

UNDER AUTHORITY REVISITED

**Report from Clergy Conduct
Measure Implementation Group**
GS2277

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FOREWORD

It is exactly 30 years since the General Synod passed a motion to create a working party charged with examining the reform of clergy discipline. That group published their report 'Under Authority' (GS1217) in 1996; from it emerged the 2003 Clergy Discipline Measure.

In his forward to the report Canon Alan Hawker, who chaired the group, wrote that *'it is both sensible and responsible for the Church to reassess from time to time whether the systems we currently have are working and to suggest changes where they do not appear to be satisfactory.'*

We owe that group a debt of gratitude but, though the Clergy Discipline Measure was a great improvement, the time for its revision and, indeed, replacement is overdue.

The Clergy Conduct Measure Implementation Group, which I have chaired, has done a great deal of work on the attached report. I am very grateful to its members, as I am to all those with whom we have consulted, whose counsel has been invaluable.

We present this report, which we have called 'Under Authority Revisited', to Synod in the hope that it will enable legislation which is fit for purpose, which will create trust in clergy discipline and which will, in the words of Canon Hawker 30 years ago, *'allow discipline to be handled firmly, fairly, sensitively and without delay, without distracting God's people from their primary task of mission.'*

+John Wigorn

The Right Reverend Dr John Inge
Bishop of Worcester
Chair, Clergy Conduct Measure Implementation Group

INTRODUCTION

Under Authority Revisited: Report from the Clergy Conduct Measure Implementation Group

Background

1. The Clergy Conduct Measure Implementation Group (“the Group”) was formed in 2021 for the specific task of formulating legislative proposals for the creation of a new Clergy Conduct Measure.
 - 1.1. The first major step in the reform of the Clergy Discipline Measure 2003 (“the CDM”) was the Church’s involvement in the Independent Inquiry into Child Sexual Abuse (IICSA). Arising out of that a House of Bishops’ Working Group, chaired by the then Bishop at Lambeth, the Rt Revd Tim Thornton, was set up to examine improvements to the CDM in the context of safeguarding. The recommendation of that group went further and proposed to the House of Bishops in 2020 that the CDM be replaced in full.
 - 1.2. The Lambeth Working Group, along with others,¹ identified that there was a pressing need for the creation of a system that could deal with different levels of misconduct and behaviour.
 - 1.3. At the July 2021 group of sessions General Synod voted to take note of the final report of the Lambeth Working Group which recommended the creation of a smaller more focussed implementation group to bring legislative proposals back to General Synod.
 - 1.4. This report sets out those proposals for Synod’s consideration.

The Implementation Group’s work

- 1.5. The Group met seven times between October 2021 and May 2022. A list of members appears at **appendix B**. We are particularly grateful to the contributions of the consulting members who joined the meetings at various stages.

¹ Such as the Ecclesiastical Law Society’s Working Party on reviewing the Clergy Discipline Measure

1.6. Along the way the Group have consulted widely, taking onboard comments and criticisms and amending the proposals accordingly. A list of those who have contributed to the consultations appears at **appendix C**. The House of Bishops considered the proposals in March and May 2022.

Legislative history: the EJM to the CDM

1.7. Prior to the CDM the law relating to clergy discipline was contained within the Ecclesiastical Jurisdiction Measure 1963 ("EJM"). The EJM itself was the result of a 1954 Archbishops' Commission on the Ecclesiastical Courts, under the chairmanship of Sir George Lloyd-Jacob.

1.8. The EJM codified the existing disparate legislation on discipline under one Measure. Cases of discipline² were tried before the Consistory Court consisting of the Diocesan Chancellor sitting with two clerical and two lay assessors. Between 1963 and 2006 there were only three trials³. Whilst some held the view that this was a good thing – i.e. the Measure worked because it was an effective deterrent – the general consensus was that it was slow, costly, cumbersome, and ineffective in dealing with 'non-criminal' misconduct.

1.9. Due to those concerns, in 1992 the General Synod passed a motion which resulted in the creation of a working party to examine the reform of clergy discipline. That group published their report in 1996 entitled 'Under Authority' (GS1217). The recommendations in that report, although not followed in every respect in the legislative process that followed, became the Clergy Discipline Measure 2003.

The CDM in force

1.10. The CDM came into force in 2006. It was designed to deal solely with serious misconduct. It was not intended that it should operate as a 'complaints procedure'.

² By which it is meant cases **not** involving ceremony, ritual or doctrine.

³ *Re The Reverend Michael Bland* (1969/70); *Re The Reverend Thomas Tyler* (1991/2); *Re The Dean of Lincoln* (1995)

The processes under the CDM are legal in character. The ultimate jurisdiction lies with an ecclesiastical tribunal.

1.11. An analysis of cases since 2006 discloses the following:

1.11.1. Less than 0.80% of all clergy are subject to a formal allegation of misconduct under the CDM per year.

1.11.2. There has been a clear and steady increase in the number of allegations in the last 5 years. The average number is under 100 per year for priests and deacons and under 20 for bishops and archbishops.

1.11.3. There has been an increase in the complexity of cases. This has led to a rise in hostility and confrontation during the process.

1.11.4. On average each year 30 dioceses have between 1-5 cases, 2-3 dioceses have more than 6 cases, and 9 dioceses have no cases at all. Due to a lack of experience-building there is a need to pool resources and knowledge to better equip decision makers.

1.11.5. Approximately 45% all of cases are either dismissed at an early stage or no further action is taken. This will often leave the complainant unsatisfied at the outcome and the respondent unhappy at having been subject to a legal process.

1.11.6. Approximately 33% of the remaining allegations are dealt with by a penalty by consent with the bishop. This can be a pastorally negative process.

WHY THE CHURCH NEEDS DISCIPLINE

The nature of ordained ministry

2. Those who are called to ministry in Holy Orders are required to *frame and fashion their life according to the doctrine of Christ* and to be *wholesome examples and patterns to the flock of Christ* (Canon C26.2). Clergy are not expected to *bear the weight of this calling* on their own, but are supported by the church and *the grace and power of God* (the Ordinal).

- 2.1. Whilst the expectations of discipleship apply to all God's people, the Church recognises that clergy are to be held to a high standard of conduct. The exercise of public ministry is a privilege and with it comes a responsibility. Where clergy fall short the whole Church is impacted. This reflects the words of St. Paul – *We are members one of another* (Ephesians 4.25).

The purpose of clergy discipline

- 2.2. For those reasons the Church must take seriously every occasion clergy fall short of that standard of conduct. The purpose and character of clergy discipline must be to support the collective good standing of all faithful men and women who are called to serve and to place at its centre the interests of justice for all those who are affected by the faults, failings and shortcomings of clergy.

- 2.3. However, the Church must also approach discipline in a flexible and pastorally minded fashion. Not every cleric should be disciplined in the same fashion. It is clearly disproportionate to engage in a formal disciplinary process each time something goes wrong. The Group are of the view that the principal failing of the CDM *as a piece of legislation* lies in its procedural inflexibility to respond appropriately to different levels of misconduct and complaint.

