

# GUIDANCE ON PENALTIES

Issued by the Clergy Discipline Commission

January 2021

## INTRODUCTION

The purpose of the administration of discipline is to deal with clergy who are found to have fallen below the very high standards required and expected of them.

For the individual member of the clergy who is subject to discipline, this involves not just the imposition of an appropriate penalty, but also pastoral support, encouraging repentance and forgiveness, rehabilitation, attempting reconciliation, and moving on constructively from the past.

For the victim, the administration of discipline must have regard to the interests of justice for all who may be affected by the faults, failings or shortcomings of the clergy, support the collective good standing of all faithful men and women who are called to serve in the ordained ministry, and ensure the clergy continue to be worthy of the great trust that is put in them as ordained ministers.

The Clergy Discipline Measure 2003 provides for a range of penalties to be imposed in cases of clergy misconduct. The Clergy Discipline Commission gives general advice to bishops, archbishops, disciplinary tribunals and the courts of the Vicars-General as to the penalties which are appropriate in certain circumstances.

This advice is given in the interests of justice so that there will be consistency in the penalties imposed. The Clergy Discipline Commission is not laying down prescribed penalties which must be imposed, but seeks to provide guidelines. Those who have a duty to determine an appropriate penalty should take into account this guidance before exercising their discretion.

**The Clergy Discipline Commission**  
**January 2021**

March 2006, revised January 2009, April 2012 & April 2016 and January 2021

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## TYPES OF PENALTY

**Prohibition for life:** This is the most serious penalty that can be imposed. It prevents the respondent without limit of time from exercising any ministry or functions as a clerk in Holy Orders. It should be imposed only where the misconduct is grave and there appears to be no realistic prospect of rehabilitating the respondent back into ministry.

**Limited prohibition:** This prevents the respondent from exercising any ministry or functions for a specific period of time. It is suitable for serious cases where there is a realistic prospect that the respondent, with the appropriate pastoral, training and other necessary support, could in the future resume ministry.

**Resignation (by consent only):** The respondent relinquishes the preferment held at the time, but this does not prohibit him or her from seeking to serve in Holy Orders elsewhere. In serious cases, resignation could be combined with prohibition for life or limited prohibition.

**Removal from office:** This penalty removes the respondent from the preferment held at the time, but does not prohibit him or her from serving as a clerk in Holy Orders in another post. In serious cases, removal could be combined with prohibition for life or limited prohibition.

**Revocation of licence:** For clergy who hold a licence from the bishop, it may be appropriate to terminate the licence. Revoking the licence does not prevent them from seeking to serve in Holy Orders elsewhere. In serious cases, revocation could be combined with prohibition for life or limited prohibition.

**Injunction:** An injunction requires a respondent to do, or to refrain from doing, a specified act, and is usually limited in time. More than one injunction can be imposed arising out of the same complaint. An injunction will be appropriate for cases where a respondent is generally capable of performing his or her normal duties but ought to be stopped from dealing with a particular aspect of those duties. Injunctions could also prescribe specific training to be taken or oversight for a specified period. The injunction must be worded with sufficient

clarity so that there is no doubt as to what the respondent is required to do or is prohibited from doing. Any breach of an injunction is an act of misconduct under the Measure, and could result in further disciplinary proceedings.

**Rebuke:** This is the least serious of the penalties. It can be used for acts or omissions of a less serious nature but which nevertheless fall within the definition of misconduct.

**Conditional deferment (by consent only):** A conditional deferment means that the complaint is kept on file for up to five years, but no other action is taken on it by the bishop unless a further complaint of misconduct is made within that period. Conditional deferment is most likely to be suitable where the respondent admits the misconduct, and where such misconduct is not serious but is out of character and unlikely to be repeated.

**Conditional discharge:** A tribunal or court may decide not to impose a penalty having taken into account all the circumstances of the misconduct and the respondent's character. It has the option of making an order discharging the respondent subject to the condition that there must be no more misconduct within a period not exceeding two years. If the respondent does commit further misconduct within that period the disciplinary tribunal or court dealing with it on the subsequent occasion may, in respect of the earlier misconduct, impose any penalty that could have been imposed originally.

## TYPES OF MISCONDUCT

### Financial misconduct

**1.** In financial matters clergy are in a position of trust. As chairs or members of a PCC they hold fiduciary responsibilities. Dishonesty brings the church into disrepute and is a serious breach of trust.

