

GENERAL SYNOD
DRAFT CLERGY CONDUCT MEASURE

Explanatory Notes

The draft Clergy Conduct Measure amends the law on the regulation of the conduct of clergy in the Church of England by repealing the Clergy Discipline Measure 2003 and replacing it with a new system for the investigation and determination of complaints, establishing three different procedures depending on whether the complaint is a grievance, an allegation of misconduct, or an allegation of serious misconduct. Various other amendments have also been made to improve the overall operation of the Church's disciplinary structures.

BACKGROUND

1. The draft Clergy Conduct Measure ("**CCM**") sets out the statutory framework for regulating the conduct of clergy in the Church of England. It provides for the replacement of the Clergy Discipline Measure 2003 ("**CDM 2003**").
2. The first major step in the reform of the CDM was the Church's involvement in the Independent Inquiry into Child Sexual Abuse ("**IICSA**"). Arising out of that, a House of Bishops' Working Group, chaired by the then Bishop at Lambeth, the Rt Revd Tim Thornton, was set up to examine improvements to the CDM in the context of safeguarding allegations. The recommendation of that group went further and proposed to the House of Bishops in 2020 that the CDM be replaced in full.
3. The Lambeth Working Group, along with others, identified that there was a pressing need for the creation of a system that could deal with different levels of misconduct and behaviour.
4. At the July 2021 group of sessions General Synod voted to take note of the final report of the Lambeth Working Group which recommended the creation of a smaller more focussed implementation group to bring legislative proposals back to General Synod.
5. In July 2022 Synod endorsed the legislative proposals contained in the Implementation's Group's report entitled '*Under Authority: Revisited*' and passed a motion requesting that the Archbishops' Council introduce legislation to give effect to the proposals.
6. This draft Measure has been produced, as requested by Synod, to reflect the legislative proposals as approved by Synod in 2022. The Revision process under the Synod's Standing Orders allows the draft Measure to be amended as required. Following First Consideration, Synod members may table amendments to any

provision in the draft Measure for consideration by the Revision Committee and then by Synod in July 2024.

OVERVIEW OF CHANGES

7. The principal feature of the new Measure is that complaints will be categorised as either a grievance, misconduct, or serious misconduct.
8. Grievances will be dealt with at a local level and in a relatively informal way without the imposition of any penalty.
9. Complaints of misconduct will be investigated by a case assessor. In a case where a finding of misconduct (not amounting to serious misconduct) is made, the bishop will impose a penalty, but will not be permitted to remove the cleric from any office, revoke the cleric's licence, or prohibit the cleric from ministry.
10. Complaints of serious misconduct will be referred by the bishop to a central body of lawyers and investigators located within the NCIs. After an investigation the complaint will be subject to a report to the President of Tribunals who will decide whether the complaint should be determined by a bishop's disciplinary tribunal (priests and deacons) or the Vicar-General's Court (bishops and archbishops).
11. Other key changes from the CDM include:
 - a. The creation of a new Investigation and Tribunals Team (ITT) to investigate and oversee cases of serious misconduct and to give general advice and guidance about the Measure (**see clause 14**).
 - b. A new procedure for protected parties, where a child or a person who lacks capacity or has a disability wishes to bring a complaint. In such cases it will be possible to appoint a litigation friend to conduct the complaint in the place of the child or person lacking capacity or having a disability (**see clause 17**).
 - c. Clerics will be able to self-refer themselves into the system in respect of their own conduct (**see clause 18**).
 - d. The abolition of a decision to take 'no further action' as an available outcome to a complaint.
 - e. The panel of either a bishop's disciplinary tribunal or the Vicar General's Court will now comprise three members, down from the current five (**see clauses 29 and 30**).

- f. The introduction of a power to make a restraint order against a person who has brought vexatious complaints (**see clauses 32 and 33**)
- g. The introduction of a threshold test of ‘necessity’ prior being able to suspend a respondent (**see clause 34**).
- h. The introduction of a power to make an interim restriction order, prohibiting a cleric for carrying out certain specified functions in the order, as opposed to imposing a full suspension from carrying out *any* functions as a cleric (**see clause 35**).
- i. New provision for administrative sanctions, which are not a penalty, for lower-level misconduct (**see clause 37**)
- j. The abolition of ‘penalty by consent’ where a respondent admits misconduct. This implements an IICSA recommendation (**see clause 38**).
- k. The re-introduction of a power to depose a clerk from Holy Orders following a finding of misconduct that does not involve a question of doctrine, ritual or ceremony. This implements an IICSA recommendation (**see clauses 41 and 42**).

RULES

12. The draft Measure establishes the framework of the system and provides for rules to be made which will contain further operational details. These rules will be secondary legislation made under this Measure and pursuant to section 83 of the Ecclesiastical Jurisdiction and Care of Churches Measure 2018. The 2018 Measure provides for the rules to be made by the Rule Committee and laid before Synod for approval.
13. In the **appendix** at the end of these explanatory notes an illustrative outline of the structure that the rules will take has been provided to assist members. These rules have been considered on an informal basis by the Rule Committee. As the draft Measure progresses more detail will be added to this outline.

PROCEDURAL STAGES

14. Standing Order 48(1) provides for Measures and Canons to be considered by the General Synod on the following successive stages
- First Consideration (see SOs 51 and 52)
 - Revision Committee (see SOs 54 to 57)
 - **Revision (see SO 53 and 58 to 60)**

- Final Drafting (see SO 61)
- Final Approval (see SO 64).

15. The draft Measure was considered by the General Synod at the July 2023 group of sessions on the First Consideration Stage

16. The Revision Committee stage took place between November 2023 and June 2024. The Committee received 24 submissions from members of Synod and 3 submissions from non-members of Synod. The Committee determined that it would consider the points raised in all submissions received. The Committee made a number of amendments to the Measure which are set out in its report (GS 3211Y).

17. The next stage is the Revision Stage following Revision Committee, which is being taken at the July 2024 group of sessions. Members who wish to propose amendments to the Measure for considered must do so in accordance with SO 28 and by the deadline specified in the agenda for that group of sessions.

18. The Measure is expected to return to the Synod for the Final Approval and Final Drafting stages in February 2025.

NOTES ON CLAUSES

Clause 1 Duty to have regard to purpose of disciplinary system etc

19. Clause 1 is an overarching provision that sets out that every person who exercises a function for the purposes of the Measure must have due regard to the purpose of the clergy conduct system and also to the general role of bishops and archbishops in administering discipline (reflecting the role of bishops as set out in the Ordinal and the Canons (see Canon C18.7)).

Clause 2 Jurisdiction on clergy conduct

20. Clause 2(1) sets out that the Measure confers a jurisdiction regulating the conduct of a priest, deacon, bishop or archbishop.

21. Clause 2(2) maintains the current position that where a case concerns a question of doctrine, ritual, or ceremonial, the matter is to be dealt with under the procedure contained in the Ecclesiastical Jurisdiction Measure 1963.

Clause 3 Meaning of “misconduct”

22. The current grounds of misconduct in the CDM have been retained, with one amendment to the drafting.

23. Clause 3(1) sets out four grounds for which a complaint of misconduct may be made under the Measure.

- a. Clause 3(1)(a) provides that a breach of ecclesiastical law is to amount to misconduct. This includes an act or omission.
- b. Clause 3(1)(b) provides that a failure to comply with a requirement imposed by a Code issued under section 5A of the Safeguarding and Clergy Discipline Measure 2016 continues to be misconduct.
- c. Clause 3(1)(c) provides that neglect or inefficiency in the performance of a duty of ecclesiastical office continues to be misconduct.
- d. Clause 3(1)(d) replaces the wording found in the CDM of “conduct unbecoming or inappropriate to the office and work of clerk in Holy Orders” with a redrafted formulation of ‘conduct which fails to meet the standards required of a clerk in Holy Orders.’

24. Clause 3(2) provides that, for the purposes of (d) above, the standards are to be found in particular (but not limited to) in the Ordinal, the Canons, and in assessing whether conduct has failed to meet those standards, regard may be had to any guidance issued by the Convocations of Canterbury and York on what is desirable in the professional conduct of clergy (for example, *The Guidelines for the Professional Conduct of the Clergy*).

25. Clauses 3(3) and (4) continue the current position that where the House of Bishops have declared that the constitution, policies, objectives, activities or public statements of a political party or organisation are incompatible with the Church’s teaching on equality of persons or groups of different races, then membership, promotion, or an expression or solicitation of support for that party or organisation amounts to misconduct.

26. Clause 3(5) provides that holding lawful political opinions or undertaking lawful political activities cannot constitute misconduct for the purposes of clause 3(1)(d) (conduct which fails to meet the standards required of a clerk in Holy Orders.)

27. Clause 3(6) provides that the term ‘races’ in subsection (4) is to read with section 9 of the Equality Act 2010.

28. Clause 3(7) provides that any declaration previously made by the House of Bishops under the corresponding provisions of the CDM is to remain in force under this Measure. Presently the House of Bishops have made one declaration in relation to the British National Party and the National Front.

Clause 4 President and Deputy President of Tribunals

29. Clause 4(1) and (2) provides that the offices of President and Deputy President of Tribunals are to continue to exist and provides that they are to be appointed by the Appointments Committee of the Church of England on the recommendation of the Dean of the Arches.

30. Clause 4(3) sets out the qualification requirement for appointment as President or Deputy which are that the person currently holds or has held high judicial office or they hold, have held, or have the qualification for holding, the office of circuit judge. 'High judicial office' is defined in clause 64(2).

Clause 5 President and Deputy President: functions

31. Clause 5 sets out provisions relating to the functions of the President and Deputy.

32. Clause 5(1) provides that the President of Tribunals has such functions that are conferred on that person by this Measure or under this Measure (for example as set out in Rules or other secondary legislation) and by any other Measure.

33. Clause 5(2) provides that the President is entitled, should the President wish to, to act as Chair of a bishop's disciplinary tribunal.

34. Clause 5(3) requires the President to issue practice guidance in relation to the operation of tribunals.

35. Clause 5(4) provides that the President and Deputy President have a coterminous jurisdiction so that that, if the President is absent, or unable or unwilling to act, then the Deputy President must do so instead.

36. Clause 5(5) allows that the President or Deputy President may select a person who is eligible to be a Chair of a bishop's disciplinary tribunal to act in their place where they are unable or unwilling to act.

Clause 6 Registrar of Tribunals: continuation

37. Clause 6(1) provides that the current office of registrar of tribunals for each province under the CDM 2003 is to continue.

38. Clause 6(2) sets out that the appointment of each registrar is to be made by the archbishop of the relevant province after consultation with the President.

39. Clauses 6(3) – 6(8) set out the eligibility, retirement, resignation and termination requirements in relation to the registrars of tribunals.

Clause 7 Registrar of tribunals: functions

40. Clause 7(1) sets out that the functions of the registrar of tribunal for each province will be such as are conferred by rules.

41. Clause 7(2) provides for what happens in the event that a registrar of tribunals is unable or unwilling to act. In those cases, the functions must be carried out by either the registrar of tribunals for the other province, or a person selected under subsection (3) of this clause.

42. Clause 7(3) provides that the registrar of tribunals may select another person to act in their place but may not do so unless they have obtained the written approval of the President to Tribunals.

Clause 8 Clergy Conduct Commission: continuation

43. Clause 8 allows for the continuation of a Commission to oversee the general operation of the Measure and changes its name to the Clergy Conduct Commission.

44. Clauses 8(2) – (5) provides that the Commission is to consist of no more than 12 members, which include the President and Deputy President. The other members are to be appointed by the Appointments Committee and must include at least one member from each House of General Synod.

