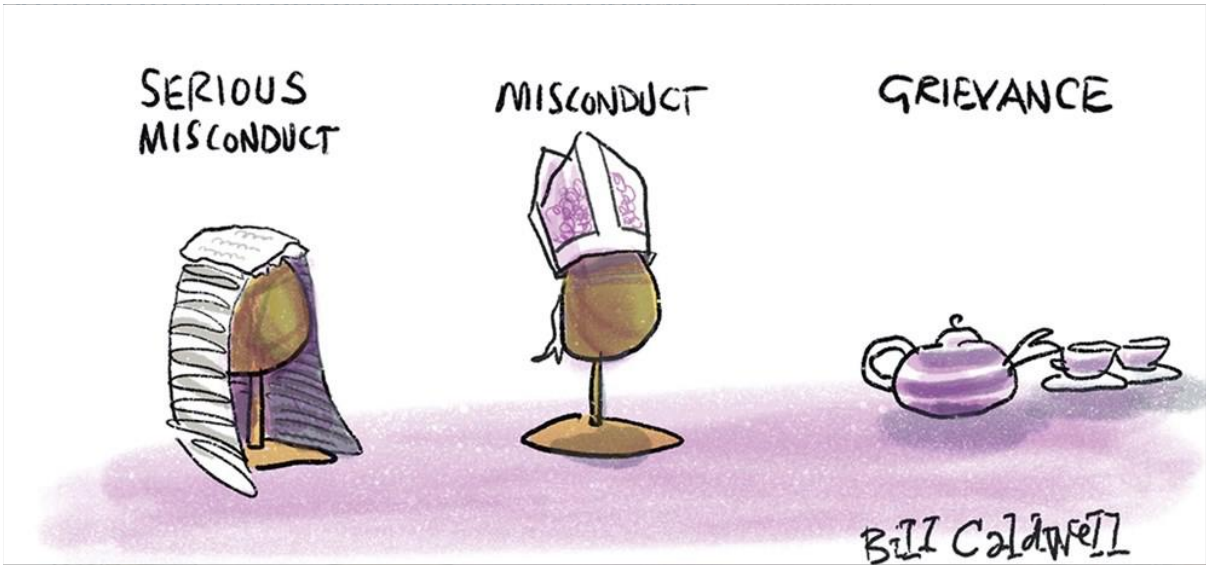
Ecclesiastical Law Society

Final Report of Working Party
Reviewing the Clergy Discipline Measure 2003



24th February 2021

Final Report of ELS Working Party Reviewing the Clergy Discipline Measure 2003

Chapter 1

Introduction and Overview

1.1 On 9th September 2020 the Ecclesiastical Law Society (ELS) Working Party published an Interim Report in relation to its review of the Clergy Discipline Measure 2003 (CDM). There is a link to it here, and to an executive summary here.

1.2 In that report in a section entitled 'Introduction and Background' we described how the Working Party came to be set up, how its membership was selected and the scope of its initial work. Suffice to underline, at this point, that the Working Party was set up by the Ecclesiastical Law Society, which Society's membership includes many clergy and others who are not and never have been lawyers. The Working Party consisted of thirteen members – seven lawyers and six clergy. Their selection was to ensure that each member brought to the table different knowledge about and different experiences of the actual operation of the CDM. We came together with different ideas of what needed to be done and what might be achieved through our work. As we met month by month and discussed what we knew and what we had experience of and what others were saying to us through our consultations we found ourselves coming to a clear and common view of what the issues were that needed resolution and what that resolution should be.

1.3 A list of the members is included in Annex 1 as are the Terms of Reference which we identified and to which we have tried to work.

1.4 In the Interim Report we identified some of the public criticisms that had been made of the CDM and the calls for its reform. Since then, the Independent Inquiry into Child Sexual Abuse (IICSA) has added its own to those voices and has made some specific recommendations about changes that should be made. Also, the Working Group under the chairmanship of the Bishop at Lambeth (the Lambeth Group) has published a Progress Report and held public consultations focussed on the initial thinking set out in their report.

1.5 In our Interim Report we identified issues that in our judgement needed to be addressed. We did that in Annex 1 entitled "a reflective walk through the CDM process". We summarised those issues in paragraph 6 of the report, and they bear repetition here:

a. The high number of cases brought by individuals who were neither parochial nor diocesan officers
b. The absence of any early enquiry into the allegation or the seeking of a response from the cleric
c. The absence of any recognition of the need to identify and dismiss allegations of a frivolous or vexatious character
d. The absence of any filtration process for examining complaints before deciding how to proceed
e. The high percentage of cases that are dismissed

f. The frequency with which timetables are not complied with
g. The delay in bringing cases to a conclusion
h. The role of the Designated Officer (DO)
i. The anxiety and stress that is caused to many who are complained about who fear loss of home and livelihood
j. The failure of dioceses to work with prohibited clergy in helping them return to ministry (or into some new walk of life)
k. Confusion as to the role of the bishop

1.6 As we have continued to hear about how the CDM operates in practice we have only been confirmed in our view that those are serious issues that need to be addressed. We have also become more aware that a number of those issues have arisen because those designing the law chose not to implement a grievance procedure which the authors of *Under Authority* were very keen should be part of any clergy discipline scheme.

1.7 We have considered whether it is appropriate for us to publish a Final Report at this stage, particularly when the Lambeth Group is still designing its own scheme. We are persuaded that it is appropriate. In September we were clear about the key things that needed to be a part of any future system. Our view about what are the key issues has only been confirmed as we have considered how a new system should operate in detail. We found it a very useful exercise to take the four 'worked examples' from chapter 7 of *Under Authority* through which it illustrated how its proposed 'core procedures' would operate in practice and to work through how they would operate under our proposals as we developed them. To their four cases we have added further examples of our own, particularly taking some safeguarding cases, as they have become a significant species of cases in a way that they were not in 1996. These are included in Annex 9 to this report.

1.8 The most important requirement at this moment in time is the introduction of a system for triaging cases and separating the cases alleging serious misconduct from the other complaints and grievances that are brought. We understand that everyone agrees about that as a principle. We have noted in various reports and documents from such bodies as the Clergy Discipline Commission (CDC), the National Safeguarding Team (NST), and the National Safeguarding Panel (NSP), along with representations from the Sheldon Hub and the Church of England Clergy Advocates (CECA) that there is unanimity in the view that a way must be found to deal with the less than serious cases in a manner other than through a scheme designed for serious cases.

1.9 But the detail of how that is done is just as important as the principle of triaging itself. We believe that given that we have had round our table people who have over recent years been dealing with complaints from the perspectives of all those involved in and affected by the process, we are well placed to examine how specific proposals will or will not work. We have spent many hours thrashing out together what will work and what will not work in practice. In doing that we have given a lot of thought as to how the triaging process should happen so that it can be done quickly, be truly

independent and be delivered consistently across all dioceses. We commend our proposals and ask that any alternative proposals should be subjected to equal scrutiny as to how they will work in practice.

1.10 The second matter is that there is a clear distinction between on the one hand incidences of serious misconduct that disqualify someone from being trusted to continue to exercise their Holy Orders and on the other hand incidences of a cleric falling short of what they should aspire to but that can be dealt with other than by removing them from their post or debarring them from exercising their Orders. We have also been persuaded that there is no set of rules that you can or could consult in which you will find each ground of complaint clearly defined so that you are able to say "this is a breach of Rule 1 (a) (i) etc and so it is 'serious' or it is 'less than serious'". The decision as to whether something is serious or less than serious is a matter of judgement to be formed when looking at all the circumstances of each case. The principles can be defined, examples can be given, but each case is different and will need to be assessed on its own facts. We have no issue with the Canons, the Guidelines for Professional Conduct of the Clergy, the House of Bishops' Guidance on Safeguarding and such like documents being used to assist in that assessment. Such documents could be amplified and no doubt improved in a number of ways so as to give guidance to clergy on their way of life and the practice of their ministerial profession. But we do not see any such improvement producing a clear rule book of the sort that some professions produce that describe definitive standards and practices in relation to the daily duties and tasks performed by members of the profession. All these documents and any others relating to professional standards or ministerial standards will be there to enable an answer to be given to the critical question as to whether the conduct has fallen so far short of the standards that consideration must be given as to whether the cleric can be allowed to continue to exercise their Orders.

1.11 The third matter we remain persuaded about is the importance of restoring the bishop to a meaningful role in the process. We understand that this is more controversial. We have been guided by those among us who have theological acumen. We are all persuaded that this restoration is essential and that it would be a mistake to transfer away from the bishop the responsibility for this element of pastoring their clergy. Any talk of delegation needs very careful analysis and in our judgement delegation of some specific tasks within their responsibility is categorically different from transferring the whole responsibility away from the bishop so that there is nothing left. We have spent a lot of time discussing how that balance of delegating some tasks yet retaining the overall responsibility in the bishop's hands might be achieved. We believe that we have reached a balance that will work well.

1.12 We believe that when the Measure was enacted a message was given to bishops that was neither necessary nor helpful. It was not to be the bishop's role to make decisions about who was to be believed when there was a conflict about what had

happened. If an allegation of wrongdoing was not admitted and was not one that should be dismissed or have no further action taken because it was unsubstantiated or trivial, then the case would be referred for investigation. The outcome of that investigation would be that if it was serious and still denied it would be tried by a tribunal and the tribunal would impose any penalty. One of our consultees spoke about the "disproportionate emphasis on excluding any outside influence on a decision-maker" which had "hobbled most of the bishops I have had dealings with over all the years since the legislation came into force in 2006" and which is "deeply embedded in the culture". We have also found in a lot of the discussions many of us have had with people that those observations are accurate. There is a deep culture that the bishops must be very careful about their involvement in disciplinary matters and which has led to a lot of disengagement. We sense that there are some who might want it to stay that way. Our firm view is that the culture must change and that bishops must again take on the responsibilities entrusted to them at their ordination.

1.13 Because we see the role of the bishop as so significant we have included Chapter 2 on the theology of discipline and the role of the bishop in discipline before moving to any further detailed proposals. The Interim Report had two sections entitled respectively "The purpose of Christian discipline" and "The role of the bishop". They have been reworked. We have reflected further on the theological issues that underpin them in the light of a) the IICSA report and b) the need to provide some interim way of dealing with grievances and cases of less than serious misconduct before any new statutory provision will be made, which we anticipate is some years away.

1.14 We now recognise that the historic approach to discipline as being *pro salute animæ* (for the good of the soul) has sometimes led to the wrongful protection of clerics. This was highlighted through the IICSA Inquiries. It was also referred to in a lecture given to the ELS by The Rt Hon and Rt Revd The Lord Williams of Oystermouth in November 2020[1]. We have now addressed that matter in chapter 2. We have also considered in that chapter the inherent authority of bishops to censure clergy apart from the CDM and see in that a basis for providing an interim scheme for dealing not only with grievances but also with cases of less than serious misconduct in advance of any new legislation.

1.15 We then move on to set out our proposals in chapter 3. We have done that by giving an account of "the continuation of our journey". That is how we have regarded what we have been doing – travelling on a journey together. On that journey we have consulted widely with others and we will give an account of some of those consultations and in the process we will set out the conclusions to which we have come and our reasoning for doing so.

1.16 Since we started our work we have constantly wondered why there is no realistic 'Stage One' provided for in the Measure. Having looked at the history of the Measure

[1] https://www.youtube.com/watch?v=m--AqC0Whc4

we remain troubled as to how it came about that there was no such provision, which given that history we find remarkable.

1.17 Late in 2020 we formed some provisional views about how some of the broad details we outlined in September might be delivered in practical ways. We put out to consultation some of those proposals to see if they were acceptable and where we had some options we asked which of our options was preferable. We were also very privileged to be able to take part in the consultations arranged by the Lambeth Group in December 2020 and January 2021 and in the course of those there was some discussion about our proposals as well as the Lambeth proposals. We learned from those discussions and they helped shape our final proposals, particularly about the need for regional panels of assessors.

1.18 From our discussions, among ourselves, with others and following consultation, we feel confident that we have reached final decisions on a scheme that will enable complaints of all levels of seriousness to be dealt with. We believe that the proposed scheme is one that will not only work, but will deliver what we believe should be at the heart of any such scheme namely it will enable the church to live out what the Archbishop of York recently described as a Christ-centred and Jesus-shaped life. When we have complaints about each other they should be addressed in the way described in Matthew 18. We have tried to ensure that the processes we would put in place will always have at their heart the gospel principles of forgiveness, the servant nature of our discipleship and the need to seek reconciliation.

1.19 So we see the triage process, which we describe as an assessment process, as a means to discover what has happened, to seek to restore relationships and resolve issues, and where misconduct is identified to put it before the bishop who will where possible take appropriate action to reform and rehabilitate the erring cleric and in cases of serious misconduct remove them from ministry. The actual decision making about disputed significant facts will not be that of the bishop but of either an assessor in less than serious cases or a tribunal in serious cases. That will enable the bishop to be involved as pastor to all parties throughout the process. The bishop will of course not necessarily be the one up close and personal in the pastoral care of each person involved, but will be proactively and personally responsible for it being put in place and being exercised. All parties will be given support throughout the process and there will be appropriate legal aid provision for those facing serious misconduct allegations. There will also be training for everyone who has any role to play in the investigation of and dealing with complaints.

1.20 In chapter 3 we also deal with many of the details of the current Measure which will need consideration as to the extent to which they will be replicated, or amended, and incorporated in a new Measure. We have set out our proposals in relation to such things as the continuing role of a Clergy Discipline Commission with a remodelled membership, limitation periods, section 30, divorce, deposition, and suspension.

1.21 The first of our Terms of Reference was to review the history of how clergy have been disciplined within the Church of England. That we have done and Annex 2 outlines that history looking in particular at who was responsible for exercising that discipline and the principles by which it was done. We pay particular attention to the changes that have happened since Parliament and Synod have intervened from 1840 onwards.

1.22 In the Interim Report we included at Annex 2 a paper on how other professions deal with professional standards and with enforcement of those standards. That annex has been revised and the revised version is appended as an annex to this report (Annex 3). As with the previous annex there is deliberate colour coding included in the text – each separate profession that is referred to is given a separate colour and each time it is referred to the text is in the profession's colour. We summarise our conclusions about professional standards in a short chapter on that subject in the main body of the report (chapter 6). We are also aware in the context of professional standards that some have been looking at how the Anglican Church of Australia deals with these matters. We include in a further annex a summary of the Australian processes (Annex 4).

1.23 Whilst we have been meeting, discussing these matters and coming to our conclusions, we have been very conscious that we have not been alone in considering these matters. Two other bodies have also been considering the CDM and the extent to which it requires replacement or revision. Since we published our Interim Report each of them has also put their views about the reform of the CDM into the public domain.

1.24 The first is the IICSA report published on 6th October 2020. The second is the Bishop at Lambeth's group, who published their Progress Report on 4th December 2020. In that Progress Report they spelled out their thinking on three themes: the need for a triage system, the creation of a central professional standards agency to deal with disciplinary matters and their proposed reliance on professional standards as the delineator of misconduct.

1.25 We have considered the proposals made by both IICSA and the Lambeth Group and comment on them in the two chapters that follow our description of our proposals. We also include in an annex a summary of all the evidence given to IICSA about the CDM and clergy discipline (Annex 5). One of the witnesses who gave evidence to IICSA was the Bishop of Buckingham, the Rt Rev Alan Wilson. His evidence reflected his views about the CDM which are also set out in a book entitled *To Heal and not to Hurt* which he had written with the Revd Rosie Harper and in which they expressed forthright views about the CDM and what needed to be done to reform it. We have included an annex summarising those views which they set out in chapter 5 of their book (Annex 6). We believe that our proposals meet their "hot stove" principles.

1.26 Very recently the Sheldon Hub has published a document entitled "Purpose and scope of proposed replacement of CDM".[2] In it they argue that any consideration of the CDM and its replacement should be based on such a scoping document. Beneath its headline it addresses what should be the purposes of any new Measure and its relationship to other processes within the church. It then spells out in some detail what that will mean for particular aspects of the processes to ensure that everything that needs attention is addressed. Then it identifies what can be described as particular requirements and red lines. It then addresses how the process of addressing all that should be managed and finally refers to some 'other principles qualities and notes'.

1.27 Obviously we did not have this document when we started our work. However we did begin our work by identifying our terms of reference (see Annex 1). Those Terms came out of quite lengthy and wide-ranging discussions about many of the matters that are mentioned in the scoping document. We have also now looked back at our work in the light of that document to see if there is anything we have obviously missed either in the way we have approached our tasks or in the conclusions to which we have come. We are content to leave it to others to judge the extent to which that which we have proposed adequately addresses the matters listed therein. And of course we would encourage Sheldon and others to spell out any ways in which they feel we have fallen short and/or to supplement or detract from what we have said.

1.28 We have said that it has been the attention to detail that has helped shape our proposals. When *Under Authority* was produced, it contained both a flow chart and some specimen cases spelling out how it was foreseen that they would progress under the proposed scheme. We also include an Indicative Flow Chart illustrating how cases will progress (Annex 7). We have carried out a similar practice in relation to specimen cases and include two annexes. The first is a list of sample cases and how we would see them falling into the three categories of: grievance, less than serious misconduct and serious misconduct (annex 8). The second is a series of worked examples considered in the same way as in *Under Authority* (Annex 9). We believe that those worked examples, perhaps more than anything else, will show all the underlying principles we have been working with throughout our deliberations, and many of which are referred to in the Sheldon scoping document.

1.29 Further Annexes set out, in outline at least, our proposals for the costs of running such a system (Annex 10); Legal Aid provision which will be neither means-tested nor merits-tested in all cases of serious misconduct (Annex 11); our thoughts about the delivery of training and some necessary training modules (Annex 12); the CDC Annual Statistics (Annex 13); a table of all the Tribunal Hearings that have taken place since 2007 (Annex 14); the outline of a draft Measure (Annex 15); and a list of those who have contributed to our consultations or engaged with us at various times, some quite significantly (Annex 16).

[2] Available here

Chapter 2

The theology of discipline – some further thoughts

2.1 The biblical starting-point for how the Church should approach discipline is often given as Matt. 18:15-17. However, that passage cannot be properly understood without being read in the greater context of Matt. 18, which not only condemns those who would lead God's 'little ones' astray but affirms God's love for all those who are lost and who he wills to return. It is this which prompts the subsequent exchange between Jesus and Peter, where Jesus says that we must be always prepared to forgive those who sin against us (Matt. 18:22). There then immediately follows the parable of the unforgiving servant (Matt. 18:23-35), which vividly illustrates the consequences of withholding mercy for those who have received mercy and forgiveness from God. It is also important to recognise that the Matt. 18 approach to discipline appears to be based on a passage from Leviticus, Lev. 19:15-18, part of the so-called 'Holiness Code' which seeks to regulate individual and group conduct towards right living before God. This passage calls on individuals to determine disputes justly and not to bear hatred against any who have wronged us, but rather reprove them openly, encapsulated in the divine command to 'love your neighbour as yourself' (Lev. 19:18).

2.2 Three themes emerged as we reflected on the nature and purpose of discipline within the Church. First of all, it is clear that the exercise of discipline is not about retribution or punishing wrongdoing. As Lev. 19 reveals, the purpose of confronting the wrongdoer is to bring fault into the open rather than allow it to fester and grow into a cause for vengeance; it is part of the practical outworking of the love we are to have for our neighbours, and must be read alongside Christ's command in Matt. 18 to never stop forgiving sinners no matter how many times they wrong us. We noticed that Jesus places the onus on the wronged party to instigate the process – they are called to lay aside their rights as the injured party in order to approach the sinner in a spirit of openness and forgiveness. This gets to the heart of what discipline in the Church is really about – reconciliation and the restoration to right relationship within and across the Body of Christ. In Matt. 18 the process is only escalated, and the sinner only put at risk of exclusion from the Church, if they persistently refuse to acknowledge their fault and the wrong they have caused to another, with the grave hurt and damage this can cause to individuals and to the community. It is a measure of last resort to maintain the health of the whole Body, and always works with the proviso that the Church must welcome back the wrongdoer if and when they finally repent and seek to repair their relationship with the injured party and the wider community.

2.3 We find such an act of exclusion in 1 Corinthians, when Paul orders the local church to hand one notorious sinner 'over to Satan for the destruction of the flesh, so that his spirit may be saved on the day of the Lord' (1 Cor. 5:5). Again, this is not punishment out of spite or vengeance; rather, it introduces the second theme of Christian discipline found in the Bible, which is that the power to correct wrongdoing should be directed at leading the sinner to repentance and spiritual growth. It is the

wellbeing of all parties to a dispute, victims and wrongdoers, which concerns the Church in the exercise of its disciplinary authority, as it works to promote reconciliation and right relationship and to build up all members of the community in holiness. Meanwhile, the parable of the unforgiving servant in Matt. 18 encapsulates the third and final major theme of the biblical theology of discipline. It is that the Church must always exercise discipline hand-in-hand with mercy, that it must always be prepared to forgive as it has itself received forgiveness from God.

2.4 Through these reflections we came to appreciate how the three themes of reconciliation, repentance and forgiveness hold together within the wider biblical themes of redemption for sin, sanctification and the unity of Christians in the Spirit. It is integral to the Church's calling as the Body of Christ and God's holy people to uncover and confront sin in its midst, and it has received real authority to do so effectively (Matt. 18:18). Yet the Church must never forget that God has granted it this authority 'for building up and not for tearing down' (2 Cor. 13:10), and that every act of discipline is an opportunity to make right what has gone wrong, to help liberate those who have become caught in a self-destructive cycle of sin, and to lead its members together into new and more abundant life in Christ.

2.5 However, history has all too often exposed the gap between the Church's high calling and the realities of its institutional life, of which the failure to prevent and respond adequately to sexual abuse by clergy and other church officers is the most current example. In its report on the Anglican Church in England and Wales, IICSA stated that a culture of deference to authority and high regard for clergy helped to facilitate abuse by those within the Church, and that the welfare of the abuser often appeared to receive more attention than that of the victims or those who were at risk of abuse. Of the Church of England, IICSA said '[t]he Church has failed to respond consistently to victims and survivors of child sexual abuse with sympathy and compassion, accompanied by practical and appropriate support. This has often added to the trauma already suffered by those who were abused by individuals associated with the Church.'[3] This is not a new problem either: Rowan Williams has linked the sidelining of victims of clerical abuse back to developments in the medieval Church when the hierarchy sought to protect clergy from the jurisdiction of the secular courts, both to secure the Church's ancient privileges and to ensure that any punishment of 'criminous clerks' was directed at penance and reform as opposed to retribution. For all its good intentions, Williams concludes that this approach espoused a view of clerical accountability that put the proper exercise of official obligations and the pastoral relationship between cleric and superior above the welfare of victims and the wider community.[4]

2.6 The impact of such an approach is particularly stark in cases of abuse, given the catastrophic damage abusive behaviour can cause to victims and the corrosive effect it can have on trust within the community, but illustrates the clear need for balance

[3] Independent Inquiry Child Sexual Abuse, *The Anglican Church Investigation Report* (October 2020), Executive Summary.

[4] Rowan Williams, ''Saving our Order': Becket and the Law', public lecture delivered on 10 December 2020 to the Ecclesiastical Law Society.

in any exercise of discipline within the Church. Punishment without mercy may fall short of our Lord's command to always forgive and seek the reform of the sinner, but discipline which fails to take account of the victim is an affront to justice and an obstacle to the healing which must take place before the victim and others affected by wrongdoing are in a position to forgive and seek reconciliation. Of course, the nature of the wrongdoing and proximity to it may mean that complete healing and personal reconciliation are never attained in this life, but this must always be the Church's ultimate objective when responding to wrongdoing; just as it must recognise that the extent to which reconciliation can be modelled within the community depends on how well its system of discipline holds wrongdoers to account while making space for those who seek forgiveness and acknowledge the hurt and damage they have caused by their misconduct.

2.7 On a practical level, this means ensuring victims' voices are heard and that the Church supports them in making sense of their experience and moving beyond past trauma. It also places a responsibility on Church authorities to ensure that full weight is given to such trauma, and the wrongdoing that caused it, when disciplining clergy on behalf of victims and the whole community. Meanwhile, from the point of view of the respondent cleric, it means the unreserved acceptance of the consequences of proven or admitted misconduct and the recognition that, even with genuine repentance, there may be situations in which their wrongdoing has caused so much damage or scandal that there is no possibility of returning to a position of leadership or spiritual authority within the Church. Again, such an outcome is justifiable within a system based on reform and reconciliation if it is a proper response to the hurt caused to victims and the community, and enables the respondent to understand the nature of their behaviour and its impact not only on others but on their own welfare and vocation within the Church.

The role of the bishop

2.8 In light of the delicate balance between forgiveness, repentance and reconciliation which a Christian approach to discipline requires, and the corresponding balance between the interests of complainants, respondents and the wider community, we think it important to maintain the central role of the bishop in these processes. From the earliest days of the episcopate, part of the role of bishops has been to administer and enforce discipline within their dioceses. But this disciplinary authority has always been seen as one part of the overarching pastoral function of the episcopal office. As the opening paragraph to Canon C18 puts it, the diocesan bishop 'is the chief pastor of all that are within his diocese.' The Canon then sets out the teaching, liturgical, sacramental and disciplinary aspects of that role, C18.7 stating that '[e]very bishop shall correct and punish all such as be unquiet, disobedient, or criminous, within his diocese'. All these functions are part of the primary responsibility as shepherd and steward of Christ's flock, caring for God's people and building them up in faith and good works.

2.9 The balance between pastoral care and disciplinary authority is well expressed in the Church of England's liturgy for the consecration of bishops, which in its modern form declares that 'bishops are to be merciful, but with firmness; to minister discipline, but with compassion.' It also states that they are to 'share with their fellow presbyters the oversight of the Church', which provides an important foundation for the discipline of clergy by their diocesan. The dynamic between a bishop and their clergy is not just one of shared stewardship of Christ's flock but is an hierarchical relationship reflected in the oath of canonical obedience made by all candidates for ordination, in which the candidate swears to obey the bishop (or, in the case of bishops, the archbishop of that province) 'in all things lawful and honest' in the exercise of their ministry. So at the heart of any case of clergy misconduct and discipline will be either disobedience towards the bishop or the derogation of that shared duty of stewardship which the bishop and the Church have entrusted to the clergy.

2.10 Yet even as the hierarchical relationship imbues the bishop with authority to punish wrongdoing, so it imposes a particular responsibility to those whose Christian vocation has given them a share in the bishop's pastoral and sacramental oversight of all the faithful. Once again, this is all tied in with the bishop's overarching office to steward and shepherd the flock of Christ '[m]indful of the Good Shepherd, who laid down his life for his sheep'. Good stewardship entails the correction of wrongdoing; it also involves identifying its causes and supporting those in need. All of this requires wisdom and discernment, gifts integral to the episcopal calling and for which the Church prays for at the service of consecration.

2.11 In short, the bishop's role in discipline does not undermine his or her pastoral ministry: on the contrary, it is an essential part of that ministry. Indeed, it is interesting to note that efforts to formally categorise the various episcopal functions are a relatively recent development. The 1603 *Constitutions and Canons Ecclesiastical* of the Church of England, which were the immediate predecessor of the current Canons, contain no comparable provision to Canon C18, though they are peppered with instances of various discrete powers exercisable by diocesan bishops and the several causes of action which could be tried in the bishop's court. As such, the 1603 Canons only deal indirectly with the nature and extent of the diocesan's "Ordinary jurisdiction" – that jurisdiction which belongs to the bishop by right of their office – suggesting this was a matter of settled law and custom based on pre-Reformation canon law and Church tradition.

2.12 That wider tradition is well expressed in the *Code of Canon Law* of the Roman Catholic Church, which states that the episcopal office has been divinely instituted and that its authority and functions flow from the act of episcopal consecration itself.[5] Furthermore, the jurisdiction of a diocesan bishop carries with it all Ordinary power "required for the exercise of his pastoral function" within the diocese, which includes the duty to "promote the common discipline of the whole Church".[6] There is something nebulous but complementary about the authority of the diocesan

[5] *Code of Canon Law of the Catholic Church*, c.375.
[6] *Code of Canon Law*, cc.381.1, 392.1.

bishop, consisting of all and any powers which the bishop may require to shepherd and steward the faithful under his or her care. It is that pastoral office which sets the limits of the diocesan's legitimate functions and authority, which at times have been channelled into formal legal processes to aid their administration. So the Church Discipline Act 1840 – the Church of England's first attempt at a 'modern' system of clergy discipline – states at section 25 that its provisions do not affect or limit the authority which bishops 'may now according to Law exercise personally and without Process of Court' over their clergy; while section 1 of the CDM states that any disciplinary functions granted under the Measure must be exercised with due regard to the diocesan whose responsibility it is to administer discipline 'by virtue of his office and consecration'.

2.13 Alongside this understanding of the functions of the episcopal office, there are further strong theological arguments for holding discipline and pastoral care together. Proverbs 3:12, later cited by the author of the letter to the Hebrews (Heb. 12:6) is an essential insight: 'the Lord reproves the one he loves.' From earliest days the Church has resisted any tendency to drive a wedge between divine justice and mercy: Irenaeus of Lyons, for example, is severe on those who speak of 'what great things the Lord had done at His coming to save those who received Him, taking compassion upon them; while they keep silence with regard to His judgment.'[7] Episcopal discipline and pastoral care reflect this holding together of judgement and mercy. Discipline untempered by pastoral concern and an understanding of the individual risks being abstract and harsh; pastoral care that parts company with correcting wrong behaviour is shallow and relativistic.

2.14 It must be acknowledged that this role of the Bishop, holding together both the pastoral and the disciplinary, runs counter to some modern preconceptions about quasi-judicial processes. In the early days of the CDM, the concern was that the bishops' pastoral role could undermine impartiality. More recently, this concern has turned on its head as clergy express the concern that the role of the diocesan in the CDM process undermines their relationship with their chief pastor.

2.15 Given the strong theological and ecclesial reasons for holding discipline and pastoral care together, however, it is important to be clear on where this critique gets its footing. How we think depends on the concepts with which we are furnished by the thought world in which we live. We can think beyond those concepts, but only with some effort. Many concepts taken for granted today, though they often have roots in Christianity, are not concepts that are particularly helpful in the Church. We must make an effort not to be constrained by them. The current preference is for value-neutral processes, in which judgement drawing on experience and personal acquaintance is minimised. But this outlook is culturally specific and time-bound. It arises from a process of thought in the Western world in the last two or three hundred years. Charles Taylor thinks this began in earnest with Descartes (though he traces the roots much further back) who made truth something arrived at by an ordered internal process of doubt, rather than something received, communally,

[7] Irenaeus of Lyons, *Against Heresies*, Book IV, Chapter 28.1
(https://www.newadvent.org/fathers/0103428.htm accessed 6th September 2020)

from without. Taylor characterises this as 'The move from substance to procedure, from found to constructed orders.'[8]

2.16 Of course, there is value in this way of thinking. Any new Measure will have to show that it possesses the necessary procedural safeguards to meet secular standards of fairness such as an independent investigation stage, early disclosure of allegations to the respondent, a responsive approach to vulnerable witnesses, and a right of review or appeal of decisions at appropriate points in the process. At the same time, even in the secular frame of reference there are signs that the trend toward a narrow value neutrality may be reaching a reversion point. Take the example of the machine-learning algorithms increasingly used for 'predictive policing'[9] in which a computer determines when there is an increased likelihood of an individual offending, allowing police resources to be deployed to prevent the offence. The authors of a recent report note the argument that 'the algorithm is neutral in that it has no self-interest, and to that extent it can be expected to treat all similar data in a similar fashion.'[10] But they go on to observe that, for example, as more crimes are committed by men than by women, an individual man is more likely to be targeted by the algorithm.

2.17 The result is an unexpected form of unfairness that would not arise if the situation were assessed by a human being, since 'the police officer dealing with the person before them can assess the specific characteristics and circumstances of the individual in question.'[11] Likewise a reformed Measure should make space in its processes for wisdom, for relationships and personalities, for the experience of age and the acceptance of difference. True fairness is not a matter of strict equality but of "rendering what is due", a more nuanced process grounded in human difference and human relationships. That the Church continues to model in its life that sense of proportion which measures our individual interests against those of others and of the whole community should be seen as a strength of Christian polity, rather than a weakness.

2.18 To sum up: value neutral processes do not necessarily produce fairer outcomes than those decided by actors who hold some interest in the outcome. The clearest example is the role of the judge, who as a citizen has a personal interest in the good running of society and yet we do not say that interest recuses them from adjudicating between parties. Good judgement requires wisdom and experience, and the ability to acknowledge and discount one's own inherent bias, and this is why judicial authority is reserved to individuals of proven professional and personal ability and integrity. The diocesan bishop is in just such a position of trust, with even higher expectations given the mixed functions of their role and the belief that they will be held accountable to God for the exercise of their office. They are to know and love their flock like the Good Shepherd, and so the exercise of discipline will always be

[8] Taylor, C., *Sources of the Self* (Cambridge: University Press, 1989) p. 156

[9] Babuta, A., Oswald, M., and Rinik, C., 'Machine Learning Algorithms and Police Decision-Making: Legal, Ethical and Regulatory Challenges' (Royal United Services Institute, 2018) p. 3 *et seq*.

[10] Babuta, Oswald, and Rinik p. 25

[11] Babuta, Oswald, and Rinik p. 26

tempered by pastoral concern, just as the desire to promote discipline and justice will shape the particular care offered to individuals and groups.

2.19 This brings us back to Church discipline's primary concern with reconciliation and the welfare of the whole community of the faithful alongside that of individual complainants and clergy. These concerns pertain naturally to the bishop not only as chief pastor but as living symbol and guarantor of unity for all the faithful in the diocese, who when administering discipline should always be directed by the common good as well as justice and fairness for the parties concerned. This marks another departure from the modern secular mindset, which would seek to treat the Church as an institution made up of individuals when in reality it is a relational entity, *the Body of Christ*. The Church encompasses people of all backgrounds, experiences and faith traditions, united in a common vision of the Kingdom and our ultimate end in Christ; it is therefore the bishop's responsibility to promote that common vision and to lead the faithful forward as one even as they each grow in individual vocation. The bishop must discipline with love while taking full account of the damage caused by clergy wrongdoing; and he or she must acknowledge and embrace the pain of victims while guiding them to a place of healing and forgiveness.

2.20 By its nature this process is dynamic and dialectic as opposed to static and procedural, and as such true fairness and pastoral support are likely to be undermined by divesting the diocesan of all disciplinary authority and turning their role into a purely 'pastoral' one. In developing our proposals for reform, this working party has been conscious of the risk of creating a whole new raft of problems by simply pursuing the appearance of fairness or 'objectivity', but which actually confuses and undermines the reciprocal bonds between bishop, clergy and people. Given the purpose of Christian discipline, the theology of the episcopal office and the nature of the Church as a relational community, it is right that clergy discipline remains centred on the diocesan bishops and that they retain an active role in how discipline is administered within the dioceses.

Chapter 3

Our final proposals – the continuation of our journey

3.1 Since publishing our Interim Report in September 2020 the Working Party has continued to meet at least monthly. We have discussed in detail how our proposals would work in different cases, trying to cover the wide range of cases from vexatious complaints, through genuine grievances that cry out for resolution, instances of clergy struggling to cope with their role and/or responsibilities, into areas of misconduct that are relatively minor and right through to cases of serious misconduct which clearly impinge on the cleric's fitness to hold office and which merit permanent prohibition from the exercise of their clerical functions, or even deposition from Holy Orders. As we have considered and discussed these things together we have been able to refine our proposals.

3.2 From time to time individual members or sub-groups of the working party have produced papers to assist our thinking and deliberating. Some of those have formed the base of some of our chapters in this report and some are attached as annexes.

3.3 We have continued to consult with others outside the working party as we have tested our proposals. Some of us had a brief discussion in September 2020 with Bishop Tim Thornton and some of his CDM Working Group, identifying the common ground and clear divergences in the approaches we were each developing. We had a longer follow up discussion in January 2021 exploring further both the common ground and the differences in our ways of thinking about a future system of clergy discipline. We have stayed in touch with the Sheldon Community and been much assisted by being given access to some of the data that emerged from their research. We have remained in contact with CECA. We have also had contact with the CDC and are grateful for being given early sight of their annual report for 2019 and for their willingness to allow us to drill into a little more detail than was apparent on the face of the published data.

3.4 In October IICSA published its Investigation Report into the Anglican Church. It made a number of recommendations, including six specific proposals about "changes and improvements to the way in which *(the Church)* responds to safeguarding complaints (whether related to allegations of abuse, or a failure to comply with or respond to the Church's safeguarding policies and procedures)".

3.5 Responding to that report was a significant part of the Agenda of General Synod in November. The chair of the Working Party spoke in the debate in relation to Recommendation No 2 which contained IICSA's six specific proposals for amendments to the way in which the CDM operates. That was not the focus of the debate, which was very much about responding to survivors. We will deal later in this report with IICSA's consideration of the CDM, suffice for the moment to say that we have no issue with including in our proposed scheme the implementation of the six specific recommendations that IICSA made about the CDM.

3.6 We carried out a further public consultation in December. In that we outlined some elements of our proposed system for dealing with complaints. In some instances we sought views as to whether we had got it right and in other instances where we were uncertain about some aspect, we sought views as to what might be most appropriate.

3.7 Our consultation was launched on the same day as the Lambeth Group also went public with its Progress Report and the details of its own consultation process. The two things happening together was of interest to the Church Times who wrote on the subject in the 11th December edition. We also contributed to the same edition an article outlining our proposals. We are grateful to the Church Times and to the cartoonist Bill Caldwell for permission to use the cartoon they published in that edition on our cover sheet. It is sometimes said that a picture is worth a thousand words.

3.8 We are grateful that Bishop Tim enabled us to join in the consultation meetings the Lambeth Group organised in December and January so that we were able to hear what a wide range of people had to say about what both the Lambeth Group and we were proposing. As yet there has been no significant engagement between the two groups to produce a unified set of proposals. We have doubts that that will be possible as we believe that on some issues, such as the role of bishops, there is a significant difference of opinion that may not be susceptible to compromise. However it will, we hope, be helpful to articulate the areas of difference between the conclusions of the two groups, so that these issues can receive further attention and dialogue. We believe that our publishing our final conclusions can only assist those who will in due course be responsible for formulating first the overall shape and then the detail of any proposed legislation. We believe that should be resolved by the House of Bishops before proposals are put to General Synod.

3.9 We believe that publishing our detailed proposals will also assist the Lambeth Group to refine their own proposals as they will have specific proposals to set their own proposals against as they begin to descend into detail. Our own experience has been that it was as we discussed the details that we came to see what would work and what would not work. We believe it will assist them and others as these things are discussed in various places if we publish our Final Report so that people will know why we have reached the conclusions we have reached, and why we have concluded that some proposals that are being mooted elsewhere will not work.

3.10 We are very grateful to all who have responded to us at any time and we include at Annex 16 the names of all who have assisted us in those consultations or in other ways. To any who have responded or in other ways contributed, whom we have omitted from that annex, we offer our apologies. We did our best to try and include all who had made contact at any point. We trust that our not ascribing titles or roles to our consultees will not be taken amiss. We know that if we had attempted to do so we would have failed spectacularly.

3.11 Over the last 3 months there are a number of things that have become very clear to us.

Handling of serious misconduct complaints under the CDM 2003

3.12 The report entitled *Under Authority* which had been produced by a General Synod Working Group under the chairmanship of Canon Alan Hawker began its Synod journey in November 1996 when there was a Take Note Debate in relation to it, the Synod document number for the report was "GS 1217".

3.13 Having taken note, Synod then debated the motion:

> "that this Synod (a) approve the recommendations summarised in chapter 11 of GS 1217; and (b) request the Standing Committee to bring forward legislation based on those recommendations."

3.14 There were several amendments to the motion. One was to exclude doctrinal matters from the new legislation, which was carried; one was to exclude the proposal to alter the position in relation to political opinion, which was also carried; one asking for a white paper prior to legislation was lost; one requesting "the Working Party to provide additional proposals for a grievance procedure" was carried; and one in relation to the Bishop's discretion and power of dispensation was lost.

3.15 So the working party tasked with drawing up the legislation was asked to base it on proposals in chapter 11 of *Under Authority* excluding 11.9 in relation to political opinions, excluding 11.13(d) in relation to teaching, preaching, publishing or professing doctrine or belief incompatible with that of the Church of England as expressed within its formularies, and additionally to provide proposals for a grievance procedure.

3.16 The inclusion of a grievance procedure had been proposed by Stephen Trott. The response of Canon Alan Hawker, chair of the working Group, who had proposed the base motion was to welcome the amendment. He said:

> "The Working Group are very happy to accept this amendment and would encourage you to vote in favour of it. The only reason it does not appear in the report is because we had a clear remit … Subsequently representations were made to us that if we were to have a new discipline system, it should include a grievance procedure with it. The Working Group has at all stages in its discussions unanimously and wholeheartedly agreed with that view but found itself, under its remit, unable to include the matter. We had hoped that it would come up at Synod and be put within our remit in order to guarantee that when the Measure goes through – if it gets that far – the grievance procedures will go through at the same time, rather than, as I think would happen otherwise, being added later, which I do not think would be acceptable. I encourage Synod to vote in favour of this amendment."

The amendment was carried without further debate.

3.17 When the legislation came back it was in conformity with the amendments in relation to political opinions and issues of Doctrine Ritual and Ceremony, but it did not include a grievance procedure. That was in spite of the presence of Stephen Trott on the Revision Committee, who sought to have a grievance procedure included. Not only were attempts to bring it back through the Revision Committee unsuccessful, but when the Measure was finally sent to the Ecclesiastical Committee in Parliament, the report to that Committee in May 2003 quite remarkably omitted any reference to the request for a grievance procedure. Paragraph 125 of that report reads as follows:

> "125. The Report of the Working Party entitled *Under Authority: Report on Clergy Discipline* was debated by the Synod in November 1996 and a resolution approving the Report's recommendations was approved subject to two amendments. The first provided that disciplinary cases involving doctrine, ritual and ceremonial should not come within the provisions of any new procedures and should remain to be dealt with under the existing provisions of the 1963 Measure. The second amendment retained the existing provisions of the 1963 Measure whereby disciplinary proceedings could not be instituted in respect of political opinions or activities."

