



**MISSION AND PASTORAL MEASURE 2011  
GUIDANCE ON CLERGY DISPOSSESSIONS 2021**

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# GUIDANCE ON CLERGY DISPOSSESSION

## Introduction

1. Dioceses are responsible for drawing up schemes for pastoral reorganisation under the Mission and Pastoral Measure 2011 (MPM). A scheme may change the structure of the relevant area (e.g. parish/benefice) and as a consequence, some clergy and others may become dispossessed of their posts<sup>1</sup>. This can include clergy, assistant curates, readers, and licensed lay workers<sup>2</sup> on Common Tenure. We have used the term clergy throughout this document, as that is the main focus, but the guidance can apply to lay staff as necessary. All those who would be affected can make representations to the Church Commissioners once a pastoral scheme is published. The representations will then be considered by the Mission, Pastoral and Church Property Committee (MPCPC), which is chaired by the Third Church Estates Commissioner, who may uphold the diocesan scheme, or refuse it, or refer it back to the diocese for amendment.
2. The MPCPC may consider draft schemes or orders on the basis of the papers, or hold a public hearing where that is appropriate. If an individual is dissatisfied with the final outcome they may seek leave to appeal to the Judicial Committee of the Privy Council (JCPC).
3. This guidance explains how the Commissioners assess pastoral schemes in this context and how Dioceses should approach the processes when the re-organisation could involve a dispossession. It deliberately does not seek to give detailed HR advice on how processes should be handled in relation to the Ecclesiastical Terms of Service and other office holder related legislation. Dioceses will need to refer to their Diocesan Registrars and HR leads for support on those issues. However, it does give some suggestions about how clergy who are affected by pastoral reorganisation proposals can be better supported.
4. This guidance is an appendix to the MPM Code of Practice and is intended for:
  - Bishops, Diocesan Secretaries and Archdeacons
  - DMPC leads and Pastoral Secretaries
  - Diocesan Human Resources (HR) Advisers and Diocesan Registrars
5. A separate guide will be developed to advise clergy of their rights and the processes under the Measure.

## Roles and responsibilities

6. In order to manage the MPM processes effectively it is important to be clear about the different roles and responsibilities that the dioceses and Church Commissioners hold in relation to dispossession cases. The diocese is responsible for:
  - Long term ministry provision, and the allocation of resources.
  - Ensuring that good HR practice is followed.
  - Running the consultation processes required by the Measure for pastoral schemes.
  - The pastoral care of the clergy/office holders.

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<sup>1</sup> See Sections 38, 39 and 52 of the 2011 Measure. Compensation for dispossession would be payable.

<sup>2</sup> Licensed layworkers can only be on common tenure if they are provided with a stipend and/or house and if their duties are canonical and do not involve other duties requiring a role description that would make it employment.

- Paying or providing the compensation required under schedule 4 of the Mission and Pastoral Measure for dispossessed clergy<sup>3</sup>. This is one year's stipend, a cash sum in lieu of pension contributions, and housing provision, which is agreed with the diocese.

7. The Church Commissioners are responsible for:

- Overseeing the legislative framework of the MPM and the delivery processes.
- Approval and making of draft schemes following consultation where they are satisfied that the proposals would make better provision for the cure of souls and further the mission of the Church.
- Convening and managing the MPCPC processes and deliberations.
- Defending appeals to the JCPC.

## Ministry and legal context

8. The Bishop and the diocesan team are responsible for the ministry of the diocese and for coordinating the recruitment of clergy and other office holders with patrons and parishes as appropriate.

9. The MPM gives the diocese the power to change the administrative structures within the diocese in order to facilitate the delivery of the Church's mission. This can include merging structures (e.g. parishes and benefices) and the creation of new mission initiatives through Bishop's Pastoral Orders and Bishop's Mission Orders, as well as group and team ministries. When considering administrative reorganisation dioceses would generally think about:

- The economic/social/environmental and geographic context. This could include factors such as deprivation and population density.
- The mix of churches and traditions in the area and the potential for mission and growth.
- The existing patterns of mission and partnership working. This could include ecumenical work.
- Financial and other practical issues. This could include parish share and the provision of parsonages and housing.
- The existing clergy and lay teams, their capacity and ability to support mission activities.
- The buildings and facilities available to support the mission. This brings in the considerations around the potential closure of churches no longer needed for public worship, which are also dealt with under the MPM.