45. Clause 8(6) changes the current position that the President is automatically the Chair of the Commission and allows, should the Appointments Committee wish, for the Committee to appoint another member of the Commission as Chair.

46. Clause 8(7) is a standard provision that allows the Commission to regulate its own procedure subject to any provision made by or under this Measure.

Clause 9 Clergy Conduct Commission: functions

47. Clause 9(1) sets out that the three primary functions of the Commission are to

- a. give general advice to tribunals, courts and to bishops and archbishops on the penalties or other orders that would be appropriate to make;
- b. oversee the training and professional standards of persons exercising functions within system. For example, the training and work of the lead and case assessors; and
- c. continue to give an annual report on its activities to the General Synod through the House of Bishops.

48. Clause 9(2) provides that the Commission will also have other such functions that are conferred on it by or under this or any other Measure.

49. Clauses 9(3) and (4) require the Commission to prepare general guidance for persons exercising functions under the Measure, which may then be amended or replaced. The guidance will be issued as a Code of Practice and before it is issued it must have the approval of the Dean of the Arches and Auditor and the President of Tribunals. The clause does not replicate the current provision in the CDM 2003 whereby the Code of Practice is laid before General Synod for approval with or without amendment.

Clause 10 Provincial panel: composition

50. Clause 10 requires the Clergy Conduct Commission to continue to maintain the list known as the 'provincial panel' of persons suitable to sit on tribunals and courts.
51. Clause 10(2) replicates the exact provisions of the CDM 2003 in respect of the nomination by the diocesan bishop of two lay persons and two clergy to the panel. A member of the laity must be resident in the diocese and on the electoral roll of a parish in the diocese or on the community roll of a cathedral in the diocese. A person in Holy Orders must be resident in the diocese and have served in Holy Orders for at least seven years. Before making a nomination the bishop must consult with the bishop's council (see clause 10(5)).
52. Clause 10(2)(a) expands the panel by including each diocesan chancellor as a person who may chair a tribunal.
53. Clause 10(2)(d) removes the current cap under the CDM 2003 of 10 nominations per province for those eligible to chair a tribunal and sets out the qualification requirements for appointment.
54. Clause 10(3) continues to allow the archbishop of each province to nominate for inclusion in the relevant panel up to five members of the laity and five persons in Holy Orders, each satisfying the same qualification criteria as if they had been nominated by a diocesan bishop.
55. Clause 10(4) requires a lay person nominated to be an actual communicant. Clause 68(1) defines 'actual communicant' by reference to Rule 83(2) of the Church Representation Rules.
56. Clause 10(6) provides that subsection (2)(d) operates to mean that the eligibility requirements for appointment to the provincial panel as a tribunal chair under this Measure are treated as a statutory provision for the purposes of section 50 of the Tribunals, Courts and Enforcement Act 2007, which sets out the eligibility requirement for the appointment of certain secular judges.

Clause 11 Provincial Panel: period of inclusion

57. Clause 11 sets out the period for which a person nominated to the provincial panel serves.
58. Clause 11(1) provides that each person will initially serve for a period of six years.
59. Clause 11(2) provides that a lay person or member of the clergy (other than those eligible to act as a Chair) nominated either by a bishop or an archbishop is eligible to be nominated for inclusion on the relevant panel for one further period of six years, which does not need to be consecutive to the previous term.

60. Clause 11(3) allows for those nominated to act as a Chair to be nominated for one or more further period of six years, each of which does not need to be consecutive to the previous term.
61. Under clause 11(4) if a person's inclusion on the panel comes to an end whilst they are a member of a court or tribunal which is hearing a complaint, either under this Measure or the CDM, that person continues on the panel until such time as the complaint has been determined.
62. Clause 11(5) sets out the procedure for filling a casual vacancy where a person has resigned from the panel or is no longer eligible to be a member.
63. Clause 11(6) provides that a person nominated to fill a casual vacancy does so for a period not exceeding 6 years as is specified in the nomination.

Clause 12 Regional panel of assessors: composition

64. This clause makes new provision for the creation and maintenance of a regional panel of assessors who will have responsibility for the allocation of cases and investigation of complaints of misconduct which is not serious.
65. Clause 12(1) requires the Clergy Conduct Commission to compile and maintain a national list which is to be known as the panel of assessors.
66. Clause 12(2) sets out that the panel should consist of assessors in such numbers as the Commission thinks appropriate and that one or more of the assessors shall be appointed a 'lead assessor'.
67. Clause 12(3) provides that the lead assessor may only be nominated on the recommendation of the Dean of the Arches and Auditor.
68. Clause 12(4) allows for a lead assessor to delegate his or her functions to any other person on the panel of assessors.
69. Clause 12(5) requires the lead assessor(s) to make a report to General Synod, through the House of Bishops, each year on the exercise of their functions in the previous year.
70. Clause 12(6) sets out the eligibility requirements for nomination to the panel of assessors. The requirement is the same as for inclusion on a provincial panel, save that a clerk in Holy Orders must have been in orders for five years.

71. Clause 12(7) provides that it is for the Commission to decide the terms on which a person nominated for inclusion on the panel is so included, for example, length of service.
72. Clause 12(8) requires the Commission to have due regard to any advice issued the House of Bishops when making a nomination to the regional panel to have due regard to the Code of Practice issued by the Clergy Conduct Commission. The Code will set out the general experience and qualities required for exercising the functions of an assessor.
73. Clause 12(9) makes amendments to section 86 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, which deals with the annual fees orders, to allow for a person included on the panel of assessor to be paid.

Clause 13 Regional panel of assessors: period for inclusion

74. This clause sets out the period for which a person nominated to the regional panel of assessors serves.
75. Clause 13(1) provides that a person nominated for inclusion on the panel of assessors serves an initial term of six years.
76. Clause 13(2) allows for that initial term to be renewed for one further period of six years, which does not need to be consecutive to the previous term.
77. Clauses 13(3) and (4) set out what happens when an assessors' term come to an end whilst they are dealing with a complaint. An assessor who is investigating a complaint continues on the panel until the investigation is complete. In the case of a lead assessor, that person continues on the panel until the complaint has been allocated to the appropriate track under clause 21.
78. Clause 13(5) provides that where a casual vacancy occurs on the panel, the nomination to fill it by the Commission must be made subject to the same conditions as the nomination in respect of which the vacancy has occurred.
79. Clause 13(6) provides that the rules made under this Measure may provide that a person's inclusion on the panel of assessors depends upon the completion of specified training and that the Commission may remove a person from the panel upon specified grounds. The provision of training will be overseen by the Clergy Conduct Commission.

Clause 14 Investigation and Tribunals Team

80. This clause makes provision for the creation of an 'Investigation and Tribunal Team' ("ITT") to oversee cases of serious misconduct and to give general advice and guidance about the Measure.

81. Clause 14(1) requires the Chief Legal Adviser to the Archbishops' Council and the General Synod to designate one or more members of the Legal Office of the NCIs as members of the ITT.

82. Clause 14(2) sets out the general responsibilities of the ITT.

83. Clause 14(3) is a technical provision which provides that the work of the ITT has effect as if it were a function of Chief Legal Adviser and therefore enforceable through that person.

Clause 15 Complaint: proper interest

84. This clause sets out who may bring a complaint against a priest, deacon, bishop or archbishop, known as having a 'proper interest'.

85. Clause 15(2) provides that in the case of a priest or deacon the following persons have a proper interest:

- a. if the priest or deacon holds office in a parish—
 - i. a churchwarden of the parish, or
 - ii. a person nominated by the PCC at a duly convened meeting where at least two-thirds of the lay members are present and at least two-thirds of the lay members present vote for the complaint to be brought. The person nominated need not be a member of the PCC.
- b. the archdeacon in whose archdeaconry the priest or deacon holds a form of authority to exercise ministry; or,
- c. if the priest or deacons hold a form of authority which operates in more than one archdeaconry, or the form authority does not operate by reference to an archdeaconry, any archdeacon in the diocese;
- d. the diocesan safeguarding officer of the diocese in which the priest or deacon either holds a form of authority to exercise ministry or, if the person does not hold a form authority, is resident;
- e. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- f. a person who experienced or witnessed the conduct alleged in the complaint.

86. Clause 15(3) provides that where the complaint is brought against a clerk in Holy Orders who serves in a cathedral then the complaint may be brought by:

- a. a person nominated by the Chapter of the Cathedral. The person nominated need not be a member of Chapter;
- b. the cathedral safeguarding officer;
- c. the diocesan safeguarding officer of the diocese of which that cathedral is the cathedral;

- d. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- e. a person who experienced or witnessed the conduct alleged in the complaint.

87. Clause 15(4) provides that where the complaint is brought against a bishop, the following persons have a proper interest:

- a. in the case of a diocesan, suffragan or other bishop who has authority to exercise ministry in the diocese, a person nominated by the bishop's council of the diocese at a duly convened meeting where at least two-thirds of the members are present and at least two-thirds of the members present vote for the complaint to be brought. The person nominated does not need to be a member of the bishop's council
- b. the diocesan safeguarding officer of the diocese in which the bishop either holds a form of authority to exercise ministry or, if not holding authority to do so, is resident;
- c. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- d. a person who experienced or witnessed the conduct alleged in the complaint; or
- e. a person nominated by the archbishop of the relevant province.

88. Clause 15(5) provides that where the complaint is brought against an archbishop the following persons have a proper interest:

- a. a person nominated by the bishop's council of the diocese of that archbishop at a duly convened meeting where at least two-thirds of the members are present and at least two-thirds of the members present vote for the complaint to be brought. The person nominated does not need to be a member of the bishop's council
- b. the diocesan safeguarding officer for the archbishop's diocese;
- c. the national director of safeguarding or a member of the national safeguarding team nominated by the national director;
- d. a person who experienced or witnessed the conduct alleged in the complaint; or
- e. a person nominated by the other archbishop.

89. Clause 15(6) makes provision for an archdeacon to nominate another archdeacon, either from within that diocese, or from another diocese, to bring a complaint where the archdeacon is unable or unwilling to do so, for example because of a conflict of interest.

90. Clause 15(7) sets out that where an archdeacon nominates another archdeacon that must be done in writing and a copy of the record sent to the relevant diocesan registry.

91. Clauses 15(8), (9) and (10) define who is to be regarded as the 'cathedral safeguarding officer', the 'national director of safeguarding' and a member of the 'national safeguarding team'.

Clause 16 Complaint: procedure

92. Clause 16 sets out the procedure for bringing a complaint.

93. Clause 16(1) allows for the procedural rules made under this Measure to set out the form that a complaint must be made in and the procedure which must be followed.

94. Clause 16(2) sets out that a complaint against a priest or deacon (subject to the exceptions set out below) must be made to the bishop of the diocese in which the priest or deacon held a form of authority to exercise ministry at the time that the alleged conduct occurred, or if the priest or deacon did not hold a form of authority the diocese in which the priest or deacon was resident.

95. Likewise, clause 16(3) sets out that a complaint against a bishop must be made to the archbishop of the province in which the bishop held preferment at the time that the alleged conduct occurred, or if the bishop did not hold preferment at time, the diocese in which the priest or deacon was resident.

96. In either case, if the complaint alleges that the priest or deacon or bishop officiated as minister without authority then the complaint must be made to the bishop of the diocese (in the case of a priest or deacon) or the archbishop of the province (in the case of a bishop) in which the person is said to officiated without authority.

97. Clause 16(4) requires a complaint against an archbishop to be made to the President of Tribunals, who must notify the other archbishop. This changes the position under the CDM 2003 where a complaint against an archbishop is made to the other archbishop.

