

# GUIDANCE ON PENALTIES

Issued by the Clergy Discipline Commission

March 2023

## INTRODUCTION

*The reputation of the Church in the community depends to a great extent on the integrity and example of its clergy, who should recognize their role as public representatives of the Church. Their lives should enhance and embody the communication of the gospel.*

The Guidelines for the Professional Conduct of the Clergy (2015)

The purpose of the administration of discipline is to deal with clergy who are found to have fallen below the very high standards required and expected of them.

For the individual member of the clergy who is subject to discipline, this involves not just the imposition of an appropriate penalty, but also pastoral support, encouraging repentance, rehabilitation, attempting reconciliation, and moving on constructively from the past.

For the victim, the administration of discipline must have regard to the interests of justice for all who may be affected by the faults, failings or shortcomings of the clergy, support the collective good standing of all faithful men and women who are called to serve in the ordained ministry, and ensure the clergy continue to be worthy of the great trust that is put in them as ordained ministers.

The Clergy Discipline Measure 2003 provides for a range of penalties to be imposed in cases of clergy misconduct. The Clergy Discipline Commission gives general advice to bishops, archbishops, disciplinary tribunals and the courts of the Vicars-General as to the penalties which are appropriate in certain circumstances.

This advice is given in the interests of justice so that there will be consistency in the penalties imposed. The Clergy Discipline Commission is not laying down prescribed penalties which must be imposed, but seeks to provide guidelines. Those who have a duty to determine an appropriate penalty must take into account this guidance.

**The Clergy Discipline Commission**

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## TYPES OF PENALTY

**Prohibition for life:** This is the most serious penalty that can be imposed. It prevents the respondent without limit of time from exercising any ministry or functions as a clerk in Holy Orders. It should be imposed only where the misconduct is grave and there appears to be no realistic prospect of rehabilitating the respondent back into ministry.

**Limited prohibition:** This prevents the respondent from exercising any ministry or functions for a specific period of time. It is suitable for serious cases where there is a realistic prospect that the respondent, with the appropriate pastoral, training and other necessary support, could in the future resume ministry.

**Resignation (by consent only):** The respondent relinquishes the preferment held at the time, but this does not prohibit him or her from seeking to serve in Holy Orders elsewhere. In serious cases, resignation could be combined with prohibition for life or limited prohibition.

**Removal from office:** This penalty removes the respondent from the preferment held at the time, but does not prohibit him or her from serving as a clerk in Holy Orders in another post. In serious cases, removal could be combined with prohibition for life or limited prohibition.

**Revocation of licence:** For clergy who hold a licence from the bishop, it may be appropriate to terminate the licence. Revoking the licence does not prevent them from seeking to serve in Holy Orders elsewhere. In serious cases, revocation could be combined with prohibition for life or limited prohibition.

**Injunction:** An injunction requires a respondent to do, or to refrain from doing, a specified act, and is usually limited in time. They can also perform an important restorative function and aid in developing understanding. This is particularly the case where the respondent has shown a lack insight towards the misconduct. More than one injunction can be imposed arising out of the same complaint. An injunction will be appropriate for cases where a respondent is generally capable of performing his or

her normal duties but ought to be stopped from dealing with a particular aspect of those duties. Injunctions could also prescribe specific training to be taken or oversight for a specified period or provide an opportunity for the respondent to demonstrate insight and learning from the disciplinary experience. The injunction must be worded with sufficient clarity so that there is no doubt as to what the respondent is required to do or is prohibited from doing. Any breach of an injunction is an act of misconduct under the Measure, and could result in further disciplinary proceedings.

**Rebuke:** This is the least serious of the penalties. It can be used for acts or omissions of a less serious nature but which nevertheless fall within the definition of misconduct.

**Conditional deferment (by consent only):** A conditional deferment means that the complaint is kept on file for up to five years, but no other action is taken on it by the bishop unless a further complaint of misconduct is made within that period. Conditional deferment is most likely to be suitable where the respondent admits the misconduct, and where such misconduct is not serious but is out of character and unlikely to be repeated.

