred to the registrar of the province (not the diocesan registrar) for the purposes of preliminary scrutiny, and to the registrar of the other province if the allegation is about an archbishop. r82(3)

287. A formal hearing of an allegation against a bishop or archbishop (i.e. during "stage 3") would be before a Vicar-General's court, rather than before a bishop's disciplinary tribunal. s6(2)

Removal of prohibition for life and deposition

- 288.** A respondent who is prohibited for life under the Measure, or deposed under the previous Ecclesiastical Jurisdiction Measure 1963, may apply to have nullified that particular penalty, censure or deprivation. s26, r97
- 289.** The only grounds under the Measure on which the respondent may apply are that new evidence has come to light affecting the facts on which the prohibition or deposition was based, or that the proper legal procedure leading to the prohibition or deposition was not followed. s26(1)
- 290.** An application by a priest or deacon is made to the archbishop. The application should be in writing and state the reasons why it is made. It should also state how and when the respondent became aware of the new evidence or discovered that the proper legal procedure may not have been followed. The application should be made promptly once the respondent realises there are grounds to make it. r97(1)
- 291.** If there is new evidence it should be submitted with the application (whether in the form of signed witness statements, photographs, audio or other material). The new evidence will only be taken into account if it is credible and could not have been obtained with reasonable diligence for use at the original hearing. r97(1)
- 292.** The archbishop on receiving the application and accompanying evidence may invite any person involved in the original proceedings to make written representations within 21 days. A copy of any representations received will be sent by the archbishop to the respondent making the application. r97(2)
- 293.** The archbishop may decide the application with or without a hearing and, after consulting the Dean of the Arches and Auditor, will declare whether or not the prohibition or deposition is nullified. If it is nullified then it is treated as if it had never been imposed. r97(3)
r97(4)

294. The decision by the archbishop on the application for removal of the prohibition for life or deposition is put into writing with reasons, and a copy is sent to the respondent making the application and to the provincial registrar. **r97(4)**

Removal of limited prohibition

295. A respondent who has been prohibited under the Measure (or inhibited under the Ecclesiastical Jurisdiction Measure 1963) for a specific time from exercising any functions may apply to the Dean of the Arches and Auditor, sitting with the Vicar-General for each province, for the prohibition (or inhibition) to be removed. **s27, r98(1)**

296. The application may only be made by a priest or deacon with the consent and support of, and on a joint application with, the bishop. Before deciding whether to support the respondent, the bishop should, if practicable, confidentially consult the original complainant about the application and its implications. If the penalty was imposed in relation to a matrimonial breakdown the respondent's former spouse should be consulted if practicable.

297. The application may be dealt with on paper or at a hearing. Copies of the written decision are sent to the respondent and bishop jointly making the application, and to the provincial registrar. **r98(2)**
r98(3)

Legal Aid

298. At a tribunal hearing the case for a complainant is conducted by the Designated Officer; the complainant is not therefore entitled to legal aid.

299. Legal aid may be available for a respondent during "stages 2" and "3". It may also be available in respect of an appeal against suspension imposed under sections 36(6) or 37(6) of the Clergy Discipline Measure on the basis of information received from a local authority or the police in a safeguarding case. The scheme for legal aid funding is prescribed in the Church of England (Legal Aid) Measure 1994 and the Church of England (Legal Aid) Rules 1995; it is administered by the church's Legal Aid Commission.

300. Under the funding scheme there is no absolute right to legal aid. Before deciding whether to grant any legal aid, and if so, to what extent, the Legal Aid Commission considers all the circumstances of the matter, including any other financial resources which are available to the respondent.

301. Details about eligibility for legal aid, the Commission’s procedures and an application form can be obtained from the Secretary of the Legal Aid Commission at the Legal Office, Church House, Great Smith Street, London SW1P 3AZ.

Relationship with Capability Procedure

302. The capability procedure under the Ecclesiastical Offices (Terms of Service) Regulations (“the Regulations”) is intended to help office holders improve their performance where it falls below an acceptable minimum standard, whereas the Clergy Discipline Measure (“the Measure”) is concerned with disciplinary proceedings for misconduct.

303. One of the grounds for bringing disciplinary proceedings under the Measure is neglect or inefficiency in the performance of the duties of office. The Measure is appropriate for cases where there are serious, deliberate or wilful failures. The Regulations are appropriate for cases where the respondent’s skill, aptitude, attitude, health or other physical or mental capabilities are in question. Whether it is more appropriate to deal with alleged neglect or inefficiency under the Regulations, or under the Measure, will need to be determined on a case by case basis. s8(1)(c)

304. It is in the interests of justice for there to be flexibility between capability procedures under the Regulations and disciplinary proceedings under the Measure, so that cases are dealt with in the most appropriate way. Where appropriate, an allegation under the Measure may be dismissed or withdrawn so that a capability procedure can be instigated, and a capability procedure may be stayed so that an allegation under the Measure can be made.

