GENERAL SYNOD

SUBMISSIONS TO THE REVISION COMMITTEE FOR THE DRAFT CLERGY CONDUCT MEASURE

Contents: **page**

The Rt Revd Sarah Mullally (3 – Bishop of London)

Thank you for all the work you are doing on this. I have a couple of points:

1) We need to be clear about which time scales are included in the measure or guidance and which are not and why the decision has been made. More the better in my view.
2) As regards Grievance my experience is that this needs to has as much care as the Complaints Procedures. Can we have guidance for good practice (including support for those involved, processes, time scales and training for those carrying the process out)

The Right Reverend Robert Innes (17 – Bishop of Gibraltar in Europe)

I write to make representations in regard to the Clergy Conduct Measure.

One of the main criticisms of the existing CDM relates to delays. A second is to the perceived inequity of penalties given by different bishops. The appointment of assessors is seen as addressing both these points.

But we need much more information about the proposed assessors.

- From which disciplines will they come? HR? or Legal? Or from the ranks of the clergy? What training and/or qualifications will they have? How much time are they expected to need to devote to the role?

If these are lay assessors, then it is important that they are paid for their services, else it will be hard to enforce any contracting in regard to timescales.

The CCM needs to be accompanied by a statement of financial impact. It will prove more costly to administer than the CDM as work is being transferred from bishops and registars whose costs are simply absorbed into the system onto assessors and tribunals. The real costs of the assessors, tribunals and senior lawyers need to be made explicit.

The Rt Revd Rose Hudson Wilkin (43 – Bishop of Dover)

I have been away during August returning this week. I wanted to share the following thoughts with you regarding the Measure:

I believe that going forward, we need to ensure that “Complaints” are appropriately categorised.

I believe only “really serious” matters such as **fraud**; things meeting **Safeguarding threshold**; **lying with serious consequences**; **adultery** or **other sexual misconduct**; **spiritual or physical grooming** that should be considered.

Flippant issues such as not being allowed to ring bells in a church should not be given precious (and costly legal time). It is distressing to be wasting time on nonsense there has to be some level of judgement as to what this measure should be used for.

I hope this is helpful.

With best wishes

+ Rose

The Revd Paul Benfield (66 – Blackburn)

Clause 1

The clause as it stands is fine, but I wonder whether (here or elsewhere) a new clause should be added to restrict any agreement purporting to exclude the use of proceedings under the Measure. I have recently been made aware of a clause in a draft settlement agreement between a priest and a bishop and DBF in which the priest agrees not to bring 'any claim under the Clergy Discipline Measure 2003 as amended by the Clergy Discipline (Amendment) Measure 2013 and the Safeguarding and Clergy Discipline Measure 2016'. If the purpose of the Clergy Conduct Measure is to 'hold to account those clergy who fall below the standards required of them' it should not be possible to restrict access to proceedings under the Measure by anyone.

So I suggest a new clause along the lines of

'Any contract, agreement or understanding that a person shall not bring any claim under this Measure shall be void and unenforceable.'

Clause 2

This clause seems to create a double jurisdiction for matters involving questions of doctrine ritual or ceremonial. The EJM continues to confer jurisdiction in such cases but they are not excluded from proceedings under this Measure. It would be clearer to remove 'but that is subject to subsection (2)' from subsection (1) and replace it with something like 'other than conduct which involves a question of doctrine, ritual or ceremonial'.

Clause 3

Clause 3 (1) (d) should be replaced by the current definition in section 9 (1) (d) of the CDM 'conduct unbecoming or inappropriate to the office and work of a clerk in Holy Orders'.

This has the benefit of having stood the test of time with many examples of it in case law but no strict definition of what it means. My concerns are with the explanation of what 'standards required' mean in clause 3 (2).

Clause 3 (2) Even if Cluse 3 (1) is not amended as suggested above I suggest that clause 3 (2) might be better omitted.

1. Referring specifically to the canons opens the way for disgruntled parishioners to trawl through them and find apparent breaches of them and bring a complaint against a cleric for not following them. But many of the canons are aspirational and cannot easily be subject to any sort of legal process eg

    Canon C27 is about the dress of ministers. Do we want cases where parishioners complain that the dress of their vicar at the parish barbecue 'was not suitable to his office' or that (not being for the

purposes of recreation) his or her dress 'was not such as to be a mark of his or her holy calling'?
Canon C26 concerning fashioning the life of his family according to the doctrine of Christ. Do we want complaints under the Measure that the minister's teenage children run amok around the parish?

2. I am not happy with failure to comply with an Act of Convocation being misconduct. Acts of Convocation do not create legal rights and duties but simply have moral force. As Stephen Slack has said concerning Acts of Synod:

> "An Act of Synod therefore represents 'provision' corresponding to that previously made by the Convocations for their respective provinces, in the form of an 'Act of Convocation'. It does not accordingly enjoy any greater authority than that of Acts of Convocation – which, while they were said to have 'great moral force, as the considered judgment of the highest and ancient synod of the province', [ref 27: ***Bland v Archdeacon of Cheltenham*** **[1972] 1 All ER 1012 at 1018**] did not create legally enforceable rights or duties."
> *Synodical Government and the Legislative Process*, [2012] 14 Ecc LJ 43–81]

Earlier Acts of Convocation (now repealed) dealt with the remarriage of divorcees whose former spouse was still living. They said that such marriages should not take place in church – though doing so was not illegal under the Marriage Act, 1949. Clergy were simply under a moral duty not to conduct such marriages but could not be disciplined if they did so. Under the provisions of this draft Clergy Conduct Measure Acts of Convocation are given a new and enhanced status.

I imagine that those proposing the clause have in mind the Guidelines for the Professional Conduct of the Clergy. Like the canons, many of these are aspirational

> eg paragraph **11.2** 'The authority of churchwardens and lay people elected or appointed to office in the local church is to be respected and affirmed'.
>
> Do we want cases under the Measure brought by PCC members who have fallen out with their incumbent complaining that their authority was not 'respected and affirmed'?

Clause 8 (5)

Consideration should be given to requiring that at least two members of each House of General Synod should be members of the Commission (as in the current Clergy Discipline Commission) This is particularly important given the proposal that guidance and codes of practice need not be approved by Synod.

Clause 9 (4)

I am concerned that code of practice can be approved with the approval of only the Dean of Arches and Auditor and the President of Tribunals. Since the latter is a member of the Commission his or her consent does not add much. The Dean of Arches need not have particular skill or knowledge regarding clergy conduct and so may not have the experience of working with clergy conduct matters or the time to study the Code and offer comments on it. There ought to be some body which has the power to scrutinize and approve the Code and would suggest that General Synod is the most appropriate body (assuming that the code will be as detailed as the current code of practice on the CDM). Good reasons need to be given to justify not doing this.

I would add that it may be better to separate guidance on penalties (which need not be approved by Synod) and general guidance which should be in a code of practice approved by Synod or some other body.

Clause 12

The Assessors are a crucial part of the proposed new system yet we have no clue as to what experience or expertise they will require. Presumably guidance will be found in the Code of Practice (which – see above – will be approved only by the Dean of Arches and Auditor and President). The importance of the assessors was raised on the floor of Synod. We need more explanation as to what is envisaged here or the whole Measure may not find favour with Synod.

Clause 15 (3)

I understand that a cathedral may have its own safeguarding officer, who may not be the diocesan safeguarding officer. If that is correct should the cathedral safeguarding officer not have a proper interest?

Clause 15 (6)

I would suggest that it would be better to say that the archdeacon may nominate ‘another person’ rather than ‘another archdeacon’. The relevant archdeacon has made the decision that a complaint should be made and so that needs to be done as efficiently as possible. It may be that there is no available archdeacon or that he or she is in some way conflicted so it would be better to allow flexibility. The suggested change would not prevent an archdeacon from being appointed.

Clause 19

1. As far as I can see there is nowhere a definition of ‘serious misconduct’. One can only deduce what it means by looking at penalties. Although the draft measure ‘works’ as drafted it ought to be possible for a non-lawyer cleric or complainant to understand it. So I suggest we need to state clearly that serious misconduct means conduct which might result in loss of office, prohibition etc.

2. How is a complainant to know what time limit applies to their complaint? They may go through a lot of effort in making a complaint only to be told later (by whom?) that it is out of time.
3. Is it the assessor who will decide that the complaint is out of time? – see my comments on clause 21.

Clause 21

If the lead assessor decides that the complaint should be allocated as a grievance or misconduct (but not serious misconduct) under clause 21 (1) (a) or (b) they surely need to check whether the complaint is within the limitation period as in clause 19. If it is not it must be dismissed. So should there be added to clause (1) *(e) recommend to the responsible bishop that the complaint be dismissed on the grounds that it is out of time.*?

Clause 33

Does there need to be some time limit on a restriction order (as with a suspension under clause 34)?

Clause 37

I am unclear how clause 37 relates to clause 24 (5). Does the assessor recommend a penalty and, if so, must this be followed by the bishop?

Clauses 39 and 40

Whilst I understand that the process of deposition from Holy Orders in this clause follows the procedure in the EJM 1963 it seems odd that the Convocation must vote to depose a bishop or archbishop whereas a bishop may depose a priest or deacon on his or her own. Synod may want a historical, ecclesiological or other explanation for this discrepancy as it appears on the face of it that a bishop or archbishop has a greater protection from deposition than a priest or deacon.

Clause 40 (7) needs some explanation since if the Upper House resolves not to depose is there to be some sort of appeal against that?

Clause 44 (7)

Should the provisions of sections 39 and 40 be ignored? By doing so a person who is convicted of, say, a serious sexual assault could not be deposed from Holy Orders, whereas a person who was found guilty of the same conduct by a tribunal could be. This seems an odd anomaly.

Clause 46

I suggest that the phrase ‘is subject to a finding’ in sections 46 (1) and 46 (2) needs amplifying with some phrase such as ‘after due process’. I have been made aware of a case where a bishop of another Church made a finding without proper process and wrote a letter stating his finding. Bishop John Ford knows more about this matter and

I hope he will write to the Revision Committee amplifying his concerns, He is currently in the Holy Land and so is unlikely to be able to respond by the deadline of 8th September, but I hope the Committee will consider any response that he makes after that time.

