

**GENERAL SYNOD
AMENDMENTS TO CODE OF PRACTICE
ISSUED UNDER THE CLERGY DISCIPLINE MEASURE**

EXPLANATORY NOTES

BACKGROUND

1. The Clergy Discipline Measure 2003 ("the CDM") provides for the determination of allegations of misconduct (other than matters relating to doctrine, ritual or ceremonial) against clerks in Holy Orders.
2. The Clergy Discipline Commission ("the Commission") is responsible for overseeing the operation of the CDM. Under section 39 it is the duty of the Commission to formulate guidance for the purposes of the CDM generally, and with the approval of the Dean of the Arches and Auditor, to promulgate the guidance in a Code of Practice. The Commission may at any time amend or replace a code. Amendments cannot come into force until approved by the General Synod. In April 2021 General Synod approved the replacement of the previous Code in its entirety with substantial amendments and new formatting.
3. The Code does not have the force of law, but as a statutory code it must be taken into account at all times. Compliance with the code is considered to be best practice. It aims to be a relatively simple guide to point users in the right direction, and to draw their attention to the relevant provisions of the CDM and the Rules. Amendments to the Code cannot change the operation of the CDM 2003 itself or the Clergy Discipline Rules 2005, which would require amendments to that legislation.
4. The current Code can be accessed here:
https://www.churchofengland.org/sites/default/files/2017-10/code-of-practice-as-published-jan-2017_0.pdf
https://www.churchofengland.org/sites/default/files/2021-07/Code%20of%20Practice%20April%202021_0.pdf

PROPOSED AMENDMENTS

Police Investigations

5. The Code of Practice currently provides that where there is a police investigation or criminal trial proceedings under the CDM should be paused to await the outcome. This can be the cause of considerable delay in the progression of an allegation of misconduct under the Measure, often whilst the respondent is suspended from Office.

6. The proposed amendments to **paragraphs 87 and 92** reverse the presumption that it will always be necessary to pause the CDM proceedings pending the outcome of the police investigation or a criminal trial. The proposed guidance provides that allegations of misconduct should now proceed, unless the police or other relevant statutory agency have expressly stated that the Church's processes would prejudice their investigation or a criminal trial. In those cases, the CDM proceedings may be paused pending the outcome of the secular processes.

Secular Employment Investigations

7. **Paragraph 89** has been amended to apply the same approach to employment disciplinary investigations. The proposed guidance requires that a view be formed as to whether it is appropriate to wait for the outcome of the secular disciplinary action before proceedings with the allegation under the Measure.

8. **Paragraph 90** is deleted as being inconsistent with the proposed revised guidance.

Publishing Penalties

9. All penalties imposed under the CDM are made public. Penalties imposed by a tribunal are published on the Church of England tribunal webpage, administered by the NCIs.

10. The current guidance provides that where the respondent admits misconduct and the bishop imposes a penalty by consent brief details of the case should be placed

on the diocesan website. Further, it states that penalties imposed other than by a tribunal – i.e. under sections 30 and 31 CDM 2003 – should be made public.

11. To ensure a consistent approach to the publishing of penalties the proposed amendments to **paragraph 312** provide that publishing penalties by consent and penalties imposed under sections 30 and 31 will no longer be the responsibility of the diocese or province. Upon a penalty being agreed the diocesan or provincial registrar will send the relevant details to the President of the Tribunals, who will cause them to be published on the Church of England website. The name of the respondent, the date penalty was agreed or imposed and the statutory ground of misconduct (e.g. “doing an act in contravention of the laws ecclesiastical”, “neglect or inefficiency in the performance of the duties of his office”, “conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders”) –but not any details of the particular misconduct – will be published.

12. Paragraph 311 is deleted as being no longer being necessary consequential upon the amendments to paragraph 312

13. The Clergy Discipline Commission will revise their statutory guidance in light of the amendments to the Code of Practice.

14. The proposed amended text appears in the Annex.

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ANNEX

Paragraph 87

Where there is an ongoing police investigation or criminal proceedings, a complainant is not precluded from either bringing an allegation of misconduct within time, or making an application for permission to bring an allegation out of time. Unless the police, or another statutory agency (e.g. HMRC) have expressly stated that the disciplinary proceedings will prejudice either their investigation or a criminal trial, the allegation of misconduct under the Measure should proceed.

Paragraph 89

Some clergy are employed as chaplains by hospitals, schools, or prisons, or as staff with bodies such as diocesan boards of finance, BMOs or church plants. Other clergy may be licensed to serve as chaplains in Her Majesty's armed forces. In those circumstances, as well as being subject to the discipline of the Church of England, they will also be subject to such separate disciplinary procedures as may apply under the terms of their employment or service, as the case may be. Where an allegation under the Measure is made about such clergy, a view should be formed about whether it is appropriate to wait for the outcome of any disciplinary action that is taken by the employer before the matter is dealt with under the Measure. Those concerned must have regard to the need to avoid undue delay.

Paragraph 92

If an allegation is made against a priest or deacon concerning matters in connection with which he or she has already been arrested on suspicion of committing a criminal offence, it is not necessary to pause any CDM proceedings pending the outcome of any police investigation. The police or other relevant statutory agency should be asked whether continuing with the proceedings would prejudice their investigation or any future criminal trial. If it would not then the procedures under the Measure should continue.

Paragraph 312

Where a penalty by consent has been agreed with a bishop or archbishop, or a penalty under section 30 or 31 has been imposed, brief particulars of the misconduct should be made public by a notice placed on the Church of England website. the diocesan or provincial registrar should notify the President of Tribunal and send a copy of the Form 7 along with any further information necessary in order for the details to be published. The President will then cause the following to be published: the name of the respondent, the date penalty was agreed or imposed, the statutory ground of misconduct. The Commission has issued statutory guidance (available on the Church of England website) which should be referred to on each occasion a penalty is uploaded.