**Conditional discharge:** A tribunal or court may decide not to impose a penalty having taken into account all the circumstances of the misconduct and the respondent's character. It has the option of making an order discharging the respondent subject to the condition that there must be no more misconduct within a period not exceeding two years. If the respondent does commit further misconduct within that period the disciplinary tribunal or court dealing with it on the subsequent occasion may, in respect of the earlier misconduct, impose any penalty that could have been imposed originally.

## TYPES OF MISCONDUCT

### **Financial misconduct**

**1.** In financial matters clergy are in a position of trust. As chairs or members of a PCC they hold fiduciary responsibilities. Dishonesty brings the church into disrepute and is a severe breach of trust.

**1.1** It is dishonest for clergy to interfere with, or misappropriate, the church's money. This includes, but is not limited to, collection plate offerings and fees for occasional offices such as weddings and funerals.

**1.2** Dishonesty, which includes a wilful failure to declare fees, is a serious act of misconduct and will likely warrant removal from office and prohibition. Account should be taken of the sums involved, and at the higher end a prohibition for a period of up to 4 or 5 years could be appropriate. Where theft is systematic and takes place over a prolonged period of time, or where it involves a serious breach of trust or the victim is particularly vulnerable, there may be little realistic prospect of reintroducing the respondent back into ministry, and prohibition for life should usually follow.

**1.3** At the lower end of the scale is the cleric who on a single occasion takes money belonging to the church, intending to repay it, and does repay it quickly without any prompting. This is a breach of trust because church monies are wrongfully used for private purposes, but there is no financial loss to the church and a rebuke may be appropriate. An injunction could be imposed prohibiting the cleric from having any dealings with financial matters. If it were to happen on more than one occasion, removal from office with a limited prohibition could be appropriate.

## **Sexual misconduct**

**2.** Sexual misconduct is usually a deliberate and damaging failure to comply with the high standards of Christian behaviour required of clergy. Depending on the circumstances, the misconduct may also be a criminal offence. Clergy who commit sexual misconduct should be dealt with firmly and in a way which will protect those who could be harmed if the respondent were otherwise to be allowed to remain in ministry.<sup>1</sup>

**2.1** Sexual assault on children and vulnerable adults is a gross violation and causes lasting trauma to the victims. In almost all cases removal from office and prohibition for life are appropriate. The same is likely to apply to sexual assaults on adults.

**2.2** Adultery is destructive of marriages and is hurtful and disturbing for the children of the families affected. If the adultery is with a person within the cleric's area of pastoral responsibility that is a significant aggravating factor particularly if issues of vulnerability, exploitation, and abuse of position arise. Removal from office and prohibition, either for life or for a limited time, are usually appropriate. It does not, however, follow that sexual misconduct falling short of adultery should automatically attract a lesser penalty. Sexual misconduct outside of marriage is contrary to the Church's teaching and should also be dealt with firmly.

**2.3** Downloading, distributing, or otherwise possessing child sexual abuse images is a serious and damaging offence. Every indecent photograph of a child is an image of a child being abused or exploited. Downloading such photographs continues the injury done to the victim through further dissemination of the pictures. Children suffer shame and distress continuing into adulthood from the knowledge that indecent images of them are in circulation. Anyone convicted of possessing child sexual abuse images should be regarded as complicit with the original abuse involved in the making of the images. There will be little realistic expectation that

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<sup>1</sup> See the judgment of the Arches Court of Canterbury in *The Reverend David Gilmore (2011)*, at paragraph 42.

the cleric could be safely restored into ministry. Removal from office and prohibition for life should normally be imposed.

**2.4** Downloading, viewing or distributing lawful pornography is contrary to the exemplary standards of moral behaviour that clergy are called to display. Account should be taken of the nature of the material, the extent and frequency of the viewing, and where the material was accessed or stored. Using church equipment to access or share material is an aggravating feature as is viewing material on church property or in the presence of others.



## **Misconduct in public ministry**

3. By virtue of their office, great trust is placed in the clergy by members of the Church and by the wider community. Clergy are expected to be worthy of this trust, and are required to uphold Christian values in their pastoral ministry and in performing other duties.