10. Dioceses may use Deanery planning, or other planning tools, to help assess what is needed at the local level and use these plans to inform their schemes for reorganisation. Where approved Deanery plans under s.6(8A) of the MPM have been completed then some of the consultation processes under s.6(1) or s.21(1) can be omitted.

11. Diocese should also note that there are specific provisions in relation to how patronage is managed in relation to pastoral reorganisation – see Section 85 – 88 of the MPM.

## Gaulby Judgement

12. It is important that all diocesan teams are aware of the Gaulby legal judgement<sup>4</sup> in which the Judicial Committee of the Privy Council (JCPC) considered the proper approach to pastoral reorganisation which has consequences for how clergy should be treated in dispossession cases. The JCPC emphasised that a pastoral scheme must be for the better cure of souls (with due regard to the furtherance of the mission of the Church of England). Its sole or dominant purpose must not be to punish an incumbent or deprive them of their office solely to remedy a breakdown in relationships between the clergy person and their parishioners.

<sup>3</sup> Note – this could include lay office holders on common tenure and Archdeacons and Suffragan Bishops. However, most lay workers are likely to be PCC employees and would therefore be made redundant or be subject to TUPE.

<sup>4</sup> The details can be found on page 14 of the Code of Practice.

13. The implications of Gaulby are significant. The JCPC accepted that in practice it is not possible to completely divorce pastoral reorganisation from certain aspects of individual clergy performance. If, for example, a parish congregation drops to the point where the congregation is financially unviable and there are limited options for new growth or mission initiatives then the diocese will have to consider the options around pastoral reorganisation. The factors that lead a parish to become unsustainable could be in the control of the incumbent to some degree, but may also be outside their control. The diocese does have a duty to consider how the mission of the Church can be continued in this context, and this may lead to plans for pastoral reorganisation.
14. If there are particular queries about the implications of the Gaulby judgement the Deputy Official Solicitor and Pastoral Case Officers can provide further advice.

## **Good practice in HR matters**

15. Bishops are responsible for the relationships with clergy/office holders in their dioceses, and it is not the role of the Church Commissioners to give detailed guidance on this issue. However, we would encourage dioceses to adopt good HR practice in this sensitive area of work, and draw on appropriate legal advice and HR support where required. This could include:
  - Having clear diocesan policies for clergy who may be affected by plans for pastoral reorganisation. The policies should ensure that clergy are treated fairly and know what to expect when changes need to be made.
  - Having clear information packs, role descriptions and person specifications for any new posts which would be created as a result of pastoral reorganisation. This is so that individuals could make a reasonable judgement about whether or not they might be suitable for a post. (It is noted that office holders will be able to amend the role description once appointed).
  - Access to the Clergy Transitions Service which helps clergy to consider their options when a dispossession is going ahead.
  - Recognition that dispossession will affect partners and close family and that their needs and concerns should be part of the conversations. For example, in relation to housing, children's schooling etc. Family members should ideally be offered pastoral support where appropriate (see section below).

## **Equality Act 2010 and protected characteristics**

16. Dioceses should be sensitive to possessions which may involve clergy who have protected characteristics and take steps to ensure themselves that the processes and decision making are not inherently biased or discriminatory. The provisions of the Equality Act 2010 do not generally apply to most clergy office holders, because they do not meet the required test to gain a remedy under the Equality Act because they do not have employee status. However, despite this, dioceses should take a cautious approach where protected characteristics are an issue.<sup>5</sup>
17. Characteristics protected under the Equality Act 2010 include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. In the case of disability the Act sets out the expectations around reasonable adjustment practice. There is a general protection for different strands of religious belief, so dioceses would be advised to take a cautious approach when considering approaches to theological tradition in their work.
18. In this context dioceses should think about their policies, and decision making processes and whether they can provide evidence to show that they are non-discriminatory. If there is evidence of a positive

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<sup>5</sup> Note - There are some clergy roles (e.g. Chaplains) who would have employment status, or some roles where the Crown is patron, and the Equality Act applies because they meet the definition of public appointments.

approach it can be quoted, or referred to in the scheme documentation, to support a case for dispossession. Examples could include:

- References from a diocesan handbook for clergy or the handbook for lay employees.
- Any evidence of equality or diversity audits, or surveys of clergy/lay staff.
- Evidence of diverse membership on any relevant committees.
- Membership of HR good practice accreditation schemes – e.g. Investors in People etc.