Four principles

- 2.4. In meeting the purpose of clergy discipline the Group have sought to apply **four fundamental principles:**

2.4.1. The system must provide for a **proportionate and efficient way** of dealing with a wide range of grievances and misconduct.

2.4.2. As much as the Church must defend her integrity and that of Holy Orders, she must also **protect her clergy from frivolous, malicious and vexatious accusations.** Clergy offer a sacrificial ministry with limited material reward. Allegations of wrongdoing not only cause stress and anxiety but also threaten the home and income. **Disciplinary procedures therefore must be robust in providing protection against misuse.**

2.4.3. The system must provide those wronged with **swift access to justice.** Co-operation with but not blind subservience to the secular authorities is paramount. The ecclesiastical courts should be a model of best practice for survivors and vulnerable witnesses.

2.4.4. The **rules of natural justice**, developed partly in the medieval courts of the church, must run as a golden thread through the system.

THE NEED FOR REFORM

- 3.** The Group recognise that many of those who have been involved in any way with the CDM will have experiences that demonstrate the need for reform. It is not possible in this report to catalogue each of those experiences. As a summary, three principal reasons underpin the need for reform:
- 3.1.** Firstly, since 2006 the landscape in professional discipline has changed dramatically. The CDM was designed to deal with misconduct of the utmost seriousness. As the secular world has become more ‘complaint-focussed’, those who come into contact with the Church and her ministers are now much more willing to complain about their experiences. ‘Expectation management’ has failed to keep up with this changing base. The result has been a steady and constant increase in the number of complaints that fall short of serious misconduct. There is a legitimate expectation from these complainants that the church, like most large organisations, has clear procedures for dealing with these complaints. The CDM does not provide for this.
- 3.2.** Secondly, since c. 2010 onwards, there has been a downturn in the willingness of the secular authorities to prosecute certain criminal offences. Without other recourse available to them, survivors and victims have properly turned to the Church to be the court of first instance on matters of criminal complaint. The church’s disciplinary infrastructure has not hitherto been designed or resourced to deal with these cases.
- 3.3.** Thirdly, the culture, expectation, and legal responsibilities on clergy around safeguarding have recognised a new category of discipline concerning process failures – e.g. failing to follow a policy – rather than what might be termed ‘personal failing’ (e.g. adultery) which was always (and to some extent still is) the main area addressed in of church discipline. This requires a more comprehensive approach rather than the narrower focus of ‘serious misconduct’ under the CDM.

THE ROLE OF THE BISHOP

4. The bishop is called, as the Shepherd, to care for and minister to the flock. It is the bishop who ordains and licenses, and it is the bishop with whom the cure of souls is shared. Alongside this ministry the bishop, as Ordinary, exercises ecclesiastical jurisdiction in the diocese. Central to this role is the administration of discipline.

4.1. The basis for the bishop's role in discipline (which includes discipline of the laity as well as the clergy) can be found in three primary sources:

The Ordinal

Archbishop: Bishops are called to serve and care for the flock of Christ...

As chief pastors, it is their duty to share with their fellow presbyters the oversight of the Church, speaking in the name of God and expounding the gospel of salvation. With the Shepherd's love, they are to be merciful, but with firmness; to minister discipline, but with compassion...

Common Worship: Ordination Services: the Ordination and Consecration of a Bishop

The Canons

Every bishop shall correct and punish all such as be unquiet, disobedient, or criminous, within his diocese, according to such authority as he has by God's Word and is committed to him by the laws and ordinances of this realm.

Canon C18.7

The Thirty-nine Articles of Religion

...it appertaineth to the discipline of the Church, that inquiry be made of evil Ministers, and that they be accused by those that have knowledge of their offences; and finally, being found guilty, by just judgment be deposed.

Article XXVI

4.2. That said, the Church has never understood the bishop as acting entirely alone.

The bishop serves the community and is also assisted by it. The New Testament makes references to this community based approach (see *Matthew 18.15-21*). The historical development of the ecclesiastical courts is good evidence of the structures that the Church has developed to assist the bishop in the exercise of quasi-judicial functions.

4.3. It is commonplace that the exercise of discipline can become too personalised.

The personal exercise of the *episcopus* must always also be balanced against the rights and needs of the respondent cleric and accuser. The balance is struck to ensure trust in the system.

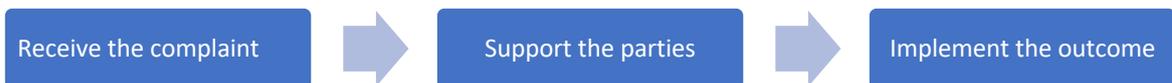
4.4. A consistent theme in the consultation responses has been what is said to be a

fractured relationship between the episcopate and those they discipline. It is clear to the Group that the bishop exercising the role of both pastor and judge has caused conflict. This conflict has undermined confidence in the decision making and procedures of the CDM. Further, it has impeded the ability of the bishop to exercise the ministry of reconciliation with those subject to discipline.

4.5. The Group are of the view that it will be important to re-affirm the primacy of

episcopal authority in the new system, as reflecting the established theological and ecclesial position in the Church of England. However, it is also necessary to recognise the reality that there has been a significant change in the preceding years. **It is proposed that the role of the bishop in discipline be modified.**

The key functions will be to:



LEGISLATIVE PROPOSALS

Scope of this work

5. The purpose of the Group's work has been to devise legislative *proposals*. Synod does not have before it a final procedural map. It is within the nature of the legislative process that proposals change. What Synod does have is a report that sets out the *policy direction* for legislation to be drawn up.

5.1. The Group wish to emphasise in particular that there are details of the reform that are outside their remit. Principal amongst these are the procedural rules which will govern how the proposed system is to operate 'on the ground'. These, for example, will cover aspects such as time scales, evidence, tribunal procedure *etc.* That these details are not contained in this paper is not an indication that the Group have failed to consider them. Should these proposals proceed to the legislative drafting stage the Rule Committee will take forward this work and it is intended that the Synod will be presented with draft procedural rules alongside a draft Measure.

5.2. There are two further areas that, whilst outside the Group's remit, we nevertheless wish to signpost:

5.3. The first is the relationship between these proposals and the Church's **capability procedures**. The line between misconduct and capability can often become blurred. A disciplinary system cannot deal with issues of performance. However where a complainant raises a grievance under this system, the complaint may be indicative of a wider issue about capability. The Group are of the view that the flexibility of the grievance process should enable those in the diocese with responsibility in this regard to identify the problem and look to an appropriate remedy. However, it is not intended to be a replacement for the formal capability procedures the Church has put in place.

5.4. The second is **the issue of clergy personal files ('blue files')**. It is clear to the Group that this is an area which must be considered carefully. It has wider

implications than simply the disciplinary system. Whilst setting out guidance is outside the Group's work we do wish to make the following observations:

- 5.4.1. Detailed personnel record keeping in a professional context is a well-established and a necessary consequence of the trust placed in those who hold office.
- 5.4.2. Accurate record keeping is important in all cases, including where a low level penalty has been imposed or advice has been given, in order to assess the ongoing work of improvement in the respondent.
- 5.4.3. Records of complaints that are dismissed or ruled to be vexatious are important to protect the cleric from future identical complaints. Additionally, an accurate record of the dismissal protects the respondent from others misremembering the substance or outcome of the complaint in future years.
- 5.4.4. That said, clergy should not feel subject to undue levels of continued scrutiny where a complaint has been dismissed. There is distinction to be drawn between the requirement to keep a proper record of a case (whatever the outcome) and the improper reliance upon it in the future discernment of ministry.
- 5.4.5. Consideration should be given to a standardised form of recording outcomes on blue files to ensure consistency.