**3.1** Cases of misconduct in the course of carrying out normal duties of ministry may often be suitable for resolution by conciliation. This is particularly so where pastoral or personal relationships have been damaged but not irreparably damaged. Bishops, when deciding on the appropriate course to take in misconduct proceedings, are always encouraged to consider whether a particular case could benefit from conciliation.

**3.2** Misconduct such as persistent rudeness to parishioners, lateness without good reason, or a failure to comply with formal requirements such as keeping the register book of services may all merit a rebuke, with or without an injunction to ensure that there is no repetition. Where the cleric has no previous findings of misconduct and the failure is time limited, or where it takes place in the context of other unusual pressures on the respondent, conditional deferment or discharge could be appropriate. If the misconduct were to be repeated in defiance of an injunction, removal from office would be likely to follow.

**3.3** Clergy are expected to play a full part in parish life. Failure to conduct parish affairs, which includes the chairing or conduct of PCC meetings, in accordance with the professional standards expected may result in a rebuke and injunction. Persistent and deliberate misconduct may, exceptionally, result in removal from office and a limited prohibition.

**3.4** Clergy will meet parishioners in need of pastoral support who are distressed, lonely, sick, elderly, or otherwise vulnerable. There is an intrinsic imbalance in relationships between clergy, who are in a position of trust and responsibility, and those who turn to them for help. Consequently, it is a serious matter if clergy exploit the trust placed in them, and develop inappropriate relationships with people in

their pastoral care. Such inappropriate relationships include close emotional or intimate relationships falling short of sexual misconduct, inappropriate messaging (via text, social media or some other forum), and relationships where clergy take inappropriate advantage of the financial generosity of the person in their care. Where there are serious non-sexual pastoral abuses, committed over a prolonged period of time, or an extremely serious isolated incident, removal from office and limited prohibition will usually be appropriate. For less serious cases, a rebuke and injunction requiring training on pastoral boundaries may be appropriate.

**3.5** Anyone who seeks pastoral guidance and advice from a member of the clergy is entitled to expect that the cleric concerned will not pass on to a third party confidential or personal information, without his or her consent or other lawful authority. Any failure by a member of the clergy to observe this principle can cause distress to the person concerned and is damaging to the position of trust enjoyed by clergy. Depending on the gravity of the circumstances and nature of the disclosures, removal from office could be appropriate in the most serious cases.

## **Personal misconduct**

**4.** Misconduct in private or family life can take many different forms. No guide on penalties can comprehensively cover all possible situations. What follows is guidance in relation to particular examples of misconduct that can be used as indicative of the appropriate penalty for other types of behaviour.

**4.1** Given the nature of ordained ministry there is no separation between the public and home life of clergy<sup>2</sup>. At all times and in all places clergy must manifest a lifestyle which is based on that of Jesus Christ. Conduct that, in other professions would be inherently private and would not lead to professional disciplinary action, can lead to disciplinary proceedings against clergy. Inappropriate text messaging, emailing or other communications that cross professional boundaries will likely result in a rebuke and injunction. Where the misconduct takes place over a prolonged period of time and involves vulnerable adults, children and/or a breach of pastoral duties, a limited prohibition may be appropriate.

**4.2** Failing to maintain professional boundaries can cause serious pastoral harm. Misconduct such as inappropriately accepting gifts or inappropriate and frequent social contact can in serious cases result in removal from office and/or a limited prohibition. Account should be taken of the nature and value any gifts, the period of time the misconduct took place over, the context of the behaviour and the insight of the Respondent into why the misconduct took place.

**4.3** Drunkenness without any aggravating features should normally be met with a rebuke or a conditional deferment or discharge. But it may be a sign that the cleric has a particular problem for which help is needed; a bishop should be alert to this and take steps to provide the appropriate pastoral support. Drunkenness during services or other official engagements is more serious, especially where there is a repeated pattern of such behaviour. This may merit a removal from office.