**1.1** It is dishonest for clergy to meddle with, or misappropriate, the church's money. This includes, but is not limited to, collection plate offerings and fees for occasional offices such as weddings and funerals.

**1.2** Stealing (which includes a failure to declare fees) is a serious act of misconduct and could deserve removal from office and prohibition. Account should be taken of the sums involved, and at the higher end a prohibition for a period of up to 4 or 5 years could be appropriate. Where theft is systematic and takes place over a prolonged period of time, or where it involves a serious breach of trust or the victim is particularly vulnerable, there may be little realistic prospect of reintroducing the respondent back into ministry, and prohibition for life should usually follow.

**1.3** At the lower end of the scale is the cleric who on a single occasion takes money belonging to the church, intending to repay it, and does repay it quickly without any prompting. This is a breach of trust because church monies are wrongfully used for private purposes, but there is no financial loss to the church and a rebuke may be appropriate. An injunction could be imposed prohibiting the cleric from having any dealings with financial matters. If it were to happen on more than one occasion, removal from office with a limited prohibition could be appropriate.

## **Sexual misconduct**

**2.** Sexual misconduct is usually a deliberate and damaging failure to comply with the high standards of Christian behaviour required of clergy. Depending on the circumstances, the misconduct may also be a criminal offence. Clergy who commit sexual misconduct should be dealt with firmly and in a way which will protect those who could be harmed if the respondent were otherwise to be allowed to remain in ministry.<sup>1</sup>

**2.1** Indecent assault on children is a gross violation, and can cause insecurity and lasting trauma to the victims. In almost all cases removal from office and prohibition for life are appropriate. The same is likely to apply to indecent assaults on adults.

**2.2** Adultery is destructive of marriages, and is hurtful and disturbing for the children of the families affected. If the adultery is with a person within the cleric's area of pastoral responsibility, that is an aggravating factor, particularly if issues of vulnerability, exploitation and abuse of position arise. Removal from office and prohibition, either for life or for a limited time, are usually appropriate in cases of adultery. It does not, however, follow that sexual misconduct falling short of adultery should automatically attract a lesser penalty.<sup>2</sup> Sexual promiscuity outside of marriage is contrary to the Church's teaching and should also be dealt with firmly.

**2.3** Downloading or otherwise possessing child pornography is a serious and damaging offence. Every indecent photograph of a child is an image of a child being abused or exploited. Downloading such photographs continues the injury done to the victim through further dissemination of the pictures. Children suffer shame and distress continuing into adulthood from the knowledge that indecent images of them are in circulation. Anyone convicted of possessing child pornography should be regarded as complicit with the original abuse involved in the making of the images. There can be no realistic expectation that a convicted cleric could be safely restored into ministry. Removal from office and prohibition for life should normally be imposed.

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<sup>1</sup> See the judgment of the Arches Court of Canterbury in *The Reverend David Gilmore (2011)*, at paragraph 42.

<sup>2</sup> See the judgment of the Chancery Court of York in *The Reverend David King (2008)*, at paragraph 19.

### **Misconduct in public ministry**

**3.** By virtue of their office, great trust is placed in the clergy by members of the Church and by the wider community. Clergy are expected to be worthy of this trust, and are required to uphold Christian values in their pastoral ministry and in performing other duties.

**3.1** Cases of misconduct in the course of carrying out normal duties of ministry may often be suitable for resolution by conciliation. This is particularly so where pastoral or personal relationships have been damaged but not irreparably damaged. Bishops, when deciding on the appropriate course to take in misconduct proceedings, are always encouraged to consider whether a particular case could benefit from an attempt at conciliation.

**3.2** Misconduct such as persistent rudeness to parishioners, lateness without good reason, or a failure to comply with formal requirements such as keeping the register book of services may all merit a rebuke, with or without an injunction to ensure that there is no repetition. Where the cleric has no previous findings of misconduct and the failure is time limited, or where it takes place in the context of other unusual pressures on the respondent, conditional deferment or discharge could be appropriate. If the misconduct were to be repeated in defiance of an injunction, removal from office would be likely to follow.

**3.3** Clergy are expected to play a full part in parish life. Failure to conduct parish affairs in accordance with the professional standards expected may result in a rebuke and injunction. Persistent and deliberate misconduct may, exceptionally, result in removal from office and a limited prohibition.

