

STATUTORY GUIDANCE

Issued by the Clergy Discipline Commission

INTRODUCTION

The Clergy Discipline Commission is established under section 3 of the Clergy Discipline Measure 2003. Amongst its various functions the Commission has responsibility for issuing guidance to persons exercising functions in connection with clergy discipline.

The guidance herein is issued under section 3(3)(b) of the Measure. It should be read alongside the Measure, the Rules, and the Code of Practice.

The Commission's Guidance on Penalties is published as a separate document.

The Clergy Discipline Commission

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PUBLICITY IN CLERGY DISCIPLINE PROCEEDINGS

Publicity before a penalty is imposed

1. Whilst proceedings are under way, there is normally no good reason for the Church to disclose publicly the existence or details of an allegation of misconduct, and the proceedings should be confidential. Although the media may be particularly interested in allegations of misconduct against the clergy, coverage in advance of a determination can be misleading, unfairly damage the reputations of the parties, and damage the Church both locally and nationally. This is particularly the case where an allegation is without foundation and the bishop either dismisses it or decides to impose no penalty. The public does not need to know that an allegation in any particular case has been presented – it merely needs to know that if one is made, it will be dealt with in accordance with the due process of law.

2. Subject to this general principle of confidentiality whilst allegations are being processed, the Commission recommends there are two circumstances when the diocese should disclose that an allegation has been made and that it is being investigated:
 - a. Where a cleric is suspended under the Clergy Discipline Measure, his or her absence will usually need to be explained to the local congregation. Any such explanation should be truthful, and will therefore need to disclose if an allegation has been made, for example: *‘The Reverend [name] has been suspended pending an allegation of misconduct made under the Clergy Discipline Measure. Suspension does not mean the bishop has formed any view that the allegation is true. The matter is being investigated.’* When the suspension comes to an end, that too should be announced to the congregation.

 - b. Where the media already know that an allegation has been made and seek confirmation about it from the diocese, denying what is already in the public domain would be fruitless and merely lead to the Church appearing to be secretive. If approached by the media, the Commission suggests the

diocese should disclose that an allegation under the CDM has been made against the cleric in question, and that it is duly being considered in accordance with the appropriate statutory procedures. The details of the matter should not be revealed publicly at that stage.

3. Where there is a police investigation connected with the alleged misconduct, the diocese should liaise with the police before any public announcement is made.

Publicising penalties

4. The Code of Practice emphasises it is important that the Church should be open about any misconduct that is proved to have taken place. Tribunals therefore announce their decisions in public, giving reasons for their decision.
5. The same principle applies to penalties that are agreed with or imposed by bishops. Where a penalty is imposed other than after a tribunal a record will be uploaded to the Church of England website. In addition to the type of penalty the following will be made public: the name of the Respondent, the diocese, the date of the penalty and the statutory ground of misconduct.
6. The Commission has agreed that an entry in a particular case will be removed from the Church of England website after 5 years, save in the following cases:
 - (i) a rebuke – the entry will be removed at the end of 1 year;
 - (ii) removal from office – the entry will be removed where the cleric re-enters licenced ministry before the period of 5 years has expired.
 - (iii) prohibition – the entry will be removed at the end of the prohibition if the period is longer than 5 years.
7. For the purposes of 6(ii) above, in order for the entry to be removed the cleric in question must inform the Office of the President that they have re-entered ministry and provide the appropriate evidence.
8. To comply with the UKGDPR, the bishop must serve the cleric with a privacy notice so that the cleric is informed that the penalty will be published by the Archbishops'

Council of the Church of England on the Church of England website. **Appendix I** has a template that can be used for this purpose.

9. In particularly serious allegations, such as safeguarding cases, the diocese is encouraged to consider issuing a separate statement to the media, referring to the high standards required and expected of clergy, the serious nature of the misconduct, and apologising for any harm caused to those affected by the misconduct.

10. The Commission recommends that, as a matter of practice, the diocese notifies a congregation directly in all cases where a cleric is removed from office or has his or her licence revoked, and/or where a form of prohibition is imposed. The Bishop may wish to consider a pastoral visit to the parish.