3.18 There was no mention at all of the third amendment to include a grievance procedure in the legislation. To conspiracy theorists, which we are not, that might be seen as a rewriting of the history of the Measure. It was 7 years after the Synod debate, but it is remarkable that the institutional memory of 7 years could be quite so forgetful.

3.19 However what is now clear to all is that we have been reaping the consequences of that omission from the legislation ever since.

3.20 The lack of a clear grievance procedure meant that when the legislation widened the scope of what could be complained about so that it included such vague and broad reaching offences as "inappropriate conduct" and "inefficiency in the performance of the duties of his office", there was only one mechanism for dealing with all complaints, which was a mechanism designed for the serious cases.

3.21 The number of cases that are serious and which have resulted in temporary or permanent prohibition is relatively small. In the 14 years for which we have statistics (2006 to 2019) there have been 239 complaints where a prohibition (either permanent or of limited duration) has been the penalty. It is notable that of those, 148 followed on from admission of guilt by the cleric, 67 were imposed under s.30 of the Measure following a finding of guilt in a criminal court, and 24 followed a finding of guilt by a bishop's tribunal. It is not widely understood that less than 10% of serious cases have been contested in a tribunal hearing. In that same 14 year period only 30 cases have been brought to a bishop's disciplinary tribunal.

3.22 It is interesting to note the tribunal cases where some other penalty was imposed. A conditional discharge was imposed in a case in relation to improper accounting and retention of funds. Rebukes were imposed in relation to not following national and diocesan policy in appointing a youth worker (coupled in that case with an injunction); a bequest being applied to a wrong charity; and for failing to obtain pastoral support for a vulnerable adult (coupled in that case with an injunction for further training along with removal from that particular office).

3.23 That suggests to us that in relation to serious cases the Measure is doing what it was designed to do. When guilt is proved elsewhere or admitted by the cleric, the bishop imposes prohibition. When serious misconduct is denied, the case is fairly tried and on conviction serious penalties are imposed. In cases where the allegation is not proved, as has happened twice, then the complaint is dismissed.

3.24 That is not to say there is no room for improvement in the handling of serious cases. It is clear that they have lacked a firm grip and tight case management. That can easily be remedied. All legally qualified tribunal chairs are people with significant case management experience in their secular professional lives as salaried or fee paid judges. They are accustomed to proactive case management. One of our proposals is that these chairs would become involved in cases at their commencement rather than at their conclusion. They would hold a hearing in which the real issues in the case would be identified, the evidence that was relevant to those issues would also be identified and directions given leading to a speedy trial, no later than 6 months from the date of that first hearing.

3.25 It may well be that apart from reducing delays, such case management would result in fewer contested cases. It is apparent that there are cases where respondents sit tight and say little; then when pressed they ask for further adjournments as they say that they are still not ready. This is one of the significant causes of delay. And of course in the meantime the cleric can stay in their house and draw their stipend.

3.26 Proactive case management would also ensure that everyone in the case knew what was happening, what the hearing dates were, and could have confidence that the timetable would be kept. Such directions hearings would also ascertain the needs of witnesses and ensure that any special measures that were required were put in place and that the witness knew that that would happen. Directions would also be given that in any case involving vulnerable witnesses all advocates shall have undertaken the Bar Council vulnerable witness training or its equivalent.

3.27 So there is no doubt that the handling of the serious cases can be improved but under our proposals the process for those serious cases would not be so far removed from what happens now when a case is contested.

Handling of complaints that are not cases of serious misconduct under the CDM 2003

3.28 The real issues with the current processes lie in the cases that do not fall into that serious category. Again the numbers are instructive. We know that in that 14 year period there was a total of 1183 complaints. Of those 311 were dismissed by the bishop following receipt of the diocesan registrar's preliminary scrutiny report (PSR). A further 200 resulted in No Further Action (NFA) by the bishop following the cleric being given opportunity to respond to the substance of the complaint. Under the Code of Practice NFA is considered appropriate when either there was no misconduct or it was of a minor or technical nature.

3.29 What these numbers cry out for is a way of quickly identifying those cases where there is no case or where there may be something that technically can be described as misconduct, but it is at a level where NFA is the appropriate response. Where there is no case to answer the complaint should be summarily dismissed without unnecessary delay. Also important to identify and attempt to resolve are those complaints which are genuine grievances but which do not amount to misconduct meriting disciplinary action.

The need for a speedy investigation and triage system

3.30 In our judgement the most appropriate way to deal with these cases that do not involve serious misconduct is speedily to investigate them locally. An investigation in which both the complainant and respondent were seen and interviewed and in which, where it was necessary, other witnesses of events were also able to give their account to the investigator, would have a number of benefits.

3.31 Complaints that were vexatious or that lacked substance would be identified and could be swiftly brought to an end.

3.32 Grievances that had resulted from some breakdown in relationship would have some time and effort invested in attempting to restore the relationship and resolve the issue on the face of the complaint. One of the failures of the current Measure is that although it provides that a bishop "may direct that an attempt to bring about conciliation" is made, only 32 such attempts were made in 14 years, of which only 10 were successful. It appears to us from what is admittedly anecdotal evidence that there may have been a significant number of cases which have been dismissed or had no further action taken in which all parties would have benefited from an attempt to resolve the issues and reconcile the parties.

3.33 Complaints that are of misconduct, but misconduct falling short of serious misconduct, can be given consideration in their context. Whatever the outcome in terms of penalty, there may well be benefits, again to both parties, from attempts to restore broken relationships. It may also become apparent that although there was misconduct, the circumstances indicate that there is a need for some sort of intervention. It may be that the cleric was going through particular personal

difficulties, or was carrying an intolerable workload, or any number of other circumstances might come to light indicating that something more than penalty is required. Help and/or assistance might come in many different forms. This would be a better way of dealing with many of the capability and capacity issues which are currently supposed to be dealt with under other statutory provisions, but which for the most part are regarded as unworkable.

3.34 The type of penalty which would be imposed for misconduct that is less than serious would normally be a rebuke, which might be coupled with an injunction or other directive measure. Currently a bishop can impose a conditional deferment, which works rather like a conditional discharge in criminal courts. The matter remains on file for the length of the stated period – any length up to five years. If there is no further misconduct that is the end of the matter; if there were other misconduct within the period, then the two matters would be considered together and an appropriate penalty imposed. The difference between a conditional deferment under s.14 and a conditional discharge under s.25 is that the latter involves a finding or admission of guilt. A conditional deferment does not depend on guilt having been established although it does require the respondent's consent. There have been 47 conditional deferments in 14 years, but no statistics have been recorded in relation to conditional discharges. We see no purpose in keeping conditional deferment. The triage process will involve making findings of fact about what has happened and any penalty, including a conditional discharge, would be able to be imposed by the bishop without the need for the consent of the cleric.

3.35 We would envisage that penalties for misconduct that is less than serious would not be recorded on the Archbishops' list but would be recorded on the cleric's personal file (often referred to as the 'blue file') for a limited period (on which see further below).

3.36 As stated above, these cases which concern matters other than serious misconduct constitute the vast majority of complaints made against clergy, and an effective system of initial investigation and local assessment is required to have them resolved fairly and quickly.

How should the assessment be made?

3.37 We propose that panels of 'assessors' are established who would be available to carry out investigations promptly after a complaint has been received. Initially we thought of these panels being diocesan based. However after listening to views expressed during the Lambeth consultation meetings, it seemed to us on reflection that there were clear advantages in basing them regionally, each panel covering perhaps two or three, or maybe more dioceses. The reasons for this were several. The number of complaints in each diocese is low and varies from year to year - each year about a quarter of dioceses have no complaints at all. So combining dioceses would enable the panel to build up experience more quickly and more consistently. It would also have the advantage of retaining some local feel and understanding of

context whilst enabling an investigation to be carried out by someone who is independent of the diocese in which the complaint arises. It would also have savings in relation to expenses and be more flexible than something run from a central London office.

3.38 Again to ensure that measure of independence, we consider that the panel should be appointed by the CDC following interview and trained to common national standards with regular refresher courses and the encouragement of networking between them to ensure consistency. The panel will liaise together regularly sharing experiences and building up their skills. And there will be liaison between panels. This is not dissimilar to other patterns within the Church such as in relation to selection for ministry.

3.39 The training would be extensive. It would be part of the training programme which the CDC would be providing for everyone who had any involvement in the various disciplinary processes. We would anticipate that there would be a series of modules and depending on the individual's role they would attend the relevant modules. Assessors would be trained in every part of their task – self-awareness and unconscious bias, how to investigate and interview, particularly with regards to interviewing and dealing with vulnerable and intimidated people (including children), decision making when faced with conflicting accounts, report writing, identifying particular issues (eg the vexatious complainant, parish breakdown, bullying , harassment, particular needs a cleric might have for intervention and assistance), what amounts to serious misconduct, and appropriate penalties. We deal with the issue of training in a little more detail in Annex 12.

3.40 The panel would consist of both clerical and lay members. The clerical members may well be archdeacons who would be familiar with many of the issues that regularly arise. However the clerical membership would not be restricted to archdeacons but open to any cleric with relevant experience. Our initial thought was that it would be sufficient to say that an archdeacon should not deal with a case in their own archdeaconry, but the responses to our second consultation make it clear that to ensure that independence is seen to be present they should not assess cases in their own diocese. We would anticipate that the lay members would be people who would have relevant experience from their secular roles. They may be people who had been involved in human relations or other roles dealing with relationship or employment issues, or they might have investigative experience. The demand on their time would not be great given the number of cases each would deal with. We would hope that it might be possible to recruit such people to act as volunteers, being paid only their expenses. We think that there are quite a number of people in the church who have retired from their full-time secular or clerical roles and who would have a great deal to contribute in this area. We are given confidence that such people would come forward for training for such service from our knowledge of the people who have done just that and are serving on the provincial panels of CDM Pastors and Assessors in relation to clerics who are hoping to return to ministry following a period of prohibition. One of the advantages of using such a panel of people is that they would

not only be very quickly available when required to act but they would be quite flexible in the times at which they could see people.

3.41 There would need to be a lead person on each regional panel through whom the request would be made to appoint an assessor when a complaint was received.

Process

3.42 We would hope that it would be possible for all the processes to be dealt with online through a bespoke digital platform. We would envisage the complaint being completed online and that once it was submitted it would immediately be sent to both the relevant bishop and the relevant lead assessor. The various steps that then follow would also be recorded online with as much as possible being automated. This would enable the CDC to monitor processes and timetables and when a date passed without a record of the action having been completed a gentle reminder would be sent and if no response with a given number of days, some personal contact made to ascertain what was the cause of the delay. It would also mean that sensible monitoring of what was happening could take place across the system.

3.43 In what follows we speak about people doing things such as "the bishop will send …". It will be possible for some of these processes to be automated, but some should involve a personal approach from the bishop. The fine detail can be resolved in connection with the design and building of a computer programme.

Is this a new idea?

3.44 What we are proposing is not a new idea. It is essentially what was proposed in *Under Authority.* Paragraph 8.8 and following in the report provides as follows:

> "8.8 Once a written complaint is received by the bishop, we propose a maximum period of four weeks, within which the complaint will go through a filtering process, and a decision on what further progress, if any, needs to be taken. The bishop would delegate responsibility to check out the complaint to whomsoever he felt suitable, such as an archdeacon, rural dean, registrar or layperson
>
> During this initial exploration it would be:
> - the responsibility of the complainant to clarify and amplify the complaint they have made, providing evidence to substantiate the allegation;
> - the responsibility of the bishop's appointed investigator to listen to the complainant, and also the cleric (if the cleric wishes to comment at this stage). It is important that complaints that are frivolous, maliciously motivated, or without substance, are disposed of quickly.
>
> 8.9 In many cases this initial investigation will be completed in a matter of days. The suggestion of four weeks is to prevent delays developing, and is seen as the

longest allowable time before the bishop makes his first decision, based upon the report provided by his initial investigator."

There were then four potential outcomes:

"(a) If it is seen as frivolous, malicious or unsubstantiated, the bishop will dismiss the complaint

(b) If the complaint is obviously of a serious nature, then the bishop will follow the formal procedures straightaway ….. *[in cases of pastoral breakdown using the Incumbents (Vacation of Benefices) Measure procedures]*

(c) If … a minor complaint, of the kind that currently form the majority of the complaints made to a bishop, where formal disciplinary procedures are not warranted, then the bishop would follow the procedures for minor complaints outlined in Part A of this chapter. Here the emphasis is pastoral.

(d) In between (b) and (c) above would come some cases where the gravity of the offence, if proven, would be less easy to define. In such cases, the minor complaints procedure (Part A) would be followed until and unless the seriousness of the case became more obvious. Only then would formal disciplinary procedures be followed."

3.45 Part A contained "Procedures for resolving minor complaints about the clergy". Those procedures were contained in appendix C to the report and had been drawn up by the Clergy Conditions of Service Steering Group. It was in an appendix rather than the body of the report because as Canon Hawker explained to Synod their remit was to deal with serious misconduct, but he recognised the need to deal with cases that were less than serious, and so he was grateful that Synod was asking for procedures for less serious cases to be included in the Measure as well.

3.46 It seems to us that our proposals are very much along the lines of what was envisaged by Canon Hawker and his working group back in 1996, but as we have already stated for reasons we do not understand that never came to pass. We cannot now roll back the clock, but we can pick up the baton they dropped as we go forward.

3.47 We will now address in some detail how we see what we propose being delivered in detail.

Who can complain and what happens on filing a complaint?

3.48 There will be no specific categories of people who can complain, but a complainant must be someone who had direct involvement in the matter complained about or who has a relevant concern about the matter (which would include Diocesan Safeguarding Officers and archdeacons but not people who read in newspapers or social media about what a priest or bishop is alleged to have said or done).

3.49 The complaint must set out in writing the facts of the matter complained about, the impact the matter has had on them, and also set out what they are looking for as the

outcome of making their complaint. Their statement of facts should include a statement of truth. They should also supply such evidence as they have in support of their complaint. There will not however be a restriction, as now, where you cannot subsequently raise any matter not particularised in the initial complaint. Part of the assessment will be ascertaining exactly what it is that the complainant is complaining about and ensuring that the assessor has uncovered everything that is there.

3.50 The complaint will be completed online. We are satisfied that as with other complaints systems we know about ways could be found to provide assistance and or facilities for those who had no access to the internet or no ability to file a complaint electronically. The filling in of the "which diocese does the priest you complain about operate in?" box would cause the complaint to be sent simultaneously to the relevant diocesan bishop and to the lead assessor for the relevant region. For retired clerics the question would be in which diocese they were now resident.

3.51 The respondent cleric will be notified of the complaint by the bishop, provided with a copy of it, and asked to complete an online form setting out their account of the matters complained about. We think that that contact by the bishop should be personal rather than just an automated action. The cleric's response will be copied to the allocated assessor and to the bishop.

3.52 The bishop will be responsible for ensuring that appropriate support is provided to both the complainant and the respondent. That will be initiated by the bishop writing to both parties immediately on receipt of the complaint indicating that support is available and also contacting an appropriate supporter whose duty it will be to make contact with both complainant and cleric and support them through the process. Appropriate support will also be provided to other affected parties e.g. family members or witnesses in abuse cases, or the wardens and PCC when the incumbent has been suspended following allegations of serious misconduct. Training will be provided for such supporters, and we say a little about that in Annex 12.

3.53 In due course if the matter is to be progressed as an allegation of serious misconduct there will be a further communication from the bishop to both parties offering further support that will see them through to the outcome of the process. When the complaint is one of sexual or domestic abuse we would hope to be able to draw on the national network of IDSVAs (Independent Domestic and Sexual Violence Advisors) to support the complainant. Other regional supporters would be trained in relation to what complainants and respondents may need in the way of support in relation to participating, whether as complainant or respondent, in cases of serious misconduct.

3.54 Annex 11 contains our proposals in relation to Legal Aid. Many of the respondents to our consultation thought that Legal Aid was unnecessary in the assessment phase but should be available as soon as a decision is made that the case is one that might be a case of serious misconduct. It seems to us that it would be important in all cases that looked as though they might amount to serious misconduct that the cleric

should have access to free legal advice from the outset. We therefore propose that when the lead regional assessor receives the case, one of their early tasks will be to consider whether it looks like a case that could amount to serious misconduct if what is alleged in due course is proved to be true. In those case they would mark that on the system and when making contact with the respondent they would inform them of that and of the availability of Legal Aid. When it does kick in it will be neither merits tested nor means tested. We propose up to 6 hours advice as the initial grant.

3.55 Whenever it is offered there would be a list of solicitors and direct access barristers who have been approved by the CDC as experienced and competent to do the work. Many will be experienced in regulatory, employment or criminal law. These cases will not be about ecclesiastical or canon law, except in very rare cases. Solicitors and barristers not on the list could be chosen by a respondent and subject to a check by the CDC that they are suitably experienced will be able to receive legal aid.

3.56 The lead assessor's first responsibility would be to assess that the complaint was not clearly frivolous on its face, by which we mean for example a complaint where the complainant had no real direct involvement or that was excluded from being a ground of complaint. Examples of each respectively would be a complaint about a bishop's tweet in respect of some current matter or a complaint that an archdeacon assessor wrongly dismissed a previous complaint. Currently we are led to believe that there are a significant number of complaints made about how a bishop or archdeacon handled a previous complaint. Dissatisfaction about the outcome of a complaint will only be able to be dealt with by the appeal/review mechanism that is built into the system. It would have to be something wholly exceptional such as a bishop refusing to call a cleric to pastoral meeting after receiving the assessor's report, or there being a repeated pattern of dismissing complaints contrary to the findings of the assessor's reports, that could give grounds of complaint in relation to an earlier complaint. Absent such exceptionality the assessor would communicate immediately to the bishop their summary assessment inviting dismissal and would also communicate with the cleric telling them of their report to the bishop. In most cases the complaint having passed that initial scrutiny the lead assessor would allocate it to a member of the regional panel. They would know the members of the panel and be able to decide who seemed most appropriate to deal with the complaint in question. That person would then be approached to ascertain that they had no conflict of interest and to check their immediate availability. If available they would be given charge of the assessment.

The assessment

3.57 The allocated assessor would make contact with the complainant and arrange to see them. Ideally they would meet face to face, but it would always be possible as we have learned in this last year to achieve much through a Zoom or other video platform meeting. They would also have the respondent cleric's written answer which would have been requested when the complaint was first received.

3.58 The process that would then take place would be that which we described in our Interim Report. The assessor would see both parties, ascertain that they fully understood what the parties were saying, and try to ensure that each party understood the other's position. In so far as there was a disagreement as to the facts, they would ascertain what other evidence there might be. They would also speak with other witnesses identified to them and examine other material supplied to them. All that they did and everything that was said or produced to them would be fully recorded. Some have suggested that all interviews should be audio-recorded. We don't have a strong view one way or the other on that. On the basis of what they had heard and seen they would make a decision as to what had or had not happened and record that with their reasons for coming to their decision. Sometimes of course the reason would simply be that having reviewed all the evidence and having heard from x and from y, they believed 'x' and/or did not believe 'y'. That is how these decisions are made in courts and tribunals day after day.

3.59 Clearly both complainant and respondent must have a right to be accompanied at those meetings. In our recent consultation we asked about the limits that might be set on who might accompany them in meetings. The outcome of the recent consultation was that of the 35 people who responded 17 expressed no view about whether people should have the right to be accompanied by a lawyer, 8 said that they agreed with our initial proposal that there should be no right to a lawyer in the assessment phase and 11 either said that they should be able to be accompanied by a lawyer, or that they should be accompanied by anyone they wanted to be there. We did not find this an easy matter to come to a clear and final conclusion about. We were much affected by what we understand to be the position in relation to internal investigations in employment cases where there is no right to have a lawyer present during investigatory interviews. But it did seem to us that if during the course of the investigation into what might at first have appeared to be less than serious it began to look as if it might be serious then the assessor should inform the cleric of that and enquire whether they wanted to obtain some legal advice before the matter was taken further. If so, the assessor would be able to authorise the grant of an initial legal aid package (up to 6 hours advice). In cases initially recognised as potentially serious misconduct cases they will have been able to take legal advice under the Legal Aid scheme before being spoken to. We felt that the obtaining of legal advice in both those sets of circumstances was sufficient protection of the cleric's interests.

3.60 In a non-serious case the assessor will be looking to report on findings as to what did/did not happen; whether it amounts to misconduct, whether in a marginal case it is serious or not, the starting point, as suggested in *Under Authority*, being that cases are less than serious until it becomes clear that they are serious. Our position remains as set out in our Interim Report that an act or omission will only constitute "serious misconduct" if (absent exceptional mitigating factors) a penalty involving prohibition (permanent or limited), or removal from office or revocation of a bishop's licence, would be appropriate. A Code of Practice would set out how the assessor/tribunal would approach the issue of whether something was misconduct and if so whether it was serious misconduct. It would deal with the relevance of any

breach of ecclesiastical laws and canons, and failing to comply with codes of guidance and other relevant published material.

3.61 For the avoidance of doubt it follows from our definition of serious misconduct that there will be no reference on the face of a new Measure to any of the particular "acts or omissions" set out in s.8(1) of the CDM 2003. That includes failing to comply with requirements relating to the House of Bishops' Guidance on safeguarding (presently s.8(1)(aa) of the CDM) or whatever replaces that under the Safeguarding (Code of Practice) Measure. These will be referred to in the Code as matters that will assist in determining what is misconduct and what is serious misconduct.

3.62 Another outcome of the recent consultation was the suggestion that before reporting to the bishop on the outcome of the assessment, the conclusions of the assessor should be considered together with some, perhaps 2, other members of the panel so that it is not the judgment of just one person. We considered that to be unnecessary, and that it would potentially cause delays. The protection for the parties is their right to a review of the findings. The Sheldon Community proposed that any decision that misconduct was serious should be a decision of at least two panel members. Again, that is not something we favoured. There is in our view sufficient protection, particularly as we propose the right to apply to a Tribunal Chair at the first hearing for a review of the decision that this is an allegation that amounts, if true, to serious misconduct.

3.63 If either party is dissatisfied with the conclusions of the assessor as to the facts or the complainant is dissatisfied with the decision as to seriousness, they can ask for a review of those decisions by the regional lead assessor; and if the assessment was by the lead assessor, then by a neighbouring lead assessor. The question for the reviewer will be whether the decision was plainly wrong or not. If the reviewing assessor concludes that decision was plainly wrong they will replace it with their own decision and recommendations, which shall be final. The respondent's right for a review of the decision as to seriousness will be before the judge at the PDH. There will be no right of review as to penalty recommendation for either complainant or respondent. The respondent will be able to address the bishop directly about penalty at the pastoral meeting.

3.64 On current experience there may be quite a number of dissatisfied complainants in relation to dismissals (in 2019 the President of Tribunals (PoT) was asked to review 15 out of 34 dismissals and 21 out of 47 cases of No Further Action, and in 2018 24 out of 26 dismissals were appealed!) We do not have any guide as to the likely number of appeals by respondents on the findings of fact.

Assessment – grievance needing resolution

3.65 Sometimes the issue is not one of fact – whether an incident happened or not – but whether it was the right thing to do in the circumstances. Complaints are often what can be referred to as grievances or what in other professions would be termed

"service level complaints". There is no doubt that under the 2003 Measure there have been many grievances put forward as complaints which have been dismissed or no further actioned that have left the complainant with a continuing grievance which has remained unresolved.

3.66 We would anticipate that there would be a key role for the assessor to play in these cases in attempting to resolve the grievance. They will want where possible to bring the parties together round the table. They will want to ensure that each understands the other's position. They may suggest ways of resolving the underlying issue if the parties cannot find a way to do so themselves. Of course, for various reasons, some disputes are not capable of resolution. However the assessor will always have in mind and be reminding the parties of the gospel principles of forgiveness, the servant nature of our discipleship and the need to seek reconciliation.

3.67 In what was considered to be a grievance case the report would outline the outcome so far. It may suggest in a few cases that it might be helpful if the bishop, acting as chief pastor, lent their weight to the efforts so far put in. A meeting with the bishop could be arranged if it was thought that would assist.

Assessment – an insubstantial or a vexatious complaint

3.68 If it was a case that the assessor found was lacking in substance, or was vexatious, they would say so and invite the bishop to dismiss it. As we have indicated the complainant would have a right of review if a case was summarily dismissed, in the manner described above. It would be a review on the papers by the regional lead assessor as to whether the decision was plainly wrong.

Assessment – misconduct less than serious misconduct

3.69 If it was a misconduct case then we would expect that the report would set out why the assessor had concluded that the conduct which they would rehearse in the report amounted to misconduct, and if so whether they thought it amounted to serious misconduct and why. They would also say whether it had been admitted by the cleric. We will deal with the further management of serious misconduct cases after dealing with the next steps in cases of lesser misconduct.

3.70 The assessor would also give their assessment as to how and why the event(s) complained about had happened. It is at this point that the assessor will be able to address issues of capacity and capability. It is generally recognised that the legislation that currently deals with those issues is unworkable. We know from the Sheldon data that, out of 197 respondents to their questionnaire, 66 had approached the diocese for help with the issue before a complaint was issued against them under the CDM. Also that, of the 52 people who acknowledged the behaviour complained of, 36 of them said it happened at a time when they were vulnerable. These are just some indicators that support, help and intervention of one sort or another is often

required by those who have performed in ways that are less than acceptable. There is a wide variety of circumstances that might need to be addressed. Sometimes there will be issues to do with resources and skills to be able to perform the tasks required of the cleric. On other occasions the assessor may uncover health issues, whether mental health or physical health. All of these will require sensitive enquiry and sensitive handling. Procedures may well vary as between dioceses. But some basic principles will need to be spelled out in the Code. The assessor will form a judgement about what support is needed and make some recommendations about this to the bishop.

3.71 They will also in cases of misconduct that is less than serious propose what form of penalty should be imposed. These will all be cases that do not call into question the fitness of the priest to continue in ministry. In such cases the appropriate penalty will usually be a rebuke. In some cases it may be appropriate to issue what the CDM describes as 'an injunction'. An injunction is simply an order or direction to do something or to refrain from doing something. We are aware that following a visitation, "directions" are frequently given. We consider that that is a more appropriate word to use. The directions may be to apologise for something if that has not already happened, to refrain from doing the same thing again, or to undertake some further training. There are doubtless many other directions particularly in relation to training, submitting to mentoring and the like that would be entirely appropriate in order to restore the health of the body and ensure that the mutual flourishing of all involved is promoted. There may be a few cases where a conditional discharge would be appropriate.

3.72 Guidelines from the CDC in relation to penalty will be available on all these issues. We note the new Penalty Guidance issued by the CDC in January 2021 which we regard as a significant improvement on what went before. The new guidelines focus, as do the sentencing guidelines for the criminal courts, on identifying the levels of culpability and harm in order to arrive at an assessment of the seriousness of an offence. That process is designed to enable the sentencer to identify a 'starting point' level of sentence. They then look at the aggravating and mitigating circumstances to fix the sentence within the bracket of appropriate sentence levels for that type of offence. The assessors would have received training in relation to these guidelines, would have that regularly refreshed and would of course be able to consult other members of their panel if they felt it would be helpful to do so. Each case would be assessed on its own merits and a recommendation made accordingly. If they had questions of law to resolve, which we think will be very rare, they would be able to consult the Designated Officer.

3.73 §The assessor's report, which should be completed within 28 days of being allocated to the assessor, will be provided to the complainant, the respondent and the bishop.

3.74 We believe that all of what we propose in relation to assessing conduct that is less than serious misconduct is wholly consistent with biblical principles of Christian discipleship and with the long history of clergy discipline in the church. It is

concerned about the health of the whole body and the individual members of it. Its purpose is to promote that health and the health of its individual members.

Assessment – serious misconduct

3.75 In cases of serious misconduct, particularly those which were not admitted we would anticipate that the assessor's role would be more limited: they would be assessing whether there was credible evidence of the misconduct, whether in their judgement it fell within the guidelines for prohibition, and whether it was admitted. If it was admitted they would be exploring the surrounding circumstances a little more fully for their report, but in contested cases they would be conscious that there was a need to get this matter quickly before a tribunal judge who would effectively be taking over the management of the case. They would not be forming any judgment about whom they believed in a contested case.

The role of the bishop in less than serious misconduct cases

3.76 It is in relationship to the role of the bishop in cases of less than serious misconduct that we believe what we are proposing fully expresses and realises the bishop's proper role as disciplinarian pastor.

3.77 On receipt of the assessor's report the bishop would take the appropriate action. In cases which were lacking in substance or which were vexatious the bishop would dismiss them, explain there was a right of review, that such a review would be on the papers and would be carried out by the lead assessor.

3.78 In cases where the bishop was asked to assist with conciliation they would engage as requested.

3.79 The decision on the facts has been made by the assessor. The bishop and the cleric will be bound by those facts, subject to the cleric's right to a review (see 3.63 above). As to seriousness, if notwithstanding the assessor's view that this was less than serious misconduct, the bishop was firmly of the view that it was serious misconduct, then the bishop should have the right to send the case to a PDH hearing, where of course the cleric's protection would be their ability to apply to the judge to say that it was not serious which would be definitive. We think that would be rare, but that it should be provided for. It is the logical outcome of our view as to the bishop's overall responsibility – what can be delegated – determining the facts, and what cannot – setting the standards. Assuming that the bishop accepts the conduct is less than serious misconduct they will have been provided with an account that sets that assessment into the context of the cleric's personal and parochial or other circumstances. There will also be a recommendation as to disposal by way of penalty and other suggested orders and/or interventions. The cleric would have been provided with a copy of the report and the bishop would call the cleric to a "pastoral meeting". The cleric would be entitled to be accompanied as at other meetings in

the earlier parts of the process. We see no purpose or need for lawyers on either side to be present. At that meeting the cleric would be able to say why the bishop should not proceed as proposed, which the bishop would consider before making any final decision as to what to do. It would be possible for the meeting to be adjourned to another date if more information was required. However we would expect in most cases the bishop and cleric would discuss the cleric's ministry, what had gone wrong, what needed to be done to ensure that things were put right and what needed to be done to mark the failure and to ensure that the same things would not recur. There would sometimes be a need for the bishop to admit that they and/or the diocese had failed the cleric and to give assurance of further provision. This would be an open and honest pastoral conversation which would include prayer together.

3.80 We hope it is clear from the above that there is no requirement for the cleric to consent to a penalty that is proposed. That was a recommendation from IICSA, but it was something that we had already decided before issuing our Interim Report (paragraph 116 of the Interim Report).

3.81 We would envisage that usually the bishop's chaplain would be present to record what happened. The cleric would subsequently be asked to agree and endorse the record. That record would be included in the cleric's blue file. The bishop would at the time of dealing with the matter tell the cleric for how long it would remain on the file. We think that such matters should not be on the file for longer than 5 years, but it could be a lesser period. As with all else, guidance would be given about these matters in the Code. The full record of the assessor's conclusions would also be included on the file.

3.82 There will be occasions where a complainant or cleric may want to appeal the bishop's decision. We think this would be rare, but it should be provided for. It would be a review (was the decision plainly wrong?) and would be carried out by a diocesan bishop from another diocese in the region. In this case the neighbouring bishop would consider the case on paper and decide whether the bishop was plainly wrong or not. If they thought the original bishop was plainly wrong they would say so. We would expect the bishops to discuss the matter together as fellow members of the college of bishops. The case would then go back to the respondent's own bishop for reconsideration. The priest or deacon remains the pastoral responsibility of their own bishop and for that theological reason we consider that the bishop must continue to hold and discharge that pastoral responsibility. We also consider that the collegiality of the bishops is an important factor that will be developed through this kind of cooperation to their mutual benefit.

3.83 We would hope that in most cases the bishop would follow up the cleric as time went by. We will leave it to those compiling a code of practice to decide whether it would be appropriate to build in, perhaps a 6-month review meeting, to ensure for example that the requirements of any injunction had been met.

The tribunal process

3.84 In cases of serious misconduct the assessor's report would also be sent to the CDC central office and the process that would lead to a tribunal hearing if the matter remained contested would commence. If there has been no legal aid prior to that point then it would be available from this point forward and lists of solicitors/barristers who do the work would be supplied to the cleric. They would be entitled to choose a non-panel lawyer, but legal aid would be dependent on that lawyer satisfying the CDC that they had relevant experience. Some clerics will be members of a union and may choose to use a lawyer nominated by their union.

3.85 We propose that legal aid will not be merits tested or means tested. There will be an initial grant of up to £1500 to cover initial advice and representation before the tribunal chair at the Plea and Directions Hearing (PDH) and in admitted cases at the penalty meeting with the bishop.

3.86 We did learn in the course of our work, something that until then only the archdeacons on our Working Party were aware of, namely that the insurance company, Ecclesiastical, offers a "Clergy Discipline and Terms of Service Protection Policy" for an annual premium of £25 plus IPT which

"provides up to £250,000 to cover costs and expenses to:

- Help provide a formal written response to a complaint made against you under the Clergy Discipline Measure 2003 or the Church in Wales Constitution (limited to £1,000 + VAT)
- Represent you at a hearing before a disciplinary tribunal or the Vicar General's Court
- Appeal against a finding and/or penalty following the hearing
- Represent you in a dispute concerning your terms and conditions of service."

3.87 We consider that all cases including those that appear to be admitted should go before a Tribunal Chair as this would be a safeguard to ensure that the case is one of serious misconduct, also to ensure that in admitted cases the admissions are freely given and fully informed.

3.88 The cleric would be provided with any necessary additional pastoral support (see above) as would the complainant.

3.89 The procedure before the tribunal judge would be as described in the Interim Report. In short, a plea and directions hearing (PDH) would be followed by judicial control of the timetable to ensure a trial as soon as convenient and in any event within 6 months of that PDH. Other issues in relation to better management and care of witnesses prior to trial will be introduced.

3.90 We think that organisation of the tribunal hearings should be managed centrally. It will be important to have proper Chinese walls erected between the Designated

Officer and the Administrative Officer(s). But given that the PoT will be allocating cases to Tribunal chairs there is a lot to be said for the central office organising the hearings. Whether they are clerked by the Provincial Registrars or their appointed deputies, as now, is a matter of fine detail that can be resolved in due course. The Registrars will also have contacts and experience in the management of tribunal hearings within their two provinces over the years that can be drawn in cooperative working with the central office. The PDH hearing and also other subsequent hearings including any final Tribunal Hearing would need to be professionally clerked. This could be done on a fee paid basis by the Provincial Registrars. As stated those details can be resolved when it is known what size office will be needed to operate the systems we are proposing.

3.91 At that PDH hearing, which would usually be a remote hearing conducted over a video link platform, the respondent cleric could make any of 3 applications:

i. They could apply to dismiss the case on the basis that there was no case to answer.
ii. They could apply to the judge to determine that this was not a case suitable for being judged as serious misconduct and that it should be remitted to the bishop to be dealt with as a misconduct matter. If that application was granted then it might involve further investigation by the assessor, so that the assessor could form a judgment about the facts if they were still in dispute and refer the matter to the bishop to deal with it accordingly as a case of less than serious misconduct.
iii. They could argue that the case was so old that it was no longer possible for them to have a fair trial and that it should be stayed. There are well established principles for this in current criminal procedure which would be adopted by the Tribunal Chair. It is a high hurdle as usually the tribunal process is able to deal with the disadvantages a respondent will have suffered with the passage of time.

3.92 The judge would not be expected to determine such applications on the day of the plea hearing but would, as in similar applications at Crown Court Plea and Trial Preparation Hearings, set both a timetable for the matter to proceed to trial and also a timetable to hear any application to dismiss, remit or stay.

3.93 If at the PDH the respondent admitted the allegations in full or to a degree that was considered by the Tribunal Chair to be sufficient to enable justice to be done as between all the parties, the matter would be remitted to the bishop for penalty.

3.94 In admitted serious misconduct cases the penalty will be imposed by a bishop who will have consulted with a tribunal chair before imposing the penalty. The role of the tribunal chair would be to ensure through discussion with the bishop that the bishop fully understood the relevant guidelines published by the CDC and that the bishop had taken appropriate account of the aggravating and mitigating factors in the case. It is expected that the bishop and tribunal chair would normally agree about the appropriate penalty but if they did not agree about the penalty the bishop would

have the final say. The reasons for all penalty decisions in relation to serious misconduct would be set out in writing and made public.

3.95 The cleric would have the right to be legally represented at the "penalty meeting" at which the bishop would meet with the cleric to impose the penalty. It is a meeting that could be adjourned if the bishop having heard the cleric's representations wanted to review the original decision about penalty and consult further with the tribunal chair.

3.96 The current Measure provides a pause for the respondent to consider a proposed penalty of removal from office or prohibition, since they affect stipend, housing etc, and a 7 day cooling off period. We would propose a period of 14 or 21 days after the penalty is announced before it takes effect, to allow the cleric time to consider an appeal or to make arrangements to move.

3.97 The penalty and the reasons for its imposition would be written down and a matter of record. We also propose that the Church through the DO would have a right of appeal against an unduly lenient penalty. That would be judged in the same way as in criminal cases, the test not being whether it was a lenient penalty and the appellate court would have imposed a more severe one, but whether it was unduly lenient, ie outside the range of appropriate penalties. That would require the assessor's report along with the written reasons for the penalty being supplied to the DO for consideration. For an appeal to be brought leave would be required from the Dean of the Arches or her delegate. The appeal would be heard by the Court of Arches in the province of Canterbury and the Court of Chancery in the province of York. The court would be a panel of three – the Dean/Auditor along with one lay and one clerical tribunal panel members.

3.98 That same route of appeal would apply to findings and penalty before a tribunal. The cleric would have a right of appeal on the law and the facts, and the prosecutor on law alone. All appeals would require the leave of the Dean or her delegate.

3.99 Since the Interim Report we have given more thought about how cases that are not admitted would progress to trial and the role of the central administration and the Designated Officer (DO).

3.100 In our view the DO would represent the Church at the plea hearing because the prosecution of serious misconduct is a matter affecting the life and unity of the wider Church and should be carried out on its behalf. We also think it appropriate as now that the DO would be the person responsible for collecting the evidence to be presented by the Church at the tribunal hearing. The DO would not need personally to take all witness statements as now, but would be responsible for collecting the evidence and filing it. We think that because of that role in relation to witnesses it is not appropriate for the DO to prosecute the case before the tribunal but that they should instruct another advocate to do so. Whether that was an independent advocate in private practice or whether it was another member of the Church House

legal team is not a matter that we would wish to prescribe. Much would depend on the size of that team as the workload became clearer.

3.101 The tribunal panel of three would be made up of a legally qualified chair and two others, one lay and one clerical. They would be selected from the panel of tribunal members and from those identified as being able to meet the date set, rather than as now the members being selected first and then a date which they can all manage being identified which leads to unacceptable delays.

3.102 The standard of proof would be the civil standard and the decision by a majority. At the conclusion of the hearing, if the charge of serious misconduct was found proved, then the tribunal would decide on the penalty in accordance with the CDC Guidelines on Penalty.

Some other issues:

The Clergy Discipline Commission

3.103 The CDC will remain in place, its role would be broadly as now – advising on penalties; issuing codes of practice and policy guidance; and reporting annually to Synod. But its role would be expanded to include more direct oversight of the scheme, selecting the regional panel members and providing training for all involved in the various processes. The roles of the PoT and Deputy PoT would hopefully be reduced in relation to the number of reviews of decisions they were asked to carry out as those reviews will be done by others, but some will remain, such as dealing with appeals against suspension.

3.104 It would also be possible, if all cases are processed through a Church of England complaints website on which complaints would be launched and through which the various stages would be progressed for the CDC to monitor the timeliness with which cases were being dealt with, and to flag and chase cases that did not meet their timetable dates. This would also enable the annual compilation of statistics without the need for annual diocesan returns.

3.105 We would expect that there would be more publicity given to decisions of the PoT and Deputy PoT than occurs presently. We consider it is necessary both for transparency and also to enable people to have increased understanding of how the principles that would be either on the face of the Measure or contained in a code of practice should be applied in practice.

3.106 The composition of the CDC will need to alter to reflect its widened role; this would be catered for by giving specific guidance in relation to the persons appointed by the Appointments Commission. They should perhaps include – 2 people with direct experience of the regulation of other professions; one person able to speak for survivors of sexual and domestic abuse; and we would look for other suggestions as to relevant roles/experience that would be useful.

3.107 We understand that the current position is that the Designated Officer and the Secretary to the CDC are employed jointly by the Archbishops' Council, and the Church Commissioners pursuant to an agreement under section 6 of the National Institutions Measure 1998. They and any new staff posts would need to be dealt with in the same way. The CDC itself is unlikely to have either legal personality or its own money.

Periods of Limitation

3.108 Currently there is a limitation period of 12 months from the act or acts complained about for bringing a complaint. The PoT can give leave for a complaint to be brought outside that period if satisfied that there is good reason, and having given the respondent an opportunity to make representations. The Measure was amended in 2016 to exclude from any limitation period cases where the misconduct was of a sexual nature towards a child, or the PoT considered that a complaint of sexual misconduct towards an adult related to a vulnerable adult, again having considered any representations made by the respondent. IICSA has recommended that the 12-month limit should be disapplied to all complaints with a safeguarding element.

3.109 In our view there should be no period of limitation in relation to complaints of serious misconduct, subject to the right of a respondent to argue that they cannot have a fair trial as a result of the passage of time (see above at para 3.91.iii).

3.110 But we are equally of the view that in relation to less than serious misconduct there should be a limitation period. This is standard in all professions. What is a reasonable period? In the history of clergy discipline it has varied from 6 months to 5 years. The original proposal in *Under Authority* was 2 years; that was reduced by Synod to 12 months. We are conscious that in several professions with lower limits ombudsmen have nevertheless said that it should be 2 years. We consider that as the system of 12 months has been in operation for 15 years it would be seen as a disservice to clerics to extend that particularly as this is only in relation to less than serious cases. That time limit would only start to run from when the complainant was aware or ought to have been aware that they had cause to complain. As to whether there should be any possibility of applying to proceed outside that time limit, we found more difficult to decide. We finally decided that there should be such a possibility but that the applicant would have to supply cogent reasons why they had not complained earlier. We were particularly aware that there are people who will hold a threat of a complaint against a cleric in a bullying manner and in the end if they don't get their way they launch the complaint. The system should have no truck with such behaviour. We found it difficult to imagine circumstances where someone in relation to less than serious misconduct would hold back from complaining and have good reason for coming forward after 12 months knowing all along that they had cause to complain, but we felt that we should not exclude the possibility that there might be such a case. The enabling provision would make it clear that the balance in such cases lay in the way we have described.