**3.4** Clergy will meet parishioners in need of pastoral support who are distressed, lonely, sick, elderly, or otherwise vulnerable. There is an intrinsic imbalance in relationships between clergy, who are in a position of trust and responsibility, and those who turn to them for help. Consequently, it is a serious matter if clergy exploit the trust placed in them, and develop inappropriate relationships with people in their pastoral care. Such inappropriate relationships include close emotional or intimate relationships falling short of sexual misconduct, and relationships where clergy take inappropriate advantage of the financial

generosity of the person in their care. Where there are serious pastoral abuses, removal from office and limited prohibition will usually be appropriate. For less serious cases, a rebuke and injunction requiring training on pastoral boundaries may be appropriate.

**3.5** Anyone who seeks pastoral guidance and advice from a member of the clergy is entitled to expect that the cleric concerned will not pass on to a third party confidential or personal information, without his or her consent or other lawful authority. Any failure by a member of the clergy to observe this principle can cause distress to the person concerned and is damaging to the position of trust enjoyed by clergy. Depending on the gravity of the circumstances and nature of the disclosures, removal from office could be appropriate in the most serious cases.

### **Misconduct in private life**

**4.** Misconduct in private or family life can take many different forms. No guide on penalties can comprehensively cover all possible situations. What follows is guidance in relation to particular examples of misconduct that can be used as indicative of the appropriate penalty for other types of behaviour.

**4.1** Clergy are expected to maintain clear and professional boundaries. There is no separation between the public and home life of clergy<sup>3</sup>. Inappropriate text messaging, emailing or other communications that cross professional boundaries will likely result in a rebuke and injunction. Where the misconduct takes place over a prolonged period of time and involves vulnerable adults, children and/or a breach of pastoral duties, a limited prohibition may be appropriate.

**4.2** Drunkenness without any aggravating features should normally be met with a rebuke or a conditional deferment or discharge. But it may be a sign that the cleric has a particular problem for which help is needed; a bishop should be alert to this and take steps to provide the appropriate pastoral support. Drunkenness during services or other official

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<sup>3</sup> See Guidelines for the Professional Conduct of the Clergy paragraph 10.1

engagements is more serious, especially where there is a repeated pattern of such behaviour. This may merit a removal from office.

**4.3** Being convicted for driving with an alcohol concentration above the prescribed limit is to be regarded as a serious matter. Parliament has set a prescribed limit of alcohol for drivers, on the basis that drivers who are above it are unlikely to be fit to drive. Other road users are knowingly put at risk by drunken drivers. Depending on the circumstances, including the level of intoxication and whether any injury was caused, removal from office and prohibition for one or two years could be appropriate.

**4.4** Being in unlawful possession of a controlled drug is a criminal offence and would be a serious failing by any ordained minister. The penalty will depend on the type of drug, the amount involved and all the surrounding circumstances, but for a class A drug removal from office and prohibition should normally follow. Supplying controlled drugs to any third party will be a severely aggravating feature.

**4.5** Violence in the home is destructive of family life and damaging to the victims. It should not be tolerated, and removal from office and prohibition for a specific period of time or for life should normally follow. Controlling and coercive behaviour, that falls short of violence, should not necessarily attract a lesser penalty, particular where it takes place over a prolonged period of time.

**4.6** Engaging without authorisation in a trade, profession or other activity which adversely affects the performance of the duties of office of a member of the clergy is inconsistent with the responsibilities of ministry. An injunction to stop such conduct should normally be imposed, together with a rebuke.

## **Safeguarding misconduct**

**5.** The safeguarding of children, young persons, and vulnerable adults is an integral part of the life and ministry of the Church. All clergy are required to follow guidance issued by the House of Bishops on matters relating to safeguarding. Failing to respond to safeguarding disclosures in accordance with the relevant guidance can lead to a delay in providing appropriate pastoral care, the proper investigation of complaints by the statutory authorities, and contribute to re-trauma for the survivor.

**5.1** An intentional disregarding of safeguarding policy could lead to removal from office and a limited prohibition. In cases where the respondent has acted to shield or protect a known perpetrator of sexual abuse or serious other harm, it is likely that a prohibition for life would be appropriate.

**5.2** Where the cleric has been neglectful or inefficient (regardless of how the allegation is framed) it may be appropriate to impose a rebuke. Account should be taken of the respondent's age, experience, and seniority.

**5.3** In all cases an injunction should be considered requiring further safeguarding training and, where appropriate, the ongoing supervision of the cleric in safeguarding matters.