Legislation and statutory guidance

- 5.5. The procedures and processes of the CCM will be set out in both legislation and statutory guidance:
- 5.6. The **Clergy Conduct Measure** will set out the statutory framework of the system and establish the jurisdiction for dealing with cases.
- 5.7. This will be accompanied by the **Clergy Conduct Rules** which will provide the procedure. The view of the Group is that the process for approving a draft set of

Rules should run alongside the passage of the Measure to enable the Synod to see the whole legislative picture.

5.8. A statutory **Code of Practice** will provide detailed guidance to anyone exercising a function under the Measure and also to parties, witnesses and any other person or body who has cause to be involved in any aspect of discipline.

5.9. In addition, the Group is of the view that smaller, topic specific, codes of practice should be issued and updated regularly to cover subjects including, **pastoral support for respondents; support for complainants victims and survivors; and rehabilitation back into ministry.**

Members of Synod should read the following section alongside the flowchart in appendix A

Part I: Definitions

What constitutes a grievance, misconduct and serious misconduct?

6. The Church has well established standards of behaviour. These can be found in scripture (see for example the fruit of the Spirit⁴ – Galatians 5:22-23) the Canons, the Ordinal, and the *Guidelines for the Professional Conduct of the Clergy*. The *Guidelines* are important because they are Acts of Convocations and so are made *by clergy for clergy*. **The Group have invited the Convocations to consider revising the *Guidelines* for the first time since 2015.**

6.1. It is not possible to set out each occurrence that might constitute a **grievance**. In short, the secular world recognises it as normally a minor violation of a workplace policy or contractual terms falling short of misconduct. This definition does not fit comfortably with clergy who are office holders and needs to be modified in the church context. An example may be, persistent lateness for services or lack of preparation for a PCC meeting.

⁴ *But the fruit of the Spirit is love, joy, peace, forbearance, kindness, goodness, faithfulness, gentleness and self-control.*

- 6.2. Closely aligned with grievances are **minor complaints**. These are occasions where clergy ‘fall short’, but in a way that does not amount to misconduct.
- 6.3. Where a cleric’s conduct amounts to **misconduct** that is serious because it undermines public confidence in the Church and her ministers. To that end, it must always be properly addressed. However, it is right to distinguish between different levels of seriousness of misconduct.
- 6.4. Simplicity is an important factor in a disciplinary system. Accordingly, the Group propose the following use of language:
- 6.5. ‘complaint’ (*noun*) – the document which brings the wrongdoing to the attention of the bishop;
- 6.6. ‘grievance’ – a complaint about a minor matter that does not constitute misconduct and therefore would not warrant the imposition of a penalty (i.e. encompassing what we understand as both a ‘grievance’ **and** a ‘minor complaint’).
- 6.7. ‘misconduct’ – an allegation of wrongdoing which is unlikely to call into question the respondent’s fitness to exercise public ministry but which may warrant the imposition of some form of lesser penalty.
- 6.8. ‘serious misconduct’ – an allegation of wrongdoing which may call into question the respondent’s fitness to exercise public ministry and which may warrant the imposition of a more serious penalty, such as prohibition from exercising ministry, removal from office and/or deposition from Holy Orders.

Grievance Examples

Non-exhaustive

Pastoral breakdown in relationships

Lateness for services, meetings, parish appointments

Minor rudeness or anger

Unprofessional approaches in the management of parish staff, structures or organisations

Lack of proper preparation of services, preaching or other aspects of ministry

Misconduct Examples

Non-exhaustive

Unintentional or minor breaches of safeguarding policy

Inappropriate text messaging with another adult

Aggressive rudeness or anger, especially when directed towards parishioners

Failure to comply with formal requirements as to service registers, accounting or other parish administration

Engaging in a trade, profession or other activity which is inconsistent with priestly life or affects of the performance of ministry

Serious Misconduct Examples

Non-exhaustive

Wilful and/or prolonged failure to comply with safeguarding policies

Sexual, spiritual, domestic abuse

Adultery

Downloading, viewing or otherwise possessing child abuse images

Harassment

Serious financial misconduct e.g. fraud, theft

Serious breaches of pastoral duty, trust or professional boundaries

6.9. The Code of Practice will set out clear and detailed guidance with further examples.

Part II: Procedure – making a complaint

Who can make a complaint?

7. The Group propose that there should be one category of person entitled to make a complaint – anyone with a **‘proper-interest’**. On that basis, archdeacons, DSAs/DSOs and the NST will continue to have standing to bring complaints. Likewise, those who have personally experienced the event or conduct will have standing. The system will allow for the appointment of a ‘litigation friend’ to bring a complaint on behalf of those who have a proper interest but are suffering under a disability, those who lack capacity, or children. Statutory guidance in the Code of Practice will give practical examples.

7.1. The proposals include a recommendation that clergy be able to **self-refer**. This is to encourage insight, but will also provide an opportunity to bring to a head the situation where someone weaponises the threat of bringing a complaint against a cleric. There will be no duty to self-refer.

7.2. The process will continue to apply to all clerks in Holy Orders, regardless of whether they hold any preferment or authority to officiate.

How to make a complaint?

7.3. All complaints against priest and deacons would be laid before the diocesan bishop. The Code of Practice would set out that each bishop should make provision for a dedicated person to receive administratively the complaint and process it. This might be a chaplain, or some other appropriate person. There will be no requirement to set out formally each and every detail of the case at this point.

7.4. The complaint will be immediately referred to a **Regional Lead Assessor** who, applying statutory guidance, will **allocate the case to the appropriate ‘track’** on

the basis of whether it is a grievance or an allegation of misconduct. The Group are of the view that *at this stage of the process* the sole distinction should be between whether the complaint alleges a matter that would, if true, amount to misconduct. A further distinction between levels of misconduct will be applied later in the process.

Vexatious complaints

7.5. The lead assessor may determine that the case is ‘manifestly without merit or substance’ or is vexatious, and recommend to the bishop that it be dismissed forthwith. In such cases the bishop should take legal advice from the registrar and if appropriate dismiss the case. The complainant will have a right of appeal against the dismissal to be carried out by a judge.

Notifying the Respondent

7.6. It is of fundamental importance to the integrity of the system that respondents should be told at an early stage not only that a complaint has been made, but the substance of the complaint and the name of the complainant. In cases that are not dismissed as vexatious the lead assessor will notify the bishop of the ‘initial allocation’ who will in turn notify the respondent.

7.7. The bishop will **write to the respondent** informing them of substance of the complaint and setting out whether it has been allocated as a grievance or an allegation of misconduct. Information as to what happens next will be included.

