

GENERAL SYNOD

DRAFT CLERGY CONDUCT MEASURE

REVISION COMMITTEE REPORT

Chair: Mr Geoffrey Tattersall KC (Manchester)

Ex officio members

(Steering Committee): The Revd Canon Kate Wharton (Liverpool) (Chair)
The Rt Revd Viv Faull (Bristol)
The Revd Paul Cartwright (Leeds)
The Rt Worshipful Peter Collier KC (ex officio)
The Ven Malcom Chamberlain (Sheffield)
Ms Kashmir Garton (Worcester)

Appointed members: Prof Lynn Nichol (Worcester)
The Revd Paul Benfield (Blackburn)
The Revd Sonia Barron (Lincoln)
Mrs Amanda Robbie (Lichfield)
The Revd Joy Mawdesley (Oxford)
The Revd Lindsay Llewellyn-MacDuff (Rochester)
The Revd James Pitkin (Winchester)

References in this report to “the Committee” are references to the Revision Committee. References to clauses of the Measure are, unless otherwise indicated, references to those clauses as numbered in the Measure as originally introduced. All Committee decisions were unanimous except where indicated.

BACKGROUND

1. In July 2022 Synod endorsed the legislative proposals contained in the Implementation’s Group’s report entitled ‘[Under Authority: Revisited](#)’ (**GS 2277**) and passed a motion requesting that the Archbishops’ Council introduce legislation to give effect to the proposals.
2. The draft [Clergy Conduct Measure](#) (**GS 2311**) was then given first consideration at the July 2023 group of sessions, following which it was committed to the Revision Committee (“the **Committee**”).
3. Explanations of the draft Measure as introduced were contained within the [Explanatory Notes](#) (**GS 2311X**). An updated version of the Explanatory Notes for the Revision Stage has been drafted and is included within the Synod papers for the July group of sessions (**GS 2311X2**)

4. The Committee met on seven occasions on the 7 November 2023; 16 November; 27 November; 15 December; 22 April 2024; 8 May and the 4 June 2024 and then completed its remaining business by correspondence under Standing Order 56(4). **Appendix A** contains a list of members present at each meeting.
5. The Committee received 24 submissions from members of Synod and 3 submissions from non-members of Synod. One submission was submitted after the deadline. The Committee determined that it would consider the points raised in all submissions received, including those late and those from the non-members. Four members of Synod who were not otherwise a member of the Committee exercised the right under Standing Order 55 to attend the Committee's meeting and speak to their proposal.
6. Submissions were also received from the National Safeguarding Team and some amendments were proposed by the Legal Office.
7. **Appendix B** contains a summary of the proposals considered by the Committee.
8. **Appendix C** contains a flowchart showing an overview of the system.

GENERAL POINTS

9. The Committee were grateful for all the representations received. Not all of the submissions received proposed amendments to the Measure, but instead asked for clarification or made general points on the operation of clergy discipline. Where the Committee was of the view that the point raised was more suitable for inclusion in the procedural rules or code of practice, this has been recorded and will be fed into the drafting process for those documents.
10. The Committee has ensured a wide consultation and a fringe event to keep members updated on progress with the Measure was held at the February 2024 Synod. The Committee agreed to hold a further fringe event at Synod in July to enable members to ask questions or seek points of clarification prior to the debate at the Revision Stage.

Time Limits

11. Several members of Synod¹ proposed that more detail around the time limits involved in concluding each stage of a complaint be included in the Measure. The Committee considered it more appropriate for most time periods to be included in the procedural rules, with some exceptions where they relate to the provision of information.²

¹ See Appendix - representations of the **Bishop of London** and **Mrs Rebecca Hunt (Portsmouth)**

² For example, see clause 55(2)

Human Rights Act 1998

12. The Committee received one representation³ asking for the inclusion of a clause that would state that the right to a fair trial under Article 6 of the European Convention on Human Rights applied to the Measure.
13. Having been advised by the Legal Office the Committee were content that such a clause was unnecessary as it was already well established that the Human Rights Act 1998 applied to Measures of the Church of England and subordinate legislation made under them. Furthermore, disciplinary courts and tribunals under the Measure would fall within section 6 of the Human Rights Act 1998 and would already be required not to act in a way that was incompatible with a Convention right.

Consultation with victims and survivors

14. The Committee, in conjunction with the NST, conducted a consultation with victims and survivors of church related abuse. The consultation took place in May once all the proposed amendments had been dealt with and participants were provided with a copy of the draft Measure and asked to comment on two specified areas relating to specialist support when making a complaint and special measures and support during hearings. They were also given an opportunity to make any other general comments on the draft Measure.
15. The Committee received nine detailed written responses which were considered at the 4 June 2024 meeting. The Committee were very grateful for the engagement of victims and survivors. The Committee were satisfied that nothing raised in the consultation feedback required any amendments to the draft Measure by the Committee, but noted much of what was said was highly relevant to the drafting of the rules and code of practice. The Committee noted that all those involved said that they wished to be consulted on the draft Code of Practice.

Clergy serving in Royal Peculiars

16. The Committee notes that under the Clergy Discipline Measure 2003 and the Ecclesiastical Jurisdiction Measure 1963 no complaints may be made against clergy holding office in a Royal Peculiar⁴. The Committee take the view that, as a general principle, clergy everywhere should be subject to the same processes for discipline, but also acknowledge the different jurisdictional and constitutional issues that arise in relation to Royal Peculiars.

³ See submission of **Mr Martin Sewell (Rochester)**

⁴ A Royal Peculiar is church or place exempt from the jurisdiction of the diocese or province and which are subject to the direct jurisdiction of the Monarch. Although there is some dispute over which places claim the status of a Royal Peculiar – this is likely to mean Westminster Abbey, The Chapels Royal, and St George's Chapel Windsor.

17. Given the complexity of these issues, the extent to which this Measure should apply to Royal Peculiars has not yet been determined and further conversations with the Royal Peculiars, the Cabinet Office and His Majesty the King are taking place. The Committee are content that the question will be able to be resolved at the Final Drafting stage of the Measure.

The procedural rules

18. This 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.
19. In order for members to see the interplay between the Measure and the rules a set of indicative rules has been drafted by the Legal Office and considered by the Rule Committee. **The draft rules appear in the annex to the Explanatory Notes (GS 2311X2)**

PRINCIPAL AMENDMENTS

20. The Committee made the following principal amendments the Measure.

Assessors (see clause 12)

21. The Committee received several representations asking for more information as to the role and identity of the proposed assessors under the Measure. The Committee recognised the importance of this position and were of the view that it would be important to encourage professionalism, objectivity and accountability in the assessors. The Committee decided that instead of a regional model of assessors that was proposed in the Measure at first Consideration, a smaller and more agile group of assessors who were well trained would be better. Furthermore, that they should be paid for the work at a rate to be set by the Fees Advisory Commission. They will be appointed by the Clergy Conduct Commission rather than by bishops.

Safeguarding processes (see clauses 20 and 28)

22. Provision has been made to allow for the Diocesan Safeguarding Officer or member of the National Safeguarding Team to become a party to the proceedings where the conduct in the complaint involved a child or a vulnerable adult. This will allow for that officer to make representations to the extent permitted in the process.

Complaints against archbishops

23. The Committee considered that the process for dealing with complaints against archbishops would need to differ from the procedures for bishops, priests and deacons. It notes that the rationale for placing a complaint against an archbishop in front of the other archbishop was weak and would give rise to conflict. The Committee considered the best procedure was for these complaints to be laid before the President of Tribunals who would make the required referrals and decisions in place of a “responsible bishop”. The provision of pastoral and other support would be overseen by the other archbishop. A number of amendments to this effect were made throughout the Measure and are indicated below.

Adverse findings that arise in other capacities (see clause 57)

24. New provision has been introduced to allow for adverse findings in disciplinary proceedings or other processes relating to the work of a cleric in a non-church setting to be shared with the church and relied upon as misconduct. For example, where a non-stipendiary minister also practised as a doctor and was subject to disciplinary proceedings by the General Medical Council, findings in that process could be relied upon as a finding of misconduct under this Measure. In addition, that findings of misconduct under this process can be shared with the minister’s place of work.

Code of Practice (see clause 67)

25. A new approval process for the Code of Practice has been introduced in which the first iteration of the Code will not come into force until it has been approved by Synod. Subsequent amendments, apart from minor ones, will be made the Clergy Discipline Commission and will come into force, unless 25 members of Synod request a debate on the changes.

THE DRAFT CLERGY CONDUCT MEASURE

Unless otherwise indicated, references to clauses of the draft Measure are references to those clauses as numbered in the draft Measure as originally introduced (GS 2311). Where clause numbers have changed this is indicated.

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

26. **The Revd Paul Benfield (Blackburn)** proposed that clause 1 should include a provision that prohibited parties from contracting-out of the application of the Measure, for example in settlement agreements. The Legal Office advised that such a clause would be unlikely to be enforceable and that even if it were, the only remedy available would be an award in breach of contract, rather than injunctive relief against the issuing of disciplinary proceedings.

27. Following a discussion by the Committee Fr Benfield withdrew his submission, noting that the matter could be dealt with in the Code of Practice.
28. No other submissions were received and the clause was approved as drafted.

Clause 2 Jurisdiction on clergy conduct

29. **Mr Sam Margrave (Coventry)** proposed that the clause be expanded to widen the jurisdiction to include lay leaders.
30. The Committee noted that this fell outside the scope of the draft Measure and rejected the proposal.
31. **Father Paul Benfield** withdrew his submission that the current drafting of clause 2 was not sufficiently clear to exclude cases which involve a question of doctrine, ritual or ceremonial.