### **Declaration on the ministry of bishops and priests (resolution of disputes procedure) Regulations 2014**

19. Under the requirements of the House of Bishops Declaration on the Ministry of Bishops and Priests 2014, the Archbishops appointed an Independent Reviewer (currently Sir William Fittall ) to act as the adjudicator in relation to the regulations. The adjudicator's role is to review any grievance submitted by a PCC in relation to the legislation on the mutual flourishing of churches with different theological traditions.
20. In the recent case of Southampton St Barnabas<sup>6</sup>, the procedure was used in relation to a pastoral reorganisation. The PCC passed a resolution that the proposed reorganisation constituted discrimination against a resolution parish in the Catholic tradition. The Independent Reviewer made it clear in his judgement, that the reorganisation issues should be considered through the processes set out in the MPM. It is also worth noting that the clergy person who had retired from St Barnabas took a case to an employment tribunal to test the lawfulness of this enforced retirement at the age of 70. The tribunal did not uphold the case.

### **Good practice in developing pastoral schemes**

21. The MPM Code of Practice<sup>7</sup> sets out detailed guidance to help dioceses manage the scheme processes. Where a dispossession case is concerned it will be helpful if the diocesan teams can consider and include the following:
  - Evidence in the rationale of the scheme that the pastoral needs of the reorganised areas have been considered as part of the process of developing the scheme. This could include reference to the current clergy provision, (both clergy and lay, both office holders and clergy on PTO) and an assessment of the strengths and weaknesses of that provision. This should generally be on a **structural** basis. However, this is a grey area because it is very difficult to completely exclude more individual factors. For example – in a team ministry situation, one person might not be particularly suited for that style of ministry. The Gaulby judgement does make it clear that personal factors cannot be completely excluded from the decision making (see above).
  - A summary of the diocese's approach to equality/and or diversity and what mechanisms and processes are in place to ensure that all involved in any potential dispossession are treated fairly (see section above).
  - The diocese will usually set out why the scheme would improve the cure of souls, but in this context it would be helpful to make more detailed reference to how the change of roles/posts will enhance the mission outcomes. It would be useful if a summary is provided of the main purpose and responsibilities of any new roles and why that is better than what is currently in place. For example, why a Pioneer Minister would be more appropriate than as Assistant Curate.

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<sup>6</sup> <https://www.churchofengland.org/sites/default/files/202103/Southampton%20St%20Barnabas%20-%20Report%20by%20the%20Independent%20Reviewer-FINAL.pdf>

<sup>7</sup> <https://www.churchofengland.org/resources/parish-reorganisation-and-church-property/mission-and-pastoral-measure-2011-and-code>

22. Reference should be made to issues of theological tradition where that is relevant and to show that suitable provision will be made for the parishioners in the scheme as required. This will be particularly important if the parishes involved have passed a resolution under the House of Bishops Declaration on the Ministry of Bishops and Priests 2014.
23. The Measure sets out processes for informal and formal consultation which dioceses should follow, and dioceses should record their processes carefully to demonstrate they have met the requirements. Dioceses should follow a process which is genuine, fair as a whole and transparent. In relation to schemes where posts are affected we would advise the following:
- That clergy/staffing issues are considered at the beginning of the scheme development process by diocesan teams.
  - That Dioceses should consider the mix of skills and experience required.
  - That clergy who may be affected are briefed first/early about the potential discussions, particularly those who may be adversely affected. All clergy should be treated the same way – e.g. the same meeting/same briefing etc. Unless specifically requested, it is not fair if one person gets a short phone call and someone else a face to face meeting. Ideally the Archdeacon/Diocesan officer should take a note of these conversations and make sure individual concerns are noted and acted upon in the development of the scheme. It is good practice to have an HR member of staff in these meetings and to make sure that the clergy involved know that they can bring a friend, CECA, HR, or other representative with them to any meetings. Both diocese and clergy should take a note of the meeting.
  - Ideally the diocesan team should have a timetable of meetings with clergy agreed and set out, so they know what to expect. The informal and formal processes can often move quite slowly for a number of reasons. It is important to recognise that this can create stress not only for the clergy and others affected but also the PCC and church community.
  - That the diocese considers whether there might be relationship issues between clergy and the PCC and parishioners during the initial informal discussions. This may include reference to the Patron of the parish where that is appropriate. This is important, because it can help avoid a situation where a draft scheme is published, and the local congregation then represent against it because they are not comfortable with the person named as incumbent in the scheme.
  - When it comes to the formal consultation processes the clergy should be briefed ahead of the PCCs so they know how the processes are being taken forward and so they have time to prepare. It can obviously place clergy in a difficult position to discuss the potential loss of their post with their PCC and wider community. This should be treated as a potential conflict of interest and ideally PCCs should be given the option to debate a draft scheme without the affected clergy person present if they wish. However, as clergy are members of the PCC it is for the individual clergy person to agree to that suggestion. Other clergy from the benefice could be present at such a meeting.
  - Consultation must be fair. For consultation to be fair, it must take place at a time when proposals are still at a formative stage; the proposer must give sufficient reasons for any proposal to permit of intelligent consideration and response; adequate time must be given for consideration and response; and the product of consultation must conscientiously be considered when finalising the decision.