7.8. At the same time the bishop will be under a **statutory duty to offer support** to the complainant/victim/survivor and the respondent. The process for this will be diocesan based and the Code of Practice will provide guidance on the nature of the support. In serious cases the provision of professional support may be required (e.g. an Independent Sexual Violence Adviser). Where a support person (victims/survivors) and/or a link person (respondents) has already been appointed as part of a safeguarding process,⁵ they will be made aware and be kept informed of the procedural aspects of the complaint.

⁵ See *Practice Guidance: Responding to, assessing and managing safeguarding concerns or allegations against church officers*

7.9. In cases of misconduct legal aid will become available and the respondent provided with details.

7.10. The bishop will be able to **suspend** a respondent at this point, but only in cases of misconduct or serious misconduct (i.e. where the lead assessor has allocated the case as misconduct rather than as a grievance) and only where the suspension is 'necessary' (a higher threshold than in the CDM). Where a parish priest is suspended the bishop will consider what arrangements for the ministrations of the church are needed and any other support that may be required.

7.11. Where the matters complained of are also subject to secular criminal processes there will be a presumption in favour of **not pausing the disciplinary processes**, unless the police or other secular prosecuting authority is of the view that it would interfere with their investigation or with the administration of justice.

Limitation Period

7.12. In taking seriously all misconduct the Church must balance the right of those who have been seriously wronged to seek justice through the Church's disciplinary procedures and the need to provide a finality for those who may be accused.

7.13. The Group propose that there be **no limitation period** on allegations of **serious misconduct**.

7.14. **Allegations of misconduct (other than serious misconduct) would have a 12 month limitation** period from the date of the alleged misconduct)or the last date if a course of conduct is alleged). This limitation period could be disapplied by a judge where a good reason existed why the complaint was not made sooner.

7.15. **Grievances would have a 12 month limitation period** without any power to extend the period.

Delegation

7.16. The Measure will contain a specific stand-alone power for the bishop to delegate his or her role in relation to a particular complaint to another bishop, for example in cases of conflict of interest. This would be either a suffragan or assistant bishop within the diocese or another bishop outside the diocese. However, it is anticipated that by removing the principal decision making from the bishop occasions of conflict of interest will be rare. The lead assessor will also have power to delegate to another assessor.

Part III: Procedure – resolving the complaint

Track “A” – Grievance

8. Where a case is allocated to the grievance track the bishop will appoint a **designated person from within the diocese** to resolve the issue(s), so far as it is possible to do so. The designated person will be different depending on the substance, complexity and identity of the parties. In some cases a person with knowledge of the context will be appropriate (*e.g. Archdeacon, Rural Dean Assistant Bishop, Diocesan Secretary*). In other cases someone entirely external and independent may be needed (*e.g. a person with HR experience*).
9. Allocation to the grievance track would constitute a *de facto* dismissal of an allegation of misconduct and therefore the complainant will have a right of review of that dismissal to be carried out by a judge.
 - 9.1. The Measure or Rules will not provide a strict procedure for the resolution of grievances to enable flexibility to deal with what will be a wide range of different issues. Detailed guidance will be made available which will set out the tests and criteria to be applied. Respondents will be encouraged to be accompanied at any meeting, but legal representation would not be allowed. Legal aid would not be available for this process.
 - 9.2. In summary the designated person will follow a two-stage process:

1. Informal stage (e.g. telephone call, informal meeting or arranging for an apology to be given).

If unresolved they will move to:

2. Formal stage (e.g. formal meetings with the parties, fact findings and recommendations as to outcome)

9.3. Should the parties agree the case may be referred for a structured conciliation.

9.4. The process should last no more than 28 days with a focus on a **pastoral resolution** and, if necessary, advice on improvement issued to the respondent.

Re-allocation

9.5. Should the designated person form the view that the case is more serious than first thought, they may any time prior to the completion of the final report recommend to the lead assessor that it be allocated as a formal allegation of misconduct.

Track “B” – Allegation of misconduct

9.6. Where the case is allocated to the misconduct track, the lead assessor will appoint a **Case Assessor** from the regional panel. The case assessor will begin by asking the complainant to provide a formal document setting out their complaint in detail.

9.7. The first task for the case assessor will be to decide, without any investigations at this stage, whether the allegation, if true, would be **misconduct or serious misconduct**. Statutory guidance will be available to assist in the making of that decision.

Misconduct

9.8. Where the case alleges misconduct not amounting to serious misconduct the case assessor will retain the case and carry out an investigation, meeting with the

parties and receiving written evidence and submissions as necessary in order to make findings of fact. The respondent will have access to legal aid for the purposes of advice and written submissions. In order to encourage a non-adversarial approach the Group propose that respondent would not be legally represented in meetings by an advocate, but will be encouraged to bring someone to all meetings in a support capacity.

9.9. Allegations of misconduct can vary in complexity. They also can involve points of law. Whilst the assessors will have access to training and continuing professional development it is imperative that they are supported in their work. As such, the assessor *may* at any time ask a lawyer in the Office for Investigation & Tribunals (OFI&T) for guidance and *must* do so in circumstances specified in statutory guidance (for example, where a question of law arises).

9.10. The case assessor will produce a report within 90 days. The bishop must accept any finding of fact made by the assessor.

9.11. The report will also make a recommendation as to the outcome. It will be open to the assessor to recommend that the case be dismissed (with or without a finding that it is vexatious) or that it has been proven. The bishop must implement the recommendation as to outcome unless there is a good reason not to do so. The bishop will set out the decision in writing.

Appeal

9.12. The complainant and respondent will have a right of appeal to a judge against the findings and/or penalty.

Re-allocation

9.13. The case assessor may any time prior to the completion of the final report recommend to the lead assessor that the matter be re-allocated as a grievance or that it be dealt with as an allegation of serious misconduct.

Serious Misconduct

9.14. Where the case alleges serious misconduct it will be sent forthwith to OFI&T

This office will be placed within the NCIs structure and be responsible for the management, investigation, and conduct of allegations of serious misconduct, and will also be available to provide legal advice and other assistance to assessors dealing with misconduct cases.

9.15. The process will be overseen by a lawyer. Not every case needs an investigation. Some cases for example may be substantially admitted. For cases, however, where an investigation is required, the matter will be allocated to a separate and independent investigator, who will pursue all reasonable lines of enquiry. The OFI&T will maintain a published list of suitably qualified and experienced investigators. The respondent will have access in principle to legal aid and may be represented throughout by a solicitor and/or a barrister.

9.16. Once any investigation is complete, a decision will be made on whether the case should be referred to a tribunal for a hearing. The Group have considered a variety of different viewpoints and submissions on how that decision should be made. Under the CDM it is made by an independent judge – the President of Tribunals (or deputy). There are differing views as to whether that system should be retained, modified or abolished altogether. This is an issue yet to be resolved and will continue to be examined in preparation for the next stage of the legislative process.

9.17. Presently a tribunal consists of five members (a legally qualified chair, two clerks in Holy Orders and two members of the laity). A cause of significant delay at present is the arrangement of dates in which all five members of a tribunal can sit (sometimes for five consecutive days) to hear a case. The Group propose that the tribunal be reduced to three - a legally qualified chair, one clerk in Holy Orders and one member of the laity. The Group propose that the tribunals be subject to the oversight of a senior judge, with the administrative functions relating to the tribunal being the responsibility of a **Clerk to the Tribunal**.