Clause 3 Meaning of “misconduct”

32. **Mr Clive Scowen (London)** proposed that clause 3 should include a definition of grievance and serious misconduct.
33. The Committee, noting that this issue had been raised by a number of others, conducted a detailed discussion of the proposal. The Committee were advised that, having defined ‘misconduct’ in the Measure, both grievance and serious misconduct fell to be determined by reference to this clause. It was noted that serious misconduct was itself simply a form of misconduct and so was within the same categories as set out in this clause, with the ‘serious’ element being defined by reference to the possible sanction (i.e. removal from office and/or prohibition).
34. The Committee observed that on the one hand it was important to have clear definitions in the Measure, but equally it was undesirable to enshrine principles in primary legislation which made them harder to change in the future as things developed. It was agreed that if the issue were left to the Code of Practice, then very clear examples would need to be given.
35. The Committee rejected the proposed amendment.
36. **Mrs Amanda Robbie (Lichfield)** proposed her amendment that the word ‘inefficiency’ be removed from clause 3(1)(c). Mrs Robbie suggested that it was the wrong word to use in relation to clergy who did not produce anything. It was queried what it meant to be ‘efficient’.
37. The Committee were advised that removing the word inefficiency would narrow the scope of the ground of misconduct. The Committee were also advised that this ground was commonly relied upon for failure to follow safeguarding process prior to the existence of the statutory duty in 2016.

38. Having reflected upon the Committee’s deliberations, Mrs Robbie withdrew her amendment, and the Committee approved the clause.
39. **Father Benfield** addressed the Committee proposing his amendment to retain the drafting of section 8(1)(d) in the CDM 2003 of ‘conduct unbecoming to the office and work of a clerk in Holy Orders’ instead of the new formula in clause 3(1)(d) of ‘conduct which fails to meet the standards required of a clerk in Holy Orders.’ It was submitted that this phrase had the benefit of being well tested before the tribunals and was flexible enough to encompass new forms of misconduct, not envisaged by the Canons or Ordinal – such as the use of social media.
40. The Committee were advised that there was no substantive difference between the two phrases, save for the use of slightly more modern language.
41. The Steering Committee noted that they were in favour of more modern drafting.
42. Having reflected upon the discussion Father Benfield withdrew his submission and the Committee were satisfied with the clause.
43. The Committee then considered a number of amendments in relation to the draft of clause 3(2) -
 - a. **The Venerable Douglas Dettmer (Exeter)** proposed an amendment that the words “(but without limitation to)” after the word “include” be inserted into clause 3(2) in order to avoid the section being read too restrictively.
 - b. **Father Paul Benfield** proposed that clause 3(2) be deleted in full.
 - c. **Mrs Amanda Robbie** proposed that the words “in particular” and “Acts of Convocation” be deleted.
 - d. The Committee considered and allowed a representation from a non-synod member, the Revd Russell Dewhurst (which had been submitted via the **Venerable Luke Irvine-Capel (Chichester)**) that the reference to Acts of Convocation should only apply to those Acts which on the face of it declared that they had been passed for the purposes of this Measure. Further, that consideration should be given to including reference to ‘Acts of Synod’ in the clause.
44. The Committee had a very detailed discussion over two meetings in relation to the clause.

45. In respect of the Archdeacon of Totnes' submission, the Committee were advised that the proposed extra wording was unnecessary as the meaning was already present in the draft.
46. The Committee rejected the proposed amendment.
47. The Steering Committee submitted that they were not in favour of deleting the whole clause but did have concerns over the reference to 'Acts of Convocation'.
48. It was explained to the Committee that 'Acts of Convocation' was primarily in reference to the *Guidelines for the Professional Conduct of the Clergy*, which were declared an Act of Convocation in 2015. These are regularly used by tribunals in determining whether the act or omissions alleged met the definition of misconduct in the CDM. It was noted that, contrary to some views, it was envisaged at the time that the CDM was passed by Synod and considered by the Ecclesiastical Committee of Parliament that the *Guidelines* would be used in this way. It was noted that should reference to the Acts of Convocation be removed, the *Guidelines* would continue to be used in this way in any event under the new Measure.
49. Members of the Committee expressed concerns about whether referencing Acts of Convocation might give rise to unforeseen consequences, particularly in relation to giving some very ancient texts undue prominence. It was also thought prudent to refer to matters in an accessible way.
50. The Committee were of the view that including a separate reference to Acts of Synod was undesirable.
51. It was observed by the Committee that, if by referencing Acts of Convocation the intention was to simply to refer to the *Guidelines*, then it would be more straightforward to reference the particular document. The Committee were advised that to future proof the Measure it would be desirable to reference the *Guidelines* by way of a descriptor rather than by name.
52. The Committee rejected each of the amendments listed in paragraph 38 b. – d. above, but approved an amendment to clause 3(2) to reference any guidance issues by the Convocations in what is desirable in the professional conduct of clergy.

Clause 4 President and Deputy President of Tribunals: continuation

53. The Committee received no submissions and clause 4 was approved as drafted.

Clause 5 President and Deputy President of Tribunals: functions

54. The Committee received no submissions and clause 5 was approved as drafted.

Clause 6 Registrar of tribunals: continuation

55. The Committee received no representations on this clause. A discussion took place about whether the retirement age of the Registrar of Tribunals should be increased to 75 and the Committee determined that it did not wish to make any amendments.
56. The clause was approved as drafted.

Clause 7 Registrar of tribunals: functions

57. The Committee received no submissions and clause 7 was approved as drafted.

Clause 8 Clergy Conduct Commission: continuation

58. **Father Paul Benfield** proposed that the membership of the Clergy Conduct Commission should include at least two members of each House of General Synod.
59. **The Reverend Kate Wharton (Liverpool) (Chair of the Steering Committee)** noted that the Steering Committee were not in favour of the proposal and wished to see some external expertise included on the Commission and therefore favoured limiting membership to at least one from each House of Synod, noting that this did not prevent more from being appointed.
60. The Committee noted that if two members from each House were to be appointed to the Commission that would take up half of the 12 places.
61. The Committee rejected the proposal.

Clause 9 Clergy Conduct Commission: functions

62. The Committee considered proposals in relation to the approval of the Code of Practice under this clause and agreed that they should be contained in a separate section of the Measure.
63. No amendments were made to this cause and it was approved as drafted.

Clause 10 Provincial panel: composition

64. **The Very Reverend Mike Keirle (Channel Islands)** proposed that an alternative method of appointing to the provincial panels should be adopted. The rationale was that there was insufficient distance between the fact that it was the bishop who made the nomination to the panel and the fact that they were subject to the Measure themselves.

65. The Committee noted the administrative burden in relation to the nominations process and queried whether a body existed that was better placed to carry out the process.
66. The Committee rejected the proposal.
67. The Legal Office advised that, as an alternative, it would be permissible to include a provision within clauses 27 and 28 that would ensure that no person be appointed to sit on a tribunal or court that had been appointed to the provincial panel by the responsible bishops concerned with the case (including in cases where the respondent is a bishop).
68. The Committee accepted the proposed amendment.
69. The Committee considered a further representation from the **Dean of the Arches and Auditor, The Rt Worshipful Morag Ellis KC (ex-officio)**, on whether the nominations to the provincial panels should be carried out by the Clergy Conduct Commission rather than through the bishop of each diocese. This was on the basis that a central body could obtain a greater degree of diversity in the background of the nominees. The Committee considered that there was an advantage in keeping a 'local' aspect to the nominations process and that the factors the bishop should consider in making a nomination (including diversity) could be set out in the Code of Practice. The Committee were also concerned of the administrative burden placed upon the Commission.
70. The Committee rejected the proposed amendment.

Clause 11 Provincial panel: period of inclusion

71. **Mr Clive Scowen** proposed an amendment to the drafting of clause 11(3) in order to make clear the policy intention that the chairs of tribunals may be nominated to sit on the relevant provincial panel for any number of further periods of six years.
72. The Committee accepted the proposed amendment.

Clause 12 Panel of assessors: composition

73. **The Very Reverend Mike Keirle** proposed a like-amendment to that set out in paragraph 59 above, that case assessors should not come from the same diocese as the person they were investigating or be nominated by the bishop who received the complaint.
74. The Committee accepted the principle raised by Mr Keirle and determined that the Clergy Conduct Commission should have responsibility for the appointment, of assessors in such numbers as the Commission thought appropriate.

- 75. Mrs Rebecca Hunt (Portsmouth)** proposed that there should be an occupational requirement for all assessors to be Christians.
- 76.** The Committee were satisfied that subsection (6) provided the sufficient basis for this as it required assessors to be either clerks in Holy Orders or a lay person who is an actual communicant and on the electoral roll of a parish or the community roll of the Cathedral.
- 77.** The Committee engaged in a general discussion on the role of the assessors. It was observed that these posts were vital to the operation of the proposed system. Further, that a number of comments had been raised at Synod during the debate on First Consideration and subsequently in writing to the Committee concerning the identity, remuneration and training of the assessors. The Committee were of the view that it would be important to encourage professionalism, objectivity and accountability in the assessors. There was a desire to have a small and agile group of assessors who were well trained.
- 78.** In pursuance of the above, the Committee agreed the following amendments to clause 12:
- a.** There would be one central body of assessors, rather than a regional model.
 - b.** The person or persons appointed to be a lead assessor would be appointed by the Clergy Conduct Commission on the recommendation of the Dean of the Arches and Auditor.
 - c.** The lead assessor would have the power to delegate their functions to another person included on the panel of assessors.
 - d.** The lead assessors would make an annual joint report on the exercise of their functions each year to General Synod through the House of Bishops.
 - e.** The Clergy Conduct Commission would decide the terms on which a person nominated for inclusion on the panel would be included. For example, requirements as to mandatory training and continuing professional development.
 - f.** In deciding how many persons to nominate to the panel and the terms of the appointment, the Commission would be required to have due regard to such advice as the House of Bishops may issue on the principles to apply.
 - g.** The lead and case assessors would be paid a fee for their work, on the terms to be decided by the Fees Advisory Commission – which would

publish the list of fees in the relevant fees order each year to be approved by Synod.