98. Clauses 16(5) to (7) sets out special modifications for certain clergy and provides that:

- a. a complaint against a chaplain of one of the armed forces of the Crown must be made to the Archbishop of Canterbury;
- b. a complaint against a minister who has a licence to preach from an archbishop must be made to that archbishop;
- c. a complaint against a minister who has a licence to preach from the University of Oxford or Cambridge must be made to the Archbishop of Canterbury.

99. Clause 16(8) provides that where a respondent falls within both one of the general provisions in (2) to (4) and one of the special provisions in (5) to (7), only the special provision will apply.

100. Clause 16(9) operates to prevent a complaint being made under this Measure against a cleric about the way they have performed a function under this Measure, without the prior permission of the President of Tribunals. For example, this provision would apply to a priest who acted as a case assessor on a complaint of misconduct or an archdeacon who brings a complaint.

101. Clause 16(10) confirms that where a cleric holds a licence from a bishop of the diocese that licence may not be terminated because of the cleric's misconduct otherwise than by a complaint being made under this Measure.

102. Clause 16(11) creates the term 'responsible bishop' which operates as a tag for future references in this Measure.

Clause 17 Protected Parties

103. This is a new clause which sets out the procedure where a child or a person who lacks capacity or has a disability wishes to bring a complaint or where the respondent lacks capacity or has a disability. In such cases the procedure allows for the appointment of a litigation friend to conduct the proceedings in the place of the child or person lacking capacity or having a disability.

104. Clause 17(1) provides that a child may not bring a complaint, but where the child would otherwise have a proper interest (for example under clause 15(2)(e) above because they experienced the misconduct) then a person with parental responsibility (which under clause 17(9) has the same meaning as in the Children Act 1989) or a person appointed as a litigation friend may bring the complaint. This clause does not prevent another person from bringing the complaint, for example the archdeacon or diocesan safeguarding officer.

105. Clause 17(2) provides that a person who otherwise would have a proper interest but lacks capacity (which under clause 17 (10) is to be read with the Mental Capacity Act 2005) or has a disability (which under clause 17 (11) has the same meaning as in section 6 of the Equality Act 2010) may appoint a litigation friend to bring the complaint. This provision does not affect the powers of any person who may be appointed an attorney or other authorised person under the Mental Capacity Act 2005.

106. Clause 17(3) provides that a respondent who lacks capacity or has a disability may appoint a litigation friend.

107. Clause 17(4) is a technical provision that confirms that subsections (2) and (3) do not affect the powers of a person authorised under the Mental Capacity Act 2005 to act for that person generally.
108. Clause 17(5) provides that the appointment of a litigation friend is to be by the President of Tribunals or, if a court or tribunal has been convened, the Chair, in accordance with the procedure that will be set out by the rules.
109. Clause 17(6) is a standard provision that sets out that it is the duty of a person appointed as litigation friend for another person to act in the best interests of that person.
110. Clause 17(7) and (8) confirm the position that a person who under this clause is authorised by virtue of their appointment as litigation friend is treated as having a proper interest in the complaint.

Clause 18 Self-referral by cleric

111. Clause 18 creates a new provision whereby a cleric may self-refer themselves into the system in respect of their own conduct. There is no obligation on a cleric to do so and they may not do so where the conduct in question is already the subject of a complaint under this Measure or the CDM. The clause also sets out where a self-referral is to be made to.

Clause 19 Limitation periods

112. This clause deals with the period in which a complaint against a cleric must be brought, known as a limitation period.
113. Clause 19(2) provides that a complaint that constitutes a grievance or misconduct (that is not serious misconduct) must be brought within 12 months of the last occurrence of the conduct ending with the date the complaint is made. Where the conduct constitutes a course of conduct the whole of the conduct may fall within the scope of the complaint so long as the last event is within 12 months of the complaint being brought.
114. Clause 19(3) allows for a complaint to be made in respect of conduct occurring before the coming into force of the Measure, subject to the limitations imposed by this clause regarding time limits as set out above.
115. Clause 19(4) provides that the limitation period does not apply to any complaint self-referred by the cleric.
116. There is no limitation period for complaints of serious misconduct. This is a change to the current position and implements an IICSA recommendation.

Clause 20 Referral of a complaint

117. This clause sets out the actions that must take place once a complaint has been made to the responsible bishop.
118. Clause 20(1)(a) requires that upon receiving the complaint the responsible bishop, or the President of Tribunal (in the case of a complaint against an archbishop) must refer the case to the lead assessor. This is for the purposes of allocating the complaint to the appropriate track.
119. The operation of clauses 20(1)(b) and 20(2) and (3) is to require referral to the police (unless it has already been referred), and to the diocesan safeguarding officer (unless it has already been referred), where the conditions for doing so are met.
120. Clauses 20(4), (5), (7) and (8) make provision for either the DSO or the national director of safeguarding (or a member of the NST nominated by the director), to become a party to a complaint involving a child or vulnerable adult and for the rules to make provision for the role as a party.
121. Clause 20(6) sets out that, where there is more than one lead assessor in post, the rules will determine which lead assessor will deal with the complaint.
122. Clause 20(9) provides that upon referring the case to the lead assessor the responsible bishop of President must give to the lead assessor such information as the rules may specify. For example, this could include details of previous complaints of a similar nature.
123. Clause 20(10) requires the responsible bishop to consider and offer appropriate pastoral support to each of the parties to the complaint, people in the area where the respondent exercises ministry (for example churchwardens or other parishioners) and any other person with an interest in the complaint (for example the person who experienced the alleged conduct or another witness).
124. Clause 20(11) confirms that in cases where an archbishop is the respondent the functions in subsection (10) above are to be carried out by the other archbishop.

21 Allocation of complaint

125. Clause 21(1) requires the lead assessor to either
- a. allocate the complaint to one of three tracks (grievance, misconduct and serious misconduct); or
 - b. make a recommendation to the responsible bishop that the complaint be dismissed on the grounds that it is vexatious or totally without merit or
 - c. if a complaint of misconduct has been made outside of the 12 months limitation period, either dismiss the complaint, or where the assessor is of

the view that there was a good reason why the complaint was not made within time, give permission for it to proceed; or

- d. dismiss the complaint on the grounds that it was made by a person who does not have a proper interest under clause 15.

126. Clause 21(2) allows for the lead assessor to allocate a complaint of misconduct as a grievance. For example, where the complaint alleged a very minor breach of ecclesiastical law.

127. Clause 21(3) provides that before deciding whether or not to give permission under clause 21(1)(e)(ii) – where the complaint of misconduct is out of time – the lead assessor must give the persons specified in the rules an opportunity to make written representations.

128. Clause 21(4) requires the assessor to notify the responsible bishop or President of Tribunals of the decision.

129. Clause 21(5) makes provision for the rules to specify the procedure for when a complaint alleges different levels of conduct – for example a mixed case of misconduct and serious misconduct.

Clause 22 Action after allocation of complaint

130. Clause 22(1) requires the responsible bishop or President of Tribunals to inform the parties of the lead assessor's decision.

131. Clause 22(2) makes provision that, in the case of a complaint allocated as a grievance, the bishop must appoint a designated person to investigate and seek to resolve the grievance.

132. Clause 22(3) provides that the designated person must be a clerk in Holy orders or an actual communicant and before making the appointment the responsible bishop or President of Tribunals must have due regard to the factors set out in the Code of Practice.

133. Clause 22(4) provides that where the case is allocated as misconduct (but not serious misconduct) then the lead assessor must appoint a case assessor from the panel.

134. Clause 22(5) provides that where the case is allocated as serious misconduct then the responsible bishop must refer the case direct to the ITT.

135. Clauses 22(6) and (7) make provision in respect of informing the respondent as to the availability of ecclesiastical legal aid and make amendments to the Church

of England (Legal Aid) Measure 1994 to allow for the instruction of a direct access barrister.

136. Clause 22(8)(a) requires the bishop to dismiss the complaint where that has been the recommendation of the lead assessor under subsection (1). Clause 22(8)(b) allows that the President (in the case of a complaint against an archbishop) may either dismiss the complaint or where the President disagrees with the recommendation may either not dismiss the complaint or may give directions in accordance with the rules for the next steps.

Clause 23 Grievance

137. This clause sets out the basic procedure for investigating and resolving a grievance. It will be supplemented by procedural rules and guidance in the Code of Practice.

138. Clauses 23(3) and (4) make provision for the re-allocation of a grievance at any time before it has been resolved. This may be, for example, where during the investigation stage new evidence comes to light that warrants a re-evaluation of the allocation.

139. Clause 23(5) provides for the allocation process to be rerun.

140. Clause 23(6) provides that where the designated person is satisfied that it is not possible to resolve the complaint, then the designated person must inform the parties, the lead assessor and the responsible bishop or the President of Tribunals.

Clause 24 Complaint of misconduct: investigation

141. Clause 24 sets out the process for the investigation of a complaint of misconduct (but not serious misconduct).

142. Clause 24(2) requires that the case assessor to be appointed from the panel maintained by the Commission.

143. Clause 24(3) sets out that it is the role of the case assessor to investigate the complaint and make such findings of fact that are required for determining the complaint. The procedural rules and Code of Practice will set out further details on the process that the case assessor will follow.

144. Clauses 24(4) and (5) provide that the case assessor must seek advice from the ITT where an issue specified in the rules arises (for example a question of law) and that the case assessor may seek advice from the ITT on any issue relating to the complaint.

145. Clauses 24(6), (7) and (8) provide the same procedure as in clause 22 for the re-allocation of the complaint as a grievance or a case of serious misconduct and for the subsequent decision by the lead assessor and also that the lead assessor may allocate a case of a minor case of misconduct as a grievance.

146. Clause 24(9) is the same as clause 23(5) and provides for the allocation process to be rerun.

Clause 25 Complaint of misconduct: report

147. This clause sets out what happens once the case assessor has completed the investigation. Under clause 25(1) the assessor must write and issue a report to the parties and to the responsible bishop or President of Tribunals. Clause 25(2) provides that the rules will specify the time period and the contents of the report.

148. Clause 25(3) sets out the recommendations that the case assessor may make.

149. Clause 25(4) provides that where the report finds the complaint proven or part proven, it may also recommend what, if any, penalty or administrative sanction should be imposed.

150. Clause 25(5) makes provision for the case assessor, when recommending that the case be dismissed, to also recommend that the complaint be declared vexatious or totally without merit.

151. Clause 25(6) requires the responsible bishop (in a case against a deacon, priest or bishop) to implement the recommendations in the report, whilst having due regard to the Code of Practice.

152. Clause 25(7) set out the procedure in the case of a complaint against an archbishop. In that case, the President may implement the recommendation under subsection (3) or (5) or if the President does not agree with a finding of fact or with a recommendation, the President may determine the case or give directions.

153. Clause 25(8) allows the President or responsible bishop a discretion in whether or not to accept the recommendation for a penalty or administrative sanction and, should the person wish to, decide the appropriate penalty or administrative sanction themselves.

Clause 26 Complaint of misconduct: conciliation

154. Clause 26 set out the process for the parties entering into conciliation where the complaint has been allocated as misconduct (but not serious misconduct). It does not apply to cases that have been allocated as a grievance, but the procedure set out in the rules for resolving grievances will allow for a separate process akin to a conciliation.

155. Where conciliation is reached, an agreement must be put in writing and no further steps may be taken on the complaint. If within three months conciliation is not reached, then the complaint proceeds in accordance with the preceding clauses.

Clause 27 Complaint of serious misconduct

156. This clause sets out the process when a complaint is allocated as serious misconduct.

157. Clause 27(2) provides that the ITT is to investigate the complaint and make a report to the President of Tribunals.

158. Clause 27(3) operates so as to allow a person other than a member of the ITT to carry out the investigation and write the report (for example an external investigator or barrister).