9.18. Appeals would be dealt with by the Court of Arches or the Chancery Court of York, overseen by the Dean of the Arches and Auditor, one other judge and one clerk in Holy Orders. Permission to appeal against the decision of a tribunal would be required, the application for permission being determined by the Dean of the Arches and Auditor.

Admitted misconduct

9.19. Repentance is at the heart of Christian living. A system of discipline must allow for those who admit wrongdoing to be dealt with in a sensitive and swift manner in order to encourage the process of reconciliation and healing. It will be open to a respondent to admit the case at any stage.

9.20. Where admissions of misconduct, not amounting to serious misconduct, are made, a case assessor will make a recommendation on penalty to the bishop. The bishop will consider the recommendation and, applying statutory guidance, impose a penalty. The respondent will have a right of appeal against the penalty to be carried out by a judge.

9.21. Where admissions of serious misconduct are made the penalty will be imposed by a tribunal. Online hearings will be utilised to ensure that penalty hearings take place soon after the admission. Appeals would be dealt with by the Court of Arches or the Chancery Court of York and permission to appeal would be needed.

Penalties

9.22. Penalties for misconduct should be both punitive and restorative. They should do justice to the complainant and the respondent and reflect the wrongdoing and the harm caused. Where it is appropriate to do so the penalties should aim to rehabilitate the respondent back into ministry. In cases of misconduct the Group have recommended a wide array of supportive penalties.

9.23. In the most serious of cases the Church must act to ensure the protection of others and the integrity of its mission. Whilst no transgressor is beyond the scope of Christian redemption, it will not be possible to safely allow some respondents

back into ministry. Under the current CDM a respondent may be prohibited from exercising the functions of their orders for life. In 2020 the Church gave a commitment to IICSA to re-introduce the availability of deposition from Holy Orders for those who commit the most serious offences. Whilst the Church holds that no person who has been admitted to Holy Orders may be divested of their character it has always recognised that by a legal process a person may be deposed from them (*Canon C1*).

PROPOSED PENALTIES	
MISCONDUCT	SERIOUS MISCONDUCT
<p style="text-align: center;">Injunction <i>A requirement to do a specified act or refrain from doing a specified act</i></p> <p style="text-align: center;">Mentoring and supervision order <i>An order requiring the respondent to undergo a specified period of mentoring and supervision</i></p> <p style="text-align: center;">Reprimand <i>A formal mark that the misconduct in question was unacceptable and should not occur again</i></p> <p style="text-align: center;">Written Advice <i>Advice in writing issued to ensure that there is no repetition of the misconduct</i></p> <p style="text-align: center;">Informal Warning <i>An informal warning not to repeat the misconduct</i></p> <p style="text-align: center;">Conditional discharge <i>No penalty is imposed subject to the condition that no new misconduct is committed in a period no exceeding two years from the date of the order</i></p>	<p style="text-align: center;">Deposition from Holy Orders <i>An order having the same effect as a deed of relinquishment under section 4(3) of the Clerical Disabilities Act 1870</i></p> <p style="text-align: center;">Prohibition for life <i>A prohibition without limit of time from exercising the functions of Holy Orders</i></p> <p style="text-align: center;">Limited prohibition <i>A prohibition for a specified time from exercising the functions of Holy Orders</i></p> <p style="text-align: center;">Removal from office <i>Removal from any preferment currently held</i></p> <p style="text-align: center;">Revocation of licence <i>Revocation of any licence issued by the bishop</i></p>

	<p style="text-align: center;">Injunction</p> <p style="text-align: center;"><i>A requirement to do a specified act or refrain from doing a specified act</i></p> <p style="text-align: center;">Rebuke</p> <p style="text-align: center;"><i>A formal rebuke for serious misconduct</i></p> <p style="text-align: center;">As well as those penalties available under the misconduct track</p>
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Vexatious complainants

9.24. Whilst it is right that the Church maintain an ‘open’ system for complaining, it is the sad reality that there will be those who abuse the process in order to harass or harm clergy. While truly vexatious complaints are rare, when they happen they cause untold distress and damage to those who receive them.

9.25. It is proposed that where such a vexatious complainant is identified the respondent or bishop may apply to a judge for an order that the person be prohibited from bringing any further complaints unless prior permission is granted by a judge. The application for an order would be made through a lawyer located in the OFI&T. A tribunal chair and the Dean of the Arches would also have the power to impose such an order.

Bishops and Archbishops

9.26. The nature and character of ordained ministry is universal and no substantive distinction in disciplinary procedures should apply to those in episcopal orders.

9.27. The procedure as set out above will apply to bishops and archbishops with the following minor variations:

9.27.1. Complaints against bishops will be laid before the relevant archbishop.

- 9.27.2.** Complaints against an archbishop will be laid directly before a judge.
- 9.27.3.** In the case of a grievance against a bishop or archbishop the ‘designated person’ will be an assessor.
- 9.27.4.** Hearings will be before the Court of the Vicar-General for the relevant province. The clerical member of the Court will be in episcopal orders.

Part IV: Infrastructure, resourcing and training

The assessor

- 10.** Under the proposals the assessor has a key role in allocating, investigating and assessing evidence. The Group are of the view that throughout the Church there will be people, both lay and ordained, who possess the necessary skills, temperament and expertise in order to fulfil this role.
- 10.1.** It is proposed that panels of assessors be formed grouped by regions across the Church. A suggested grouping of dioceses into eight regions appears in **appendix D**.
- 10.2.** The lead assessor for each panel will be someone with extensive relevant decision-making experience. It may be that they also possess a legal background or qualification, although the Group do not regard this as a prerequisite. They will need to be committed to the ministry of the Church and willing to give their time freely.
- 10.3.** Where a case assessor is appointed they will not be from within the diocese in which the respondent serves or have any connection to the complainant. In circumstances where the need arises it will be permissible to delegate outside the region to another panel.
- 10.4.** At present there are on average just under 100 complaints per year against priests and deacons. On average 30 dioceses have between 1 and 5 cases a

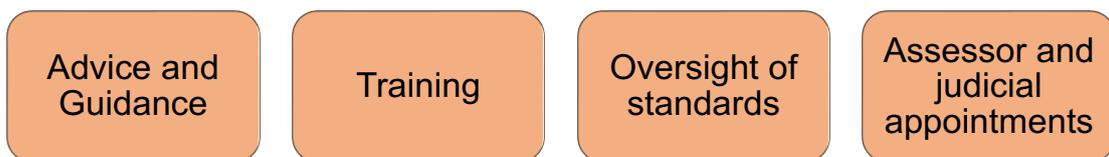
year while 2-3 dioceses have more than 6 cases, and 9 dioceses have no cases at all. The introduction of this new system may see an increase in complaints, in particular at the lower level. Nevertheless it is anticipated that each region will only require between 3 – 4 assessors plus a lead assessor. This would mean seeking approximately 32 – 40 suitably qualified individuals.

10.5. The Clergy Discipline Commission (see below) will be responsible for maintaining the list of assessors and providing training and ongoing professional devolvement. A system of peer reviewing, conferences and information sharing will be in place in order to develop best practice and ensure high standards.