3.111 We say that conscious of the IICSA recommendation to disapply the 12-month time-limit for all complaints with a safeguarding element brought under the Clergy Discipline Measure. All safeguarding cases that are about serious misconduct will, under our proposals have no limitation of time. There will however be cases with a safeguarding element that are less than serious. These will typically be cases where a cleric has negligently, rather than deliberately, failed to follow safeguarding advice or guidelines, and which have resulted in no harm. We see no reason why these, which will usually be being brought by a safeguarding officer, will not be brought very soon after coming to light. We think that a limitation period will concentrate minds. The time will also, unlike now when it is from the act complained about, be from the time when the complainant (ie DSO) knew there was a cause to complain about. We think that our proposals in the preceding paragraph meet the justice of safeguarding cases that allege less than serious misconduct.

3.112 We consider that our approach of dealing differently with serious and less than serious cases will meet both the justice and the substance of the IICSA criticism and proposal.

Section 30 cases

3.113 Currently (and since the mid 19th century) there has been a fast-track procedure for cases that follow a secular court conviction (s.30 CDM). That will be replicated.

3.114 s.30 also deals with cases where clerics become divorced. There is a duty under s.34 to report the fact of the divorce 28 days after the decree has been made absolute. We consider that should continue so that the bishop/archbishop can investigate the matter. However whereas until recently divorce court findings would be conclusive proof of matters under s.30, the implementation of the Divorce, Dissolution and Separation Act 2020 in the autumn of 2021 will mean that the assertion that a marriage has irretrievably broken down will be taken as conclusive proof that the marriage has broken down without any need for particulars as to why. There will be no finding of adultery or unreasonable behaviour, nor even any allegation of such in the future conduct of divorce proceedings. However, we consider that for all sorts of reasons a bishop will need to enquire into any marriage that has broken down. Whether it gives rise to any complaint under the Measure will of course depend on what has happened.

The Archbishops' List

3.115 Our proposal is that only serious misconduct offences should be registered on the Archbishops' List. We also would encourage a review of process in relation to that list so that it is possible for a listing to be removed in appropriate circumstances. We would also suggest that existing entries on the Archbishops' List recording a rebuke

or injunction or other less serious penalty should be removed automatically by any new Measure.

3.116 The List should also be accessible to the public, since the imposition of penalties is publicised; the List could be assimilated into any national register of clergy.

Deposition from Holy Orders

3.117 IICSA proposed that deposition from Holy Orders should be reintroduced in relation to misconduct. We understand the reasoning and symbolic weight of that proposal as it is a mark that someone is not fit to hold Holy Orders at all. However we note that the effect of deposition in English Canon Law does not mean that someone cannot be appointed to a ministerial post elsewhere in the Anglican Communion, they are just barred in the Provinces of Canterbury and York. We have been told of cases such as one where a priest deposed in England subsequently held a ministerial post in the Scottish Episcopal Church. We consider this is a matter for the House of Bishops to resolve and if that resolution is to reintroduce deposition then it can easily be accommodated in any new Measure.

Permission to Officiate (PTO)

3.118 We have considered the question of those with Permission to Officiate (PTO). We are aware that in recent years that has been criticism of what some have regarded as the arbitrary way that this can be denied or revoked. However we are aware that there are now very extensive regulations about the grant and withdrawal of PTO and we have felt that as it does not affect livelihood and home it is best left alone by us.

3.119 We understand that a licence to serve in a diocese granted by its bishop is a different matter from PTO and may involve the potential loss of home and livelihood. We will maintain the effect of s8(2) that such a licence shall not be terminated by reason of that person's misconduct otherwise than by way of proceedings under the new Measure (see s.8(2) of the CDM).

Political Opinions

3.120 We would maintain the current protection from proceedings in respect of the lawful political opinions or activities of the clergy (see s.8(3) of the CDM, together with the exception provided in s.8(5)-(10) of the CDM). This freedom of speech protection was first introduced in the 1963 Measure, continued in the original 2003 Measure and then added to by the Clergy Discipline (Amendment) Measure 2013. We consider that a similar protection needs to be retained**.**

Suspension

3.121 Suspension is another matter we must address. Currently a bishop can suspend a priest if a complaint has been made about them, if they have been arrested for a criminal offence, if they have been convicted of an offence mentioned in s.30, if they have been put on a barred list, or if the bishop is satisfied on the basis of information from the local authority or the police that the priest presents a significant risk of harm. That significant risk of harm is defined in s.36(2A) as harm to a child or vulnerable adult. There are other provisions in s.36 about the details of how this is all dealt with. There is also provision in s 36A to suspend a priest on making an application to the PoT to proceed out of time. In such cases the bishop may not exercise that power unless satisfied that the suspension is necessary in all the circumstances – s.36A (3). Suspensions are for 3 months or until the conclusion of various events, whichever is the shorter, and are then renewable. There is a right to appeal to the PoT against a suspension. There were 202 suspensions of priests in the first 14 years of the operation of the Measure.

3.122 Clearly there must be a power to suspend. The Code says in para 217 that a suspension can only be imposed if necessary. And in para 220 it says that "When considering whether to impose a suspension the bishop should take into account the interests of the respondent, the respondent's family, the complainant, any witnesses who may be called upon to testify in the course of proceedings, the local church and community, and the wider church and community. When taking into account the interests of the local church and community the bishop should in particular consider whether their pastoral, liturgical and other needs can be provided for adequately in the absence of the respondent."

3.123 However necessity is only mentioned in the Measure in the circumstances described in s 36A. And nowhere is necessity defined in the Measure or the Rules. We also note that in s 36(1)(e) which deals with risk of harm, it is the risk that is significant rather than the harm. We are aware that the Children Act 1989 focused on the risk of significant harm. In any event there is no guidance as to how to assess that risk.

3.124 We are of the view that a suspension should only ever be imposed if it is necessary and that the necessity should be because there is a risk of significant harm. We note that ACAS guidance for employers provides:

> "Suspension should usually only be considered if there is a serious allegation of misconduct and either:
> working relationships have severely broken down; or
> the employee could tamper with evidence, influence witnesses and/or sway the investigation into the allegation; or
> there is a risk to other employees, property or customers; or
> the employee is the subject of criminal proceedings which may affect whether they can do their job."

3.125 We consider that similar principles should be applied in clergy discipline matters. We therefore propose that consideration of suspension should proceed in the following way:

The threshold upon which the bishop will have power to suspend a cleric from exercising or performing without the leave of the bishop all or any of the rights and duties incidental to their office is that

i. A formal complaint has been lodged; a cleric has been arrested on suspicion of committing a criminal offence; a cleric has been imprisoned or been convicted of a non summary only offence; a cleric has been included on a barred list; the bishop is satisfied on the basis of information supplied by police or local authority that the cleric presents a significant risk of harm (to a child or vulnerable adult); **and**

ii. That it is necessary to do so in all the circumstances of the case

    In considering whether it is necessary to do so the bishop shall take into account the interests of the respondent, the respondent's family, the complainant, any witnesses who may be called upon to testify in the course of proceedings, the local church and community, and the wider church and community. When taking into account the interests of the local church and community bishop should in particular consider whether the pastoral, liturgical and other needs can be provided for adequately in the absence of the respondent

iii. **And** the bishop shall consider in particular if a suspension from exercising or performing some or all of the said duties is not imposed:

    - the extent to which the cleric might interfere with the ongoing investigation and/or proceedings;
    - the risk of harm that might be caused to any person;
    - the risk of damage to or loss of any property;
    - the ability of the cleric to satisfactorily perform the duties of their office;

    whilst the investigation and/or proceedings are under way.

3.126 And an archbishop shall consider the same matters when considering whether to suspend a bishop.

3.127 In relation to the initial threshold (3.126.i above) that enables a bishop to consider suspension, we are aware that it is common police practice not to arrest people whom they interview under caution. There are a number of reasons for this to do with 'custody clocks' and other timetabling issues. In these circumstances it may well be that "a cleric has been interviewed under caution in relation to the suspicion tha they have committed a criminal offence" should be added to the list at sub paragraph i of paragraph 3.126 above.

3.128 It should also be made clear that when a bishop or archbishop is considering information from the local authority or the police that the priest presents a risk of

significant harm, the (arch)bishop must apply their own mind to the evidence provided and come to their own decision as to the real extent, if any, of the risk. It should be clear that the risk is presented by the cleric personally, not by the institution in which they work (or lead).

3.129 There will continue to be a right of appeal to the PoT against a suspension.

Bishops and Archbishops

3.130 Bishops will be subject to an identical process, with a separate provincial panel of assessors, composed of the lead assessors in the province. The complaint against a bishop should be made to the Archbishop of the province where they minister or in the case of a retired bishop where they ministered at the time of the alleged misconduct. Each Archbishop would receive any complaint about the other Archbishop.

3.131 We are aware that recusal has been an issue under the present Measure. It is not currently addressed in the Measure and has been "worked around" and no one has challenged those work arounds so far as we know. But it is not satisfactory. Recusal should be expressly provided for, but it should be expressed to be exceptional ie only in the case of a family member or some such very close association. This relates not only to bishops and archbishops but also the Dean when dealing with applications for leave. 'Conflict of interest' for all involved in the operation of the new processes should be defined within the Measure.

Doctrine, Ritual and Ceremony

3.132 Doctrine, Ritual and Ceremony (DRC) – proceedings in relation to these matters has remained under the 1963 Measure. There was a proposal in about 2006 by a House of Bishops Working Group to reform the procedures in DRC cases. It seems never to have gone anywhere. https://www.churchtimes.co.uk/articles/2004/25-june/news/uk/report-offers-new-rules-for-heresy-trials is a Church Times article on the emergence of the proposals. And https://www.churchofengland.org/sites/default/files/2018-10/gs1554-clergy%20discipline%20%28doctrine%29%3A%20report%20of%20a%20working%20group%20of%20the%20house.pdf is the paper the working group had produced.

3.133 Our scheme would not be appropriate for DRC cases. Any proposals for the reform of that type of complaint should be addressed elsewhere and by those more suited to deal with such issues than this working party.

A post scriptum

3.134 The one matter that has concerned us and to which at the moment we have no really satisfactory answer is how to deal with cases where the complaints process is weaponised by unhappy parishioners against a priest. The threat of bringing a complaint is used to try and get a priest to bend to their will and in due course, sometimes after many months, a complaint is launched. Throughout this time the priest will have much anxiety and sometimes great stress at the prospect of losing their home and livelihood although they know or trust that they have done nothing amiss. Currently even when the complaint is launched it may be many months before it comes to a conclusion. In some cases in order to preserve their home and livelihood they will have submitted to a minor penalty, even though they believe that if they had been able to withstand for longer the matter might have been dismissed. And in many cases the result is a blemished file and the requirement of disclosure in confidential declarations which may disadvantage them in applications for subsequent posts. Even if the case is dismissed as vexatious there is no sanction against the complainant who can and sometimes does launch another complaint which follows a similar pattern. We have wondered what can be done and have done our best to ensure that a speedy independent assessment will quickly get to the bottom of this sort of case and see it off. We have felt ourselves limited as it is generally accepted that a bishop has no effective power in relation to lay complainants. It is generally believed the bishop does not even have an ability to rebuke them.

3.135 We wondered whether it would be possible for a cleric to self-refer in the case of a threatened complaint to bring it to a head. But we decided that there were too many complications in respect of that and that we must just focus on the speedy resolution of the triage stage. We also contemplated the possibility of having a list of vexatious complainants, who would not be able to bring a complaint without the leave of the President. But that would not deal with the one-off cases. In the end we decided that we must just focus on getting a system that works efficiently and that assessors are well trained to look for and identify this sort of case.

Walking alongside us on our journey

3.136 Whilst we have been meeting, discussing these matters and coming to our conclusions, we have been very conscious that we have not been alone in considering these matters. Apart from the Sheldon Hub to whom we have referred several times, two other bodies have also been considering the CDM and the extent to which it requires replacement or revision. Since we published our Interim Report each of them has also put their views about the reform of the CDM into the public domain.

3.137 The first is the IICSA report published on 6th October 2020. The second is the Bishop at Lambeth's group, who published their Progress Report on 4th December 2020. In that Progress Report they spelled out their thinking on three themes: the need for a

triage system, the creation of a central professional standards agency to deal with disciplinary matters and their proposed reliance on professional standards as the delineator of misconduct.

3.138 We need to make some observations about what each of them have said as each are rightly held in high regard and many will be looking to see what these authoritative sources say about the way any reform of clergy discipline should proceed and how our proposals relate to their thinking. That we do respectively in the chapters that now follow. In chapter 4 we shall look at IICSA and safeguarding and in chapter 5 we shall examine the themes being developed by the Lambeth Group.

The journey continues

3.139 Clearly the journey is not over. We will be staying in touch as a Working Party from time to time. We will consider the responses and reactions that people offer when they read what we are proposing. There may be details that we have missed. As we have discussed our proposals they have evolved, and as we think about situations that may be put to us that we have not yet discussed, they will surely evolve further. We look forward to further dialogue with the Lambeth Group, with the Sheldon Hub and with others. We are persuaded that together we can devise something that is not only better than the current system, but something that reflects what and who we are as the Body of Christ.

Chapter 4

Our current context – IICSA and safeguarding

4.1 Although when the IICSA enquiry was opened, counsel to the inquiry said that "We want to examine whether CDM is fit for purpose in dealing with complaints about child protection and safeguarding …", it is to be noted that its way of addressing these issues was in marked contrast to how it dealt with other issues. In relation to child sexual abuse it dealt with a number of specific cases and examined what had happened and how the cases had been dealt with. It did not examine any particular CDM cases; nor did it rely on any statistics about the CDM. We attach as an annex a record of all the reference to disciplinary proceedings or the CDM that we have identified from the proceedings before the Inquiry, and who said what about them (Annex 5).

4.2 Apart from Matthew Ineson whose case is still subject to a review by Justin Humphreys, and who was complaining about lack of action by several bishops, the evidence before the Inquiry about particular cases was very limited. Sir Roger Singleton spoke about his need to obtain leave to proceed out of time in his complaint against the Bishop of Chester, and about the delays caused when the Archbishop of Canterbury recused himself and consideration of that case and also the case against the Dean of Lincoln were transferred to the Archbishop of York. The Chester case has not yet concluded. The Lincoln one was concluded with a conditional deferment for four years and an injunction requiring the respondent to undertake some refresher training in safeguarding. The Bishop of Chester spoke about his imposing a 20-year prohibition on Revd Ian Hughes for possessing indecent images of children. Archdeacon Lain-Priestley spoke about why it was considered that CDM cases could not be brought against two people for their involvement in the case of Timothy Storey. The York Diocesan Safeguarding Advisor (DSA), Julie O'Hara, spoke about the case concerning a priest who had not been prosecuted for an allegation of sexual assault on his daughter and another case of a priest who was unwilling to ask a PCC member to step down and the discussions as to whether a CDM complaint should be made about him. That priest himself gave evidence about the matter including the threat made to him of a complaint being issued under the CDM. Edina Carmi had dip-sampled 4 dioceses and gave evidence about what she found. She referred in passing to a Chichester case where a priest admitted non-recent abuse which the police did not prosecute but a CDM was brought and he agreed to a lifetime prohibition; also to a case in London where she commended the Archdeacon of London for lodging a complaint rather than expecting the victim to do so. And she referred to the case in the York diocese referred to above that might have gone to a CDM but did not, being dealt with by capability procedures.

4.3 That was the extent of the evidence about specific cases. For the rest, the then DO gave evidence about how the CDM operates. The Bishop of Buckingham gave evidence along the lines of what is said in the book he had written along with Revd Rosie Harper – *To Heal and Not to Hurt*. In it they made a number of criticisms about the CDM, almost all of which are addressed and remedied in the proposals we put

forward. We are confident that our proposals meet their "Hot Stove Rule". We provide a short synopsis of the issues they raise in Annex 6.

4.4 Others who spoke almost in passing about the CDM were Justin Humphreys, Rupert Bursell, Mark Sowerby, Meg Munn, the Archbishop of York John Sentamu, Graham Tilby, Bishop Peter Hancock, and the Archbishop of Canterbury. Evidence was read from Jo Kind (MACSAS). We summarise all their evidence in Annex 5.

4.5 One of the problems IICSA faced was the lack of data about safeguarding cases and the CDM. Graham Tilby provided some data about the number of cases brought under the CDM in relation to safeguarding matters. At para 150(d)(4) of his witness statement he said that in 2017 disciplinary measures were taken under the CDM in 39 cases, but he was unable to give a more detailed breakdown. So far as we are able to discern, IICSA was not provided with any of the data that the Clergy Discipline Commission (CDC) obtains on an annual basis that would have enabled it to have an overall picture of the operation of the CDM. Since IICSA heard evidence, the CDC has begun to collect evidence of the number of complaints that relate to misconduct of a sexual nature towards a child or misconduct of a sexual nature towards a vulnerable adult. In 2019, the first year for which such data is available, there were 6 complaints in each of those categories.

4.6 The two tables below show the brief details of what happened in those cases. In each category we have not as yet been able to ascertain the details of one of the cases. But the trend is clear from the other five in each category. In relation to the children cases the police investigated but prosecutions were rare. Those cases were then investigated by the DO and in one case there was an admission and lifetime prohibition, in the three that were denied, one is awaiting a tribunal hearing, but in two the PoT declined to send them to a tribunal hearing. The one case the police prosecuted resulted very recently in a conviction and will inevitably result in a life-time prohibition under s.30.

Children cases

	Brief description of misconduct	**Was it admitted?**	**Did police investigate?**	**How was complaint disposed of?**
1.	Non recent case of child abuse	Denied	Yes, but no prosecution	President did not refer to tribunal
2.	Non recent case of child abuse	Denied	Yes but no prosecution	President did not refer to tribunal
3.	Non recent case of child abuse	Admitted	Information not provided to us	Prohibited for life
4.	Recent case of child abuse	Denied	Yes, but no prosecution	Referred to tribunal – case pending
5.	Non recent case of child abuse	Denied	Yes, very recent conviction – prison sentence	Awaiting s.30 process
6. No information available				

4.7 The vulnerable adult cases include one that was wrongly reported as clearly it was not of a sexual nature, but involved fraud; that was the only one investigated by the police and resulted in a conviction and life-time prohibition. The others all resulted in admissions to some degree and in penalties being imposed by consent.

Vulnerable adult cases

	Brief description of misconduct	**Was it admitted?**	**Did police investigate?**	**How was complaint disposed of?**
1.	Intense and inappropriate relationship	Admitted in part	No	Prohibition for 5 years
2.	inappropriate words and behaviour	Partially admitted	No	Penalty by consent (no further detail)
3.	Inappropriate sexual behaviour	Partially admitted	No	PTO withdrawn
4.	Inappropriate pastoral handling of vulnerable adult	No admission	No	Bishop imposed rebuke outside the CDM
5.	Cleric conned elderly woman of money		Yes – and conviction resulting in 10month prison sentence	Prohibited for life under s.30
6. No information available				

4.8 It is also clear that to an extent IICSA did not fully understand how the CDM operates. In section B.3 (pages 57-63) at paragraph 4 the Report states that "The majority of cases under the CDM will be dealt with by the diocesan bishop, with only a small minority passed to the designated officer". In para 5 the Report says "there is no system of oversight to ensure that this is the case at present" (ie safeguarding cases being referred to the Designated Officer). It clearly had not grasped that it is only cases where misconduct is denied that are referred to the DO and that admitted cases go straight to penalty.

4.9 The starting point for us has been to examine what has been said in recent years by safeguarding professionals about their concerns in relation to how the CDM deals with safeguarding cases. The sources we have found most helpful in that regards are a report written by Emily Denne on behalf of the National Safeguarding Team (NST) which was presented to the House of Bishops in April 2019 following the NSTS's "widespread consultations" and the 2019 annual report of the National Safeguarding Panel (NSP).

4.10 The NST Document describes the widespread nature of the consultations it conducted. It then identified what it described as "Key issues identified". They were:

- Lack of communication with complainants and respondents.
- Both complainants and respondents being and feeling unsupported through the CDM process.

- Lack of clear supporting guidance and policy regarding and also training for those involved in cases bridging both CDM and safeguarding policies, which do not always work well together.
- The role of the independent risk assessment within the CDM process – which should come first and what to do if there is insufficient evidence for a CDM.
- Out of time applications, noting changes made for sexual abuse cases but concerns about other forms of abuse where the rules still apply.
- The length of the CDM process and the impact of delays on all concerned.

4.11 They had also consulted about what worked well and what didn't. What worked well were cases of admitted or proven guilt. The cases that did not work well were those were there was no case brought or where the respondent did not admit guilt.

4.12 As far as specific safeguarding issues were concerned they were identified as:

- Victims are often vulnerable and require significant support: this may impact on their ability to submit a CDM complaint.
- The CDM process does not appear to work well in cases involving allegations of domestic abuse perpetrated by a member of clergy. It was noted that this was often because complainants withdrew their statement, making it difficult to pursue a CDM complaint.
- There is limited scope within the CDM process for raising concerns about a pattern of behaviour and/or less serious incidents.
- The CDM process does not appear to take issues relating to spiritual abuse seriously.

4.13 They also consulted about what amendments to the Measure, Rules or Code were needed to make them work more effectively in relation safeguarding-related cases. The responses were:

- Introduce a two-track system that allowed for complaints below the CDM threshold to be heard, so enabling the offering of a more pastoral response where appropriate and ensuring that cases which did not meet the CDM threshold could still result in action.
- Change the role of the Diocesan Bishop to make the process more independent and so that the cleric does not lose their pastoral relationship with their Diocesan Bishop; so CDM procedures could be heard by an alternative bishop.
- Remove out of time applications for any case regarding safeguarding and abuse.
- Vexatious complaints – stopping people using CDM to pursue personal agendas.
- Guidance should be provided on speaking to parishes about suspensions.
- Reduce delays and make the process faster.
- Introduce neutral suspension, although it was recognised there were difficulties about that.
- Improve guidance regarding links between safeguarding and CDM and around CDM, making a complaint, and the links to HR processes.

- Improve pastoral support to both respondent and victim.

4.12 Finally, the report made specific recommendations which were:

- Guidance should be developed which focuses on the inter-relationship between safeguarding and CDM.
- Training to all those involved in safeguarding-CDM cases should be offered.
- All parties should be offered support.
- Both respondent and complainant should receive regular updates.
- Every effort should be made to reduce the length of process.
- Out-of-time applications should be allowed for all cases of abuse automatically.
- Consideration should be given to a two-tier process.

4.13 The NSP Annual Report for 2019 recorded that the NSP had considered the CDM at two meetings (in April and May). The first meeting received a presentation on how the Measure worked. The second considered what we understand to be the NST Report we have just referred to. The Annual report records that "The panel identified a significant number of areas that the working group should consider in relation to safeguarding concerns. It was felt strongly that there needs to be a different process for safeguarding to other complaints or disciplinary matters. Difficult areas include managing different burdens of proof required in criminal and civil processes and the difficulties for bishops who have both a discipline and a pastoral role. The panel has asked to be kept updated on the progress of the working group and would expect to have a further question session once there are proposals for change."

4.14 Meg Munn, the independent chair of the NSP, has a blog in which she records what has happened at meetings of the NSP. In June 2019 she recorded that

"After a full discussion, the National Safeguarding Panel agreed on a small number of recommendations and a number of areas we recommend the working group to consider.

- Currently the Clergy Discipline Measure only allows for complaints to be made within a year of the issue arising. The only exception is for sexual abuse when there is no time limit. The panel recommended that there should be no time limitation under the discipline measure on the investigation of any safeguarding concern.
- A lot could be done to improve the information given to those raising a concern and those subject to the discipline measure. This could be partly achieved through leaflets. There also ought to be agreed timescales in which parties are kept informed of the progress of a concern.
- We supported the recommendation in the National Safeguarding Team report that there should be special measures for vulnerable victims and witnesses.

This happens in the criminal justice system to enable best evidence to be collected.

The working group should consider the following issues:

- The threshold for the use of suspension for those subject to a disciplinary process.
- Should there be a different process depending on the level of concern – and how should thresholds be determined?
- What should the relationship be between disciplinary processes and risk assessments?
- How can behaviour before ordination be considered in relation to safeguarding and that any process should also apply to ordinands.
- Consider the issue of independence in the investigation and in relation to the current conflict for bishops between discipline and pastoral support for clergy.
- The "ownership" of any complaint – once a safeguarding complaint has been made; its progress should not be determined by the complainant but by the church and the wider safeguarding considerations.
- If the Church has the primary role in the disciplinary process what support should there be for the complainant, so they do not feel disempowered by the process?
- How to support those clergy subject to complaints?
- Should there be some form of peer review of decision making and who should scrutinise or audit decisions by dioceses?
- Training for bishops and diocesan registrars – most bishops have only occasional involvement in a disciplinary process and so there is little experience within one diocese.
- How to properly take account of the different burdens of proof – i.e. criminal – beyond reasonable doubt; civil – on the balance of probabilities and how these affect a disciplinary process when criminal proceedings are also involved. Should the processes be undertaken in parallel or sequentially?
- The relationship between dioceses and the National Safeguarding Team in safeguarding cases.
- The need to consider the wider context – what do other organisations do in relation to these issues, including what are the processes for those who like clergy are not employed but office holders?

4.15 Not surprisingly there are a number of common and related concerns that arose in the NST report and the deliberations of the NSP. It seems to us that there were some specific matters that would need amendment of the law and many that are matters of good practice. We also consider that with a few exceptions the issues identified as needing improvement or change are equally applicable to non-safeguarding cases as they are to safeguarding cases.

4.16 The matters requiring amendment to the law are:

- Periods of limitation;
- A two-tier process;
- Vexatious complainants.

4.17 Other matters that recurred several times in our consideration of the above and which relate to non-safeguarding cases as much as to safeguarding cases are:

- Criminal prosecution and CDM – who goes first?
- Reducing delays.
- Support for both complainant and respondent.
- Regular communication with both complainant and respondent.
- The bishop's role.
- Review and audit of decision making.
- Training for all involved.
- Special measures for "vulnerable and intimidated witnesses".
- Suspension and its impact on parishes.

4.18 The matters that have been raised that would seem to be specific to safeguarding cases are:

- Relationship between concurrent processes of Safeguarding and CDM.
- Issues around risk assessments – which first and what if no CDM?
- Domestic abuse cases – problems caused by the withdrawal of the complaint.
- Spiritual abuse cases.

4.19 We have spelled all that out in some detail as we have been concerned to hear in a number of our conversations and consultations that not only is the current CDM not fit for purpose in safeguarding cases, but that special provision should be made for safeguarding cases, or even that separate provision altogether must be provided for safeguarding cases. As a working party we have been disappointed that we have not been able to have more direct engagement with safeguarding professionals in relation to these issues, although it was not for want of trying on our part. And as noted earlier there is a sparsity of data about safeguarding cases within the CDM and there has been minimal reference to specific cases and issues that they have faced. So the sources we have referred to in this review of what the NST and the NSP were saying in 2019 and 2020 is probably the best means of uncovering the concerns that have prompted people to say the things we have been hearing.

4.20 Of course others will form their own judgements, but our view is that the scheme we have proposed does deal directly or indirectly with all these various concerns:

- It has a two-tier approach;
- it will hopefully quickly identify and dispose of vexatious complaints;
- it has tight timetables which we believe can be met and which will be monitored and chased;
- it will put in place appropriate support for both parties throughout the process;
- it will ensure regular communication with both complainant and respondent;
- it has addressed we believe sensibly and proportionately the issue of limitation periods;
- it will restore the bishop's ongoing relationship with clergy (and laity) as the chief pastor, but recognising that that role has a loving disciplinarian element;
- it maintains the bishop's independence in that role by entrusting the deciding of disputed facts in the process to others (assessor/tribunal);
- it recognises the need for and provides the necessary training for all who have different roles in the process; and
- there will be a method of monitoring and reviewing the processes.

4.21 So how will it work in practice? In particular how will the processes we are proposing deal with those few matters that are exclusively safeguarding issues. We are working on the assumption that as now whenever a safeguarding issue is raised the matter will be referred to the DSA. And we anticipate that by the time any implementation of any of our proposals takes place the DSA will have become a Diocesan Safeguarding Officer (DSO) with a real measure of independence from the diocese. If any complaint should be the first disclosure of sexual abuse then it would be referred immediately to the DSA/DSO. On receipt of the disclosure we anticipate the DSO will then refer the matter to the LADO and/or police if it alleges potentially criminal conduct against a living person. Under the current safeguarding practices, a core group will be established to manage the case and if it is a case of an allegation that does not require referral to the police that group will be responsible for conducting an investigation into the allegation. We have noted with some concern criticisms that have been made of the Core Group processes in relation to their investigating matters. We hear criticisms not only that they have been inconsistent in their approaches in different dioceses, that these investigations have taken inexplicably long times, but also that often the cleric whose conduct is being investigated has been denied some of their Article 6 rights. We understand that these processes are being reviewed and we will work on the basis that the processes will in the future be more akin to the type of investigation we have been describing as an assessment. We assume that at the conclusion of that process, if it is considered appropriate to make a complaint under the CDM, the DSO would be responsible for laying that complaint. Currently that is usually done by an archdeacon and they would retain the standing to do so, but it seems to us that the more appropriate person in safeguarding matters would be the DSO. We have indicated previously that we will abolish limitation periods in relation to all allegations of serious misconduct. However we propose to keep the 12 month period for less than serious misconduct. That period will only run from the point where the complainant (the DSO) recognises there is a matter to complain about. We consider that one of the purposes of having a 12 month limit in those circumstances is that it will focus

minds to investigate matters expeditiously. We are aware of cases where this type of investigation has dragged on and on for no apparent good reason.

4.22 In cases of abuse of a child or a vulnerable adult we would anticipate that the majority of cases, if credible, will result in a criminal prosecution. Currently the issue of prohibition under the CDM awaits the outcome of the criminal process and in the case of a conviction follows automatically under s.30 of the current CDM. We would propose some similar provision. If the cleric were acquitted then the core group would no doubt consider whether they felt there was sufficient evidence to bring a complaint, which would be judged by a different standard than had applied in the criminal court. If they decided to proceed then again we would anticipate that the DSO would lay the complaint. Such complaints would undoubtedly relate to serious misconduct and so would proceed along the serious misconduct track to a tribunal hearing within 6 months.

4.23 We have addressed how we consider suspension should operate in Chapter 3 at paragraphs 121-129. In short suspension should be based on necessity, the necessity will normally be because it is judged that there is a risk of significant harm.

4.24 We have raised previously the possibility that in cases where there is to be a criminal prosecution the disciplinary process might not always wait for the outcome of criminal proceedings given the inordinate delays currently being experienced in the criminal justice system. We asked about this in our final consultation. Of the 35 respondents 12 did not address the point, 9 felt we should wait for any investigation/prosecution to conclude, 5 said that we should not wait and 9 were equivocal saying such things as it depended on the merits/facts of the individual cases.

4.25 We hope that at a high level there could be established a national protocol about sharing information with the police and local authorities. We understand that in some dioceses that works well but in others not so well. We hope that putting DSOs on an independent basis would encourage greater confidence in the church structures and processes that would enable such a national protocol to be agreed.

4.26 We hope that a development from that might be that the disciplinary process could proceed in advance of any criminal prosecution. It happens in a number of professions. The position in the medical profession was reviewed quite recently in the case of *North West Anglia Foundation Trust v Gregg* [2019] EWCA Civ 387[12]. On the issue of parallel proceedings, the Court of Appeal having reviewed the authorities on the issue stated the following principles at paragraph 107 of the judgment:

[12] https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2019/387.html&query=(gregg)

- An employer considering dismissing an employee does not usually need to wait for the conclusion of any criminal proceedings before doing so (*Harris, Harrison*).
- A fortiori, an employer does not usually need to wait for the conclusion of criminal proceedings before commencing/continuing internal disciplinary proceedings, although such a decision is clearly open to the employer (*Mansfield*).
- The court will usually only intervene if the employee can show that the continuation of the disciplinary proceedings will give rise to a real danger (and not merely a notional danger) that there would be a miscarriage of justice in the criminal proceedings if the court did not intervene (*Jefferson, Lavelle*).

4.27 It is often said that the church should wait until the conclusion of any criminal proceedings so that it can then form a view as to whether it should proceed with disciplinary proceedings. We consider that unhelpful. The criminal proceedings have a different standard of proof which we note was something referred to in the NSP discussions. That being the case a different judgment must be made as to whether there is a case to answer in the disciplinary proceedings. That is not helped by waiting to see if the higher hurdle has been jumped in the Crown Court. It risks clouding the issue with an appeal to sympathy that it would not be right to make the cleric go through it all over again.

4.28 In a church that is concerned for truth there can be no reason we can see, in the absence in any particular case of the real risk of a miscarriage of justice in either set of proceedings, that the church should not be anxious to know the truth, so far as one can this side of heaven, so that justice can be done and done quickly for all concerned. However, all of that will be dependent on trust and information sharing with the police throughout both sets of proceedings.

4.29 We have also indicated that one of the matters that would be considered at the PDH would be the question of special measures for witnesses. It is our understanding that such orders have been made in Tribunal Hearings in the past. Such matters as screening of witnesses or even video linking a witness to the hearing are within the inherent discretion of the Tribunal and in our judgement there is no requirement for them to be included in legislation. However it may give confidence to those contemplating complaining if we provide for them in legislation and make their consideration part of the 'agenda' for the PDH. It would also be appropriate in our judgement that any advocate in proceedings where a vulnerable witness is to give evidence that the advocate shall have completed the Bar Council vulnerable witness training or whatever might be its future equivalent, and that any Tribunal Chair will also have had relevant training from the Judicial College.

4.30 The other classic species of safeguarding cases is failing to follow policy or guidance. For the most part these cases arise from neglect or carelessness. If there were cases that appeared to indicate deliberate disobedience then they might well fall within the serious misconduct track, depending on all their circumstances. However most of those that arise from neglect are so far as we can ascertain usually admitted and

dealt with by a lower level penalty and usually with some requirement for further training. We envisage exactly that happening in this type of case under our proposed system. One of the things that we envisage is that the complaint form would include a question asking what the complainant is looking for. That would not only enable those with grievances to set out at an early stage what they would like, whether in non-safeguarding cases an apology, the repayment of fees paid upfront for a hall booking where no one turned up to open the building or some other simple resolution of their grievance; but it would also enable a DSO complaining about a cleric who failed to comply with some element of policy or guidance to say that they think that the cleric requires further training and/or a period when the cleric does not carry some particular responsibility.

4.31 We are aware that risk assessment is a controversial area. One of the concerns that we have about the current practice in relation to risk assessment is that a risk assessor, where there is a dispute of facts, is told that they must not reach a decision as to those facts. That concerns us greatly. The best assessment of harm is based on past history. An assessment of risk is an assessment of the combination of the likelihood of harm and the seriousness of that harm. If the history is not known or not reasonably certain then the prediction of likelihood is very difficult. It really is guesswork. If the level of potential harm is great as it is in all cases of abuse, then the assessment of future risks is bound to be very guarded in the absence of knowledge of what has or has not happened in the past.

4.32 In the secular courts risk assessments follow on from the finding of the facts. Of course protective measures are taken pending that finding, but the long term assessment is based on the fact finding hearing. Where it is not possible to say who the perpetrator is then the disposal of the case takes that into account, but where possible the facts are found.

4.33 In cases of sexual abuse by a cleric, there will usually be a finding of fact. That may be in a criminal court, or it could be in a tribunal hearing. However we have not yet had cases where absent a criminal conviction a case of sexual abuse has been successfully pursued to a tribunal hearing. If there is a conviction or an admission then that has been and will in the future be followed by prohibition for life and other consequent orders are unlikely to be required given the inevitable registration that will follow.

4.34 However in the lesser cases we believe that our proposals will be of significant benefit for any necessary risk assessment. Once a complaint is made that is of less than serious misconduct it will trigger an assessment. That will involve the assessor interviewing all relevant witnesses and examining all relevant material following which they will write a report making their findings of fact where there is any dispute as to the facts. That will be a matter of record and would be available for any risk assessment that needed to be made before a final penalty could be imposed.

4.35 Equally if cases of serious misconduct are not admitted and not proved before a criminal court there will be a tribunal hearing which will result in a written judgment setting out in narrative form what the tribunal has found proved or not proved.

4.36 There will of course be cases as we have described above where the matter has been investigated at some length by the DSO (presumably usually working through a core group) before a complaint is made. But when the complaint is made our processes will kick in and should lead in all cases to a resolution of the facts.

4.37 Finally we commend for careful consideration the worked examples contained in Annex 9. Examples 4, 5, 6, 7, 8 and 9 are all cases that contain safeguarding issues to a greater or lesser extent. We believe that working through them will show very clearly how our proposals address in detail the issues that were identified in the NST and NSP papers to which we referred earlier in this chapter.

Chapter 5

Our current context – The Lambeth Working Group

5.1 The Lambeth Group has now published a Progress Report and engaged in its own consultation process. It has put forward its proposals under three headings. Triaging of Complaints; A Central Office; and Professional Standards.

5.2 We understand that as a result of their consultations they are now refining those proposals. We offer the following observations which we hope might assist that process.

Triaging of Complaints

5.3 The proposal is for a system of triaging. That would involve an initial assessment on receipt of the complaint. They raise the issue as to whether that should happen at a diocesan level or centrally. Their proposal is that the complainant would indicate whether this was a grievance or serious misconduct. If the complainant says grievance and the diocese agrees then the diocese accepts jurisdiction and the process is run at diocesan level. If the complainant says "serious misconduct" then it is referred to the central office. If the diocese is unsure then it is referred to the central office who will review it and can send it back to the diocese as a grievance or retain it and deal with it as serious misconduct.

5.4 We have a lot of questions about that process.

5.5 First and foremost – how is misconduct to be defined? Is it anything that is not a grievance? And how is grievance defined? Without definitions it is difficult to understand how particular cases will be managed. And in any event there is in our judgement a raft of complaints that are more than grievances but that are not serious misconduct by any stretch of the imagination.

5.6 The second area of questions is around the way that determination is made as to what category the complaint should be put into. As we understand the explanation in the Report, the decision is made on the complaint and before the cleric has been asked for their account and before any investigation has begun. That seems to us not to make any sense. We envisage that the malicious and vexatious complainants will never say their complaint is only a grievance. These will therefore all end up in London from where some investigation will have to commence.

5.7 It seems to us that this is just a different way of continuing to inflict on many clergy the same degree of uncertainty and distress as now.

5.8 Thirdly the split between grievance and serious misconduct leaves what is in our judgement a huge gap where you find the cases of misconduct which are less than serious. The *Under Authority* report said that minor complaints "currently form the

majority of the complaints made to a bishop" (para 8.9(c)). The statistics collected by the CDC over 14 years certainly bear that out. There are many cases where a cleric will admit falling short of the very high standards of life and ministry to which they all aspire but which is not serious enough to prohibit them. It will have revealed a need to apologise, or to do some further training, or to take a break. For them to sit in the serious misconduct pool while waiting for an uncertain eventual outcome is not a good idea. It certainly does not encourage timely admissions and resolution.

5.9 Fourthly there is no indication about who will deal with matters in the diocese. Who will make those initial decisions? How will that guarantee any independence? How will any consistent national standards be decided, promulgated, practised and monitored? What of the post code lotteries that are likely to develop?

5.10 We are also concerned that there is no indication as to what is believed to be the likely volume of traffic in these various tracks.

5.11 It is these concerns which have informed the overall framework for our proposed system of clergy discipline. Triaging needs to take place following a very speedy investigation, as proposed in *Under Authority*. Any such system requires people to be trained to national standards and to have the opportunity to build up their experience reasonably quickly and so you end up with a group of people who would be covering a larger patch than just one diocese. It also builds in the possibility for being carried out by someone from another diocese close by who can be seen as independent of the parties and the diocesan structure which will have benefits all round. If such a system of training is to be put in place for those diocesan people to deal with the referred back minor complaints, why should they not be entrusted with the triage itself. They could investigate quickly, see and hear both sides and make the triage decision and the matter could progress much more quickly to a conclusion. It was working through this level of detail that persuaded us to adopt the system we have proposed.

5.12 The serious cases will take their place in the serious track – to a PDH and thereafter very quickly to a penalty meeting if admitted and within 6 months to a tribunal hearing if denied. The grievances, or at least a substantial portion of them, hopefully will be resolved. The less serious misconduct will be dealt with by the bishop who will not have been making the decision about what happened, but presented with a conclusion about that, on which basis the bishop can discipline in love.

A Central Office

5.13 The Report correctly identifies two current inadequacies in dealing with cases on a diocesan level – (a) the small number of complaints per diocese means no expertise

is built up and disparity can arise between dioceses, (b) the bishop's role as judge and pastor is confused

5.14 The Lambeth Group are currently proposing a central office for investigating, bringing to tribunal and possibly triaging complaints. It will be staffed by a number of officers who will develop expertise to administer complaints efficiently and uniformly.

5.15 We are grateful to +Tim Thornton for allowing us to sit in on most of their consultation meetings. We sensed in many of those a preference for something local as opposed to central and yet the need for it to be bigger than the diocese to enable sufficient experience to be built up by those dealing with the complaints and to ensure consistency. For all the reasons set out in the previous section we consider that our proposal for regional panels trained to national standards would deliver just that quality of triaging that is looked for.

5.16 It is also said that that all of this being managed by central officers will free bishops to provide non-judicial pastoral support to respondent clergy. Legitimate concern about the removal of bishops' disciplinary powers is countered by saying that this is not removal but delegation. An analogy is drawn with Bishop's Advisory Panels (BAPs) in relation to selection for ministry. Although positioned within the NCIs it will not be protecting the church's interests, but will have a system of external judicial monitoring akin to the current President of Tribunals. It will be "in but not of".