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<sup>2</sup> See Guidelines for the Professional Conduct of the Clergy paragraph 10.1

**4.4** Being convicted for driving with an alcohol concentration above the prescribed limit is a serious matter. Parliament has set a prescribed limit of alcohol for drivers, on the basis that drivers who are above it are unlikely to be fit to drive. Other road users are knowingly put at risk by intoxicated drivers. Depending on the circumstances, including the level of intoxication and whether any injury or damage to property was caused, removal from office and prohibition for one or two years could be appropriate.

**4.5** Being in unlawful possession of a controlled drug is a criminal offence and is a serious failing by any ordained minister. The penalty will depend on the type of drug, the amount involved and all the surrounding circumstances, but for a class A drug removal from office and prohibition should normally follow.

**4.6** Supplying a controlled drug to any third party is a serious criminal offence. Regardless of the type of drug it is likely that removal from office and lifetime prohibition would be appropriate.

**4.7** The use of blasphemous, violent or offensive language or behaviour is unacceptable at all times. At the lower end a rebuke and injunction may be appropriate. Where such behaviour takes place within an ecclesiastical context the misconduct is significantly aggravated. Where the behaviour is aggravated and occurs frequently it may cross the threshold into a form of prohibition.

**4.8** Physically aggressive violent behaviour and all other forms of abusive conduct have no place in society and must be dealt with firmly. Likewise, any violence (physical or verbal) in the home is destructive of family life and damaging to the victims and should be dealt with firmly. Removal from office and prohibition for a specific period of time or for life should normally follow. Controlling and coercive behaviour that falls short of violence, whether taking place inside or outside of the home, should not necessarily attract a lesser penalty, particularly where it takes place over a prolonged period of time.

**4.9** Engaging without authorisation in a trade, profession or other activity which adversely affects the performance of the duties of office of a member of the clergy

is inconsistent with the responsibilities of ministry. An injunction to stop such conduct should normally be imposed, together with a rebuke. Where the trade, professional or other activity is incompatible with the high moral standards of priestly life removal from office and/or a form of prohibition may be appropriate,

## **Safeguarding misconduct**

**5.** The safeguarding of children, young persons, and vulnerable adults is an integral part of the life and ministry of the Church. All clergy are required to follow guidance issued by the House of Bishops on matters relating to safeguarding. Failing to respond to safeguarding disclosures in accordance with the relevant guidance can lead to a delay in providing appropriate pastoral care, the proper investigation of complaints by the statutory authorities, and contribute to re-trauma for the survivor.

**5.1** An intentional disregarding of safeguarding policy will likely lead to removal from office and a limited prohibition. In cases where the respondent has acted to shield or protect a known perpetrator of sexual abuse or serious other harm, it is likely that a prohibition for life would be appropriate.

**5.2** Where the cleric has been neglectful or inefficient in the performance of safeguarding duties (regardless of how the allegation is framed) it may be appropriate to impose a rebuke. However, account should be taken of the respondent's age, experience, and seniority. Where the misconduct takes place over a prolonged period of time and has put others at risk removal from office and a limited prohibition should follow.

**5.3** In all cases an injunction should be considered requiring further safeguarding training and, where appropriate, the ongoing supervision of the cleric in safeguarding matters.

## APPROACH TO PENALTIES

- 6.** Any penalty must be proportionate to the misconduct involved. A penalty outside the guidelines can be imposed if that would be appropriate, taking into account all the circumstances of the case.
- 6.1** Tribunals and courts should consider inviting the bishop or archbishop to express a view on penalty under section 19(2) CDM 2003.
- 6.2** Those imposing penalties should first consider the level of harm inflicted as a result of the misconduct, alongside the level of culpability of the respondent. Harm is not only suffered by individuals, and all clerical misconduct harms wider confidence in the Church. Account should then be taken of any aggravating and mitigating features of the case. If two or more factors listed describe the same feature, care should be taken to avoid 'double-counting'. Taking all of that into account, and any other relevant circumstances of the case, including the representations of the complainant, or where different the victim, and the respondent, the penalty should then be decided upon. Those imposing the sanction should start by looking at the lowest available penalty, considering the potential applicability of each level of penalty in order of seriousness and only moving into a more serious category if satisfied that the misconduct crossed the threshold to justify it.
- 6.3** The below table provides a staged approach to the imposition of a penalty. It brings together the most important and commonly found aspects of harm and culpability, as well as aggravating and mitigating factors. The factors set out in stages 1 and 2 are not intended to be comprehensive and are not listed in any particular order of priority. Likewise, the questions in stage 3 are the starting point and should be read in conjunction with the narrative sections of this guidance set out above.
- 6.4** When determining the appropriate penalty the bishop, court or tribunal should set out the factors they have taken into consideration, including aggravating and mitigating features of the misconduct, so that all those who read the decision will understand the basis upon which it was made.

