

GENERAL SYNOD

SYNOD COMPLAINTS PROCESS

Summary

The Business Committee keeps under review the Code of Conduct for Synod members. It would like to take the mind of Synod on whether changes are needed, for example to introduce a formal complaints process. To support the Synod in reviewing that, this paper sets out some of the considerations, issues and options.

Introduction

1. This paper considers the issues associated with establishing a more formal process for considering code of conduct complaints against members of the General Synod. It has been prepared by staff under the guidance of the Business Committee of the General Synod.
2. The General Synod of the Church of England has agreed a code of conduct for members which is publicly available [here](#). This was last reviewed in 2017. The Business Committee keeps the Code of Conduct under review and has considered the case for making this fully enforceable. It has wanted to ensure the Code remains principles-based and genuinely incentivises good behaviour among all members of the General Synod, without unnecessary bureaucracy or in any way stifling the good debate and diversity of opinions that the General Synod values. It has also consistently considered that a Christian body, operating by Christian values, ought to be able to rely on members' faith to govern good behaviour.
3. The Business Committee keeps the Code of Conduct under review. It has received representations that whilst behaviour in the Chamber continues to be (mostly) good, that behaviour on social media and in the margins of Synod can be less good and it has heard members argue for a more formal process for dealing with their complaints against other members.
4. The Business Committee has not taken a decision on the way forward and would welcome engagement with Synod on this topic. For this reason two opportunities are being planned for the forthcoming Group of Sessions – a fringe discussion on Saturday 8 July at 1245 in P/L/002 and a debate in Synod on Tuesday 11 July at which members will have an opportunity to indicate which way forward they would like to take.
5. To support those discussions this paper provides background on current and other complaints processes. It therefore examines what a more formalised process for dealing with complaints might look like, the issues associated with that (including the legislative and financial implications) and identifies the key choices. Note that General Synod members are office-holders not employees and therefore employment law procedures do not apply.

Complaints processes

6. Most legislatures and similar bodies have formalised complaints processes. Annex 1 includes some examples and references. Annex 2 identifies some of the generic features and issues that the Synod would need to address were it to wish to proceed with this.
7. The Code of Conduct sets out the complaints procedure at paragraphs 28 and 29:

If any member believes that another member has acted in a way that conflicts with this Code of Conduct, they are encouraged in the first instance to speak directly to their brother or sister in Christ. If a member continues to act in such a manner, this should be reported to the Business Committee. If circumstances render this inappropriate, members should report the matter to the Clerk to the Synod or the Secretary General. The Chair of the Business Committee may choose to write to members if they consider that they have breached the Code, with a request (which may be made public) that they cease to do so in future.

8. Note that at present complaints and discipline are a matter for the Business Committee of the General Synod and that the principal sanction is a letter, which may be made public
9. There are a number of options available to the General Synod at this point:
 - It could retain the current code of conduct with the same informal procedures for resolving disputes;
 - It could move introduce a more formalised complaints process. If the General Synod favours this it would need to introduce complaints process but there would be important choices including what the behavioural standard is (do we test against a bullying, harassment and discrimination policy or a set values for the General Synod) and what behaviour is covered (is it only behaviour connected with Synod or is it about the behaviour of the person – if the latter, could this scheme end up picking up complaints that might be parochial or diocesan matters).
10. There are pros and cons to each of these approaches and the General Synod will be invited to express a view on which position it wishes to take.

Legal and financial issues

11. Fuller analysis of the legal issues will depend on the options that the General Synod wishes to take. Nonetheless the following general observations apply:
12. The General Synod has powers to establish such procedures as it needs for its own functioning and as such there are broadly no legal constraints on establishing a process and policy. It is probable that the Standing Orders of the General Synod would need amendment to accommodate the disciplinary process depending on precise choices (eg if the decision-maker is to be a Committee of Synod, establishing that could need a new standing order).
13. The legal issues arise at the sanctioning stage and in particular at the more severe sanctions. Standing orders cannot be used to suspend rights to be a member of the General Synod. For members of the House of Laity we would need to change the Church Representation Rules 2020. This would require a 2/3 majority in the General Synod. For members of the House of Clergy and House of Bishops this would require changing canons H2 and H3 (and possibly a measure to permit this) since these set out the rules for membership and do not include provision for disqualification.
14. In terms of costs, any estimate will be dependent on assumptions on the number of cases, the amount of time taken to deal with these (and in particular how complex the cases are), the number of staff involved and the level and seniority of the resource. A rough estimate for indicative purposes might be that if there were 20 cases a year that could cost £100,000 a year if there were some relatively simple test to adjudge and £200,000 a year if there were more judgment and complexity in the test.