5.17 Again the Report is short on detail such as how the judicial monitoring would work. Perhaps more importantly we have no indication at all as to how the system will work apart from that there will be tribunals in contested cases. If a complaint is made that the Revd A has breached professional standards and it is admitted – who then decides on the penalty, what can the cleric do if they do not accept it is appropriate, how will the penalty be administered – will it be a letter in the post? Or will there be a hearing or meeting, and if so before whom?

5.18 We are assuming that unspoken behind this will be some sort of Professional Standards Agency who will be responsible for not only developing standards, but for policing and enforcing them as well. We await the details as to how it would all work.

5.19 But a more important issue is that what is proposed cannot be described as a delegation. It is a removal, in that there is nothing left for the bishop. The current role will have been transferred by legislation and will be irrecoverable, apart from through further legislation. We have serious concerns about the theological implications of that.

5.20 And it will put the bishop in a difficult position, no less so than now. The bishop is to become the primary pastoral support for the cleric. What will the bishop be told by the centre – where is the transparency? What if the bishop is unhappy about the way things are going? It would be entirely inappropriate for the bishop to interfere. The power and responsibility for discipline (or professional standards) has been

transferred to the centre. We fear a rather unhappy and unhealthy atmosphere potentially building up between the bishops and the national professional standards agency.

Professional standards

5.21 We note with interest the reference in the Report to the Anglican Church in Australia. We are aware of the history and background that led to the present position in Australia. A helpful starting point is the article in the (2010) Ecc LJ 53 by Garth Blake AM SC entitled *Ministerial Duty and Professional Discipline in the Anglican Church of Australia*. Garth Blake has been a driving force in the Anglican Church in Australia as it has sought to recover from its own history of scandalous child abuse. He outlines in that article the history and the introduction in 2009 of the national *Faithfulness in Service* code of conduct.

5.22 The argument in the article is that there are 4 marks of a profession – specialised knowledge and skills; service of fundamental human needs; commitment to the other's best interest; and structures for accountability. In relation to the last Blake records that there had been little use of the church's "constitutional tribunals"[13] in relation to sexual misconduct, in part because of the quasi-criminal nature of the disciplinary system involving the proof of charges. It was that which led to the General Synod in 2004 recommending dioceses to pass an Ordinance to give effect to the model Professional Standards Ordinance. That provided for the establishment of Professional Standards Committees to investigate complaints about sexual assault, sexual harassment, sexually inappropriate behaviour and child abuse, and Professional Standards Boards to determine fitness for office of clergy and lay persons where there are such allegations.

5.23 Since that article was written matters in Australia have progressed further. Each diocese has adopted its own system. We have set out in Annex 3 an account of how the Australian system operates in the Diocese of Newcastle as an example. Not all dioceses do it in an identical manner. Newcastle deals with complaints about breach of standards in house, whereas the Diocese of Melbourne has outsourced the whole oversight of professional standards to a company Kooyoora Ltd, a not for profit charitable body which describes its role as managing complaints processes.

5.24 We note two things in general about how systems work in Australia. First that the definition of what can be the subject of investigation and redress is the fitness of the cleric, or church worker to hold office, or ensuring that they are in some way restricted so as to be safe. We note a resonance with our own conclusion that it is fitness to hold office, or the likelihood of prohibition that is the test as to whether something is serious misconduct.

[13] We understand this to be a reference to consistory courts, which continue to exist alongside their new Boards and Committees.

5.25 Second it is very much focussed on matters of a sexual nature and on safeguarding.

5.26 The adoption of something like the Australian system could give a different way of dealing with safeguarding matters rather than the current system of core groups and the like. But to alter the whole system of discipline on the back of this is we would suggest a step too far.

5.27 As with the approach of the Lambeth Progress Report in other respects there is no descent into detail. Until the detail is proposed it is unclear exactly how these principles of building a discipline system based on professional standards would operate. It also appears to leave untouched the many areas of conduct and discipline which we describe as less than serious. That is a serious lacuna.

5.28 We have no concerns about further work being done on the Guidelines for Professional Conduct of Clergy. There is no doubt that both the Guidelines and the Guidance on Penalties could be greatly improved to reflect how specific types of misconduct (and grievance issues) might be dealt with.

5.29 However, even if and when improved, they will by no means provide a quick fix answer to questions about what is misconduct and its seriousness. The types of ministry and types of parish vary enormously and the issue will always be what is acceptable and what is not acceptable in a given context.

5.30 We are also aware of other work being done in the Church of England in relation to professional standards. We are grateful to Bishop Martin Seeley who is leading on that work for sharing something of their very early thinking about this. We understand that what is being looked at is what is at the root of being ordained and is common to the many different roles that ordained people have. We understand they have been looking to see how other professionals approach finding that common set of standards and values around which they can deal with issues such as wellbeing, capability, performance and development. They have been looking at the police Code of Ethics to see how that profession in particular deals with such issues. There are 10 headline Standards in the police code[14]. That resonates with representations made to us by one of our consultees that we should look at the GMC's Code of "Good Medical Practice" where again under 4 "Domain" headings the values and standards that are required of doctors are set out[15]. We do not doubt that any of these comparisons will be valuable. But each of the values and standards has degrees of falling short, and when an allegation is made that a member of the profession has fallen short an assessment has to be made as to whether it was so serious that they can no longer be trusted to represent the profession and fulfil public duties as a member of it, or whether their failing is one from which they can learn and improve can make those improvements whilst remaining a member of the

[14] https://www.college.police.uk/What-we-do/Ethics/Ethics-home/Documents/Code_of_Ethics.pdf

[15] https://www.gmc-uk.org/-/media/documents/good-medical-practice---english-20200128_pdf-51527435.pdf?la=en&hash=DA1263358CCA88F298785FE2BD7610EB4EE9A530

profession. It is how professions deal with that assessment that is critical. And it is that that we shall address in the next chapter and in Annex 3.

Overall:

5.31 We have found it difficult to engage with the Lambeth group's proposals because there are no proposals that are sufficiently detailed to enable us to realistically assess them. We have made a number of assumptions about how 'the three big ideas' will work in practice. We may be wrong, they may have other things in mind; we await seeing them spelled out in detail in the next phase of their work. But what we envisage is the transfer of all discipline away from bishops to a central professional standards agency, which will have to become a body of substantial size if it is to receive all the complaints identified as more than grievances, investigate them, and deal with them through to their conclusion. It is sometimes said that "the devil is in the detail", and we would add "in more ways than one".

Chapter 6

Our current context – Secular disciplinary processes

6.1 The Lambeth Working Group states in its most recent paper that they:

> "have been inspired by many secular institutions which maintain a system of professional regulatory standards".

6.1 Annex 2 to the ELS Interim Report followed a detailed examination of secular disciplinary processes and set out some of the issues involved in reforming and simplifying the CDM system by reference to and comparison with secular disciplinary processes. That summary had been prepared by David Etherington QC who as the member of the working party with the most significant experience in the area of Regulatory Law compiled that document to enable us to understand how different professions within this jurisdiction deliver professional standards and discipline their members in accordance with those standards. He has updated that document and it is again attached as an annex (Annex 3).

6.2 We have reconsidered these matters carefully particularly in the light of further discussions about the Lambeth Group's proposals and see no reason to alter our initial decisions about the part professional standards might play in future discipline of the clergy. In summary:

i. The development of standards in secular disciplinary processes has taken place over many years with much consideration, revision and extension, so it will slow up considerably any attempt to reform the CDM, at any rate for the near future.

ii. The setting of standards is both a time-consuming and controversial process. It is dynamic and needs regular review. It requires consultation, validation and approval before coming into force. It is more easily suited to a regulator than a general 'parliamentary' body such as General Synod.

iii. It can be costly. The present system already strains existing resources, and would not appear to be a good use of money. Moreover standards are not going to be easy to set and are likely to become mired in endless debate.

iv. The setting of standards in secular disciplinary processes is not free of controversy, but it is easier to see what, for instance, the appropriate standard might be in respect of a healthcare professional whose practising work is very specific and circumscribed, as opposed to that of a priest, which contains many variants and involves his or her whole way of living, thereby encompassing much that would be difficult to categorise in specific and detailed standards. Even in the secular system this has not proved to be without difficulty for some professions.

v. A standards-based approach may prove in the case of the clergy to complicate the issues rather than clarify them and lead to cul-de-sacs of fierce and interesting debate that do not improve the system of dealing with complaints.

6.3 It is recognised in the Annex that there can be specific rules and standards applying to particular areas of concern, for example the handling of money and cases involving safeguarding.

6.4 Having given further consideration to the question of professional disciplinary standards for the clergy, we see no reason to depart from the conclusions in the Annex. There are, however, two related matters to which we draw attention:

1) ***Our proposed three-tier system (service complaints/grievances; misconduct falling short of serious misconduct; and serious misconduct) is similar conceptually to what applies in most secular professions' disciplinary procedures****.*

6.5 Within the secular system, minor complaints are normally dealt with in-house by a practice, firm, chambers, hospital or whatever. This is so, for example, for solicitors, barristers, notaries, doctors, dentists, nurses and mid-wives, and surveyors. Such complaints concern mainly service/administrative matters, and other conduct which lacks the potential to cause more than minor harm and which falls well short of disclosing unfitness to practise. A determination within the service/minor category may require a Respondent to do (or forbear from doing) something. However, the more onerous the requirement, the less suitable it would be for treatment under this category. In the case of the legal professions there is a right to take the matter further to the Legal Ombudsman.

6.6 Some regulatory bodies have a pathway for complaints that are sufficiently serious to merit attention by a tribunal, but do not require some of the protections merited by consideration of a more serious matter. This is so for example for solicitors, barristers, dentists, opticians, and surveyors. This is usually marked by limiting the sanctions available to, say, the imposition of conditions on a practising certificate, suspension for a limited period, and in some cases by a speedier and more stream-lined process. This often leads to speedier resolution in the case of Respondents who would like to resolve the matter and who accept a degree of fault. This category can include minor/moderate negligence, but not where the conduct caused serious harm, or had the potential to do so, or substantially to erode confidence in the profession.

6.7 All secular systems have a tribunal procedure for more serious misconduct. As set out in Annex 3, the secular system looks at this usually with respect to one or more of the following features: breach of the criminal law (other than simple motoring/parking offences and the like); lack of integrity, including breach of confidentiality; breach of a core duty; acting in such a way as to diminish public confidence in the profession; repeated failure to co-operate with the regulator; serious negligence or repeated lesser negligence; failure to comply with sanctions

and the like. The complaint if proved will likely lead to very serious professional consequences, such as removal from the profession or suspension for a substantial period of time.

2) For our proposed highest tier, a test of serious misconduct has precedents in some professions, without a requirement to show breach of professional standards set out in an approved code of professional conduct.

6.6 In some professions, rather than a simple assessment of the seriousness of the misconduct, the emphasis is on whether the conduct is such as to impair fitness to practice (for example doctors, dentists, and nurses). For opticians, the focus is again on Fitness to Practice, and in particular on what is required to protect the public or in the public interest. In other professions, such as notaries, the test is simply whether there has been notarial misconduct, in which breach or breaches of the Notarial Practice Rules may, but will not necessarily, constitute notarial misconduct, that being for the tribunal to assess and determine, rather in the same way that Bishop's Disciplinary Tribunals approach a breach of the *Guidelines for the Professional Conduct of the Clergy 2015* at the present time. In the case of surveyors, a member may be liable to disciplinary action not merely for failure to adhere to the profession's Byelaws/Regulations/Rules, or where there has neem a conviction for a serious criminal offence, but also for "Conduct liable to bring RICS into disrepute" or "Serious professional misconduct". Thus, there is nothing novel in requiring those enforcing clergy discipline to ask themselves the straightforward question "Do the proven facts establish serious misconduct?".

Chapter 7

The way ahead – what can be done in advance of legislation

7.1 It is worth noting that the Clergy Discipline Measure 2003 which came into force on 01.01.2006, had begun its life with the publication of the Working Party report *Under Authority* in 1996, the working party having met 14 times during 1995 and 1996. So it was more than 10 years from when that Working Party started work to the implementation of the resulting Measure! We believe that the delays from 2000 to 2003 were caused by there being a general election and having to wait for a new Parliamentary Ecclesiastical Committee to come into being and the delay between 2003 and 2006 by the writing of the Rules and Code.

7.2 That is no encouragement for those looking for a speedy remedy to the problems identified in relation to the current operation of the 2003 Measure. Furthermore, there has already been steady drift in the anticipated timetable for reform, in part caused by the 2020 pandemic, but no doubt also in part by the general tendency of legislative reform to move slowly and to slip as time goes by.

7.3 Therefore there is an immediate question as to what steps if any can be taken to bring about immediate improvement, particularly if there is broad agreement about what needs to be done. We are aware that there has been some tightening up of timetables in recent months. Further it is proposed that some reforms to the Rules might also assist expedition and discourage the less serious complaints from being filed as CDM complaints.

7.4 But the fundamental problem remains that the natural route for complainants is to issue a complaint under the Measure which means that the statutory procedures kick in with the various problems that have been identified being likely to cause stress, frustration and disappointment to all those directly involved.

7.5 As we have identified at 3.44 above this is not what was envisaged by the Working Group that wrote *Under Authority* which led in due course to the current Measure.

7.6 Paragraphs 8.24 and 25 of *Under Authority* stated (the bold emphasis is ours) “Our starting point is the wide range of possible complaints that a diocesan bishop might receive. As we have indicated already, a **proper filtering process is needed**. This would identify and eliminate the frivolous, malicious and inconsequential complaints. **What should then be left is a number of quite legitimate complaints, most of which we believe will be fairly minor.** As **it would be in no one’s interest to activate formal disciplinary procedures for fairly minor complaints, a simple procedure to handle these effectively is required**. Borderline cases (see paragraph 8.9 (d) above) would be treated as minor unless or until the greater gravity became apparent. The intention is that formal discipline is only initiated when the alleged offence warrants such action. We have recommended above that the initial filtering process should be completed in a period of no more than four weeks (see paragraph 8.8 above).”

7.7 That is of course remarkably similar to what we are proposing.

7.8 If there were a way, even now, of ensuring that all cases that are really grievances in need of resolution **and** those that are "fairly minor complaints" were dealt with in another way than is provided for by the Measure, that would be a great step forward. We take some encouragement as to what might be possible from the current Code of Practice.

7.9 The **Preface to the Code** says: "The Code (in accordance with the Measure) does not cover …. minor complaints or grievances, which are better dealt with informally without recourse to legal procedures."

7.10 Para 9 says "This Code of Practice gives guidance for the purposes of the Measure. The Measure is concerned with formal disciplinary proceedings which have been instituted in accordance with the law. However, a bishop will receive complaints from people who do not wish to invoke formal disciplinary procedures. Often, such complaints or grievances are not about serious matters of misconduct, and can be resolved informally without recourse to law if they are handled with sensitivity and without undue delay. **Minor complaints should not be the subject matter of formal disciplinary proceedings[16].** *("In fact in the case of many minor complaints an apology or an informal rebuke may be all that is required and the full complaints process would not need to come into play"[17]).* If a problem is initially ignored so that discontentment is allowed to continue, then there may be a danger that the problem becomes bigger, and consequently harder to resolve." We have already described in chapter 3 that when Synod first debated the proposals in *Under Authority* they added a request that "the Working Party provide additional proposals for a grievance procedure". When that amendment was put, Canon Hawker replied "The Working Group are very happy to accept this amendment and would encourage you to vote in favour of it. The only reason it does not appear in the report is because we had a clear remit … Subsequently representations were made to us that if we were to have a new discipline system, it should include a grievance procedure with it. The Working Group has at all stages in its discussions unanimously and wholeheartedly agreed with that view but found itself, under its remit, unable to include the matter. We had hoped that it would come up at Synod and be put within our remit in order to guarantee that when the Measure goes through – if it gets that far – the grievance procedures will go through at the same time, rather than, as I think would happen otherwise, being added later, which I do not think would be acceptable. I encourage Synod to vote in favour of this amendment."

7.11 For reasons we have not been able to get to the bottom of, the implementation group did not include grievance procedures within the Measure.

[16] Here the bold type is in the text of the Code

[17] This quotation italicised in the Code is a quote from Under Authority Appendix C. C3 – Procedures for resolving minor complaints about clergy

7.12 We noted in our Interim Report that very few dioceses provide any information on their websites about how you make any such informal complaint. Most websites answer any question in the search box about how you complain about a cleric by taking you directly to information about the CDM.

7.13 Some dioceses have an informal system that they do publicise. An example is the diocese of Gloucester. Many dioceses however, either have no such informal system or if they do, they do not identify and/or promote it on their websites.

7.14 In our Interim report we suggested that all dioceses should adopt and publicise such a system. We even provided a template for such a system which was based on the complaints procedure in the Diocese of Brisbane. We called it "The bare bones of an interim grievance procedure pending legislation" and it was set out at Annex 3 of the Interim Report. We are not aware that any dioceses have as yet taken up that suggestion.

7.15 We are aware that the CofE website now has a new section on Clergy Discipline and provides information about making complaints and provides for a formal complaint to be made online. That section can be found at: https://www.churchofengland.org/about/leadership-and-governance/legal-services/clergy-discipline

The front page reads as follows:

The disciplinary process

A high standard of integrity and service is expected of our clergy. Mostly that standard is met, but occasionally individual clergy can fall short of what is expected. When this occurs there are different ways to respond. At whatever level you are concerned, please be assured that your complaint will be taken seriously.

Minor instances of inappropriate behaviour

If you are concerned about a minor incident or instances of behaviour which you consider inappropriate, you are encouraged to share your disappointment with the cleric concerned and resolve it together.

Area Dean / Archdeacon

If the attempts at communicating with the cleric have not proved fruitful, you should speak to your Area Dean or Archdeacon. The diocesan office will be able to tell you who this is. A representative of the bishop will then speak to the cleric concerned, so that the matter can be dealt with informally.

More serious misconduct

Only if the problem is more serious and may amount to misconduct which justifies disciplinary action will the provisions of the Clergy Discipline Measure ('CDM') be required. The CDM provides a procedure for handling such complaints of **serious misconduct.**

CDM - a legal process

It is important to realise that lodging a CDM complaint is the start of a legal process. An investigation will take place into the alleged misconduct. If the matter is referred to a tribunal it is likely that you will have to give evidence in person at a hearing.

More information

You can find information about the Clergy Discipline Rules and Appeal Rules, the availability of ecclesiastical legal aid, the Code of Practice and other guidance, as well as to details of practice directions issued by the President of Tribunals using the left hand navigation.

7.16 If our proposals are deemed acceptable then we are satisfied that there is a way by which much could be accomplished to achieve a filtering process ahead of any future legislation.

7.17 We have noted in Annex 2 that when parliament introduced its first clergy discipline statute, the Church Discipline Act 1840, it provided a new procedure for prosecuting complaints against the clergy, and it provided that this was the only way that such proceedings could be brought in relation to the laws ecclesiastical (s.23). However s.25 provided that "nothing in this Act contained shall be construed to affect any **Authority over the Clergy** of their respective Provinces or Dioceses **which the Archbishops or Bishops** of England and Wales **may now according to Law exercise personally and without Process in Court.**" Phillimore described this as "the personal powers of the ordinary".

7.18 When in 1892 parliament passed the Clergy Discipline Act 1892, s.14 repealed the 1840 Act save for several provisions which were retained in s.10, one of which was s.25 of the 1840 Act.

7.19 In 1963 the Ecclesiastical Jurisdiction Act repealed the 1892 Act and whatever was then left of the 1840 Act. It made no such similar provision about the common law "authority over the clergy" as had been expressly made in 1840 and 1892. However as this authority was founded in ecclesiastical common law it must have continued and must still continue to this day.

7.20 The recognition of this extra statutory authority has not been precisely defined in any case of which we are aware.

7.21 In Chapter 2 we have set out the theological basis for our understanding of the inherent disciplinary power of the bishop as part of his "ordinary jurisdiction". See 2.8-13 above.

7.22 Such authority therefore includes at least **the authority of a bishop to rebuke/ censure a priest**.

7.23 Further, our attention was drawn to this possibility when attempting to drill down into the detail behind the new data line in the CDC Annual Report that tells us the number of complaints that relate to misconduct of a sexual nature towards a child or a vulnerable adult. Asking the relevant dioceses for more detail of the complaints they had so identified we were told of one case concerning a vulnerable adult had been dealt with by **the bishop taking No Further Action under the CDM but issuing a pastoral rebuke outside the Measure**. We do not know, and have no way of finding out with any ease, how often such a course of action has been taken by bishops. However we do know that it is not an isolated case. Indeed we aware of one case where a priest had been rebuked and brought a complaint against the bishop who had rebuked them which complaint was dismissed.

7.24 It would appear that notwithstanding that the Measure did not expressly provide for the dealing with fairly minor complaints by such as an informal rebuke, bishops (or at least two to our knowledge) have continued to use that inherent authority and right.

7.25 Although the Code speaks about an informal stage, that by necessity is a stage before a complaint has been lodged using Form 1A and once that form is used there is no apparent scope for an informal stage.

7.26 *UA* intended that all complaints would begin with a simple communication to the bishop. At 8.7 it said "we believe that making a complaint should not be surrounded by excessive formality. It should be in writing, but initially a simple letter should be sufficient, so long as the nature of the complaint is clear." They then in paragraph 8.8 envisaged a 28 day period within which there would be an investigation, the bishop delegating that "responsibility to check out the complaint to whomsoever he felt suitable, such as an archdeacon, rural dean, registrar or layperson." During the initial exploration the complainant will "clarify and amplify the complaint providing evidence to substantiate it"; the investigator would "listen to the complainant and also the cleric (if the cleric wishes to comment)". Paragraph 8.9 goes on: "In many cases the initial investigation will be complete within a matter of days" …. If frivolous etc it will be dismissed; if "obviously of a serious nature the bishop would follow the formal procedure straightaway"; if minor "of the kind that currently form the majority of complaints made to a bishop, where formal disciplinary procedures are not warranted then the bishop would follow the procedures for minor complaints set out in Part A". Finally "All complaints will be treated as minor until and unless the seriousness became more obvious when formal disciplinary procedures would be followed".

7.27 If ways can be found through a combination of the CofE website and diocesan websites to discourage the initial filing of Form 1A there seems to be no reason why informal complaints, ie anything not on Form 1A, should not be received by the bishop and then treated by following the procedure we have outlined.

7.28 Paragraphs 9 and following of the Code effectively envisages our procedures for matters that are not serious misconduct but are grievances or conduct less than serious. See para 7.10 above. It then goes on to provide in para 10 and 11

> 10. There may be occasions when no formal complaint under the Measure has yet been made but the bishop receives information about a priest or deacon which, if true, would amount to serious misconduct. The bishop will obviously wish to find out more about it. However, the bishop should be cautious about the extent of any direct involvement. The bishop should not do anything that could prejudice, or appear to prejudice, the fair handling of any formal complaint under the Measure that could be made subsequently. Instead, the bishop should consider asking an appropriate person, such as the archdeacon, to look into it.
>
> 11. The archdeacon or other person looking into the matter will need to form his or her own view about the appropriate action to take. The priest or deacon should normally be told why his or her conduct is in question, and that a colleague or friend may be present during any discussions about it.

7.29 So to a very real extent what we are proposing is very much closer to *Under Authority* than is the CDM 2003. To suggest trying to achieve what *UA* and indeed the Code of Practice speak about might provide a way forward in advance of legislation and not be very controversial.

7.30 We therefore recommend that the HoB should agree to implement something along these lines, but if that is too big an ask we would propose that one or more regional groups of bishops agree to "road test" it.

Annex 1

Membership of the Working Party

His Honour Peter Collier QC	Chair of the Working Party
The Venerable Moira Astin	Archdeacon of Reigate; a member of the Clergy Discipline Commission
The Venerable Elwin Cockett	Archdeacon of West Ham
The Revd Stephen Coleman	Vicar, St Peter Grange Park, London N21 Assistant Director, Centre for Law and Religion, School of Law and Politics, Cardiff University
Louise Connacher	Provincial Registrar (York); a member of the Clergy Discipline Commission
David Etherington QC	Diocesan Chancellor (London and Norwich)
The Right Revd Viv Faull	Bishop of Bristol
Charles George QC	Formerly the Dean of the Arches and Auditor of the Chancery Court of York
Ed Henderson	Litigation Solicitor (Lee Bolton Monier-Williams)
Stuart Jones	Diocesan Registrar (London and Norwich)
The Revd Samuel Maginnis	Barrister at law; Pioneer Curate, St John's Loughton; Secretary to the Working Party
The Revd Joshua Rey	Vicar of Roehampton; formerly Chaplain to the Bishop of Southwark
Geoffrey Tattersall QC	Diocesan Chancellor (Carlisle and Manchester)

Terms of Reference

1. To review the history of how clergy have been disciplined within the Church of England.

2. To determine the principles (both theological and otherwise) upon which any system of discipline should operate; looking in particular at the theology around the role of the bishop and the theology of discipline.

3. To identify both design flaws and regular operational flaws in the current CDM processes.

4. To design systems for dealing with

    a. Grievances about clergy of the type that in other professions would be classed as service level complaints which should be capable of being handled with a view to a speedy resolution; and to consider whether it would be appropriate

        i. to expect the aggrieved to say what they were looking for by way of an outcome to their complaint and
        ii. to require the priest to respond immediately and
        iii. for someone acting under the auspices of the bishop to seek to bring about a resolution?
        iv. If not how should such a system operate?

    b. Misconduct of a serious nature the outcome of which might involve prohibition or other significant intervention in the life or ministry of a priest. This should again be dealt with speedily, openly and supportively. The system that does that must be one that is not only appropriate theologically but one that commands the respect of the organisation, respondents and the wider public (both church-going and non-church-going).

5. To consider the relationship between disciplinary processes and safeguarding particularly in relation to risk assessments and if appropriate to recommend how safeguarding risks should be assessed and managed in the context of new disciplinary processes.

Annex 2

A brief history of clergy discipline

1. For several hundred years bishops in England who were responsible for discipline in the Church were part of the local community of which the other recognised leader was the Earl. Together they had responsibility for the King's Peace and for the running of local courts. Those courts would deal with both clerics and lay persons. They developed a way of working together bringing together the canon law which the bishop understood and local customary law.

2. William I (in about 1072)[18] separated those two strands forbidding the two men from sitting together thereafter. They therefore developed as two different streams. The bishop was influenced by the developing Roman civil law alongside the Canon law which became codified from the mid 12th century. The king's courts also developed their own national law and procedure through the travelling assize judges from 1190 onwards

3. The ecclesiastical courts developed an extensive jurisdiction over various areas of public life – marriage, sexual behaviour, perjury cases, testamentary matters and probate, and cases involving 'spiritual goods' eg tithes. The number of courts proliferated and by the late 19th century there were nearly 400 separate ecclesiastical courts across the country. These courts initially staffed by clerics increasingly involved lay judges and of course many proctors and advocates. These were specialist lawyers who had trained separately and in a different school of law from the common lawyers practising in the king's courts. Doctors Commons was their home in contrast to the Inns of Court for the common lawyers.

4. From time to time parliament passed legislation that impacted on the ecclesiastical courts. After the Reformation the ecclesiastical courts continued and the law they applied remained the same except there was no longer any appeal to Rome. In place of the pope the king became the supreme ordinary and became the final court of appeal in ecclesiastical matters, delegating that role to the High Court of Delegates. The king might also from time to time institute a High Commission or an Ecclesiastical Commission to carry out visitations with extensive inquisitorial powers.

5. It was in the 18th century that parliament began to intervene significantly in the areas which had been exclusively those of the canon lawyers and ecclesiastical courts. The Marriage Act 1753 and the Ecclesiastical Suits Act 1787 were the first such interventions.

6. Unsurprisingly the 19th century was the period of most significant change. Law reform was rife. There were very significant changes in the common law jurisdiction both of its substantive and its procedural law. How cases progressed in the civil and criminal

[18] *The Ordinance of William*

courts was altered; the ways of doing things that had remained constant for centuries was brought up to date to cater for the new industrialised urban society.

7. At the same time, the canon lawyers and their courts rapidly lost their jurisdiction over those areas of public life that they had dominated for so long. In 1855 the church lost its jurisdiction over defamation[19]; in 1857 the church lost its jurisdiction over probate[20] and marriage[21] and in 1868 over church rates and later over tithes[22]. This took away much of the work of the ecclesiastical courts and thus the income of its practitioners. So in 1858 Doctors' Commons moved to dissolve itself; the last meeting of its corporation was in 1865.

8. Prior to that, in 1832, the High Court of Delegates was abolished and the final appeal court for ecclesiastical case became the Privy Council. A reminder of the historical context is that 1832 was also the year of the Reform Act. That period and continuing on through the second half of the century was also the time of battles over ritualism within the church. And non-conformity was strong outside the Anglican church. The 1832 Act[23] resulted from an interim report by the Royal Commission inquiring into the jurisdiction of the ecclesiastical courts. Its full report recommended a new system for clergy discipline cases. That resulted in the Church Discipline Act 1840. The court that dealt with discipline matters thereafter was not one which would have been recognised by the canon law but was more akin to those of secular criminal jurisdiction.

9. **The Church Discipline Act 1840** provided a new procedure for the hearing of complaints against clergy. It was subtitled "An Act for better enforcing Church Discipline". It was from its commencement date the only way of proceeding against a cleric for an offence against the laws ecclesiastical. However it also stated that it did not "affect any authority over the clergy of their respective provinces or dioceses which archbishops or bishops of England and Wales may now according to law exercise personally and without process in court" (s.25). In addition to offences against the laws ecclesiastical Parliament added notoriety arising from suspicion of an offence. The starting point for proceedings under the Act was a complaint being made that a cleric had committed any offence against the laws ecclesiastical or that there was "scandal or evil report as *(to his)* having offended against the said laws". We understand that this was introduced because it was often difficult to prove matters that were alleged and so the starting point of being reputed to have offended was introduced. When such a complaint was laid the bishop would issue a commission to five persons, which had to include either his chancellor or an archdeacon or rural dean, to investigate the charge, having given 14 days prior notice to the accused person. The commissioners could take evidence on oath and any witness could be cross examined by the accused. The proceedings would usually be in public. At the conclusion of the proceedings, the commissioners would submit to the Bishop the

[19] Ecclesiastical Courts Act 1855, section 1
[20] Court of Probate Act 1857, sections 3 and 4
[21] Matrimonial Causes Act 1857, sections 2 and 4
[22] The Compulsory Church Rate Abolition Act 1868
[23] The Privy Council Appeal Act 1832

depositions they had taken from the witnesses and a report as to whether they had found a prima facie case for the accused to answer. If there was prima facie case, and if the bishop thought it fit to proceed against the accused, articles (charges) would be drawn up and the accused would appear before the bishop or his commissary to plead. If he admitted the charges he would be sentenced straightaway. If the accused didn't appear or did not admit everything in full he would be tried by the bishop assisted by three assessors. But they were only assessors and the bishop could ignore their advice. There were provisions for what we would call suspension if it appeared to the bishop that great scandal was likely to arise from the accused continuing to perform services whilst under investigation, or that his "ministration will be useless while such charge is pending".

10. All of this was a complete break with the past. Michael Smith puts it like this: "The Act broke completely with the past. Except in replacing evidence taken by depositions with *viva voce* examinations of witnesses, it followed many of the old procedures and used the old officers, but it created in effect a new court in each diocese solely for the prosecution of any clergyman charged with any offence against the laws ecclesiastical … The Act required an initial investigation of the alleged offence and gave the diocesan bishop an absolute veto in deciding whether or not the case should go forward to trial."[24]

11. It provided a pattern of an initial investigation, followed by a charge, and a plea followed by a trial if the allegation was not admitted. That pattern was broadly followed thereafter in subsequent statutes.

12. We have already referred to controversy over ritualism. In 1859-60 there were the Ritualism Riots. And in 1867 a Royal Commission was appointed "to inquire into and report upon different practices which had arisen, and varying interpretations which were put upon the rubrics etc". It produced no changes in relation to discipline proceedings resulting only in a revised scheme of readings for daily prayer.

13. However in 1874 Parliament passed the **Public Worship Regulation Act 1874**. This was a private members bill introduced by the Archbishop of Canterbury in an attempt to limit ritualistic practices by prosecuting those guilty of practising them. This enacted a new court to be presided over by a former judge, Lord Penzance. It created new offences – "using or permitting to be used any unlawful ornament of the minister or neglecting to use any prescribed ornament or vesture …. Or failing to observe … the directions contained in the book of common prayer relating to the performance … of the services, rights and ceremonies ordered by the said book … or making any unlawful addition to, alteration of or omission from such services, rights and ceremonies." The courts powers were modelled on those of secular courts. The Bishop had a power to veto proceedings.

14. There were prosecutions and five priests were imprisoned for refusing to obey orders of the court. In 1886 Edward King, Bishop of Lincoln, refused to permit the prosecution

[24] Michael Smith (Edited by Peter Smith) The Church Courts, 1680-1840. (2006) Edward Mellen Press p.124

of two priests in his diocese. The Church Association laid a complaint against him before the Archbishop of Canterbury for committing ritual offences.

15. Erika Kirk describes what happened: "Archbishop Benson doubted that he had jurisdiction to act but was overruled by the Judicial Committee of the Privy Council and accordingly King's case was heard in a specially convened hearing at Lambeth Palace. The outcome was legally significant, not only because Benson held substantially in favour of King, but also because in so doing, he ignored the judgments of the Privy Council in previous Ritualist cases. Instead of basing his judgments on recent legal precedents, Benson relied on history, citing as authority decisions made at the Council of Hatfield in 680 A D. This approach drew attention once again to the continuing tension between secular and ecclesiastical law."[25]

16. The Act proved very unpopular and unworkable. Several controversial and sometimes conflicting decisions of the Privy Council led to a desire to re-examine the structure of the ecclesiastical courts. In 1881 the Archbishop of Canterbury move the House of Lords to petition for yet another Royal Commission, this time "to inquire into the constitution and working of the Ecclesiastical Courts, as created or modified under the Reformation Statutes of the 24th and 25th years of King Henry VIII and any subsequent Acts".

17. The 1840 Act was also proving to be unpopular and unworkable. The issues were said to be (i) that it was required to prove once again before the ecclesiastical court things that had already been established before a civil court; (ii) that there were rights of appeal at every stage of the proceedings that added to the delay in concluding them as well as the overall expense; and (iii) that in relation to sentence too much regard was had to precedent and that had led to the gradual reduction in sentencing levels.

18. In 1883 the Ecclesiastical Courts Commission was appointed. It resulted in due course in the **Clergy Discipline Act 1892 Act.** That act was said to be "for better enforcing discipline in the case of crimes *and other offences against morality* committed by clergymen".

19. It repealed the 1840 Act but preserved several of its sections, those dealing with penalty by consent; a bishop's power to inhibit; the ability to examine on oath; jurisdiction in relation to peculiars; and perhaps significantly the traditional personal authority of a bishop over his clergy. It excluded proceedings being brought under it in respect of any question of doctrinal ritual.

20. It provided that in the event of various convictions for specific criminal offences or for being subject of various matrimonial orders the bishop was required to declare the preferment of the cleric concerned vacant and to bar him from any further preferment.

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[25] Erika Kirk: Controlling the clergy of the Church of England: 19th-century to the present day. 13 Nottingham L.J. 20 (2004)
http://irep.ntu.ac.uk/id/eprint/20391/1/185243_2948%20Kirk%20Publisher.pdf

21. However its main provision was that that any conviction before a temporal court for an act constituting an ecclesiastical offence, or any allegation that the cleric had "been guilty of any immoral act, immoral conduct or immoral habit, or of any offence against the laws ecclesiastical, being an offence against morality and not be a question of doctrine or ritual" enabled the cleric to be prosecuted. The Act further provided that these forms of immorality 'shall *include* such acts, conduct and habits as are proscribed by [canons 75 and 109]'; 'shall include' suggests that immoral behaviour was not limited to that suggested by canons 75 and 109. A prosecution could be commenced by any three of his parishioners, or by the diocesan bishop, or anyone approved by the bishop. But the bishop could disallow the prosecution if it appeared to him to be "too vague or frivolous to justify proceedings". The trial would take place in the consistory court. The trial would be before the Chancellor and five assessors, who would be respectively judge and jury. The limitation period for bringing a prosecution was five years (from the last act complained about) or two years from a criminal conviction.

22. So a pattern was established of trial, effectively by judge and jury, with the diocesan chancellor acting as the judge. The bishop's power was effectively limited to staying vexatious prosecutions.

23. There was another issue that was of significant concern at that time namely how to deal with clergy who were not pulling their weight whether culpably or not but who could not be said to be guilty of an ecclesiastical offence.

24. The history of various statutes and Measures to address that began with the Pluralities Act 1838. Section 77 stated 'whenever the Bishop shall see Reason to believe that the Ecclesiastical Duties of any Benefice are inadequately performed' he could appoint a Commission to inquire into the facts and if they reported inadequate performance, the bishop could require the incumbent to appoint a curate, and if he failed to do so then the bishop could appoint one on a stipend not exceeding that that would be paid in the case of non-residency under the Act. Section 79 provided that if the incumbent had been found to be a lunatic or a person of unsound mind the bishop could appoint a curate then also.

25. The Pluralities (Amendment) Act 1885 added the negligence of the incumbent as a reason for appointing a curate. The Benefices Act 1898 gave additional power to the bishop on receiving a report from the Commission that the inadequate provision was due to the negligence of the incumbent, the additional power being that 'the bishop may inhibit him from performing all or any of the said duties'.

26. These Acts were then overtaken by the Benefices (Ecclesiastical Duties) Measure 1926. Again the Hansard record of the proceedings in the House of Lords is worth looking at as the Archbishop of Canterbury sets out the background of the previous Acts and introduces this Measure which defined more clearly the negligence involved, and ensured that the incumbent would be given notice of his alleged defaults in writing with an opportunity to reply before any Commission was instituted. The

Incumbents (Disability) Act 1945 replaced the 1926 Measure in relation to cases of mental or physical capability.

27. Finally the **Incumbents (Discipline) Measure 1947** returns to issues of misconduct and culpable neglect of duty. This dealt with cases of "of conduct unbecoming the character of a clerk in Holy Orders, or of serious, persistent, or continuous neglect of duty". Again we have had difficulty in the current circumstances in getting a copy of the Measure. But again Hansard comes to the rescue and the Archbishop of Canterbury's speeches give a fairly clear understanding of the position. There are two speeches – one for the first presentation on 24 October 1946, and then on 5th February 1947 when it was presented for a second time .

28. The procedure was that a complaint could be laid before a bishop who could discuss it with incumbent concerned and then decide whether to proceed under the Measure. If it proceeded it went to a ministerial committee of six clergyman from the diocese who considered it and could dismiss it or move to the next step provided a majority of four of them agreed. The next step was that the complainant was required to define the charges which went back to the committee who again could dismiss it. If not, it then went to the Bishop, who could also dismiss it, but if not it went to a special court consisting of the diocesan chancellor, two clergymen and two laymen. If the charges were proved, the court also gave its opinion on the gravity of the charges i.e. whether they considered them serious or not. At this point it went to the Bishop for 'sentence'. There were three options - censure, inhibition for three years whilst still retaining the freehold, or vacating the benefice. The last course required the Bishop to go back to the committee where at least five must agree to any vacation.

29. There had been quite a lot of concern about the phrase "conduct unbecoming" which was the basis of a lot of opposition to the Measure. However eventually it became law.

30. In the course of that 1947 debate in the House of Lords the Archbishop of Canterbury had said "the existing machinery for dealing with such cases was on all hands regarded as unworkable and obnoxious". At the end of the debate he said that "I do not think that this is the last that will be heard of clergy discipline in the future. I hope that the Church may find a better system of Ecclesiastical Courts than it now has. In this respect we suffer from a heritage of the past. One knows that the Church would welcome some revision and some better ordering of the system of Ecclesiastical Courts. When that time comes, I hope that this matter of discipline may take another form".

31. It is also apparent from this and other speeches in relation to the several measures that huge amounts of time and energy had been expended by the House of Bishops, by the Church Assembly and by diocesan conferences in attempting to find satisfactory ways of dealing with cases of clergy misconduct and incapacity. It would seem that each time they thought they had reached a suitable solution, only for it to fail in practice and for them to come back not many years later with a new and they hoped better solution. Plus ça change!

32. The 1960s saw great social and cultural change in Britain, and aspects of the criminal justice system became outdated. Harold Wilson's Labour government of 1964 gave new momentum to reform. In 1963, Wilson instigated a study that provided a blueprint for criminal justice reform in three areas: the prison system and sentencing practices of courts, juvenile offenders, and the law on murder. In 1967 there was both a Criminal Justice Act and a Criminal Law Act. The CJA introduced those reforms, and also provided for witness statements to be "admissible as evidence to the like extent as oral evidence to the like effect by the same person." The CLA looked back to some of the older ways of doing things and abolished the distinction between felonies and misdemeanours with their different procedures, introducing the new concept of arrestable offences.