## APPROACH TO PENALTIES

6. Any penalty must be proportionate to the misconduct involved. A penalty outside the guidelines can be imposed if that would be appropriate, taking into account all the circumstances of the case.
- 6.1 Tribunals and courts should consider inviting the bishop or archbishop to express a view on penalty under section 19(2) CDM 2003.
- 6.2 Those imposing penalties should first consider the level of harm inflicted as a result of the misconduct, alongside the level of culpability of the respondent. Harm is not only suffered by individuals, and all clerical misconduct harms wider confidence in the Church. Account should then be taken of any aggravating and mitigating features of the case. If two or more factors listed describe the same feature, care should be taken to avoid ‘double-counting’. Taking all of that into account, and any other relevant circumstances of the case, including the representations of the complainant, or where different the victim, and the respondent, the penalty should then be decided upon.
- 6.3 The below table provides a staged approach to the imposition of a penalty. It brings together the most important and commonly found aspects of harm and culpability, as well as aggravating and mitigating factors. The factors set out in stages 1 and 2 are not intended to be comprehensive and are not listed in any particular order of priority. Likewise, the questions in stage 3 are the starting point and should be read in conjunction with the more detailed sections of this guidance set out above.
- 6.4 When determining the appropriate penalty the bishop, court or tribunal should set out the factors they have taken into consideration, including aggravating and mitigating features of the misconduct, so that all those who read the decision will understand the basis upon which it was made.

**STAGE 1**

**CONSIDER HARM AND CULPABILITY (NON-EXHAUSTIVE)**

*Consider if any of the following apply*

<b>HARM</b>	<b>CULPABILITY</b>
<ul style="list-style-type: none"><li>▪ Spiritual and/or psychological and/or physical harm</li><li>▪ Vulnerability of victim</li><li>▪ Multiple victims</li></ul>	<ul style="list-style-type: none"><li>▪ Significant degree of planning</li><li>▪ Previous misconduct against the victim</li><li>▪ Misconduct motivated by discrimination</li></ul>

**STAGE 2**

**CONSIDER AGGRAVATING AND MITIGATING FACTORS (NON-EXHAUSTIVE)**

*Consider if any of the following apply*

<b>AGGRAVATING</b>	<b>MITIGATING</b>
<ul style="list-style-type: none"><li>▪ Misconduct committed over prolonged period of time/patterns of behaviour</li><li>▪ Previous findings of misconduct</li><li>▪ Misconduct constitutes a criminal offence</li><li>▪ Breach of position of trust/power/pastoral relationship</li><li>▪ Attempts to conceal misconduct</li><li>▪ Respondent's age, experience, and length of service in Holy Orders</li></ul>	<ul style="list-style-type: none"><li>▪ Early admission of misconduct</li><li>▪ Genuine remorse</li><li>▪ Willingness to learn from past errors</li><li>▪ Recompense e.g. repayment in cases of theft</li><li>▪ Limited period of misconduct</li><li>▪ Respondent's age, experience, and length of service in Holy Orders</li></ul>

**STAGE 3**

**CONSIDER PENALTY**

*Penalties can be combined*

**Prohibition for life**

- Is the threshold for prohibition from ministry crossed?
- Is there any realistic prospect of rehabilitating the respondent back into ministry?

### **Limited Prohibition**

- Is the threshold for prohibition from ministry crossed?
- Is there a realistic prospect that the respondent, with the appropriate pastoral, training and other necessary support, could resume public ministry in the future?
- Consider length of prohibition, taking into account the circumstances of the case including aggravating and mitigating factors.

### **Resignation/Removal from Office/Revocation of licence**

- Can the respondent continue to exercise public ministry in their current role?
- For tribunals and courts: consider seeking view of the bishop/archbishop under section 19(2) CDM 2003.

### **Injunction**

- Should the respondent be prohibited from carrying out certain functions or duties?
- Should the respondent be required to undertake further training and/or be subject to continuing oversight?
- In cases of financial loss should an injunction requiring repayment be made?
- Consider the precise wording and period of the injunction.

### **Rebuke**

- Is the misconduct of a less serious nature such as to warrant a rebuke?
- In considering whether a rebuke is the appropriate penalty, it may be first useful to consider whether the threshold for prohibition is crossed, if it is not, then it follows that a rebuke may be appropriate.
- Consider combining the rebuke with an injunction.

### **Conditional deferment/ Conditional discharge**

- Is the misconduct at the lowest end of seriousness?
- Were the actions or omissions of respondent out of character and are they unlikely to be repeated?
- Consider combining the rebuke with an injunction.