Clause 13 Panel of assessor: period for inclusion

79. **The Legal Office** proposed that an amendment be made to clause 13 to allow for the filling of casual vacancies on the panel of assessors that may arise from time to time.
80. The Committee agreed with the proposal.
81. The Committee noted that there was no provision for the removal of assessors from the panel.
82. The Committee agreed that provision should be made for the rules to include specified grounds upon which the Clergy Conduct Commission could remove a person from the panel before the expiry of their term of office.

Clause 14 Investigation and Tribunals Team

83. The Committee discussed whether or not a conflict arose where the member of the Team was to give advice to those operating the Measure and then also the Clergy Conduct Commission. The Committee were content that, as the Commission would not deal with specific cases, then the risk of conflict did not arise.
84. **Father Paul Benfield** queried whether a power to delegate should be contained in the clause. The Legal Office noted that this clause established the Investigation and Tribunals Team and where functions were specified later on in the Measure powers of delegation were included (see clause 27(3)).
85. **The Legal Office** suggested a small amendment to clause 14(2)(c) to ensure clarity that the advice and guidance being offered by the Team was on the operation of the Measure.
86. The Committee accepted the proposed amendment.

Clause 15 Complaint: proper interest

87. **The Venerable Douglas Detmer** proposed that clause 15(2) be amended to include a situation where the priest or deacon holds a form of authority to exercise ministry within a diocese but not does exercise that ministry by reference to the geographical boundaries of an archdeaconry – for example a diocesan wide PTO.
88. The Committee accepted the proposed amendment.

89. **The Rt Worshipful Peter Collier KC (ex-officio)** proposed that the ‘cathedral safeguarding officer’ be added to the list of persons in clause 15(3) with a proper interest to bring a complaint against a cleric who served in a cathedral.
90. The Committee accepted the proposed amendment.
91. **Father Benfield** raised that a problem had arisen in the past under the CDM 2003 were a bishop had, on the face of it, committed misconduct, but there was no church officer (equivalent to an archdeacon for inferior clergy) to bring a complaint – where others with standing were unwilling to do so.
92. The Committee noted that this was an issue. The Legal Office proposed that the solution would be to include a provision whereby, in the case against a bishop, the archbishop of the province would nominate a person to bring the complaint, and in the case of an archbishop, the other archbishop would do so.
93. The Committee accepted the proposed amendment.

Clause 16 Complaint: procedure

94. No representations for amendment were received.
95. The Committee were of the view that the term ‘preferment’ was unclear and outdated for inclusion in the Measure and amended the term to ‘holding a form of authority to exercise ministry’, which it was noted was used in Canon C 8.

Clause 17 Protected parties

96. No representations were received.
97. **The Legal Office** proposed two amendments -
- a. firstly, that the ability to appoint a litigation friend should also apply to a respondent who lacked capacity or had a disability, and not be limited to a complainant.
 - b. secondly, that the power to appoint a litigation friend be exercisable both before a complaint has been made and during a complaint and that if a tribunal or court has already been convened, be exercisable by the Chair sitting alone.
98. The Committee accepted the proposed amendments.

Clause 18 Self-referral by cleric

99. No representations were received and the clause was approved as drafted.

Clause 19 Limitation periods

- 100. Mr Carl Fender (Lincoln)** proposed an amendment to fill a lacuna on the operation of clause 18 (Self-referral by cleric). It was noted that where a cleric wished to self-refer a complaint of grievance or misconduct that was already outside the 12-month limitation period then it would be time barred unless permission was sought. It would be unlikely however that a cleric would wish to seek permission to bring a complaint against themselves.
- 101.** The Committee discussed three options -
- a. either the power to disapply the limitation period should not apply to self-referral; however, it was noted that this might cause significant injustice; or
 - b. all complaints of self-referral that were allocated as misconduct would automatically be referred for consideration for whether permission should be granted if they were already out of time; it was noted that this could be overly cumbersome; or
 - c. the limitation period would not apply at all to cases of self-referral, on the grounds that the cleric had made the active decision to enter into the system willingly.
- 102.** The Committee agreed that a problem has been identified and favoured an amendment to give effect to option c.
- 103.** The Committee approve the proposed amendment.
- 104. Father Paul Benfield and Mrs Rebecca Hunt** proposed that the term serious misconduct be defined.
- 105.** The Committee noted that they had already determined that they did not wish to do so when dealing with representations on clause 3.
- 106.** The Committee rejected the proposed amendment.
- 107. Mrs Hunt** proposed two further amendments –
- a. the first was to reduce the limitation period to three months – to match that used in employment tribunals – unless the conduct alleged amounted to a criminal offence; and
 - b. secondly an amendment to change the test for extending the limitation period from ‘good reason’ to ‘exceptional circumstances’.

108. The Committee considered that a limitation period of three months would be too short and agreed that the right balance had been struck between 12 months for a complaint amounting to a grievance (with no power to extend the period), 12 months for misconduct (with a power to extend the period) and no limitation period for complaints of serious misconduct.

109. The Committee also considered that the test of ‘good reason’ had a tried and tested pedigree before courts and tribunals and noted that ‘exceptional circumstances’ would mean a much higher threshold had to be met, which might cause injustices.

110. The Committee rejected the proposed amendment.

Clause 20 Referral of complaint

111. Mrs Amanda Robbie proposed two amendments –

- a. firstly, to provide that the lead assessors must be given information regarding previous complaints made by the complainant against clergy, diocesan staff and other laity, including where those complaints were vexatious, malicious or querulant.
- b. secondly, to make provision requiring that any person giving pastoral or other support must be trained in the Measure, Rules, Code of Practice and be trauma informed.

112. The Committee were advised that it would be outside the scope of the Measure for the lead assessor to be given information relating to previous complaints made against diocesan staff or laity.

113. The Committee observed that, whilst it might be expected that where the respondent was aware that the complainant had brought previous vexatious or without merit complaints the respondent would bring that to the assessor’s attention, there may be instances where the bishop would have information that was relevant to the issue of allocation or the outcome of the complaint.

114. The Committee noted that it did not wish to be too prescriptive in the Measure on what sort of information the bishop might provide to the lead assessor, and these could be more properly set out in the rules.

115. The Committee agreed the inclusion of a new subsection at 20(9) making the relevant provision.

116. The Committee rejected the second proposed amendment as to training, being more appropriate for inclusion in the Code of Practice.

117. **Mr Clive Scowen** proposed a slight amendment to (10)(b) to clarify that the bishop did not have to provide the pastoral support personally, but that, where the support is accepted, the bishop should be under a duty to arrange for the provision of that support.
118. The Committee accepted the proposed amendment.
119. The Committee considered detailed representations from the **National Safeguarding Team (“NST”)** on the need to align the church’s safeguarding processes with its disciplinary system. The NST proposed an amendment whereby if the conduct alleged in the complaint involved a child or vulnerable adult then upon referral to the DSO (if that officer had not brought the complaint) the officer becomes a party to the complaint. This would ensure that the DSO would have a lawful basis to receive the documentation in the case and, where appropriate, make representations.
120. The Committee were grateful for the input of the NST and noted the importance in ensuring that the two systems worked well alongside each other. In particular, it was observed that the early referral of safeguarding cases into the CCM process would mean a quicker and less traumatic investigative process for all concerned.
121. The Steering Committee supported the amendment. The Legal Office advised that if the Committee supported the amendments, then like-provision would need to be made in the same clause for cases involving bishops and archbishops and referral to the NST through the director.
122. The Committee accepted the proposed amendments.
123. **The Legal Office** identified a number of further amendments
- a. in (1) to make reference to the President of Tribunals in the case of a complaint against an archbishop;
 - b. in (6) to make provision for the rules to determine which lead assessor should deal with a case when there is more than one;
 - c. in (11) to make provision that, in the case of a complaint against an archbishop, the other archbishop should carry out the function set out in (10) (arranging for pastoral and other support etc).
124. The Committee accepted the proposed amendments.

Clause 21 Allocation of complaint

125. The Committee considered the proposal of the **Revd Chris Moore (Hereford)** and the **Revd Dr Sean Doherty (Universities and TEIs)** to remove grievances from the scope of the Measure.
126. The Committee noted that it had been a key proposal from the Clergy Conduct Measure Implementation Group to Synod that the draft Measure include three tracks, one of which provided for a system dealing with low end grievances. Synod had endorsed that proposal and the Committee took the view that it did not wish to depart from that decision.
127. The Committee rejected the proposed amendments.
128. **Dr Sean Doherty** raised a concern that the complainant did not appear to be given a say in how the case should be allocated.
129. The Committee were advised that the process by which the lead assessor will allocate a case will include consideration of the Complainant's own view of the type of complaint they wish to raise. There would be included on the standard form a box to indicate the level of complaint. However, this would not be determinative of allocation and it was important that the task was undertaken independent of the parties to ensure an objective and consistent decision making.
130. The Committee rejected the proposed amendment.
131. **Mrs Rebecca Hunt** proposed that where a case assessor was appointed to investigate a complaint of misconduct, the respondent should be given a choice of three names to choose from.
132. The Committee noted that, should the appointed assessor be in a position of conflict, then they would be required to recuse themselves from the case in any event. The Committee took the view that, outside of that, it was not appropriate for the parties to pick and choose who investigated their case.
133. The Committee rejected the proposed amendment.
134. **Father Paul Benfield** suggested that the lead assessor be given the power to dismiss a complaint where it had been made outside of the 12-month time limit.
135. The Committee accepted the proposed amendment.
136. **Mr Carl Fender** proposed replacing the term 'totally without merit' in (1)(d) with "no case to answer".