33. The Church had been looking at bringing its courts up to date from the 1950s. The "unworkable and obnoxious" nature of the church courts more generally was the subject of the 1954 Lloyd-Jacob Report. The report recommended, and this is largely what came to pass, the abolition of archdeacons' courts, and making the consistory court the court of first instance for all diocesan matters, including clergy discipline *conduct* cases. The appellate court from the consistory court remained the provincial court (the Court of Arches or the Chancery Court of York), although the Privy Council's appellate jurisdiction was retained in faculty cases with no question of doctrine, ritual or ceremonial. For doctrine, ritual and ceremonial cases (the 'reserved' category) the report recommended the creation of a Court of Ecclesiastical Causes Reserved (CECR), because it was understood that the nature of the cases needed spiritual authority as well as judicial. An appeal would lie from the CECR to a Commission of Review appointed by the Crown.[26]

34. So the **Ecclesiastical Jurisdiction Measure 1963** was passed. Offences in relation to conduct which could give rise to proceedings under the Measure were "any … offence against the laws ecclesiastical, including (i) conduct unbecoming the office and work of a clerk in Holy Orders, or (ii) serious, persistent, or continuous neglect of duty. A time limit of three years from the last offence for instituting proceedings was imposed unless there had been a criminal conviction in which case it was six months from the date of conviction. Proceedings were instituted by a written complaint verified on oath and served on the accused as soon as it was laid. In the case of a priest or deacon proceedings could be instituted by someone authorised by the Bishop, or by six or more persons on the electoral roll. For a diocesan bishop it required 10 persons in the diocese to institute proceedings, and in the case of an Archbishop, at least two diocesan bishops with regard to his metropolitan duties. Once a complaint was laid it was the duty of a bishop in relation to a priest and of the Archbishop in relation to a bishop, to consider it and to afford both sides an opportunity to be interviewed in private by him either separately or together as he saw fit. The bishop then had to decide whether to take no further steps or to refer it for inquiry. The inquiry was carried out by an examiner who decided whether there was a case to answer. Both sides could be represented and could put evidence in affidavit form before the examiner who could require deponents to attend and be examined on oath. If the

[26] Christopher Smith: Turbulent Priests: How the Church of England disciplines its errant clergy in Religion and Legal Pluralism Ed Sandberg 2017 (Routledge)

examiner found there was a case to answer he would say so in a written report to the Bishop. The Bishop would then appoint a fit person to promote the complaint against the accused in the consistory court. The diocesan chancellor could with the consent of the Bishop appoint someone other than him/herself to preside over the court in those proceedings. The Chancellor sat as the judge with four assessors who acted as the jury in the court. The assessors' verdict had to be unanimous. The Measure provided that the trial "shall, so far as circumstances admit, … be the same as at the trial of a person by a court of assize exercising criminal jurisdiction". If the accused was found guilty the Chancellor decided on "such censure therefor as is warranted by … the Measure." The Bishop had an overriding power at any stage after a complaint been laid after the complainant had been consulted and if the accused consented to pronounce such censure as he thought fit." If the accused was a Bishop the examiner was replaced by a committee, and any trial was conducted before a Commission of Convocation presided over by the Dean of the Arches.

35. It is interesting to see how to an extent the procedure mirrored criminal procedures of the day. In those proceedings allegations were made and someone was summoned before the justices who conducted a preliminary investigation in which evidence was presented, witnesses could be cross examined and a decision was made as to whether there was a case to answer. If so, in serious cases, the matter was then committed for trial to quarter sessions or the assizes where a trial would take place before a judge and jury.

36. That remained the only way that misconduct and culpable cases of neglect could be dealt with until the Clergy Discipline Measure 2003 repealed it in relation to such cases.

37. The **Incumbents (Vacation of Benefices) Measure 1977** repealed the 1945 Measure and instituted a new system of Provincial Panels for dealing with cases where a) "there has been a serious breakdown of the pastoral relationship between the incumbent and the parishioners to which the conduct of the incumbent or of the parishioners or of both has contributed over a substantial period" and b) where there is an issue "as to whether the incumbent of a benefice in the diocese is unable by reason of age or infirmity of mind or body to discharge adequately the duties attaching to his benefice and, if so, whether it is desirable that he should resign his benefice or be given assistance in discharging those duties."

38. The procedure is complex and has been used only rarely. It is the task of the Vicar-General to choose the panel in any case. Our Chair who is Vicar-General for the Province of York has not performed that task in the last twelve years that he has occupied that role. It is a widely held view that the process is unworkable. It may be that its unworkability causes some situations where there has been a breakdown, whether through fault or incapacity, to end up following the route of a CDM complaint.

39. The notorious history of the few cases prosecuted under the 1963 Measure led in due course to the General Synod setting up a working party under Alan Hawker which

produced its report entitled *Under Authority* in 1996 and which led in due course to the passing of the **Clergy Discipline Measure 2003**, the history of which we have referred to on several occasions in the Interim Report and in this report and the operation of which we reviewed in Annex 1 of our Interim Report and which we summarise in paragraph 5 of our Introduction to this report .

40. What are the threads of note in this history? England developed its own system of courts and law quite separate from that which developed in the rest of Europe. Throughout that development in England there was an observable relationship between the secular and ecclesiastical systems after their separation in 1072. At times there was competition for jurisdiction, at all times each was aware of the other. It is therefore not surprising that changes in ecclesiastical law were in some way or other related to what was happening in the secular world.

41. As to overarching themes in the development of ecclesiastical law: more often than not there has been an investigation stage before a formal charge is laid; periods of limitation have always been in place but have varied; the role of the bishop has been key, particularly in protecting clergy from vexatious complaints which have always been a significant problem; and the bishop has usually sentenced the cleric in admitted cases.

42. The following table shows some of the similarities and some of the differences in the last 180 years.

Comparisons between the 6 various clergy discipline processes since 1840 for misconduct cases

Act	**Church Discipline Act 1840**	**Public Worship Regulation Act 1874**	**Clergy Discipline Act 1892**	**Incumbents (Discipline) Measure 1947**	**Ecclesiastical Jurisdiction Measure 1963**	**Clergy Discipline Measure 2003**
Who could initiate	Anyone, or Bishop of his own initiative		Bishop becoming aware of conviction, divorce etc. Any 3 parishioners or bishop or anyone approved by bishop		6 persons on electoral roll, or someone authorised by bishop or by incumbent against stipendiary curate	PCC nominee (2/3 vote) Churchwarden Person with proper interest
What could be charged	An offence against the laws ecclesiastical or about whom there is scandal or evil report he has offended against the said laws	Specific new offences about ritual	If guilty of immoral act, conduct or habit or an offence against the laws ecclesiastical being an offence against morality not doctrine or ritual	Conduct unbecoming or serious persistent or continuous neglect of duty	Ecclesiastical offence including i. conduct unbecoming or ii. serious persistent continuous neglect	As set out in s.8(1) CDM

Preliminary assessment	Commission of 5 who would hear evidence which could be subject of XX Decide if a prima facie case 2. Bishop sends case directly to Provincial Court with no preliminary assessment	None	None	Committee of 6 consider Charge drawn up Committee consider charge	Bishop consider and interview both sides Bishop then Decides no further steps to be taken, or 2. Refers to examiner to decide if case to answer – done in public and evidence on oath	Registrar examines complainant's statement only as to whether a prima facie case
Bishop discretion to prosecute	Yes - if the bishop "think fit to proceed"	Yes	Yes "if too vague or frivolous to justify proceedings"	Yes	Could impose penalty by consent at any stage	No
Tried by	Bishop or commissary and 3 assessors, but bishop could decide contrary to assessors' views 2. Dean/Auditor	A secular judge in a secular style court using secular procedures	Chancellor (and if any disputed issues of fact - 5 assessors playing role of jury with Ch as judge)	Chancellor and four (two clergy & two lay)	Chancellor and four assessors (jurors) Trial same as at assizes	Tribunal – legal chair with 2 lay and 2 clerical members.
Sentenced by	Bishop or commissary 2. Dean/Auditor	Judge	Trial Court	Bishop (limited options)	Chancellor	Tribunal
Limitation period	2 years from last offence; or 6 months from a secular conviction if offence more than 2 years before.		5 yrs from last offence 2 yrs from secular court conviction		3 years from last offence; or 6 months from a secular conviction if offence more than 3 years before.	
Suspension	Bishop could inhibit cleric from performing service pending proceedings if great scandal likely to arise form doing so, or his ministration will be useless		1840 provision repeated		None	ss.36-37A

Annex 3

SECULAR DISCIPLINARY PROCESSES

1. The purpose of this note is to examine some of the issues involved in reforming and simplifying the CDM system by reference to and comparison with secular disciplinary processes

2. The following aims are held in common with the secular systems:

    a. Separating out complaints of a frivolous or vexatious nature or which, even if established factually, would not amount to any category susceptible of action by the Bishop or a national complaints' tribunal.
    b. Removing complaints of a more minor nature from the national tribunal process altogether. This could be done by having two processes, one which deals with the minor complaints (MIN) and one which deals only with serious, major ones (MAJ). It could also be done by having three levels of complaint: the two just mentioned and an intermediate one (INT) which could either be dealt with by the local process for minor complaints provided sufficient remedies or sanctions were available or by the national tribunal which would consider the case either using the same powers as for MAJ but with a lower sanction ceiling and probably adopt other procedural changes (such as fewer tribunal members or the like) in order to facilitate a speedier resolution.
    c. Increasing the efficiency of the whole process so that Respondents are not left dangling with cases that might affect their lives very considerably in MAJ (although there will be a minority who may not wish to have a complaint resolved so speedily) and so that Complainants are not left feeling that there is a never-ending wait for resolution of their complaint (although a minority of Complainants will contribute to the delay themselves).

3. In order to achieve these aims the secular systems have also had to address issues arising out of their reformed processes.

4. Extrapolating those issues into the ecclesiastical context, they include these:

    a. Does the Complainant or the Respondent have a right to have the decision which tracks a Complaint (or dismisses it outright) into one of the two (or three) pathways reviewed and, if so, what form should that review take?
    b. What powers should the Bishop have at MIN and should the exercise of these be conditional upon consent by either the Respondent or the Complainant?
    c. Is the final determination of the MIN complaint open to appeal by either party and, if so, what form should that appeal take?
    d. What is the test for placing something in MIN, INT or MAJ? Should it be set around the likely sanction that would be imposed or categorised because it is a particular type of allegation or should it be looked at solely on its specific facts or should it be mixture? Who would make that decision and with what tools? What is the ultimate broad charge that encompasses the specific

behaviour – is it trying to establish Fitness to Practise (as in the case of the healthcare professions) or Misconduct?

e. *Who should bring the complaint at the MIN, INT and MAJ levels respectively?*
f. *Should there be a right of appeal from any decision of the tribunal?*

5. Secular tribunals have in recent times largely divided into two different pathways. The first is the traditional Misconduct one. The second is Fitness to Practise. The healthcare professions have largely taken the second route. Thus, the traditional Misconduct pathway is still favoured by the Bar (Bar Standards Board – BSB), Solicitors (Solicitors Regulatory Authority – SRA), Notaries, Surveyors (RICS), whereas the Doctors (General Medical Council – GMC), Dentists (General Dental Council – GDC), Opticians (General Optical Council – GOC) and Nurses/Midwives (General Nursing Council – GNC) have changed to a Fitness to Practise test.

6. FITNESS TO PRACTISE – the word is used in two different contexts. *All* secular disciplinary processes have fitness to practise components. However, in the healthcare professions/vocations, the question of Fitness to Practise is the ultimate issue in their regulatory processes dealing with serious allegations, whereas the ultimate issue for the serious cases in other professions is whether the practitioner has committed Misconduct.

7. This distinction has its limitations. All secular tribunals have to deal with unfitness to practise caused through mental and medical issues. And healthcare professions have to consider cases where practitioners have committed gross professional misconduct in the general sense of the word (for instance, committed a crime) and where the fact the practitioner should no longer practise has to be expressed in terms of, or fitted into, a concept of impairment of fitness to practise. In other words, what is really meant is that the previous misconduct (the crime, for instance) has impaired the fitness of the practitioner to practise (even if there is no fear it will be repeated) because its gravity is such is that any other decision would erode confidence in the profession as a whole.

8. Fitness to practise regimes can, of course, deal with specific medical/mental unfitness like any other issue, whereas those taking the misconduct path will need to channel health issues separately although, as it happens, the healthcare professions generally use a separate committee to decide a case where the impairment is primarily a medical or mental issue. Most secular disciplinary bodies also have a system of interim suspension for serious cases where the safety of others (particularly clients or patients) is involved or for permitting the practitioner to continue only on conditions which may be of such a nature to make carrying out the particular occupation practically impossible

9. There is no doubt, however, that there is a different tone and emphasis in Fitness to Practise regimes from those concerned with Misconduct.

10. DETERMINING FITNESS TO PRACTISE (other than in health cases) and SERIOUS MISCONDUCT.

    a. In modern secular systems, there is a much greater emphasis on establishing the breaching of proper professional standards and most professions and vocations now have a considerable body of guidance and standards - departure from which can form a basis for alleging Fitness to Practise or Misconduct.
    b. However, there is inevitably some variation in the degree to which a breach or variation of a standard constitutes either impairment of fitness to practise or professional misconduct.
    c. First, the occupation, profession, vocation or calling may be more or less susceptible of substantial standardisation. This seems to me to be a real issue with clerical misconduct. It is comparatively easy to say when a healthcare professional has performed a procedure that constitutes a breach of a peer-reviewed and regulatory-approved standard that this amounts to impairment of fitness to practise. In some professions, some of the areas are more difficult to identify in that way. At the Bar, and also with Solicitors, there are a number of areas (advocacy to name but one) where, whilst training recommends particular techniques, there are wide variations that would only become a regulatory concern if they had crossed very bold red lines such as deliberately misleading a court or refusing to accept a judicial ruling.
    d. The Bar Handbook and Code of Conduct defines a barrister's behaviour by an examination of Core Duties, Rules, Guidance and Desired Outcomes. Surveyors talks about "serious breaches". They have five Global Professional Ethical Standards: Acting with Integrity (where standards are set out and non-exclusive examples are given and which also include key questions the practitioner should ask him or herself). They are: "Providing a High Standard of Service" (same as above – non-exclusive examples given), "Acting in a Way that Promotes Trust in the Profession", "Treating Others with Respect and Taking Responsibility" (which relates to regulatory compliance and cooperation).

11. SEPARATING MINOR FROM MAJOR IN CLERICAL COMPLAINTS. Before turning to what the pointers could be in deciding whether an ecclesiastical complaint is serious, it is useful to remember how the secular system deals with minor complaints.

    a. WHAT IS A MINOR COMPLAINT - MIN? As with major matters, identifying it is a mixture of an assessment of the issue itself and what remedies are likely to be considered adequate to deal with it.
    b. Within the secular system these would equate to matters that the regulators would wish to be dealt with in-house by a practice, firm, chambers or whatever. At the Bar, all "service complaints" must be dealt with in-house by sets of chambers (right of appeal to the Legal Ombudsman by the

Complainant). This resembles more of an employment-style situation (despite the fact the barristers are self-employed). It will be dealt with by the chambers, and, if the complaint is upheld, the barrister is effectively directed by chambers to apologise, return fees, or the like. Failure to do so may result in being asked to leave the set in extreme cases. Misconduct *outside* of a service or other minor complaint must be referred to the first-tier regulator – the BSB.

c. In our discussions about the distinction between complaints that would be adopted by an Archdeacon or those that simply lie between the Complainant and the Respondent we have been considering a similar principle.
d. Most healthcare bodies draw a line between minor personal complaints which can be dealt with by the practice, either under the auspices of the NHS or by a private patient of his or her own initiative. For example, the GDC also funds a Dental Complaints Service to try and facilitate informal resolution. This is particularly important for private patients as they will not be able to access assistance from NHS England. A review is currently taking place called "Shifting the Balance" which is trying to ensure that only matters that are sufficiently serious to raise questions about Fitness to Practise are referred to the GDC.
e. WHAT IS A MAJOR COMPLAINT – MAJ? The secular systems look at this usually with respect to one or more of the following features: breach of the criminal law (other than simple motoring/parking offences), lack of integrity – including breaching confidentiality, breach of a core duty, acting in such a way as to diminish public confidence in the profession etc., repeated failure to co-operate with the regulator, serious negligence or repeated lesser negligence, failure to comply with sanctions and the like. This will be assessed by a number of professions together with whether the complaint, if proved, would likely lead to very serious professional consequences such as removal from the profession or suspension for a substantial period of time.
f. INTERMEDIATE COMPLAINTS – INT. Some regulatory bodies have a pathway for complaints that are sufficiently serious to merit attention by the tribunal element of the process but do not require some of the protections merited by consideration of a more serious matter. This will usually be marked by limiting the sanctions available to, say, suspension for a limited period and in some cases by a speedier or more streamlined process. The Bar, for instance has these dealt with by a three-person tribunal instead of five-person one and with a limit on the length of suspensions and the amount of fines. It is potentially a useful device for two reasons: first, because it allows the complaint to be dealt with more speedily and, second, because it reassures a Respondent as to what is the worst that can happen. This second feature may lead to a speedier resolution in the case of Respondents who would like to resolve the matter and who accept a degree of fault. The sort of cases that might be suitable for this pathway would include repeated minor/moderate negligence; slipping from remedial action already agreed (but not to a degree justifying a full tribunal) and cases where the behaviour alleged does involve some more general damage to the Church rather than simply the feelings of one individual complainant (and therefore not the MIN level) but not to a point that would

justify the full force of the MAJ level because the damage would not substantially erode confidence in the Church.

12. FINDING THE RIGHT LEVEL – A STANDARDS BASED APPROACH
    a. There would seem to be a number of objections to developing an approach to clerical misconduct that is based on a breach of proper standards that are set out in detailed and cohesive rules and guidance to the clergy.
        i. The development of these standards in secular disciplinary processes has taken place over many years with much consideration, revision and extension, so it will slow up considerably any attempt to reform the CDM mechanism, at any rate for the near future. *This does not in itself make it an unworthy project to consider in the longer term. However, it is likely that a longer review may reveal some other issues with this approach.*
        ii. The setting of standards is both a time-consuming and sometimes controversial process. It is dynamic and needs regular review. It requires consultation, validation and approval before coming into force. It is more easily suited to a regulator than a general 'parliamentary' body such as Synod.
        iii. It follows from ii. above that it can be costly. The present system strains limited resources already, so is this a good use of money and are the standards going to be easy to set out or mired in endless debate?
        iv. The setting of standards in secular disciplinary processes is also not free of controversy but it is easier to see what, for instance, the standard might be in respect of a healthcare professional whose practising work is very specific and circumscribed, as opposed to that of a priest, which contains many variants and involves his or her whole life and is likely to encompass that which would be difficult to categorise in specific and detailed standards. Even in the secular system (as already mentioned) this has not proved to be without difficulty for some professions.
        v. The fear is that a standards-based approach, as taken (in various degrees) by the secular systems may prove here to complicate the issues rather than clarify them and lead to cul-de-sacs of fierce and interesting debate that do not improve the system of dealing with complaints.
        vi. There is however one very important caveat. It is possible with any system to create specific rules and standards that apply to a particular area of concern. These may be the specific to the profession or vocation (the prohibition on barristers holding a client's money for instance) or general, such as rules protecting the vulnerable and cases involving safeguarding. These can be discrete, wholly separate, and can be developed much more speedily. They can extend right up to and

including the rules of evidence and the way any hearing is conducted – this is now commonplace in the criminal courts.

b. We should be very cautious, however, at this stage before predicating the whole complaints system upon detailed and (somehow) agreed standards.
c. There are, doubtless, particular aspects of a priest's work that do require a tightly drawn system of rules and standards – as with safeguarding above – and there is nothing inconsistent in having such rules to deal with a specific and discrete area without necessarily having to introduce it globally.

13. PUTTING COMPLAINTS ONTO THE PROPER PATHWAY

a. If it is any consolation, this is not a precise science in the secular system. At the MAJ end of the spectrum some conduct is obviously grave, if proved, and at the MIN end some is clearly trivial. However, there are numerous grey areas. Correct placement involves judgment of the gravity of the allegation and the specific facts surrounding it. The secular system, as has been seen, mostly hives off one level of complaint, the "service" complaint, away from its national regulatory bodies to the entity that has the most immediate local connection to both the Respondent and Complainant. This can be the Respondent him or herself, directly through to his or her firm, company or practice grouping (such as a set of chambers). In some professions the hiving off is optional and up to the Complainant to choose and in others it is mandatory.
b. Most complaints are doubtless dealt with at this lower level. They are resolved quickly and life goes on. They have not damaged the profession concerned and they often result in the practitioner (or his immediate organisation) taking them as a wake-up call either to examine how he or she is performing or, as often, how she or he is communicating.
c. The advantages of "in-house" resolution are obvious. The disadvantage is that they are not always susceptible of resolution and a Complainant may feel justifiably aggrieved (particularly in the case of a less competent practitioner, firm or company) if the perception is created that the complaint is just being brushed away. Therefore, most if not all secular systems, have a way of having service complaints being reviewed if the complaints' process has or may have gone wrong. This can be by reference to the national complaints' body or often by a specific Ombudsman. Subject to resources, the Ombudsman has one particular advantage: it still keeps the whole matter in the territory of a service complaint and avoids clogging up the national complaints' body with trivial complaints. There are other alternatives, such as review by another person independent of the original decision maker (this can vary from someone else in the same firm etc through to someone completely independent). In the ecclesiastical system, this could be another Bishop, the Registrar, the DBF or another diocese (which may want a mutual arrangement for its own reviews) or something specifically set up for the purpose. The really important thing is that there *is* a review and that a reasonable person properly informed would not conclude that the reviewer would be (or might reasonably appear to be) inhibited from questioning the decision made by the original decision-maker. It would appear that the only good reason for placing a service complaint with the regulatory arm of a disciplinary process, as opposed to the alternatives

canvassed above, is if it is not really a service complaint at all, but involves graver issues.

d. The hallmark of dealing with complaints at the "service" level in the secular system is that they should be resolved quickly and informally - concentrating on the remedy. That should, surely, be the aim here too.
e. However, there is a real issue about who decides what is a service complaint as opposed to genuine misconduct (or impairment of fitness to practise).
    i. The first person (often forgotten in this context) who should be required to consider that issue is the Respondent. Complaints are often made in the secular system to the Respondent first of all. It is a duty in all secular disciplinary processes that where a practitioner Respondent identifies a complaint as being an allegation of misconduct he or she should report the matter to the regulatory body. Self-reporting is an obligation in most secular disciplinary processes.
    ii. Second, someone else dealing with the complaint, irrespective of the Complainant's view of its seriousness, *must* consider the question of whether actual misconduct is involved if that question arises, which, in the secular system, would involve reporting the matter to the relevant disciplinary body.
    iii. Third, the Complainant will obviously have a view as to the gravity of what is alleged and the appropriate remedy. It cannot be conclusive of the issue for obvious reasons, but it must be considered carefully.
    iv. In clergy cases it would also be helpful for the Bishop to have a template of factors to look out for in placing a complaint properly and one could be easily drafted.
f. If the matter is what has been described as a service complaint, then it goes into the MIN process automatically. The actual determination should be subject to some potential for review (as discussed) particularly if it is dismissed. If it is not a service complaint, then the proper pathway has to be selected. If the issue is still minor then it stays in the MIN process. The MIN process can have a local panel to resolve disputed issues of fact and ought to have one if there are significant and relevant disputes of fact that would potentially affect the outcome.
g. There is nothing unusual in a determination within the service/minor end of complaints *requiring* a Respondent to do (or forbear from doing) something. <u>However, the more onerous the requirement, the less suitable it would be for summary judgment.</u> Requirements that impaired a person's ability to carry out his or her profession, vocation etc altogether would not generally be suitable for the MIN process. Failure to abide by lawful requirements imposed under this mechanism might be rectified (particularly if there was some reason for the failure other than simple refusal) in the MIN process itself by a stern warning or whatever, but it would be a definite indicator that potentially it might need elevating as a complaint in its own right to at least the INT level.
h. If the complaint involves more serious issues of concern (INT or MAJ) then it would go into the tribunal process. It is helpful if a tribunal system can also refer the complaint back to the MIN track if it concludes that this course is appropriate. This gives the Respondent his or her remedy against a mistaken

characterisations of seriousness. The ability to dismiss, compromise on terms or elevate a complaint within the disciplinary process is present in most secular disciplinary systems. Where the complaint is dismissed, there would normally be some method of review at the request of the person bringing it, which, by then, ought to be someone on behalf of the Complainant such as a regulator in the secular system or a DO in the ecclesiastical one, because the complaint will have been "adopted" on behalf of the original Complainant. It is usual for the Complainant in the secular system to be consulted by the regulator to explain those options but the regulator makes the final decision as to whether or not to seek a review. Where it is dealt with in any compromise or where undertakings have been given, best practice would be to have a similar review as for dismissal or, at the least, consultation with the person bringing the complaint who will doubtless discuss it with the original Complainant. However secular disciplinary processes vary on this aspect.

i. Dentists have a process which shows the ability to be flexible about the way in which Complaints can be handled in the stages where impairment is under consideration: The GDC has a four-stage process:
    i. STAGE 1. (REGISTRAR) Assess the information and allocate to CASEWORK for consideration or dismiss telling Complainant why. Dismissal may only happen if the complaint does not amount to an allegation.
    ii. STAGE 2. CASEWORK (REGISTRAR) notifies the Respondent, collects the relevant information, obtains necessary evidence, in "health" cases obtains medical/psychological reports, in criminal cases obtains certificates of conviction or police reports. CASEWORK may then close (i.e. dismiss) the case at this stage or move to STAGE 3. The relevant question is not whether the allegation is true but whether it needs to be considered in more depth.
    iii. STAGE 3. Referred to CASE EXAMINERS. Two CE's consider each case (one lay, one practitioner). The CE's will consider the allegations, take the Respondent's comments and send a complete copy of the evidence to both sides. It may decide to refer the allegations for a full public inquiry (hearing) or to agree a set of undertakings with the Respondent. If not referred for a full hearing the CE may also simply send a letter of advice or warning or take no action at all.
    iv. STAGE 4. Full public hearing before PROFESSIONAL CONDUCT COMMITTEE or PROFESSIONAL PERFORMANCE COMMITTEE or the HEALTH COMMITTEE.
    v. At any stage the Registrar (of the GDC) or the CE's may refer the Respondent to the Interim Orders Committee which may impose conditions on the Respondent's practice or even suspend the Respondent from practising until the disciplinary procedure is complete.

j. The BSB only deals with complaints that involve Professional Misconduct or a serious breach of proper professional standards. It investigates complaints, first by a Contact and Assessment Team which puts the complaint in order and also conducts a risk assessment as to how the behaviour alleged might have

impacted on the profession and the public. If satisfied that there is some evidence of potential misconduct the case moves to the Investigation and Enforcement Team which, having put together the evidence and sought the Respondent's account, can either dismiss the complaint as misconceived / without any proper evidential foundation or report to the Independent Decision-Making Body (IDB) which, unlike the Conduct Committee it replaced, pays its members (17 barristers and 23 lay members) to decide whether to dismiss the complaint or refer it on to BTAS (the Bar Tribunal and Adjudication Service). If it takes that course, the BSB will instruct counsel to bring its case and a series of case directions will be given very quickly including whether it is to be a 3-person Tribunal with more limited sanctions or a 5-person Tribunal which can disbar the barrister. Cases only go to the 5-person Tribunal if disbarment or suspension for more than 12 months is a realistic and likely prospect.

k. Although both professions have differences, both are investigated by a dedicated body charged with doing so and the system is expensive. It is paid for by practitioners. Experience shows that it is not unusual for there to be a delay of 9 months or so in hearing the most serious cases and sometimes longer.
l. Compelling attendance (much easier in a criminal court for instance) is often a problem and a minority of those facing secular disciplinary processes string the proceedings out considerably. At the MIN stage, it is easier to be much tougher about moving things along. But that this is not an excuse for doing nothing and a tough 'directions' regime both in the criminal courts and the secular disciplinary process has improved matters. However, that too has cost implications: someone has to administer it, chase people up and enforce it.
m. Most secular disciplinary systems have a lawyer conducting the "prosecution" of a MAJ or INT case in front of a Tribunal. The prosecutor is responsible for considering the allegation made or the preliminary charge that has been proffered and (a) making sure it is correct and in proper form (b) amending it if necessary and (c) considering the sufficiency of the evidence to support it. This role is, surely, important.

14. Summarising then:
    a. Ultimately it may not matter whether the more serious cases fall into INT/MAJ pathways or just MAJ, although INT might assist in focussing the cases where the line of demarcation between between MIN and MAJ starts.
    b. Something analogous to the "service complaint system plus minor negligence etc" provides the framework for complaints that do not leave the diocesan level – MIN complaints. Their hallmarks will be:
        i. <u>SANCTION</u>: the sanctions will be those best designed to assist the Respondent perform his role properly and to resolve any sense of grievance between the Complainant and the Respondent. However,

these cannot be dependent on the consent of the Respondent otherwise they lack 'teeth'.

ii. PROCESS: the process, being more informal and aimed at reconciliation and moving forward not looking backward, will be suited to deal with what has happened.

iii. INVOLVEMENT: the complaint will be seen by reasonable people as being between the Complainant and the Respondent and not involve any wider concern with public safety or any likely loss of confidence or reputational damage to the Church of England.

iv. LACK OF AGGRAVATING FEATURES. For instance (and not exhaustive):
    1. Conduct not serious in itself (e.g. inattention to something, minor negligence, poor communication) and not repeated.
    2. Conduct not amounting to any criminal offence (save parking, minor speeding etc) or any substantial breach of ecclesiastical law.
    3. Conduct not involving any dishonesty, lack of integrity, or breach of trust.
    4. Conduct not clearly scandalous or not clearly unbecoming.
    5. Conduct not such as to erode public confidence in the Church or its teachings.
    6. Respondent not aware (and reasonably so) of any vulnerability in the Complainant if there is such. If aware this would be a distinct aggravating feature.
    7. Impact (objectively assessed) on the Complainant is low.

v. PRESENCE OF MITIGATING FEATURES (this may serve to lessen any Aggravating Features) such as:
    1. Cooperation with the process.
    2. Insight into any admitted faults.
    3. Steps already taken to address the issue underlying the complaint.
    4. Particular personal circumstances that might reasonably explain the behaviour (dependent on its inherent gravity).

vi. AGGRAVATING FEATURES. Conduct that would lift the complaint into INT or MAJ would be the reverse of the "LACK" features or the mitigating factors.

vii. SANCTIONS would involve likely prohibition or other very serious sanction at the MAJ level and involve the necessity for a formal procedure to be fair to both sides and the involvement would be with the Church as a whole. Aggravating features would be present and, by reason of the seriousness, the mitigating features would necessarily carry less, if any, weight.

viii. The INT level would still have features of seriousness but the gravity of the conduct itself would be lower and the aggravating features less pronounced. Above all, the lesser sanctions open to the tribunal would

be sufficient both to mark the behaviour, prevent its repetition and maintain public confidence in the process.

c. At all levels, there is no reason against (and many for) the Registrar advising briefly on the issues to be looked for in a particular complaint in order to decide the correct pathway for its resolution and disposal. Nor why in the initial consideration much more than a summary of the facts is required plus an initial brief assessment of gravity. The Respondent need only be involved if the complaint discloses some genuine grievance (at whatever level). If it will likely stay at the MIN level, the Respondent can be invited to give a response to the matter causing concern. If the case is potentially going to move to INT/MAJ then a more detailed evidence-gathering exercise will be needed and both the original Complainant and the Respondent invited to give detailed statements of what they say in the form of a witness statement or, at the least, in a document that attests to its truth.
d. There is sense in the suggestion of defining the core duty, breach of which may cause an allegation of Misconduct to be alleged.
e. Finally, assessing gravity should not simply be a tick-box exercise. Most cases will be obviously MAJ or obviously MIN but in the middle it requires a sensible analysis of the important factors in the round to find the correct pathway.

15. ADMISSIONS OF LIABILITY. Under the present system the Bishop may conclude that a penalty by consent is appropriate. In comparison with the secular systems this has some unusual features and seems to encompass two different things: the first is the imposition of a penalty by consent after having determined it in the MIN system. It would be the sanction following a finding. This should not require the "consent" of the Respondent, surely. However, where there is an agreement that a certain penalty will be imposed if the Respondent agrees to it, thus, for instance, meaning a case does not have to go forward to a tribunal, that clearly would require the Respondent's consent otherwise the case would need to be resolved before that tribunal. This second situation is nearer to an advance indication of sentence in the criminal system, upon knowing which a defendant might wish to admit guilt and take that sentence to avoid further proceedings and delay. Obviously, he or she would not be obliged to do that. That does require the Respondent's consent, because he or she is foregoing a right to have the case heard by the tribunal.

16. APPEALS. All secular tribunal systems have a right of appeal (often involving the High Court) generally for the Respondent, and usually one for the Prosecutor (or DO) on a question of law from the decision of the tribunal. Therefore, a system of appeal to the Court of Arches is consistent with the principles of appeal in the secular systems.

17. OTHER DIOCESAN COMPLAINT SYSTEMS. Most (if not all) dioceses have a complaints' procedure to deal with complaints against those others than priests, e.g. diocesan staff, but I agree that the Bishop's particular role precludes fusion of this with the MIN track. There will usually be a separate tracking for safeguarding within the general diocesan complaints' process. There is a separate system (the CDM) for priests, usually with separate tracking for safeguarding even within that. If there are separate entry points, separate forms of consideration and wholly separate processes applying to

each, that can present quite a complex appearance to anyone outside those directly involved with them, and probably to not a few inside. In the processes as they apply to clergy, the Bishop is the first point of reference with the process which, in the majority of cases, begins and ends under episcopal control. In the diocesan (non-clerical) complaints' process, although the Bishop might forward complaints that understandably people have sent to him or her, the episcopal involvement will often in reality be as a final port of call, if the complainant remains dissatisfied after a body such as the DBF has dealt with the complaint. Simplifying the system of making a complaint greatly benefits both Complainants and Respondents alike.

18. Finally, it is clear that the commencement of every complaint with a CDM is wrong. Most complaints are dealt with at the MIN level and the CDM is perceived as having escalated the complaint to a charge before the process has even begun. That is not what was intended but it is understandable that it supercharges the complaint in the Respondent's eyes when we know that a large majority of complaints never would or should get as far as the tribunal process.

Annex 4

The Australian Model

1. The Lambeth Working Group states in paragraphs 31 and 32 of its recent Progress Report (4th December 2020) that they:

> "have been inspired by many secular institutions which maintain a system of professional regulatory standards. We have also been inspired by Churches, particularly the Anglican Church of Australia who adopt such a model. It strikes me *[sic]* that this model is particularly well suited to the Christian Church. We are a body of those who profess Jesus as Christ. Those of us who have realised our vocation to Holy Orders profess Jesus Christ in a particular way. For clergy professing Jesus as Christ is part of our profession. This, it is suggested, is not merely a semantic nicety, but a reality which impacts on our entire way of life, including how we order our professional and personal lives. The desire to serve the Church as regulated professionals arises from our love for Jesus Christ, and all those made in God's image.
>
> It is for this reason that it is being proposed that the Church of England's understanding of Clergy Discipline should be set within the broader context of professional standards. This will serve to provide a clear code according to which regulated professionals should seek to order their lives. It will ensure that all deacons, priests, bishops (and archbishops), are held to the same common standard. This codified standard will make clear the professional expectations placed on clergy"

2. In 2004 the General Synod of the Anglican Church of Australia recommended that dioceses should each pass an ordinance to give effect to model Professional Standards. We have looked at the way that has been worked out in the Diocese of Newcastle. Our stating point was *Faithfulness in Service A code of for personal behaviour and the practice of pastoral ministry by clergy and church workers in the Anglican Diocese of Newcastle July 2020*.[27] This derives from that diocese's *Professional Standards Ordinance 2012* [28]*,* which by para 3 empowers the diocesan synod or the diocesan council to "approve a Code of Conduct for observance by Church workers in the diocese".

3. *Professional Standards Ordinance* is a complex 23-page document, including a definition section of 3 pages. In Part 5 there is provision for a Professional Standards Committee (PSC) to implement the protocol approved from time to time by the

[27] https://www.newcastleanglican.org.au/wp-content/uploads/2020/08/Faithfulness-in-Service-Anglican-Diocese-of-Newcastle-July-2020.pdf

[28] https://www.newcastleanglican.org.au/wp-content/uploads/2020/10/Professional-Standards-Ordinance-2012-24092020.pdf

Diocesan Council. The PSC is charged with training and compliance, as well as investigation and recommending interim suspension or prohibition to the diocesan bishop. Part 6 provides for the appointment of a diocesan Director of Professional Standards. Under Part 9, provision is made for a diocesan Professional Standards Board (PSB) to which, after investigation, there shall be referred under Part 10 questions of the fitness of a Church worker to hold any office, licence or position of responsibility in the Church or to be or remain in Holy Orders or in the employment of a Church body; and whether in the performance of any function the Church worker should be subject to certain conditions or restrictions.

4. The PSB may, following investigation, recommend to the diocesan bishop (para 82):
    - That the Church worker be counselled;
    - That the Church worker be suspended from office or employment or from performing the function as the case may be for such period as determined by the Board;
    - That the licence of the Church worker be revoked;
    - That the Church worker's contract of employment (if any) be terminated;
    - That the Church worker cease to hold any office the held;
    - That a prohibition order be made in terms specified by the Board;
    - That the Church worker's holding of office or employment of performance of the function as the case may be, shall be subject to such conditions or restrictions as the Board shall specify;
    - Recommend that the Church worker should be deposed from Holy Orders;
    - Make such other recommendation as the Board sees fit.
      The diocesan bishop is empowered, but not bound, to follow the recommendation of the PSB, and "may take different action to that recommended by the PSB" (para 83). There is provision (para 88) for Review in two categories of decision (deposing from Holy Orders; or terminating a contract of employment or removing or suspending the capacity of the respondent to gain income as a Church worker")

5. As mentioned above, *Professional Standards Ordinance* expressly states that the code of conduct is "for observance by Church workers in the diocese". When considering (under para 82) whether the Church worker is unfit, whether temporarily or permanently, to hold a particular office or remain in Holy Orders or in

the employment of a Church body, or be subject to certain conditions or restrictions, the PSB (under para 81):
"shall take into account:

(a) the conduct of the Church worker as it finds it to have been;
(b) ….any other fact or circumstance relevant to the determination of the question or questions before it; and
(c) Any failure of the Church worker to comply with a provision of the Ordinance or with a direction of the Board".
Although the language of (c) is a little opaque, it would seem that failure to observe the Code of Conduct would constitute "failure…to comply with a provision of this Ordinance".

6. *Faithfulness in Service 2020* is the relevant Code of Conduct under the *Professional Standards Ordinance.* This 42-page document:

> "is intended to identify the personal behaviour and practices of pastoral ministry that will enable clergy and church workers to serve faithfully those among whom they minister. If the behaviour and practices it outlines are followed, our communities will be safer places for everyone, where integrity is honoured, accountability is practised and forgiveness encourages healing and does not conceal misconduct" (p4).
>
> The code contains 5 sections, Pastoral Relationships; Children; Personal Behaviour; Sexual Conduct; and Financial Integrity, each consisting of a Preamble, Standards for clergy and church workers, and Guidelines. Surprisingly, there is no express statement that failure to follow Standards or Guidelines may result in or influence disciplinary action. Rather the focus in on reporting. Failure to follow standards "should" be reported to the diocesan bishop and the Director of Professional Standards; failure to follow guidelines related to children or resulting in harm to a person "should" also be reported to the same persons; but other failures to follow guidelines "may" be reported to the same persons, but "should" be raised with the member of the clergy or church worker concerned (p14-15).

7. The code appears to be primarily aspirational and has some similarities to the Church of England's *Guidelines for the Professional Conduct of the Clergy 2015.* Those *Guidelines* are, however, markedly less legalistic in format, and expressly recognise (page x of the Preface) that they "are not intended to be a complete compendium covering every aspect of our life and ministry".

8. Legalism and comprehensiveness apart, the two most striking differences between *Faithfulness in Service* and the *Guidelines* are:

> (1) The *Guidelines* (like the CDM itself) is addressed solely to the clergy. *Faithfulness in Service* is addressed to all "Church workers", defined (p7-9) to include not only clergy, but also a wide range of lay persons. Including members of the General or diocesan Synod and members of any board, council or committee constituted by General or diocesan synods, the

Diocesan Council or a parish council, and any person involved in direct ministry to children or young people, including team members of Family/Youth/Children's group teams.

(2) Whereas safeguarding in relation to children and vulnerable adults is properly mentioned in the *Guidelines* (2.11-2.16), safeguarding considerations dominate *Faithfulness in Service.* For example, in the extensive section on "Key Terms" (p6-13), most entries relate to forms of child abuse or exploitation. Whilst some safeguarding cases give rise to a need for disciplinary investigation and sanctions, safeguarding is largely a distinct matter and of only secondary significance to the scope, present or future, of the CDM.

9. *Professional Standards Ordinance* and *Faithfulness in Service* are complemented by *Professional Standards Protocol 2020*[29]. This third document "is designed to assist in the understanding of the procedures to be followed in accordance with the Professional Standards Ordinance 2012" (para 1), and "to be read in conjunction with the Ordinance and the Code of Conduct…" (para 2). It is largely concerned with non-mandatory reporting of sexual misconduct and safeguarding matters, but includes reporting to the DPS of "any conduct from which a person has suffered harm or is at risk of harm which is contrary to the standards or guidelines of Faithfulness in Service" (para 6 f.). The document is mostly concerned with the conduct of investigatory proceedings, including reporting to child protection agencies.

Conclusions in relation to the Australian model

10. Analysis of *Professional Standards Ordinance* shows that failure to observe the code of conduct in *Faithfulness in Service* is but one of several factors relevant to disciplinary decisions in the Anglican diocese of Newcastle. The fundamental question for the PSB concerns fitness to hold office or employment, and/or the need for conditions/restrictions, rather than whether there has been a specific breach of the code of conduct (see para 5 above).

11. It may be worthwhile to take account of the format of *Faithfulness in Service* when the Church of England's *Guidelines* are next revised, though it would be regrettable if the latter were to become as legalistic a document as the former, and also undesirable that the latter's concentration on safeguarding should play so prominent a role in any future version of the *Guidelines* (see para 8 above).

12. Quite apart from this safeguarding matter, it needs always to be borne in mind that the Newcastle suite of documents is aimed at a far wider group of "Church workers"

[29] https://www.newcastleanglican.org.au/wp-content/uploads/2020/08/Professional-Standards-Protocol-2020-28052020.pdf

than concerns *Guidelines* or, more importantly, the CDM and its revision (see para 8 above).

Annex 5

Evidence given to IICSA – References to CDM and relevant extracts from transcripts

By means of word searches in the transcripts of the IICSA hearings an attempt has been made to identify all witnesses who referred to the CDM. In many instances extracts of what was actually said have been included in this Annex, but in some instances reference is made by way of a summary of what was said rather than including the full transcript.