Risks and issues

15. The biggest risks of such a formal complaints process would be:

- a. That we design a system to deal with a handful of cases but it becomes overwhelmed with cases and as a result is incapable of providing rapid justice;
 - b. That rather than dealing with bad behaviour in the Church it become a vehicle for increasing conflict - sweeping up vexatious questions/ weaponization of behaviours;
 - c. That as cases become more contested and complex – the cost, including of professional legal advice, is high
 - d. That it constrains debate as people hold back from commenting in fear of complaints;
 - e. That it unfairly penalises those with disabilities, especially neurodivergent characteristics; and
 - f. That sanctions do not change behaviours – and that the same behaviour continues to happen, but without being able to claim individuals as Synod members;
16. The risks and issues associated with not having such a process might include:
- a. That the failure to deal with cases of bad behaviour normalises such behaviour and makes Synod less of a safe place for all Christians;
 - b. That the failure to deal with cases damages the reputation of Synod in the eyes of the Church and beyond – noting that Synod is increasingly out of line with other legislatures in not having a formal complaints process;
 - c. That it increases the pressure on other processes – diocesan or whatever – to deal with such cases in the absence of a Synod process.

Conclusion

17. The Business Committee looks forward to the discussion with Synod and to taking its mind on the way forward.

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(on behalf of the Business Committee)
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EXAMPLES OF CODES OF CONDUCT AND COMPLAINTS PROCEDURES

A: PARLIAMENTARY COMMISSIONER FOR STANDARDS: [detail here](#)

The Parliamentary Commissioner for Standards is an independent officer of the House of Commons, appointed for 5 years:

- Investigates allegations that MPs have broken the Rules of Conduct
- Oversees complaints from the parliamentary community about harassment, bullying or sexual misconduct by MPs
- Reviews the Code of Conduct and makes recommendations to the Committee on Standards
- Keeps the Register of Members' Financial Interests and three other Registers which the House requires

They cannot investigate:

- How an MP has responded to concerns or the standard of service they have provided
- An MP's views or opinions on social media
- How an MP has voted in Parliament or the policies they do or do not support
- What happens in the House of Commons chamber, this is a matter for the Speaker
- Members of the House of Lords, these complaints should be directed to the Lords Commissioners
- Complaints about how Ministers carry out their Ministerial duties, the Ministerial Code is separate to the Code of Conduct
- Complaints about MPs' expenses, this is regulated by the Independent Parliamentary Standards Authority (IPSA)
- Data breaches under the GDPR or Data Protection Act 2018, this is a matter for the Information Commissioner's Office (ICO)
- Any criminal offences, which should be reported to the police

Extract from the Rules of Conduct

“Members are expected to observe the following rules and associated Resolutions of the House:

Members shall base their conduct on a consideration of the public interest, avoid conflict between personal interest and the public interest and resolve any conflict between the two, at once, and in favour of the public interest.

No Member shall act as a paid advocate in any proceeding of the House

The acceptance by a Member of a bribe to influence his or her conduct as a Member, including any fee, compensation or reward in connection with the promotion of, or opposition to, any Bill, Motion, or other matter submitted, or intended to be submitted to the House, or to any Committee of the House, is contrary to the law of Parliament.

Members shall fulfil conscientiously the requirements of the House in respect of the registration of interests in the Register of Members' Financial Interests. They shall always be open and frank in drawing attention to any relevant interest in any proceeding of the

House or its Committees, and in any communications with Ministers, Members, public officials or public office holders.⁴

Information which Members receive in confidence in the course of their parliamentary duties should be used only in connection with those duties. Such information must never be used for the purpose of financial gain.

Members are personally responsible and accountable for ensuring that their use of any expenses, allowances, facilities and services provided from the public purse is in accordance with the rules laid down on these matters. Members shall ensure that their use of public resources is always in support of their parliamentary duties. It should not confer any undue personal or financial benefit on themselves or anyone else, or confer undue advantage on a political organisation.

Members shall never undertake any action which would cause significant damage to the reputation and integrity of the House of Commons as a whole, or of its Members generally.”