Clause 62 (2) (a)

Should other ecclesiastical corporations sole be included eg archdeacons who sometimes hold patronage in their corporate capacity?

The Revd Rachel Webbley (76 – Canterbury)

Thank you for your work in preparing the CCM at this revision stage.

In 'From Lament to Action' one of the recommendations is that an audit of governance structures is carried out and existing and newly gathered data examined in relation to ethnic diversity at all levels. With this in mind, has there been GMH / UKME representation and / or consultation in the conversations leading towards the new CCM?

There was a UN Human Rights report in January 2023 which confirmed that 'Racism in the United Kingdom is "structural, institutional and systemic", with a 'warning that people of African descent in the country continue to encounter discrimination and erosion of their fundamental rights.' There were serious concerns about impunity and the failure to address racial disparities in the criminal justice system.

While the Clergy Conduct Measure is a different process from the criminal justice system, I would like to be reassured that steps are in place to ensure that similar dymanics do not affect the church's processes. It would seem helpful to factor in the potential for racism to affect how clergy are treated or assessed at this planning stage, and consider how to mitigate this possibility. However, you may well have already made sure there has been appropriate consultation with our GMH / UKME colleagues for this important piece of legislation.

Being new to General Synod I am still learning how to engage at the different stages of our work. Thank you for your invitation inviting a submission to this Revision stage and I trust that this question is both appropriate and constructive.

Many thanks,

Rachel Webbley

Canterbury 076

The Revd Dr Sara Batts-Neale (80 – Chelmsford)

It is important for the new CCM to neither send claimants/respondents off a cliff with no warning, or for there to be an infinite loop of referral they could be stuck in. I could see nothing in the draft Measure to indicate the latter, but there is a possible dead end in s26(8).

S26(8) says "If the President of Tribunals determines there is no real prospect of a finding of misconduct, the complaint is dismissed and no further steps may be taken in relation to it."

s26(9) allows for a complaint to be re-allocated as misconduct (not serious misconduct).

So a complaint can be tracked to the lower level, but if not, it falls completely. Is that a correct reading? It has been my experience that this "dead end" could potentially lead to more complaints being submitted - possibly allowing for a complainant to be classed as vexatious - in the quest for a satisfactory answer.

Separately, I would call for a review period to be established. Not just of the whole measure, although that would help to prevent the effects of unintended consequences, but of the regional lead assessors' decisions. It is not impossible to imagine that over time, lead assessors' decisions could vary, leading to the same kind of complaint being allocated to a different track. A review period whereby the anonymised cases were benchmarked against each other would help to ensure consistency across areas. I note that the regional operation reduces the risk of there being 40+ variations across Dioceses.

The Revd Julian Hollywell (102 – Derby)

Thanks for inviting input to the CCM process. May I offer the following submission which is the result of conversations both in our Diocesan House of Clergy of which I am Chair and our Diocesan Board of Finance of which I am Vice-Chair.

Firstly, my comments relate to S 20. 4 'the provision of pastoral care by the diocesan bishop' focussing particularly on the cleric subject to the complaint and what is stipulated in the rules which will accompany the new Measure (and on which I spoke in the debate).

Supporting the speech given by the Bishop of London, I suggest each diocese or region appoint a cohort of appropriately diverse, qualified and supervised individuals who may on behalf of the bishop provide appropriate and independent pastoral support. Issues of cultural background, gender, relationship status, sexual orientation and church tradition (amongst others) may all be relevant. If possible there seems no reason for this pastoral support to be imposed, but for the individual themselves to have agency in deciding who and how best they may be supported.

I disagree strongly with the view of the Bishop of Leeds in the debate, who indicated a selection of suffragans offer a such a facility. This I believe confuses the episcopal role of ensuring appropriate pastoral care with the actual ministry of providing it directly. It will not always be appropriate for any bishop to provide such personal support to an individual subject to the Measure.

It can be the case that such pastoral care breaks down or is not adequate, may there be clear guidance on review and if necessary altering the care provided.

May there be clear guidance as to who and how it is decided to whom the cleric in question may speak and explicit timescales on any such stipulation, with a clear point of review. At present individuals and their families can become extraordinarily isolated within the communities they are called by God to serve.

Secondly, for those levels of complaint that do not warrant legal support, can a fund be made available none the less for individuals subject to a complaint to receive at least a basic level of independent professional advice?

Thirdly, may a clear and detailed financial note accompany the legislative proposals determining the estimated cost of the new arrangements and where responsibility for funding the regional structures will lie.

Yours faithfully,

Julian Hollywell

Derby 102

The Ven Douglas Dettmer (117 – Exeter)

Thank you. Here are a couple of suggestions for the Revision Committee, in red—I've just realised that the 17:30 deadline is almost upon us!

3 Meaning of "misconduct"

> (2) The standards referred to in subsection (1)(d) include, in particular, the standards required of clergy that are set out in the Ordinal, the Canons and Acts of Convocation.

The Explanatory Note makes it clear that 'include, in particular…' is not intended to limit the definition of misconduct to a failure to meet the specific standards mentioned. However, paragraph (2) could be read more restrictively, and so in the interest of future-proofing and for avoidance of doubt, it would be helpful for the intention to be made more explicit—e.g.:

> (2) The standards referred to in subsection (1)(d) include, in particular, the standards required of clergy that are set out in (but without limitation to) the Ordinal, the Canons and Acts of Convocation.

15 Complaint: proper interest

> (2) Each of the following has a proper interest in a complaint against a priest or deacon—
>
> > (b) the archdeacon in whose archdeaconry the priest or deacon holds a form of authority to exercise ministry or, if not holding authority to do so, is resident (see also subsection (6))…

Clergy who are beneficed or licensed in a diocese hold authority to exercise ministry in a specific post, normally located in a particular archdeaconry. Other clergy (e.g. those retired but no longer holding Permission to Officiate) do not hold authority to exercise ministry. However, there is a third category, which in any diocese includes a considerable number of clergy: those who hold the bishop's Permission to Officiate in the diocese or who hold a general licence under seal from the bishop or a licence which is not specific to a post clearly locatable in an archdeaconry. Because clergy in that third category neither hold authority in a particular archdeaconry nor lack authority to minister, the only practicable means of specifying which archdeacon in the diocese has a proper interest in a complaint is the minister's place of residence. Therefore it may be worth adding an additional clause along the following lines:

> (2) Each of the following has a proper interest in a complaint against a priest or deacon—
>
> > (b) the archdeacon in whose archdeaconry the priest or deacon holds a form of authority to exercise ministry or, if not holding authority to do so or if holding authority to do so throughout the diocese, is resident (see also subsection (6))…
> >
> > -OR-
> >
> > (b) the archdeacon in whose archdeaconry the priest or deacon holds a form of authority to exercise ministry or, if not holding authority to do so or if

holding a form of authority which is not specific to an office within a particular archdeaconry, is resident (see also subsection (6))…

I hope these suggestions may be helpful. Douglas

The Revd Chris Moore (129 – Hereford)

At the end of the debate yesterday we were invited to email you with any things we would like the revision committee to consider with regard to this measure. I wasn't called to speak, so I hope you don't mind me feeding in my comments via you.

1. I have concerns that the measure brings together every kind of complaint into a single system. Most organisations will have separate polices and processes for complaints, grievances, misconduct, and capability. They can be initiated by different people. The process we have is unwieldy and will involve greater costs and delays. We need to separate out complaints from discipline.

2. Without a separate complaints policy, any complaint against a clergy means that, prior to triage, they are in a process which could lead to their dismissal. This causes unnecessary distress.

3. I am very concerned about the number of skilled volunteers needed to administer the scheme. I think this is unrealistic, and that we would be better served by employing the necessary experts (even if that increases costs sharply). I fear the system will be under-resources and therefore slow.

4. I am unsure as to why there is no right to appeal for clergy who are in the "misconduct: track.

5. I would like to see Unite and the Sheldon Hub fully consulted. It is very common to have union involvement when drawing up policies in schools, and this gives more confidence to staff.

The Revd Martin Thorpe (155 – Liverpool)

Clergy Conduct Measure response

A Professional and Credible System

Given the number of ministries damaged and clergy and their families seriously harmed by the abuse of the CDM process, we need to get this right with a professional, properly funded and very well resourced system.

In order to be credible and inspire confidence it must:

- Recruit properly paid professionals with the necessary HR and legal skills required for the assessors who will be taking statements, weighing the legal implications and assessing the seriousness of any complaint. **This must not be done on the cheap using volunteers – only disaster that way lies.**
- Not only assessors but all involved in the new process must be comprehensively trained in their roles in the new system. This will need to include comprehensive training for new bishops, archdeacons and other senior staff as part of their induction process.
- Optional training for clergy should be offered regarding the system, perhaps along the lines of the basic safeguarding training online. This could then be accessed by anyone potentially caught up in the system and provide clarity, unlike the relative opaqueness of the MDR process.

Martin Thorpe Liverpool 155

The Revd Christopher Trundle (167 – London)

I would like to make one point about the need for further clarity on section 16 subsection 5 which refers to complaints about chaplains to the armed forces being made to the Archbishop of Canterbury. I should say that I am a chaplain in the Army Reserve.

I suggest that some detail will be needed on how this subsection applies to clergy who are reservist chaplains, noting that service law applies to us when ‘on duty’ only, but ecclesiastical regulations apply to us at all times.

With all good wishes,

Christopher Trundle
London
167

The Revd Canon Lisa Battye (169 – Manchester)

During the GS debate on Monday 10 July 2023 on the First Consideration of the Clergy Conduct Measure (GS 2311) (Item 508) I spoke against re-use of the term 'Rebuke' in the list of new penalties and administrative sanctions at Paragraph 35 (1) on page 19.

I say *re*-use because 'Rebuke' was the term used in the Clergy Disciplinary Measure for the lowest form of penalty available. In the new Measure it is no longer the lowest form, and is differently used, due to the different framing of the new Measure.

In English canon law a 'rebuke' is a censure on a member of the clergy, defined as 'the least severe censure available against Clergy in the Church of England, which is less severe than a monition'.

In Section 2(e) on p3 of the 2006 Clergy Discipline Commission Guidance for Penalties a Rebuke is defined as 'the least serious of the penalties, which can be used for acts or omissions of a less serious nature which fall within the definition of misconduct'.