1st July 2019 – Opening Statements –

Fiona Scolding QC (Counsel to the enquiry)

p38 - In a recent report about clerical discipline, bishops made pertinent observations about what they considered was needed of their clerics. They say "For us, this exercise relating to the working of the CDM, particularly by the bishops, has focused rather sharply that we need clergy at all levels of the ministry who are …,

p49 – she made reference to Sir Roger Singleton's complaint about +Chester, and the Ineson complaints and said:

"Online commentators have raised concerns as to whether or not the 2016 changes have been used appropriately, especially if there are no allegations of child sexual abuse themselves or safeguarding concerns, the issue being about what was done or not done about others. I would also identify that the Tim Storey case demonstrates the limits of CDM. As I identified, it was seen to be disproportionate and not to provide the outcome which the survivors would wish, given that survivors wanted to challenge the conclusions reached within the independent review.
We want to examine whether CDM is fit for purpose in dealing with complaints about child protection and safeguarding, even after the changes I have just identified. The church has recognised that this may be the case and therefore has undertaken three recent consultations which we will ask about: a consultation on the workings of CDM to all diocesan bishops; a consultation by the National Safeguarding Team about the efficacy of the CDM process; and a consultation with lawyers operating in dioceses known as diocesan registrars who handle such complaints about the issues of delay.
We want to hear about the possible proposals which are being put forward to further amend CDM and how they are going to be taken forward. In particular, we want to know how effective CDM is as a process for risk management for current concerns and if, in fact, a different sort of process needs to be devised.
Secondly, if the process currently builds in adequate processes to meet the needs of complainants, and also those who are the subject of complaints.
And, lastly, if staff who undertake work involving CDM have suitable experience in managing the needs of vulnerable individuals.
The church recognises, at least in part, that CDM is not a means of protecting against risk in a safeguarding context, and is not necessarily an appropriate vehicle for those who do not manage safeguarding well, but whose conduct would not meet the test for the bringing of

disciplinary proceedings. It also recognises that the capability procedure introduced for certain members of the clergy who have a status known as "common tenure", which has only been in place since 2011 and which provides some of measure of quasi employee rights and responsibilities, is also seen by the church not to be an appropriate mechanism and unlikely to be of assistance."

p104 Greenwood (representing a number of survivors): On internal discipline, the Clergy Disciplinary Measure must be surely another embarrassment for the church. Its ludicrous rules led to complaints of being timed out after a year and many claims being dismissed or decisions to take no action, all without independent scrutiny. What kind of discipline measure has impenetrable rules, allows an alleged perpetrator to comment on whether a case can be considered out of time, and, as per the report on the CDM of 2018 attests, has only 90 complaints covering over 20,000 members.
The CDM summary report of 2018 tells us that most of the 90 complaints were either dismissed by a bishop, had no action taken or a penalty by consent imposed. Only seven reached consideration by the President of Tribunals. Only four were dismissed from office. These came after criminal convictions. It bears no relation to most employer and employee disciplinary codes.
Interestingly, 24 complaints were made against bishops. All, apart from the six still outstanding, were dismissed or no action taken by Messrs Welby and Sentamu.

p**.112 Giffin** (representing the Archbishops' Council): As Ms Scolding has mentioned, since the last hearings there have been a number of consultations on the CDM and its efficacy, including consultation drawing specifically upon the experience of bishops and diocesan registrars. The House of Bishops has now established the working group to bring forward proposals for reform with a view to amending legislation being introduced next year, and the NSSG has determined that the inquiry's particular recommendation for legislative change should be addressed as part of that process and that, meanwhile, a strategy for better communication of what the current legislation means and requires should be developed and implemented.

P165 – witness AN-N4 said he took out a CDM against +Durham "because his response was so thin"

2nd July

p.132 Bishop Alan Wilson (His witness statement deals with CDM at paras 85-94)

Q. You also identify in your witness statement concerns that you have about the operation of the Clergy Discipline Measure. This is, chair and panel, at 50 to 52 of your witness statements. Can you identify why you have concerns about the current workings of the Clergy Discipline Measure, or CDM, as I may call it?
A. Well, I think there are phenomena that a large number of people experience when they're dealing with the system to do with delay and to do with the lack of a whistleblowing policy, which means that witnesses are quite often intimidated and don't want to make statements because they're afraid that this will be thrown back at them by the person about whom they're complaining. So there's that sort of level of operational difficulty. I think, as a bishop,

my problem with it is that it puts bishops in the most extraordinary role, where they are both expected to be judges, which they have no particular training or yen for being or experience of doing, and also pastors at the same time. I think that that is, in itself, very problematic indeed. It means that an enormous amount of work that happens under the CDM is done in a hurry by people who aren't used to doing that sort of thing and who may make very quick judgments which are not particularly secure. And I also think that there are structural problems with it. I think it's very difficult sometimes to establish what has actually happened. I think a lot of CDM proceedings are conducted in a dense cloak of secrecy, so nobody knows what has happened. And, therefore, in terms of the church learning from disciplinary lapses by clergy, that can't possibly happen, because nobody knows, when anything has gone wrong, what it was. So there are lots of problems about it.

Q. In fact, at paragraph 85 of your witness statement, just for the chair and panel, you describe it as "self-protective, inconsistent and opaque"?

A. Yes.

Q. That's page 15 of your witness statement.

A. I think that's how many survivors have experienced it. It also contains some discretionary -- I have seen CDMs, for example, where a witness was one day late with a statement and therefore the whole thing has unravelled.

Q. Could you tell me, at paragraph 86 -- maybe it would be useful for us to get this up. It's ANG000637: "The key problems with the current CDM ..." There's quite a long list of them. I don't necessarily ask you to go through all of them, but you have already identified the compromise of bishops asking to be "investigator, prosecutor, judge and pastor; the reluctance of archdeacons to administer the process". Can you tell me, what do you mean by "the reluctance of archdeacons to administer the process", for those people who are less familiar with the way the church works?

A. Very often, the archdeacons are the people who have to prepare the witness statements and do the donkey work, really, of putting together a CDM complaint. They're in a particularly difficult position because everybody thinks that the church has responded to the problem by sending in an archdeacon who's taken a witness statement. They're then left hanging, sometimes for months, if not years, on end, whilst nothing seemingly happens, trying both to protect the witnesses and to maintain the forward momentum in the procedure, but the procedure very often simply goes round and round in circles, really, at that point, and I think it's the archdeacon who is often blamed for those delays, even though in fact it's not the archdeacon's responsibility to ensure they don't happen. I feel very deeply for the role of archdeacons in CDM proceedings.

Q. You also identify an issue halfway down that page about non-disclosure agreements. I think some people would be quite surprised. We are used to NDAs, as I believe they're called, in other situations, but is it the position that clerics can have non-disclosure or confidentiality agreements imposed as a result -- or can ask for them to be imposed as a result of Clergy Discipline Measure?

A. The way I have experienced it working is a bit like this: a cleric may be caught doing something that she or he should not have done. They then can have it dealt with by their diocesan bishop, but only if they agree to the penalty.

Q. So penalty by consent?

A. Yes. If they don't agree to the penalty, then they can enter into a process of negotiation, really, about what happens next. It's kicked upstairs to a tribunal, but a tribunal is very unlikely to happen. In the meanwhile, there will be a negotiating process between the diocese, through the registrar, and the person being complained about and their legal representatives. Very often, the ideal solution, from some points of view, is for the cleric to resign at that point. Because that gets them out of the parish and saves embarrassment. That means the diocese no longer has to go to the trouble or expense of further CDM proceedings. And it means that everybody really finds the thing has been dealt with far more expeditiously than would have been the case if it had gone to tribunal. The problem is, if you're the victim, say the person who has been abused by the cleric, part of that negotiation will very often be a confidentiality agreement, and that is a problem because it means that the cleric can then apply for work, particularly if the Lambeth List hasn't gone out, then nobody will know that they were on that, at the other end, and they will feel, as one cleric once felt, that I have compromised their confidentiality by not giving them a reference for another job, which they should not have had because proceedings were being taken against them at the time that they left our employment.

Q. The other point that you raise is that there was -- in 2003, deposition from Holy Orders was abolished in respect of these sorts of complaints. In fact, it isn't abolished in terms of breaches of ceremony and ritual. I think it still exists –

A. That's dealt with under the Ecclesiastical Jurisdictional Measure which deals with matters of doctrine and worship.

Q. Yes, but it was abolished and you describe that as fundamentally misguided?

A. Yes.

Q. Why do you think it needs to be reinstated?

A. I think there are people who should not be in Holy Orders. It's as simple as that. And I think that not to have that red line sends up a very powerful signal in any profession. If it was impossible to strike off a doctor, all you could do was say, "We won't give you a job and you'll go on a list which we don't circulate to people anyway", that wouldn't be a very powerful way of preventing someone who shouldn't be a doctor from practising as a doctor.

Q. You identify at paragraph 87, ANG000637_016, what you think an effective disciplinary system should look like. Chair and panel, it is behind tab A1 of yours. So you say that it doesn't meet any of those tests that you identify, which is: doesn't really fully investigate and

establish facts; doesn't communicate expectations appropriately; it isn't consistent; and it doesn't produce an action plan based on the act not the person?

A. Yes.

Q. So it fails fundamentally, as far as you're concerned –

A. Yes.

Q. -- to meet basic requirements. Is that in respect of victims and survivors or also in respect of clerics, from your role as the pastor of other members of the clergy?

A. Well, I think any organisation needs these bases to covered, if its disciplinary procedures are going to be effective. If you can't investigate what actually happened, you've got nothing to talk about, in a way, and yet the investigation stage, penalties can be handed out before an investigation has even happened. So there are a large number of aspects of it that make it a less-than-ideal system.

Q. So what would be your solution, if you have one?

A. To which?

Q. To the current inadequacies of the system?

A. How long have you got? I think that you have to begin by investigating what actually happened. I think that there has to be, at some point, a revelation of what behaviour is actually being reacted to. Simply saying, "Well, a decision has been reached that a cleric has offended in a particular way", without saying how they did that -- so that, for example, in a case of spiritual abuse, nobody knows what spiritual abuse actually happened, in the way that that is reported. So the chance of another cleric realising that this behaviour is unacceptable is very small because they will never know what was actually being talked about. In terms of being consistent across the board, there is a very widespread suspicion among survivors that bishops get a much easier ride with CDM than other clerics. Now, I don't see all the figures and I can't comment on that, but that is often said, that people who have entered CDMs against bishops feel that they get lost in a dense fog where everything takes twice as long and, at the end of it, nothing very much happens and, if it did happen, you wouldn't know it had happened because nothing is reported anyway. So just at a very basic level, I would say that those are things that should be addressed.

Q. At the moment, it's the diocesan bishop that certainly starts the process before it goes to a tribunal. You've already identified some misgivings you have about that. Would you be of the view -- I think you identify at paragraph 92 of your witness statement that your solution to that would be to have like a national body that deals with discipline. So, in a way, extending the remit of the current Clergy Discipline Commission so it was responsible for all stages of the process?

A. Well, I think most professions and teaching regulation authority, that's how it works if something seriously goes wrong, and that secures consistency across the board. It means it doesn't depend on which particular one of 42 dioceses you are in; there is consistency across the board about the kind of behaviour. Also, since I'm involved in education, I can say there is much more clarity in teachers' discipline about why particular penalties have been involved, what factors have been engaged, why they have been engaged, so that someone studying the results of those tribunals would know what to avoid and what not to avoid in terms of their behaviour. So, yes, I think that would be much better. But, actually, a return to the system before the CDM came in, where judgment was function -- was basically offered by diocesan chancellors would be an improvement, because at least diocesan chancellors are legally trained and are used to exercising judicial function.

Q. If you can just remind me, the diocesan chancellor, who I think still exists under the Ecclesiastical Jurisdictional Measure 1963, so that's doctrine and church buildings and that kind of thing, they are people who are appointed by each diocese but who have to have a legal qualification?

A. They are senior, qualified lawyers, many of whom are used to exercising judicial functions. That's a much better basis on which to do this than beginner's luck.

Sir Roger Singleton p196-201
Makes references to his CDMs against +Chester and Dean of Lincoln and the problems getting his head round the complexity of the process (he needed leave to go ahead out of time)

3rd July

+Chester references to the CDM against him at pp77 and 78

Justin Humphreys (31:8) – at p.197
Q: So what areas do you think the Church of England would benefit from - or requires, not even benefit, would require external oversight?
A. I think you've heard in previous witness evidence that there is a connection -- I think there should be a connection with the CDM process. There should be a connection with general complaints around safeguarding services. There should be a connection to the general provision and quality of safeguarding so that that might even be a standards-based, quasi inspectorate arrangement that says, "This is what you are supposed to be working towards. You're either meeting it or you're not", and have some teeth and authority to bring sanctions, where appropriate.

4th July

Archdeacon Lain-Priestly (Witness statement ACE027707) pp156-181 of transcript
Spoke about decisions regarding CDMs against Hugh Valentine & Jeremy Crossley over Timothy Storey who was convicted of rape, explaining why not thought possible to bring CDM proceedings against either.

5th July

All about Wales – no mention of CDM

8th July

Edina Carmi – passing reference at pp110 & 112 to CDMs against people, commending the Archdeacon of London for lodging the CDM and not expecting the victim to do it

9th July

Julie O'Hara (York DSA) – passing reference to a CDM at p.46; and at p.70 saying:
So I think, for me, there is a role where incumbent is struggling for developmental and supportive work to take place. That falls within the informal capability process. I recognise that. And I do think there is a role for that, to support somebody to be more compliant or to practice in the way you would expect them to under modern safeguarding standards. The informal capability process has the option of formal capability, but also, it doesn't preclude a CDM taking place as well, if necessary, at a later stage.

At pages 82 & 83 she says she has nothing to add about capability/CDM

p.123 Witness X7 (being questioned about his reluctance to ask a PCC member to stand down)

THE CHAIR: Yes, I understand that, especially when you mentioned the threat of CDM. Do you now consider it wrong in principle?

A. I will follow the rules as they are presented to me. So bearing in mind that you now need to be DBS-ed before you go on the PCC, this won't arise again.

10th July

pp.1–61 Matthew Ineson – described the abuse he said he had suffered at the hands of Trevor Devanamanikkam, his disclosure of the same to several clerics including bishops and their inaction, his disclosures to the police and his filing of CDM complaints against the several bishops and the Archbishop of York and his further complaint against the Bishop of Doncaster for discussing his case in public. He also spoke about his complaints about the Provincial Registrar for Canterbury, and about the review the Church had instituted into how these various matters had been handled.

p.62 Adrian Iles begins to give evidence and explains how CDM system works and his role in it

p.111 ++ Sentamu begins his evidence

p.134 begins to talk about Ineson and his CDMs, then the apology over the Whitsey matters then at 157 about the non-suspension of +Chester (on advice of his Vicar-General)

at p.166 - I suppose the issue in terms of the conflict -- I mean, firstly, you're in a very fortunate position because obviously you have held judicial office and you've trained as a lawyer and, therefore, probably, the administration of discipline is more -- you're more naturally able to use the skills of forensic analysis than maybe some of the other bishops who don't have your qualifications and training would have. Secondly, is there not, however, an inherent tension, even if you're not directly responsible for pastoral care during the process of any clerical discipline, in terms of the fact that you are disciplining one of your own, so to speak, and that there is an inherent difficulty in -- they're one of your tribe, for want of a better word, they are one of your gang, and therefore you have to -- you know, it may well be difficult for you to administer discipline in those sorts of circumstances?

A. The Ordinal spells it out very carefully, that the bishop's duty is to exercise discipline with mercy. So discipline is part of being a bishop. We, in York, with my four suffragans, have all had to go on training of what is required for a bishop distinguished between pastoral responsibility and discipline under the Clergy Discipline Measure. And we never cross the line at all. They are kept quite separately. And I just think that if bishops are finding it difficult to exercise discipline, which is already one of their duties in the Ordinal, they should go on a course.

11th July

p.71 Graham Tilby on capability and CDM
pp.72-83 on reform of the CDM

In his witness statement he had spoken about the development of national safeguarding standards, he said that there was no draft as yet, but he went on (at p76):

Yes. I mean, you know, that's not a new concept and most organisations have them. Indeed, other denominations like the Catholic Church have them. And I'm very keen on the Royal Commission of Australia, the Child Safe Standards, I think is a good model because it brings it back into the kind of child's world, to some degree. Yes, the idea would be a set of standards with some criteria/measure sitting underneath that that then would form the basis, underpin the quality assurance work, whether it is self-assessment, whether it is independent audit, that you can actually begin to get some minimum standards in place that say, "This is what's expected. No longer a postcode lottery. This is what you expect to find in every diocese or every parish in terms of safeguarding". So that's an important piece of work we need to move forward on.

He went on to speak of the CDM being used as carrot and stick (ie threat to comply with safeguarding)

He said that if redesigning a CDM from first principles:

Matters that are complaints rather than conduct and misconduct, I think is the place to start. But regardless of that, I think it is likely the Working Group will need to come to some view and recommendations around a separate process that's more tailored towards safeguarding. I think, you know, if I was looking at other forms of quasi court processes, you would start to really actively think about, well, how does that really centre more towards the survivor, centre more towards special measures and issues, and I think you would be looking at creating a system that is much more focused and a proper justice process, a fair process, but actually is tailored more towards the safeguarding issues.

p.134 - +Hancock on his own experience of dealing with CDMs, relationship of CDM to safeguarding

p.208-212 ++Justin on need for reform of CDM, weaponising of the CDM
p.218 back to Ineson, York bell ringers
p.222 re appointment of +Lambeth and complaint against him.

12th July

Closing submissions

p.36 O'Donnell (??)
… the panel has heard a lot about the CDM in this wider case study, but we say it is hard to know what disciplinary proceedings are ever actually taken against the clergy because they are not made public. Bishop Alan Wilson put his concerns about clergy discipline characteristically well. He said: "I think a lot of CDM proceedings are conducted in a dense cloak of secrecy, so nobody knows what's happened. And, therefore, in terms of the church learning from disciplinary lapses by clergy, that can't possibly happen because nobody knows, when anything has wrong gone, what it was."

p.62 Chapman (MACSAS) You have an Archbishop of York who tells you that the voices of the abused must be heard, but in fact takes advantage of a one-year limitation period under the CDM procedure

p.84 Giffin (Archbishops' Council)
We hope to be able to help focus the arguments, in the light of the evidence that has been heard. There are some matters where, as you know, work to come up with the right solution continues within the church and the Clergy Discipline Measure is a prime example of that. Although the Archbishops' Council will not seek to pre-empt the conclusions of the CDM

Working Group, we hope that through the written submissions we can, at any rate, make a positive contribution by formulating some specific potential issues and potential changes which the Archbishops' Council, for its part, will wish to see considered.
These may include not only the more fundamental choices to be made about how the disciplinary process or any related capability process should work in future, but potentially also suggestions for more immediate improvements, and any views which the inquiry may then express on those suggestions will, of course, be welcomed.

p.84 Berry (National Police Chiefs Council)
Some time was spent on the question of discipline and the Clergy Discipline Measure. The NPCC expresses no view on the CDM itself, but suggests that the focus should remain on improving safeguarding processes and practice rather than on the intricacies of a complex Disciplinary Code. Safeguarding and disciplinary procedures have distinct functions.

There is no need, and indeed it would be unsafe, to wait for a formal criminal or disciplinary allegation to be made to commence safeguarding procedures. Disciplinary procedures have their place at one remove from the immediacy of safeguarding. They are principally a mechanism in all professions for maintaining the public confidence in the profession, maintaining high professional standards, and protecting the public from future misconduct by the cleric concerned where the allegation is found proved.

Disciplinary proceedings are not the principal medium for addressing safeguarding concerns. Indeed, even where an allegation is not proved in a Disciplinary Tribunal to the civil standard, there will be an ongoing role for the safeguarding procedures if the cleric is still deemed to pose a risk to children. So there may be sound reasons to reform the CDM, and perhaps align it with the more developed disciplinary procedures in other professions, but it would be easy for the church to get bogged down in that much bigger project to the detriment of getting safeguarding right and, in our submission, that would be a mistake.

Annex 6

Alan Wilson and Rosie Harper - *To Heal and Not to Hurt*

Ch 5 – The Way to the Inn

The greater part of the chapter is concerned with safeguarding. It begins by outlining some particular issues in relation to safeguarding in the church. Churches historically have had a focus on children; churches have a culture of high levels of trust but low levels of accountability; high moral expectations of the church lead to greater disillusionment when there is failure; love is about deeds more than about words. "*We asked for bread but you gave us stones*" – the churches failure to respond to disclosures of abuse other than with repeated apologies and promises, all of which prove empty.

The importance of "small marginal gains" as per Sir Dave Brailsford and British cycling.
The chapter then lists seven practical areas where significant gains could be achieved:
spiritual abuse; mandatory reporting; independence; accompaniment; restoration and redress; whistleblowing policy; and clergy discipline.

Clergy Discipline is the last of the seven to be unpacked.

They recount the case of a Head Teacher dealt with by the National College of Teaching and Learning for dishonestly completing health and safety forms. The process that was followed is described – public fact finding, followed by assessment as to whether what happened was professionally unacceptable, and then whether prohibition from teaching was appropriate, and if so the right of review. This is favourably compared with the CDM process which is experienced by many survivors as "self-protective and inconsistent".

They propose the 'Hot Stove Rule' as propounded by Douglas McGregor. When you touch a hot stove you burn your hand immediately, in a way that is predictable, the same for anyone, and impersonal. So any disciplinary system will cause resentment unless it succeeds in::

1. Finding out what actually happened (with accompaniment and representation for 'staff'.
2. Communicating expectations to everyone to whom they apply; policies rules and regulation clear and transparent to everyone from point of induction.
3. Achieving consistency – justice for all to whom it applies; all policies applied equally and fairly.
4. Directing action on the basis of the act, not the person; never down to discretion of individual manager.

In the NCTL case fact finding was dealt with separately from penalty.

In what follows reference is made to a number of cases that are used throughout the book.
Mark (1) – an altar boy abused by his vicar as a child, and re-abused by the failure of the church to respond to his disclosure.

Linda and Colin (8) – Linda, churchwarden, against Jason - drunkenness, lewd comments and bullying
Jane (11) – conscientious vicar, devastated by a CDM brought against her, suspicion that the real issue was her providing a service for a gay couple
Malcolm (6) – a bullied vicar, bullied (along with other members of the church) by Barry the treasurer
Jennifer (12) – as a girl, abused by the church organist.

Other "anecdotes" are recorded.

They say that many complainants like Linda, including abuse survivors, find trying to use it "at best frustrating, at worst outrageously arbitrary and unjust". Many respondents, like Jane, have found it "burdensome, capricious, and emotional destructive". They refer to work done by the Sheldon Hub, and the findings from its research.

But does it work? Some collateral damage could be acceptable if it deterred wrongdoing and protected the public. How does it fare against the hot stove rule?

A common theme of survivor experience is slackness about **investigating the facts**. An example given is that of Mark.

Hot stove disciplinary systems enable organisations to close the file, learn from mistakes and move on, but the vast majority of CDM complaints are handled in a way that makes that intellectually impossible. Complaint e.g. adultery, evidence gathered, lawyers advise 'game up, so resign with a secret agreement'. That way nobody will ever know anything went wrong and the church can move on. Post-apartheid South Africa shows that truth is the foundation of reconciliation. In CDM proceedings the truth is rarely investigated and when it is an NDA may keep it safely under the carpet.

Common matters such as drunkenness, aggression, or lying are not weighty enough for a tribunal, so a dishonest cleric can deny all and get away with it. Some pastoral solutions require disciplinary action. CDM is a charter for wolves in sheep's clothing.

One person's word against another does not always prevent a tribunal taking a view on the balance of probabilities. See what Nathan J Robinson says on Judge Kavanaugh for USSC.

Hot stove also means **being open about what has happened**. CDM is exceptionally secretive. Contrast however the case of Day (2016) (diocese of Europe) where the conduct unbecoming was reported in gross detail. This is said to be inconsistent with the way matters reported in English CDMs. Things could have been redacted as per NCTL judgements. Most English proceedings are cloaked in a thick fog of secrecy. Especially when resolved by the Bishop at stage I *(that is before a formal complaint is lodged).*

Administrative suspension is almost never imposed, instead clerics persuaded by bishop to 'withdraw from ministry' voluntarily. Works as a kind of anti-whistleblowing policy. Scope for continued offending and witness intimidation. Also limits the scope of any investigation. In many abuse cases people only come forward when the perpetrators have been removed from

the scene, making it safe to do so. E.g. Jimmy Savile being dead. Also imposes obligations on conscientious clergy like Jane to keep things going in the parish while under investigation.

Flying has become safe through the rigorous habit of investigating accidents in minute detail than applying what has been learnt. Sadly that has not always happened in the medical world. Similar pattern of cyclical failure to learn from past errors can be seen in the gushing stream of apologies from senior figures in the church.

Third hot stove principle – **consistency**. It is the same for everyone when they touch a hot stove – they get burnt. Pro rata 10 times as many CDMs against bishops as against other clergy. But nobody knows what has happened, nothing goes to tribunal, everything is kept incestuously within the purple circle. Nonsensical that archbishops deal with complaints against each other. The whole system requires independence at every level. Bishop as judge, investigator, prosecutor and pastor is a disaster.

Out-of-time rules are used to suppress cases all over the world. There have been incidences were a serious complaint relating to a sustained pattern of behaviour has been thrown out because received one day late.

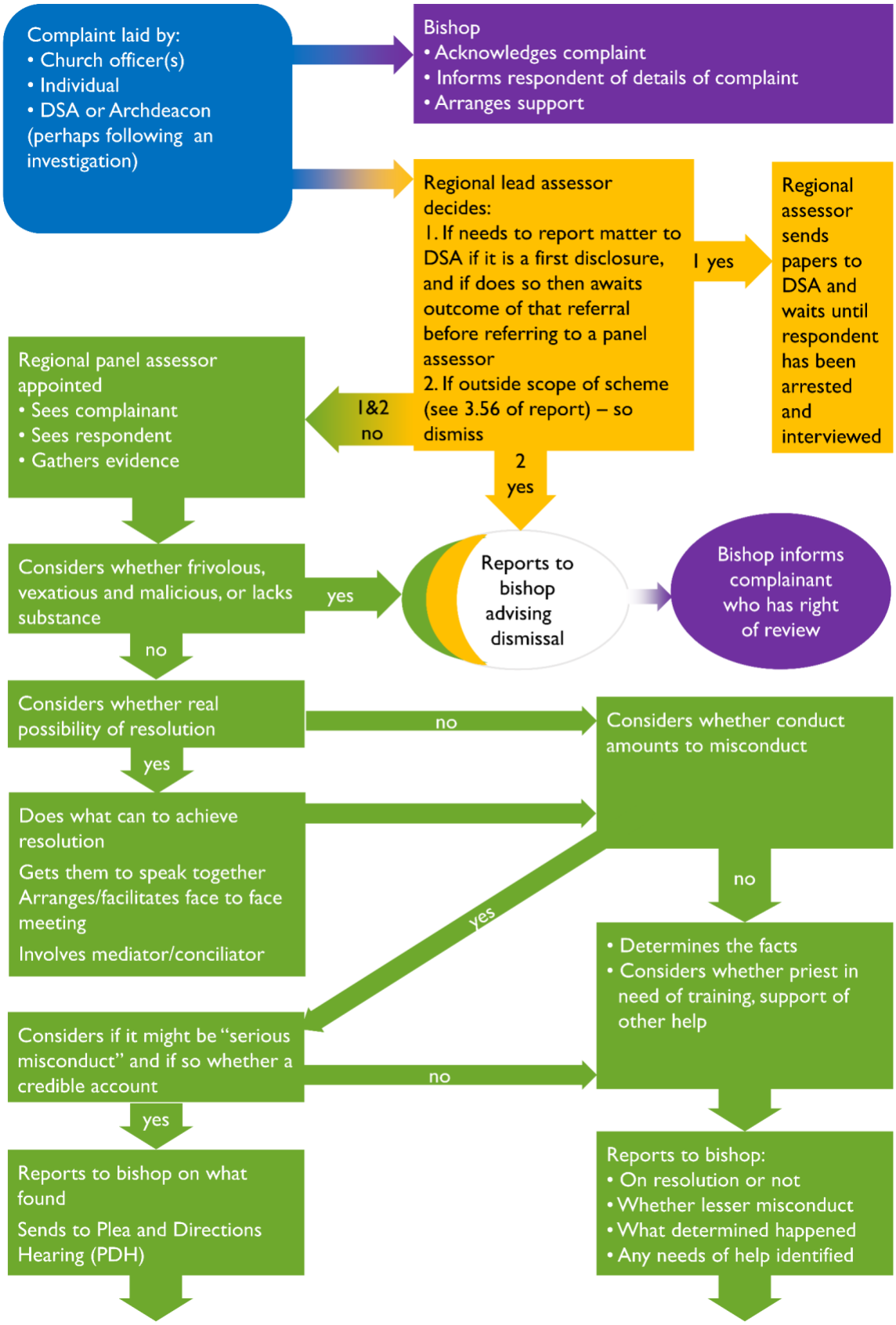
Only way forward is wholesale reform to provide a system that is consistent, transparent and effective. It must address the basic needs of respondents as well as complainants. It must resolve the position of bishops and assert what they are in canon law – chief pastors of their dioceses. There must be access to justice for all. Serious professional misconduct must be dealt with on the basis of fact, not a desire to save money and save face. Requires a single national body that transcends individual dioceses.

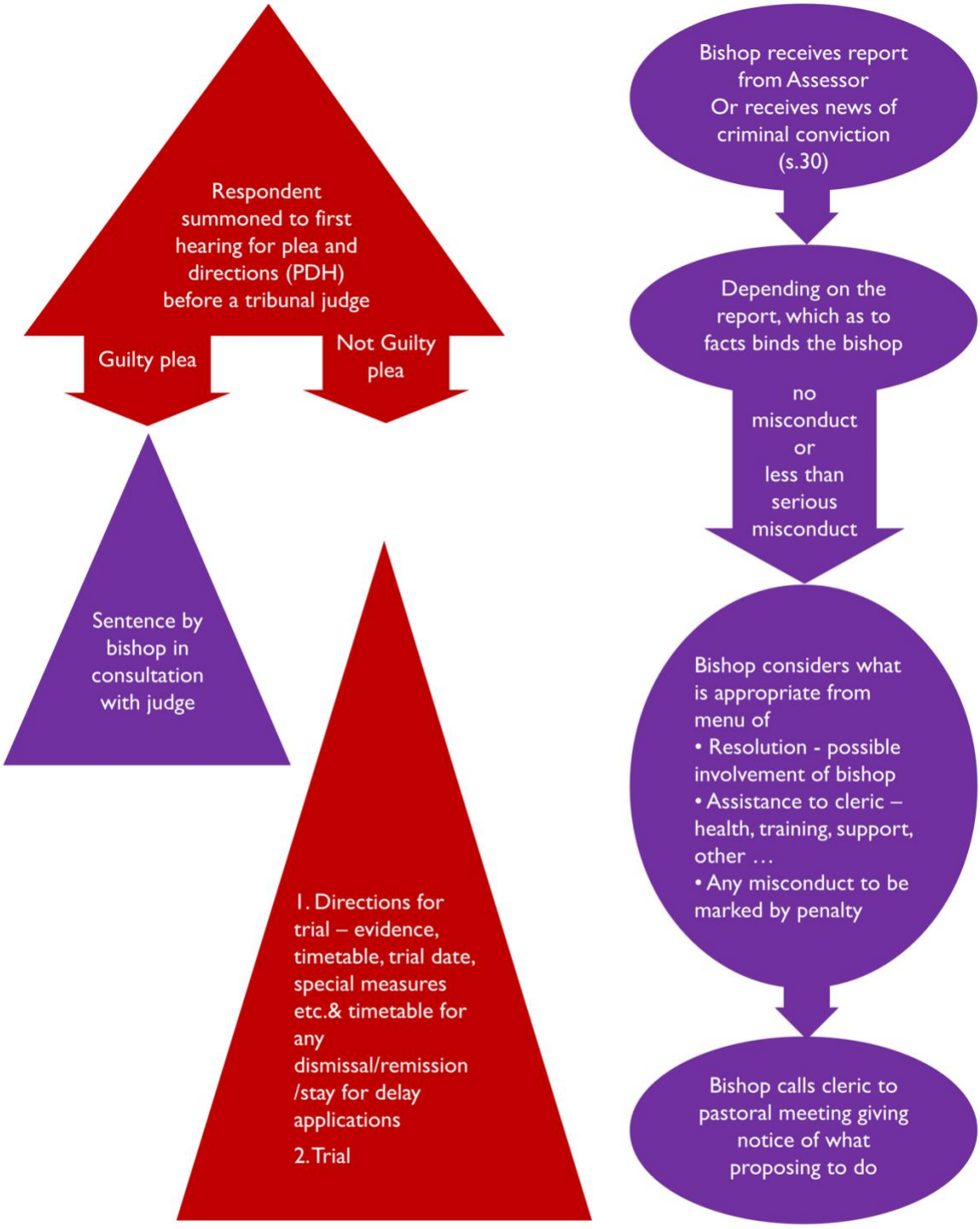
Also need to have a system that protects the clergy from being bullied or abused by lay officeholders.

It will cost money.

Annex 7

Indicative Flow Chart




Bishop receives report from Assessor
Or receives news of criminal conviction (s.30)
Depending on the report, which as to facts binds the bishop
no misconduct or less than serious misconduct
Bishop considers what is appropriate from menu of
• Resolution - possible involvement of bishop
• Assistance to cleric – health, training, support, other …
• Any misconduct to be marked by penalty
Bishop calls cleric to pastoral meeting giving notice of what proposing to do
Respondent summoned to first hearing for plea and directions (PDH) before a tribunal judge
Guilty plea
Not Guilty plea
Sentence by bishop in consultation with judge
1. Directions for trial – evidence, timetable, trial date, special measures etc.& timetable for any dismissal/remission /stay for delay applications
2. Trial

Annex 8

Some specimen cases by category

This is a list of some of the sorts of complaint that are made under the CDM. In determining into which category each would fall under our proposals, much would depend on all the circumstances of the particular case. However the starting point in the assessor's mind might be as is suggested below.

Grievance/service level complaint

- Loss of congregation numbers during COVID, changing service times and making a joke on facebook
- The Archdeacon was very rude and upset a number of PCC members when attending a PCC meeting to discuss a clergy appointment
- The complainant was excluded from all church activities except public worship after a parishioner complained about his behaviour towards her
- Allegation that insufficient action was taken to address a long known but unproven allegation of sexual assault
- Allegation that priest had failed to treat reports by a vulnerable (blind) parishioner that she had been assaulted by another female member of the congregation, who had simply hugged her, as a safeguarding matter
- Alcohol smelt on vicar's breath during a service *(but may well quickly move to misconduct on examination of facts)*

Misconduct that is less than serious

- Unwanted (non-sexual) physical contact with a curate
- Allowing a volunteer who was known to be an ex-offender to have a brief period of unsupervised supervision at messy church
- The cleric failed to identify that an individual was a vulnerable adult and that therefore the individual's complaint amounted to a safeguarding matter
- Curate flirting with non-parishioner, inappropriate texts inviting sexual contact

Serious misconduct

- Lewd sexual acts with two visitors to the rectory
- Historic grooming and touching of 15-year-old girl
- Affair and controlling behaviour with vulnerable adult
- Conducting 30 sham marriages as part of a visa scam
- The Vicar (married) formed a close inappropriate personal relationship with a parishioner which on one occasion was of a sexual nature; the Vicar lied to his Bishop about the nature of the relationship
- Unlawful possession of indecent images of children
- Abusive behaviour over many years towards wife and daughter; abandoning marriage to live with another woman

Annex 9

Worked Examples under the Working Party's proposed reforms

It has been the intention of this working party throughout our review of the CDM to propose reforms that not only reflect sound theological and legal principles, but that work in practice. To aid this, we produced a number of example scenarios on which to test our proposals and to help identify any gaps or pitfalls in the procedure as a case progressed. Our primary inspiration for this was *Under Authority*, which also provided factual examples to illustrate how its recommendations could work in practice. The first four below examples are based on those from *Under Authority*, while the final five were developed to reflect other common types of complaint and to explore how our proposals should address more recent issues highlighted by the CDM process, such as the handling of clergy suspensions and the relationship between discipline, capability and safeguarding.

As each example seeks to illustrate particular procedural responses to its own facts, some routine steps have been omitted to maintain the overall flow and pace of a given scenario. It should therefore be assumed that, where relevant, the following general procedural principles apply:

1. A complaint must be submitted online to initiate the investigation and triaging process. Once it has been submitted, a copy of the complaint is sent to the diocesan bishop and also to the lead regional assessor to appoint a suitable assessor to investigate.

2. A complaint may be submitted by any individual who has a connected interest in the matter, but not by the bishop who remains the disciplinary authority in the diocese. As under the current system the cleric's archdeacon has a sufficient connected interest to raise a complaint, as may the Diocesan Safeguarding Advisor (or DSO if that is what they become) following the outcome of a criminal investigation or a safeguarding investigation and/or risk assessment.

3. A suspension may only be imposed if the bishop determines it is necessary to do so in all the circumstances of the case, as discussed in detail at paras 3.121-129 of the report.

4. The bishop retains pastoral oversight and responsibility for those involved in a complaint or disciplinary matter but will not provide primary pastoral care to any of the parties while the process is ongoing. Every diocese will establish a central pastoral team to provide appropriate support and will be proactive in reaching out to the parties to assess their pastoral needs. The bishop will not generally have to ensure additional pastoral support is provided during the initial investigation stage though a decision will have to be made on the facts of each case, such as in safeguarding cases or cases involving immediate suspension or where the cleric is clearly struggling with his or her ministry.

5. The initial investigation should not be regarded as part of the disciplinary process and therefore it is not generally expected that a cleric will require legal advice or representation at that stage of a complaint. Ecclesiastical Legal Aid becomes available when the cleric's home or livelihood is at risk i.e. when it is first determined that a complaint involves allegations of serious misconduct and so exposes the cleric to a potential penalty of removal from office or prohibition.

6. Assessors are authorised to report on suspected capability issues which may have led to a complaint and, provided no matters of serious misconduct are identified, the bishop is entitled to address any disciplinary matters alongside capability if in the all the circumstances it is deemed appropriate to do so.

7. If appropriate, pastoral support will continue to be provided to the parties by the diocese once the disciplinary process has concluded. In particular, support and guidance will be offered to clergy who have received a penalty of prohibition or removal from office, to help them prepare for a fruitful return to ministry or life outside ordained ministry.

Example 1

Mrs Smith is an elderly widow living in a suburban parish. The vicar has a large and unruly family, several being in their early teens. One of the vicar's teenage sons has an electric scooter and rides it on the pavements, once colliding with Mrs Smith and almost knocking her over. She calls him a "bad boy" and he calls her an "interfering old bag". Mrs Smith is upset by the incident and writes to the diocesan bishop complaining that the vicar has failed in his duty to be diligent to frame and fashion the lives of his family according to the doctrine of Christ (Canon C 26). The bishop's chaplain contacts Mrs Smith to tell her that all complaints about clergy are to be made using the Church of England's online platform; she informs him that she does not use the internet and he refers her to one of the diocesan office staff who completes the online form with her consent and on her behalf.

The lead regional assessor receives the online complaint form and appoints an investigation assessor, and letters are sent to Mrs Smith and the vicar informing them that the assessor will be contacting them to make enquiries into the substance of the complaint. The letter to the vicar includes the full details of the complaint as initially submitted by Mrs Smith.

The assessor interviews Mrs Smith, the vicar and the vicar's son. In her report to the bishop she concludes that the incident appears to have been no more than a heated exchange and certainly nothing which calls the conduct or manner of life of the vicar into question; however, during their meeting Mrs Smith was adamant that the vicar feel the full force of the disciplinary process for breaching the Canons. The assessor recommends that no further action is taken against the vicar.

The bishop writes to Mrs Smith summarising the assessor's findings and recommendations, adding that it would be unreasonable to hold the children of clergy to a higher standard of behaviour than their peers. He dismisses the complaint, but states that he will write to the

vicar asking him to encourage his children to not be rude to parishioners. A copy of the assessor's report is included with the bishop's decision letter. The vicar receives his letter from the bishop confirming that the complaint has been dismissed along with a copy of the report.

Shortly after, Mrs Smith writes again to the bishop saying she is dissatisfied with the outcome and that she expects him to take formal disciplinary action against the vicar for breach of Canon C 26 – if he refuses to do so then she will write to the Queen and the Archbishop of Canterbury demanding redress. The bishop responds that the findings of the independent investigation were that there was no substance in the alleged breach of Canon nor evidence of any other disciplinary issue, but that Mrs Smith can request a review of the assessor's conclusions or the bishop's decision if she remains dissatisfied by the outcome. She demands a review of his decision to dismiss, and the bishop's decision letter along with the assessor's report is sent to the diocesan bishop of a neighbouring diocese to review. The two bishops meet to discuss the case and the reasons for the bishop's decision to dismiss, and the reviewing bishop upholds the original decision.

Example 2

The benefice is vacant. It comprises a parish church and a daughter church. The parish church uses *Common Worship* Order One Holy Communion while the daughter church (which has a very small congregation) uses the BCP. The new rector is appointed and wishes to use Order One in both churches but narrowly loses a PCC vote. She commences use of Order One at the daughter church as an "experimental measure" on the basis that the majority of parishioners are used to it. She also states that the BCP is obsolete and written in a tongue "not understanded of the people" (Article XXIV of the 39 Articles). Worshippers from the daughter church make a complaint that the rector's actions breach Canon B 3 as a change of the form of service without the consent of the PCC. The complaint is received by the diocesan bishop and by the lead regional assessor, who appoints an assessor to investigate. The facts of the dispute are agreed between the rector and the worshippers and the assessor recommends conciliation. The parties agree to the assessor acting as conciliator and he reports to the bishop that conciliation is going ahead and that he will inform the bishop of the outcome.

Ending 1

During conciliation the rector apologises to the worshippers for disregarding their tradition and breaching Canon B 3, while they agree to adopt Order One experimentally for six months. Upon being informed of the outcome by the assessor, the bishop writes to the rector highlighting Canon B 3 for her future reference and saying he expects a further PCC vote to be held at the end of the experimental period and for its outcome to be respected. The matter is closed.

