

Working Party on Revision of the Clergy Discipline Measure 2003

In para 140 of our Interim Report we identified a number of matters that we still needed to resolve. We have been working through those and have resolved a number of them to our own satisfaction. However, there are a number of issues on which we said we would seek a wider consensus of opinion.

Initial phase of dealing with complaints

We have found much agreement with our proposals that there must be an early independent investigation of all complaints and a triage process identifying what, if established, would amount to a grievance and what would be misconduct and if misconduct, whether serious or less than serious (serious misconduct being conduct that would lead to consideration being given to permanent or temporary prohibition from ministry).

Arising from that we now seek responses to our current view that the initial investigation and assessment should be carried out by a member of a regional panel (a panel drawn up to cover several neighbouring dioceses; the number would depend on size and geographical practicality). The panel would be likely to consist of some archdeacons (but no archdeacon would assess a case from their own archdeaconry) and some lay people with relevant experience (perhaps in the fields of HR or other investigative work). We would anticipate recruiting people who would be willing to act as unpaid volunteers, being paid only their expenses.

The panel would be appointed by the Clergy Discipline Commission (CDC), thus ensuring quality and independence and would receive training at a national level to ensure consistency of approach across the regions/dioceses.

As a guide to the anticipated number of cases – in recent years there have been approaching 100 complaints under the CDM across the country and each year more than a quarter of dioceses have had no complaints. It is therefore not anticipated to be a great workload.

1. Would such a panel meet the need for it to be independent of the bishop and the diocesan structure where the priest complained about was located?

2. Do you agree that these regional panels should be made up of a mixture of archdeacons and suitably-qualified lay people?
3. Do you have any other observations on this key proposal?

Our current thinking is that all complaints would go through the initial assessment. In cases of complaints laid by a Diocesan Safeguarding Officer following a safeguarding investigation, or by an archdeacon as a result of a criminal charge being laid against a priest, that assessment would doubtless be quite short and sharp. It may be suggested by some that that step could be avoided in those and similar “clear cases” and that they should be sent immediately to a tribunal judge for a plea hearing.

4. Should complaints brought by DSOs, archdeacons or others on behalf of the institution as a whole be subjected to this initial assessment, or is it a better use of resources for such complaints to proceed directly to the next stage?

Our proposal involves a complainant setting out their complaint in writing and the respondent providing their factual response in writing, prior to each being seen by the assessor. Each would have the right to be accompanied at such meeting(s) but not by a family member or a lawyer at that point in the proceedings. That is in conformity with normal ACAS procedures and was one of the matters which we indicated in the Interim Report we would consult more widely about – para 118.

5. Is that description of who could and could not accompany someone being seen by the assessor appropriate for that stage of a clergy disciplinary procedure?

One of our proposals is that the investigation might lead the assessor to conclude that the respondent priest has needs in relation to capacity or capability that should be addressed (quite independently of the merits of the complaint and whether there has been misconduct).

6. Is that appropriate?
7. And is it appropriate that such matters are addressed in parallel with the consideration of the complaint with relevant liaison taking place with diocesan HR and other relevant people?

Bishop’s consideration of the assessment report

We propose that on receipt of the report, if it says that there is no substance to the complaint and that it should be dismissed, then the bishop should dismiss it setting out the reasons for doing so. Clearly in those circumstances the complainant should be entitled to a review of that decision.

8. Should such a review be by the same bishop or by a different bishop? And if a different bishop is there any reason why it should not be a suffragan or area bishop rather than another diocesan bishop?

We propose that in cases of misconduct that are considered to be serious if established the bishop should send the matter to a tribunal so that very quickly an experienced judge can hold a hearing at which the plea will be entered and directions given about the evidence that will be required to enable a tribunal hearing to determine whether or not the case has been established. Those directions would include directions about any special measures needed in relation to the evidence to be given at trial, such as screening witnesses so as not to be face to face with the respondent.

9. If the respondent admits the conduct and admits that it is serious misconduct during the course of the assessment, should the matter still go before a tribunal judge or should the matter stay with the bishop who would proceed to impose a penalty on the basis of the admission and in accordance with penalty guidelines issued by the CDC (and see Q11 below)?
10. If the matter is not admitted or not fully admitted in the course of the assessment but is admitted at the plea hearing, do you agree that the matter should be returned to the bishop to impose a penalty (see para 138 of Interim Report)?
11. Do you agree that whenever the bishop imposes a penalty in a case of serious misconduct that they should deal with the matter together with a tribunal judge?
12. And if they cannot agree do you agree that the bishop should have the final say?