By contrast, in CCM 35 (1) (d) the definition of a 'rebuke' is given as 'a written notice of serious misconduct'. The more serious nature of the new penalty is underlined in the definition of 'reprimand' at (a) as 'a written notice of misconduct that is not serious misconduct'.

A change of definition is confusing. It could, of course, be explained within the CCM or its Explanatory Notes. However, if the CCM is to truly replace the discredited CDM then using a different term at 35 (1) (d) would be a much better way of showing this. It would avoid both confusion and unintended consequences (such as vexatious abuse of the term).

Suggestions

I can see two possibilities for resolving the problem: switch the terms at (d) and (a) or introduce an entirely new term at (d).

1. Switch the terms in (d) and (a) around.

The rationale for this is that for 'rebuke' to have a similar meaning in both Measures it would need to be at (a), and 'reprimand' has a similar meaning.

Support for this solution is found in dictionary definitions of the word 'reprimand': Meriam-Webster defines the verb as 'to reprove sharply or formally, usually from a position of authority' and Wikipedia defines it as a 'severe, formal or official reproof'. Other synonyms include 'harsh criticism', 'censure', 'admonition', 'castigation' and 'rebuke'.

Reprimanding takes different forms in different legal systems. In Education it may be an administrative warning, while in custody it may be a formal legal action issued by a government agency or professional Board. This suggests that use of 'reprimand' might appear *later* in a list of increasing severity.

Meanwhile, it is notable that the most common dictionary definition of 'rebuke' *is* 'reprimand', suggesting interchangeability of the term.

2. Introduce an entirely new term at (d).

   This solution would have the benefit of underlining that the CCM has been differently framed.

The alternative term found in most definitions for *both* 'rebuke' and 'reprimand' is 'reproof', defined as 'an oral or written statement intended to censure'; reproach; discredit; admonishment; reprehension.

Replacement terms for (d) drawn from this and other definitions:

(i) 'Admonishment'
(ii) 'Admonition'
(iii) 'Castigation'
(iv) 'Censure'
(v) 'Discredit'
(vi) 'Reprehension'
(vii) 'Reproach'
(viii) **'Reproof'** ('an oral or written statement intended to censure')
(ix) 'Serious reprimand'
(x) 'Monition' ('a formal written notice from a bishop or ecclesiastical court admonishing a person not to do something specific')

My own preferences within this list are in **bold** type.

Lisa Battye

The Revd Canon Lisa Battye, GS Member 169 (Manchester)

The Very Revd Mike Keirle (215 – Channel Islands/Salisbury)

As I was not called to speak in the debate in York on this matter, I wanted to write to express my concerns about episcopal involvement in the CDM, to which they themselves are subject and below, I include my short speech on the matter, in the hope that you will take this into consideration.

With best wishes

Very Rev Mike Keirle, Dean of Jersey

When the Channel Islands received a visitation from the Archbishop's Commission in 2019, regarding the Diocese to which we were to belong and the subsequent revision of the Canons of the Church of England in Jersey, one of the matters that came to the fore was regarding Clergy Discipline and the importance of there being sufficient distance between the Dean, who, at the time, appointed some members to the disciplinary panel, and the fact that he was also subject to that discipline.

It was clearly a conflict of interest and it needed addressing and is now subsequently enshrined in our Canons.

However, when I read the new Clergy Conduct Measure, somewhat to my dismay, I saw in Clause 10 that Bishops have a significant role in nominating members to the provincial panels and, that it is from those panels, that a person can be appointed as a member of the Bishop's disciplinary tribunal in a province, or a member of the Vicar Genera's Court of the Province or a member of the Arches Court of Canterbury or the Chancery court of York.

I then read Clause 12 for the creation of a panel of assessors for each region and the Bishops also nominate up to two people who sit on these panels.

This means that, both at the assessor and tribunal level, there is considerable episcopal involvement, albeit with various references to abiding by codes of practice, but the powers still remain with the bishops who are themselves subject to the same Measure. This is a clear conflict of interest and there will be a perception that this will not be independent should a Bishop find themselves facing discipline themselves.

To my mind, there is insufficient distance between the Bishops and the Measure to which they are subject and therefore I would call upon those crafting this piece of work to protect the bishops from any perception of inappropriate involvement in selecting those who will sit in judgment and find an alternative method of appointing people to the various tribunals and panels.

Mr Alan Dowen (279 – Chester)

I am reading the current measure and guidance whilst on holiday so I may have missed something, but is there any specific definition or guidance to help the decision as to whether a misdemeanour should be treated as a grievance, misconduct or serious misconduct?

How do different panels maintain a degree of consistency in their decisions between various cases? - i.e. the severity of the case and the final penalties (if any are applied).

Regards,

Alan Dowen

Chester Laity: 279

Mr Sam Margrave (295 – Coventry)

Submission 30 June 23

Is it possible to amend the Clergy Conduct Measure to:

1. Change the name to the Church Leaders Conduct Measured

2. Replace the term Clergy with Church Leaders and define that so to include lay leaders

In a new Church with 10,000 worshiping committees we need a CDM which applies to all Church leaders. It's not just Priests who run Parishes anymore.

I want to know if this is the point I make this proposal and how.

Sam

Subsequent submission 30 August 23:

I am writing to ask for the revision committee to make amendments to the proposed legislation to bring about changes to include lay church leaders and ordinands as subject to this measure and the standards of discipline within the Church.

I also raise the points with you that I raised on the floor of Synod as outlined in my speech in July. Please see my comments below:

- We will soon have 10000 lay led Churches
- Lay Church leaders and Ordinands should be subject to this measure
- If not now when, and why has this measure been limited to clergy? Can that be changed?
- I would also like to see more Support to make complaints. Someone vulnerable finding a litigation friend isn't enough. We need a process of providing independently commissioned advocacy and support like other public bodies in their complaints processes
- On the issue of independence, the NCIs are not independent of the Church. So what alternatives were considered?
- Have survivor groups and those supporting vulnerable children or adults been consulted on whether we are doing enough to help complainant's to bring forward a complaint?

Finally, I would ask for further theological work on discipline within the Church and that we are witnessing Christ in this area so we don't just say what we expect but why we expect professional standards and the ordering of lives in Christian ministry.

Historic actions which are only revealed years later. Immunity? Time from finding out? A year from discovery?

Whistle blowing?"

Mrs Amanda Robbie (339 – Lichfield)

This paper contains proposed revisions to the draft Clergy Conduct Measure (June 2023) in order to provide the 'robust protection' (GS 2277 para 2.4.2) against frivolous, vexatious and malicious complaints demanded in GS2277. The proposed CCM process does not provide any 'robust protection against misuse'. To do so, it must first define the nature of vexatious, malicious or querulant complaints and how they can be identified and handled. Such a definition is set out in a separate paper 'Identifying and Handling Vexatious, Malicious or Querulant Complaints under CCM.'

Section 3
(1) (c) delete 'inefficiency'.

(2) delete 'in particular' and delete 'Acts of Convocation'.

Section 20
Insert new subsection (1*) after subsection (1)

(1*) (a) If the complaint is raised by a complainant who has made previous complaints to the diocese, whether about the respondent or any other member of diocesan staff, the bishop shall submit a summary of all previous complaints to the regional assessor with the complaint. The summary shall be anonymised and include the date, object, subject and outcome of each previous complaint.

(1*) (b) If the complaint is raised by a complainant who has made previous complaints at a parish level, whether about the respondent or any other member of parish staff or officers, the respondent may submit a summary of all previous complaints to the regional assessor at the time the respondent is made aware of the complaint. The summary shall be anonymised and include the date, object, subject and outcome of each previous complaint.

(1*) (c) If the regional assessor finds evidence of vexatious, malicious or querulant complaining behaviour, the merit of the complaint must be considered in conjunction with the examples of unreasonably persistent complaining behaviour (vexatious, malicious or querulant behaviour) set out in the rules/appendix (see attached report - Identifying and Handling Vexatious, Malicious and Querulant Complaints under CCM').

(4) (b) must offer pastoral support by an individual who has received training, as a minimum, in the legislation, rules and Code of Practice of the Clergy Conduct Measure as well as trauma awareness training.

Section 21
(1) (e) if the complaint is dismissed under subsection (1) (d) the complaint will be dismissed entirely before conversations toward reconciliation proceed. (see further Section 22)

(4)
(a) make subsection (4) subsection (4) (a)
(b) the respondent or complainant may appeal against the appointment of a designated person if there are reasonable grounds to show that the designated person may be biased

due to prior knowledge of or existing relationships with either the respondent or complainant.

Section 22
(2) The designated person appointed under Section 21(4) must, in investigating and seeking to resolve the grievance, act in accordance with the process set out in this subsection.

(a) The designated person shall ask if the complainant has followed the parish complaints policy and whether that process was completed. If the process was not completed, the complainant will be referred back to the parish complainants process and offered the opportunity to make the complaint at parish level. If the parish complaints process has been completed and the complainant wishes to appeal, the complainant and parish officers will be asked to pass the records of the parish complaint to the designated officer.

(b) The designated person shall ask if the complainant has followed the diocesan complaints policy and whether that process was completed. If the process was not completed, the complainant will be referred back to the diocesan complainants process and offered the opportunity to make the complaint at diocesan level. If the diocesan complaints process has been completed and the complainant wishes to appeal, the complainant and parish officers will be asked to pass the records of the parish complaint to the designated officer.

(c) The designated person shall ask the complainant shall be asked what outcome is being sought.

(d) If the designated person believes it necessary he/she may ask parish officers for further context.

(e) The designated person shall ask the respondent to respond to the complaint in writing within 21 days.

(f) The designated person shall ask diocesan officers (archdeacon, bishops and safeguarding officer) for any information related to the complaint, including any summary of previous complaints by the complainant as set out in section 20 subsection (1*) (a)

(3) At the completion of section 22 subsection (2) the designated person may determine to:

(a) refer the matter back to the regional assessor as misconduct or serious misconduct

(b) refer the matter back to the regional assessor as a vexatious, malicious or querlant complaint and request that a restraint order be placed upon the complainant

(c) refer the matter back to the regional assessor stating that the complainant and respondent are ready to enter a conciliation process, the complaint shall be dismissed entirely before conciliation talks proceed.