It is worth noting that the Parliamentary Commissioner for Standards only deals with a sub-section of the code of conduct for members of Parliament – the “rules of conduct”. Other aspects are covered by a voluntary code. The Commissioner focuses on financial arrangements and breaches of financial controls – non-declaration of interests etc – rather than conduct and behaviour. They are also responsible for advising on the Code itself and for maintaining the registers of interests. And they play no role in policing social media comments.

B: LOCAL GOVERNMENT AND COUNCILLORS

(taken from the website of the Local Government and Social Care Ombudsman)

“The system of regulation of standards of member conduct in England is governed by the Localism Act 2011. This system applies to county, district and unitary councils, London boroughs, the Greater London Authority, and parish and town councils. Local authorities must have a Code of Conduct for members, which must be consistent with the Nolan Committee’s principles of selflessness, honesty, integrity, objectivity, accountability, openness and leadership.

All local authorities (other than parish and town councils) must have procedures in place to deal with complaints about member conduct. It is for the authority to decide the details of those procedures, but they must appoint at least one Independent Person whose views are to be taken into account before making a decision on a complaint that they have decided to investigate.

Complaints about the conduct of parish and town councillors are handled by the Principal Authority, which may be a county, district, unitary or borough council. Case law, R (Harvey) v Ledbury Town Council, has found that such complaints must be investigated under the standards procedures and not through other processes such as staff grievance procedures.

Complaints may be about a councillor's conduct through their Monitoring Officer and Standards Committees. Such complaints may be about councillors' actions relating to a council function such as:

- *giving incorrect advice or information*
- *involvement in decision-making*
- *conduct, such as comments about a complainant on a social media site or behaviour in a council meeting, and*
- *a breach of the Code of Conduct, such as a failure to disclose a non-pecuniary interest.*

The Ombudsman does not offer a right of appeal against a council's decision on member conduct complaints, but we can consider if there was fault in the way the council considered the complaint. We will only investigate complaints if there is sufficient injustice to warrant our involvement or we consider it in the public interest to do so.

We (ie the Ombudsman) may also be able to investigate complaints about the way the council has investigated the complaint about parish or town councillors. But we would need to consider what we could ultimately achieve as we could not investigate the actions of the town or parish council itself. We cannot investigate complaints about a failure to disclose a disclosable pecuniary interest, because this could be a criminal matter which would be for the police to investigate – that said, councils should have protocols with their local police as to how to deal with such complaints. We would also not normally investigate a complaint if a separate appeal right exists, such as a planning applicant complaining about a councillor's involvement in voting against their planning application.”

Individual councils have different arrangements but looking at the example of the London Borough of Sutton:

- the code of conduct forms part of the constitution of the London Borough of Sutton [here](#)
- It requires that “you must comply with this Code whenever you: (a) conduct the business of the Authority (which, in this Code, includes the business of the office to which you are elected or appointed); or (b) act, claim to act or give the impression you are acting as a representative of the Authority” but does not cover where they are acting in a private capacity.
- It forms a set of general obligations which include:
 - Do treat others with respect.
 - Do not do anything which may cause the Authority to breach any of the provisions in the Equality Act 2010.
 - Do not do anything which may cause you or the Authority to breach any of the provisions in the Bribery Act 2010.
 - Do not bully or harass any person.
 - Do not intimidate or attempt to intimidate any person who is or is likely to be: (a) a complainant, (b) a witness, or (c) involved in the administration of any investigation or proceedings,
 - Do not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.
 - Do not disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, unless:

- Do not prevent another person from gaining access to information to which that person is entitled by law.
 - Do not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.
 - Do not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.
 - Do not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties.
 - Do ensure, when using or authorising the use by others of the resources of the Authority [that they are not used for party political purposes or other improper purposes
 - Do ensure, when taking decisions as part of or on behalf of the Authority that you have regard to any relevant advice provided to you by the Authority's Chief Finance Officer; or the Authority's Monitoring Officer;
 - Do give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by the Authority.
- There is a two-stage complaints process:
- Complaints are made to the monitoring officer (senior staff member);
 - In consultation with an Independent Person decides whether to accept complaint against a 9-point triage test (including "The complaint is too trivial to warrant further action or not in the public interest" and "The complaint appears to be simply frivolous, vexatious, politically motivated or tit-for-tat.")
 - If accepted appoint an Investigating Officer (either a senior member of staff in the Council, a member of staff from another Council, or an external investigator). At that point communicate with relevant parties;
 - Investigating office can decide procedure but produces a draft report, shared with parties and then sent to the monitoring officer to consider;
 - If appropriate can call a hearing of the Code of Conduct Panel;
 - Code of Conduct has a range of sanctions but critically has no power to suspend or disqualify the member or to withdraw allowances. Options include:
 - Instruct the Monitoring Officer to arrange training for the member.
 - Publish its findings in respect of the member's conduct.
 - Report its findings to Council for information, without discussion or debate.
 - Chair of the Audit and Governance Committee write to the member with their advice on the conduct.
 - Censure or reprimand by the Code of Conduct Panel.
 - Recommend the Council to censure.
 - Recommend the removal of the member from all outside appointments to which they have been appointed or nominated by the Authority.
 - Recommend to the member's Group Leader that the member be removed from particular portfolio responsibilities.
 - Recommend to the member's Group Leader (or in the case of ungrouped members, recommend to the Council or to committees) that the member be removed from any or all committees or sub-committees of the Council.
 - Withdraw facilities provided to the member by the Council, such as a computer, web site and/or e-mail and internet access.

- Exclude the member from the Council's offices or other premises, with the exception of meeting rooms as necessary for attending Council, committee and sub-committee meetings.
- Recommend to change/adopt a Council process.

It is worth noting that there are no powers to suspend or disqualify and it is principally focused on financial matters rather than behavioural matters.

3. WELSH ASSEMBLY (Code of conduct available [here](#))

Members of the Assembly: (a) must comply with the Code of Conduct for Assembly Members; (b) should act always on their personal honour; (c) must never accept any financial inducement as an incentive or reward for exercising parliamentary influence; (d) must not vote on any Order or motion, or ask any question in plenary or a committee, or promote any matter, in return for payment or any other material benefit (the "no paid advocacy" rule).

Complaints to the [Standards Commissioner](#) are admissible if:

- (a) is made in writing;
- (b) states the name of the complainant;
- (c) states the postal or email address of the complainant except where the complainant is a current Member;
- (d) is about the alleged conduct of a named Member;
- (e) states the acts or omissions of the Member being complained about that are alleged to have breached a provision in the Code or other relevant provision;
- (f) in relation to each act or omission complained of, is supported by sufficient evidence to satisfy the Commissioner that (i) the conduct complained of may have taken place and (ii) if proved might amount to a breach of a relevant provision; and
- (g) is made within six months from the date of the conduct complained of, unless the Commissioner is satisfied there is good cause for the delay.

4. SCOTTISH PARLIAMENT [here](#)

There is a code of conduct for MSPs. Much like others focuses on disclosure of financial interests and avoidance of paid lobbying. But also includes:

"Members must treat the following individuals with courtesy and respect:

- *other MSPs;*
- *parliamentary staff (including contractors providing services to the Parliament);*
- *their own staff and the staff of other MSPs.*

Members must not behave in a manner towards those individuals in 7.5 or any individuals they are in contact with in their capacity as MSPs that involves bullying, harassment (including sexual harassment), or any other inappropriate behaviour."

The Scottish Parliament has a similar complaints procedure set out in a mixture of guidance, law and standing orders and [here](#). It is a four stage process:

- the Commissioner will investigate and determine the admissibility of the complaint
- if passed, the Commission will investigate the substance and report to the Standards, Procedures and Public Appointments Committee

