



CLERGY DISCIPLINE COMMISSION: ANNUAL REPORT 2022



Jenny Jacobs

CLERGY DISCIPLINE COMMISSION ANNUAL REPORT 2022

INTRODUCTION

1. This report is made in fulfilment of the duty placed upon the Clergy Discipline Commission by section 3(3)(c) of the Clergy Discipline Measure 2003 to make an annual report to the General Synod, through the House of Bishops, on the exercise of its functions during the previous year. This is the eighteenth annual report made by the Commission and covers its work in the year to 31 December 2021
2. The House of Bishops received this report in May 2022.

MEMBERSHIP AND FUNCTIONS

3. The Clergy Discipline Commission (“the Commission”) is constituted under section 3 of the Clergy Discipline Measure 2003 (“the Measure”). The Measure provides for the appointment by the Appointments Committee of a Commission of not more than twelve persons, to include at least two from each House of the General Synod and at least two with legal qualifications specified in the Measure. The Chair and Deputy Chair of the Commission are appointed from amongst the legally qualified members after consultation with the Dean of the Arches and Auditor.
4. The Chair and Deputy Chair sit respectively as the President and Deputy President of Tribunals. In those capacities they exercise certain judicial functions under the Measure. The Commission itself has no judicial or investigative role in respect of individual cases. It has a general responsibility to monitor disciplinary procedures under the Measure, and its specific duties include formulating guidance for the purposes of the Measure generally, issuing general policy guidance to persons exercising disciplinary functions, and giving general advice as to appropriate penalties.
5. The Commission met on three occasions in 2021: January, May, and October.

THE WORK OF THE COMMISSION IN 2021

6. The major work of the Commission in 2021 was revising the principal statutory guidance issued under the Measure. In January 2021 an update [Guidance on Penalties](#) was issued which included new advice on cases involving a failure to follow safeguarding policy and also introduced a new staged approach to the imposition of a penalty.
7. In April 2021 the Commission issued a completely re-formatted and substantially updated [Code of Practice](#). The changes took into account recent amendments to the Clergy Discipline Rules 2005 as well as providing further advice on confidentiality, privacy and the general functions of disciplinary proceedings under the Measure.
8. In response to the need for a system to investigate and resolve low-level complaints the Commission devised and issued a 'Procedure for the Resolution of Informal Complaints' which appears in Appendix A of the new Code of Practice.
9. The Commission issued four separate pieces of [statutory guidance](#) under section 3(3)(b) CDM 2003:
 - a. The meaning of 'sufficient substance' – January 2021.
 - b. Applications for permission to bring an allegation of misconduct out of time - January 2021, updated November 2021.
 - c. Confidentiality and Privacy in Clergy Discipline Proceedings – February 2021.
 - d. Confidentiality and Privacy in Clergy Discipline Proceedings FAQs – November 2021.
10. In order to streamline case management the President issued a Practice Direction in February 2021 allowing for the Registrar of Tribunals to issue standard directions in all cases that are referred for a hearing before a Bishop's Disciplinary Tribunal or the Court of the Vicar-General.

11. The Commission continued to engage with the proposals for reform of clergy discipline and was given an opportunity to comment upon the draft paper to the house of Bishops by the Lambeth Working Group on discipline. In addition, the Commission considered representations from a number of individuals for reform of the disciplinary process, which the Commission considered and referred with recommendations to the Working Party.

CASE SUMMARIES

12. The Commission has determined that in order to highlight significant principles arising out of tribunal cases the annual report will include case summaries where matter of wider general importance have arisen.

[The Reverend AB \(by his litigation friend CD\)](#) – Bishop’s Disciplinary Tribunal for the Diocese of Chichester, June 2021

Facts

The Respondent faced an allegation of misconduct that between 2015 and 2017 he had an inappropriate intimate relationship with an adult woman and further harassed and engaged in non-consensual sexual touching of a different adult woman. In January 2017 the Respondent suffered a series of strokes which caused him to cease ministry. Different and unrelated criminal proceedings against the Respondent were not pursued on the basis that the Respondent lacked capacity to stand trial. The Respondent sought a stay of the CDM proceedings on the same basis.

Issues

Whether or not the tribunal had power to appoint a litigation friend; whether to stay proceedings on grounds of lack of capacity and/or delay as an abuse of process.

Decision

Applying the principles set out in *Jhuti v Royal Mail Group Ltd and ors*¹ the Chair was satisfied that the broad procedural power to give directions under Clergy Discipline Rule 33 allowed for the appointment of a litigation friend. The tribunal reviewed the caselaw on capacity and set out at [13] a staged approach for use in clergy disciplinary proceedings.

¹ [2017] UKEAT/0061/17/RN

Applying that approach to the medical evidence the tribunal stayed the proceedings on the ground that the Respondent lacked the necessary capacity to stand trial. The tribunal also considered the issue of delay, it being four years from the date of the form 1a to the hearing, and were not satisfied that it had been such as to amount to an abuse of process.