159. Clause 27(4) requires that the report to the President be given to the parties and that each party be given an opportunity to make written representations to the President.

160. Clause 27(5) then requires the President to consider the report and the representations and either refer the complaint in full for determination by a bishop's disciplinary tribunal (for priests and deacons) or the Vicar-General's Court (for bishops and archbishops), to refer part of the complaint and dismiss the remainder, or to dismiss the complaint in full.

161. Clauses 27(6) and (7) set out the test that the President is to apply in making the above decision. The President must consider if there is a real prospect of a finding of misconduct; if so, whether it is likely that the misconduct would be a finding of serious misconduct; and if so whether there are exceptional circumstances such that referring the complaint to a court or tribunal would cause an injustice.

162. Where the President is satisfied that the test is met, the complaint must be referred to a bishop's disciplinary tribunal or to the Vicar-General's court.

163. Clause 27(8) provides that where the President determines that there is no real prospect of a finding of misconduct then the case must be dismissed.

164. Clause 27(9) provides that if the President determines that there is a real prospect of a finding of misconduct, but that the misconduct would not amount to serious misconduct, then the President must refer the case to the lead assessor

and the complaint proceeds as if it has been allocated as misconduct (but not serious misconduct).

165. Clause 27(10) requires the President to put the decisions in writing.

Clause 28

166. Clause 28 sets out that if, during an investigation into a complaint of misconduct or serious misconduct an issue relating to the safeguarding of a child or vulnerable adult arises, the person carrying out the investigation must notify the DSO or director of the NST (or a member of the NST nominated by the director). The person who is informed then may become a party to the proceedings in accordance with the procedure that will be set out in the rules.

Clause 29 Bishop's disciplinary tribunal

167. Clause 29 sets out the composition of and appointment to a bishop's disciplinary tribunal. The tribunal is reduced from five persons (under the CDM) to three.

168. It provides that a person may not be appointed to sit on a tribunal if they were nominated to the provincial panel by the responsible bishop who dealt with the case.

Clause 30 Vicar-General's court

169. Clause 30 sets out the composition of and appointment to the Vicar-General's court. The composition of the Courts has also been reduced to three persons. Where the Vicar-General is unable or unwilling to serve as Chair, the President of Tribunal (or deputy) or a person appointed from the relevant sections of the provincial panel may be appointed as Chair.

170. It also provides that a person may not be appointed on the court if they were nominated to the provincial panel by the responsible bishop who dealt with the case or the President of Tribunals.

Clause 31 Procedural matters

171. Clause 31(1) provides that the standard of proof to be applied by a Bishop's disciplinary tribunal or Vicar-General's court is the balance of probabilities. This is the usual standard of proof in civil and disciplinary cases and means 'is it more likely that not that an event occurred'.

172. Clause 31(2) provides that a decision of a court or tribunal is to be taken by a majority of its members, but there is an exception for any question of law or procedure, where the decision is to be taken by the Chair alone. This is a change from the CDM and reflects the fact that only the Chair is legally qualified.

173. Clause 31(3) and (4) require a tribunal or court to sit in private except where the respondent requests the sitting to be in public; the tribunal or court is satisfied that it is in the interest of justice to sit in public, or the rules provide for the sitting to be in public. Where the court or tribunal does sit in public, the Measure provide a power to exclude persons from the whole or part of the proceeding.

174. Clause 31(5) allows for the rules to make provision for certain procedural matters.

Clause 32 Vexatious litigant: application for restraint order

175. Clause 32 is a new provision that allows for the respondent to a complaint, or a bishop or archbishop, or the ITT, to apply for a restraint order against a vexatious litigant.

176. Clause 3(22) sets out what a restraint order is and the consequences of an order being made. Where a restraint order is in place the person subject to the order may not make any complaint, request or application without the prior permission of the President. Similarly, a person with a proper interest may not make the complaint, request of application on behalf of a person subject to a restraint order. Any complaint, application or request that had been made before the restraint order was made proceeds no further.

177. Clauses 32(3) provides that the application is to be made either to the President of Tribunals or to the Chair of a court or tribunal if one has been convened.

178. Clause 32(4) sets out the test to be applied upon an application for a restraint order and subsection (5) provides that before making an order the person against whom the order would be made must be given an opportunity to make written representations.

Clause 33 Vexatious litigant: operation of restraint order

179. Clause 33(1) and (2) provides for the period that the restraint order is to remain in force and for the publication of the order in line with directions issued by the President.

180. Clause 33(3) operates so as to make any complaint, application or request made by a person subject to an order without the necessary permission to be a nullity.

181. Clause 33(4) and (5) sets out the test for the granting of permission to a person who is subject to a restraint order to bring a complaint, application or request and also makes provision for the variation and discharge of an order.

Clause 34 Restriction order and suspensions: power to impose

182. Clause 34 sets out the circumstances when a restriction order may be made against a cleric or when a cleric may be suspended. A restriction order or suspension may only be imposed on a complaint of misconduct or serious misconduct (i.e. not in the case of a grievance).
183. Clause 34(3) allows for a restriction order or suspension to be revoked at any time.
184. Clause 34(4) sets out who may impose the order or suspension. In the case of an archbishop the relevant officer is the President of Tribunals.
185. Clause 34(5) repeats the provisions of the CDM 2003 in relation to the meaning of 'significant risk' for the purposes of clause 34(1)(f), which derives from Canon C 30.
186. Clause 34(6) allows for the rules to specify that a particular offence or type of offence is excluded from this clause, for example, speeding offences.

Clause 35 Restriction order

187. This clause sets out provisions relating to the making of a restriction order and the test and procedure for imposing the order.
188. Clause 35(2) provides that the relevant officer (which is the person who imposes the order) may only do so once they have considered all the circumstances of the case and is satisfied that an order is necessary to secure the proper exercise of a typical clerk in Holy Orders.
189. Where an order is imposed the cleric may not carry out the action specified in the order unless the person who imposed the order gives permission. A restriction order differs from a full suspension in that a suspension is a full prohibition from exercising any function in relation to the cleric's office. It is designed to be a more proportionate response to lower-level concerns raised about the cleric's conduct.
190. The relevant officer must consult such persons as the officer considers appropriate and if relying upon section 34(1)(f) ('significant risk of harm') then the officer must consult either the DSO or the director of the NST unless the information came from that person.
191. The rules will make provision for the recoding in writing of decisions and the procedure of serving notice of the order.

192. A restriction order has effect for three months, unless revoked and the relevant officer may at the expiry of the order impose a further order, applying the same test.

Clause 36 Suspension

193. Clause 36 deals with the power to suspend a cleric.

194. Clause 36(1) sets out the definition of a suspension.

195. Clause 36(2) sets out a new test for suspension. The relevant person must first have considered whether it would be sufficient to impose a restriction order. If they are satisfied that such an order would not be sufficient, then they may only suspend the cleric where it is necessary to do so, having considered all the circumstances of the case.

196. Clauses 36(3) provides for consultations prior to imposing a suspension, including if the relevant officer relying upon section 34(1)(f) ('significant risk of harm') then the officer must consult either the DSO or the director of the NST unless the information came from that person.

197. Clause 36(4) provides that, before a bishop or archbishop may be suspended the consent of the two most senior bishops in the province must be obtained.

198. Clause 36(5) makes provision for the creation of rules concerning the recording of decisions, the giving of notice and revocation of suspension and the period of suspension.

199. Clauses 36(6) and (7) provides that a suspension has effect for three months, unless revoked and the relevant officer may at the expiry of the order impose a further order, applying the same test.

200. Clause 36(8) – (11) provides for the making of arrangements for ministry in the relevant place where the cleric is suspended.

Clause 37 Penalties and administrative sanctions

201. Clause 37(1) sets out the penalties that may be imposed for misconduct. Three new penalties have been added which are (i) a written notice given to the respondent concerning the commission of misconduct that is not serious and (ii) a mentoring and supervision requirement, which would require the respondent to be supervised and mentored by another cleric for a period of time specified in the order and (iii) removal of permission to officiate.

202. Clause 37(2) makes new provision for administrative sanctions, which are not a penalty, for lower-level misconduct.

Clause 38 Power to impose penalty or administrative sanction

203. Clause 38 sets out the circumstances in which a penalty or administrative sanction may be imposed.
204. Clause 38(1) provides that where a case assessor makes a finding that the respondent has committed misconduct then the responsible bishop or President of Tribunals may impose a penalty or an administrative sanction.
205. Clause 38(2) provides that a tribunal or court may impose either a penalty or an administrative sanction when dealing with misconduct or serious misconduct.
206. Clause 38(3) provides that the responsible bishop or President of Tribunals may impose a penalty or administrative sanction where the respondent admits misconduct.
207. Clauses 38(4) and (5) provide that where in a complaint of serious misconduct the respondent admits to the misconduct the court or tribunal, as the case may be, may impose a penalty or administrative sanction.
208. Clause 38(6) provides that where the respondent enters a partial admission, either to a complaint of misconduct or serious misconduct, a penalty or administrative sanction may not be imposed until such time as the remaining part has been concluded, either as a result of a tribunal or court, or by being withdrawn.

Clause 39 Exercise of power under section 38

209. Clause 39(1) operates so that the responsible bishop or President of Tribunals when dealing with a case of misconduct may only impose following penalties:
- a. a written notice of misconduct;
 - b. a mentoring and supervision order; and
 - c. an injunction;
- or may impose either or both of the administrative sanctions (written warning and written advice).
210. Clause 39(2) operates so that a tribunal or court may impose any of the penalties or either or both of the administrative sanctions.
211. Clause 39(3) confirms that, for the avoidance of doubt, where one or both of the administrative sanctions is imposed, a penalty may not be imposed.
212. Clause 39(4) inserts a new provision that allows a tribunal or court to take into account any period that a respondent has been suspended when imposing a limited prohibition, but in doing so may not extinguish the total period of prohibition altogether.

213. Clause 39(5) and (6) repeats the current provisions in the CDM whereby a tribunal or court may invite the responsible bishop to give a written opinion of what an appropriate penalty would be in the particular case.

214. Clause 39(7) requires those imposing a penalty to have due regard to the Code of Practice as well as guidance issued by the Commission on penalties.

Clause 40 Conditional discharge

215. Clause 40 repeats like provisions in the CDM for the imposition of a conditional discharge where the responsible bishop, President of Tribunals or the tribunal or court is of the opinion that it is not expedient to impose a penalty or administrative sanction. A conditional discharge may only be imposed for a period not exceeding two years from the date of the order.

216. Where a respondent, during the period of discharge, commits further misconduct, the bishop, President of Tribunals, court or tribunal as the case may be, may deal with the Respondent for both the original misconduct and the new misconduct.

Clause 41 Deposition from Holy Orders: priest or deacon

217. Clause 41 re-introduces a power for a bishop to depose a priest or deacon from Holy Orders following a finding of misconduct that does not involve a question of doctrine, ritual or ceremony. The re-introduction of this power implements an IICSA recommendation. Canon C1.2 provides that once a person is admitted to Holy Orders they can never be divested of the character of the order but may by legal process be deposed from them. The power to depose will be exercisable only where a tribunal has imposed a penalty of prohibition for life.

218. Where a tribunal makes a recommendation that the respondent be deposed from Holy Orders the bishop may then depose that person, subject to the provisions of clause 41(4) to (8) which sets out a process of appeal to the archbishop of the relevant province.

219. The effect of deposition from Holy Orders is that the person must thereafter live their life as a lay person and the same consequences apply as if the person had voluntarily relinquished their orders by deed under the Clerical Disabilities Act 1870¹.