Section 25
(2) The parties will be asked to enter into conciliation

(a) the respondent may decline to enter into conciliation if it can be shown that the complainant displays behaviour consistent with persistent vexatious, malicious or querulent complaining as set out in the rules (see attached report - Identifying and

Handling Vexatious, Malicious and Querulant Complaints under CCM').

(b) if the parties agree to conciliation the complaint shall be dismissed entirely before conciliation talks proceed.

(c) if the parties do not agree to conciliation the complaint precedes in accordance with this measure.

(5) delete this subsection and replace with:

(5) If, after the three months following the conciliator's appointment, the parties do not agree that conciliation has been reached, the fact will be recorded and no further steps may be taken by the complainant.

Comment for inclusion in the rules or Code of Practice

Section 6

(2) the registrar of tribunals must be qualified in ecclesiastical law and have received training in handling complaints, with particular reference to the nature of vexatious, malicious and querulant complaints.

Amanda Robbie (Continued) July 2023

Introduction

This review of the proposed Clergy Conduct Measure is based on the experience of my husband, who, between 2015 and 2021, was subject to a string of formal complaints and three CDMs by two complainants. Complaints were numerous, changing in nature, vague, incomprehensible, unrealistic, sometimes involving the police and then the diocese, and, when the complainants have failed to get the outcome they have sought from formal complaints, they have elevated matters to CDMs. The result of the mishandling of these complaints CDMs led, as it did in many cases, to the author suffering post traumatic stress which required time off work and counselling. In each case, the definition of vexatious, malicious or querulant complaints would, in the author's view, have been met and the cases should have been handled differently.

The proposed CCM process cannot provide the 'robust protection against misuse' as demanded in GS2277 para 2.4.2 unless it first defines the nature of vexatious, malicious or querulant complaints and how they can be identified and handled at the earliest stage in the process. Included in this paper are: a definition of a spectrum of complaining behaviours from the Judicial Council of New South Wales; proposed additional steps required in the CCM process to identify and handle vexatious, malicious or querulant complaints and examples of persistent complaining behaviour from the Local Government Ombudsman.

The Need for a Working Definition of Vexatious, Malicious and Querulant Complaints.

In GS2277, The Church of England Clergy Conduct Measure Implementation Group identified the need for a policy to identify frivolous, malicious and vexatious complaints. It states:

> "As much as the Church must defend her integrity and that of Holy Orders, she must also protect her clergy from frivolous, malicious and vexatious accusations. Clergy offer a sacrificial ministry with limited material reward. Allegations of wrongdoing not only cause stress and anxiety but also threaten the home and income. Disciplinary procedures therefore must be robust in providing protection against misuse."

The draft Clergy Conduct Measure does not, as it stands, provide any robust protection against misuse. Before good legislation can be drafted, a clear and proper working definition of the nature of frivolous, malicious and vexatious accusations must be made, to which an additional category, querulant, should be added.

A vexatious complaint is one that is pursued, regardless of its merits, because of the heart attitude of the complainant(s). The focus of an enquiry must give careful consideration to both the merit of the case and the attitudes and behaviour of the complainant.

When clergy face a vexatious, malicious or querulant complainant then, by the time a complaint reaches the diocese, the clergyperson can already be exhausted. When diocesan officers or external bodies then process the complaint, as if it is made by a "normal" complainant (see definitions below), then parish life becomes almost unbearable for clergy.

The Judicial Council of New South Wales has identified a problem with formal complaints policies.

> "Increasingly common in our society is the persistent complainant who disrupts the

> work of complaints officers, ombudsmen, commissioners and, ultimately, tribunals and courts. In the process, they leave their own lives in chaos and show a significant potential for threats and violence. As government agencies, businesses, and professional organisations have established formal mechanisms for responding to complaints, so a small but vocal group of complainants has emerged which, by persistence and insistence, consumes disproportionate amounts of time and energy."[1]

When a persistent, chaotic, threatening complainant is also a member of a parish church and lives in the vicinity of the church, the clergyperson, unlike those in other professions, has no means of distancing or protecting themselves from almost daily harassment other than to leave the parish, including their home, and so pass the problem to the next incumbent.

The Judicial Council of New South Wales describes a spectrum of complaining behaviour[2] which must be recognised early in the CCM process, and this spectrum of behaviour can be contextualised for clergy conduct:

First, a "normal" complainant believes they have experienced a loss caused by the clergy. This has created a grievance which they seek to redress. The complainant follows the complaints process and maintains an objective perspective. The normal complainant will accept a fair and reasonable finding.

Second, the "vexatious" complainant also believes that they have experienced a loss which they attribute to the clergy. They become not only aggrieved but also indignant and bitter. They centralise their own importance and devalue and dehumanise others.

Third, the "malicious" complainant not only becomes aggrieved and indignant but seeks to cause harm or loss to the clergy, who they hold responsible for their real or perceived loss.

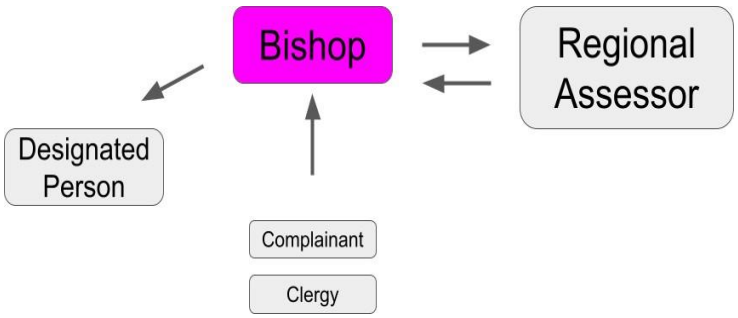
Fourth and last, some complainants have disordered personalities or psychiatric conditions which render them incapable of viewing any perspective other than their own. They misinterpret the actions of others, magnify slights, become deeply resentful, hold an exaggerated evaluation of the loss to themselves, fail to engage in the complaint process, complain to the highest authority after bypassing stages and are difficult to negotiate with as they generally reject all but their own estimation of a just settlement. They are persistent, demanding, rude and frequently threatening. They may become morbidly obsessed with complaining about everyone and everything.

Sadly, people on this spectrum of harmful behaviour will make complaints under CCM. The church might be a particularly soft target. The legislation must assume that there is no one righteous, not even one, that all sin and, therefore complaints might be sinful. The process must include early provision to identify such complaints.

When external bodies become involved in local disputes they lack local contextual knowledge which can lead to two undesirable outcomes. Either a rushed decision is made with only partial knowledge or a time consuming process proceeds, pouring fuel on the fire in the parish to the detriment of the respondent's wellbeing. External bodies must develop an understanding of the context of the complaint is vital for a proper understanding of its nature.

Several additional steps must be taken early in the process in order to build an understanding of the nature of the complaint.

The proposed CCM legislation offers no point in the process to allow for the nature of the complaint to be considered. The complainant submits a complaint to the bishop who passes it to the regional assessor for categorisation. At this point, the complaint is without any context. A proper understanding of the context and dynamics of vexatious, malicious or querulant complaints is necessary so that robust protections, which are so desperately required, can be incorporated into the process.



There is a substantial body of material available to help identify and handle vexatious, malicious or querulant complaints. The Local Government Ombudsman provides one, very good definition: "For us, unreasonable and unreasonably persistent complainants are those complainants who, because of the nature or frequency of their contacts with an organisation, hinder the organisation's consideration of their, or other people's, complaints".

The Local Government Ombudsman guidance offers examples of unreasonably persistent behaviour which may be adapted, as follows, for the Church of England.[3]
(this list is not exhaustive, nor does one single characteristic on its own imply that the person will be considered as being in this category)

- Refusing to specify the grounds of a complaint, despite offers of help.
- Refusing to cooperate with the complaint's investigation process.
- Refusing to accept that certain issues are not within the scope of the Diocese's jurisdiction or within the scope of a complaint's procedure.
- Insisting on the complaint being dealt with in ways which are incompatible with the adopted complaints procedure or with good practice.
- Making unjustified complaints about the Regional Assessor, Bishop, Diocesan Officers and clergy who are trying to deal with the issues and seeking to have them replaced.
- Changing the basis of the complaint as the investigation proceeds.
- Denying or changing statements he or she made at an earlier stage.
- Introducing trivial or irrelevant new information at a later stage.
- Raising many detailed but unimportant questions, and insisting they are all answered.
- Submitting falsified documents from themselves or others.
- Adopting a 'scatter gun' approach: pursuing parallel complaints on the same issue with various members of staff and/or organisations.
- Making excessive demands on the time and resources of staff with lengthy phone calls, emails to Diocesan staff and senior clergy or detailed letters every few days, and expecting immediate responses.
- Submitting repeat complaints with minor additions/variations, which the complainant insists make these 'new' complaints.
- Refusing to accept the decision; repeatedly arguing points with no new evidence.

The proposed CMM process cannot hope to assess a complaint on the basis above for two reasons. First, CMM currently assumes that a complaint is made in good faith by a reasonable or 'normal' complainant. Second, information in addition to the complaint is required for proper identification of the nature of the complaint.