Revised: March 2019, March 2023

Appendix I

Publication of a penalty under the Clergy Discipline Measure - Privacy Notice

The [Bishop] is committed to protecting your personal data. Personal data is any information relating to an identified or identifiable person. This privacy notice explains what to expect when

- i. either you have consented to a penalty as a result of disciplinary proceedings under the Clergy Discipline Measure 2003.; or
- ii. a penalty has been imposed other than by a tribunal as a result of disciplinary proceedings under the Clergy Discipline Measure 2003

It explains why and how your personal information about the penalty will be published in accordance with the UKGDPR [and the EU General Data Protection Regulation (GDPR)].

1. Data controller(s)

The data controller is:

[Name and address of Bishop]

2. Why we collect and use your personal data

Personal information is collected and processed for the following purpose:

To enable the Bishop to carry out his/her responsibilities in relation to the disciplinary process under the Clergy Discipline Measure 2003. The Clergy Discipline Commission's Code of Practice emphasises that it is important for the Church to be open about any misconduct that is proved to have taken place and this will include publishing the penalty to which you have either consented or has been imposed upon you. Penalties are published to

reassure members of the public that the Church has an effective disciplinary process in place and that appropriate penalties will be imposed where misconduct has been committed; and

to protect members of the public from dishonesty, malpractice, seriously improper conduct, unfitness or incompetence by alerting the public to clergy who have committed misconduct.

3. The categories of personal data we process:

The information we process for this [purpose/these purposes] is:

- Your name and title or style
- The penalty (including date imposed)
- Summary of the nature of the misconduct

We also process “special categories” of information that may include:

- Race/ethnicity
- Religion
- Health
- Sex life
- Sexual orientation
- Criminal allegations, proceedings or convictions

4. The lawful basis for using your information

We collect and use personal data under the following lawful bases:

Personal data

- **Public task** (Article 6(1)(e): The Bishop processes your information in performance of a task carried out in the exercise of official authority vested in the controller in accordance with the Clergy Discipline Commission’s Code of Practice. [Code of Practice and other guidance | The Church of England](#)

Special categories and criminal offence data

- Substantial public interest (protecting the public against dishonesty, malpractice etc.), Article 9(2)(g). The Bishop will publish your information for reasons of substantial public interest, for the exercise of a “protective function”, including the protection of members of the public against seriously improper conduct.(Data Protection Act 2018, Part 2, Schedule 1, paragraph 11).

5. Who we collect from or share your information with:

We collected your information from:

- You
- The complaint process

We will not share your data with any other third parties except where specified here. We will be sharing your information with:

- The Archbishops’ Council, for the purposes of publication on the Church of England website
- The general public and parishioners
- The media (e.g. a public statement, when deemed necessary)

6. Your personal data will not be sent to countries outside the UK

7. How long will your data be published?

Your penalty information will be published for 5 years except in the following cases:

- a rebuke – the entry will be removed at the end of 1 year;

- removal from office – the entry will be removed if you re-enter licenced ministry before the period of 5 years has expired. In order for the entry to be removed you must inform the Office of the President that you have re-entered ministry and provide evidence.
- prohibition – the entry will be removed at the end of the prohibition if the period is longer than 5 years.

8. Your rights

You have the following rights regarding your personal data, subject to the restrictions in the Data Protection Act 2018, Schedule 2, Part 1, paragraph 5 '*Information required to be disclosed by law etc or in connection with legal proceedings*':

- The right to be informed about any data we hold about you;
- The right to request a copy of your personal data which we hold about you;
- The right to request that we correct any personal data if it is found to be inaccurate or out of date.

To exercise these rights, please contact [*insert name of relevant contact*] using the contact information provided below.

9. Complaints or concerns

If you have any concerns or queries about how your personal data is handled, please contact the [*insert name of contact*] at:

[*insert email address and/or postal address and phone number*]

You have the right to make a complaint at any time to the Information Commissioner online at: **Data protection and personal information complaints tool | ICO**, or by phone on 0303 123 1113 (local rate).

