

General Synod

UPDATE FROM THE CLERGY CONDUCT MEASURE STEERING AND REVISION COMMITTEES

Introduction

1. The draft Clergy Conduct Measure received First Consideration at the July 2023 group of sessions of General Synod and was duly remitted to a Revision Committee.
2. This paper provides a brief update on the work of the Steering and Revision Committees.
3. The deadline for submissions to the Revision Committee was the 8 September 2023 and a total of 27 representations were received. Some representations were received out of time and some were from non-Synod members. The Revision Committee determined that, in the interests of fairness, all submissions would be accepted and considered.
4. The Revision Committee met on four occasions, the 7 November, the 16 November, the 22 November and the 13 December. On the first three occasions the Steering Committee also met in the morning before the Revision Committee. The Committee have further meetings scheduled for the coming months.
5. Membership of the Steering and Revision Committees is set out in **Appendix A**.

Timetable

6. The Steering and Revision Committees had hoped to bring the draft Measure back to General Synod for the report and revision stage at this February group of sessions.
7. On the 27 November 2023 both the Steering and Revision Committees took the decision to bring the draft Measure back to Synod in July. This was for three main reasons – firstly, to allow the detailed work of the Revision Committee to continue and be fully completed; secondly, to allow the Rule Committee to consider draft indicative rules to be presented alongside the draft Measure at the revision stage; thirdly, to allow for further consultation on particular areas, including with survivors and Royal Peculiars.
8. The Committees were very conscious of the perceived delay that this decision represents and the high interest General Synod understandably has in seeing this work completed. However, both Committees wished to ensure that the work continued to be of a very high standard and not rushed in any way. They also observed that it would be unusual for a draft Measure of this complexity to complete its revision stage between only two groups of sessions. Further, both Committees were of the strong view that as much of the detail of the operation of the system would be contained in the procedural rules and not the Measure, it was important for Synod members to see some indicative draft rules alongside the draft Measure during the revision stage at Synod.
9. The draft revised timetable for this work is as follows:

Report Stage and Revision in Synod	July 2024
Final Drafting and Final Approval in Synod	February 2025

Parliamentary Process and Royal Assent	Spring 2025
Implementation Period & Training	Spring – Winter 2025
New Measure comes into operation.	Early 2026.

Principal Revisions

10. The Revision Committee has made a large number of amendments to the draft Measure. **The main revisions are set out in the table at Appendix B.** This does not represent each and every amendment that has been made to the Measure. In addition, it is important to note that the below is liable to further revision as the Committee continues to complete its work.

Safeguarding Representations

11. On the 16 November 2023 the Steering Committee met with two members of the NST, Maria Atanasoaei, the Policy and Development Lead in the NST and Julie O'Hara, Deputy Director, Development. The Committee considered a paper and representations on how to more closely align the Church's safeguarding function with its disciplinary system in light of the impending major revisions to the 'Managing Allegations against Church Officers' policy. The Steering Committee agreed to propose a number of suggested amendments to the draft Measure to the Revision Committee.
12. At the meeting of the 15 December the Revision Committee considered and adopted the Steering Committee's amendments in this area which, in summary –
- a. Provide for the DSO (where they are not already the formal Complainant) to become a party to a complaint where the conduct alleged involved a child or vulnerable adult. This will ensure that the DSO is able to provide the disciplinary process with any relevant information held by them, and also to receive any relevant information obtained during the disciplinary investigation. This is intended to ensure that the practice of multiple investigations into the same matter will cease.
 - b. Expand the list of occasions when a cleric may be suspended or be subject to a restriction to include being interviewed under caution (without being arrested). The cleric will also be required to disclose to the relevant bishop any occasion when they are interviewed under caution.
 - c. Provide a new ground for imposing a suspension or restriction order where the DSO provides information that the cleric in question presents a significant risk of harm.
 - d. Require the rationale behind a decision to suspend or impose a restriction order, or not as the case may be, to be recorded in writing.
 - e. Provide that where the bishop has determined not to suspend a cleric or impose a restriction order and the DSO is of the view that the cleric nevertheless presents a significant risk of harm, the DSO may request the President of Tribunals to review the bishop's decision.

- f. Require that, in a case involving a child or vulnerable adult, before imposing a penalty or administration sanction the bishop must consult the DSO.