305. A capability procedure under the Regulations and disciplinary proceedings under the Measure should not normally be actively pursued simultaneously with a respondent in respect of substantially the same conduct (although they can proceed at the same time if the conduct in question is different or, exceptionally, if the overlap between them is not significant or if a capability procedure has almost been concluded when an allegation under the Measure is made). Consequently, where a capability procedure is under way and an allegation is made under the Measure in respect of substantially the same conduct, the disciplinary proceedings should normally take precedence and be concluded first. The bishop should then decide whether it is in the interests of justice to proceed with the stayed capability procedure. A sanction in a capability procedure and a penalty in disciplinary proceedings should not both be imposed in respect of the same specific matter.

Confidentiality

306. 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.

307. All matters 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.

308. 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 detail of the allegation, the individuals involved, or give an opinion as to the merits or otherwise of the alleged misconduct.

309. 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.

Publicity and Media Relations

- 310.** It is important that the Church should be open about any misconduct that is proved to have taken place. Tribunals therefore announce their determination of allegations in public, giving reasons for their decision, although details disclosing the identity of anyone involved in the case may be withheld in the interests of justice.
- 311.** If a penalty is imposed on a priest or deacon other than after a determination by a tribunal, the penalty and brief particulars of the misconduct should be announced publicly. Details disclosing the identity of any child, or where necessary to protect their private lives the identity of any others involved in the matter (except the respondent), should be withheld from the announcement to the public. The decision will be uploaded to the Church of England website.
- 312.** Where a penalty by consent has been agreed with a bishop brief particulars of the misconduct should be made public by a notice placed on the diocese's website. **The Commission has issued statutory guidance (available on the Church of England website) which should be referred to on each occasion a penalty is uploaded.**
- 313.** The media may be particularly interested in allegation of misconduct against the clergy. Unfortunately, media coverage in advance of any determination of the case can be speculative and misinformed, which can damage not only the complainant and the respondent, but also the local church or community and the wider church. For this reason, it is advisable for anyone involved in a case who is approached by the media to refer the enquirer straightaway to the appropriate communications officer, which will normally be the diocesan communications officer.

314. Subject to the above whilst matters are being processed, the Commission recommends there are two circumstances when the diocese should disclose that an allegation of misconduct has been made and that it is being investigated:

- 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.

- Where the media already know that an allegation has been made and seek confirmation about the matter 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 of misconduct 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 allegation should not be revealed publicly at that stage.

APPENDIX A

PROCEDURE FOR THE RESOLUTION OF INFORMAL COMPLAINTS

Introduction

1. This procedure for the resolution of informal complaints has been developed by the Ecclesiastical Law Society Working Party on the Clergy Discipline Measure in conjunction with the Clergy Discipline Commission.
2. The manner in which an informal complaint made outside of the CDM is resolved is a matter for the diocesan bishop. Accordingly, the use of this procedure is not mandatory but is intended to provide a 'best practice' approach. It aims to resolve disputes swiftly, fairly, and in a non-confrontational manner.
3. The procedure set out below is not comprehensive and can be adapted to meet the needs of the specific case.

Panel of assessors

4. The diocese, at the direction of the bishop, should maintain a panel of assessors who shall be selected on account of their established skills and experience in dealing with matters of conflict and/or grievance. Assessors should be drawn from a wide range of backgrounds, both clerical and lay.

Stage 1 – Making an informal complaint

5. A complaint should be sent to the diocesan bishop.

5.1 The complaint must be in writing and contain the following information:

- The specific details of the complaint, including what occurred and when it occurred; or what was not done and when it should have been done, as the case may be. This should be set out in a non-combative manner.

- Details of what the complainant is seeking by way of resolution of the complaint. This might be an apology from the cleric, a meeting with the bishop, or some other form of resolution.

5.2 The complaint **must** be signed by the complainant (no anonymous complaints should be allowed) and contain a statement of truth in the following form:

"I believe the facts as stated in this complaint are true".

5.3 A complaint must not be frivolous or vexatious (i.e. intended only to harass, annoy or frustrate the member of clergy) and must not include any deliberately false or misleading information.

Stage 2 – the bishop’s acknowledgment and respondent’s answer.