DELEGATION BY DIOCESAN BISHOPS OF THE DISCIPLINARY FUNCTION

1. Section 13 of the Dioceses, Pastoral and Mission Measure 2007 enables a diocesan bishop by a signed instrument to delegate functions to a suffragan or assistant bishop. An instrument of delegation may provide for the discharge of a delegated function to be subject to such conditions as may be specified in the instrument. The disciplinary function under the Clergy Discipline Measure is a function that may be delegated under section 13 of the 2007 Measure.
2. The Clergy Discipline Measure Code of Practice draws attention to the provisions relating to delegation by a diocesan bishop. In particular, paragraph 93 of the Code encourages each diocesan bishop to sign an instrument so that disciplinary functions may be delegated to a suffragan or assistant bishop where the bishop certifies in writing that there is a conflict of interest in a particular case – this should be done as soon as reasonably practicable after taking office and with the consent of the diocesan synod.
3. To ensure there is always a bishop who is able to discharge delegated disciplinary functions (so that cover is provided, for instance, where a suffragan see becomes vacant, or an assistant bishop is ill or otherwise unable to act) it would be advisable for a diocesan bishop to sign instruments of delegation in respect of at least two suffragan or assistant bishops. Each instrument could provide that the disciplinary function is to be exercised by the relevant suffragan or assistant bishop only in relation to such named clerks in Holy Orders as may be specified by the diocesan bishop in writing from time to time to that other bishop.

Issued: August 2020

THE MEANING OF 'SUFFICIENT SUBSTANCE'

1. The Commission has become aware that some difficulty has arisen over the meaning of '*sufficient substance*' as referred to in section 11(1)(b) of the Measure.
2. There are two stages at which allegations of misconduct are filtered. The first is the preliminary scrutiny report, in which the registrar must form a view as to whether the matter is of '*sufficient substance*'. The second is limited to those cases which are referred for formal investigation under section 17. In deciding whether or not to refer a matter to a tribunal the President applies a further threshold test. The two stages should not be confused.
3. The meaning of '*sufficient substance*' must be read in the full context of the Measure. Section 11(1)(b) requires the registrar to scrutinise the allegation of misconduct with a view to -

*“forming a view as to whether or not there is sufficient substance in the complaint to **justify proceeding with it in accordance with the following provisions of this Measure**”* [emphasis added].

4. Reference to "*the following provisions of this Measure*" means taking one of the courses available to the bishop under section 12. Prior to making a decision under section 12 the bishop seeks an Answer from the Respondent pursuant to Rule 17.
5. Accordingly, in determining whether or not an allegation is of '*sufficient substance*' the registrar must form a view as to whether it justifies an answer from the respondent and, if so, whether or not it warrants the bishop taking one of the courses of action under section 12.
6. The registrar should not form a view as to whether or not it is likely that the matter would be referred to a tribunal by the President. Likewise, for the avoidance of doubt, the test for sufficient substance does not include a threshold of there being a realistic prospect of removal from office.
7. In applying the test of '*sufficient substance*' the following may be of assistance:

- a. The preliminary scrutiny stage is not a fact finding exercise.
 - b. The analysis is carried out without any answer from the respondent.
 - c. The complainant's case should be taken at its highest and the allegations presumed to be credible.
 - d. Consideration should be given as to whether the misconduct alleged falls within one or more of the grounds in section 8 of the Measure.
 - e. Complaints based upon grievances, disagreements, and/or minor acts or omissions, however genuine, are not of sufficient substance and should be dismissed.
8. In all cases the final decision rests with the bishop who must exercise their own judgment. Where a matter is dismissed due to not being of sufficient substance, but the conduct alleged nevertheless gives the bishop cause for concern, the bishop may take appropriate and proportionate action outside of the Measure.