¹ (1) He shall be incapable of officiating or acting in any manner as a minister of the Church of England, and of taking or holding any preferment therein, and shall cease to enjoy all rights, privileges, advantages, and exemptions attached to the office of minister in the Church of England:

(2) Every licence, office, and place held by him for which it is by law an indispensable qualification that the holder thereof should be a minister of the Church of England shall be ipso facto determined and void:

(3) He shall be by virtue of this Act discharged and free from all disabilities, disqualifications, restraints, and prohibitions to which, if this Act had not been passed, he would, by force of any of the enactments mentioned

Clause 42 Deposition from Holy Orders: bishop or archbishop

220. Clause 42 makes equivalent provision for deposition from Holy Orders in respect of a bishop or archbishop. In the case of a bishop or archbishop the Upper House of the relevant Convocation must consider the recommendation and may not pass a resolution to depose the person from their orders until they have given the bishop or archbishop an opportunity to be heard before it and considered any representations.

Clause 43 Restoration on pardon

221. Clause 43 provides that the Royal prerogative of mercy (“a free pardon”) applies to proceedings under this Measure, the CDM or the Ecclesiastical Jurisdiction Measure 1963 (“EJM”).

222. Where a person receives a free pardon the relevant prohibition, removal or deposition ceases to apply and the person is restored to any ecclesiastical office or form of authority held previously held, unless it has been filled in the meantime.

Clause 44 Limited prohibition: performance of cleric’s functions

223. This clause makes provision for the exercise of functions when a priest or deacon holding a form of authority, a suffragan or diocesan bishop, or an archbishop is subject to a period of limited prohibition.

224. In each case the bishop or archbishop, as the case may be, may appoint some other person to carry out the cleric’s functions during the period of prohibition, save that in the case of an archbishop the other archbishop is to carry out those functions.

Clause 45 Disobeying penalty etc

225. Clause 45(1) provides that a breach of any penalty or censure imposed under this Measure or the CDM or the EJM is to be regarded as misconduct for the purposes of clause 3(1)(a).

226. Clauses 45(2) and (3) provides that where a person has been deposed from Holy Orders a subsequent complaint may still be brought against them, as if they had not been deposed.

in the first schedule to this Act or of any other law, have been subject as a person who had been admitted to the office of minister in the Church of England, and from all jurisdiction, penalties, censures, and proceedings to which, if this Act had not been passed, he would or might, under any of the same enactments or any other law, have been amenable or liable in consequence of his having been so admitted and of any act or thing done or omitted by him after such admission. This final paragraph is subject to the provisions of clause 43(2) of this Measure.

Clause 46 Conviction for offence etc. power to impose penalty etc

227. Clause 46 provides that where a cleric is convicted of an offence, whether committed in England or elsewhere, or is included in a barred list, a penalty or administrative sanction may be imposed on the cleric without the need for a complaint to be made.
228. Clause 46(2) to (7) sets out who may impose the penalty or sanction, the requirement for that person to obtain a report from the ITT, consultations, and allows representations from the cleric in question. It also sets out the guidance that must be taken into account and the procedure for imposing the penalty.
229. Clause 46(8) provides that the provisions of clauses 38 to 45 (which includes the power to depose from Holy Orders) apply to penalties imposed under this clause.
230. Clause 46(9) allows for the rules to provide that certain specified offences or an offence of a certain description does not fall within this clause, for example, minor traffic offences.
231. Clause 46(10) provides that this clause applies to a conviction or inclusion in a barred list which occurred before the cleric was in Holy Orders and which occurred before the coming into force of the Measure.
232. Clause 46(11) provides for a definition of 'relevant diocese' for the purposes of clause 46(2).

Clause 47 Power under section 46: time limit

233. Clause 47(1) provides that the power to impose a penalty or administrative sanction above must be exercised within two years of the date the conviction becomes conclusive (for the definition of which see clause 65) or the date on which the cleric was included on the barred list.
234. Clause 47(2) and (3) sets out that the President may on application extend the above period if satisfied the applicant did not know about the conviction or inclusion and provides for who must make the application.

Clause 48 Recognition of external decisions etc.

235. Clause 48 is a new provision to recognise disciplinary findings made by a church other than the Church of England, or by the Church of England in a territory where this Measure does not apply. For example, clause 48 would operate to recognise a disciplinary finding made by the Church in Wales against a priest who was at the time of the misconduct licensed in the Church in Wales, but at the time of the Welsh disciplinary proceedings held licence in the Church in England. This finding of misconduct could be relied upon by the Church of England and, subject to the procedures set out in this clause, a penalty (including removal from office and prohibition) imposed on the cleric.

236. Clauses 48 (1) - (3) provide that where the President of Tribunals is satisfied that a cleric who holds a form of authority to exercise ministry in either province in the Church of England is subject to a finding by the other church or territory which would amount to misconduct under this Measure, the President may either take no further action or may refer the matter to a tribunal or court. Before making the decision, the President must seek written representations from the ITT and the cleric in question.

237. Clause 48(4) requires the President to record the decision in writing.

238. Clause 48(5) provides that upon referral to a court or tribunal that body may impose a penalty or administrative sanction for the misconduct.

239. Clause 48(6) confirms that a finding of misconduct includes the making of an admission by the respondent.

Clause 49 Rights of Patronage

240. The clause makes provisions to protect the rights of patrons in the event that an incumbent is removed from office as a result of this Measure. Clause 49(2) operates so that the start date specified in a notice that is required to be served under section 7(4) of the Patronage (Benefices) Measure 1986 is the date specified in the notice, and not when the incumbent was removed from office, which may have been earlier.

241. Clause 49(2) provides for any right of patronage held -

- a. by a priest or deacon to vest in the bishop of the diocese where the place to which the patronage applies or subject to a limited prohibition in one of the archbishops;
- b. by a diocesan bishop in the archbishop of the province concerned; or
- c. by an archbishop in the other archbishop

242. Clause 49(3) provides that were a cleric exercises any right of patronage as part of a board of trustees, the person may not participate in the exercise of the board's functions as trustees during any period of suspension or limited prohibition.

Clause 50 Review etc by the President of Tribunals on complaint

243. Clause 50 sets out each occasion that a person may request the President of Tribunals or Dean of the Arches and Auditor to review a decision, finding of fact, order or penalty. The procedural rules that will accompany the Measure will set out the procedure for requesting a review and the procedure along with the powers of the President when determining a request.

244. Clause 50(6) permits a DSO or the director the NST to ask the President of Tribunals to review a decision a bishop not to impose a restriction order or suspension where the officer is of the view that the cleric presents a significant risk of harm.

Clause 51 Review by the President of penalty etc under on conviction

245. Clause 51 provides that a cleric on whom a penalty has been imposed under clause 56 (i.e. following a conviction for an offence) may seek a review of that penalty.

246. In the case of a priest, deacon or bishop that review is considered by the President of Tribunals. In the case of an archbishop, it is considered by the Dean of the Arches and Auditor (because the President will have imposed the penalty).

247. In each case the President or Dean must invite written representations from the persons or body listed in either clause 51(3) or 51(4).

248. The procedural rules will set out the procedure for requesting a review along with the procedure and powers of the President or Dean when determining a request.

Clause 52 Appeals etc to court

249. Clause 52 sets out the routes of appeal open to each party to appeal against the decision of a tribunal or court.

250. Clauses 52(1) and (2) provide that a respondent may appeal against a penalty imposed by a tribunal or court, or on a question of law or finding of fact determined by a tribunal or court.

251. Clauses 52(3) and (4) provide that the ITT may appeal on a question of law against a finding of a tribunal or court and may also apply for a review of the penalty imposed where it appears that it was unduly lenient.

252. Clause 52(5) sets out the court to which to the application or appeal is made.

Clause 53 Permission to appeal

253. Clause 53 sets out that an appeal or application for review, as set out above, may only be made where prior permission has been given by the tribunal or court which heard the proceedings, or the Arches Court of Canterbury or the Chancery Court of York, depending on the province.

254. Clauses 53(2) and (3) make provision for who determines applications for permission and enables directions to be made as to the issues that may be determined on any appeal or review.

255. Clauses 53(4) and (5) make provision for the implementation and recording in the Archbishops' List of any penalty to be postponed pending the disposal of the application for permission or the appeal.

Clause 54 Composition of court on appeal or review

256. Clause 54(1) provides that for an appeal brought by a priest or deacon or an application for review of penalty brought by the ITT the Court is to be comprised of the Dean of the Arches and one judge from the relevant provincial panel (see clause 10(2)(a) and (d)) and one clerk in Holy Orders from the relevant provincial panel (see clauses 10(2)(c) and (e)), both appointed by the President.

257. Clause 54(2) provides that an appeal by a bishop or archbishop is to be heard by the same composition, save that the clerk in Holy Orders must be in Episcopal Orders and need not be on either provincial panel but must serve or reside in the other province to the appellant.

258. Clause 54(3) provides for the Dean of the Arches and Auditor to appoint another person to Chair the court where the Dean is unable or willing to sit.

259. Clause 54(4) sets out that a person may not be appointed to sit on the court if they were nominated for inclusion on the panel by the responsible bishop who dealt with the case.

Clause 55 Duty to disclose convictions, arrests, cautions

260. This clause sets out the duties on a cleric to disclose when they have been arrested, charged with an offence, had proceedings for an offence commenced against them, convicted of an offence or received a caution or administrative disposal², or have been include in a barred list (which must include the reason). The clause operates so as to include offences committed outside of England.

261. Clause 55(4) provides that the rules may specify that certain offences fall outside the duty to disclose, for example, minor traffic offences.

262. Clause 55(7) provides a definition of 'administrative disposal' for the purposes of this clause.

Clause 56 Divorce or separation order

263. Clause 56 makes provision requiring the disclosure of a final divorce order or a judicial separation.

² See subsection (7).

Clause 57 Work in other capacities: adverse findings

264. Clause 57 makes new provision for the sharing of and reliance upon information relating to disciplinary proceedings or process relating to a cleric's work between secular employees and the church.

Clause 58 Archbishops' List

265. Clause 58 provides for the continuation of the Archbishops' List. Under the CDM the List is a record of all clerks in Holy Orders who have subject to penalty or censure under the CDM or EJM; who have been deposed from Holy Orders or who have voluntarily relinquished their Orders under deed; who resigned their office following a complaint being made under the CDM or EJM; whose name has been included in a barred list; or who in the opinion of the archbishops, have acted in a manner (not amounting to misconduct) which might affect their suitability for holding preferment.

266. The clause and sets out the grounds upon which a cleric is to be added to the List and the making of procedural rules for an appeal process against the particulars (but not the inclusion) of the entry. The names of clergy who were placed on the list under the provisions of the CDM and EJM will continue to appear on the List.

267. It will no longer be possible to add a person to the List where they have behaved in a way not amounting to misconduct but the archbishops were nevertheless of the view that the person's conduct might affect their suitability for holding office. Furthermore, the provisions concerned with the removal of names from the List after a specified period have not been replicated in this Measure, so names of those on whom a penalty or an administrative sanction has been imposed will remain on the List indefinitely.

Clause 59 Panel of solicitors

268. Clause 59 makes amendments to the Church of England (Legal Aid) Measure 1994 to include a power for the rules made under that Measure to make provision for the creation of a panel of solicitors' firms and direct access barristers. Subject to any circumstances specified in the rules, only solicitors from such a firm will be eligible to represent respondents under a legal aid certificate.

Clause 60 Place where courts and tribunals to sit

269. Clause 60 is a standard provision that provides for where a court or tribunal may sit to hear cases.

Clause 61 Evidence

270. Clause 61 sets out that the powers of a court or tribunal are the same as the High Court in relation to the attendance and examination of witnesses and the

production and inspection of documents. This replicates existing provisions that apply to proceedings under the CDM 2003.