**STAGE 1**

**CONSIDER HARM AND CULPABILITY (NON-EXHAUSTIVE)**

*Consider if any of the following apply*

<b>HARM</b>	<b>CULPABILITY</b>
<ul style="list-style-type: none"><li>▪ Spiritual and/or psychological and/or physical harm</li><li>▪ Vulnerability of victim</li><li>▪ Multiple victims</li></ul>	<ul style="list-style-type: none"><li>▪ Significant degree of planning</li><li>▪ Previous misconduct against the victim</li><li>▪ Misconduct motivated by discrimination</li></ul>

**STAGE 2**

**CONSIDER AGGRAVATING AND MITIGATING FACTORS (NON-EXHAUSTIVE)**

*Consider if any of the following apply*

<b>AGGRAVATING</b>	<b>MITIGATING</b>
<ul style="list-style-type: none"><li>▪ Misconduct committed over prolonged period of time/patterns of behaviour</li><li>▪ Previous findings of misconduct</li><li>▪ Misconduct constitutes a criminal offence</li><li>▪ Breach of position of trust/power/pastoral relationship</li><li>▪ Attempts to conceal misconduct</li><li>▪ Respondent's age, experience, and length of service in Holy Orders</li></ul>	<ul style="list-style-type: none"><li>▪ Early admission of misconduct</li><li>▪ Genuine remorse</li><li>▪ Willingness to learn from past errors</li><li>▪ Recompense e.g. repayment in cases of theft</li><li>▪ Limited period of misconduct</li><li>▪ Respondent's age, experience, and length of service in Holy Orders</li></ul>

**STAGE 3**

**CONSIDER PENALTY**

*Penalties can be combined*

**Conditional deferment/Conditional discharge**

- Is the misconduct at the lowest end of seriousness?
- Were the actions or omissions of respondent out of character and are they unlikely to be repeated?



### **Rebuke**

- Is the misconduct of a less serious nature such as to warrant a rebuke?
- In considering whether a rebuke is the appropriate penalty, it will often be necessary to consider whether the threshold for prohibition is crossed, if it is not, then it follows that a rebuke may be appropriate.
- Consider combining the rebuke with an injunction.

### **Injunction** *[see appendix A for examples]*

- Should the respondent be prohibited from carrying out certain functions or duties?
- Should the respondent be required to undertake further training and/or be subject to continuing supervision and/or oversight?
- Is there a need for the respondent to formally reflect on the misconduct and its impact?
- In cases of financial loss, should an injunction requiring repayment be made?
- Consider the precise wording and period of the injunction.

### **Resignation/Removal from Office/Revocation of licence**

- Can the respondent continue to exercise public ministry in their current role?
- In recognition that the ministry of incumbents and others is shared the bishop, the confidence of the bishop in the exercise of that ministry in a particular place is a relevant factor. Tribunals and courts should consider seeking the view of the bishop/archbishop under section 19(2) CDM 2003.

### **Limited Prohibition**

- Is the threshold for prohibition from ministry crossed?
- Is there a realistic prospect that the respondent, with the appropriate pastoral, training and other necessary support, could resume public ministry in the future?
- Consider the length of prohibition, taking into account the circumstances of the case including aggravating and mitigating factors.
- Where the bishop, tribunal or court considers it is appropriate to do so, the period of any prior suspension imposed under section 36 or 37 CDM 2003 may be taken into account in determining the length of a period of limited prohibition.