Issued: January 2021

APPLICATIONS FOR PERMISSION TO BRING AN ALLEGATION OF MISCONDUCT OUT OF TIME

1. All allegations of misconduct under the Measure must be brought in a timely fashion and, where possible, within the limitation period as prescribed by section 9.
2. An application for permission to bring an allegation of misconduct out of time should be brought as soon as reasonably practicable after it becomes evident that an allegation of misconduct will be pursued. Significant delays, without good reason, between the date of knowledge of the alleged misconduct and the making of an application may result in the application being dismissed.
3. Where there is an ongoing police investigation or criminal proceedings, a complainant is not precluded from either bringing an allegation within time, or making an application for permission to bring an allegation out of time. However, it will almost always be appropriate for the criminal matter to be determined before progressing the allegation – see Rules 18 and 19.
4. Where a core group has been established this should not be a cause of delay in the bringing of an allegation or the making of an application for permission to bring an allegation out of time. In almost all cases it will not be necessary for the core group to have concluded prior to the bringing of the allegation. In cases where permission to bring an allegation out of time is being sought this should be made expeditiously alongside the core group process.
5. Applications should always set out clearly and concisely why there is a ‘good reason’ for not instituting proceedings at an earlier date and, where available, provide supporting evidence.

Issued: January 2021, amended November 2021

CONFIDENTIALITY AND PRIVACY IN CLERGY DISCIPLINE PROCEEDINGS

1. Allegations of misconduct under the CDM are private and confidential. This is to ensure that matters are dealt with fairly and that the process is not prejudiced. It extends to complainants, respondents and witnesses.
2. Due to the nature of allegations, individuals concerned will have a reasonable expectation of privacy and confidence at common law¹. In addition, their personal data will be subject to data protection law. In certain cases the provisions of section 1 of the Sexual Offences (Amendment) 1992 may also apply (anonymity of victims of certain offences)
3. The default position is that all hearings will take place in private, unless one the reasons provided for in rule 40 applies.
4. **Accordingly, all matters relating to an allegation should be kept strictly private and confidential.** This includes written documents and material which, save for legal representatives, should not be shared with third parties.
5. In particular, individuals (regardless whether or not they are a party) should refrain from making statements, posts, comments or similar on social media, websites, print media or other public fora which in any way reference the details of the allegation, the individuals involved, or give an opinion as to the merits or otherwise of the proceedings.
6. Where an allegation has been referred for determination before a tribunal or court, the Chair may certify that an act or omission, in connection with the proceedings or an order, committed by *any person* is a contempt and refer the matter to the High Court.
7. The Commission has previously issued statutory guidance (see page 3) concerning publicity in CDM cases. That guidance sets out two exceptions where the existence of an allegation may be disclosed without the detail being made public.

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¹ see *Richard v British Broadcasting Corpn* [2019] Ch 168 and *ZX v Bloomberg LP* [2020] EWCA Civ 611.

CONFIDENTIALITY AND PRIVACY IN CLERGY DISCIPLINE PROCEEDINGS FREQUENTLY ASKED QUESTIONS

Paragraphs 306 - 309 of the Code of Practice set out guidance in relation to maintaining privacy and confidentiality during proceedings under the CDM. The following FAQs should be read in conjunction with that guidance.

What is the purpose behind the guidance on confidentiality and privacy?

Proceedings under the CDM involve allegations of serious wrongdoing including accusations which may constitute a criminal offence. Due to the nature of these allegations all individuals involved (including both the complainant and the respondent) will have a reasonable expectation of privacy and confidence. The guidance is designed to ensure that allegations are dealt with fairly and free from prejudice.

Can I share documents with others, for example, witnesses I may wish to call?

Yes, documents such as the allegation of misconduct or answer can be shared with those who have a legitimate reason for seeing them. For example, legal professionals, witnesses, healthcare professionals or others providing support during the disciplinary processes. Documents should not be used in such a way which may prejudice the proceedings and the parties' expectation of privacy and confidence.

Can I speak about my experiences with others?

Yes, the purpose of the guidance is not to restrict the right of individuals to speak about their experiences. However, care should be taken not to put into the public domain matters which would unfairly prejudice a hearing before the tribunal or cause significant distress to others involved in the process.

Does this guidance restrict the right of the press of report on disciplinary proceedings?

No. Normally, hearings before a tribunal take place in private and therefore the press are not able to attend. However, all penalties by consent and final determinations of a tribunal are made public and the press are free to report on them.

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