Ending 2

Conciliation fails. The bishop directs, in accordance with Canon B 3, that the BCP shall continue to be used in the daughter church unless and until the rector succeeds in persuading

the PCC otherwise. The rector refuses and states her intention to use Order One irrespective of the Canons. The bishop requests a further report from the assessor in light of this, and the assessor concludes that the rector's continuing breach of Canon B 3 and refusal to comply with the bishop's direct order is a disciplinary matter, though not so serious as to merit prohibition or removal from office. He recommends that a rebuke would be an appropriate penalty, provided the rector then complies with the bishop's original directive. The bishop accepts that the rector's behaviour constitutes misconduct although considers it to be more serious than the assessor has indicated, and approaches the lead assessor to ask his view on seriousness. The lead assessor agrees with the original assessor's findings and the bishop decides not to refer the matter for tribunal investigation.

The bishop writes to the rector with a copy of this report, summoning her to a "pastoral meeting" at which they are to discuss the report's findings and recommendations. The bishop's letter also confirms that he is not treating the matter as serious misconduct attracting tribunal investigation at this stage, that the rector may be accompanied by a friend or union representative to the pastoral meeting, and provides contact details of the diocesan pastoral team should she require additional support through the disciplinary process. The rector attends the meeting with a fellow cleric, and during the meeting the bishop allows her to make representations about her behaviour towards the worshippers and the bishop, and what she intends to do next. She apologises to the bishop and agrees to revert to using the BCP at the daughter church, and receives a formal rebuke on her personal file, which the bishop says will be removed after four years.

Example 3

A vicar, committed to climate justice issues, gives increasing time to making political representations and to non-violent direct action with protest groups. Some of his parishioners disagree with his politics and the bishop has on several occasions defended his right to hold and express those views. She did, however, also tell the vicar to spend more time on his parish responsibilities. There was a change in PCC treasurer and the parish share fell off and eventually ceased. The archdeacon held a visitation and found the treasurer was not able to balance the books - £12,000 had been removed over several years from the general account and fabric fund. They had been demanded by the vicar and could be seen as donations to climate charities, his attending several conferences on the global climate emergency (including one in the United States) and on equipment and supplies for him and other protestors involved in a multi-day "climate camp" in Central London.

The archdeacon raises a complaint against the vicar to be subject to independent assessment. An assessor is appointed and letters are sent to the vicar, PCC secretary and treasurer informing them of the complaint and the investigation and that they can expect to be contacted by the assessor.

Ending 1

During his interview with the assessor the vicar accepts the substance of the archdeacon's complaint that his behaviour amounted to misconduct. He says he failed to perceive the

seriousness of his actions and that they could be construed as theft; rather that the purposes for which the money was spent was more important than "propping up diocesan finances" and looking after a building. He accepts the need for both discipline and guidance and places himself voluntarily under the bishop's censure. He also offers to pay back the money to the church over time through increased personal giving. In his report, the assessor concludes that the misappropriation of such significant funds amounts to serious misconduct but highlights the vicar's full admission and desire to cooperate with the disciplinary process.

A copy of the report is sent to the Designated Officer and to the provincial registrar to list a plea and directions hearing for the case. The bishop also sends a copy to the vicar under cover, informing him that the matter has been referred to the tribunal and explaining the potential penalties which serious misconduct attracts, but also stating that if he admits the misconduct as before then the case will be referred back to the bishop to decide the penalty. The bishop's letter also contains details of how to secure representation under Ecclesiastical Legal Aid, and of the pastoral support which will be offered by the diocese. The vicar admits misconduct on plea and the matter is remitted to the bishop, who arranges a preliminary penalty meeting to hear representations from the vicar, the PCC treasurer and churchwardens.

At this meeting the bishop sits with the tribunal judge from the plea hearing, and in the course of submissions the vicar's barrister sets out a framework for paying the funds back to the church. Following the meeting the bishop and judge confer and agree that the matter does not justify prohibition provided the vicar makes the payments quickly as proposed. A second meeting is convened, at which the bishop reads the penalty remarks agreed between her and the judge and imposes directions on the vicar to reimburse the PCC in line with the proposed scheme, and prohibiting him from being an authorised signatory to any PCC accounts. Details of the penalty are entered on the vicar's personal file and on the Archbishop's List.

Ending 2

At interview the vicar contests the allegations, arguing that this spending of church funds was a legitimate extension of his parochial ministry and that he has "done nothing wrong", either through dishonesty or incompetence. Again the assessor concludes that his behaviour amounts to serious misconduct but also highlights the vicar's denial of misconduct. The matter is referred to the DO and provincial registrar to list a plea and directions hearing, at which the vicar denies any wrongdoing. The bishop determines that there remains a significant risk of financial harm to the parish while the vicar has access to parish funds and suspends him for one month pending a PCC resolution to have him removed as signatory to any church accounts. The next regular PCC meeting is held in this period and once the resolution is passed and actioned the vicar is allowed to return to parish duties.

A full hearing is held three months after the plea and directions hearing, and the complaint is found proved. The vicar maintains his innocence throughout the proceedings. Following submissions on penalty from both sides the tribunal orders his removal from office and a five-year prohibition on his ministry.

Example 4

Mr and Mrs Stark lodge a strongly-worded complaint against their rector alleging that he behaved in an overly-familiar manner with Mrs Stark when they were alone during several baptism preparation sessions. The bishop receives notification of the complaint while the lead regional assessor takes charge of the independent investigation and writes to the Starks and to the rector that she wants to interview them. The assessor soon reports back to the bishop that this is a "complicated case" – the Starks have told her that the rector has a reputation for being something of a 'ladies' man' and that there are a number of rumours of inappropriate behaviour going around the parish. They would have been happy with an apology and the assurance that the behaviour against Mrs Stark would not be repeated, but the rector has refused to engage with the assessor.

By now the bishop has received two further complaints relating to the rector: one of sexual harassment, and one of seduction. The bishop's chaplain contacts the two new complainants and asks them to submit these complaints online, which they both do; he also provides details of pastoral support which they can access through the diocese. The lead assessor receives notification of the additional complaints and arranges interviews with the new complainants, but once again the rector refuses to engage with her. Given the nature of the complaints the bishop determines that there is a risk of significant harm to others in the parish and that it is therefore necessary to impose a suspension which will be subject to review in six weeks pending conclusion of the assessor's investigation. In his letter notifying the rector of the suspension the bishop provides details of available pastoral support, and urges him to engage with the assessor to offer his side of the story. A week later a further complaint is submitted online, alleging a long-term adulterous relationship with one of the parish Sunday School teachers. The rector continues to ignore the assessor's requests for an interview.

Four weeks into the suspension the assessor submits her report to the bishop. Without any response from the rector she concludes that the allegations if proven would amount to serious misconduct and so must be sent for a plea and directions hearing before a tribunal judge. A copy of the report is sent to the DO and the provincial registrar to list a hearing. A copy is also sent to the rector under cover informing him of the potential penalties if the allegations are proven and with details of how he can access ELA for initial advice and representation. The bishop also extends the rector's suspension pending the outcome of the tribunal process.

Ending 1

The rector does not apply for ELA but writes to the tribunal to say he is wracked with guilt over the allegations, accepts that he has fallen short of his calling and that he has written to the bishop to resign his living. He also says he has been diagnosed with stress and anxiety by his GP and has been advised not to engage in any activities that would exacerbate his condition, which is why he did not engage with the assessor's investigation nor attend the plea hearing.

Absent a physical plea, the tribunal judge makes directions for a full hearing three months away. He also requests the provincial registrar to write to the rector to explain that if he wishes to enter a plea he must attend the tribunal in person, and that experienced legal representation is available to him under ELA. The registrar informs the bishop of the situation, who asks the diocesan pastoral team to also contact the rector and advise him of his need to enter a plea if he wants the case to be resolved quickly. One of the diocesan pastors does speak to the rector and convinces him to follow the registrar's advice and apply for ELA.

Upon obtaining representation, the rector's barrister requests a hearing for the rector to enter a plea. He admits misconduct as detailed in all of the complaints and the judge remits the matter to the bishop for penalty. The judge also asks the rector's barrister to file any written submissions on mitigation with the tribunal within 14 days so these may be considered by the bishop in conference with the judge. Upon receiving notification of the plea, the bishop extends the rector's suspension pending penalty and schedules a penalty meeting one month away. Submissions on mitigation are received in time and the bishop and judge meet to discuss an appropriate penalty. The rector attends the penalty meeting with his barrister and the bishop, reading the prepared penalty remarks which make note of the rector's admission and remorse alongside the facts and impact of the complaints, imposes a five-year prohibition. Following the penalty meeting the diocese mandates training for the rector on inappropriate behaviour and boundaries in ministry, together with continuing pastoral support as he navigates the prohibition period.

Ending 2

The rector instructs a solicitor under ELA and attends the plea and directions hearing. At the hearing he admits the affair with the Sunday School teacher but denies the other allegations as being the invention of a cabal of parishioners who do not like his approach to ministry or his friendships with others in the parish. His solicitor applies to have these complaints struck out as without basis or, in the alternative, because they do not amount to serious misconduct. The judge makes directions for filing and exchange of evidence and lists a full hearing for three months away; he also lists a hearing to determine the rector's strike-out application in 28 days. At this stage, given the nature of the allegations, the judge asks the DO whether witnesses have been made aware they may be eligible for special measures to help them give their evidence in the most effective way. The DO says this has been done but no such request has been made by the witnesses. At the application hearing the judge determines there is a case to answer on the remaining allegations on the basis of the assessor's report, and that given their nature and proximity as a pattern of behaviour they must all be dealt with as serious misconduct.

Following exchange of evidence it becomes clear that the sexual harassment complaint is without substance and was made maliciously following the rector's legitimate refusal to permit a photograph of the complainant's deceased father on a proposed grave monument. The rector's solicitor negotiates with the DO and it is agreed that the sexual harassment matter should be formally struck out at the full hearing. Meanwhile, the complainant in the seduction matter tells the DO she is uncomfortable about giving evidence in front of the rector and believes doing so may adversely effect the quality of her testimony. The DO applies to the tribunal to allow her to give her evidence via videolink from within the tribunal centre,

which is granted. As it happens, the seduction complainant resolves to give her evidence behind screens in the tribunal room on the day she is called to appear. At the hearing the tribunal finds the seduction and inappropriate behaviour with Mrs Stark proven alongside the admitted adultery, and imposes a penalty of removal from office and prohibition for seven years. The tribunal also directs that measures be put in place for appropriate training and assistance to help the vicar navigate the prohibition period, and offers a suggested timetable for review meetings with the bishop and diocesan HR to assess the rector's response to the training.

Example 5

Having spoken to the area dean about how to initiate the formal process, Miss Finch makes three complaints against her rector, the Rev'd Augustus Sneer:

(1) He has shown an unhealthy interest in a younger member of his adult confirmation class, which meets on Thursday evenings at the rectory. Miss Finch writes that Sneer keeps the young man back after instruction and although she does not know exactly what goes on, she can guess. She does not give the young man's name (she says it would be "unfair to hold him to account for the rector's bad behaviour") nor does she say precisely how she came by this information.

(2) She arranges the flowers at the parish church every third Sunday in the month and on two occasions Sneer has removed her flowers from near the chancel and replaced them with some from the rectory garden. Miss Finch says that, when confronted, he told her that the ones she produced were "awful, and far from fresh" which she writes was not true. She asserts that Sneer's removal of the flowers is theft.

(3) Finally, Miss Finch says she has evidence that Sneer misappropriated parish funds. She provides photocopies of the relevant PCC accounts which show payments totalling some £2,000 were made to Sneer under the accounting heading of "MISC".

The lead regional assessor receives the complaint and decides to investigate matters herself. Letters are sent to Miss Finch and the Rev'd Sneer setting out the details of the complaints and to make arrangements for an interview. At interview Miss Finch is unable (or unwilling) to provide any more information about her complaint relating to the young man; when asked what she hopes to achieve from her complaint, she says she wants "to see the rector punished for his bad behaviour and unchristian manner – the parish deserves better".

Ending 1

At interview Sneer denies any wrongdoing. The young man, a trainee solicitor, has been staying on at the rectory to continue their discussions after class, as he has shown an increasing interest in Christian theology and liturgy. Sneer provides the young man's name and contact details to the assessor. He also says that the "MISC" transfers to his account relate to his working expenses, and he produces claim forms signed by the PCC treasurer which appear to match those figures. With regard to the flowers complaint, he says that Miss Finch's

arrangement was past its best and that he may have snapped at her because it was not the first time she had "cut corners" with the flowers, but he did not mean any personal offence and was sorry she had taken his actions to heart.

The assessor contacts the young parishioner about the weekly confirmation classes and his interactions with Sneer, and their accounts match up. There is no indication that the young man is discomforted by Sneer's behaviour or feels pressured to stay on at the rectory for longer discussions. She also contacts the PCC treasurer who confirms he signed off Sneer's expense claims and made the payments to him from the PCC account.

In her report to the bishop the assessor concludes that, while Miss Finch clearly bears some resentment towards Sneer and his "bombastic and brusque manner", there is no evidence of any misconduct as Miss Finch had alleged. She also states that Miss Finch was unwilling to sit down with Sneer to try to resolve their differences. The bishop writes to Sneer advising him to apologise to Miss Finch for the flowers and to be careful not to speak in haste when dealing with grievances from parishioners in the future; he also advises him to ensure next year's PCC accounts clearly mark clergy and parish officer expenses to avoid any future misunderstanding. The bishop also writes to Miss Finch setting out the assessor's findings and informing her of his advice to Sneer and that he is dismissing the complaint. Miss Finch responds by saying that Sneer is a thief and a liar and the treasurer must be working with him to defraud the parish – she demands a review of the assessor's findings in the second and third complaints (but does not refer to the complaint regarding the young man in this letter). The assessor's report is sent for review by the lead assessor in the neighbouring region, and her findings are upheld.

Ending 2

Again, Sneer denies any wrongdoing. His account with regard to the young man and the money is the same as above, but as to the flowers he says he doesn't know what Miss Finch is talking about and that he never touched her Sunday arrangement. As part of her further enquiries with the young man and the PCC treasurer, the assessor calls Miss Finch to tell her Sneer's account of the flowers complaint, but she asserts that her account is the true one. The young man and the treasurer again corroborate Sneer's story.

The assessor concludes that there is no evidence of misconduct relating to the young man or the PCC accounts, and that on balance she felt that Miss Finch was "prone to exaggeration" but clearly was harbouring some resentment over the alleged incident with the flowers. She suggests a round-table meeting but again Miss Finch refuses; the assessor therefore suggests that the bishop may want to try to facilitate a meeting to lay the matter to rest. The bishop writes to both sides with a copy of the assessor's report and states that no disciplinary action is required but he would like to bring them together for an informal meeting to ensure any remaining differences can be set aside.

On the day of the meeting Sneer is present but Miss Finch does not attend. The bishop listens to Sneer that he has no idea why Miss Finch has taken against him and that she never raised any of these issues with him before submitting her complaint. The bishop reassures Sneer that he sees nothing of concern in Miss Finch's complaints, but advises him to be more alert

to the impact his behaviour can have on some parishioners in the future. He sends a final letter to both parties recording the outcome of this meeting, and his decision to dismiss the complaint.

Ending 3

This follows Ending 1, except when conducting her further enquiries the young man tells the assessor that whenever he stays after confirmation class Sneer proceeds to ply him with alcohol and that recently he has steered their conversations onto sexual topics which the young man has found uncomfortable. The assessor informs both the bishop and the DSA about this and contacts the churchwardens and the parish safeguarding lead to enquire if they know of any similar allegations having been made against Sneer by other parishioners. The bishop writes to Sneer detailing what the young man has said and informing him that the DSA is now also investigating the safeguarding aspect of the allegations; he also says that he does not believe it is necessary at the present time to suspend Sneer from his duties, but that he must not hold any private meetings at the rectory until the investigation has been concluded.

Over the following days the churchwardens and the safeguarding lead state they have heard of no other allegations against Sneer; meanwhile the DSA consults Sneer's personal file and, except for a reference to a "foolish drunken advance" towards another ordinand in his penultimate report from theological college, there is no record of safeguarding concerns or sexual behaviour towards parishioners. The DSA interviews Sneer, who is deeply apologetic about his actions – he says that he has been feeling incredibly lonely and "persecuted" by Miss Finch recently, and his friendship with the young man was the only thing that had been giving him comfort. He acknowledges he had acted in a foolish and inappropriate manner and will not drink with the young man alone in the rectory again. The DSA also interviews the young man and asks what action he would like taken, and he says things had gotten "a bit weird" but he still likes and respects Sneer and wants to be able to carry on a pastoral relationship with him.

The DSA advises the bishop that Sneer's behaviour towards the young man was non-criminal and he does not appear to pose a safeguarding risk. Meanwhile, having consulted with the DSA, the assessor concludes that Sneer's actions towards the young man do constitute misconduct but, given the minimal harm caused and Sneer's admission of ill-judged behaviour, not such as to merit removal from office or prohibition. She therefore recommends that the bishop convenes a "pastoral meeting" to issue Sneer with a rebuke and directions to receive counselling both because of his actions and his feelings of depression and persecution. The bishop summons Sneer to this meeting and advises him that he may be accompanied by a friend or union representative. Following a discussion in which Sneer again apologises for his behaviour the bishop issues a rebuke and directions to receive counselling, and says he will support Sneer in taking a retreat away from the parish to settle and refresh himself, and that loneliness and stress and the progress of his counselling sessions will be marked as items for discussion at his next MDR. They also discuss Miss Finch's other two complaints and the bishop advises Sneer as in Ending 1. He then issues Sneer with a letter setting out the finding and penalty with directions, and also writes to Miss Finch explaining

the outcome of the whole investigation and to the young man specifically about the disciplinary matter and penalty.

Example 6

The archdeacon receives a concerned email from the team rector of an urban benefice about the team vicar, the Rev'd Colin Tremble. Tremble has been with the benefice for just over one year and it is his first post following curacy; he has been given special responsibility for a new outreach project, leading the building and development of a church community centre on one of the local housing estates. The rector writes that in the past three months Tremble has failed to attend three baptisms and two funerals which were marked in his name in the team diary, and on several occasions his Sunday preaching has been "woefully poor" and clearly underprepared, though he has preached other very effective sermons and whenever he leads the liturgy it is always with great care and dignity.

Furthermore, while the development of the community centre appears to have been going smoothly, the PCC has started receiving demands for payment from the builders and tradesmen who were contracted for the project, totalling nearly £30,000. The bulk of the project money was meant to be coming from diocesan and central funds so a separate account had been set up with Tremble as signatory, but the demand letters all state that numerous demands had been sent to Tremble (and numerous assurances given) with payments now months overdue and they have been forced to approach the PCC as principal debtor. The rector has seen a recent statement of the project account and knows that money has been transferred by the diocese (as well as the PCC) to cover payments due; it is also clear that Tremble hasn't spent the money on anything else – "It's just sitting there while the church is getting hounded for payment."

Even more worryingly for the rector, she had a conversation with the parish safeguarding lead the previous Sunday in which she discovered that Tremble has been recruiting volunteer staff to run his planned youth activities and social outreach for the elderly, but he has failed to provide her with the personal details of these recruits so she can perform DBS checks. Thankfully, none of these activities have yet started. The rector confronted Tremble about all of these matters the next day, and while he appeared to take it in he also seemed impatient and responded curtly "I'll deal with it. I'm busy. I've got to go." She fears this is a "ticking timebomb" and hopes the archdeacon can intervene to "sort things out".

The archdeacon is aware that Tremble has not attended any of the training which the diocese puts on each year for its pioneer ministers and church planters; he has always emailed his apologies (often at the last-minute or after the event) saying that he has been busy with parish commitments. The archdeacon speaks to the bishop about the situation, and the bishop takes the view that there are clearly causes for concern and so advises the archdeacon to submit a formal complaint so the matter can be independently investigated by an assessor. The archdeacon does this, and an assessor is appointed to conduct the investigation. He contacts Tremble, the team rector, the churchwardens and the parish safeguarding lead to arrange interviews.

The churchwardens and parish safeguarding lead corroborate the rector's account – they all think Tremble has some real talent, but that he has seemed increasingly out of his depth balancing the pioneer project and his parochial duties. The safeguarding lead confirmed she had finally received the volunteer details from Tremble and was in the process of having them DBS-checked. When the assessor contacts Tremble, he asks if he may be accompanied to the interview by his union representative and the assessor confirms that this will be fine. At the meeting Tremble breaks down, saying that the level of responsibility just feels so much more than when he was a curate, especially with trying to juggle the business-minded approach of the community centre project with his desire and vocation to be a faithful parish priest. He just feels the pioneer project is getting in the way of his true ministry, and he resents it and it makes him depressed. Also, it has all had an impact on his family life, with him not being able to spend time with his two young children and having increasingly heated arguments with his wife. He says he does not want to let the parish and the bishop down, but he "can't carry on like this".

The assessor summarises all these meetings in his report to the bishop and concludes that Tremble's current behaviour clearly stems from capability issues and should be prioritised as such, though there is a risk of these escalating into disciplinary matters if not adequately addressed now. He also concludes that Tremble's failure to facilitate the DBS checks form part of the wider capability problem but cannot be excused given the potential harm of disregarding safeguarding processes and the numerous requests he had received from the parish safeguarding lead. He recommends that the bishop can adequately address this level of misconduct with a rebuke.

The bishop sends a copy of the assessor's report to Tremble and schedules a "pastoral meeting" at which they will discuss the capability problems which Tremble has been facing along with the misconduct relating to the safeguarding failure. He is informed that his archdeacon and the diocesan head of HR will also attend solely in relation to the capability matters, and that he may again be accompanied to this meeting by his union representative. The bishop also forwards a copy of the report to the team rector with a letter explaining the purpose of the upcoming pastoral meeting.

At the meeting Tremble is first given the opportunity to rehearse his feelings and concerns about juggling parish and pioneer ministries. The bishop then explains that the post was created to have this dual responsibility and that it will be a really good opportunity for Tremble to develop his ministry if he carries it forward, but there are clear capability issues which must be addressed and he wants to support Tremble through this. With regard to the DBS failings, he sees this as part of the wider capability concerns but that can be no excuse for disregarding the Church's safeguarding policies and so he issues a rebuke against Tremble. The bishop tells him to take a break from ministry for the next two weeks and he, the archdeacon and the head of HR will come up with a plan to address the capability issues. The bishop writes to the rector explaining the outcome of the meeting and that he will be in touch again once Tremble's support plan has been finalised.

The bishop writes to Tremble the following week with details of the plan. He must prioritise all pioneer and safeguarding training offered by the diocese from now on, and he is to have monthly meetings with the diocese's pioneer ministry lead to discuss his work and how he is

finding the balance in ministry and with home life. He must also give control of the project bank account to the rector and PCC treasurer and must seek their approval for all future project expenses. The bishop also offers Tremble a course of counselling paid for by the diocese if he thinks this will help any underlying issues or anxieties, and provides details of the diocesan pastoral team should Tremble feel he needs more focussed pastoral support from outside the parish. The plan, and Tremble's progress, will be reviewed at a meeting with the bishop and archdeacon in six months. The bishop sends details of the plan to the rector and the pioneer lead asking him to contact Tremble to arrange their first meeting.

Example 7

The DSA receives an email from a parish safeguarding lead saying that she has recently received complaints about the vicar, the Rev'd Jeremy Heedless, from the families of two 16-year-old girls who are part of the parish youth group and serving team. Over the past six months it has invariably been the two girls who Heedless asks to help him clear up the chancel and sacristy after High Mass, effectively ordering everyone else into the hall for coffee. He has also been giving both girls spiritual direction on a regular basis since they were being prepared for confirmation last year, but the older sister of one of the girls revealed to her parents that at her last session Heedless had started asking the girl about her sex life and sexuality. Also, even though he is known to buy Christmas and birthday presents for the serving team, his last gifts to the two girls were clearly expensive necklaces and make-up (while everyone else receives some chocolates or a bottle of wine). The parish safeguarding lead tells the DSA that there have been no other similar complaints about Heedless in his eight years in the parish, but she says he is a very charismatic figure and despite being unmarried has been spotted outside the parish with a string of "girlfriends", all of them noticeably younger than him.

The DSA informs the bishop that he intends to refer the matter to the police given the alleged grooming and the possibility that Heedless incited one or both of the girls to engage in sexual activity during their conversations. The bishop writes to Heedless informing him of the details of the complaint and that given the nature of the allegations she believes it necessary in all the circumstances to suspend him from his duties for four weeks pending the outcome of the police investigation. The letter confirms that he can expect to hear from the diocesan pastoral team about offering pastoral support while the matter is ongoing. The bishop also writes to the families of the two girls explaining her concerns about grooming and incitement and that Heedless will be suspended while the police carry out their enquiries. Over the next two weeks the police interview Heedless, the two girls and their parents, but they conclude that no criminal conduct has occurred. They do however say that Heedless' behaviour was inappropriate and that he appeared to be using gifts and attention to develop a controlling influence over the girls.

Given the police findings the bishop decides that Heedless should undergo a safeguarding risk assessment. She therefore writes to him extending his suspension for a further four weeks while the risk assessment can take place. The diocese brings in the LADO for the parish to conduct the risk assessment, and he concludes that while there is a clear risk of harm towards the two girls there is no evidence of risk against others and so Heedless can continue in

ministry provided he is never left alone with the girls. However, the LADO also reports that Heedless was impatient and quite disdainful of the risk assessment process, and did not accept that he had behaved in an inappropriate manner with the girls.

The bishop remains unsatisfied with this outcome – she thinks it is only a matter of time before other young girls in the parish start growing up and become Heedless' next target. She asks the DSA to submit a formal complaint so that an independent investigation and disciplinary complaint can be carried out. The lead regional assessor appoints an assessor who is experienced in safeguarding and grooming cases, and he is sent the files of the DSA's investigation and the LADO's risk assessment. Meanwhile, the bishop writes to Heedless to inform him that on the basis of the risk assessment it no longer appears necessary to continue his suspension, but that will change if he breaches any of its requirements. The assessor attempts to contact Heedless to determine his response but he refuses to engage with this new process. A report to the bishop is quickly produced in which the assessor concludes that Heedless' controlling and inappropriate behaviour towards two children under his pastoral care does constitute serious misconduct which could attract prohibition. He therefore directs the bishop that the matter should be sent to a disciplinary tribunal for determination. The bishop sends Heedless a copy of the assessor's report with details of how he can access ELA, and that he can expect to hear shortly from the diocesan pastoral team who will make an assessment of his pastoral needs.

Copies of the case file and all supporting documents (including the police report of its investigation and the safeguarding risk assessment) are sent to the DO and to the provincial registrar to list a plea and directions hearing before a tribunal judge. Heedless instructs a direct-access barrister under ELA and at the hearing denies the allegations and makes an application to have the case struck out or alternatively remitted to the bishop for not being "serious misconduct". The judge determines that there is a case to answer and, given Heedless' calculated manipulation of others to secure time alone with the girls and the sexual nature of his recent conversations with them, the allegations do concern serious misconduct and should be heard by a full tribunal. A hearing is listed three months away, and directions made for exchange of statements and evidence, along with special measures with regard to examining the young girls at the hearing.

Following the directions hearing Heedless shows up at the girls' homes and remonstrates angrily with their parents, demanding that they withdraw the complaints and "desist in persecuting a man of God". Upon being notified of these incidents, the bishop immediately imposes a fresh suspension in light of the risk of harm he may cause to the girls, their families, and the tribunal process. Heedless subsequently ceases to engage with the process – he goes absent from the vicarage, disinstructs his barrister and stops responding to letters from the DO and the tribunal. On the morning of the hearing Heedless appears at the tribunal centre and says that he intends to represent himself and "expose this for the show trial it is".

The DO's barrister makes an application to postpone the hearing and require Heedless to instruct a lawyer, or in the alternative to restrict him from cross-examining the two girls (who have both attended to give evidence). The tribunal chair questions Heedless as to the basis of his defence and whether he would instruct a lawyer if the panel ordered a postponement, and he states that there is no need – the risk assessment was clear that he was not guilty of

wrongdoing and the girls will confirm that when he questions them on their meetings. The chair makes it clear that if the hearing does go ahead Heedless will not be permitted to cross-examine the girls; Heedless then starts shouting that it is "a mockery of justice" and the bishop and the tribunal have no jurisdiction over how he engages with his parishioners or conducts his ministry. The chair reluctantly adjourns the hearing for three weeks and informs Heedless that he will need to seek legal representation if he intends to challenge the girls on their evidence.

Before that hearing, Heedless' archdeacon forwards an email from Heedless to the bishop, informing the archdeacon that he has been the victim of "malevolent forces" within the diocese who have never liked or understood his way of doing things, and he is resigning his post and leaving the Church of England. The bishop again instructs the pastoral team to try to make contact with Heedless, though he continues not to engage. He fails to attend the hearing, though he does send a letter to the tribunal chair saying he has been persecuted and hounded out of the parish by the diocese which, like the church of Sardis in the book of Revelation, is "spiritually dead" and the "synagogue of Satan" – he again asserts that he has done nothing wrong in befriending and counselling the two girls.

At the hearing the tribunal determines that Heedless had been grooming the two girls and the risk assessment had been clear that there was a significant risk of harm towards them if the diocese had not intervened when it did. Given Heedless' complete lack of remorse and acknowledgement of his misconduct, as well as his resignation from office and subsequent conduct, the tribunal imposes a life prohibition "to prevent him from ever again abusing his authority as a clergyman to manipulate and coerce children and vulnerable young adults".

Example 8

The archbishop receives a letter from a priest who states he was abused by the director of music when he was a boy chorister at his diocesan cathedral. The director of music died in retirement 18 months before, and at that time the priest finally felt able to speak to someone about his experience – he consequently contacted Bishop Copes, who had been dean of the cathedral when the abuse happened and who had appointed the director of music early in his tenure. The priest claims that when Copes responded to his story he was apologetic but gently dismissive, saying that the man could do no more harm and that the priest should focus on getting on with his life and ministry; the priest pressed him to do something, to investigate whether he had abused any other choristers, and Copes said he would look into it. Over a year had passed, and the priest had heard nothing more from Copes or news of any investigation into the man – meanwhile he had continued to suffer flashbacks and panic attacks, and had felt abused all over again by Copes "and the Church" ignoring his abuse and the effect it had had on him.

The archbishop immediately contacts the NST and asks them to investigate the matter. She then writes to Copes setting out the priest's allegations and informing him that the NST will be in contact to hear his account of how he responded to the revelations of abuse. She also advises him that he is suspended from exercising any safeguarding functions until the matter has been investigated, and that another of the senior bishops of the province will be in

contact about any additional support that Copes may need while the matter is investigated. During the investigation it becomes clear that Copes made no further enquiries about past abuse by the director of music, or indeed told anybody else about the priest's allegations. In his interview with the NST, Copes says he is very sorry for the priest's experience and was shocked to hear that the director of music was an abuser, but he had never heard any other such allegations against him while he was dean of the cathedral and given that the man was now dead he saw no need to drag the matter out "and cast any more shadows over the memory of a talented musician and faithful Christian".

The NST refers the matter to the CDC to appoint one of the lead regional assessors to determine whether Copes' behaviour amounted to misconduct. An assessor is appointed and soon concludes that Copes' disregard of the priest's concerns and of his duty to properly investigate the potential abuse of others by the director of music constitutes serious misconduct which in line with the penalty guidelines could attract a prohibition. The assessor also advises the archbishop that as this is a serious misconduct matter there is no limitation period and so they can proceed to a plea and directions hearing in the Vicar-General's court even though more than 12 months had elapsed since the priest first approached Copes. The archbishop writes to Copes informing him that she will proceed as advised by the assessor and provides details of how he can access legal advice and representation under ELA. She instructs him that his suspensions with respect to safeguarding matters will continue while the matter is awaiting hearing.

The provincial registrar lists the complaint for a plea and directions hearing while the DO works with the NST to prepare the case. At the hearing, Copes' barrister applies to have the complaint thrown out for not amounting to serious misconduct; the judge makes directions for the full hearing of the Vicar-General's court two months ahead, and lists a hearing to decide Copes' application in 28 days. At that hearing, the judge determines that the complaint should be dealt with as serious misconduct and that the full hearing will go ahead as directed. Meanwhile, the NST has begun an investigation into the director of music and has uncovered allegations of abuse from several other individuals, relating both to his time at the cathedral and in his previous post at a school.

Three weeks before the full hearing, and as these other allegations are reported in the media, Copes admits his misconduct and submits himself to the archbishop's discipline, asking her to impose a penalty rather than letting the matter proceed to the hearing. The judicial chairman of the court accepts the plea and remits the matter to the archbishop for penalty, requesting written submissions on penalty from both sides within 14 days. The archbishop confers with the judge over the telephone to determine the most appropriate sentence and summons Copes to a penalty meeting shortly after, to which his barrister is also admitted. At the meeting she reads her prepared penalty remarks and, acknowledging Copes' eventual admission and remorse for his pastoral insensitivity towards the priest and the other victims, imposes a rebuke and directions requiring Copes to submit to a programme of training and supervision, and forbidding him from having any safeguarding functions within the diocese and the wider church for five years.

Example 9

In his second year as vicar of the parish of St Ogg's, the Rev'd Donald Stringer announces at the APCM that he intends to streamline the leadership structures within the parish. Among his proposals he says that there should only be one person to oversee lay appointments and safeguarding checks in the parish, and as he received Level 3 safeguarding training before becoming vicar he will take over responsibility as the Parish Safeguarding Officer (PSO).

Following these reforms and Stringer's assumption of the role of PSO, St Ogg's advertises for a new youth pastor to coordinate the parish's youth ministry and lead its Thursday evening youth group. The application form is based on a template from the diocese which includes the Confidential Declaration relating to safeguarding concerns. Among the candidates invited for interview is Tom, part of the youth ministry team in a nearby parish; he indicates no matters of concern on the Confidential Declaration. At interview, Tom points out that he has not yet received safeguarding training for a leadership role and asks if St Ogg's will make arrangements for this if he is appointed, to which Stringer responds that "it will all be seen to". Following the interviews, Stringer decides to offer Tom the role and takes up his references; the reference from Tom's current parish indicates that he last received Level 1/Foundation training in safeguarding three years ago and so requires refresher training in any event.

Tom accepts the job offer and attends St Ogg's for his induction with Stringer and the assistant youth pastor. During the induction Tom asks Stringer if he needs to complete a DBS form but Stringer reassures him that this will not be necessary as "I have obtained all your details from the other parish." Tom starts in his new role and is a great success in the parish, but after three months he becomes concerned that the parish has not put Level 2/Leadership safeguarding training in place for him. He approaches Stringer about this, who cuts him off and says "There are plenty more important matters to be dealing with. You get on with your job and I will sort it when I have time!" Two more months pass, and Tom hears nothing about safeguarding training from Stringer or the diocese. Concerned, he contacts the Diocesan Safeguarding Advisor (DSA) to explain the situation and to try to put training in place himself.

The DSA takes Tom's concerns to the bishop and the bishop instructs Stringer's archdeacon to conduct a formal investigation into the handling of safeguarding at St Ogg's. The archdeacon's investigation reveals that (i) Stringer had assumed the role of PSO contrary to national safeguarding policy, which requires a suitably experienced lay person to be in that role (ii) Stringer had failed to carry out a DBS check on Tom at any point after St Ogg's had made him the job offer (iii) Stringer had made no effort to put appropriate safeguarding training in place for Tom, despite the fact he knew that Tom had never received training for a leadership role and that he was due for refresher training in any event. The archdeacon also discovers that a parishioner who Stringer had recently appointed as a volunteer with the parish's mental health support group has not been DBS-checked or received any form of safeguarding training or guidance. As part of the investigation the archdeacon arranges DBS checks for Tom and the lay volunteer; she concludes that there is no evidence of Tom posing a safeguarding risk to the children under his care, but the volunteer's DBS report shows that eight years ago he was convicted and received a suspended sentence for assaulting a police officer and possession of cannabis with intent to supply. The volunteer confirms that Stringer

was unaware of his criminal record but that it did not come up during their informal discussion about the role, and Stringer had told him that "he would deal with all the necessary formalities".

The bishop directs Stringer to undergo a safeguarding risk assessment arranged by the DSA.

Ending 1

The risk assessment concludes there is a significant risk that Stringer may cause a child or vulnerable adult to be harmed in light of his disregard and "clear contempt" for national safeguarding policy and procedures, which he described during the assessment process as "stupid 'woke' posturing" and an obstacle to effective parish ministry. The assessment report concludes that Stringer should be made to undergo a programme of safeguarding training and supervision and should be restrained from being involved in appointing for roles that involve contact with children or vulnerable adults for at least five years; the assessor also reports, however, that he doubts whether Stringer "will ever take safeguarding in the church seriously."

The bishop, alarmed by these findings, instructs the DSA to submit a formal complaint so that an independent assessment can be carried out on whether Stringer's behaviour constituted serious misconduct. The lead regional assessor receives the complaint and an assessor is appointed to review the archdeacon's initial report and the safeguarding risk assessment, and to interview Stringer, Tom and other relevant parties to the matter. The assessor conducts her investigation and interviews over the course of two weeks, and concludes that Stringer's conduct amounts to serious misconduct in light of his flagrant disregard for safeguarding policy and procedure, and the risk he could expose children and vulnerable adults to in the future if his behaviour is not properly addressed. The matter is referred to a tribunal judge for a plea and directions hearing; the bishop also writes to Stringer informing him of this and with details of pastoral support which will be offered by the diocese and a list of approved legal representatives who can advise him and represent him at the initial hearing. At the PDH Stringer's counsel makes an application for the matter to be struck out and remitted to the bishop as not amounting to serious misconduct; both sides agree that the issue is straightforward and that the judge has all the necessary materials to make an adjudication, and so she proceeds to hear submissions on the application. Following submissions the judge dismisses Stringer's application and hands down directions for a full hearing.

Four weeks later, Stringer's counsel requests a further preliminary hearing as Stringer is prepared to admit the misconduct on the basis that the matter is remitted to the bishop for the penalty hearing; at the hearing he says he has been doing a lot of reflecting and accepts he has "been wrong about safeguarding", and that he is prepared to hand over safeguarding responsibilities to someone else and actively promote good safeguarding practice in the parish if the bishop can see fit to let him continue in ministry at St Ogg's. The tribunal judge accepts Stringer's plea and directs that the matter is remitted to the bishop to impose an appropriate penalty; she also directs that both sides provide written submission on penalty to the tribunal within 7 days. A penalty meeting is scheduled with the bishop for 14 days after that submission deadline. Once the submissions have been received, the bishop confers with the judge as to the level of penalty and the reasons to be cited in the penalty remarks.

At the hearing the bishop reads the prepared penalty remarks which acknowledge Stringer's admission of misconduct but also note that this only came after his attempt to have the tribunal case struck out had failed. The bishop impresses upon Stringer the importance of churches being welcoming and safe for children and vulnerable adults and the central role which safeguarding plays in that, and expresses his concern that Stringer would never have understood the potential grave consequences of his behaviour if Tom had not raised the matter with the DSA. Consequently, he orders that Stringer is removed as vicar of St Ogg's and prohibited from ministry for two years. Stringer's counsel asks that appropriate support is put in place to guide his client through the prohibition period and to prepare him for a return to ministry, and the bishop says that this will be stipulated in the penalty order alongside directions for a focussed programme of training in safeguarding policy and procedures.

Ending 2

The risk assessment concludes that there is no significant risk and that Stringer's conduct was based in a poor understanding of safeguarding policy and a misguided desire for efficiency, rather than deliberately seeking to sidestep the procedures. It nevertheless recommends that Stringer undergo a refresher course in safeguarding for leadership and that he does not retain sole authority for appointing to roles in the parish that involve contact with children or vulnerable adults.

The bishop meets with Stringer to discuss the outcomes of the risk assessment and says that he has asked the DSA to refer the matter to a regional assessor to determine whether his behaviour constitutes misconduct which requires disciplinary action. An assessor is appointed as before, and concludes after two weeks that there has been misconduct but that it is not sufficiently serious to justify being sent to a tribunal, and could be adequately addressed by a rebuke from the bishop and directions in the form recommended in the risk assessment. The bishop sends a copy of the assessor's report to Stringer and directs him to attend a "pastoral meeting" at which they can discuss the matter and the bishop can impose an appropriate penalty. The bishop's letter also provides details of pastoral support available through the diocese and informs Stringer that he may be accompanied to this meeting by a friend or union representative but not by a lawyer.

At the meeting, Stringer apologises profusely for his actions and assures the bishop that he will undergo any necessary safeguarding training so long as he can continue in ministry at St Ogg's. The bishop determines to impose a rebuke alongside directions that Stringer is to attend refresher safeguarding training, and regular six-monthly reviews with the DSA for the next two years. He also directs that Stringer should act jointly with the churchwardens in appointing for roles that involve contact with children or vulnerable adults for the next four years. He informs Stringer that a note of the penalty will be entered on his 'blue file' and will remain there for four years.

Annex 10

Costings of the present and reformed systems

The areas of current cost are:

- The Clergy Discipline Commission (CDC) – retainers, salaries and expenses (including brief fees to external advocates)
- The cost of operating the system – preliminary scrutiny reports
- Tribunals – fees and expenses of chairs and panel members and other running expenses
- Costs of appeals and applications for leave to appeal - judicial fees for appeals etc
- Ecclesiastical legal aid
- Other costs eg bishops' payments to Registrars for advice

Current Costs

CDC

Retainers for President of Tribunals (PoT) and Deputy PoT - £8,000 x 2 (although it is believed that they have not been taken in recent years) Total £16,000
Salaries of Designated Officer (DO) and Secretary to PoT and CDC c £125,000
Expenses of DO c£2,500
External brief fees etc (currently one - £15,000)

We are aware that there is a backlog of tribunal hearings that have not been able to take place because of the pandemic. So in the next two or three years it is likely that there will be a significant number of cases, some of which are likely to be briefed out so that figure could go to c£50,000 and increase the total annual costs under this head to £193,500

So we will allow a current ball park figure of **£200,000 pa**

Operating costs

There are the costs of general administration of the CDC that are covered as we understand it by the Church House Legal Office. These will include the costs of supporting the DO; the general office costs; Professional Indemnity Insurance and the like.

However, the principal cost of operating the current system is the cost of preliminary scrutiny reports prepared in almost every case in which a complaint is issued.