137. The Committee were advised that the term “totally without merit” was used to denote that the dismissal was being made on the basis that the complaint had no or little basis in fact or law and to identify that it should have never been brought. It was a summary dismissal that would only apply in the clearest of cases. Conversely, the test of “no case to answer” required an analysis of the merits of the case, which was not what was intended at this stage of the process.
138. The Committee rejected the proposed amendment.
139. **Mrs Amanda Robbie** proposed two amendments –
- a. firstly, the insertion of a new subsection which provided that where a complaint was dismissed on the ground that it was vexatious or totally without merit then it was to be “dismissed entirely before conversations towards reconciliation proceed.”
 - b. secondly, that provision be made for a right of appeal against the appointment of the ‘designated person’ on account of a pre-existing relationship with the respondent or a bias.
140. In respect of the first proposed amendment, the Committee were advised that it was redundant as the effect of a dismissal was to dismiss the whole case and so the question of conciliation under the Measure did not arise.
141. In respect of the second amendment the Committee observed that the Code of Practice would set out factors for the bishop to consider when appointing the designated person, which would include making sure they were independent of the parties. The Committee noted that training would be provided to ensure they acted without bias.
142. The Committee rejected the proposed amendment but noted the importance of the bishop having due regard to the code of practice when appointing the designated person.
143. The Committee examined the process for granting permission to bring a complaint of misconduct out of time. It was noted that there was a potential for an overly cumbersome process whereby, if the complainant brought a case that they thought was one of serious misconduct (and therefore had no limitation period) but that was allocated as misconduct and was outside of the 12 month period, then it would fall to be dismissed, unless referred to the President of Tribunals to start the process of considering whether or not to grant permission. The Committee observed that the changes they had made to who would be the lead assessor meant that it was likely that this person would be a paid professional with the requisite skills to make these sorts of decisions. The Committee were also advised that there was a benefit in considering the issue

of allocation and permission to bring a complaint out of time at the same point in the process, and by the same person.

144. The Legal Office suggested an amendment to give effect to the policy that where the lead assessor allocated a case as misconduct the same assessor would also consider whether it had been brought within the 12-month time limit. If it had not, the assessor could, having given the parties an opportunity to make representations, either grant permission for the case to proceed, or dismiss it as being out of time.

145. The Committee accepted the proposed amendment.

146. The Legal Office proposed three further amendments

- a. firstly, that provision be made for the allocation of ‘mixed’ cases, for example that were part ‘misconduct’ and part ‘serious misconduct’. It was suggested that the process for allocating these cases be contained in the rules.⁵
- b. secondly, that where the lead assessor considered that a complaint of misconduct was so low level that it could be properly dealt with as a grievance, then the lead assessor may allocate it as such.⁶
- c. thirdly, that the lead assessor have the power to dismiss a complaint where the person did not have a proper interest.

147. The Committee accepted the proposed amendments.

Clause 22 Action after allocation of complaint (Revision version)

148. The Legal Office advised the Committee that it would be clearer to separate out into a new clause the actions required to be undertaken under the Measure after a case has been allocated.

149. The Committee gave effect to the observations made above about the importance of the Code of Practice by amending the clause to insert (3) – which required the bishop and President of Tribunals to have due regard to the Code of Practice in appointing the designated person to resolve the grievance.

150. The Legal Office proposed amendments relating to the provision of legal aid, including the requirement to bring to the Respondent’s attention in a letter the

⁵ It is likely that the process will be that the mixed case will be allocated to the ‘highest track’ – for example, where a case contained both matters of grievance and misconduct, then it would all be allocated to the misconduct track.

⁶ For example, a case which alleged a breach of the canons could amount to misconduct under clause 3(1)(a) – ‘a breach of ecclesiastical law’ – but if it were very minor, it should more properly be dealt with as a grievance.

right to instruct a lawyer and how to apply for legal aid. Further, the need to amend the Church of England (Legal Aid) Measure 1994 in order to allow a respondent to instruct a 'direct access barrister'⁷.

151. The Committee accepted the proposed amendments.

152. Further amendments were proposed by **the Legal Office** in (1), (2) (5) and (8) to make provision for cases in which the archbishop was the respondent.

153. The Committee accepted the proposed amendments.

Clause 23 Grievance (Revision version)

154. **Dr Sean Doherty** proposed that a definition of grievance should be included in the clause.

155. The Committee noted that they had already considered this point in relation to clause 3 and agreed that they did not wish to include a definition for the reasons given.

156. **Mrs Amanda Robbie**, being satisfied with the explanation that they were more relevant to the rules, withdrew her proposal to include the procedural steps for the investigation of grievances in the Measure.

157. The clause was approved.

Clause 24 Complaint of misconduct: investigation (Revision version)

158. No representations were received.

159. The Committee approved the amendment at clause 24(8) which arose out of the decision as set out at paragraph 140 b. above (allocating certain misconduct cases as a grievance.)

Clause 25 Complaint of misconduct: report (Revision version)

160. **The Rt Worshipful Peter Collier KC** proposed an amendment that provided for the assessor's report to include a recommendation as to a penalty or administrative sanction, but that recommendation would not be binding on the bishop, unlike the findings of fact that lead to the outcome.

161. The Committee were advised that this was the recommendation of the Implementation Group in their report *Under Authority: Revisited*. The Steering Committee supported the adoption of the amendment.

⁷ A direct access barrister is a barrister who is authorised to take instructions from a client directly without the need for going through a solicitor.

162. The Committee accepted the proposed amendment.

163. Further amendments were proposed by **the Legal Office** (7) and (8) to make provision for cases in which an archbishop was the respondent.

164. The Committee accepted the proposed amendments.

Clause 26 Complaint of misconduct: conciliation (Revision version)

165. Mrs Amanda Robbie proposed two amendments –

- a. Firstly, a new subsection that would provide that a respondent may refuse to enter into conciliation if it can be shown that the complainant displayed behaviour consistent with persistent, vexatious, malicious and querulent complaining; and that if the parties did agree to enter into conciliation the complaint shall be dismissed entirely before the talks commence.
- b. Secondly, that where conciliation took place but after a period of three months did not result in an agreement, then no further steps would be taken by the complainant on the complaint.

166. The Committee were advised that there was no obligation for any party to enter into conciliation. Furthermore, conciliation was intended to be a means of disposing of the complaint. If upon agreeing to enter into conciliation the complaint then stood automatically dismissed, there would be no reason for the conciliation to take place.

167. The Committee agreed that the second proposed amendment could cause an injustice as it would afford a respondent the means to ‘run down the clock’ on the conciliation in order to have the proposed three-month period expire and the complaint end.

168. The Committee rejected the proposed amendments.

Clause 27 Complaint of serious misconduct (Revision version)

169. No representations were received for this clause.

Cause 28 Safeguarding issues arising during investigation (Revision version)

170. The Committee considered a detailed representation from the NST suggesting that should, during an investigation of a complaint, an issue relating to the safeguarding of a child or vulnerable adult arise which has not previously been apparent, then the DSO should be informed and the person carrying out the investigation should consider making an application to the President to join the DSO as a party to the complaint.

171. The Committee were advised that should they wish to include such a clause, then provision should also be made for the equivalent person in the NST to be informed and become a party to the complaint as well in cases against a bishop or archbishop.

172. The Committee accepted the proposed amendment.

Clause 29 Bishop's disciplinary Tribunal (Revision version)

173. No representations were received on this clause.

174. The Committee included a provision in a new (4) that a person may not be appointed to sit on a tribunal if they have been nominated to the provincial panel by the responsible bishop dealing with the complaint.

Clause 30 Vicar-General's Court (Revision version)

175. No representations were received on this clause.

176. The Committee made the same provision as set out in paragraph 166 above in relation to this clause.

Clause 31 Procedural matters (Revision version)

177. **Mr Clive Scowen** proposed that the standard of proof used by a tribunal or court should be the same as in criminal court, beyond reasonable doubt, on the basis that the decision could dramatically affect a person's ministry and livelihood.

178. The Committee were informed that no other disciplinary body in the country used the criminal standard anymore and that the phrase 'beyond reasonable doubt' was not used in the criminal courts anymore. Furthermore, there was a large amount of applicable caselaw dealing with what was meant by 'on the balance of probabilities.' It was noted that in determining whether or not they were satisfied that it was more likely than not that an event occurred or not, the court or tribunal would take into account the cogency of the evidence and the inherent probability of the particular act or omission taking place. The lower standard did not necessarily mean a case was 'easier' to prove. The Chair of the Steering Committee confirmed that the Steering Committee did not support changing the standard of proof.

179. The Committee rejected the proposed amendment.

180. **Mr Clive Scowen** also proposed an amendment so that the default position would be that the tribunal or court would sit in public (with a right for anyone to attend), and not in private. The Steering Committee did not support the amendment.

181. The Committee discussed the importance of balancing transparency with confidentiality. It was noted that other professional tribunals, such as General Medical Council hearings, sit in private due to the confidentiality of patient information. Members noted the need to ensure that vulnerable persons, in particular laity, felt able to make complaints without fear of public intimation or inappropriate press reporting during a trial. It was noted that in all cases a full narrative judgment would be made public after each hearing.

182. The Committee rejected the proposal.

183. The Committee agreed however that the right of the respondent to request a hearing take place in public and the power of the tribunal or court to order it should be included in the Measure and amended the clause accordingly.

Clause 32 Vexatious litigant: application for restraint order (Revision version)

184. No representations were received for this clause.

185. **The Legal Office** proposed two amendments -

- a. firstly, that the Arches Court of Canterbury or the Chancery Court or York (i.e. the appellate courts) have the power to impose a restraint order; and
- b. secondly, that the power to make the order rest with the chair of a court or tribunal sitting along without the other panel members.

186. The Committee accepted the proposed amendments

Clause 33 Vexatious litigant: operation of restraint order (Revision version)

187. No representations were received.

188. The Committee agreed to amend the clause in the same way as set out in paragraph 180 b. above.

Clause 34 Restriction orders and suspensions: power to impose (Revision version)

189. **Mr Clive Scowen** proposed that provision should be made within the clause to exclude minor offences (for example speeding) from the ambit of triggers for suspending a cleric or imposing a restriction order. It was noted that such a provision appeared in clause 55 (“Conviction, arrest, caution etc”), but not in this clause.

190. The Committee accepted the proposed amendment.

191. The Committee considered a proposal from the **NST** for an amendment to clause 34(1)(b) to include a cleric being 'interviewed under caution' as a ground for suspension or imposition of a restriction order. It was noted that it was now commonplace for the police to conduct interviews under caution without arresting the suspect.