A thorough identification process must be developed as part of a fit and proper process based on the following assumptions:

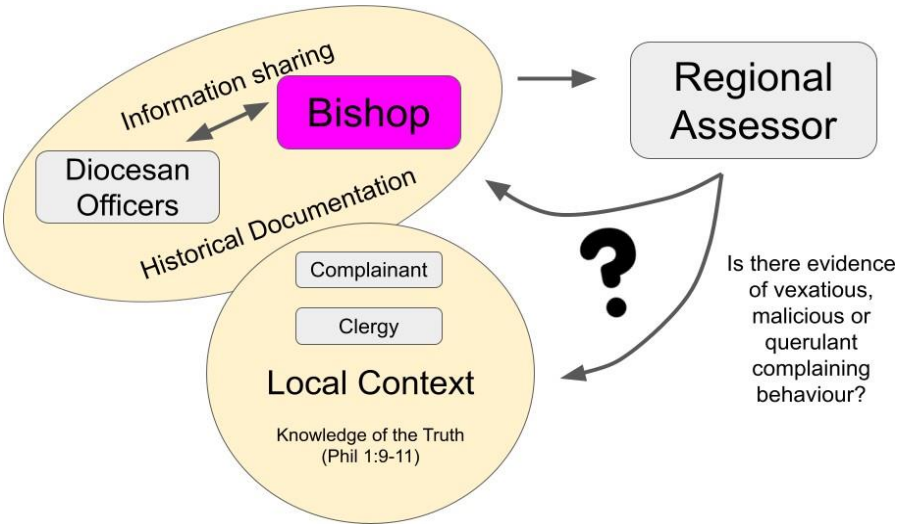
1. The process must assume at the first stage that the complainant may be vexatious, malicious or querulant. What additional information is required to assess whether or not a complaint is vexatious, malicious or querulant? How can the regional assessor make this assessment based on a single complaint?'
2. The complainant may be vexatious, indignant, bitter, filled with malice or querulant and yet the complaint may have merit.
3. There is no one righteous, not even one, all sin and all short of the glory of God, and so can distort the justice and mercy of God, cause strife and undo the image of God in us all. Complaints may be made sinfully by broken souls.
4. A history of complaining behaviour by the complainant may exist, at parish, diocesan or national level, which may shed light on the nature of each CCM complaint. This information needs to be shared.

For the nature of any complaint to be properly assessed several additional processes are required before the assessor decides on a final course of action.

Proposed Process to identify and handle vexatious, malicious or querulant complaints.

When a regional assessor categorises a complaint as misconduct or serious misconduct the CCM process must allow respondents to submit contextual evidence (i.e. records of complainant behaviour and correspondence with the complainant) which may be unrelated to the matter of the complaint but which help identify patterns of vexatious, malicious or querulant behaviour.

When a regional assessor categorises a complaint as a 'grievance' and returns the matter to the bishop, the bishop needs to take time to ask questions and listen to establish the nature of the complaint, the attitude of the complainant and respondent, including the wider local context and the attitude and historic behaviour of the complainant and respondent.



I propose six additional processes need to be made by the diocese before rushing into reconciliation. These six processes will help establish the nature of the complaint.

First, every parish ought to be encouraged, even required, to have **a parish complaints policy**. The complainant must be asked if he/she has followed the parish complaints policy and whether or not that process has been completed. If so, then the proceedings of that process should be handed to the diocese. I have attached the parish complaints policy for Holy Trinity West Bromwich, which, no doubt, may be improved, but it establishes the principle that grievances should first be handled at a local level.

Second, every diocese should have a **diocesan complaints policy** which covers the identification and handling of vexatious, malicious and querulant complaints. This must include good diocesan record keeping which is necessary to help identify patterns of vexatious, malicious or querulant complaining behaviour. Lichfield Diocese is currently working on a diocesan complaints policy which will be brought to diocesan synod later this year.

Third, the complainant must be **asked what good outcome** he/she is looking for. Establishing the motive for the complaint is necessary if its nature is to be determined.
Fourth, the parish reps (wardens, PSO, PCC secretary, licenced laity etc) must be asked to provide **historical context** of what has happened. The request for local contextual information should seek the perspective of as many of these as possible to avoid bias by one or two. Any records of historic behaviour or correspondence should be welcomed to help establish whether the criteria for vexatious, malicious or querulant complaints are met.

Fifth, **the respondent must be asked what has happened.** The respondent should be asked to provide details, including written, contemporaneous records of the behaviour of the complainant and events preceding the complaint, again to establish if the criteria for vexatious, malicious or querulant complaints are met.

Sixth, **diocesan officers must share their own knowledge of the situation with the delegated person**, including any past correspondence or complaints. A querulant complaint will have made repeated and parallel complaints to various diocesan officers. Vexatious, malicious or querulant complaints can only be identified by recognising the pattern of complaining behaviour outlined by the Local Government Ombudsman and this requires identifying every complaint made to every diocesan staff member.

Only once the Bishop is fully informed about the local context will he or she be able to decide on a course of action. Three courses of action are available under the proposed measure:

1. the bishop may determine that the complainant and respondent are ready to enter a process of reconciliation
2. the bishop may refer the matter back to the assessor as misconduct
3. The bishop may refer the matter back to the assessor as a vexatious, malicious or querulant complaint, which requires the proposed restraint order to be applied to the complainant.

If it is determined that the complaint is normal, that both parties have demonstrated a willingness and capacity to enter into Christian reconciliation, then the threat of a legal escalation must be removed. If the threat of legal action continues to hang over a respondent during a reconciliation process, then it would be a very foolish respondent who said anything in that process due to the possibility that the complainant escalates matters.

If it is determined that the complaint is vexatious, malicious or querulant the complainant should not only be placed under a restraint order but be offered biblical pastoral counselling, within or outside the local church context, under the grace of God, to address any issues of the heart to bring about healing, wholeness, inclusion and, over time, reconciliation.

Further comments on the proposed legislation

1. The designated person - Section 21

The formal process of reconciliation should be defined within the measure or the rules. My experience of CDM was of diocesan staff who either did not understand the requirements for reconciliation or were uninterested. The CDM process left the situation at parish level worse than before the complaints were made. Neither complainant nor respondent were well served by the follow up process. I was formally admonished for 'causing upset' to the complainant and the matter was left at that. I was severely upset by the punitive process and lack of objective justice.

What formal reconciliation process will be included in the measure or rules? What provision for lay discipline will be included? What training will be required for the delegated person?

Roman law maintained a standard which disqualified judges on the basis of even a suspicion of bias. Modern legal standards would disqualify a judge if impartiality could be reasonably questioned. The question of impartiality in law normally applies to preexisting relationships, such as filial, marital or close friendships. In the context of the church, a designated person in a diocese may have bias in favour or against a respondent or claimant based on previous relationships in the context of normal church life. Respondents or complainants should be able to appeal against the appointment of a designated person on the basis of a pre-existing context.

2. Meaning of Misconduct - Section 3

The definition of misconduct should be objective. The explanatory note 23 states: "the standards are to be found in particular (but not limited to) in the Ordinal, the Canons, and the Acts of Convocation needs clarification - "for example - *The Guidelines for the Professional Conduct of the Clergy*." What are the Acts of Convocation? What standards exist other than those listed? What standards of conduct are the laity expected to uphold?

The definition of misconduct must be objective and established from the revealed word of God. It is the commands of God, the law God and the expected character of elders and overseers, presbyters and priests, which must be held up as the standard against which complaints are objectively measured. Complaints can be made because the complainant has a value system which differs from the value system given to us in the scriptures.

For example, Christians are to encourage, exhort and rebuke one another according to the commandments of Christ and the law of God but a complainant might not like being gently rebuked and may not think they've done anything wrong and therefore, rather than repenting and being restored in the grace and love of Christ, they accuse the clergy person of bullying. Accusations of bullying are misconduct or serious misconduct yet the issue here is not the behaviour of the cleric but the value system of the complainant and therefore clear standards Christian standards, biblical standards, of conduct need to be established for both clergy and laity.

Another example is the charge of 'inefficiency'. Some clergy are accused of being inefficient at their job. A measure of what this charge means and how inefficiency is measured is required.

3. Registrar of tribunals - Section 6

What qualifications and standard of legal/theological/pastoral training or experience will be required of a registrar of tribunals?

4. Regional lead assessor - Section 20

What qualifications and standard of legal/theological/pastoral training or experience training will be required of regional lead assessors?

5. Pastoral support for respondents - Section 20

Clear expectations need to be established regarding pastoral support. Respondents will have a network of existing pastoral support. CDM/CMM requires pastoral support from someone who understands the practical and pastoral demands of the process. Supporters should be familiar with The Measure, The Rules, Code of Practice and offer appropriate pastoral/theological support. Powerlessness is a significant issue for respondents. They should be able to reject a bishop's offer of support and request an alternative, with justification for their pastoral needs.

6. Does a dismissal mean no further action? Section 21

No further action under CDM routinely resulted in unilateral and unaccountable action being exercised by the bishop, outside the measure. Letters of admonition, for example, placed on the blue file, must either be prohibited altogether, or legislated for, to avoid further judicial action outside the measure.

Mr Carl Fender (343 – Lincoln)

I have the following proposals to make regarding the CCM:

1. Clause 18 and Self-referral. I agree with the principle behind this. One point I spotted which may need tidying up is how it impacts with limitation especially with regard to what I call ordinary misconduct. I am talking here about conduct which is not serious and where no limitation restriction applies. If a clergy-person self refers in respect of an accusation which would be out of time had it been brought by the accuser, what happens next? The self-referring clergy-person may have known or suspected the complaint was out of time and self-referred simply to have it dismissed as time-barred. But, in the event of self-referral, the accuser then gives a reason for not presenting their complaint within time, what happens next? I hope you see the point. It is a situation that will seldom if ever arise, but does the CCM need to consider the possibility and make provision for it? I would suggest the following additional procedural amendments to address the situation :

2. Deadlines for disposal of complaints overall. I believe the church has to take seriously the task of keeping the tremendous delays that arise in disposing of cases and keep them to a minimum - they are hugely distressing for both parties to a complaint. I cannot emphasise enough how heavily delay weighs with those concerned. Tremendous delays are now embedded within the civil court system - I have seen this first-hand. Let's do our best not to reflect this trend.

I propose the primary legislation should include a statutory obligation which has firm expectations for disposal of complaints which can only be exceeded with *good reason*. I would suggest overall time limits of 3 months for a grievance, 6 months for misconduct and 12 months for serious misconduct. The *good reason* test would be a threshold that is neither too firm nor too soft in testing the reasons for exceeding a time limit expectation. The procedure rules would have to finesse the test. I am writing to the Revision Committee for them to consider the principle of the point. A code of practice could expand upon what are good and bad reasons for exceeding time limits for disposal.

3. Clause 21(1)(b) : dismissal of a complaint that is vexatious or totally without merit. The current basis for dismissal sounds too emphatic to me and arguably sets the test a bit too high. A simple test of *no case to answer* is perfectly good enough basis for assessment of the complaint if it needs to be dismissed. Whether a claim is vexatious can be dealt with under any application under clauses 30 & 31.