The Reverend Clive Evans - Bishop's Disciplinary Tribunal for the Diocese of Hereford, December 2021

Facts

The Respondent faced an allegation that, *inter alia*, he performed the baptism of a teenager in a private dwelling whilst wearing only his boxer shorts.

Issues

The issue for the tribunal was whether it had the jurisdiction to consider the allegation. The respondent contended that the Panel did not have jurisdiction as the Respondent's lack of appropriate clothing pointed to the allegation being a ceremonial matter. This would fall under the jurisdiction of the Court of Ecclesiastical Causes Reserved. The Designated Officer relied upon *Bland v Archdeacon of Cheltenham*², where it was found that whilst conduct may touch upon doctrine or ceremony, where it was in essence a matter of good order and pastoral concern then it was a matter of discipline.

Outcome

The Panel, applying *Bland*, determined that the allegation did fall within the jurisdiction of the CDM. The key point was what was being charged. The panel commented that while there may be a doctrinal or ceremonial element to the facts, this does not necessarily make it solely a ceremonial matter where the facts give rise to a "question of pastoral propriety."

ANALYSIS OF ALLEGATIONS OF MISCONDUCT

The annual analysis of allegations made under the Measure is at Appendix 2.

13. In 2021, 94 allegations of misconduct were made under the Measure against priests or deacons as against 92 in 2020.

² [1972] 1 All ER 1012

- 14.** 31% of dioceses had no allegations at all, compared with 24% in 2020, and 12% had six or more allegations. As in previous years, the majority of allegations (59%) were made by complainants other than archdeacons, churchwardens or persons nominated by a PCC, with archdeacons making up a further 38% of complainants.
- 15.** 30% of allegations were dismissed by the bishop and no further action was taken in 19% of cases, a slight decrease on the previous year (20%). A penalty by consent was imposed in 20% of the allegations 19% were conditionally deferred.
- 16.** Following formal investigation, the President or Deputy President of Tribunals decided there was no case to answer in respect of 7 allegations, 3 were referred to a bishop's disciplinary tribunal, and 4 investigations were ongoing at the end of the year.
- 17.** There were six tribunal hearings in 2021 and one appeal before the Court of Arches.
- 18.** There were six cases where a penalty of prohibition or removal from office was imposed under section 30(1)(a) of the Measure following conviction and sentence of imprisonment and one following the inclusion in a barred list.
- 19.** 19 allegations were made against bishops and 3 against archbishops in the course of 2021; 7 were dismissed, no further action taken in 7 more; and 2 penalties by consent was imposed and 4 were referred for formal investigation. Six allegations were outstanding at the year-end (compared to 10 in 2020).

On behalf of the Clergy Discipline Commission



Dame Sarah Asplin DBE (Chair),

April 2022

APPENDIX 1 MEMBERSHIP 2021

Appointed under section 3(1)(b) – ‘legally qualified’

Chair (and President of Tribunals)

The Rt Hon Lady Justice Sarah Asplin DBE

Deputy Chair (and Deputy President of Tribunals)

HH Judge David Turner QC

Appointed under section 3(1)(a) – ‘at least two from each House of the General Synod’

The Rt Revd Nicholas Baines, Bishop of Leeds+^

The Rt Revd Rachel Treweek, Bishop of Gloucester+^

The Revd Canon John Sinclair (Newcastle)+^

The Reverend Christopher Smith (London)+^

Mr David Mills MBE (Carlisle)+^

Vacancy

Other members appointed under section 3

Louise Connacher Provincial and Diocesan Registrar for York*#

The Ven. Moira Astin, Archdeacon of Reigate*

Dr Jamie Harrison (Durham)*^

The Reverend Adeola Eleyae*#

^ Member of the General Synod.

* Appointed to 31st December 2023.

+ Appointed to 31st December 2021.

Legally qualified other than those appointed under section 3(1)(b).

APPENDIX 2

ANALYSIS OF FORMAL ALLEGATIONS OF MISCONDUCT MADE UNDER THE MEASURE

<i>Allegations against Priests and Deacons</i>	Total	% of
	2021 (2020)	42 dioceses
Formal allegations made to bishops	94 (92)	
<i>Dioceses with no allegations made</i>	13 (10)	31% (24%)
<i>Dioceses with between 1 and 5 allegations made</i>	24 (29)	57% (69%)
<i>Dioceses with 6 or more allegations made</i>	5 (3)	12% (7%)
	2021 (2020)	% of Total
Of the total (94), the following numbers of allegations were made by:		
<i>a person nominated by a PCC under s10(1)(a)(i)</i>	1 (1)	1% (1%)
<i>a churchwarden under s10(1)(a)(ii)</i>	2 (2)	2% (2%)
<i>an archdeacon under s10(1)(a)(iii)</i>	36 (29)	38% (32%)
<i>another person under s10(1)(a)(iii)</i>	55 (58)	59% (63%)
Number of allegations delegated under s13 Dioceses, Pastoral and Mission Measure to a suffragan bishop for determination	18 (18)	20% (20%)
Action taken in 2021 in relation to allegations made in 2021 or earlier		
<i>Dismissed by the bishop under s11(3)</i>	28 (19)	30% (21%)
<i>No further action under s12(1)(a) & s13</i>	18 (18)	19% (20%)
<i>Conditional deferment under s12(1)(b) & s14</i>	18 (7)	19% (8%)
<i>Resolved by conciliation under s12(1)(c) & s15</i>	1 (3)	1% (3%)
<i>Penalty by consent under s12(1)(d) & s16</i>	19 (24)	20% (26%)
<i>Formal investigation under s12(1)(e) & s17</i>	13 (12)	14% (13%)
<i>Withdrawn (rule 59(1)(a))</i>	1 (12)	1% (4%)
<i>No decision as at 31st December 2020</i>	13 (4)	14% (20%)