PSRs – total amount paid out in 2019 was **£438,530**

Cost of Tribunals

There are a number of factors that determine the cost of a tribunal hearing – the number of directions hearings in advance of it and the amount of registrar's time dealing with the preliminaries; the ancillary support costs provided by the registrar (photocopying, postage and the like); the length of the final hearing in number of days; the cost of venue hire which we understand has varied significantly; and the expenses of running a hearing which includes travel and hotel expenses for panel members.

Some of these are fees and are fixed by Regulations approved by General Synod:

Chair – daily fee for a hearing £668 (£333 for ½ day)
Directions hearing £269
Written directions £133
Hourly rate for writing (eg tribunal judgment) £133

Registrar – daily fee for a hearing £530 (£266 for ½)
Directions £212
Written directions £106

Other running expenses
Venue Hire – varies but up to £5000 for a 4/5 day case

We have taken a global view of an average 3 day hearing and concluded that the average cost of those items will be in the region of **£15,000**

We understand that the CDC is currently collating the costs of these tribunals in recent years and we hope that that such figures will be released when available and it will then be possible to take account of the actual cost in recent years. We have no reason to think that the costs in the future will be any greater than now. So if the figure is higher than we have estimated so will the figure for this head of expenditure be in the future and the difference between present and future costs will not be any different, as the figure of each would be higher by the same amount.

On that basis we think that a reasonable estimate would be that the cost of 4 tribunal hearings per year has been not less than **£60,000**. We would caution that this might be a significant underestimate!

Appeals

The cost of determining applications for leave to appeal and dealing with any consequent appeals along with other allied appeal costs we would estimate at an average annual cost of **£20,000**

Ecclesiastical Legal Aid (ELA)

01.12.18 to 30.11.19 the cost was **£104,325**

Other costs

Figures are not available, but we have been given an estimate of at least **£30,000** pa which would cover additional fees paid by bishops to Registrars and other ancillary costs

So the total costs of running the current system is approaching **£900,000**

Costs of our proposals

CDC

There will not be much change to these costs.
The PoT and Deputy will still have a retainer (whether taken or not) shown in the budgeted costs of £16,000.
There will still be a DO and Secretary at c £125,000.
There will be the on costs of providing them with office accommodation and other support.
There will be professional indemnity insurance.
It is possible there could be an increase in staff, but it is thought unlikely, unless there is a significant increase in cases going to Tribunal hearings. Even if there is an increase, staff numbers might well be kept down and flexible by more cases being briefed out.
Other expenses will remain at about £2,500.
We will include brief fees in the costs of running tribunals.
There will be some additional costs for training – buying in some of the courses that will be required initially, although the cost should include being able to use the material to go on teaching it ourselves. Perhaps allow £20,000
So total CDC costs will amount to about **£163,500**
Again it may be wise to allow a significant amount of headroom and say a total of **£200,000.**

Operating costs

There will be a significant reduction here as the costs of PSRs will disappear completely.

The costs of operating the assessment process, leaving aside training costs (see above) will hopefully be basically the expenses of the assessors. Some contact will be on the phone / via the web. There will be some face to face visits perhaps averaging 300 miles per assessment @ 40p = £120, say £150 per case. Allowing for additional expenses, say £200 per case

The total number of complaints in 14 years has been just under 1200. Average 85 pa. Even if 100 pa is allowed for that is a total cost of **£20,000.**

If the bishop occasionally needed any legal advice, if that came from their registrar, there would be a question as to whether it should be included in the annual retainer. But even if

not it is going to be very few cases, if any, per diocese in any given year. The advice would be less formal than eg a PSR and should take much less time to prepare and deliver. So the diocesan cost may be a few hundred pounds per diocese. We will allow **£15,000** pa.

Cost of Tribunals

These will also remain within the same broad range of figures – there will be a small reduction in expenses as we propose reducing panels from a chair + 4 to a chair + 2.

However there will be additional directions hearings (the PDH) in all serious misconduct cases.

There will also be additional costs of the bishop consulting a Tribunal Chair about penalty.

Our estimate of the number of serious misconduct cases is as follows. Following conviction etc (s.30) – the total in 14 years = 67 – an average of 4.8 (the maximum in any one year was 8 (twice)). The total prohibitions by consent in 14 years have been 33 for life and 115 for less than life, a total of 148. 24 prohibitions have flowed from the tribunal hearings in the same period. Adding all those together we have a total of 239 cases in 14 years, an average of 17 pa.

One thing to note is that there have been more s.30 cases in recent years than in the earlier years. So it may be safe to allow now for perhaps 8 per year.

So we will allow for up to 20 serious cases a year for sentence

The number of serious cases that will not be admitted is difficult to estimate but 41 have been referred to a tribunal in 14 years (average just under 3 a year)

Working on these broad figures, we might anticipate in an average year – 8 x s.30; 20 cases for PDH and 5 of those going on to trial

20 cases going to a PDH - a ½ day hearing with Chair and Registrar fees - £481 – produces a total cost of £14,430, so say **£15,000**

Up to 25 cases for sentence before the bishop (15 guilty pleas plus 8+ s.30 cases) – Chair's time – half day @ £333 = £8,325; and you might have to add some time for writing reasons (although we would hope that might be included in the daily rate as it is for fee paid secular judges) but say you add 2 hours = £266. So max total = £600 per sentence x 25

Total cost of judicial time in sentence cases = **£15,000**

Cases going to a contested tribunal hearing – say 5p.a. at £15,000 each = **£75,000**

Costs of prosecuting tribunals:

We anticipate the DO will represent the prosecution at all PDHs and most interlocutory hearings.

As for the tribunal hearings, some may be prosecuted by the DO but some will be briefed out. We consider that it should be possible in the average case to instruct experienced junior counsel to prosecute at a cost of less than £5,000 (+VAT) for a case lasting up to a week.

So if counsel prosecutes 3 of those cases, total fees (including VAT at 20%) - **£18,000**

Ecclesiastical Legal Aid (ELA)

We have set out in the next annex (Annex 11) our proposals for ELA and its costs.

The results of the consultation we carried out in November 2020 were that most respondents felt that Legal Aid should only be available in cases of alleged serious misconduct. We have however provided figures showing the cost of both providing it in all cases and providing only in cases of serious misconduct, the latter being our proposal.

The total cost of an ELA system which was not merits tested or means tested and which was available in the case of every complaint would amount to £365,000 to which of course must be added VAT, currently at 20% making a grand total of **£438,000.** If only available for serious misconduct the sums would be £245,000 plus VAT at current rate of 20% = **£294,000**.

So the total cost of running the scheme we propose, depending on whether legal aid was available in all cases or just in those of serious misconduct would be:

CDC costs		£200,000		£200,000
Assessments		£20,000		£20,000
Tribunals				
PDH (Judge and Registrar)	£15,000			
Sentence with bishop (Judge)	£15,000			
Prosecutors' fees	£18,000			
Contested tribunal hearings	£75,000			
Other expenses	£15,000	£138,000		£138,000
ELA		£438,000		£294,000
Total		**£796,000**	**or**	**£652,000**

Annex 11

Ecclesiastical Legal Aid (ELA) – a budget for the new Measure

The purpose of this paper is solely to provide some ball-park figures as to the potential costs of a reframed ELA system. We have some figures on ELA granted in the year 1 December 2018 to 30 November 2019 which is retrospective but all projections for future costs are broad guestimates only.

Principles underpinning reformed ELA system

1. ELA be available to every cleric required to participate in a CDM process.

2. ELA awards shall not be means tested. Amounts available should be standardized and not impacted by the respondent's assets or savings or their partner's finances.

3. ELA awards should not be impacted by the Commission's view of the merits of the case or their assessment of the amount of legal work that should be required although there should be a right for the Commission to challenge a respondent's right to funding if they are clearly acting in bad faith.

4. Respondents facing charges of serious misconduct which, if proved, could result in their removal from office should be fully funded so that they can properly defend themselves.

5. ELA to fully fund Respondent's legal costs rather than just be a charitable contribution. Bishops/Dioceses should not have to contribute to a Respondent's legal costs as a few do now.

Current costs for Commissioners

It is understood that the amount of ELA awarded for the year 1 December 2018 to 30 November 2019 was £104,325.[30]

It is also understood that the amount paid out by the Church Commissioners on Registrar's Preliminary Scrutiny Reports (PSR) in 2019 was £438,530.

We are aware that some Bishop's/Diocese contribute towards a Respondent's legal fees where ELA is insufficient. We do not have any figures for the amount but would conservatively estimate £30,000 per year.

[30] Not currently known whether these figures provided are inclusive of VAT

Known annual costs for legal advice paid for the Commissioners in 2019 in relation to CDM procedures amounted to £542,855. Adding the estimated Bishop's/Diocese's discretionary contributions results in a total expenditure on legal advice of **£572,855**.

In Annex 10 we have set out our best assessment of the current cost of operating the CDM.

Although the Report recommends that ELA should only be provided for cases of serious misconduct, we have also shown what the cost would be of providing it in all cases of complaint.

Mechanics of new ELA system

Stage 1: complaint & initial assessment

1. A reasonable hourly rate to be paid to solicitor or counsel engaged in advising and/or representing clerics facing disciplinary proceedings is £250 per hour. That will be the ELA rate.

2. Upon notification of a complaint by the Bishop, the Respondent is entitled to access up to 6 hrs ELA (£1,500 plus VAT) for legal advice (**Initial Budget**).

2. The Respondent will have been provided with a list of solicitors and direct access barristers who are experienced in CDM work and who are prepared to operate under the ELA scheme. The Respondent does not have to use one of these solicitors. A solicitor or barrister not on the list will be entitled to be paid under the scheme provided that they satisfy the CDC that they are sufficiently competent and experienced in litigation and/or advocacy adequately to represent the Respondent.

3. The Respondent will complete a simple online form which requires biographical details and basic factual details about the complaint. They should receive a confirmation email that the Initial Budget is in place.

4. The Initial Budget is to be used by the Respondent in obtaining advice on the process, their written response and their interactions with the assessor (it is not anticipated that lawyers attend any meetings with the assessor).

5. The solicitor or barrister will submit invoices showing a narrative and how time was spent to the Commission up to the value of the Initial Budget.

6. If the Initial Budget is exhausted and the Respondent requires further ELA cover, he (or his solicitor) shall contact the Commissioners and provide reasons for the request and time estimates.

Stage 2: serious misconduct

7. Where the complaint is allocated to the serious misconduct track, the Respondent will complete a further short form online to access the further budget (**Tribunal Budget**).

8. Tribunal Budget shall be awarded in tranches of £2,500 plus VAT. Once the Commission has confirmed by email to the Respondent that the Tribunal Budget is in place, the acting solicitor may liaise direct with the Commission for further tranches and should expect to set out anticipated work and time estimates.

9. The Commission should take the time estimates (including the solicitor's for counsel's fees) at face value whilst retaining a right to challenge if it suspects the solicitor is acting in bad faith.

10. The Tribunal Budget will first be used for the Plea & Directions hearing. If the misconduct is admitted, the Tribunal Budget can cover advice on penalty and drafting written representations as to penalty.

11. If the matter is to proceed to a Tribunal Hearing, the Tribunal Budget will be required for compliance with directions such as preparing witness statements, expert evidence, participating in any formal investigation by the Designated Officer and ultimately at the Tribunal hearing.

Possible preliminary stages

12. In some cases the Respondent will be suspended and wish to appeal that decision. A simple form should be available online to access up to £1,000 plus VAT (4hrs) ELA.

Examples of the potential costs in particular cases

These are hypothetical scenarios (based on recent cases)

Complaint	**Preliminary**	**Stage 1**	**Stage 2**	**Total costs**
Crossing pastoral boundaries – too close to curate eg. presents, holidays, control Admitted, reconciliation, training – resolved by assessor	n/a	£1,500 Initial Budget	n/a	£1,500 plus VAT

Conducting sham marriages and not accounting for fees. Partially admitted, extent denied	£1,000 Suspended but R feels unwarranted so appeals	£1,500 Initial Budget	£2,500 P&D hearing. Penalty imposed	£5,000 plus VAT
Numerous complaints from choir/PCC. Allegations of bullying & mismanagement against R Denied	n/a	£1,500 Initial Budget £2,500 Further budget granted as R submits lengthy response with evidence and requires support during assessor stage	£2,500 P&D hearing (not guilty plea). £5,000 Formal investigation. Evidence gathered. Initial directions complied with. Ultimately based on DO report, matter does not go to Tribunal.	£11,500 plus VAT
Historic (5yrs ago) sexual affair (denied) with parishioner including possible aggravating factors, complex evidence issues and lots of documentation	n/a	£1,500 Initial Budget	£2,500 P&D hearing £10,000 Trial preparation £20,000 Hearing (3 day)	£35,000 plus VAT

Funding

We have seen the Clergy Discipline Commissions returns for the period 2006-2019. Over the 14 years the average is 84 complaints per year. There is however an upward trend over the last three years which we expect to continue. 100 complaints per year would be a reasonable working basis. An average of just over 2 cases per year has gone to Tribunal. Again, figures in the last three years and, based on experience, indicate the number is increasing so 4 would be a reasonable working basis and being cautious we will say 5.

We estimate the number of potential cases of serious misconduct by looking at those for which prohibition either permanent or temporary has been imposed. Over the 14 years that is a total of 239 cases. Of those and 148 have been penalties by consent, 67 have come on the s.30 route, and 24 have come following tribunal hearings. That is an average of 17 per year. Again being cautious we would allow for our calculations 20 cases of serious misconduct per year. It is entirely possible that the new processes might attract more complaints of a serious nature. Only time will tell. As we have said elsewhere whilst anything is possible past behaviour is the best predictor of future behaviour.

So we will allow for 20 cases of serious misconduct of which we allow for 5 to go a tribunal hearing. It is possible that some will resolve after the PDH hearing but before a trial. However in the greater scheme of things we judge that they will only add marginally to the sums of expenditure and to that extent we will ignore them.

The figures allowed for in relation to legal aid payments have been in some cases preliminary payments of up to £1,000. We think such sums will mostly be related to suspensions. There have been an average of 14 suspensions per year. So we will allow £15,000 for payment of preliminary sums.

All 20 serious cases will go to a PDH and so the ELA costs of that will have been the £1500 initial expenditure and the £2,500 that will take the case through to PDH and in the case of guilty pleas the sentence hearing. That is £4,000 per case, a total of £80,000.

Perhaps 5 cases will run on through to a tribunal hearing. We will allow ELA costs of up to a further £30,000 per case that goes to a tribunal. We think in fact the true figures will be considerably less. But making that allowance would give a further sum of £150,000.

The total ELA costs for serious misconduct cases would therefore amount to £245,000.

If ELA was available in the case of every complaint, that would require expenditure on the additional 80 less serious cases which would have the £1,500 ceiling applied; we think the actual time spent by a lawyer would usually be below and often significantly below that sum. But that would cost up to a further £120,000. It follows from what we have said in the substance of the report that it may not be considered necessary to fund the cases that are not allegations of serious misconduct, in which case this sum would not be required.

The total cost of an ELA system which was not merits tested or means tested and which was available in the case of every complaint would therefore amount to £365,000 to which of course must be added VAT, currently at 20% making a grand total of £438,000. If only available for serious misconduct the sums would be £245,000 plus VAT at current rate of 20% = £294,000.

Annex 12

Training and training modules

At various points in the Final Report we have referred to training of people for their participation in any new scheme of clergy discipline. There are a number of reasons why this is necessary.

- The scheme will be a national scheme and it is important that everyone involved is operating to the same standards, there must be no variations from diocese to diocese.

- Some people will have relevant experience from their professional lives but it is likely that it will need updating and being kept up to date.

- Many of the roles will involve stretching people beyond their previous experience and they need to be made aware of some of the things that they will come across so they will recognise them when they see them.

We therefore propose that there will be a comprehensive scheme of training; there will be some modules that all participants will engage with and others that will be specifically designed for those fulfilling particular roles

The categories of people we currently have in mind who will need some level of training are:

Bishops
Registrars
Archdeacons
Diocesan Safeguarding Officer/Advisor
Assessors
Pastoral supporters
The DO and staff of central office
Tribunal chairs
Panel members
Litigators and advocates

It would in our view also be very helpful if all those who handle complaints in relation to safeguarding including safeguarding officers and advisors at parish, diocesan, provincial and national levels had same level of familiarisation with the discipline processes

We would hope that those designing the training would draw on the people we have had contact with who have particular insight into the issues that arise for complainants and respondents involved in disciplinary proceedings. By way of example The Sheldon Community and Broken Rights have indicated that they would be willing to contribute to the design and delivery of such training. We would hope that Survivors Voices would also help.

There would also be a need to draw on other professionals, such as those who train police and social workers in relation to interviewing and dealing with vulnerable and intimidated witnesses[31].

We are very conscious of the Recommendation from IICSA that ensure that "those handling such complaints are adequately and regularly trained". We know that that was said in particular as the then Designated Officer (DO) who said that "whilst he had received some training in his other judicial posts, the designated officer does not receive specific training about handling or interviewing vulnerable witnesses." However our concern goes much wider than just the DO, it is in our view vital that everyone concerned has an understanding of the issues that arise in relation to vulnerable witnesses. But equally we see that as only one part of the training that all should receive so that they have a full understanding of the issues that are likely to arise generally and equipped to respond appropriately in their role.

There would be cost to buying in some of the necessary expertise, but we would imagine that some of the buy in could include training in house trainers who would continue to deliver the modules after they had been rolled out initially.

What follows is far from being exhaustive but is rather an indication of some starting points for those designing the training modules.

A series of modules might look like this:

1. Basic for all
    i. Describing the scheme and how the various roles interrelate
    ii. Legal framework – red lines
    iii. Identifying misconduct and serious misconduct
    iv. Understanding impact of proceedings (at all stages) on complainants, witnesses and respondents
    v. Training in self-awareness and unconscious bias
    vi. Some instruction in recognising typical parish situations
    vii. Particular training in relation to issues of harassment and bullying
    viii. Training about the issues arising from Adverse Childhood Experiences (ACEs), commonness, patterns – things they are told (secrets etc), ways they react, issues they face in disclosure etc

    Object: To enable everyone to have an overview of the process, how it works, and the difference between types of cases, identifying the most common types and how they might be approached; and to give an awareness of the main issues surrounding ACEs so as to lay foundation for everyone's particular role and potential involvement in their different ways in such cases.

[31] We use the phrase vulnerable and intimidated witnesses in the sense that it is used in ss 16 and 17 of the Youth Justice and Criminal Evidence Act 1999

2. Bishops
    i. Role – pastor including disciplinarian side of pastoring – how it should work in practice
    ii. Going through the particular stages of the process and what is expected of the bishop at each stage
    iii. Managing relationships with others and their different roles

    Object: To enable the bishop to understand and navigate their critical role in the process

3. Registrars
    i. What sort of advice might be required and by whom
    ii. Managing any issues of conflict

    Object: To enable the registrar to understand the process and to recognise what their very different role is in this regime contrasted with that under the CDM 2003

4. Archdeacons
    i. Roles they might play
    ii. Investigating for bishop before a complaint is laid

    Object: To enable the archdeacon to understand their different potential roles: carrying out an enquiry pre complaint to establish if there is a cause to complain; filing a complaint and role then in relation to witnesses (communication, support etc); support for a respondent

5. Pastoral supporters
    i. Nature of role
    ii. Describing how the proceedings might affect those involved as complainants and respondents
    iii. Identifying critical moments in the process
    iv. What help can be provided or signposted
    v. Limits of role

    Object: To enable the supporter to know what is expected of them, what to anticipate may be effect of the process at different stages on their supportee; where else to go for help when concerned

6. DSA/DSO
    i. Relationship of discipline process to other roles and processes – core groups, investigations, risk assessments
    ii. Making a complaint
    iii. Supporting complainants and witnesses through the process

    Object: similar to some parts of the Archdeacon (see above)

7. Investigators (Assessors and DO)
    i. How to carry out enquiries and interviews
    ii. Recording what is said
    iii. How to interview children – drawing on the joint training for police and social workers.

    Object: to enable those engaged in interviewing to do so in a way that enables the person to give their best account of their story, to ensure it is properly recorded and to be aware of the particular issues in relation to children so that they do it in the most appropriate way so as to enable the child to tell their story

8. Assessors
    i. explaining the role, and how to carry out the various enquiries;
    ii. decision making when conflicts of evidence
    iii. record keeping
    iv. assessing seriousness
    v. report writing.

    Object: to equip them to fulfil their role and to do so to a consistent national standard; particularly to enable them to understand the importance of establishing a time line and when they have completed their enquires to know how to resolve contested issues of fact; to enable them to write reports that put the relevant issues and conclusions before the bishop

9. Those processing complaints including cases with vulnerable witnesses – importance of timeframes, what practical steps need to be taken for child witnesses.

    Object:To ensure that all those who are responsible for managing the processes are aware of the importance of timeliness and the reasons why it is important and to know in relation to vulnerable and intimidated witnesses the critical phases of an investigation/ prosecution, to appreciate the different questions and anxieties that people may have and to know what can be said to address those.

10. Advocates – recommend that they do the bar course on vulnerable and child witnesses – and commit to studying the relevant Advocates Toolkit module.

    Object: to ensure that whether examining in chief or cross-examining vulnerable or intimidated witnesses they do so in an appropriate way.

11. Judges dealing with safeguarding cases – should be approved as either current Public Law Family or Serious Sex Ticketed Criminal Judges.

    Object:to ensure that they are suitably trained to deal with cases involving vulnerable or intimidated witnesses

12. Others can be added as appropriate.

Annex 13

CDC Statistics	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	Totals
COMPLAINTS AGAINST PRIESTS AND DEACONS															
Total complaints	66	71	63	59	68	66	69	73	79	67	90	101	90	217[32]	
Approx no. of clergy subject to the CDM	*22430*	*22430*	*22360*	*20000*	*18000*	*19000*	*19000*	*18620*	*18620*	*18620*	*20450*	*19550*	*20000*	*20,000*	
Complaints as % of total clergy	*0.30%*	*0.30%*	*0.30%*	*0.30%*	*0.40%*	*0.35%*	*0.35%*	*0.40%*	*0.40%*	*0.35%*	*0.45%*	*0.50%*	*0.45%*	*0.80%*	
Dioceses with no complaints	18	13	15	17	15	12	14	15	13	8	11	9	13	3	
Dioceses with 1-5 complaints	24	29	22	24	27	31	25	25	27	33	28	31	26	25	
Dioceses with 6 or more complaints	2	2	3	2	1	0	3	3	2	1	3	2	4	16	
Types of complainants															
Complaints brought by PCC nominees	2	0	1	2	1	0	0	0	0	4	4	0	2	1	17
Complaints brought by churchwardens	2	13	5	1	0	2	1	1	4	1	0	0	0	1	31
Complaints brought by archdeacons	17	16	16	14	18	14	25	28	29	27	30	28	23	29	314
Complaints brought by other parties	45	42	41	39	49	50	43	44	46	35	56	73	65	193	821
	66	71	63	56	68	66	69	73	79	67	90	101	90	224	1183
Complaints delegated to suffragan for determination	1	4	6	10	19	10	9	18	13	10	11	9	16	37	173
Complaint handling															
Complaints dismissed under s11(3)	19	22	20	16	16	25	16	29	15	21	31	21	26	34	311
No further action under s 12(1)(a) and s13	11	10	12	3	6	12	5	10	16	14	10	23	21	47	200
Conditional deferment under s12(1)(b) and s14	3	1	2	3	2	4	3	8	5	4	3	2	2	5	47
Resolved by conciliation under s12(1)(c) and s15	0	1	1	2	2	0	0	2	1	0	0	0	1	0	10

[32] There is an anomaly in the statistics which state the total number of complaints was 217 but adding together the complaints by the different categories of complainer produces a total of 224

Complaints referred unsuccessfully to conciliation	*1*	*1*	*8*	*6*	*0*	*0*	*0*	*2*	*2*	*0*	*0*	*2*	*0*	*0*	22
Penalty by consent under s12(1)(d) and s16	11	14	13	18	9	8	15	26	23	16	18	23	20	13	227
Formal investigation under s12(1)(e) and s17	10	8	4	5	18	6	3	5	2	8	6	8	18	19	120
Withdrawn complaints	0	0	3	2	1	0	0	1	1	1	1	0	1	53	64
Decisions pending by year end	*12*	*16*	*17*	*18*	*17*	*18*	*32*	*11*	*29*	*17*	*35*	*41*	*19*	35	317
															0
Penalties by consent															0
Prohibition for life	0	2	2	1	8	0	2	4	1	2	1	6	2	2	33
Limited prohibition	4	9	6	8	7	3	11	13	10	6	11	9	14	4	115
Resignation without prohibition	1	2	4	1	0	0	0	2	0	0	0	3	1	0	14
Injunction	1	1	1	0	0	0	2	0	0	3	1	0	1	0	10
Rebuke	1	1	0	7	0	2	0	4	11	4	3	2	3	5	43
Injunction and rebuke	4	0	0	1	0	3	2	3	2	1	4	3	1	0	24
															0
Decisions following investigation															0
No case to answer	4	1	1	0	4	4	5	1	1	2	2	2	7	4	38
Referred to tribunal	1	6	3	2	3	1	0	4	2	2	4	3	6	4	41
Not decided by year end	1	0	0	0	10	0	2	0	0	0	1	2	0	0	16
Investigation ongoing by year end	4	2	1	3	0	1	2	1	1	4	3	7	3	2	34
No further steps due to penalty by consent	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	0	0	1	2	1	5
															0
Cases determined by tribunal	0	2	7	0	2	1	0	2	2	1	3	4	3	4	31
Cases withdrawn or otherwise terminated	0	0	0	0	1	0	0	1	4	0	1	1	0	1	9
															0
Total suspensions imposed															0
Under s36(1)(a) following complaint	5	6	7	3	5	3	9	8	3	2	10	10	8	9	88
Under s36(1)(b) following arrest	4	5	8	5	9	5	4	7	11	11	13	6	2	7	97
Under s36(1)(c) following conviction	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	3	1	0	1	1	6
Under s36(1)(d) following inc on a barred list	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	1	0	0	1
Under s36(1)(e) concerning significant risk of harm	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	1	4	5	10

Under s36A re bringing proceedings out of time	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0	0
															0
Penalty imposed following conviction and sentence	0	1	1	3	2	3	4	6	8	8	5	7	4	4	56
Penalty imposed following divorce or separation	0	1	0	2	2	1	0	0	1	0	0	1	1	1	10
Penalty imposed following inc on a barred list	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	1	0	0	1
																0
COMPLAINTS AGAINST BISHOPS/ARCHBISHOPS																0
																0
Total complaints against bishops	3	6	5	3	7	5	12	8	7	6	6	5	24	12	109
Total complaints against archbishops	2	0	1	0	0	0	0	0	1	0	0	2	0	1	7
																0
Complaint handling																0
Dismissed by archbishop	3	5	3	3	2	5	7	3	5	6	3	2	13	1	61
No further action	1	1	0	0	0	0	1	0	0	0	0	2	4	6	15
Conditional deferment	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Resolved by conciliation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Complaints referred unsuccessfully to conciliation	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*		*0*
Penalty by consent	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1
Formal investigation	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Withdrawn	1	0	0	0	1	0	0	1	0	0	0	0	5	2	10
No decision by year end	0	0	3	1	4	1	4	5	3	2	4	6	6	8	47
																0
V-G courts held in year	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Suspensions imposed	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Penalty following conviction and sentence	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Penalty following divorce or separation	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Penalty following inc on a barred list	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	0	0	0	0	

Annex 14

Bishop's Disciplinary Tribunal Cases

Name of Case	Diocese	Complaint	Admit/Deny	Evidence called	Principal Issue	Date of last incident	Date of complaint	Date of hearing	Tribunal chair	Outcome/ Penalty
Re King	York	Adultery	Deny	Yes	Whether conduct unbecoming	October 2006	9 March 2006	Nov 2007	Geoffrey Tattersall QC	Removal from office and 4 year prohibition – upheld on appeal
Re Faulks	Peterborough	Mischarging parochial fees, improper accounting and retention of surplus funds	Deny	Yes	Whether neglect of duty and/or conduct unbecoming	November 2006	24 July 2006	Dec 2007	HHJ David Turner QC	Conditional discharge – 2 years
Re Robinson	Chester	Failed to follow national and diocesan policy in appointing youth worker with manslaughter conviction	Deny	Yes	Whether neglect or inefficient performance of duties	March 2006	19 April 2006	Aug 2008	Charles George QC	Rebuke and injunction – 5 years
Re Rea	Blackburn	Adultery	Admit	No	Whether conduct unbecoming	Not specified	18 July 2007	Sept 2008	David Dixon	15 month prohibition
Re Gair	Chelmsford	Adultery and abuse of pastoral position	Admit (last-minute)	Yes	Whether conduct unbecoming	Not specified	Not specified	Nov 2008	Rupert Bursell QC	Removal from office and 7 year prohibition
Re Davies	Peterborough	Respondent in open marriage and under the influence of alcohol whilst conducting church services	Deny	Yes	Whether conduct unbecoming	18 December 2006	Not specified	Nov 2008	David Cheetham	Removal from office and 12 year prohibition
Re Okechi	Lichfield	Adultery	Deny	Yes	Whether conduct unbecoming	February 2006	June 2006	Dec 2008	HHJ Simon Grenfell	Removal from office and 10 year prohibition

Re Tipp & Northern	Rochester	Adultery and desertion of office	Admit	No	Whether conduct unbecoming and/or neglect of duty	Ongoing at date of hearing	4 February 2008	Dec 2008	HHJ Samuel Wiggs	Tipp: removal from office and prohibition for life Northern: removal from office and 12 year prohibition
Re Rowland	Rochester	Adultery and desertion of spouse	Admit	No	Whether conduct unbecoming	Ongoing at date of hearing	15 December 2008	Feb 2010	Linda Box	Removal from office and 10 year prohibition
Re Gilmore	London	Sexual advances and behaviour	Deny	Yes	Whether conduct unbecoming	4 December 2009	17 December 2009	Nov 2010	Geoffrey Tattersall QC	Removal from office and 2 year prohibition – upheld on appeal
Re Wray	Carlisle	Retaining parochial fees and filing inaccurate returns	Admit neglect of duty; deny conduct unbecoming (dishonesty)	Yes	Whether conduct unbecoming and/or neglect of duty	December 2008	11 March 2009	May 2011	Roger Kaye QC	Prohibition for life
Re Landall	Sheffield	On barred list so unable to perform duties of office	Admit	No	Whether neglect or inefficient performance of duties	30 April 2013 (resigned from office)	Not specified	June 2013	HHJ Simon Grenfell	Prohibition for life
Re Meier	Chichester	Adultery	Admit	No	Whether conduct unbecoming	August 2008	Not specified	Oct 2013	HHJ John Lodge	Removal from office and 8 year prohibition
Re Vincent	Lichfield	Adultery	Admit	No	Whether conduct unbecoming	29 July 2012	Not specified	Sept 2014	Geoffrey Tattersall QC	8 year prohibition
Re Hawthorn	Winchester	Retaining parochial fees	Deny	Yes	Whether conduct unbecoming and/or neglect of duty	April 2012	Not specified	Jan 2015	Rupert Bursell QC	Prohibition for life
Re Huntley	Durham	Casual sexual relationship with parishioner	Admit; but challenged the	Yes	Whether conduct unbecoming	January 2015	26 March 2015	May 2016	HHJ Sarah Singleton QC	Removal from office

			gravity of the misconduct							and 2 year prohibition
Re Day	Diocese in Europe	Pornography, sexual promiscuity and domestic violence	Deny	Yes	Whether conduct unbecoming	25 March 2012	6 June 2012	May 2016	HHJ Samuel Wiggs	Prohibition for life
Re Gomes	Sodor and Man	General conduct and temperament	Deny	Yes	Whether conduct unbecoming	Not specified	23 October 2015	Oct 2016	Geoffrey Tattersall QC	10 year prohibition
Re Waswa	London	Inappropriate relationship under false pretences	Admit	No	Whether conduct unbecoming	January 2016	10 February 2016	Feb 2017	Morag Ellis QC	Removal from office and one year prohibition
Re Blewett	Leicester	Adultery	Deny	Yes	Whether conduct unbecoming	September 2012	Not specified	Mar 2017	HHJ Philip Waller	Complaint dismissed
Re Huntley (No. 2)	Durham	Fraudulent insurance claim with forged documents	Deny	No	Whether conduct unbecoming	17 June 2016	12 October 2016	Oct 2017	HHJ David Turner QC	Prohibition for life
Re Davis	Oxford	Abuse of spiritual power	Deny	Yes	Whether conduct unbecoming	September 2013	22 January 2016	Dec 2017	HHJ Mark Bishop	Removal from office and 2 year prohibition
Re R	Exeter	Historic grooming and sexual relationship	Deny	Yes	Whether conduct unbecoming	"About 2000"	Late 2016 (R's Answer submitted in January 2017)	Apr 2018	Morag Ellis QC	Complaint dismissed
Re Marsh	Chester	Adultery and/or inappropriate relationship	Deny	Yes	Whether conduct unbecoming	December 2013	4 December 2015	Oct 2018	Roger Kaye QC	Removal from office and prohibition for life
Re Butland	Carlisle	Bequest applied to wrong charity	Admit	No	Whether neglect or inefficient performance of duties	May 2012	22 January 2018	June 2019	HHJ John Lodge	Rebuke
Re Sayers	Portsmouth	Adultery following previous penalty for inappropriate sexual relationship	Admit	Yes	Whether conduct unbecoming	Autumn 2010	23 March 2017	July 2019	Ruth Arlow	Prohibition for life

Re Hanson	Sheffield	Adultery and/or inappropriate relationship	Deny	Yes	Whether conduct unbecoming	October 2017	October 2017	Oct 2019	David Pittaway QC	Prohibition for life
Re Ntege	Southwark	Failure to maintain marriage registers and theft of parochial fees	Deny	Yes	Whether neglect of duty and/or conduct unbecoming	30 April 2011	30 November 2017	Nov 2019	HHJ Stephen Eyre QC	Removal from office and prohibition for life
Re Parks	Chichester	Domestic abuse and controlling behaviour	Admit	Only psychiatric evidence to determine level of culpability	Whether conduct unbecoming	March/April 2017	4 August 2017	Jan 2020	HHJ Heather Norton	Removal from office and 2 year prohibition
Re Bulloch *Currently awaiting the determination of an appeal (leave having been granted)*	Chelmsford	Adultery and failure to obtain pastoral support for a vulnerable adult	Deny adultery; admit failure to obtain pastoral support	Yes	Whether conduct unbecoming	September 2017	22 November 2017	April 2020	HHJ Mark Bishop	Adultery charge dismissed; admitted charge brought removal from office, rebuke and injunction to undertake training

Annex 15

Outline of a Measure

It is understood that the current preference is to keep what is in a Measure to a minimum and to have more in the subsidiary legislation (Rules) and Practice Directions or Codes of Practice, as they are more easily amendable. Quite a lot of what follows could probably be in the Rules, Practice Directions and Codes, but is set out here so that the full ambit of what is intended is clear

Clergy Discipline Commission (CDC)

Role – oversee operation of the Measure; make various appointments (staff and assessors); responsible for provision of training; responsible for provision of guidance (process and penalty); report annually to General Synod.

Composition – to include independent members (including members with: external regulatory experience of other professions, experience of supporting victims of sexual assault, experience of supporting clergy going through disciplinary processes).

Bishop

Bishop's role – pastor responsible for whole flock which includes ordination promises to correct and punish those with whom they have shared their ministry.

Assessors

Regional panels appointed by CDC
Lead regional assessor - role
Role of panel members in assessing all complaints and reporting to bishop on outcome of assessment

Tribunals

President of Tribunals (PoT) and Deputy PoT – PoT presides over panel of legally qualified chairs of tribunals; allocates each case to a tribunal chair for hearing, or can hear case themselves; chair of CDC, deals with some appeals/reviews eg suspension.
Legally qualified chairs – qualification required to be same as for appointment as a Circuit Judge but also to have had significant professional experience as a fee paid or salaried judge.
Central Registry – responsible for developing and keeping up to date a case management system, through which all complaints would be lodged, and automatically sent out to bishops and lead assessors (for allocation of case to individual assessor); overseeing the timeliness of cases (through a dashboard); arranging the provision of the CDC training to all involved in investigating and prosecuting and otherwise dealing with complaints.
Designated Officer's responsibilities: investigating allegations of serious misconduct; attending and prosecuting PDH hearings; briefing out serious misconduct cases for final hearings; reviewing sentences to see if should be referred as unduly lenient; assisting in training, drawing up guidance (penalties and process).

Case officer(s) responsibilities: managing the oversight of cases through the dashboard; dealing with the arrangements in relation to conduct of hearings.
Role of Provincial Registrars in clerking hearings.
Panel of tribunal members (clergy and lay); organisation of composition of each tribunal after tribunal date has been fixed; a tribunal to consist of chair and two members (one clergy one lay).

Penalties

Types of penalty: prohibition (permanent or for a specific period); removal from office; revocation of diocesan bishop's licence; direction; rebuke; other ways of dealing with misconduct which is less than serious.

Prohibition (permanent or for a specific period), removal from office, revocation of diocesan bishop's licence – only available on an admission or finding of serious misconduct.

Archbishops' list and cleric's personal file

Only cases of serious misconduct to be recorded on the Archbishops' List.
A system for review and/or possibility of applying to come off the List
Less than serious misconduct to be recorded on cleric's personal file for a fixed period of time.
Removal from current list of cases that are less than serious.

Complaints

About misconduct, defined as falling short of conduct to be expected of those in Holy Orders.
Complaint to be submitted online, through a dashboard.
Complaint to set out what did or did not happen, when the events took place, what steps the complainant has taken to address the misconduct with the cleric, and what the complainant is looking for as an outcome.
Complaint to be supported by a statement of evidence by the complainant which contains a statement of truth.
Cleric to respond online setting out their account of what did or did not happen in relation to matters complained about and how say matter might be resolved.

Limitation Period

No limitation period for cases of serious misconduct, but a respondent can apply to stay the case on the basis that it is no longer possible to have a fair trial as a result of specific disadvantages that have arisen by reason of the length of time that has elapsed since the events complained about.
Cases of misconduct less than serious or of grievances shall have a limitation period of 12 month from when the complainant became aware that they had cause to complain.
Limitation period can be overridden by the PoT in exceptional circumstances.

Assessment (Triage)

Carried out by a member of the regional panel as allocated by regional lead assessor.
Completed unless exceptional circumstances within 28 days.

Right of complainant and respondent to be accompanied at all meetings with assessor.
Findings as to whether there has been misconduct and if so, whether:

Serious misconduct (rendering the cleric unfit for office),

The matter only proceeding further if there is credible evidence of misconduct by the cleric;

Misconduct (culpable misconduct falling short of serious misconduct),

In less than serious cases, the assessor shall determine any disputed issues of fact;

The happening of the events complained about was contributed to by issues of capacity and/or capability on the part of the cleric;

And if no substance to the allegation of misconduct, whether they consider it amounts to:

A grievance;

A malicious or vexatious allegation.

Report to the bishop of assessor's findings with reasons.
Right of review (limited to as to whether decision was plainly wrong) – for the complainant if the complaint is dismissed or they are dissatisfied as to assessment that it is not serious misconduct, and for the respondent on the decision as to facts.

Provision of pastoral support

The bishop to be responsible for:

The provision of trained supporters for complainants and respondents;

Enhanced support in cases of serious misconduct when identified.

Pastoral penalty meeting in cases of less than serious misconduct

Following a finding of less than serious misconduct the cleric shall attend a pastoral meeting with the bishop.
Bishop to give notice of what proposes by way of penalty and/or other intervention
Right of respondent to be accompanied at that meeting.
The content of the meeting.
Complainant's and Respondent's right of review of penalty by another bishop in the region.

Serious misconduct cases

All referred to Tribunal Hearing before a Tribunal Chair for a Plea and Directions Hearing (PDH).
If respondent admits (sufficient) facts then referred to the bishop for penalty.
If denied:

Directions in relation to any applications to dismiss/remit/stay as fair trial not possible;

Timetabling to final hearing, the date of which shall be fixed at the PDH

All other relevant directions (including any special measures)

Practicalities of hearing – organisation (usually remote hearings for PDH and all directions hearings)

CDM 2003 s.30 cases

Very similar provisions to be enacted, but bishop to consult with a tribunal chair rather than PoT before imposing penalty.

Duty to report arrest (or being interviewed under caution) and/or charge, or being placed on a barred list, also divorce (even though there will no longer be allegations or findings of adultery or unreasonable behaviour).

Penalty hearing in serious misconduct cases

Bishop to discuss penalty with a tribunal chair.

If not agree then bishop has last word.

Bishop to inform respondent of proposed penalty.

Right of respondent to make written representations or oral representations at the hearing

Bishop can adjourn for further considerations

Final result will be recorded with written reasons for decision.

Less than serious misconduct

Assessor's findings and recommendations.

On admission – respondent will be called to see the bishop for a pastoral meeting.

Blue file record for fixed period of time.

Complaints against bishops and archbishops

Similar processes:

- Provincial panels of assessors made up of regional leads and some bishops;
- PDH before PoT or Deputy;
- Final tribunal hearing before Vicar-General.

Recusals – only in exceptional circumstances

Appeals

Court of Arches / Chancery Court is appeal court – Dean/Auditor plus two panel members.

Appeal only with leave of Dean/Auditor

Respondent may appeal on law and facts; DO only appeal law.

Suspension

Only if a complaint/arrest for crime/criminal charge/placed on barred list/'significant risk of harm' as per report by police or local authority.

And only if suspension is necessary.

Period of suspension and renewals.

Rules

Power to make and how made.

Practice Directions / Code of Practice

Power to make and how made.

Duty to have due regard to Code

Annex 16

List of consultees and contributors

We mean no disrespect to any of our consultees in that we have not attempted to ascribe either titles or roles to any of them. We are very aware that any such attempt inevitably would be incomplete.

First consultation

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Ian Cooper
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Sue Field
John Gallagher
Justin Gau
John Gosling
Gareth Green
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Mark Hedley
Pete Hobson
William Hogg
Sarah Horsman
Robert Innes
Richard Jackson
Phillip Johnson
Andy Jolley
Malcolm Jones
Jeremey King
Roger Knight
Bernard Lane
John Marshall
Philip Mountstephen
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Augur Pearce
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