Clergy Discipline Commission

10.6. The Clergy Discipline Commission is currently a body constituted under the CDM whose role is to give advice on the operation of discipline, issue guidance on penalties, issue and amend the Code of Practice and make an annual report to General Synod on the exercise of its functions. It is made up of two members from each house of Synod and further appointed members with legal or other relevant expertise.

10.7. The Group propose to expand the role the Commission to include the following functions:



10.8. Membership would still in part be drawn from Synod, but the Group also recommend that wider expertise from outside the Church be sought.

Legal Aid

11. Legal aid is administered by the Legal Aid Commission under the Church of England (Legal Aid) Measure 1994. Currently applications for legal aid are subject to a merits-test and a means-test.

11.1. It is outside the scope of this Group's work to make any amendments to that Measure. The Group are grateful to the Legal Aid Commission for their contribution to the consultation questions.

11.2. It is central to the rules of natural justice that those subject to allegations of misconduct have proper access to legal advice at the earliest opportunity. As part of this review the Group recommend to the Legal Aid Commission that the following be considered:

11.2.1. For allegations of serious misconduct the 'merits test' be discontinued as such cases will by definition be serious enough to merit the grant of legal aid.

11.2.2. The introduction of a fixed-fee initial package at no cost to the respondent to assist with the provision of early advice to those accused of misconduct.

11.2.3. The creation of a panel of solicitors and direct access barristers who would undertake legal aid work, with the list being made available to respondents.

11.3. Having considered detailed representation and evidence from a variety of sources the Group are of the view that legal aid should continue to be means tested. It must be recognised that the Legal Aid Commission administers charitable funds. Such funds are not unlimited and they have to be carefully husbanded to ensure that money can be made available to clergy who are in need of legal advice and have no or very limited resources of their own.

FINANCIAL IMPACT

- 12.** It is evident that these proposals have resourcing consequences at both diocesan and national level. An effective disciplinary system will inevitably need to be properly resourced both in monetary and other terms. Whilst cost effectiveness is important, a fair system cannot be governed by economic criteria alone.
- 13.** At diocesan and provincial level the principal direct cost will be the implementation of any professional support to complainants and the expenses of the assessors.
- 14.** At a national level the principal costs will be the resourcing of the OFI&T and the Clergy Discipline Commission. It is imperative that both of these bodies are properly resourced in order to provide the advice, expertise and functions necessary to progress cases swiftly and maintain standards. In particular a regular system of training will be essential to secure confidence in the system and a uniformity of approach.
- 15.** It is estimated that the additional costs, on top of those already provided for in the current system, will be in the region of a further £350,000 per annum. There would be one-off project implementation cost of around £200,000. The implementation would include project management and training of bishops, assessors and Diocesan Safeguarding Advisers. These costs would be met by the Archbishops' Council.
- 16.** To counterbalance these costs there will be savings in other areas. Principal amongst these will be the abolition of the Preliminary Scrutiny Report currently produced by diocesan registrars and paid for by the Church Commissioners. Over the last three year the average cost of these reports is £472,824.00 per annum.

POSTSCRIPT TO THE REFORM

17. The Implementation Group are of the view that these reforms will establish a proportionate, efficient, and fair system. However, the reforms alone cannot address all of the issues concerning clergy discipline. Alongside these steps a re-adjustment of culture, embedded in the early stages of discernment, training and ministry will be required to take place. The Group offer the following two general observations on the exercise of discipline in the Church:
18. Firstly, better expectation management for both clergy and complainants should exist. Secular professions have for many years lived with the reality that those who undertake public-facing work are liable to be complained about. Clergy must also come to this realisation and engage in the disciplinary process. It exists as much for their protection as a means of redress for those who complain. Likewise, whilst the Church must take all complaints seriously, it cannot become an ecclesiastical policeman. The nature, character and purpose of ecclesiastical disciplinary proceedings are different from criminal proceeding and will differ in some respects from the processes in secular employment.
19. Secondly, a shift is required to view abusive misconduct as *primarily* a matter of discipline and not of safeguarding. All too often the safeguarding process precedes the disciplinary one and is the cause of delay and frustration. Whilst serious abuses rightly engage the safeguarding procedures of the Church, the abuses are first and foremost a matter of good order. Good order by its nature is a matter of discipline. By viewing the misconduct as discipline first, the focus becomes the proper investigation, findings of facts and, where appropriate, imposition of penalty. The safeguarding procedures can then operate alongside the disciplinary processes, to be both informed by it, and complement the analysis and decision-making as a whole.
20. Working together in this fashion will create a system that is fair, proportionate, efficient and made in the image of the Gospel.

BRINGING A COMPLAINT

Any person with a **'proper interest'**.

Clergy will be able to **self-refer** (*but will not be under a duty to do so*).

THE COMPLAINT

The complaint is received by the **BISHOP**.

There will be no requirement to set out the full case or attach evidence. It is limited to a brief summary. The case is passed forthwith to the **REGIONAL LEAD ASSESSOR**.

STATUTORY DUTY: REFERRAL

The bishop will be under a statutory duty in specified cases to refer the case to: DSA/DSO; Police; LADO

There will be a presumption in favour of **not pausing disciplinary processes**, unless view of police is that it would prejudice criminal case

THE BISHOP

LEAD ASSESSOR: INITIAL ALLOCATION

The lead assessor will apply statutory guidance to allocate the case on the basis of whether the complaint amounts to a **GRIEVANCE ("A")** or whether it amounts to an **ALLEGATION OF MISCONDUCT ("B")**.

The allocation assessment will take the complainant's case at its highest.

Cases that are 'manifestly without merit or substance' or are vexatious may be **summarily dismissed**. The bishop must take legal advice from the Registrar.

REVIEW: The Complainant has right of review of the dismissal to be carried out by a judge.

NOTIFYING THE RESPONDENT

THE FIRST LETTER

The bishop will write to the Respondent setting out that a complaint has been made against them, giving the detail, and whether it has been allocated as a grievance or misconduct. Information concerning the provision of pastoral support and legal aid will also be provided.

SUSPENSION

Once a case has been allocated as serious misconduct a power to suspend the Respondent arises. The bishop may only suspend where it is necessary to do so. Detailed statutory guidance will be available .

THE BISHOP

STATUTORY DUTY: SUPPORT

The bishop will be under a statutory duty to offer support to complainant/victim/survivor and respondent; and must consider what support the parish or place of ministry requires.

ALLOCATION: "A" GRIEVANCE

"A"

GRIEVANCE TRACK

A minor matter that does not constitute misconduct nor would warrant the imposition of a penalty

REVIEW: The Complainant has right of review of the allocation to the grievance track to be carried out by a judge.

Upon allocation as a grievance the bishop will appoint a **DESIGNATED PERSON** to investigate and resolve the grievance. The designated person will be different depending on the substance, complexity and identity of the parties. In some cases a person with knowledge of the context will be appropriate (*e.g. Archdeacon, Rural Dean, Assistant Bishop, Diocesan Secretary*). In other cases someone entirely external and independent will be needed (*e.g. HR professional*). The designated person will immediately contact the respondent.