Mr Clive Scowen (358 – London)

This is a placeholder since I shall not be able to submit much of substance by the deadline of 5.30 today. I hope to send a fuller document by Monday morning 11 September.

Clause 10

- Subsection (3) is deeply obscure and needs clarifying.
- Subsection (5) needs to specify that a person so appointed is to serve the remained of the term of the person he or she is replacing, and clarity is needed about how the term limits in subsections (2) and (3) apply to a person filling a casual vacancy.

Clause 64: Definition of Appointments Committee. This is not terribly helpful to the reader. The committee was established by section 10(a) of the National Church Institutions Measure 1998 and it would be helpful to refer to that in this definition

LATE SUBMISSION (received Monday 11 Sept at 05.42)

Clause 3

"Misconduct" is defined here, but "grievance" and "serious misconduct" are not, either here on in clause 64. Surely some sort of definition of those concepts is required, given how much turns on the distinctions between them.

Clause 10

- Subsection (3) is deeply obscure and needs clarifying: in particular, what does "or this subsection" mean in this context; and how does "at least" work in this context?
- Subsection (5) needs to specify that a person so appointed is to serve only the remainder of the term of the person he or she is replacing, and clarity is needed about how the term limits in subsections (2) and (3) apply to a person filling a casual vacancy: does the remainder of the term which the person appointed is serving count towards the relevant term limit, and if so to what extent?

Clause 16

Subsections (2) and (3) are very convoluted and should be expressed more straightforwardly. I suggest:

(2) Unless subsection (4) applies, a complaint against a priest or deacon must be made to the bishop of the diocese in which, at the time that the conduct alleged in the complaint occurred, the priest or deacon held preferment, or, if not holding preferment at that time, the priest or deacon was resident.

(3) Unless subsection (4) applies, a complaint against a bishop (other than an archbishop) must be made to the archbishop of the province in which, at the time that the conduct alleged in the complaint occurred, the bishop held preferment, or if not holding preferment at that time, the bishop was resident.

(4)) If the complaint alleges that a priest or deacon officiated as a minister without authority the complaint must be made to the bishop of the diocese in which the priest or deacon is alleged to have done so; and if the complaint alleges that a bishop (other than an

archbishop) officiated as a minister without authority, the complaint must be made to the archbishop of the province in which the bishop is alleged to have done so.

Clause 17
How does the power of the President of Tribunals under subsection (4) to appoint a litigation friend sit with his role as "responsible bishop" on a complaint against an archbishop (clause 16(4)(12)? Is there/might there be a conflict?

Clause 18
I suggest the addition of "already" before "the subject of" in subsection (4) to bring greater clarity.

Clause 19
Subsection (2) is qualified by subsections (3) and (4) and that should be made clear in subsection by inserting at the beginning of subsection (2) words such as "Subject to subsections (3) and (4)," or "Unless subsections (3) or subsection (4) applies,"

Clause 20
Subsection (4)(b) could be read as requiring the responsible bishop to provide pastoral support personally, which I take it is not the intention, and as drafted there is no duty to provide it if the offer is accepted. I suggest that both points would be addressed if it read "*must offer to secure the provision of such pastoral support as the responsible bishop considers appropriate and, if that offer is accepted, must secure its provisions accordingly*".

Clause 21
Should there not be provision as to who may be appointed as a "designated person" and to require appropriate training to be undertaken prior to acting in that role?

Clause 29
In view of the very serious consequences which can flow from a finding of serious misconduct, the standard of proof should be beyond reasonable doubt. Furthermore, justice should be done in public. I therefore propose that the default should be for the tribunal and court to sit in public unless a case is made out by either the complainant or the respondent that it should be heard in private. At the very least, it should always sit in public if the respondent/accused so desires.

Clause 32
- Are the 6 conditions in subsection (1) mutually alternative – ie only one needs to apply for the power to impose restriction and suspension to arise?
- Is it really intended that an accusation of, say, failing to comply with a planning enforcement notice or passing a red traffic light or exceeding the speed limit should trigger the availability of these powers? I notice that clause 44(8) provides that "The rules may provide that this section does not apply to a specified offence or an offence of a specified description" but there is no equivalent provision is clause 32.

Clause 34
- In subsections (4) and (9), do the two most senior bishops include the archbishop? What happens if the respondent is the archbishop or one of the two most senior bishops? This needs to be clarified.

- Does subsection (8)(b) apply where the respondent is the incumbent or priest-in-charge? If so, is that appropriate? Would it not be more appropriate in those circumstances to consult the rural dean?

Clause 37

Why is the responsible bishop not to be asked to provide an opinion as to sentence if he has given evidence in the proceedings?

Clause 39

It seems odd that provisions for an appeal against deposition are made here, when all other appellate provisions are made in sections 49 to 51. Ought not subsections (4) to (9) to be relocated there?

Clause 43

Does "a complaint" in subsection (2) mean "a complaint under subsection (1)" (in which case that should be spelled out), or does it refer to any complaint? In any event, how can any complaint be made against a lay person, which is what someone who has been deposed from holy orders is.

Clause 64

- Definition of "the Appointments Committee"**.** This is not terribly helpful to the reader. The committee was established by section 10(a) of the National Church Institutions Measure 1998 and it would be helpful to refer to that in this definition
- Add a definition of "cleric": "cleric" means an archbishop, bishop, priest or deacon – and remove the repeated ad hoc definitions of "cleric" in the substantive provisions.

Mrs Rebecca Hunt (386 – Portsmouth)

I am a barrister and clergy wife and I work as Centre Manager for Christian Legal Centre. My team has considerable experience with the CDM process for C of E clergy, and some experience in relation to the Methodist Church Disciplinary process, which I understand the new measure is partially modelled upon. In the last few years, we have advised and acted for 16 C of E clergy in matters related to clergy discipline. At CLC we are motivated by a desire to see clergy against whom allegations are made are treated fairly by a disciplinary process. Natural and open justice principles should be applied and delay should be minimised.

Our experience would suggest that the following will be needed in order to maximise the chances of this under the proposed new measure:

1. Tight provisions on timings:
    a. How long complainants have to bring a complaint.
        i. A longer period has the tendency to aggravate a situation where a relationship has broken down and there is a grievance or an accusation of misconduct. Taking the analogy of the Employment Tribunal, under their process the complainant has 3 months from the last incident to bring a claim (with provision for older acts that form an ongoing course of conduct). We suggest that a 3-month time period for bringing a complaint should be adequate in most situations, with a provision to extend time where exceptional circumstances would warrant it.
        ii. It is clear that for cases which are so serious that the clergyman is accused of what potentially amounts to a criminal act, then it is appropriate that there is no limitation on when such a complaint should be able to be brought (as you propose in the draft CMM).
    b. How long should be taken to resolve the complaint, once it is brought
        i. In our experience under the current system, a period of 2 years is not unusual. We have had several of cases in recent times which have run for this period of time, and which have then finally been determined as appropriate for no further action to be taken. The impact on a clergyman and his family of this is extreme.
        ii. We suggest that there are deadlines imposed at every stage for the amount of time that can be taken for decisions to be made, regular updates on progress to be required to the clergyman, and also a final cut off. These deadlines could be extended in exceptional circumstances. At present the clergyman has 28 days to reply to an allegation, with no apparent duty imposed upon the Bishop to decide whether the matter proceeds.

2. A clear definition of where an allegation of misconduct will be treated as serious misconduct:
    a. This distinction will be crucial because of the potential consequences for the clergyman, and the availability of a tribunal hearing for the latter category
    b. Fairness demands that this is therefore tightly defined.
3. We suggest that there should be an occupational requirement that all the assessors and designated people are Christians, under Schedule 9 of the Equality Act 2010.
4. The assessors and designated people should be paid for their work and they should have legal training in some form. For clergy, their reputation is everything. This work must be done in a highly professional manner by people who understand the legal framework and definitions. This has not been our experience of the Methodist model.
5. In order to reduce the chances of any sort of bias in the process, the clergyman should be given a choice from a list of at least 3 assessors to investigate his or her case.
6. Confidentiality provisions:
    a. In order to promote fairness, open justice principles should apply to these processes.
    b. The presumption should be that the identity of the complainant/s should be revealed to the clergyman. This should be withheld only in exceptional circumstances that constitute serious misconduct. Even then, should not be routine on application, but should only be done in exceptional situations with clear guidance about when the discretion should be exercised.
    c. The clergyman should not be prevented from speaking about the process to others, neither should he be prevented from identifying his accuser.
7. In the interests of fairness, where a complaint is made against a Bishop or an Archbishop there should be a fully transparent process that ensures that all decisions made in relation to the complaint are made independently and at arm's length from the clergyman concerned and the relevant Diocese.

I hope that the above are helpful suggestions. I would be pleased to come and speak further about them in due course if that were considered appropriate.

Rebecca Hunt

Portsmouth 386

Mr Martin Sewell (390 – Rochester)

I write to ask that your consideration of the Clergy Conduct Measure and the report to Synod following your deliberations specifically address the issue of the applicability of the Human Rights Act and the Nolan principles for the conduct of public life.

It seems to me that many of the matter to which this measure will pertain will have aspects directly or indirectly related to matters of Employment Law and Safeguarding and in both of these fields the secular world has benefitted from the application of the Human Rights Act. I am aware and appreciate that for matters of theology and reform complexity the Church secured a degree of immunity but we ought at least to address our minds to whether this is right, necessary or beneficial in this field. I would ask the Committee to specifically record in its report to Synod your deliberations and conclusions on this subject along with an outline of any representations your have received from Church House the Archbishops' Palaces, the House of Bishops or any individuals.

In the legal field with which I was most familiar, that of Safeguarding Law, we found the intellectual structures imposed by HRA especially valuable. Indeed I find it hard now to imagine why any judicial or quasi judicial process would NOT want to comply with such well understood jurisprudence. The former President of Tribunals Sir Andrew MacFarlane (now President of the Family Division) has been a leading advocate of transparency within the Family Courts that arises from HRA and I wonder f any of your committee has approached him for his thought son the subject.

Our processes are somewhat opaque, I would say necessarily so. The Family Courts are pioloting ways in which the ways in which they work can be published to make the thinking behind decisions transparent. In these cases one is dealing with the most sensitive of matters and with minors who have often suffered the most degrading abuse, yet still my former colleagues are finding ways in which a better balance is struck between privacy and public accountability of those acting in these matters. Why cannot our Tribunals be more transparent.