Clause 62 Contempt

271. Clause 62 restates the provisions of the CDM 2003 in relation to a person carrying out an act or omission before a court or tribunal that would constitute contempt. Where that takes place the judge or chair of the court or tribunal may send a certificate to the High Court which in turn may consider proceedings for contempt.

Clause 63 Costs and fees

272. Clause 63 makes provision for the payment by the Archbishops' Council and the Church Commissioners of the costs and fees in relation to the work of bishops and archbishops (but not in their capacity as a respondent), the tribunal and courts, and ecclesiastical judges or legal officers, concerned with this Measure.

Clause 64 Recording and publication of decisions

273. Clause 64(1) requires that judgments, orders or other decisions made under the Measure must be recorded in the diocesan or provincial registry.

274. Clause 64(2) requires that certain judgments, orders or other decisions must be published in the form and manner that is specified in the procedural rules.

Clause 65 Delegation by bishop or archbishop

275. Clause 65 allows a bishop or archbishop to directly delegate their functions under this Measure to another bishop from either inside or outside the diocese. This provision replaces the need for bishops to rely upon the more general procedures in section 13 of the Dioceses, Pastoral and Mission Measure 2007 which are not designed for dealing with delegation in cases of discipline.

Clause 66 House of Bishops' declarations

276. This clause sets out the procedure before the House of Bishops and General Synod where the House of Bishops wishes to make a declaration for the purposes of clause 3(4) of this Measure (i.e. a declaration that the policies etc. of a political party are incompatible with the church's teaching on racial equality). A declaration made by the House of Bishops must be laid before General Synod and if at least 25 members of Synod give notice that they wish it to be debated it must be so.

Clause 67 Code of Practice

277. Clause 67 sets out the approval process for the Code of Practice.

278. It provides that the first iteration of the Code may not be issued until it has been approved by General Synod. Thereafter, amendments to the code, apart from those which in the view of the Commission are insubstantial, are made by the

Commission and laid before General Synod. If within the period of four weeks of that taking place 25 members of Synod give notice in writing to the Clerk that they wish for the amendment to be debated, then the Business Committee must secure a debate on the Code at the next group of sessions. If Synod votes to revoke the amendments, then anything done in reliance upon the new sections would not be invalidated.

Clause 68 Interpretation

279. Clause 68 defines a number of words and phrases, as well as clarifying some of the terminology used in the Measure.

Clause 69 Conclusive convictions

280. Clause 69 provides for when convictions for criminal offences become conclusive as well as setting out various provisions for relying upon convictions, cautions and administrative disposals as conclusive evidence that the respondent has committed the conduct to which the convictions or cautions relates.

Clause 70 Consequential amendments

281. Clause 70 refers to the consequential amendments set out in schedule 1.

Clause 71 Repeals

282. Clause 71(1) repeals the CDM 2003.

283. Clauses 71(2) and (3) list a number of provisions that are in consequence repealed.

Clause 72 Transitional and saving provisions

284. Clause 72 refers to the transitional and saving provisions set out in Schedule 2.

Clause 72 Citation, commencement and extent

285. Clause 72 makes standard provision for the Measure's citation, commencement and extent.

286. The Measure may be applied to the Channel Islands or extended to the Isle of Man where those jurisdictions make provision under their own laws and procedures for doing so.

Schedule 1 Ancillary Amendments

287. Schedule 1 sets out a number of amendments to Acts, Measures and Regulations consequential on the passing of this Measure.

Schedule 2 Transitional and Saving Provisions

288. Paragraph 1 provides that proceedings under the CDM that have commenced and not yet completed when this Measure comes into force continue under the CDM until they are completed.
289. Paragraph 2 makes provision for penalties under the CDM or censures *etc* imposed under the EJM to be treated in the same manner as if they were imposed under this Measure. Further provision is made for dealing with conditional deferments and conditional discharges made under the CDM by this Measure once it comes into force.
290. Paragraph 3 makes provision for those persons on the provincial panel under the CDM to continue on that panel when this Measure comes into force and also provides for the filling of casual vacancies.
291. Paragraph 4 provides for the continuing effect of guidance issued by the House of Bishops and the operation of article 3 of the Safeguarding (Code of Practice) Measure 2021 (Commencement and Transitional Provision) Order 2022, in so far as it relates to clause 3(1)(b) of this Measure.
292. Paragraph 5 is a technical provision dealing with the interaction between this Measure and the Interpretation Act 1978.

June 2024

THE LEGAL OFFICE
Church House
Westminster

Note: These indicative rules have been drafted as a guide only. Where a full rule has been provided, it is subject to change.

Draft Indicative Clergy Conduct Rules

PART 1

OVERRIDING OBJECTIVE

Overriding objective

1.1.—a) The overriding objective of these Rules is to enable complaints brought under this Measure to be dealt with justly.

(1) Dealing with a complaint justly includes, so far as practicable—

- (a) ensuring that the parties are on an equal footing;
- (b) ensuring that parties and all relevant interested persons are kept informed of the procedural progress of their case.
- (c) saving expense;
- (d) dealing with complaints in ways that are proportionate to the importance of the matter and the complexity of the issues; and
- (e) ensuring that it is dealt with expeditiously and fairly.

Application of the overriding objective

1.2. Any tribunal, court or person exercising a function under the Measure must seek to give effect to the overriding objective when—

- (a) exercising any power given to it by these Rules; or
- (b) interpreting any rule.

Duty to co-operate

1.3.—a) All parties shall co-operate with any person, tribunal or court exercising any function under the Measure in order to further the overriding objective.

(2) Any failure to co-operate by a party may result in adverse inferences being made against that party at any stage of the complaint.

PART 2

APPLICATION AND INTERPRETATION OF THE RULES

Application of the Rules

2.1 — These Rules apply to a complaint under the Clergy Conduct Measure; and a reference in these Rules to a complaint or to proceedings on a complaint is, unless otherwise stated, to be read accordingly.

Interpretation

2.2.—a) In these Rules— *[this section will set out defined terms]*

Time

2.3.—a) This rule shows how to calculate any period of time for doing any act which is specified by these Rules.

(3) A period of time expressed as a number of days shall be computed as clear days.

(4) In this rule ‘clear days’ means that in computing the number of days—

(a) the day on which the period begins; and

(b) if the end of the period is defined by reference to an event, the day on which that event occurs

are not included.

(5) Where the specified period is—

(a) 5 days or less; and

(b) includes—

(i) a Saturday or Sunday; or

(ii) a Bank Holiday, Christmas Day, Maundy Thursday or Good Friday,

that day does not count.

PART 3

CLERGY CONDUCT COMMISSION

This rule will set out the operation of the powers and functions of the Clergy Conduct Commission, including in relation to training and oversight of standards.

PART 4

PRESIDENT AND DEPUTY PRESIDENT OF TRIBUNALS

This rule will set out how the powers and functions of the President and Deputy President of Tribunals (and those to whom they delegate their functions) will operate.

PART 5

PANEL OF ASSESSORS

This rule will contain the procedures on the appointment, terms of service and training of assessors.

PART 6

PROTECTED PARTIES

Litigation friend: appointment

6.1—(1) The President of Tribunals may appoint a person under section 17 as the litigation friend for another person (“the protected party”) if the President is satisfied that the person wishing to be so appointed—

(a) can fairly and competently conduct the proceedings on the complaint for the protected party, and

(b) has no interest adverse to that of the protected party.

(2) An application for the appointment of a person as a litigation friend under section 17 must be made in writing to the President of Tribunals in the form set out in Form 2 in the Schedule.

(3) The application may be made by—

(a) the person who wishes to be appointed as the litigation friend for the protected party, or

- (b) a person who seeks the appointment of some other person as a litigation friend for the protected party.
- (4) The application must be accompanied by a certificate of suitability given in writing in the form set out in Form 3 in the Schedule.
- (5) The certificate must be verified by a statement of truth in the following form by the person wishing to be appointed—
“I believe that the facts stated in this application are true.”
- (6) The certificate must be signed and dated by the person who wishes to be appointed.
- (7) The President of Tribunals may determine the application without a hearing.
- (8) Having determined the application, the President must give written notice of the determination to—
- (a) the protected party, and
 - (b) the person wishing to be appointed.
- (9) Where a person is appointed as a litigation friend after the complaint is made, the person appointed must send a copy of the order making the appointment to—
- (a) the respondent, and
 - (b) the responsible bishop.
- (10) Where the complaint is already being heard by a tribunal or court, each reference in this rule to the President of Tribunals is to be read as a reference to the chair of that tribunal or court.

Litigation friend: removal

- 6.2.**—(1) The President of Tribunals may—
- (a) direct that a person may not act as a litigation friend,
 - (b) terminate the appointment of a litigation friend, or
 - (c) appoint a new litigation friend instead of an existing one.
- (2) An application for an order under this rule—
- (a) must be made in writing in the form set out in Form 4 in the Schedule, and
 - (b) must be supported by evidence.
- (3) A person may not be appointed under paragraph (1)(c) unless the President of Tribunals is satisfied that the person meets the conditions set out in rule 6(1)(a) and (b).
- (4) Where the complaint is already being heard by a tribunal or court, each reference in this rule to the President of Tribunals is to be read as a reference to the chair of that tribunal or court.

Litigation friend: change of circumstances

- 6.3.**—(1) Where a child for whom a litigation friend is acting on a complaint reaches the age of 18 before the complaint has been concluded, the appointment of the litigation friend continues unless and until the order of appointment is discharged (see paragraph (3)).

(2) Where a person who lacks capacity to make a complaint and for whom a litigation friend is acting in proceedings ceases to lack capacity before the complaint has been concluded, the appointment of the litigation friend continues unless and until the order of appointment is discharged (see paragraph (3)).

(3) In a case within paragraph (1) or (2), the protected party or the litigation friend may apply to the President of Tribunals for the discharge of the order of appointment of the litigation friend and the application must be supported by evidence.

(4) Where a person appointed as a litigation friend on a complaint dies before the complaint has been concluded, the proceedings on the complaint are stayed until the President of Tribunals appoints a new litigation friend.

(5) Where the complainant or the respondent to a complaint loses capacity to participate in proceedings on the complaint, no step may be taken in the proceedings until a litigation friend is appointed for the person unless, pending the appointment, the President of Tribunal gives permission for the step concerned to be taken.

PART 7 LIMITATION

This rule will set out the procedural steps when the lead assessor is considering whether to give permission for a complaint of misconduct to proceed outside of the 12-month time limit for bringing the complaint. The rule will include how and in what time scale the lead assessor will gather with the representations of the parties and the period in which the decision has to be made.

PART 8 SENDING DOCUMENTS

Methods of service etc.

8.1—a) Subject to any other provision of these Rules, any document may be served by any of the following methods—

- (c) delivering it to or leaving it at the proper address of the person to be served;
- (d) sending it by first class post to that address;
- (e) leaving it at a document exchange as provided for in rule 8.3;
- (f) sending it by electronic means as provided for in rule 8.4 or
- (g) in such other manner as the President of Tribunals, Registrar of Tribunal or Chair may direct.

Meaning of ‘proper address’

8.2. (1) The proper address of a person for the purposes of this Part is—

- (a) that person’s usual or last known address; or
- (b) the business address of a solicitor (if any) who is acting for that person in the proceedings,

(6) The proper address for the President shall be care of The Legal Office of the National Institutions of the Church of England.

(7) The proper address for the Dean of the Arches and Auditor shall be the address of the Provincial Registry of the province concerned.

(8) The proper address for the Investigation and Tribunals Team shall be care of The Legal Office of the National Institutions of the Church of England.