Appeals against penalties

We would propose that the route of appeal from a tribunal hearing or from a bishop's penalty in a serious misconduct case should be to the Court of Arches where the Dean of the Arches (or their delegate) would sit with 2 tribunal panel members (one lay and one clerical). Any appeal would be only with leave (the application for leave being determined by the Dean alone).

13. Should there be a right of appeal by the Designated Officer in cases of unduly lenient penalties?

Contested cases

We have considered the matter of who should conduct the subsequent enquiries and collect the evidence for the 'prosecution' identified as required at the plea hearing. We see a role for the CDC and the Designated Officer (DO) here. We have considered further the matters raised in para 121 of the Interim Report and intend to keep the administrative

function of the CDC as light touch as possible. It will clearly, as now, need some administrative staff, currently that is a member of the Church's Legal Office giving part of his time to the work and the DO who is full time. We would retain the DO and have any necessary admin operating on the same basis as now out of the Legal Office, but the extent of their time, will depend on the work load. The intention is for it to be as light touch as possible.

The DO would represent the 'prosecution' at the plea hearing (but not at the subsequent tribunal hearing). In answer to the questions we posed in para 132 about who would collect the evidence, we would now propose that the DO would be responsible for collecting evidence to be called before the tribunal, other than evidence called by the respondent, which would be the responsibility of the respondent's representative. The DO would then 'brief out' to an advocate for the tribunal hearing.

We propose that the final tribunal hearing should consist of an experienced secular trial judge (which would mean salaried or significant fee paid judicial work) sitting with 2 other members drawn from a panel appointed and maintained by the CDC, one lay and one clerical (as per para 137 of our Interim Report).

14. Do you agree with our proposals for the role that the CDC would play in employing clerical/administrative staff and the DO based in the Legal Office?
15. Do you agree that the DO should (a) be the person responsible for collecting together the 'prosecution' evidence identified by the judge as relevant and admissible and (b) that having done that the DO should brief out the advocacy role?
16. Do you agree that a panel of 3 is sufficient?
17. Individual dioceses would lack the experience and facilities to organise tribunal hearings, but should they be arranged by the Provincial Registrar as now, or run by the CDC through its administrative staff operating as now from the Legal Office of the Church of England?

One of the matters we raised in para 145 was whether the disciplinary process needs to wait for the outcome of any criminal investigation and/or prosecution. Currently there is what many regard as inordinate delay in the investigation and prosecution of serious criminal offences. In a number of professional settings the disciplinary process does not wait for the completion of other investigations or prosecutions.

18. Should it be a hard and fast rule that we should wait for such investigations and subsequent prosecutions to be concluded before progressing the assessment of the complaint and its 'prosecution' before a tribunal if the assessment shows that there is a case to answer?

Cases of less than serious misconduct

Following the IICSA report and recommendations about reform of the CDM which included that there should no longer be penalty by consent it must follow that in cases of misconduct falling short of serious misconduct the bishop should, in accordance with the penalty guidelines, impose an appropriate penalty. We think that there should be a right of review and would pose the same question as for the review of a dismissal.

19. Should such a review be by the same bishop or by a different bishop? And if a different bishop is there any reason why it should not be a suffragan or area bishop rather than another diocesan bishop?

Legal Aid (para 123)

Our broad view is that there should be legal aid available on a non-merits, non-means-tested basis for all who face serious misconduct charges. We would envisage a fixed fee to cover initial advice and representation at the Plea hearing. Thereafter the judge having directed what work needs to be done to collect evidence and prepare for trial we envisage it being possible to provide a realistic estimate of work that needs to be done and generally it should be accepted by the legal aid authority who would allow an hourly rate for that work and a daily rate for appearances before the tribunal. We propose that there should be a panel of solicitors and barristers (who can accept direct access work) who would be prepared to advise and act in such cases and that admission to that list should be through the CDC which would be able to ensure that only those with appropriate experience were on the list.

20. Do you agree that there should be a list of appropriate legal representatives?

21. Do you have any observations on our initial broad brush approach to remuneration for such work?

Please send your responses in relation to the questions on which you feel you have something you want to contribute.

Please send your response to <mailto:cdmconsultation@gmail.com>

We would appreciate receiving responses by the 20th December 2020

HH Canon Peter Collier QC
Chair of the Working Party

4th December 2020