New allegations involving misconduct towards a vulnerable adult (sec 6 SCDM 2016)	11 (7)
New allegations involving misconduct of a sexual nature towards a child	14 (6)

Number of allegations referred unsuccessfully to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (3)
Penalties by consent imposed under s12(1)(d) & s16	
<i>Prohibition for life (with or without resignation)</i>	2 (5)
<i>Limited prohibition (with or without resignation)</i>	7 (11)
<i>Resignation without prohibition including revocation of licence</i>	1 (2)
<i>Injunction</i>	1 (2)
<i>Rebuke</i>	2 (3)
<i>Injunction and Rebuke</i>	6 (4)
Cases referred for formal investigation under s12(1)(e) & s17	
<i>President of Tribunals decided 'No case to answer'</i>	7 (7)
<i>President referred allegations to bishop's disciplinary tribunal</i>	3 (8)
<i>President not decided as at 31st December 2021</i>	1 (0)
<i>Formal investigation ongoing as at 31st December 2021</i>	4 (2)
<i>No further steps taken under s16(3A) (penalty by consent)</i>	4 (6)
Number of cases determined by a tribunal	6 (1)
allegations withdrawn from a tribunal or otherwise terminated	1 (0)
Number of suspensions imposed (total)	27 (23)
<i>Suspensions under s36(1)(a) in course of allegations proceedings</i>	10 (2)
<i>Suspensions under s36(1)(b) following arrest</i>	3 (9)
<i>Suspensions under s36(1)(c) following conviction</i>	0 (0)
<i>Suspensions under s36(1)(d) following inclusion in a barred list</i>	1 (1)
<i>Suspensions under s36(1)(e) following determination that the cleric presents a significant risk of harm</i>	12 (11)
<i>Suspensions under s36A pending determination of an application to bring proceedings out of time</i>	1 (0)
Applications, reviews & appeals to the President/Deputy President of Tribunals	96 (69)
<i>Application to bring an allegation out of time (s9)</i>	47 applications 13 dismissed

<i>Review of a dismissal (s11(4))</i>	17 applications 11 upheld
<i>Referral of a decision of no further action (s13(3))</i>	14 applications 12 upheld
<i>Consulted by bishop re penalty in case of divorce/conviction (s30(2))</i>	6 applications 0 remitted
<i>Bishop applies for extension: 2 yr. limit for imposing penalty (s30; r.67A)</i>	0 applications
<i>Appeal against notice of suspension (s36(6))</i>	6 appeals 6 unsuccessful
<i>Sec 37 - Rule 86 - Suspension of Bishop</i>	0 appeals
<i>Review of inclusion of entry in list under s38(1)(a) to (d) (s38(2))</i>	6 applications 4 variations of entry

Cases where a penalty of prohibition or removal from office was imposed under s30(1)(a) following conviction and sentence of imprisonment	6 (6)
Cases where a penalty of removal from office or prohibition was imposed under s30(1)(b) following decree of divorce or order for judicial separation	0 (1)
Cases where a penalty of removal from office or prohibition was imposed under s30(1)(c) following inclusion in a barred list	1 (0)

Allegations against Bishops and Archbishops

Formal allegations made to archbishops	2021 (2020)
<i>in respect of a bishop</i>	19 (27)
<i>in respect of the other archbishop</i>	3 (5)
Action taken in 2020 in relation to allegations made in 2020 or earlier	
<i>Dismissed under s11(3)</i>	7 (22)
<i>No further action under s12(1)(a) & s13</i>	7 (2)
<i>Conditional deferment under s12(1)(b) & s14</i>	0 (1)

<i>Resolved by conciliation under s12(1)(c) & s15</i>	0 (0)
<i>Penalty by consent under s12(1)(d) & s16</i>	2 (1)
<i>Formal investigation under s12(1)(e) & s17</i>	4 (3)
<i>Withdrawn (rule 59(1)(a))</i>	1 (0)
<i>No decision as at 31st December 2021</i>	6 (10)
Number of allegations unsuccessfully referred to conciliation before being dealt with under s12(1)(a), (b), (d) or (e)	0 (0)
Number of Vicar-General's courts held	0 (0)
Number of suspensions imposed	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(a) following conviction and sentence of imprisonment	0 (0)
Cases where a penalty of removal from office or prohibition was imposed under s31(1)(b) following decree of divorce or order for judicial separation	0 (0)