6. The bishop must **within 7 days** acknowledge receipt and **supply a copy of the written complaint to the respondent asking for their written response within 7 days.**

7. Where appropriate, the bishop should take advice from the registrar and diocesan safeguarding adviser. If safeguarding and/or criminal matters are raised referral to the appropriate statutory agencies must take place.

7.1 The **respondent’s response must be in writing** and include the following information:

- The respondent’s answer to the complaint, setting out what did or did not happen. This should be written in a non-combative manner.
- How the respondent believes that the complaint can be resolved.

7.2 The answer **must** be signed by the respondent and contain a statement of truth in the following form:

"I believe the facts as stated in this answer are true".

7.3 The answer must not make frivolous or vexatious counter complaints and must not include any deliberately false or misleading information.

Stage 3 – Referral to an assessor.

8. The assessor acts independently of the bishop, the complainant and respondent.

8.1 Upon receipt of the respondent's answer the bishop **within 7 days** must identify an assessor who does not know the parties and send the written complaint and answer to that assessor.

8.2 The assessor should arrange to meet separately with the complainant and the respondent. During the meeting each may be accompanied by a supporter should they wish, although they should not be legally represented. The assessor will be able to seek points of clarification. The assessor may also wish to try and enable each of the parties to see and understand the other person's perspective on the issues in dispute.

8.3 The assessor will come to a view as to whether:

- The complaint is, on the balance of probabilities, substantiated or not.
- The complaint should be dismissed as being frivolous, vexatious, malicious or of no substance.
- The complaint is capable of resolution and the manner in which any resolution should take place. This might include a face to face meeting between the complainant and respondent, a meeting with the bishop, or a facilitated conciliation or mediation.
- The respondent should be given a written warning or advice or be asked to undertake specific training.

8.4 **Within 28 days of the referral from the bishop** the assessor should produce a written report to the bishop containing the relevant findings and recommendations.

Stage 4 – Resolution

8.5 Within 7 days of receiving the assessor’s report the bishop shall consider the report and form a view as to the most appropriate course of action to take. The bishop is free to depart from the assessor’s recommendation, but should only do so where the bishop considers there is a good reason.

8.6 The bishop should write to both parties setting out how the complaint is to be resolved, or that it is not upheld. The bishop should set out the reasons for the decision in a clear manner to enable both parties to understand how it was reached. Where advice or a warning is given to the respondent, this should be recorded in writing and placed on the clergy file. The bishop may refer the matter back to the assessor for the implementation of the recommendations e.g. a meeting between the parties.

8.7 If the bishop is of the view that the substance is more properly an allegation of misconduct under the CDM the complainant should be invited to complete a Form1a, or refer the matter to an archdeacon to bring an allegation of misconduct under the Measure.

March 2021

Appendix B

B1: Pro-forma Letter of Acknowledgment

Complainant's name & address

Concerning an Allegation of Misconduct about *The Reverend [Name]*

Dear *[Name of Complainant]*,

I acknowledge receiving on *[date]* your written allegation of misconduct dated *[.....]* about *The Reverend [Name]*. Your allegation will be given full consideration and dealt with in the most appropriate way according to the procedures laid down by law.

The first stage in dealing with your allegation will be to refer it to the diocesan registrar. The registrar will advise me about whether you have a proper interest in making the allegation (in other words, whether you are entitled in law to make the allegation). The registrar will also advise me about whether there is sufficient substance in the allegation to justify instituting disciplinary proceedings. The registrar is normally expected to report back on these matters within 28 days. I will then read that report to enable me to decide on the proper course to take.

After considering the registrar's report, I could, if you do not have a proper interest or there is not sufficient substance, dismiss the allegation with a written explanation to you in writing of the reason for dismissal. If the matter is not dismissed, I would invite *The Reverend [Name]* to answer the allegation in writing, and then I would decide which of the following courses is the most appropriate:

- (i) no further action be taken, in which case I would notify you of the reasons for this,
- (ii) the matter to remain on the record conditionally for a fixed period of up to 5 years, (this means that no further action would be taken unless a further allegation of misconduct were made against *The Reverend [Name]* during that period),

- (iii) an attempt to be made at conciliation between you and *The Reverend [Name]*, to explore how the matter could be resolved by agreement,
- (iv) an appropriate penalty to be imposed on *The Reverend [Name]* with *his/her* consent, (but I would not decide on this course of action without first consulting you),
- (v) the allegation to be formally investigated by an officer of the Church and then, if appropriate, referred to a Bishop's Disciplinary Tribunal for determination at a full hearing.

I hope to decide the appropriate course to take within 28 days of receiving the registrar's report, and will notify you in writing of the decision.