192. The Committee accepted the proposed amendment.

193. The Committee considered a representation from the **NST** that the list of persons able to provide information for the purposes of clause 34(1)(f) ("cleric presents significant risk of harm") should include the national safeguarding team and the diocesan safeguarding officer and not just the police or local authority.

194. The Committee accepted the proposed amendment.

Clause 35 Restriction order (Revision version)

195. The Committee considered representations from the **NST** that proposed the following amendments -

- a. where the bishop or archbishop was replying upon clause 34(1)(f) ("cleric presents significant risk of harm") as the ground for imposing a restriction order, they must first consult the DSO or NST, as the case may be, unless the information about the significant risk of harm came from the DSO or NST in the first place; and
- b. that the decision whether or not to impose a restriction order must be accompanied by reasons and be recorded in writing in order that there was a system of proper record keeping.

196. The Committee accepted the proposed amendments.

197. **Fr Paul Benfield** proposed that a time limit should be placed on the operation of a restriction order otherwise it would run indefinitely. He suggested a period of three months so as to match the operation of suspensions, save the notice making the order could be re-served if the case had not concluded and the test for imposing the order was still met.

198. The Steering Committee supported the proposal.

199. The Committee accepted the proposed amendment.

Clause 36 Suspension (Revision version)

200. The **NST** made the same representations as set out in paragraph 185 above in relation to the operation of suspensions.

201. The Committee accepted that the proposed amendments should also operate for suspensions.

202. Mr Clive Scowen proposed an amendment that the Rural (Area) Dean should be consulted when the incumbent or priest-in-charge has been suspended and the responsible bishop wishes to make arrangement for the ministrations of the church during the period of suspension.

203. It was noted that absolute clarity was also needed in clause 36(9) that the duty to consult the incumbent or priest-in-charge in such a case did not include the incumbent or priest-in-charge who was the subject of the suspension.

204. The Committee accepted the proposed amendment.

Clause 37 Penalties and administrative sanctions (Revision version)

205. Canon Lisa Battye (Manchester) proposed an amendment to replace the term ‘rebuke’ with an alternative word or phrase. Canon Battye submitted that under the CDM the term meant the lowest level of penalty available – but under this Measure it was only available under the serious misconduct track – which therefore changed its meaning.

206. The Committee had an extensive discussion over the use of the term ‘rebuke’ and the meaning under both the CDM and CCM.

207. It was suggested that replacing the term with a mere description (such as notice of misconduct) could feel more bureaucratic.

208. The Steering Committee noted that they were, in general, in favour of keeping the terms, on the basis that another term was not readily apparent to them. They had not discussed deleting the term altogether.

209. Whilst the Committee observed that the meaning was not intended to change under the CCM, and that it would remain as a marking of serious misconduct, the Committee were of the view that it would be clearer to replace the terms with new language.

210. The Revd Lindsay Llewellyn-MacDuff (Rochester) proposed using the terms “notice of misconduct” and “notice of serious misconduct” respectively.

211. The Committee agreed (with slightly revised wording) with the proposed amendments.

212. The Legal Office proposed that there be an explicit power to revoke a permission to officiate as an available penalty.

213. The Committee accepted the proposed amendment.

Clause 38 Power to impose penalty or administrative sanction (Revision version)

214. No representations were received for this clause.

215. **The Legal Office** proposed an amendment to allow for the President of Tribunals to impose a penalty or administrative sanction where the complaint was against an archbishop.

216. The Committee accepted the proposed amendment.

Clause 39 Exercise of power under section 38 (Revision version)

217. No representations were received for this clause.

218. **The Legal Office** proposed two amendments –

- a. to make a consequential amendment to include the President of Tribunals as a person able to exercise the power under the clause in respect of cases against archbishops; and
- b. in clause 39(7) to require any person or body imposing a penalty to have regard to the Clergy Conduct Commission's advice on penalties.

219. The Committee accepted the proposed amendment.

Clause 40 Conditional discharge (Revision version)

220. No representations were received for this clause.

221. **The Legal Office** proposed an amendment to include the President of Tribunals under the clause where the complaint was against an archbishop.

222. The Committee accepted the proposed amendment.

Clause 41 Deposition from Holy Orders: priest or deacon (Revision version)

223. **Mr Clive Scowen** proposed that the provisions under this clause dealing with appeals should be placed later in the Measure, alongside with the other clauses dealing with reviews and appeals.

224. It was explained that as the appeal against the decision to depose a cleric went to the archbishop and was of a different nature to the other appeals, it was more logical to keep the provisions within the single clause.

225. The Committee rejected the proposed amendment.

Clause 42 Deposition from Holy Orders: bishop or archbishop (Revision version)

226. **The Rt Worshipful Peter Collier KC** noted the absence of a provision requiring the bishop or archbishop to be heard at a hearing, if so requested, before a resolution to depose that person from Holy Orders may be put to the Upper House of the Convocation.
227. The Committee agreed that such a provision should appear and accepted the proposed amendment.

Clause 43 Restoration on pardon (Revision version)

228. No representations were received for this clause.
229. The Committee agreed to consequential amendments in light of the decision not to use the term 'preferment' (see paragraph 89 above).

Clause 44 Limited prohibition: performance of cleric's functions (Revision version)

230. No representations were received for this clause.
231. **The Legal Office** proposed an amendment making it explicit on the face of the Measure that where the bishop intends to appoint another priest or deacon to carry out the functions relating to the ministry of a cleric who is subject to a limited prohibition, then there is no need to obtain the consent of that cleric.
232. The Committee accepted the proposed amendment.
233. The Committee also agreed to the same amendments in light of the decision not to use the term 'preferment' (see paragraph 89 above).

Clause 45 Disobeying penalty etc (Revision version)

234. No representations were received for this clause.
235. **The Legal Office** identified the need for an amendment in clause 45(2) (with consequential amendments to (3)) to make clear that a complaint against a cleric deposed from Holy Orders may be made in relation to both breach of the penalty imposed alongside the deposition and also in relation to misconduct that occurred prior to the deposition taking effect. This was to enable complaints of the utmost seriousness to still be considered even after deposition from Holy Orders.
236. The Committee accepted the proposed amendment.

Clause 46 Conviction for offence etc: power to impose penalty etc (Revision version)

237. The Committee considered a representation from the NST that where the bishop or archbishop intended to impose a penalty in a case where the cleric is convicted of an offence involving a child or vulnerable adult, or in a case where the cleric is included on a barred list, then prior to doing so the bishop or archbishop must consult with the DSO or NST as the case may be. The Steering Committee supported the amendment.
238. **The Legal Office** also identified the need for a small amendment in (5) for the rules to make provision for the President of Tribunals to exercise this power where the case involves an archbishop.
239. The Committee accepted the proposed amendments.
240. The Committee also agreed to amendments in light of the decision not to use the term 'preferment'.

Clause 47 Power under section 46: time limit (Revision version)

241. No submissions were received and the clause was approved.

Clause 48 Recognition of external decisions etc (Revision version)

242. **Father Paul Benfield** proposed an amendment to include the term "after due process" after "is subject to a finding" in clause 48(1) and (2) so as to ensure that only in cases where the President was satisfied that a proper legal process had been followed in the other church or province could the power be used to impose a penalty.
243. The Committee were advised that the proposed amendment was unnecessary as the proposed clause had been drafted so as to give the President a discretionary power inherent in the exercise of which would be to consider the integrity of the process under which the finding was made in the other church or province. If there had been a lack of due process the President could decide to take no further action under (3)(a).
244. The Committee rejected the proposed amendment.
245. **The Legal Office** identified the need for an amendment in (6) to include reference to an admission being by the cleric in question.
246. The Committee accepted the proposed amendment.

Clause 49 Rights of Patronage (Revision version)

- 247. Father Paul Benfield** proposed an amendment to expand the list of ecclesiastical corporation sole that might hold the patronage of a benefice, and whom might be subject to suspension or limited prohibition – for example an archdeacon.
- 248.** It was proposed that if a priest or deacon were the patron, then the bishop of the diocese would exercise the patronage during the relevant period; if a diocesan bishop were the patron then the patronage would be exercised by the relevant archbishop; and if the archbishop was the patron it would be exercised by the other archbishop.
- 249. The Legal Office** also proposed that explicit provision be made in (3) to prevent a clerk in Holy Orders who is a member of a board of trustees which is the patron of a benefice from exercising the functions of that board relating to patronage, during the period that the clerk is either suspended or prohibited from ministry. The Legal Office advised that the provisions in relation to the effect of suspension (clause 36) and limited prohibition (clause 37) were likely not sufficiently wide to encompass this.
- 250. The Committee accepted the proposed amendments.**

Clause 50 Review etc by President of Tribunals on complaint (Revision version)

- 251. Dr Sean Doherty** proposed an amendment that would give the respondent the right to request a review of the decision of the lead assessor to allocate a complaint as a grievance.
- 252.** The Committee were advised that it would not make sense for the Respondent to wish to seek to make the case against them more serious, by asking the President of Tribunal to allocate the complaint as misconduct or serious misconduct. It was explained that the reason a right of review existed for the complainant was that the allocation of a complaint to the grievance track could amount to the effective dismissal of a complaint of misconduct. The Steering Committee did not support the amendment.
- 253. The Committee were satisfied with drafting and rejected the proposed amendment.**
- 254. Dr Doherty** withdraw his proposed amendment to transfer the exercise of the review functions from the President to a panel of assessors.
- 255.** The Committee considered a representation from the NST that where a bishop or archbishop decides not to impose a restriction order or a suspension of a cleric but the DSO or director of the NST thinks that the cleric presents a significant

risk of harm, then the officer or director be able to request the President to review that decision.

256. The Committee were advised that no similar provision was required in relation to archbishops as the underlying decision would be a judicial one exercised by the President.