Service through document exchange

8.3.—a) Service may be effected via a document exchange where this rule applies.

(9) This rule applies if—

- (a) a person has given a numbered box at a document exchange as that person's address for service;
- (b) a document exchange box number is inscribed on the writing paper of a party who acts in person or on the writing paper of a legal representative who acts for a party and the party or solicitor has not indicated in writing to the person serving the document that he or she is unwilling to accept service through a document exchange.

Service by electronic means

8.4. A document may be served by electronic means unless the party to be served has stated clearly in writing that they are unwilling to accept service by electronic means.

Deemed time of submission, filing and service

8.5. A document is deemed to have been submitted, filed, received or served under these Rules on the day shown in the following table—

| <i>Method</i> | <i>Deemed date of submission receipt, filing or service</i> |
|--|---|
| First class post (or other service which provides for delivery on the next business day) | The second day after it was posted, left with, delivered to or collected by the relevant service provider provided that day is a business day; or, if not, the next business day after that day |
| Document exchange | The second day after it was left with, delivered to or collected by the relevant service provider provided that day is a business day; or, if not, the next business day after that day. |
| Delivering the document to or leaving it at an address permitted by these Rules | If it is delivered to or left at the address on a business day before 4.30 p.m., on that day; or in any other case, the next business day after that day |
| Electronic means | If the email or other electronic transmission is sent on a business day before 4.30 p.m., on that day; or in any other case, on the next business day after the day on which it was sent |
| Personal service | If the document is served personally before 4.30 p.m. on a business day, on that day; or in any other case, on the next business day after that day |

PART 9
MAKING A COMPLAINT

Complaint form: main information

9.1. A complaint must be made in writing in the form set out in Form 1 in the Schedule.

9.2.—The complaint must specify—

- (a) the responsible bishop (see section 16(11)),
- (b) the complainant's full name,
- (c) the name of the person against whom the complaint is made and (if the complainant knows it) the office or other position currently held by that person,
- (d) the basis on which the complainant has a proper interest (see section 15) or is otherwise entitled to make the complaint,
- (e) in summary form, the nature and details of the alleged conduct, and
- (f) the dates on which the alleged conduct took place.

9.3. The complaint must be verified by a statement of truth in the following terms by the complainant— "I believe that the facts stated in this complaint are true"

9.4. The complaint must be signed and dated by the complainant.

Complaint form: additional information

9.5. A complaint in Form 1 must be accompanied by the following information about the complainant in writing in the form set out in Form 1A in the Schedule—

- (a) a postal address,
- (b) a telephone number, and
- (c) if the complainant has one, an email address.

9.6. If the complainant is a person appointed by the President of Tribunals as a litigation friend under section 17, the complaint must be accompanied by a copy of the order of the President making the appointment.

9.7. If the complainant is a person nominated by a PCC who has a proper interest in the complaint under section 15(2)(a)(ii), the complaint must be accompanied by a copy of the resolution making the nomination.

9.8. If the complainant is a person nominated by the bishop's council of a diocese who has a proper interest in the complaint under section 15(4)(a) or (5)(a), the complaint must be accompanied by a copy of the resolution making the nomination.

9.9. If the complainant is an archdeacon whom another archdeacon has nominated under section 15(6) and who has a proper interest in the complaint under section 15(6), the complaint must be accompanied by a copy of the nomination.

9.10. If the complainant is a person who is subject to a restraint order (see sections 32 and 33), the complaint must be accompanied by a copy of the order by the President

Complaint about exercise of function conferred by or under Measure

9.11 — (1) This rule applies to an application to the President of Tribunals under section 16(9) for permission to make a complaint about the exercise of a function conferred by or under the Measure.

- (2) The application must be made in accordance with the procedure set out in ...
- (3) The application must be served on the person who would be the respondent to the complaint if the application for permission under section 16(9) were to be granted (“the would-be respondent”).
- (4) The President of Tribunals may determine the application without a hearing.
- (5) Before determining the application, the President may request comments from the would be respondent.
- (6) If the President exercises the power under paragraph (5), the President must inform the would-be respondent of the right to make comments on the application before the end of 14 days beginning with the day after the President makes the request.
- (7) Accordingly, the President must take into account any comments received from or on behalf of the would-be respondent before the end of that 14-day period.

PART 10

REFERRALS AND ALLOCATION

Referral of a complaint

10.1 —(1) The responsible bishop, having received a complaint, must make the referral under section 20(1)(a) and any referral required under section 20(2) or (3) within two days of receiving the complaint.

(2) Where there is more than one lead assessor on the panel assessors, the question of which of them to make the referral to under section 20(1)(a) is for the responsible bishop to determine, having taken into account the availability of each of them.

Allocation of complaint

10.2—(1) A lead assessor, having had a complaint referred under section 20, must decide what action to take under section 21(1) within 14 days of the referral.

(2) Where the lead assessor requires clarification of a matter in order to be able to decide what action to take under section 21(1), the lead assessor may seek that clarification from the complainant before making the decision.

(3) The lead assessor, having decided what action to take under section 21(1), must record the decision in the form set out in Form 5 in the Schedule.

(4) If the lead assessor sought and received clarification under paragraph (2), the decision in Form 5 must specify the matter and the clarification.

(5) If the lead assessor makes the decision under section 21(1)(b) (allocation of case as misconduct but not serious misconduct), the lead assessor must, within the 14-day period referred to in paragraph (1), make the appointment under section 22(4) of a case assessor.

(6) If the lead assessor makes the decision under section 21(1)(d) or (e) (dismissal where complaint vexatious or without merit or out of time), the form in Form 5 must specify the reasons for that decision.

(7) The lead assessor, when making the notification to the responsible bishop under section 21(3), must provide a copy of the decision in Form 5; and, in a case within paragraph (5), the notification must include the name of the case assessor appointed.

(8) The lead assessor may extend the 14-day period referred to in paragraph (1) if the lead assessor is satisfied that doing so is necessary, having had due regard to the overriding objective; and, where the lead assessor does so, this rule has effect accordingly.

(9) In the case of a complaint within section 21(4) (complaint including allegations which, if made separately, would be allocated differently), the lead assessor must allocate the complaint—

(a) if the allegations include an allegation which the lead assessor thinks would be allocated as serious misconduct, as a complaint of serious misconduct, or

(b) if the allegations do not include an allegation which the lead assessor thinks would be allocated as serious misconduct, as a complaint of misconduct (but not serious misconduct).

PART 11

ACTION AFTER ALLOCATION

Action after allocation of complaint

11.—(1) The responsible bishop must, within seven days of receiving a notification under section 21(3), inform each party to the complaint of the lead assessor's decision by letter in the form set out in Form 6 in the Schedule.

(2) Where the lead assessor's decision is to allocate the complaint as a grievance, the letter in Form 6 must also include the name of the designated person appointed under section 22(2).

(3) Where the lead assessor's decision is to allocate the complaint as one of misconduct (but not serious misconduct), see rule 10(5) and (7).

(4) Where the lead assessor's decision is to allocate the complaint as one of serious misconduct, the responsible bishop must make the referral under section 22(5) to the Investigation and Tribunals Team at the same time as sending the letter in Form 6 under paragraph (1) of this rule.

(5) Form 6 must be accompanied by a copy of the complaint in Form 1 (see rule 3) and a copy of the lead assessor's decision in Form 5 (see rule 10).

PART 12

TRANSFER

This rule will set out the procedure when a complaint transfers between tracks as a result of new information coming to light during the course of an investigation.

PART 10

GRIEVANCES

This rule will set out the procedure for how a grievance will be looked into and resolved. It will include the time period for each party submitting their accounts to the designated person (see clause 32(2)) and for the period in which a decision will be made.

PART 14

COMPLAINT OF MISCONDUCT

This rule will set out the procedure for how the case assessor will investigate a complaint of misconduct. The rule will include the time period for each party submitting their statements to the assessor, the powers of the assessor, the timeframe for meetings that will take place and for when decisions have to be made by, as well as the contents of the assessor's report.

PART 15

COMPLAINT OF SERIOUS MISCONDUCT

This rule will set out the procedure for how the investigation and tribunals team will oversee the investigation of a complaint of serious misconduct and also the steps that team will take in the process in deciding whether a case will be transferred to a court or tribunal. The rule will include the time period for each party submitting their statements to the investigator, the powers of the investigator, the timeframe for meetings and interviews that will take place, the powers to obtain evidence and compel third parties to provide evidence and for when decisions have to be made by, as well as the contents of the report to the President of Tribunals.

PART 16

PARTIES AND SAFEGUARDING

This rule will set out the procedure for adding a DSA or member of the NST as a party to a complaint when during an investigation a matter concerning a child or vulnerable adult arises (see clause 28).

PART 17

TRIBUNALS AND COURTS

This rule will set out process for appointing panel members to tribunals and courts and any other ancillary provisions, not covered elsewhere, in relation to how they operate.

PART 18

CASE MANAGEMENT

Duty to manage cases

18.1—a) The Chair must further the overriding objective by actively managing cases.

(10) Active case management includes—

- (a) encouraging the parties and any other persons concerned in the proceedings to co-operate with each other—
 - (i) in the conduct of the proceedings, and
 - (ii) in resolving, as far as possible, matters that are in dispute between them;
- (b) identifying the issues at an early stage;
- (c) deciding promptly which issues (if any) need a full hearing in person and accordingly disposing of others summarily or on consideration of written representations
- (d) deciding the order in which issues are to be resolved;

- (e) fixing timetables or otherwise controlling the progress of the case;
- (f) considering whether the likely benefits of taking a particular step justify the cost of taking it;
- (g) dealing with as many aspects of the case as the court can on the same occasion;
- (h) dealing with the case without the parties needing to attend court;
- (i) making effective use of technology; and
- (j) giving directions to ensure that the resolution of a case proceeds quickly and efficiently

General powers in relation to case management

18.2—a) The list of powers in this rule is in addition to any powers given to the Chair by any other rule or by any other enactment or any powers it may otherwise have.

(11) Except where these Rules provide otherwise, the Chair may—

- (a) extend or shorten the time for compliance with any rule or order (even if an application for extension is made after the time for compliance has expired);
- (b) give permission to a party to amend any statement of case or other document on such terms as the Chair considers just;
- (c) adjourn or bring forward a hearing;
- (d) require a party or a party's legal representative to attend a hearing;
- (e) hold a hearing and receive evidence by telephone or by using any other method of direct oral communication;
- (f) direct that part of any proceedings be dealt with as separate proceedings;
- (g) stay the whole or part of any proceedings or judgment either generally or until a specified date or event;
- (h) consolidate proceedings;
- (i) try two or more sets of proceedings on the same occasion;
- (j) direct a separate trial of any issue;
- (k) decide the order in which issues are to be tried;
- (l) exclude an issue from consideration;
- (m) dismiss or give judgment on any proceedings after a decision on a preliminary issue;
- (n) take any other step or make any other order for the purpose of managing the case and furthering the overriding objective.

(12) When the court makes an order, it may—

- (a) make it subject to conditions, and
- (b) specify the consequence of failure to comply with the order or a condition.

(13) A power under these Rules to make an order includes a power to vary or revoke the order.

(14) An order under paragraph (2)(a) may be made by the Registrar of Tribunals.

Registrar's power to refer to Chair

18.3. Where, in relation to proceedings in a court or tribunal, a step is to be taken by the Registrar of Tribunals—

- (a) the registrar may consult the Chair before taking that step;
- (b) the step may be taken by the Chair instead of the registrar.

Power of the Chair to act on own initiative

18.4.—a) Except where a rule or some other enactment provides otherwise, the Chair may exercise the powers under this or any other Part on an application or on the Chair's own initiative.