While the allegation proceeds you should not discuss it with *The Reverend [Name]* who will now be informed that an allegation has been made.

[You may wish to receive care and support at this time. I will not personally be able to give it to you, because, as bishop, I must remain impartial. However, I have asked [.....] to provide you with care and support on my behalf, and (s)he will be contacting you shortly. His/her contact details are: [address, phone no. etc]

B2: Pro-forma Registrar's letter of notification to the Respondent

Respondent's name & address

Concerning an allegation of misconduct under the Clergy Discipline Measure 2003

Dear *[Name of Respondent]*,

The Bishop of *[.....]* has referred to me for preliminary scrutiny an allegation made against you by *[name of complainant]*. A copy of that allegation and of the evidence in support is enclosed so that you may be aware of what is happening.

The purpose of the preliminary scrutiny is limited to considering the allegation so that I can send the bishop a written report setting out my views on:

- (i) whether the complainant has, within the meaning of s10 of the Clergy Discipline Measure 2003, a proper interest in making the allegation, and,
- (ii) whether there is sufficient substance in the allegation to justify proceeding with it.

There is no need for you to make any submissions at this stage in response to the allegation. If it proceeds beyond the preliminary scrutiny stage you will have the opportunity to respond in detail with evidence in support within a further 21 day period.

You can find more background information about the Measure on the Church of England website at: <https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline>

You may be eligible for legal aid under the Church of England (Legal Aid) Measure in respect of any legal costs you may incur in connection with this matter. I recommend you explore this possibility. Enquiries about legal aid, including requests for application forms, should be addressed to Mr Stephen York at the Legal Office, Church House by email to stephen.york@churchofengland.org.

I expect to send my report to the bishop by *[date]*.

While the matter proceeds you should not discuss it with *[name of complainant]*.

B3: Pro-forma Bishop's letter to the Respondent

Respondent's name & address

Concerning an allegation of misconduct under the Clergy Discipline Measure 2003

Dear *[Name of Respondent]*,

A formal allegation of misconduct has been made against you by *[name of complainant]*. The details of that allegation are being sent to you by the diocesan registrar so that you may know more about it.

You *[and your family]* may wish to receive care and support at this time, and so I will ensure that you have all the support and care that you may need. I will not personally be able to give it to you, because, under the terms of the Measure, I have a central role as diocesan bishop in the administration of discipline, and I must therefore remain, and be seen to remain, impartial. Consequently, I have asked *[Name]* to provide you with care and support on my behalf, and (s)he will be contacting you very shortly.

Any discussions you have with *[Name]* will be completely confidential. I will not be informed about them unless you so request.

I trust you will get in touch with *[Name]* whenever you need to, and I strongly encourage you to do so. *His/her* address, phone number and e-mail details are:

[address etc]

If you do not believe *[Name]* would be suitable to give you the care and support you need, please let me know and I will ask someone else.

You can find more background information about the Measure on the Church of England website at:<https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline>

You may be eligible for legal aid under the Church of England (Legal Aid) Measure in respect of any legal costs you may incur in connection with this allegation. I recommend you explore this possibility. Enquiries about legal aid, including requests for application forms, should be addressed to Mr Stephen York at the Legal Office, Church House by email to stephen.york@churchofengland.org.

B4: Pro-forma Bishop's letter – no further action

Complainant's name & address

Concerning an allegation of misconduct against *The Reverend [Name]*

Dear *[Name of Complainant]*,

I am grateful to you for bringing this matter to my attention. The diocesan registrar has now reported back to me, and *The Reverend [Name]* has sent an answer in response to your allegation together with evidence in support. Having very carefully considered the whole matter, I have decided that it is not appropriate to take any further action on your allegation of misconduct.

The reasoning for my decision is as follows: *[etc]*

You are however entitled within 14 days of receiving this letter to ask the President of Tribunals to review my decision if you are dissatisfied with it. The request should be in writing, and you should explain in it why you believe I am wrong. Any request for a review should be accompanied by copies of:

- (i) your formal written allegation ,
- (ii) the answer from *The Reverend [Name]*,
- (iii) the evidence in support of the allegation and the answer,
- (iv) the registrar's report, and
- (v) this letter.

A form is provided by the Clergy Discipline Rules 2005 for you to use, and it will help you set out the required information (a copy can be obtained from). You are not permitted to send any new or fresh evidence in support of your allegation. The President of Tribunals will only overrule my decision to take no further action if he is satisfied that I am plainly wrong.

Any request for a review of my decision should be sent to The President of Tribunals, c/o The Legal Office, Church House, Great Smith Street, London SW1P 3AZ or by email to president@churchofengland.org