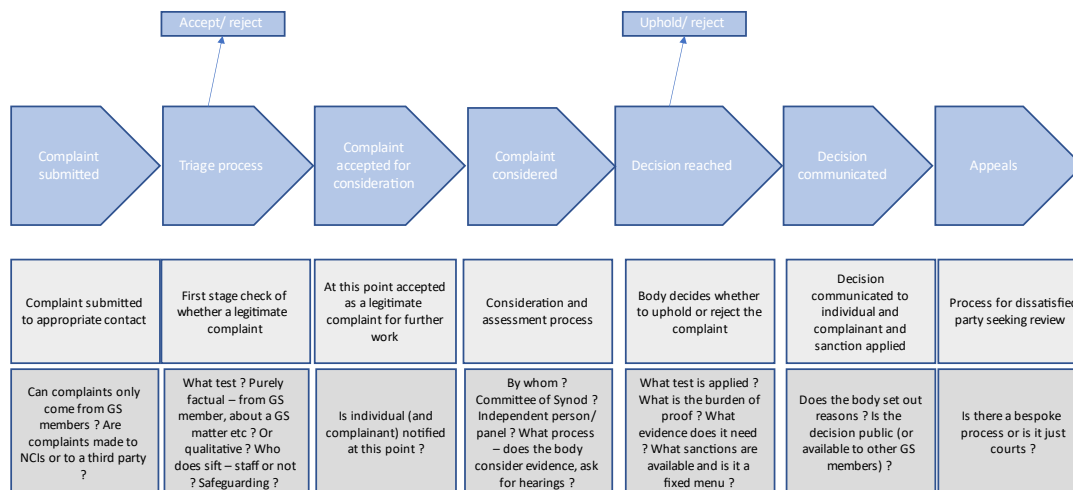
- a report to the Parliament is then made
- a decision on sanctions is made by the Parliament on a motion of the Committee.

It is worth noting that:

- at the first stage the tests are relevance (is it about an MSP, if proved would the allegation breach the code) and warrants further investigation (ie there is enough evidence)
- the Commissioner might interview parties rather than have hearings
- there are powers in law to restrict members from participating in the Parliament where the offence relates to non-disclosure of a relevant interest
- The other sanctions include preventing a member from:
 - o attending any meeting of the Parliament, committee or sub-committee in the capacity of a member;
 - o initiating, contributing to or intervening in any debate
 - o voting;
 - o lodging notice of a proposal for a Bill or introducing a Bill;
 - o lodging or asking a parliamentary question;
 - o lodging notice of or moving a motion;
 - o lodging notice of or moving an amendment to a Bill or motion;
 - o proposing a draft report, or moving an amendment to a draft report in a committee;
 - o supporting a Bill or a motion or proposal for a Bill or a motion;
 - o supporting an amendment to a Bill or a motion.
- In relation to conduct, a member can be excluded from the chamber for a period not beyond the end of the next sitting day
- Rights and privileges such as access to the Parliamentary complex or allowance and salary may also be withdrawn, but this will be decided on a case-by-case basis.

COMPLAINTS PROCESSES: COMMON ELEMENTS AND SOME CONSIDERATIONS

Different organisations have very different complaints processes. But there are a number of common elements. The schematic below sets out a (broadly) standardised model of complaints processes.



In terms of how this might be applied in a Synod context, on the question of who makes the decision on a disciplinary matter, broadly there are three groups of options. In all cases we would need to manage risks of conflict of interest:

- A committee of Synod. Within this there are a number of options:
 - a. The Business Committee, which currently considers complaints. The advantage is this is the existing body and which is representative of Synod views; the disadvantage is that the Business Committee has a busy job planning the next Group of Sessions and improving Synod more broadly and this work could overwhelm it;
 - b. The Standing Committee of the relevant House could be empowered to make the decision. The advantages are that this is a group of peers and allows them to decide their own standards; it reduces the risks of any perception that bishops are making decisions about the laity and that these are existing committees that could meet to decide. The disadvantage is that it risks different standards in each House and that this risks crowding out their other business, and it would raise questions about whether such a process would command the confidence of the other Houses;
 - c. There could be a special Complaints Committee, perhaps comprising two members from each House (selected by each House), to consider the case. The advantages here include consideration by peers and therefore both trust and understanding of the mood and sensitivities of what may and may not be appropriate for Synod members; the disadvantages include that it is creating

another committee and the difficulty of identifying who would be the appropriate people to join such a group;

- An independent person. We could appoint a group of independent people – retired judges or senior lawyers, retired Synod members – to decide in such cases. These might be appointed by the Synod on advice of the Business Committee for a period of (say) 5 years. The advantage is the professionalism and independence from the Synod, the disadvantage is their lack of understanding of the soft skills of Synod (would they really understand the context and nature of Synod ?);
- Staff. The Secretary General (or the Director of the Central Secretariat) could consider such cases. The advantage is this could be swiftly implemented and that they are independent; the disadvantage is the resource cost and bringing staff into disciplinary matters.