Consultation and Fringe Event

13. Building on the consultation conducted by the CCM Implementation Group, the Steering Committee, in conjunction with the NST survivor engagement team, will be holding a further round of consultations with survivors over the next two months and prior to the finalisation of the Revision Committee report to Synod.
14. **A fringe event for members of Synod to receive a more detailed update and ask questions will be held on Saturday the 24 February 2024 at 08:00am in the Harvey Goodwin Suite, Church House. In order to book a place please contact conor.gannon@churchofengland.org.**

February 2024

**The Revd Kate Wharton
Chair of the Steering Committee
Geoffrey Tattersall KC
Chair of the Revision Committee**

Appendix A

The Revd Kate Wharton (Liverpool) * **Chair of Steering Committee**

Mr Geoffrey Tattersall KC (Manchester) **Chair of Revision Committee**

Prof Lynn Nichol (Worcester)

The Rt Revd Viv Faull (Bristol) *

The Revd Paul Benfield (Blackburn)

The Revd Paul Cartwright (Leeds) *

The Revd Sonia Barron (Lincoln)

Mrs Amanda Robbie (Litchfield)

The Revd Joy Mawdesley (Oxford)

Mr Peter Collier KC (ex officio) *

The Ven Malcolm Chamberlain (Sheffield) *

The Revd Lindsay Llewellyn-MacDuff (Rochester)

The Revd James Pitkin (Winchester)

Ms Kashmir Garton (Worcester) *

An asterisk () denotes a member of the Steering Committee who is accordingly an ex officio member of the Revision Committee.*

Appendix B

Draft Clause	Original Provision	Amendment	Explanatory Notes
12	The panel of assessors for each region must include— (a) one person nominated by the Clergy Conduct Commission on the recommendation of the Dean of the Arches and Auditor, and (b) for each diocese in the region, up to two persons nominated by the bishop of the diocese.	(2) The panel of assessors consists of persons nominated by the Clergy Conduct Commission in such numbers as it thinks appropriate, with one or more of them being nominated as a “lead assessor” for the purposes of this Measure. (3) But the nomination of a person as a lead assessor may be made only on the recommendation of the Dean of the Arches and Auditor.	This amendment reduces the body of assessors to a smaller, more agile and professional body with the intention that that they will be trained appropriately for their role.
12		In section 86 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018 (fees orders), in subsection (8) (meaning of “legal officer”), after paragraph (d) insert— “(da) a person included on the panel of assessors under the Clergy Conduct Measure 2024;”. Explanatory note: this will enable the assessors to be remunerated.	This will enable those operating as assessors to be paid a fee for their work, set by the Fees Advisory Commission.
15		The cathedral safeguarding officer included in the list of persons who has standing to bring a complaint against a cleric serving in a Cathedral The “cathedral safeguarding officer”, in relation to a cathedral, is the person appointed by the Chapter of the cathedral to advise the Chapter on, or to	This expands the list of those who have standing to bring a complaint to include the cathedral safeguarding officer.

		have responsibility for managing, matters relating to the safeguarding of children and vulnerable adults.	
19		(6) Subsection (2) [limitation period of 12 months] does not apply in the case of a complaint by virtue of section 18(1) (self-referral by cleric).	This removes the limitation period of 12 months in cases where the cleric has self-referred into the system.
20	(3) If conduct alleged in the complaint is conduct towards a child or vulnerable adult, the complaint must be referred to the diocesan safeguarding officer unless the alleged conduct has already been referred to that officer.	(3) If conduct alleged in the complaint is conduct involving a child or vulnerable adult but the complaint was not made by the diocesan safeguarding officer and the alleged conduct has not already been referred to that officer, the complaint must be referred to that officer. (4) Where a complaint is referred to the diocesan safeguarding officer under subsection (3), that officer becomes a party to the complaint. ... (6) The rules must make provision as to the role of the diocesan safeguarding officer in the case of a complaint made by that officer or to which that officer becomes a party by virtue of subsection (4).	This provides that where the complaint involves conduct towards a child or vulnerable adult the DSO becomes a party to the complaint.
20		(7) On referring a complaint under subsection (1)(a), the responsible bishop must give the lead assessor such information as the rules specify.	This amendment will ensure that the lead assessor has all the information they require to carry out their functions. This could include, for example, previous vexatious complaints made by the Complainant.
21		(2) Where the lead assessor considers that a complaint is one of misconduct (but not serious misconduct) and that it could properly be dealt with as a grievance, the lead assessor may decide to allocate the complaint as a grievance under subsection (1)(a).	This provides that, where on the face of it the conduct alleged would fall within the technical definition of misconduct under section 3, but the lead assessor considers it to be at the lowest end of