- The diocese should follow the requirements set out in the MPM. The clergy person who may be dispossessed must be offered the opportunity of a face to face meeting with the DMPC and the Diocesan documentation should refer to this opportunity being offered and the outcome. The minutes of the meeting can be attached to the scheme submission to the Commissioners. It would also be good practice to give clergy an opportunity to have a meeting with the Bishop responsible for bringing forward the scheme if they wish.
24. If personal issues are raised about individual clergy as part of the consultation then these should be addressed sensitively with appropriate HR support. It may be more appropriate for the person to meet with a small group from the DMPC to discuss options and the way forward, as someone may not wish to attend a full DMPC meeting in such circumstances. Discussing personal issues with a large group is not pastorally sensitive, and could be intimidating for the person concerned. The clergy person in this instance needs to agree if the meeting is not to be with the full committee, and that also that such a meeting would not prevent them from participating in a session with the full committee for less sensitive matters.
  25. The diocesan team will have a range of options about how to manage the appointment of clergy as part of new pastoral scheme, including whether to name any clergy who might be dispossessed by the scheme as office holders of the new benefice(s), or for the new benefice(s) to be vacant and the appointments process to start once the new benefice comes into existence. The Commissioners' Pastoral Case Officers can offer detailed advice on possible options. Whatever option is chosen, it is important to ensure that clergy have been fairly and equally treated and a fair and transparent process has been adopted to enable clergy to assess their skills and experience against a new role.
  26. Dioceses will have the choice whether or not they want to name existing clergy in a new scheme. Where existing clergy are being named, dioceses should have ensured that the clergy person has the right skills and experience and have discussed the nature of the role and responsibilities with the person in advance, and any development requirements to support the new role. In such cases where a clergy person is technically dispossessed but is also named in a new scheme it is not necessary to pay compensation.
  27. Dispossessing all office holders in a scheme and getting them to apply for the new posts, can be an option, but generally speaking it is better to keep the number of people who go through the dispossession process to a minimum, to reduce the stress and strain on individuals. Dioceses do not need to dispossess everyone in order to create a sense of fairness in the process. Dispossessing more clergy will also increase costs to the diocese. Clergy keep the compensation even if they quickly get a new post after dispossession.
  28. The diocese can also choose not to name particular clergy in their draft scheme. Re-deployment or new recruitment can be completed at different stages of the process. The Pastoral Team can also advise on the various options that are available.

## **Church Commissioners' processes**

29. When representations are received against a pastoral scheme a letter will be sent to the Bishop asking for their response to the comments, and the reply will be circulated to those who make the representations. The representators may make comments on the Bishop's response and the Bishop may make further comments on the representors' responses. Once this process is complete the case will be considered by the Mission, Pastoral and Church Property Committee.

30. The Case Officer will ask the MPCPC Sifting Panel to rule on whether or not the case should be decided on the basis of papers alone, or whether a public hearing should be held. The panel reviews the papers and makes a judgement on hearing on the basis of sifting criteria which have been developed by the Legal Office and approved by the MPCP. A copy can be requested from the Pastoral and Closed Churches Team.
31. The staff team are responsible for coordinating the MPCPC discussion and or a public hearing as required. The public hearing can take place in the geographic locale or be completed virtually as necessary. The protocol for hearings has also to be signed off by the MPCPC. A copy can be requested from the Pastoral and Closed Churches Team.
32. In deciding about whether or not a public meeting should be held in a particular case, the Sifting Panel will consider the sifting criteria, but also more broadly:
  - The quality of the diocesan submission. Is there a strong audit trail showing that the processes have been properly followed and evidence that the process has been fair.
  - Is there evidence of the diocese's approach to equality/and or diversity.
  - The tone and nature of the representations. For example, if there are allegations of direct discrimination in relation to protected characteristics or an unlawful or improper use of the Measure.
33. Any evidence submitted as part of the representations will be carefully considered by the Sifting Panel and MPCPC.