### **Prohibition for life**

- Is the threshold for prohibition from ministry crossed?
- Is the case of the upmost seriousness that only a prohibition for life is appropriate?
- Is there any realistic prospect of rehabilitating the respondent back into ministry?

## APPENDIX A

### **Example wording for injunctions**

*(to be amended as appropriate)*

#### **Training (whilst continuing in ministry)**

An injunction that the respondent must undertake within the period of 2 years of the date of this decision such training in appropriate working, supervision and external relationships as the Diocesan Bishop shall in his absolute discretion direct.

A separate and further injunction to undertake and complete within 6 months of the date of this decision (i) an anger management course approved by the Diocesan Bishop and (ii) a course relating to the safeguarding of children and venerable adults as approved by the Diocesan Bishop.

#### **Training (after removal from office and limited prohibition, to be completed prior to the commencement of ministry)**

An injunction that, in the event the Respondent is granted a form of authority to exercise ministry, he must undertake and complete, prior to the recommencement of ministry, training courses relating to (i) the safeguarding of children and vulnerable adults; (ii) pastoral boundaries; (iii) appropriate working, diversity and inclusion and external relationships as directed by the Diocesan Bishop of the area where he is to exercise ministry having regard to the findings and concerns set out in the Panel's written decision.

#### **Training (after removal from office and limited prohibition, to be completed whilst in ministry)**

An injunction that, in the event the Respondent is granted a form of authority to exercise ministry, he must undertake and complete within 6 months of the date of that grant, training courses relating to (i) the safeguarding of children and vulnerable adults; (ii) professional boundaries; and (iii) conflict management, such courses to be approved by the Diocesan Bishop of the area where he is to exercise that ministry, having regard to the nature of the admitted misconduct.

### **Supervision and oversight (whilst continuing in ministry)**

An injunction that the Respondent must cooperate with the supervision and oversight of his ministry. The supervision to be provided by such person and in such respects as the Diocesan Bishop shall direct in his absolute discretion for a period of 1 year from date of this decision.

### **Supervision and oversight (after a limited probation without removal from office)**

An injunction that the Respondent must cooperate with the supervision and oversight of his ministry by such person and in such respects as the Diocesan Bishop shall determine in his absolute discretion for a period of 2 years from the recommencement of his ministry.

### **Supervision and oversight (after removal from office and limited probation)**

An injunction that, in the event the Respondent is granted a form of authority to exercise ministry, he must cooperate with the supervision and oversight of his ministry from a senior cleric selected by Diocesan Bishop of the area where he is to exercise ministry and in such respects as that Bishop may determine at his absolute discretion, for a period of 1 year from the commencement of his licenced ministry.

### **Reflection and education (to be carried out during a period of limited prohibition)**

An injunction that within the period of the prohibition the Respondent must:

(a) reflect on [moral integrity and the harms of online pornography to individuals and society and especially to those vulnerable to, grooming, trafficking and coercion], and that he do maintain a reflection portfolio during this time to be submitted to the Bishop along with a written assessment of 3000 – 5000 words to demonstrate his learning which is to remain confidential to the Bishop.

(b) to meet with the Bishop to review that learning, and restore mutuality of trust in their shared cure of souls.

**Reflection and education (to be carried out whilst in ministry)**

An injunction that the Respondent must read and reflect deeply on the victim impact statement submitted by the complainant and that he must read and study carefully [*Escaping the Maze of Spiritual Abuse* by Oakley and Humphries,] and that he must write a confidential 2,000 word essay, reflecting on how his behaviour has caused damage and how he will prevent that happening again to be submitted to the Bishop no later than after evensong on the third Sunday in Advent.

**Prohibition on contacting a third party**

An injunction that the Respondent must not contact [*person X*] whether directly or indirectly by any means of communication whatsoever for [*an indefinite period / a period of X years*].

**Prohibition on carrying out financial business**

An injunction that the Respondent is prohibited from carrying out any financial transactions, including but not limited to, signing cheques, authorising bank transfers and handling cash, donations, gifts, or other such monies, in relation to the work and ministry of the Parochial Church Council of the [name of parish] for a period of 2 year from the date of this decision.