			seriousness, the complaint may be allocated as a grievance.
22		<p>(7) In section 3 of that Measure (supplementary provisions about legal aid), after subsection (3) insert—</p> <p>“(4) A person is entitled to instruct a direct access barrister to act for that person in proceedings mentioned in the first column of Schedule 1.</p> <p>(5) Accordingly a reference in this Measure to the solicitor acting for a person is, in a case where the person instructs a direct access barrister, to be read as a reference to the direct access barrister.</p> <p>(6) “Direct access barrister” means a barrister who is authorised by the body responsible for regulating barristers in England and Wales to take instructions directly from a person rather than through a solicitor acting for that person.”</p>	This makes amendments to the statutory provisions concerning legal aid to allow a respondent to instruct a barrister without the services of a solicitor.
35	(4) The rules must make provision for serving notice of, or notice of revocation of, a restriction order.	<p>(4) The rules must make provision—</p> <p>(a) requiring a decision by the relevant officer whether to impose a restriction order, and the reasons for that decision, to be recorded in writing;</p> <p>(b) the procedure to be followed in serving notice of, or notice of revocation of, a restriction order.</p> <p>(5) A restriction order has effect for three months beginning with the date of service of the notice by virtue of subsection (4) unless the restriction order is revoked under section 34(3).</p> <p>(6) The relevant officer may, on the expiry of a restriction order, impose a further restriction order; and subsections (2) to (5) apply to each further restriction order as they applied to the immediately preceding restriction order.</p>	<p>This expands the clause to provide that decisions to impose a restriction order, or not as the case may be, must be recorded in writing (similar provisions will also apply to the operation of a suspension).</p> <p>A restriction order will only operate for a period of three month, with a power to serve another notice.</p>
50		(5) Where the relevant officer decides not to impose a restriction order, or not to impose a suspension, on a person under section 34 but the diocesan safeguarding officer thinks that the person presents a significant risk of harm, the officer may request the President of Tribunals to review the decision.	This provides a power for the DSO to ask the President of Tribunals to a review the decision of a bishop not to

			impose a restriction order or suspension.
52	<p>(1) This section applies where—</p> <p>(a) a clerk in Holy Orders is arrested on suspicion of committing an offence or charged with an offence without having been arrested;</p> <p>(b) proceedings for an offence are commenced against a clerk in Holy Orders;</p> <p>(c) a clerk in Holy Orders is convicted of an offence or receives</p>	<p>(1) This section applies where—</p> <p>(a) a clerk in Holy Orders is arrested, or interviewed under caution, on suspicion of committing an offence or is charged with an offence without having been arrested or interviewed;</p> <p>(b) proceedings for an offence are commenced against a clerk in Holy Orders;</p> <p>(c) a clerk in Holy Orders is convicted of an offence or receives a caution or an administrative disposal;</p> <p>(d) a clerk in Holy Orders is included in a barred list.</p> <p>...</p> <p>(7) In subsection (1)(c), the reference to receiving an administrative disposal is a reference to undergoing an administrative process operated by the police for the disposal of conduct—</p> <p>(a) which constitutes an offence, and</p> <p>(b) for which the person undergoing the process accepts responsibility, but</p> <p>(c) for which no charge is being brought.</p>	<p>This expands the list of occurrences that trigger the duty of disclosure to the bishop to include being interviewed under caution and also where the police apply an administrative disposal of a matter.</p>
57		<p>(1) The rules may make provision for a case where there is a finding against a clerk in Holy Orders who also carries out work in some other capacity—</p> <p>(a) on a complaint under this Measure or the CDM or EJM;</p> <p>(b) in any disciplinary proceedings or process relating to the work of the clerk in that other capacity.</p> <p>(2) The rules may, in particular, provide—</p> <p>(a) that the finding, and such other information as may be specified, must be disclosed to a specified person or organisation;</p> <p>(b) that a finding of the kind referred to in subsection (1)(b) is to be treated as misconduct;</p> <p>(c) that a penalty or administrative sanction may be imposed in respect of a finding of that kind without the need for a complaint to be made.</p>	<p>This amendment provides for the sharing of findings of misconduct under the church process with an external organisation with which the cleric works (including on a voluntary basis) and also that a finding of misconduct by that external organisation may be treated as misconduct by the church for which a penalty or administration sanction can be imposed. For example, where the General Medical Council were to make finding of</p>

		<p>(3) A reference to a finding against a clerk in Holy Orders includes a reference to an admission by the clerk.</p> <p>(4) "Work" includes voluntary work.</p>	<p>misconduct against a doctor who was also in Holy Orders.</p>
67		<p>67 Code of Practice</p> <p>(1) The first Code of Practice may not be issued unless a draft has been laid before, and approved by, the General Synod.</p> <p>(2) A revised version of the Code of Practice must be laid before the General Synod as soon as practicable after it is issued.</p> <p>(3) If, four weeks before the first day of either of the next two groups of sessions of the General Synod held after the revised version is issued, 25 members of the Synod have given notice in writing to the Clerk to the General Synod that they wish the revised version to be revoked—</p> <p>(a) the Clerk must inform the Business Committee of the General Synod, and</p> <p>(b) that Committee must secure that a debate on a motion for the revocation of the revised version is held at that group of sessions.</p> <p>(4) If the General Synod resolves on a motion under subsection (3)(b) that the revised version is to be revoked, the revised version is revoked on the passing of the resolution; but that does not affect the validity of anything previously done in reliance on, or in having due regard to, the revised version.</p> <p>(5) A reference in this section to a revised version of the Code of Practice is a reference to an amended version or replacement of the guidance contained in the Code; but subsections (2) to (4) do not apply in the case of amendments which the Clergy Conduct Commission considers insubstantial.</p>	<p>This sets out the approval and amendment provisions for the Code of Practice.</p>