One obvious example is that of Decisions that do not uphold a complaint progressing. Why are these not routinely put into the public domain in redacted form? It IS possible for those with the expertise similar to our Family Court judges. It is not only right in principle for justice to be open but actually it is of assistance to others facing similar cases. I have heard this referred to as the " hot stove" principle. If you do not tell your children that the stove is hot and forbid them from telling their siblings you risk having a succession of repetitive accidents. Why not ensure that these decisions are published in outline at least so that all may learn fro the developping jurisprudence?

There is actually a deeper unfairness at work here. Those firms that undertake a lot of the work will share the knowledge of the interpretations and pitfalls for the benefit of others within their practices. Why should others, perhaps newcomers into the field not have equal access to this information? What precisely is the argument against it?

On a more general point, why should those coming before the Church's Disciplinary Tribunal not have the benefits of the Article 8 Right to a fair trial? Our bishops will advocate for such good process in the House of Lords in a variety of contexts? Why should not the Church's Tribunal not act under the very same principles? We do not need to enter into a blanket embracing of HRA jurisdiction; why could not a provision within the Miscellaneous provisions

section simply state and enact that for the purposes of the Clergy Conduct Measure the Church shall be subject to Article 5 in its judicial and quasi-judicial functions. Do we not want people to have fair trials?

The inclusion would apply equally to complainannd respondents alike.

I specifically have in mind that those aggrieved ought to have access to the Civil Courts for remedy in respect of breaches of those rights. This is by no means as alarming as it may superficially be thought. In the Safeguarding field with which I was familiar, these actions were extremely rare, for a simple reason. When those in authority knew there was a simple accessible remedy of they breached the right to a fair trial - they did not breach people's right to a fair trial!

I think that little would do more for our moral health and confidence in our processes than for this simple change to be enacted. It needs to apply not only to the final hearing but the processes leading up to them. A crucial problem is that the Church does not have clear and consistent conflict of interest policies across the Diocese because it is said this is a matter from the individual Diocese. This is wholly unacceptable in the more judicial world and it seems that the National Church has little interest in pressing for such policies to be prioritised. Make Diocese liable for breaches of the right to a fair trial for not having such effective policy and you will see a mad scramble for Human Rights compliance.

Do the ladies and gentlemen of the Committee think this would be a bad ting? If we put these problems to the Ecclesiastical Committee of the House of Commons do you think that they will agree that the Right to a Fair Trial is an optional extra where the Established Church is concerned?

I hope you will give careful though to these matters and consider incorporating these suggestions into the redrawn legislation. At the very least could you draw the terms of enacting sections in the draft measure so that they option can be considered and debated. You must know what form of drafting would be succinctly appropriate to insert such provisions into the Measure. It would be better to debate a functional section rather than fall into delaying arguments. It is not a complex proposal.

It will be interesting to see if the Bishops wish to publicly oppose the applicability of this most fundamental Human Rights in their own back yard.

I look forward to hearing from you after your deliberations.

Subsequent submission:

After sending you my thoughts on the need for the right to a fair trial to be explicitly brought into our disciplinary procedures from first to last, I encountered the report of Fiona Scolding QC opening remarks to IICSA summarised in the opening Church Times report

"A "CULTURE of amateurism" and a "tendency to let difficult issues drift" are among the possible problems with which the Independent Inquiry into Child Sex Abuse (IICSA) into the Anglican Church will have to contend, it has been told."

Letting the pre-CDM procedures rest in the hands of such an unreformed culture is surely sub optimal.

Martin Sewell

https://www.churchtimes.co.uk/articles/2018/9-march/news/uk/counsel-for-abuse-inquiry-identifies-16-anglican-problems

Mr Andrew Orange (430 – Winchester)

You invited submissions from members of General Synod.

I am not an expert on this topic, but I am anxious that our priests are given the space to do their job to the best of their abilities. It is not in fashion at the moment, but I very much hold to the principle that a person should be presumed innocent until proven guilty, and I hope it will be reflected in the new regulations, save where there is evidence that individuals could be seriously at risk of harm from an errant priest.

The job of priest is selfless and I give my greatest respect to those who do it. Members of congregations can behave in disrespectful and difficult ways, and so threaten priests who deserve better. Let's not empower these people further by the unintended consequences of revised regulations, but rather let's try to make sure that no priests are placed under a higher burden because of the revised Clergy Conduct Measure.

With kind regards

Andrew Orange

Mrs Kashmir Garton (431- Winchester)

Hello, in relation to the CCM, I would like to make the observation that recent high profile cases have highlighted delays in process, not keeping the person (subject to the disciplinary action) informed of process and timescales, and not providing the person with pastoral support.

It would be good to see these elements included and indicative timescales in the Measure or explanatory guidance, so that the person who is subject to a complaint is supported, kept informed throughout and treated fairly during the process until a final decision is made.

I hope this can be factored into the revision process to ensure the process remains fair and thorough but also supportive to those who will be subject to complaints.

Kind regards

Kashmir Garton

Revd Preb Sandra McCalla (486 co-opted)

I have a particular query in relation to section 37. I maybe reading it incorrectly but is it possible that it limits the responsible bishop's ability to impose a penalty for misconduct (not serious) to a reprimand, and/or mentoring & supervision, and/or an injunction? Is the responsible bishop prohibited from imposing a rebuke, or revocation of a licence, or removal from preferment, or limited prohibition, or prohibition for life?

Many thanks for your help.

Submission from non-Synod member: Rt Revd Julie Conalty, Bishop of Birkenhead

I am writing in my role as Deputy lead Bishop for Safeguarding and want to raise the following points re the Clergy Conduct Measure:

1. When early proposal regarding this Measure were presented to the National Safeguarding Panel, the panel were assured that greater detail would be brought back to survivors and victims for further consultation. Has this happened? If not – please can this be prioritised.
2. A number of victims of church context abuse have reported the CDM process, especially Tribunal, to be a process that re-abuses them. It would be really helpful to have in the Measure reference to requirements to provide support for victims/survivors and other witnesses. This could be fleshed out in an accompanying code and provision of this support would need to be resourced.
3. A duty of care for complainants and witnesses should extend to ensuring they are properly informed about the process – not simply how to make a complaint but what could happen at Tribunal. The gap between their understandable expectation of a simple HR complaint process and a 'court' in which they are cross examined is huge and many are not aware or prepared for this.

+ Julie

Submission from non-Synod member: Revd Dr Alex Baker, Liverpool

I have been given this email by Rev Kate Wharton and I believe it is the appropriate channel to make suggestions regarding the CCM review process.

By way of introduction I am a consultant spinal surgeon working in the NHS and a self-supporting priest in the church of England. Currently my license is in the diocese of Liverpool.

I have a couple of suggestions that come from my slightly unusual perspective but might have relevance to other self-supporting ministers and the wider CCM. I'm sure you will have received many such e-mails and it may be that the time for making this kind of suggestion is passed and it might not be my place to do so but I thought I should make them anyway in case it is helpful.

I can provide more specific and detailed explanation if required but briefly:

The first perspective concerns secular employment and the clergy conduct measure. Given the number of self-supporting clergy ministering within the church of England I would like to suggest that some consideration should be included about how the measure proposes to interact with ministers in secular employment and the external organisations and employers that they are engaged with. As in my own case many employers have codes of conduct and others professional regulatory bodies (such as the GMC). Specifically I think the measure needs to address expectations regarding the notification of employers and professional regulators for SSMs and at the same time consider the potential for wider ramifications for self supporting ministers. For example in my own employment as a doctor there are general professional standards and expectations with respect to behaviour that are regulated by the General Medical Council. I have made enquires of the BMA and GMC concerning what might happen if a doctor was subject to investigation under a clergy conduct measure. Their response was that this was unusual and something that they weren't used to dealing with regularly but if it did happen it would likely result in consideration of the individual circumstances but that if the allegations where of a serious nature (probity / safeguarding) it would likely result in a temporary suspension of a medical license until investigations were concluded. This would have implications for employment and income specific to the SSM whilst for stipendiary clergy salary and accommodation would be unaffected by the investigation only rather the conclusion. Also how external bodies view the Church of England process and how the church views the process is likely to be different and providing information and guidance to those governing bodies might be needed. For example the church is likely to seek resolution compromise and reconciliation rather than judgement.

The second is with respect to healthy relationships and pastoral care. In a medical context the therapeutic relationship between doctors and their patients is valued and is specifically considered important for ongoing safe health care. If that relationship breaks down then it is expected that a doctor will recognise that and make arrangements to refer a patient on to another doctor to continue their care. Sometimes when there have been minor problems seeing a different doctor in the same practice might help. For more challenging problems care would be transferred to another surgery. Whilst the church has similar geographic arrangements to general practice with respect to boundaries the church has no formal mechanism for addressing onward referral. Depending on the level of grievance, a

mechanism and guidance should be in place for the provision of pastoral care and to enable the ongoing ministry or suspension of ministry during an investigation.

The next suggestion regards a recent realisation within the trust where I work and subsequently at a national NHS level that the NHS didn't have a mechanism or code of conduct by which volunteers within the trust might be regulated and or dismissed. I can see that the proposed CCM seeks to address malicious grievances separately and introduces a threshold for investigation which I think is an excellent addition and I welcome that introduction but I think that the measure should be expanded to include all those in office within the church not just those ordained or alternative mechanisms put in place to provide oversight and governance for other office bearers, readers, pccs etc. Although you might not feel this is directly related to the CCM I would welcome the opportunity to discuss my experience of a difficult encounter in an NHS setting that led to national policy change for the NHS.

If these comments are not relevant or helpful please do not feel the need to reply. If you will be helpful to expand on further or provide examples I'll be happy to do that.

Submission from non-Synod member: Revd Russell Dewhurst, Chichester

A comment on the proposed Clergy Conduct Measure (first consideration) (GS 2311)

The proposed Clergy Conduct Measure (first consideration) (GS 2311), includes the following provisions

s3 (1) The following conduct is "misconduct" for the purposes of this Measure—

... (d) conduct which fails to meet the standards required of a clerk in Holy Orders.