257. The Legal Office identified the requirement for an amendment to provide for a right of appeal by an archbishop against the imposition of a restriction order or suspension. As the order would have been made by the President an appeal would need to be made to another person, of which the logical choice was the Dean of the Arches and Auditor.

258. The Committee accepted the proposed amendments.

Clause 51 Review by the President of Tribunals of penalty etc on conviction (Revision version)

259. No submissions were received and the clause was approved with minor consequential amendments to account for a review being heard by the Dean of the Arches under (6)(b).

Clause 52 Appeal etc to court (Revision version)

260. No submissions were received and the clause was approved.

Clause 53 Permission to appeal (Revision version)

261. No submissions were received and the clause was approved.

Clause 54 Composition of court on appeal or review (Revision version)

262. The Legal Office proposed an amendment to allow the Dean of the Arches and Auditor to appoint a substitute chair in cases where the Dean was unable or unwilling to act in a particular case. Further, that no person may be appointed to sit on the relevant court if they had been nominated for inclusion on the panel by the responsible bishop who received the complaint.

263. The Committee accepted the proposed amendments.

Clause 55 Conviction, arrest, caution etc (Revision version)

264. The Steering Committee proposed an amendment, suggested by **The Revd Paul Cartwright (Leeds)**, to require a cleric to disclose to the bishop, archbishop or President, as the case may be, if they were interviewed under caution.

265. During the discussion the Committee identified the need for a further amendment to account for administrative disposals of a criminal complaint. The Committee noted that it was not uncommon for the police to dispose of criminal matters by way of a ‘community process’, which was not the same as a police caution. The Committee were of the view that such a disposal should also be disclosed to the bishop, archbishop or President, as the case may be.

266. The Committee accepted the proposed amendments.

Clause 56 Divorce or separation order (Revision version)

267. The Legal Office advised that the inclusion of the requirement in 57(1)(c) for, in the case of proceedings for judicial separation, the archbishop to inform the other archbishop whether they were a respondent to the proceedings was an error and should be deleted.

268. The Committee engaged in a detailed discussion over whether the duty to disclose marital separation should be continued in this Measure, in light of the change in the law to allow ‘no-fault’ divorce. It was noted that the Measure was not only concerned with ‘discipline’ but conduct more generally. There was concern that, should the cleric not be under a duty to inform the bishop (or archbishop) then relevant questions could not be asked, including in relation to the provision of proper pastoral support and contact with the Bishop’s Visitor. The Committee were advised that, unlike in the CDM, the fact of disclosure would not mean that a complaint of misconduct or penalty would automatically follow. Some members of the Committee expressed the view that such a provision should not be contained in the Measure, but in the Ecclesiastical Offices Terms of Service Regulations 2009.

269. After a comprehensive debate the Committee were satisfied that it was appropriate to retain the duty to disclose marital separation and agreed the clause as drafted.

Clause 57 Work in other capacities: adverse findings (Revision version)

270. The Committee allowed and considered a proposed new clause from a non-synod member, **the Revd Dr Alex Baker**, which the Committee considered raised an important point of principle. Dr Baker asked the Committee to make provision for where (often) non-stipendiary ministers have other secular or external- employment to the church in a regulated profession – for example, doctors or teachers. In such cases, where the church imposed discipline, the secular body may wish to take account of that decision for their own purposes, particularly in cases involving questions of safeguarding or dishonesty.

271. The Committee observed that Dr Baker had raised an important point, but that it also worked both ways, in that the church would also, in appropriate cases, wish

to take account of the findings of bodies against clergy acting in their secular capacity. It would be important to ensure that there was a lawful basis for the sharing of information in each direction. The Committee were of the view that 'work' should not be limited to paid employment and should include acting on a voluntary basis. It was confirmed that there did not need to be a separate provision relating to informing the Charity Commission as any such duty would arise under separate legislation. The Steering Committee supported the proposal.

272. The Committee accepted the representation and approved the inclusion of the new clause.

Clause 58 Archbishops' list (Revision version)

273. No representations were received.

274. A small amendment to replace the term preferment in (1)(e) was accepted by the Committee and the clause was approved.

Clause 59 Panel of approved lawyers (Revision version)

275. **The Rt Worshipful Peter Collier KC** proposed an amendment to include provision to allow a respondent to instruct a barrister on a direct-access basis, without the need to also instruct a solicitor.

276. The Committee accepted the proposed amendment.

Clause 60 Place where court or tribunal to sit (Revision version)

277. No submissions were received and the clause was approved.

Clause 61 Evidence (Revision version)

278. No submissions were received and the clause was approved.

Clause 62 Contempt (Revision version)

279. No submissions were received and the clause was approved.

Clause 63 Costs and fees (Revision version)

280. No submissions were received and the clause was approved.

Clause 64 Recording and publication of decisions (Revision version)

281. **Dr Sean Doherty** proposed an amendment that clause 64(2) be amended to provide that the obligation to publish judgments, decisions and orders should be contained in the Code of Practice, not the rules. Furthermore, that clarity was

needed around what would be published and where, with a presumption against publishing all decisions.

282. The Committee conducted a detailed exploration of the issues involved in publishing decisions, including weighing up the need for accountability and openness against the potential for serious damage to be done to clerics and their families where minor matters were put wide in the public domain. It was observed that the system operated within the boundaries of public justice and that it was important in the early stages of the new measure for decision makers to see the reasoning upon which others are relying in their judgments.

283. The Committee agreed that a difficult balancing exercise existed and that it was important to allow for flexibility.

284. **The Legal Office** proposed an amendment that would provide for the rules to specify which judgments, orders or other decisions under the Measure would be published and in which manner and form. This would allow for the greatest flexibility whilst also enshrining the provision in secondary legislation.

285. The Committee rejected Dr Doherty's proposed amendment.

286. The Committee accepted the Legal Office's proposed amendment.

Clause 65 Delegation by bishop or archbishop (Revision version)

287. No submissions were received and the clause was approved.

Clause 66 House of Bishops' declarations (Revision version)

288. No submissions were received and the clause was approved.

Clause 67 Code of Practice (Revision version)

289. The Committee considered how the Code of Practice issued under the Measure should be approved and amended. It was noted that this was a very important document that would provide key advice on the procedures in the system. As such, it needed to have sufficient authority but also be flexible.

290. **Father Paul Benfield** proposed that General Synod should be required to approve the Code and amendments to it.

291. The Committee observed that it was important that the Code could be amended quickly to take account of changes in practice, particularly in the early days of the new Measure.

292. The Committee considered several options, including

- a. Synod having no role in the approval of the code with it being made by the Clergy Conduct Commission
- b. The code being made by the Commission but if 25 members of Synod requested a debate on any amendments to it, then the code would be placed on the agenda for the next group of sessions. Any amendments made by the Commission would stay in force until Synod voted against them.
- c. Alternatively, the system would be as in b. above, but the amendments would not take effect until such time as Synod had approved them, or if 25 members had not requested a debate, then the amendments would automatically come into force.
- d. Minor amendments would not need Synodical approval.

293. The Committee engaged in a detail discussion, weighing up each option. It was observed that there were pros and cons in all four choices. The Committee determined that the best course of action was to amalgamate the best elements of each of the options into a clear package.

294. It was proposed that the first Code of Practice would be subject to the approval of Synod. Thereafter, any revised version must be laid before the General Synod and 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 the revised version to be revoked, then the Business Committee must secure a debate on the revised code of the next group of sessions. If Synod were to vote to revoke the revised version, then anything done in reliance upon the amendments would not be invalidated. The process would not apply to amendments that were in the view of the Commission insubstantial.

295. The Committee approved the proposed amendment.

Clause 68 General interpretation (Revision version)

296. The Committee agreed to insert definitions relating to “lead assessor” and “the national director of safeguarding” and as well include provision for determining the seniority of bishops⁸ and for remote meetings and hearings⁹.

Clause 69 Meaning of “Conclusive” conviction etc (Revision version)

297. No representations were received on this clause.

⁸ See clause 68(7)

⁹ See clause 68(8) – (11).

298. The Legal Office identified the need for a new (5) and (6) to make provision for the meaning of ‘conclusive’ in relation to administrative disposals (see clause 55 and paragraph 256 above).

299. The Committee accepted the proposed amendment.

Clause 70 Consequential amendments (Revision version)

300. No submissions were received and the clause was approved.

Clause 71 Repeals (Revision version)

301. No submissions were received and the clause was approved.

Clause 72 Transitional and saving provisions (Revision version)

302. No submissions were received and the clause was approved.

Clause 73 Citation, commencement and extent (Revision version)

303. Mr Sam Margrave proposed that the Measure be cited as the “Church Leaders Conduct Measure”.

304. The Legal Office advised that such an amendment would be out of order as the scope of the draft Measure only extended to clergy and not to lay leaders.