In terms of the sort of sanctions that might be applied, this could include (with the requirements for changes to law or standing orders in brackets at the end):

- a. A public letter from the decision-maker saying that the complaint has been upheld and they request the individual to desist from such behaviour/ apologise (which might be appropriate for minor breaches of the code, first time issues, issues where the offender has already apologised etc etc). The decision-maker could ask for that apology to be made publicly before Synod [no law or process changes];
- b. Suspension of some of their rights as a member of Synod whilst retaining them as a Synod member:
- c. Suspension of their right as a member of Synod to sit on its committees (where relevant) [requires changes to Standing Orders];
- d. Revocation of the right for the member to claim expenses and wider church support for their attendance at a Group of Sessions [no law or process changes];
- e. Suspension of rights to ask questions or supplementaries [may be achievable under standing orders];
- f. Suspension of rights to speak in debates or to table amendments [may be achievable under standing orders];
- g. Suspension of their voting rights [primary legislation];
- h. Suspension of their right to participate in the next Group of Sessions (in which case consideration would need to be given as to whether to allow the diocese to send another representative in their place) [primary legislation];
- i. Financial penalty – fixed penalty notice of say £500/£1000/£2000, payable to a nominated charity [depending on details may be possible under standing orders];
- j. Expulsion of the member from the General Synod, and directing the diocese or House to conduct further elections to elect a replacement [primary legislation].

Many of these raise questions of enforcement (eg would we take the member to court to recover a fine ?).

In terms of the overall test of what is a legitimate complaint, there are multiple options. Disciplinary processes tend to work best when there is a clear set of criteria for those applying them to consider. Some of these would include:

- a. A test linked to the broad Code of Conduct ie “has there been a breach of the code” ? Is the code sufficient to deal with this or would that lean heavily on para 16 on “unbecoming language” or the bits about no “personal remarks about members”?

- b. A general behavioural test ie “has the behaviour been unbecoming of a member of the General Synod” ? This could incorporate an element of reputation – ie “to what extent could this behaviour be regarded as damaging the reputation of the General Synod as a Christian legislature ?
- c. A specific behavioural test ie “does the behaviour constitute, were it a workplace, bullying, harassment or discrimination”¹;
- d. A test of seriousness/ persistency ie “has there been a persistent and/or serious breach of the code” ?
- e. A test of the impact on others ie “has the behaviour been likely to have caused undue distress to a member of the Synod”;
- f. A financial and interests test – ie “have there been misuse of Church funds/ non-disclosure of interests ?”

Two key questions would be:

- Is this about behaviour in Synod or during a Group of Sessions or about behaviour by Synod members, but outside of Synod. If the former, can it be broad enough to cover behaviour on social media between sessions ? If the latter, it presumably risks sweeping up local and parochial disputes as well as General Synod matters – what would stop a parishioner disgruntled with their clergy who happened to be serving on General Synod from using this complaints process ?
- How to preserve the legitimate range of theological and liturgical perspectives within the General Synod. We would want to ensure that holding a different theological position within the traditions of the Church was not grounds for complaint and this would probably require a clear policy statement to that extent.

In terms of a set of tests at triage, the tests could be:

- a. is this complaint made by a current member of General Synod ?
- b. Is this complaint about someone who is currently a member of General Synod ?
- c. Does the complaint raise specific criminal or safeguarding allegations that should properly be dealt with by police/ local authority officers ? If the complaint raises criminal/ safeguarding matters (in the true, narrow definition of safeguarding) they should be referred to others for investigation. We may need to establish a memorandum of understanding with the police on such cases;
- d. Is the complaint relating to behaviours in the last (say) 3 months (so a time cut-off for considering out-of-date allegations) ?
- e. If relating to clergy, is this a matter that is being considered in a current or recent CDM (though we shall need to think how we would properly verify this ?);
- f. Is this a matter of freedom of conscience to believe things, or about personal conduct ?
- g. Is this likely to be something which actually has some evidence – eg social media posts – or is it things that were said between two people of which there will never be verifiable evidence ?
- h. Is this an obvious time-wasting and/or vexatious allegation ?

¹ Note that there are now reasonably standard definitions of bullying, harassment and discrimination (see for example the ACAS advice [here](#), there are similar definitions from CIPD [here](#)) and that although there is an element of subjectivity developing employment law is giving more weight to the objective facts of the case and that although much of the language applies to employees it is quite normal for this to apply to non-employees (eg many organisations require that volunteers subscribe to the BHD policy – see for example the Girlguiding policy [here](#)).