(2) The standards referred to in subsection (1)(d) include, in particular, the standards required of clergy that are set out in the Ordinal, the Canons and Acts of Convocation.

I would like to comment on the inclusion of 'Acts of Convocation' in this subsection.

Current Practice

Disciplinary tribunal decisions and judgments often refer to the *Guidelines for the Professional Conduct of the Clergy* (2015), which were declared as an Act of Convocation by the Convocations of Canterbury and York. In doing so, it seems to me that the panels take into account both what the *Guidelines* are and what authority they have.

The Preface of the *Guidelines* provides a statement of its self-understanding as 'a set of Guidelines describing what is desirable in the professional conduct of ordained ministry. These Guidelines are not a legal code'.

In *Bland* v *Archdeacon of Cheltenham*, [1972] Fam. 157 (1970) it was stated that Acts of Convocation do not have 'the force of statute law but … great moral force as the considered judgment of the highest and most ancient synod of the province'.

At present therefore, and appropriately to my mind, a tribunal can weigh the *Guidelines* as guidelines that have great moral force but which are not themselves regulatory instruments.

Consequences of the CCM as proposed

If Acts of Convocation are explicitly mentioned in the CCM legislation, it seems to me that these acts take on an additional authority *proprio vigore*. Use of the Guidelines by tribunals constituted under the CCM could not fail to be read under the light of s(3). The *Guidelines*, instead of being treated as 'a set of Guidelines describing what is desirable', could be treated as constituting additional 'standards required of clergy.'

I suggest some of the consequences of this might be as follows:

1. The *Guidelines for the Professional Conduct of the Clergy* did not receive the scrutiny due to a text constituting 'standards required of clergy' under pain of discipline.

2. The *Guidelines* contains many different kinds of statement including statements of the law, pastoral exhortations, and standards that may variously be considered 'desirable' (as per the preface) or required. If such a document were to become more formally constitutive of standards required under pain of discipline, it would seem clearer to separate out 'standards required' from exhortations such as, for example, the need to give enough time to one's family.
3. The *Guidelines for the Professional Conduct of the Clergy* includes incorrect statements of the law. For example, it asserts at 12.12 that

> It is the duty of every parochial minister to officiate at the funerals or interment of those who die within their cure, or any parishioners or persons whose names are entered on the church electoral roll of their parish whether deceased within their cure or elsewhere. (Canon B 38). **This obligation includes not only funeral services which take place at the parish church, but those which are held in a crematorium or cemetery.**

The sentence which I have marked in bold is incorrect: the legal obligation does not include such services. The sentiment expressed, if interpreted as moral guidance, may be very appropriate and can be weighed up against practicalities[1] and other considerations. However, if this bold sentence were understood as constituting a 'standard required of the clergy' it would acquire its own force. Again, I don't think this document has been scrutinized sufficiently for this to be appropriate.

4. Acts of Convocation are made following resolution by the (exclusively clerical) Convocations only. Does the church wish to go in the direction of the clergy regulating ourselves without lay involvement? One of the main purposes of the canons of the Church of England is to regulate the clergy. When canons are made and executed both the House of Laity of the General Synod and the Crown[2] are involved. If clergy are regulated by Act of Convocation, the lay voice, and the input of those advising His Majesty, are absent. It may or may not be appropriate to restrict input here to the clerical voice, but I raise this as a possible unintended consequence.

Conclusion

I suggest that Acts of Convocation should constitute 'standards required of a clerk in Holy Orders' if and only if they expressly describe a certain standard as a 'standard required of a clerk in Holy Orders for the purposes of the Clergy Conduct Measure s3.' This will ensure that it is clear when the Convocations have intended to set out a standard which is required on pain of discipline.

I also suggest that, if it is thought that the lay voice should be retained in the regulation of clergy (and I have no strong feeling on the matter either way), the Measure could replace the reference to 'Acts of Convocation' with 'Acts of Synod'.

Russell Dewhurst
Priest in the Diocese of Chichester
Fellow of the Centre for Law and Religion at Cardiff University Law School

LATE SUBMISSION: Sean Docherty (450 – Universities & TEIs)

I'm very sorry for submitting this a day late. I appreciate you therefore may not be able to take my feedback into account.

I spoke at Synod in enthusiastic support of the *Under Authority Revisited* report and the motion requesting the drafting of this legislation. There is much that I welcome in the draft measure but inevitably in this submission I will focus on some concerns I have.

Retention of grievance, misconduct, and serious misconduct under one system
I agree that we need more than one track and that the distinction between the three categories is sound.

I do not agree however that grievances should be dealt with under the Measure. One of the main problems with the existing CDM is that it treats everything from the most serious to the most trivial matters all under the same system. I do not think the triple track approach sufficiently mitigates this.

Admittedly this depends somewhat on what one means by grievance, but the Measure leaves that undefined (see my next point). Take someone who, for example, profoundly disagrees with a decision made by their parish priest. They might also feel that the priest has not followed an appropriate process in the way they have gone about consulting others and making the decision. Whilst ideally this would be resolved through local or diocesan processes of discussion or mediation, the dissatisfied parishioner could feel they have a grievance and therefore make a complaint. But it is strange for them to do so under the rubric of a complaint about the priest's *conduct*, and it is damaging to pastoral relationships and the authority of the clergy for everything to be subsumed under this heading. It is not a matter of misconduct (as defined in 3.1), unless their complaint is that the clergyperson has (say) bullied or mistreated people in the process of decision-making. But in that case it would be the bullying that was the substance of the complaint, not the decision, and *would* be a proper grounds for complaint of misconduct – but not a grievance.

It will perpetuate enormous clergy stress for *all* complaints to begin life as matters handled under a measure which relates to their *conduct*. It means that the clergyperson subject to any kind of complaint is in the very scary situation of facing a process that, however unlikely, could in theory lead to losing their job or even their function as a priest. This is because, in effect, anyone can initiate a *disciplinary* process against a clergyperson.

Remember that the aim of the Measure is not just to get the right outcomes, but to reduce the trauma and stress for clergy whilst they wait for the process to progress. Whilst we hope that the CCM will expedite proceedings, we know from the CDM how long the processes can take because of the workload of those tasked with managing them. If all complaints will be under the CCM process, it is likely that the number of complaints will increase and therefore the workload of the assessors and time taken before clergy are even told what level of complaint they are facing.

I would therefore invite the committee to consider removing the grievance track from the Measure altogether. Let the Clergy Conduct Measure be about clergy conduct, and let

parishes/dioceses arrange their own processes to receive and resolve other complaints and grievances. If misconduct comes to light during the investigation of a grievance, it can then of course be referred accordingly.

Lack of explanation grievance
Some of my next comments only obtain if the committee takes the view that the three tracks should indeed remain within the Measure.

3.1 gives the meaning of misconduct for the purposes of the Measure. There is no corresponding meaning given for the term grievance. I would urge the committee to add this in order to reduce the number of erroneous complaints. This would be unfair both on complainants (if their complaint could fail not on any lack of merit but because they have mistakenly invoked the wrong process), and on clergy respondents if a lack of clarity leads to more complaints being made under the Measure than really should be.

Section 22 regarding investigation and resolution of grievances is likewise extremely brief. If the committee do wish to retain grievances under the Measure, I think more detail and explanation of how grievances are to be investigated and potentially resolved needs to be given (in the same way that much more is given in relation to misconduct and serious misconduct).

Allocation of complaints
21.1 provides that it is up to the assessor to allocate the complaint to one of the three categories. I am concerned that this takes away autonomy from the complainant in determining the kind of complaint they want to lodge.

47.1 provides that the complainant can request a review of the allocation by the president of tribunals. As a matter of fairness, I think that the clergyperson should have the same right to request a review.

The assessors
Section 12 does not say anything about the qualifications for the assessors except that they must be clergy or communicant lay people etc (12.5-6) whereas Section 14 provides that the Investigation and Tribunals Team must be staff of the Legal Office. That is, they must be lawyers.

Qualifications for assessors will presumably be covered in the Code of Practice. Given that the process is set up as a legal one, in order to protect both complainants and clergy I think assessors also need to be suitably and possibly legally qualified. The implementation group felt that wasn't a prerequisite. But these are the people who will make findings of fact. Interviewing people, taking witness statements, making adjudications of fact are difficult tasks which require great skill. They need appropriate qualifications, training, and support.

Likewise, I do not think that assessors should be volunteers but should be remunerated for the provision of a skilled professional service for which the person is suitably qualified. This is not only a matter of fairness to the assessors, but to complainants and the clergy complained about. Undertaking the role as a professional commitment will also help to ensure it is carried out in a timely manner.

Reviews and appeals
I think there is insufficient protection for clergy in Section 24 because the assessor's findings of fact have to be accepted by the bishop unless they have a good reason not to do so, and the only provision for appeals is to go all the way to the President of Tribunals which would presumably mean a long wait (section 47). Might it be quicker for appeals to be conducted by a panel of assessors?

There is not much specified about the process of review and whether it is also an appeal. I think it needs to be clearer that the review process has the power to overturn findings of fact, penalties etc.

Publication
Section 59 provides that judgements, orders and other decisions must be published. Can I ask the committee to ensure they have clarity about whether this only applies to cases of serious misconduct, or to all grievances and non-serious misconduct as well? And likewise, whether judgements will be published even when a clergyperson has been found not to have committed misconduct?

I think we need to be very careful regarding the impact of publication. There will of course be times when it is essential to the public and church's interest to publish a judgement e.g. a clergyperson has been found to be no longer fit to minister, a danger and people need to be warned. But there will be far more times when the misconduct will have been of a much more minor nature. At the moment anyone who has been found to have committed conduct unbecoming has that fact published online along with the penalty but no details are given as to the nature of the misconduct. The lack of this information almost makes it worse since it invites speculation. This could be hugely prejudicial to someone's continuing ministry.

I would therefore oppose the *automatic* publication of judgements, orders and other decisions required by the draft Measure. The Measure could simply specify an obligation to publish when required to do so by the Code of Practice, and then the CoP could set out the criteria by which the decision to publish or not is reached.

Once again, I apologies for sending this late and (if you are able to take account of it), an enormous thank you for your consideration.

Sean Doherty

Universities and TEIs