305. The clause was approved as drafted.

Schedule 1 – Ancillary amendments

306. No submissions were received and the schedule was approved.

Schedule 2 – Transitional and savings provisions

307. No submissions were received and the schedule was approved.

**Geoffrey Tattersall KC
Chair of the Revision Committee**

June 2024

Appendix A

Date of meeting	Members of the Committee Present
7 November 2023	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Rt Revd Viv Faull (Bristol) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) The Ven Malcom Chamberlain (Sheffield) Ms Kashmir Garton (Worcester) Prof Lynn Nichol (Worcester) The Revd Paul Benfield (Blackburn) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester)</p>
16 November 2023	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Rt Revd Viv Faull (Bristol) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) The Ven Malcom Chamberlain (Sheffield) Ms Kashmir Garton (Worcester) Prof Lynn Nichol (Worcester) The Revd Paul Benfield (Blackburn) The Revd Sonia Barron (Lincoln) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester) The Revd James Pitkin (Winchester)</p>
27 November 2023	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Rt Revd Viv Faull (Bristol) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) Prof Lynn Nichol (Worcester) The Revd Paul Benfield (Blackburn) The Revd Sonia Barron (Lincoln) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester) The Revd James Pitkin (Winchester)</p>

<p>15 December 2023</p>	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) Ms Kashmir Garton (Worcester) The Revd Paul Benfield (Blackburn) The Revd Sonia Barron (Lincoln) Mrs Amanda Robbie (Lichfield) The Revd James Pitkin (Winchester)</p>
<p>22 April 2024</p>	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Rt Worshipful Peter Collier KC (ex officio) The Ven Malcom Chamberlain (Sheffield) Ms Kashmir Garton (Worcester) Prof Lynn Nichol (Worcester) The Revd Paul Benfield (Blackburn) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester) The Revd James Pitkin (Winchester)</p>
<p>8 May 2024</p>	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Canon Kate Wharton (Liverpool) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) The Ven Malcom Chamberlain (Sheffield) Prof Lynn Nichol (Worcester) The Revd Paul Benfield (Blackburn) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester) The Revd James Pitkin (Winchester)</p>
<p>4 June 2024</p>	<p>Mr Geoffrey Tattersall KC (Manchester) The Revd Paul Cartwright (Leeds) The Rt Worshipful Peter Collier KC (ex officio) Ms Kashmir Garton (Worcester) The Revd Paul Benfield (Blackburn) The Revd Sonia Barron (Lincoln) Mrs Amanda Robbie (Lichfield) The Revd Joy Mawdesley (Oxford) The Revd Lindsay Llewellyn-MacDuff (Rochester) The Revd James Pitkin (Winchester)</p>

SUMMARY OF PROPOSED AMENDMENTS & THE COMMITTEE'S DECISIONS

DRAFT CLERGY CONDUCT MEASURE

Name	Clause in original draft Measure	Summary of proposal	Committee's decision
The Rt Revd Sarah Mullally (3 Bishop of London)	-	Request for clarity over timescales and grievance procedure.	Noted for inclusion in the Rules and Code of Practice.
The Rt Revd Robert Innes (17 Bishop of Gibraltar in Europe)	-	Provide more information about assessors and request that the assessors are paid.	Accepted
The Rt Revd Rose Hudson Wilkin (43 Bishop of Dover)	-	Only really serious matters should be included in the Measure.	Rejected
The Revd Paul Benfield (66 Blackburn)	1	New clause to restrict any settlement agreement purporting to exclude the use of the Measure	Rejected
	2	Amendment to ensure now double jurisdiction is created with EJM 1963	Rejected
	3(1)(d)	Current wording in s.8(1)(d) CDM of "conduct unbecoming or inappropriate to the office and work of a clerk in Holy Order" should be retained.	Rejected
	3(2)	Removal of referring to 'Acts of Convocation'	Accepted
	8(5)	Two members from each House of Synod to be appointed to the Commission.	Rejected
	9(4)	General Synod to approve the Code of Practice	Accepted (in part, with modification)
	12	More explanation needed as to who will be an assessor	Noted
	15(3)	Cathedral Safeguarding Officer to have a proper interest in bringing a complaint	Accepted
	15(6)	Archdeacon to be able to nominate "another person", not merely "another archdeacon".	Rejected
	19	Definition of serious misconduct needed	Rejected

	21	Addition of power to dismiss complaint where it has been made after the expiry of the limitation period.	Accepted
	33	Addition of a time limit on a restriction order	Accepted
	37	Clarity needed on the imposition of penalties	Noted
	39 and 40	Explanation needed on why the different procedures for deposition from Holy Order of a priest or deacon and bishops or archbishops	Noted
	40(7)	Explanation on the operation of the clause needed	Noted
	44(7)	Clarity needed about the operation of this clause	Noted
	46	Insertion of 'after due process' after "is subject to a finding"	Rejected
	62(2)(a)	Expand list of other type of patrons	Accepted
The Revd Rachel Webbley (76 Canterbury)	-	To ensure that the system takes account of the potential for racism and prejudicial decision making	Noted
The Revd Dr Sara Batts-Neale (80 Chichester)	26	To ensure that where a case is re-allocated it does not end.	Noted
The Revd Julian Hollywell (109 Derby)	20	To ensure that pastoral support is given and each diocese or region to recruit the appropriate person to provide it.	Noted for inclusion in the Code of Practice
The Ven Douglas Dettmer (117 Exeter)	3(2)	Insert the words "without limitation to" before "the Ordinal, the Canons..."	Rejected
	15	Amendment to address the issue of proper interest where a respondent holds a form of authority that crosses over several archdeaconries	Accepted
The Revd Chris Moore (129 Hereford)	-	Concerns over bringing all types of complaints into one system and also the system of volunteer assessors	Noted and accepted
The Revd Martin Thorpe (155 Liverpool)	-	Training and payment of assessors	Accepted
The Revd Christopher Trundle (167 London)	16(5)	Clarity needed as to whom complaints made against reservist army chaplains are laid before.	Noted
The Revd Canon Lisa Battye (169 Manchester)	35	Replace the word 'rebuke' with another term	Accepted

The Very Revd Mike Keirle (215 Channel Islands)	-	Insufficient distance between Bishops and the operation of the CCM particularly in relation to nomination of provincial panels	Accepted
Mr Alan Downen (279 Chester)	-	The need for clear guidance on how the lead assessor will allocate cases and ensure consistency	Noted for inclusion in the Code of Practice.
Mr Sam Margrave (295 Coventry)	-	Amend the measure to include laity	Rejected
Mrs Amanda Robbie (339 Lichfield)	3(1)(c)	Delete "inefficiency"	Rejected
	3(2)	Delete "in particular" and "Acts of Convocation"	Accepted
	6	Qualifications of the Registrar of Tribunals	Noted
	20	Insert a new sub-section dealing with the provision of information by the bishop to the lead assessor	Accepted
	21	Insert a new sub-section to ensure that complaints are dismissed	Rejected
	21	Appeal against the appointment of a designated person on the basis of bias	Rejected
	22	Provision of information regarding previous complaints in grievance process	Accepted
	25	Respondent may decline to enter into conciliation where the complaint is vexatious.	Rejected
Mr Carl Fender (343 Lincoln)	18	Amendment to operation of limitation in cases of self-referral	Accepted
	-	Time limits for the disposal of cases to be included in the Measure	Rejected, but noted for inclusion in the rules.
	21(1)(6)	Replace "dismissal" with "no case to answer"	Rejected
Mr Clive Scowen (358 London)	3	Include a definition of grievance and serious misconduct	Rejected
	10	Clarity needed on the drafting	Noted
	16	Re-draft to bring greater clarity	Noted
	17	Clarity needed over how the President of Tribunals is to appoint a litigation friend	Noted
	18	Re-draft to bring greater clarity	Noted
	19	Re-draft (2) to make clear that it is subject to (3) and (4)	Noted

	20	Re-draft to make clear that the bishop does not have to personally provide the pastoral support	Accepted
	21	Provision in relation to who may be appointed a designated person and the requirement of training.	Accepted
	29	Amend the standard of proof to beyond reasonable doubt	Rejected
	32	Amend so that certain minor offences do not fall within the clause	Accepted
	34	Clarity needed over whether the 'two most senior bishops' includes the archbishops or not	Noted
	37	Clarity needed over why the bishop cannot give a view on penalty if he or she has given evidence in the tribunal	Noted
	39	Move the provisions on appealing deposition of Holy Orders to a different section	Rejected
	43	Clarity needed over what the word 'complaint' means in the context in which it is used	Noted
	64	Re-draft the definition of Appointments' Committee and include a definition of cleric	Rejected
Mrs Rebecca Hunt (386 Portsmouth)	12	Requirement for assessors to be Christian	Noted as already being included
	-	Insert statutory period for consideration of complaints	Rejected – but noted for the Rules.
	-	Insert definition of serious misconduct	Rejected
	19	Shorten limitation period to 3 months	Rejected
	24	Respondent to be given choice of 3 assessors	Rejected
	-	Clear provisions around confidentiality should be included	Noted
Mr Martin Sewell (390 Rochester)	-	Inclusion of transparency of Article 6 ECHR into the Measure	Noted
Mr Andrew Orange (430 Winchester)	-	Presumption of innocence should apply	Noted
Mrs Kashmir Garton (431 Worcester)	-	Ensure no delays and the parties are kept informed	Noted
Revd Preb Sandra McCalla (486 co-opted)	37	Clarity needed over whether a bishop may remove a cleric from office/prohibit the cleric	Noted

Submission from non-Synod member: Rt Revd Julie Conalty, Bishop of Birkenhead	-	Ensure survivors are consulted and that parties are kept informed about the progress of cases	Noted
Submission from non-Synod member: Revd Dr Alex Baker, Liverpool	-	New clause to deal with circumstances where a cleric is disciplined in their secular employment	Accepted
Submission from non-Synod member: Revd Russell Dewhurst, Chichester	3	Delete "Act of Convocation"	Accepted
Late submission: Sean Doherty (450 Universities & TEIs)	-	Remove grievances from the Measure	Rejected
	21	Allow the complainant a say in allocation	Rejected
	23	Include a definition of 'grievance'	Rejected
	-	Assessors should be paid and trained	Accepted
	48	Reviews to be conducted by a panel of assessors rather than by the President of Tribunals	Rejected
	59	Consider what decisions and judgments should be published carefully and no automatic publication of all decisions.	Accepted.

BRINGING A COMPLAINT
(in the case of deacons, priests and bishops)

WHO MAY COMPLAIN?