The designated person will follow a two-stage process:

1. Informal stage (e.g. telephone call, informal meeting or arranging for an apology)
2. Formal stage (formal meetings with the parties, fact findings and recommendations)

Should the parties agree the case may be referred for a structured conciliation

The Measure or Rules will not provide a strict procedure for the resolution of grievances to enable flexibility and the development of best practice. Detailed guidance will be made available.

The designated person will produce a final report in 28 days setting out if the grievance is resolved and provide recommendations for a pastorally focussed outcome. The **BISHOP** will implement the recommendations in the report.

RE-ALLOCATION: The designated person may any time prior to the completion of the final report recommend to the lead assessor that the matter be re-allocated as an allegation of misconduct.

ALLOCATION: "B" MISCONDUCT

"B" ALLEGATION OF MISCONDUCT TRACK

Upon allocation as an allegation of misconduct the lead assessor will appoint a **CASE ASSESSOR**.

The assessor will be from outside the diocese in which the respondent serves and will not have any connection with the complainant.

The case assessor will seek from the complainant a formal document setting out more details of the allegation.

They will then decide, without investigating the facts, if the case is one of **MISCONDUCT** or **SERIOUS MISCONDUCT**.

Detailed guidance will be available.

LEGAL AID

Where a case is allocated to the misconduct track legal aid the respondent may apply for legal aid. Where the case remains on the misconduct track legal aid will cover written legal submissions only. Where the case moves to the serious misconduct track legal aid will be available for written and oral advocacy throughout.



MISCONDUCT: INVESTIGATION, FACT FINDING, AND OUTCOME

MISCONDUCT

The case alleges misconduct which is unlikely to call into question the respondent's fitness to exercise public ministry.

The case assessor **retains the case** and conducts an investigation, meeting the parties and receiving written evidence and submissions as necessary in order to make findings of fact.

The assessor *may* at any time ask a lawyer in the Office for Investigation & Tribunals for guidance and *must* do so in circumstances specified in statutory guidance (*e.g. a question of law arises*)

RE-ALLOCATION: The case assessor may any time prior to the completion of the final report recommend to the lead assessor that the matter be re-allocated as a grievance or to the serious misconduct track. The case assessor will produce a report within 90 days. The bishop must accept any finding of fact made by the case assessor.

The report will make a recommendation as to outcome and penalty, which the bishop must implement unless there is a good reason not to do so. The bishop must set out the decision in writing.

APPEAL: The Complainant and Respondent will have a right of review of the findings and/or penalty to be carried out by a judge.

SERIOUS MISCONDUCT

The case alleges serious misconduct which may call into question the respondent's fitness to exercise public ministry (i.e. it would attract a form of prohibition, removal from office and/or deposition from Holy Orders)

The case assessor will send the matter forthwith to the **OFFICE FOR INVESTIGATION & TRIBUNALS.**

SERIOUS MISCONDUCT: INVESTIGATION, FACT FINDING, AND OUTCOME

OFFICE FOR INVESTIGATION & TRIBUNALS

The case is received by the **DESIGNATED OFFICER** or a Deputy who reviews the allocation.

RE-ALLOCATION: The Designated Officer may any time prior to the referral to a tribunal re-allocate the case to the misconduct or grievance track. For cases where an investigation is required the matter is allocated to a separate and independent investigator who pursues all reasonable lines of enquiry.

The case is then referred back to the Designated Officer and a decision will be made on whether to refer the case to a tribunal.

DECISION NOT TO REFER TO TRIBUNAL

If the decision determines that the matter is not serious misconduct but does disclose a case of misconduct, it is referred to a case assessor who follows the process as above.

THE BISHOP'S DISCIPLINARY TRIBUNAL

The case is referred to the **CLERK TO THE TRIBUNAL** who convenes a tribunal and liaises with the President of Tribunals for the appointment of members.

A Chair of the Tribunal is appointed and directions to progress the case are issued. The tribunal is to consist of a **legally-qualified Chair, one clerk in Holy Orders and one lay person.**

The standard of proof is on the balance of probabilities and determinations are made by majority decision.

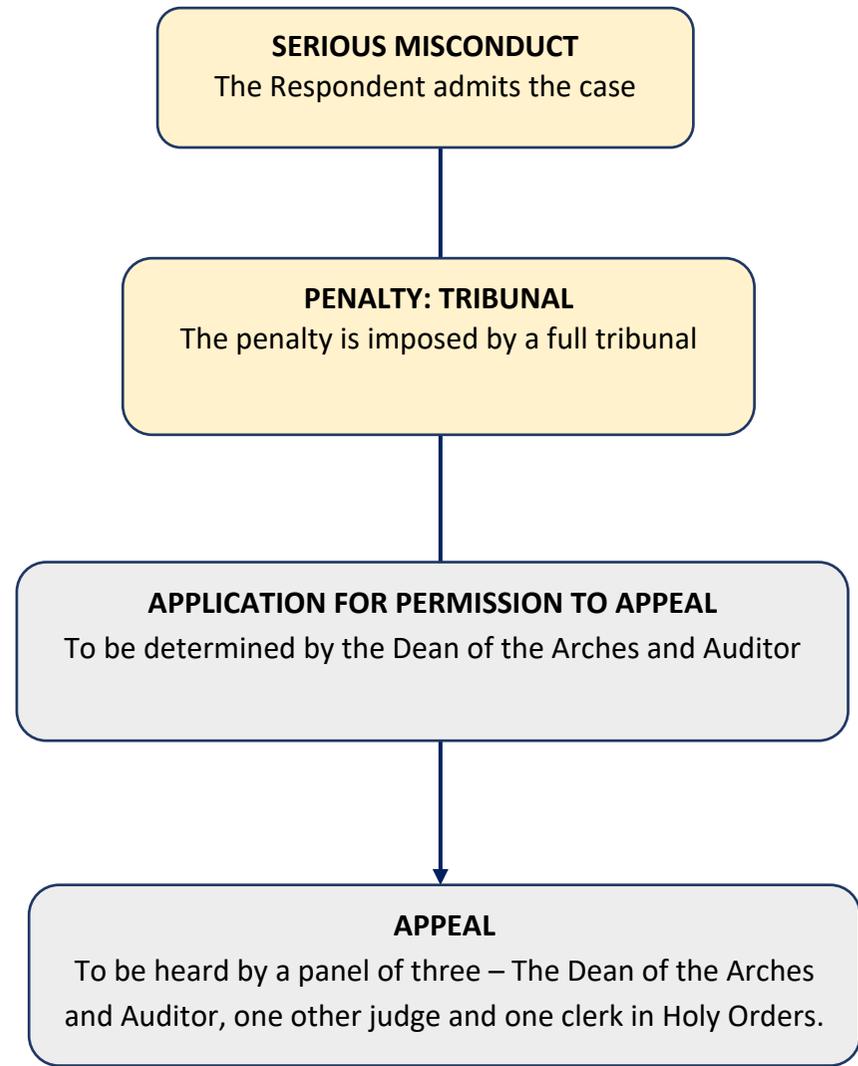
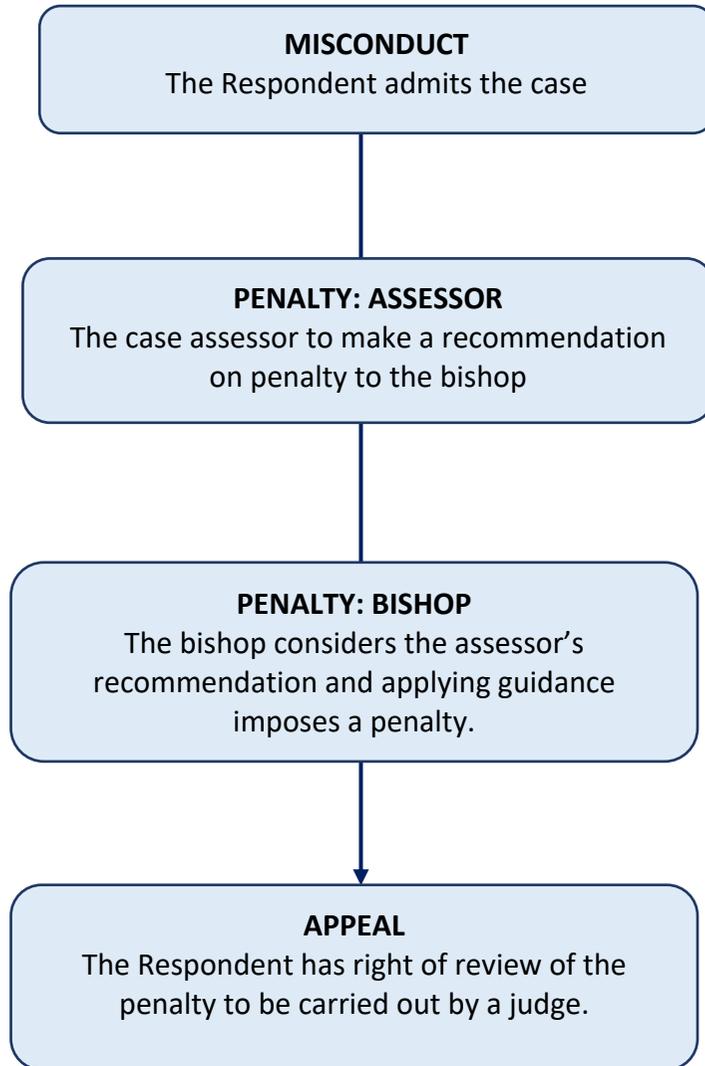
APPEAL