(15) Where the Chair proposes to make an order on the Chair's own initiative—

- (a) the Chair may give any person likely to be affected by the order an opportunity to make representations; and
- (b) where the Chair does so the Chair must also specify the time by and the manner in which the representations must be made.

(16) Where the Chair proposes—

- (a) to make an order acting on the Chair's own initiative; and
- (b) to hold a hearing to decide whether to make the order,

the Chair must give each party at least 3 days' notice of the hearing.

(17) The Chair may make an order of its own initiative, without hearing the parties or giving them an opportunity to make representations.

(18) Where the Chair has made an order under paragraph (4)—

- (a) a party affected by the order may apply to have it set aside, varied or stayed; and
- (b) the order must contain a statement of the right to make such an application.

(19) An application under paragraph (5)(a) must be made—

- (a) within such period as may be specified by the court; or
- (b) if the court does not specify a period, not more than 7 days after the date on which the order was served on the party making the application.

PART 19

DIRECTIONS

Giving directions

19.1—a) In any case the Chair may give directions for the conduct of the proceedings.

(20) When determining what, if any, directions to give, the Chair must seek to give effect to the overriding objective set out in rule 1.1.

(21) Directions may be given orally or in writing and with or without a hearing.

(22) Directions may be given by the Registrar of Tribunals to the extent the registrar is authorised to do so by these Rules.

(23) If the Chair holds a hearing for the purpose of giving directions it is the duty of the parties to attend or take part in the directions hearing, either in person or by their legal representatives.

(24) The Chair may request the attendance of any other person at a directions hearing.

Matters on which directions may be given

19.2.—a) Subject to these Rules, directions for the conduct of the proceedings may be given as the Chair thinks fit.

(25) In particular, directions may relate to—

- (a) any of the matters mentioned in Part 17 (cases management)
- (b) the issues on which the court or tribunal requires evidence;
- (c) the nature of the evidence which the court or tribunal requires to decide those issues;
- (d) how any evidence is to be presented;
- (e) the disclosure or inspection of documents;
- (f) the appointment of expert witnesses (including limiting the number of experts), the exchange of experts' reports and the identification by them of the matters on which they agree and those on which they disagree;
- (g) limiting the number of witnesses to be called on behalf of any party;
- (h) the timeline for hearing oral evidence at a hearing

- (i) the preparation of bundles of documents for a hearing and for them to be served on a party or delivered to the court or tribunal.

(26) The Chair may use the power under this rule to exclude evidence that would otherwise be admissible on the grounds that it is irrelevant or unnecessary or which should otherwise be excluded in the interests of justice in accordance with the overriding objective.

Time and place of hearing

19.3.— Directions as to the date, time and place for any hearing must be given by the Registrar of Tribunal or the Chair.

Witness statements

19.4.—a) Where the evidence of witnesses is to be presented at a hearing, the Chair must direct that statements setting out the evidence to be given by each witness be served in advance of the hearing unless the court considers that there is a good reason not to do so.

(27) A witness statement must be—

- (a) verified by a statement of truth in the following form—
“I believe that the facts stated in this witness statement are true.”; and
- (b) signed and dated by the witness.

Expert reports

19.5.—a) No party may call an expert or put in evidence an expert’s report without the permission of the Chair.

(28) Expert evidence is to be given in a written report unless the Chair directs otherwise.

(29) Where the Chair gives permission to put in evidence an expert’s report, it must direct that any such report—

- (a) contains a statement that the expert understands their duty is to the court or tribunal, and has complied with that duty;
- (b) is addressed to the court or tribunal and not to the party from whom the expert has received instructions;
- (c) gives details of the expert’s qualifications;
- (d) gives details of any literature or other material which has been relied on in making the report;
- (e) contains a statement setting out the substance of all facts and instructions which are material to the opinions expressed in the report or upon which those opinions are based;
- (f) makes clear which of the facts stated in the report are within the expert’s own knowledge;
- (g) says who carried out any examination, measurement, test or experiment which the expert has used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under the expert’s supervision;
- (h) where there is a range of opinion on the matters dealt with in the report—
 - (i) summarises the range of opinions; and
 - (ii) gives reasons for the expert’s own opinion;
- (i) contains a summary of the conclusions reached; and
- (j) if the expert is not able to give an opinion without qualification, states the qualification.

(30) An expert’s report must be—

- (a) verified by a statement of truth in the following form—
“I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete expert opinions on the matters to which they refer.”; and
- (b) signed and dated by the expert.

(31) The court or tribunal may give such other directions with regard to expert evidence as it thinks fit having regard to the overriding objective in rule 1.1.

PART 20 HEARINGS

This rule will set out procedural rules in relation to hearing that are not covered elsewhere, including the administrative steps of arranging a hearing, the recording of hearings and attendance.

PART 21 SPECIAL MEASURES

21.1—(1) This rule applies where the chair of the tribunal or court hearing proceedings on a complaint decides that a party's ability to participate or a witness's ability to give evidence in the proceedings is likely to be diminished because of vulnerability.

(2) The chair may, for the purpose of strengthening the party's ability to participate or the witness's ability to give evidence, make directions or make an order to put in place ground rules or special measures.

(3) The chair may reach the decision under paragraph (1) either on an application by the party or witness or on the chair's own initiative; and an application by the party or witness may be made in writing or orally.

(4) The factors which may cause vulnerability in a party or witness include—

- (a) age, immaturity or lack of understanding,
- (b) communication or language difficulties (including literacy),
- (c) physical disability or impairment or a physical health condition,
- (d) a mental health condition or a significant impairment of an aspect of intelligence or social functioning (including learning difficulties),
- (e) the impact of the subject-matter or facts relevant to the proceedings,
- (f) a relationship with a party or witness, and
- (g) social, domestic or cultural circumstances.

(5) Before exercising a power under subsection (2), the chair must consider views expressed by a party about participating or by a witness about giving evidence in the proceedings.

(6) The special measures which may be put in place in an order under paragraph (2) include—

- (a) allowing a support person to be present at the hearing when the party or witness gives evidence,
- (b) preventing a party or witness from seeing another party or witness by the use of screens,
- (c) allowing a party or witness to give evidence remotely by video conference,
- (d) hearing a party or witness's evidence in private,
- (e) dispensing with the wearing of wigs and gowns,
- (f) admitting pre-recorded video evidence,
- (g) questioning a party or witness through an intermediary, and
- (h) using a device or other aid to help a party or witness communicate

PART 22

ADMISSIONS

This rule will set out the procedure when a respondent makes either full or partial admissions to a complaint of misconduct or serious misconduct.

PART 23

JOINDER

This rule provides for the procedure for when two or more complaints are joined together. This will include either complaint brought by multiple parties, or complaints brought against one or more respondents.

PART 24

TERMINATION, SUBSTITUTION AND WITHDRAWAL

This rule will set out the procedure for terminating a complaint (for example when the respondent has died), for substituting parties (for example where an archdeacon brings a complaint but then retires) and for withdrawing either the full complaint or part of the complaint (for example where part of the complaint has been admitted and the remaining elements are withdrawn to allow the complaint to proceed to the imposition of a penalty).

PART 25

ADMINISTRATIVE SANCTIONS AND PENALTIES

This rule will procedure that will occur when a bishop, archbishop, court or tribunal imposes a penalty or administrative sanction. This includes the steps when the penalty or sanction is imposed following the conviction for an offence or the entry on to a barred list.

PART 26

DEPOSITION FROM HOLY ORDERS : PRIEST AND DEACONS

This rule will procedure that will occur when a bishop intends to depose a priest or deacon from Holy Orders, including how representations will be taken into account and the timeframe for the decision.

PART 27

DEPOSITION FROM HOLY ORDERS : BISHOPS AND ARCHBISHOPS

This rule will procedure that will occur when the Upper House of the relevant Convocation intends to depose a bishop or archbishop from Holy Orders, including how representations will be taken into account, any hearings before the Upper House and the timeframe for the decision.

PART 28

RECORDING AND PUBLICATION OF DECISIONS

This rule will set out how and where decisions (including penalties and other orders) are to be recorded, for example in the diocesan registry, and also which of those decisions will be made public, where and the to what extent (for example what particulars of the misconduct will be made known).

PART 29
CONVICTIONS AND OTHER ORDERS

This rule will set out the procedural steps around the notification requires of convictions and other orders (such as being included in a barred list), or when any of the events listed in clauses 55 or 56 take place.

PART 30
WORK IN OTHER CAPACITIES

This rule will provide for the steps that can be taken, including the imposition of a penalty or administrative sanction, where a cleric has been subject to a finding of misconduct in a secular work capacity.

PART 31
REGISTRAR OF TRIBUNALS

This rule will provide details in relation to the appointment, tenure and powers, not provided for elsewhere, of the Registrar of Tribunals.

PART 32
RESTRAINT ORDERS

Vexatious litigant: application for restraint order

32.1—(1) An application for a restraint order must be made in writing in the form set out in Form 7 in the Schedule.

(2) The applicant for the restraint order must, at the same time as making the application, serve a copy of the Form 7 on the person against whom the order is sought.

(3) The President of Tribunals or (as the case may be) the chair of the tribunal or court, having received the application, must without delay inform the person against whom the order is sought of the right to make written representations before the end of 14 days beginning with the day on which the Form 7 is served.

(4) If it is the chair of the tribunal or court who exercises the function under paragraph (3), representations must be made to the registrar of tribunals for the province concerned.

(5) If the person against whom the order is sought exercises the right to make representations, the person must, when making the representations, serve a copy of them on the applicant.

(6) The person determining the application must take into account representations received from or on behalf of the person against whom the order is sought before the end of the 14-day period referred to in paragraph (3).

(7) The person determining the application may determine it without a hearing.

(8) Having determined the application, the person must inform the applicant and the person against whom the order was sought of the determination.

- (9) If the determination is to make a restraint order, the person who made the determination—
- (h) must make the order in the form set out in Form 8 in the Schedule, and
 - (i) at the same time as exercising the function under paragraph (8), must send a copy of the order to the applicant and to the person against whom the order was sought.

Vexatious litigant: operation of restraint order

32.2.—(1) An application under section 33(4) (application by person subject to order for permission to bring complaint etc.) must be made in the form set out in Form 9 in the Schedule.

(2) An application under section 33(5) (application by person subject to order for variation or discharge of order) must be made in the form set out in Form 10 in the Schedule.

**PART 33
RESTRICTION ORDERS**

This rule will set out the procedure around the application for restrictions orders, including how they are to be made, the relevant forms, timescales and revocation.

**PART 34
SUSPENSION**

This rule will set out the procedure around suspension, including how one is imposed, the service of the notice of suspensions, the relevant forms, timescales and revocation.

**PART 35
REVIEWS**

This rule will provide for the procedure and powers to be exercised when a party seek applies to the President of Tribunal or Dean of the Arches for a review of a decision taken on a complaint (see clauses 50 and 51).

**PART 36
THE ARCHBISHOPS' LIST**

This rule will provide the procedure for how names are placed on the Archbishops' List, amendments to the particulars of the entry and who can access the List.

**PART 37
APPEALS**

This rule will set out the procedural aspects of appeals, including how to apply for permission to appeal, the powers the court will exercise on appeals and rules relating to hearings.

**PART 38
GENERAL PROVISIONS RELATING TO APPEALS**

This rule will set out further procedural aspects relating to appeals, that are not included above.

PART 39

CITATION, COMMENCEMENT, REVOCATION AND TRANSITIONAL PROVISIONS

This rule will provide the citation and commencement date, as well as setting out the transitional provisions between the CDM Rules and these rules.