Any person with a 'proper interest'
(**clause 15**)

Self-referral by cleric (**clause 18**)

THE COMPLAINT

The complaint is received by the **RESPONSIBLE BISHOP (clause 16)**. The case is passed to the **LEAD ASSESSOR (clause 20)**. The **RESPONSIBLE BISHOP** must give the **LEAD ASSESSOR** such information as the rules specify (**clause 20(9)**)

STATUTORY DUTY: REFERRAL

The **RESPONSIBLE BISHOP** must refer the case to the Police where the complaint if proven would amount to an offence (**clause 20(2)**)

The **RESPONSIBLE BISHOP** must refer the case to the DSO where the conduct involves a child or vulnerable adult (**clause 20(3)**)

ALLOCATION
(**clause 21**)

The **LEAD ASSESSOR**, having regard to the Code of Practice, must allocate the case as a -

- (1) grievance
- (2) complaint of misconduct
- (3) complaint of serious misconduct

or **THE LEAD ASSESSOR** may

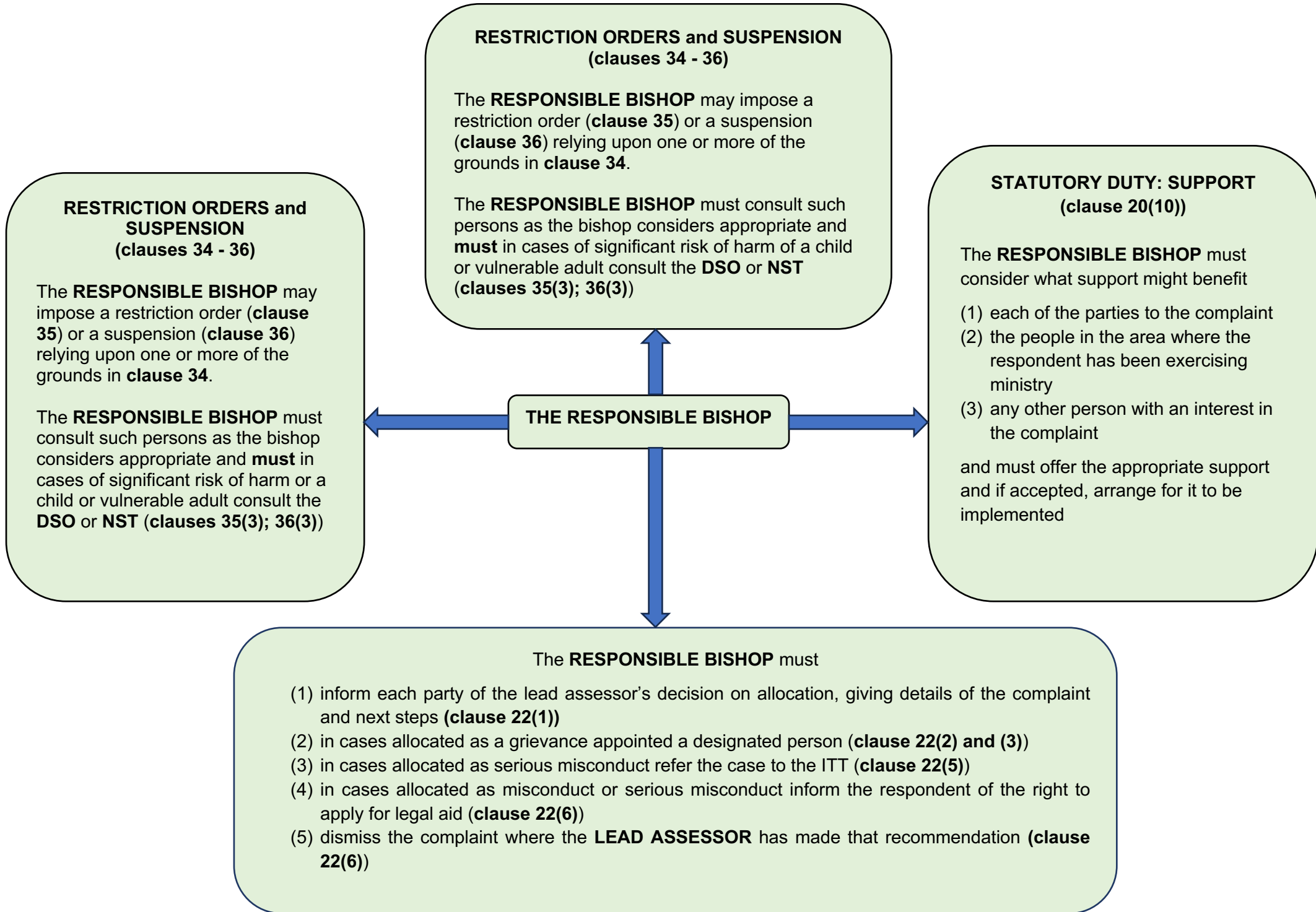
- (4) *recommend* to **RESPONSIBLE BISHOP** that the complaint be dismissed as vexatious or totally without merit; or
- (5) *dismiss* the complaint on the ground that it was made by a person without a proper interest

and **THE LEAD ASSESSOR** may in a case of misconduct that has been made outside of the 12-month time limit either

- (6) give permission for the complainant to continue where there was good reason why it was not brought sooner; or
- (7) dismiss the complaint

REVIEW

COMPLAINANT may seek review of allocation of complaint as a grievance (**clause 50(1)**)



GRIEVANCE

GRIEVANCE (clause 23)

A minor matter that would not warrant the imposition of an administrative sanction or penalty

The **DESIGNATED PERSON** appointed must investigate and seek to resolve the grievance in accordance with the procedure set out in the rules and the Code of Practice (**clause 23(2)**)

A minor matter may be allocated as a grievance despite it constituting technical misconduct under clause 3 if in the view of the **LEAD ASSESSOR** it can be dealt with as such (**clause 21(2)**)

Where the **DESIGNATED PERSON** is satisfied that it is not possible to resolve the grievance then the **PARTIES** and **RESPONSIBLE BISHOP** must be informed (**Clause 23(6)**)

RE-ALLOCATION

At any time during the investigation the **DESIGNATED PERSON** may refer the matter back to the **LEAD ASSESSOR** with a recommendation that it to be re-allocated (**clause 23(3) and (4)**)

MISCONDUCT

MISCONDUCT (clause 3)

The case alleges misconduct which is unlikely to call into question the respondent's fitness to exercise public ministry.

The **CASE ASSESSOR** investigates, meeting the parties and receiving written evidence and submissions to make findings of fact.

The **CASE ASSESSOR** *may* at any time ask a lawyer in the ITT for guidance and *must* do so in circumstances specified in the rules (clause 24(4) and (5))

The **CASE ASSESSOR** must issue a report to the parties and responsible bishop within such period as specified in the rules (clause 25(1) and (2)). The report must set out the assessor's findings and recommend that

- (1) the complaint is proven in full
- (2) the complaint is dismissed full
- (3) the complaint is proven in part and dismissed in part

Where any misconduct is found proven the report must also recommend whether an administrative sanction or penalty should be imposed and if so, which one (clause 25(4))

RE-ALLOCATION

At any time during the investigation the **CASE ASSESSOR** may refer the matter back to the **LEAD ASSESSOR** with a recommendation that it to be re-allocated (clause 24(6) and (7))

CONCILIATION

The **PARTIES** may agree to enter into conciliation to resolve the complaint (clause 26)

IMPLEMENTATION OF REPORT

The **RESPONSIBLE BISHOP** *must* implement the recommended outcome and *may* implement the recommended sanction or penalty or may determine which sanction or penalty, if any, should be imposed (clause 25(6) and (8))

REVIEWS (clause 50)

EITHER PARTY may seek a review of the outcome

THE RESPONDENT may seek a review of the sanction or penalty imposed

SERIOUS MISCONDUCT

Serious Misconduct (clause 3)

The case alleges misconduct which is likely to call into question the respondent's fitness to exercise public ministry.

The **INVESTIGATION AND TRIBUNALS TEAM (clause 14)** ("ITT") must arrange for the investigation of the complaint. The functions of the team may be delegated to a person from outside the NCIs (clause 27(3)).

The ITT must complete a report on the case, having given the parties the opportunity to make written representations, and provide that the report to the **PRESIDENT OF TRIBUNALS (clause 27(4))**

DECISION OF THE PRESIDENT (clause 27(5))

THE PRESIDENT must either

- (1) refer the case in full to a tribunal or court;
- (2) refer part of the case and dismiss the remainder; or
- (3) dismiss the whole case

The case is referred to **A BISHOP'S DISCIPLINARY TRIBUNAL (deacons and priests – clause 29)** or the **COURT OF THE VICAR-GENERAL (bishops – clause 30)**

A **CHAIR** of the tribunal or court is appointed and gives directions to progress the case. The tribunal or courts consist of a legally qualified Chair, one clerk in Holy Orders and one lay person. The hearing is in private unless an exception applies. The standard of proof is on the balance of probabilities and determinations are made by majority decision (clause 31)

APPEAL HEARING (clause 54)

To be heard by a panel of **THE DEAN OF THE ARCHES AND AUDITOR**, one other judge and one clerk in Holy Orders.

APPLICATION FOR PERMISSION TO APPEAL (clause 53) is determined by the **DEAN OF THE ARCHES AND AUDITOR**.

ADMINISTRATIVE SANCTIONS AND PENALTIES
clause 37

MISCONDUCT

Administrative sanctions

A written warning

not to repeat the conduct concerned

A written advice

to ensure the conduct does not reoccur

Penalties

Injunction

A requirement to do a specified act or refrain from doing a specified act

Mentoring and supervision order

An order requiring the respondent to undergo a specified period of mentoring and supervision

A written notice of misconduct

A formal mark that the misconduct in question was unacceptable and should not be repeated

Conditional discharge

No penalty is imposed subject to the condition that no new misconduct is committed in a period not exceeding two years from the date of the order

SERIOUS MISCONDUCT

Deposition from Holy Orders

An order having the same effect as a deed of relinquishment under section 4(3) of the Clerical Disabilities Act 1870

Prohibition for life

A prohibition without limit of time from exercising the functions of Holy Orders

Limited prohibition

A prohibition for a specified time from exercising the functions of Holy Orders

Removal from office

Removal from any preferment currently held

Revocation of licence/PTO

Revocation of any licence/PTO issued by the bishop

Injunction

A requirement to do a specified act or refrain from doing a specified act

A written notice of serious misconduct

A formal notice for serious misconduct

As well as those sanctions and penalties available under the misconduct track