To be heard by a panel of three – The Dean of the Arches and Auditor, one other judge and one clerk in Holy Orders.

APPLICATION FOR PERMISSION TO APPEAL

To be determined by the Dean of the Arches and Auditor.

MISCONDUCT: ADMITTED CASES



PENALTIES

MISCONDUCT

Injunction

A requirement to do a specified act or refrain from doing a specified act

Mentoring and supervision order

An order requiring the respondent to undergo a specified period of mentoring and supervision

Reprimand

A formal mark that the misconduct in question was unacceptable and should not be repeated

Written Advice

Advice in writing issued to ensure that there is no repetition of the misconduct

Informal Warning

An informal warning not to repeat the misconduct

Conditional discharge

No penalty is imposed subject to the condition that no new misconduct is committed in a period not exceeding two years from the date of the order

SERIOUS MISCONDUCT

Deposition from Holy Orders

An order having the same effect as a deed of relinquishment under section 4(3) of the Clerical Disabilities Act 1870

Prohibition for life

A prohibition without limit of time from exercising the functions of Holy Orders

Limited prohibition

A prohibition for a specified time from exercising the functions of Holy Orders

Removal from office

Removal from any preferment currently held

Revocation of licence

Revocation of any licence issued by the bishop

Injunction

A requirement to do a specified act or refrain from doing a specified act

Rebuke

A formal rebuke for serious misconduct

As well as those penalties available under the misconduct track

APPENDIX B: THE IMPLEMENTATION GROUP

Membership

The Right Reverend Dr John Inge, Bishop of Worcester (Chair)

Professor Joyce Hill, former Pro-Vice Chancellor and Member of the House of Laity (Vice-chair)

The Reverend Canon Simon Butler, sometime Prolocutor of the Lower House of the Convocation of Canterbury

His Honour Peter Collier QC, Vicar-General of the Province of York

Stuart Jones, Registrar of the Dioceses of London and Norwich

The Reverend Ruth Oates, Unite Faith Workers' Branch

The Venerable Mark Steadman, Chief of Staff to the Archbishop of York

The Reverend Sally Theakston, Chaplain to the Bishop of Norwich

Consulting Membership

The Reverend Stephen Coleman, Vicar of St Peter's, Grange Park and Assistant Director, Cardiff Centre for Law and Religion

The Right Worshipful Morag Ellis QC, Dean of the Arches and Auditor

The Reverend Gavin Foster, barrister and Deputy Registrar of Diocese of Winchester

The Reverend Prebendary David Houlding, Vicar of All Hollow's, Gospel Oak and former Chair of the Joint Convocations Working Party on the Guidelines for the Professional Conduct of the Clergy

The Reverend Alexander McGregor, Head of the Legal Office

Staff

Edward Dobson, Senior Advisory Lawyer, Legal Office

Kevin Connelly, Secretary to the Implementation Group

APPENDIX C: CONSULTATIONS AND SUBMISSIONS

At the February 2022 group of sessions the Group ran an informal fringe discussion event. This was followed by a formal written consultation between March and April 2022.

Submission were received from

- The Ecclesiastical Law Association (Diocesan Registrars)
- Church of England Employee and Clergy Advocates
- The National Safeguarding Team
- Broken Rights
- The Retired Clergy Association
- Replenished Life
- The Legal Aid Commission
- The Standing Committee the House of Clergy
- The Standing Committee of the House of Laity (via the Chair)
- The Remuneration and Conditions of Service Committee
- The National Safeguarding Panel

The consultation paper was made available online at the Sheldon Hub for comments and we received 18 responses.

The Group also received representations from a number of individuals as well as NCIs staff.

A further round of consultations with survivor-based groups, run in conjunction with the NST, will be taking place throughout June ending just prior to the July Synod.

The Group referenced or considered aspects of the following disciplinary systems

- The Methodist Church
- The Bar Standards Board
- The Metropolitan Police
- The General Medical Council

APPENDIX D: PROPOSED REGIONAL GROUPINGS OF DIOCESES

Region	Dioceses	
Northwest	Blackburn Carlisle Chester	Liverpool Manchester Sodor and Man
North East	Durham Newcastle Sheffield	York Leeds
East Midlands	Derby Lincoln Leicester	Peterborough Southwell & Nottingham
West Midlands	Birmingham Coventry Hereford	Lichfield Worcester Gloucester
East Anglia	Ely Norwich Chelmsford	St Edmundsbury & Ipswich St Albans
South West	Exeter Bristol Salisbury	Bath & Wells Truro
South East	Canterbury Rochester Chelmsford	London Southwark Europe
South Central	Chichester Guildford Oxford	Portsmouth Winchester Salisbury