## **Appeal to the Judicial Committee of the Privy Council**

34. Notification of an intention to seek Leave to Appeal to the JCPC must be submitted within the period stated on the publication of the Statement of Reasons (which must be at least 28 days).
35. The JCPC will then give the applicant a further period of at least 28 days in which to submit the application itself.
36. If Leave to Appeal is granted the Commissioners would act as the defendant as it is their decision on the representations which is being appealed. An Appeal would add several months to the process and prolong the uncertainty for those at risk of dispossession. A pastoral scheme could **not** be made until the Appeal had been determined.

## **Making of a pastoral scheme**

37. A scheme which dispossesses any office holder cannot come into effect for at least six months after the date on which it is made, unless all the affected office holders resign earlier. Those who may be dispossessed will be reminded during the process that if they resign before the scheme is made, they will lose their entitlement to compensation but also that if they resign between it being made and the end of the six months, they will receive the compensation (even if they resign in order to take up another post).
38. Pastoral support(see paragraph 41) should be offered to anyone affected and their partners/families during this period to support transition.



## Pastoral reorganisation, the Clergy Discipline Measure and safeguarding

39. It is possible that where pastoral reorganisation is being considered there may be clergy who are also subject to processes under the Clergy Discipline Measure (CDM), or safeguarding processes, or both, at the same time. If a proposed reorganisation would potentially dispossess someone in these circumstances then it will probably **not** be appropriate for a scheme to be taken forward whilst the other processes are being completed. It is important that no premature judgement is made on the outcomes of a CDM or safeguarding process, and a dispossession could imply a judgement even if the scheme was not directly relevant to the CDM or safeguarding issues. It is also not pastorally sensitive to add to the stresses of an individual at such a time. It could also be possible that people make representations in relation to a scheme which would have an impact on the CDM or safeguarding issues and therefore conflate the processes in way that would not be conducive to an appropriate outcome. It could also be possible that a CDM or safeguarding process is triggered after a scheme has been published and the representation period for comments has ended. In that case then a scheme might be able to continue through the relevant processes. These are sensitive matters and would need to be considered on a case by case basis. The wider reputational risk to the Church would also be an issue.
40. If there are CDM/safeguarding issues related to a potential or existing pastoral scheme then the issues should be discussed with the relevant pastoral case officer in the first instance.

## Pastoral support and mediation

41. Although the Bishop particularly, and the diocesan team more generally, have a pastoral responsibility for clergy and other office holders affected by dispossession, it is obviously difficult for people to exercise that function when they are responsible for the processes which lead to dispossession. Clergy and their families who are the subject of pastoral reorganisation may feel a degree of alienation from the diocese that is sponsoring proposals, which may make it difficult to receive pastoral support from someone closely associated with the bishop and the bishop's senior team. But it is important to recognise that signposting to sources of alternative pastoral support for clergy and their partners and families will be vital in many cases. Options include:
- Linking clergy with clergy who have gone through the same processes. Dioceses could work together to offer a reciprocal system of support so that support is independent.
  - Supporting clergy to access counselling/mental health support from other agencies. Some dioceses may have Employee Assistance programmes which provide anonymous counselling support and other services. See [healthassured.org](http://healthassured.org) for the kinds of service available.
  - The Clergy Transitions Service can be a helpful way of enabling clergy to have a confidential discussion about the direction of their future ministry.
  - Drawing on the expertise and representatives of CECA (Church of England Clergy Advocates) - <https://www.churchofengland.org/sites/default/files/2019-07/The%20NCIs%20and%20CECA%20v3%20July%202019.pdf>
  - Signposting to the Sheldon Community ([sheldonhub.org](http://sheldonhub.org)). The Sheldon Community specialise in offering support to clergy facing difficult personal circumstances.
42. The MPM does not specify if and how mediation should be used as part of the process of pastoral reorganisation. It may well be that during a process of pastoral reorganisation relationships break down and the processes and correspondence become difficult to manage. Diocesan teams should consider whether both informal and formal mediation processes could be used to help address issues that surface during the process either for individuals or for a congregation.
43. Organisations like ACAS ([acas.org](http://acas.org)) can provide support and advice on mediation if required.

## **Governance and review**

44. This guidance was approved for use by the MPCPC and the House of Bishops at their September 2021 meeting, and will be reviewed as there are any further changes to the legislative system relating to pastoral reorganisation and the recruitment and deployment of clergy and lay office holders.