
The Clergy Discipline Measure 2003: A Progress Report

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The Clergy Discipline Measure has been in force since 1 January 2006. The Measure provides a structure for dealing with formal complaints of misconduct against members of the clergy except in relation to matters involving doctrine, ritual or ceremonial, which continue to be governed by the Ecclesiastical Jurisdiction Measure 1963. This article looks at how the Measure has worked in practice, and considers amendments to the Measure that have recently been made.

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A COMPLAINANT'S CHARTER?

Before the Clergy Discipline Measure (CDM) came into force, concerns were expressed that it would prove to be a complainant's charter, that it would open the floodgates to a sea of complaints and that there would be an initial rush that would be administratively difficult to handle. The CDM was replacing a disciplinary system under the Ecclesiastical Jurisdiction Measure 1963 that had very rarely been used, probably because it was complex, expensive and slow, and there were restrictions on who could institute proceedings.² The CDM, in contrast, was introducing a much wider entitlement to complain – any person who had a 'proper interest' could make a complaint – with a much simpler streamlined process for dealing with complaints; a consequent deluge of complaints was therefore feared by some. This fear has proved to be groundless.

Each year the Clergy Discipline Commission (hereafter the Commission), which is responsible for overseeing the operation of the procedures under the CDM, presents a written report to the General Synod on the exercise of its functions during the previous year. Annexed to each annual report is an analysis of complaints made under the CDM, showing how complaints were handled. For 2006, the first year that the CDM was in force, 66 complaints were made

1 The author is the 'Designated Officer' for the purposes of the Clergy Discipline Measure.

2 Proceedings under the Ecclesiastical Jurisdiction Measure against a priest or deacon could be brought by an individual complainant only if authorised to do so by the bishop (except in the case of a stipendiary curate licensed to a benefice, in which case the incumbent of that benefice could also bring proceedings). Otherwise, proceedings could only be instituted against a priest or deacon if brought jointly by at least six persons of full age, all of whom had to be on the electoral roll.

Table 1
Complaints brought under the Clergy Discipline Measure

Year	Number of complaints	Dismissed s11(3)	No further action s12(1)(a)	Total dismissed or no further action
2006	66	19	11	30
2007	71	22	10	32
2008	63	20	12	32
2009	59	16	3	19
2010	68	16	6	22
2011	66	25	12	37
2012	69	16	5	21
Total	462	134 (29%)	59 (13%)	193 (42%)

against priests or deacons, and 17 of those complaints (more than 1 in 4) were made by archdeacons; there were no complaints at all in 18 dioceses (see Table 1). The following year, 2007, the comparable figures were 71 complaints made with 16 of those being by archdeacons; there were no complaints at all in 13 dioceses. These figures should be judged against the total number of clergy falling within the provisions of the CDM as at 31 December 2006 – approximately 22,430. In other words, in the course of the year when the CDM first came into force, complaints were presented against just 0.003 per cent of priests and deacons.

The level of complaints has remained remarkably consistent over subsequent years. The annual reports from the Commission for 2008, 2009, 2010, 2011 and 2012 reveal, respectively, that 63, 59, 68, 66 and 69 complaints were made against priests and deacons for those years. One possible explanation for the relatively low volume of complaints could be that potential complainants have heeded the Commission's guidance and warnings that minor complaints and grievances should not be the subject of formal disciplinary proceedings under the CDM.³

THE DISMISSAL OF COMPLAINTS AT PRELIMINARY SCRUTINY STAGE

Of the cases that are dealt with at diocesan level by the bishop a large proportion of complaints are dismissed by him at preliminary scrutiny stage under section 11(3) of the CDM, before the respondent has been asked to put in an Answer to

³ See, for example, paras 8 and 9 of the Code of Practice issued by the Clergy Discipline Commission, and an explanatory leaflet produced by the Commission for complainants, entitled 'I have a complaint about misconduct by a member of the clergy – what can I do?', available at <<http://www.churchofengland.org/media/51329/makingcomplaintA4.rtf>>, accessed 12 September 2013.

the complaint. This suggests that the preliminary scrutiny stage is proving to be a useful sieve so that complaints without merit are dealt with speedily and efficiently, without even troubling the respondent. At preliminary scrutiny stage the diocesan registrar prepares a report on the complaint for the bishop and advises specifically on two issues – first, whether the complainant has a ‘proper interest’ within the meaning of section 11(1) of the CDM, and second, whether the complaint is of sufficient substance to justify proceeding with it in accordance with the CDM. The test of ‘proper interest’ is designed to exclude complainants who have not been affected by the alleged misconduct, or who have no real connection with the respondent. Guidance on who has a proper interest is provided by the Commission in the Code of Practice. The Code makes it clear that anyone who personally observes or experiences the alleged misconduct has a proper interest, and so too does the relevant archdeacon, as well as a diocesan safeguarding officer when making a complaint about misconduct concerning children or vulnerable adults. A person making a complaint on behalf of anyone under a disability with a proper interest, or a parent or guardian making a complaint on behalf of a child with a proper interest, would also have a proper interest.⁴ In practice the issue of whether a complainant has a ‘proper interest’ in making a complaint is likely to be straightforward for a bishop to resolve.

The more difficult issue in practice for a bishop to consider at preliminary scrutiny stage is the test of whether the complaint is of ‘sufficient substance’. When deliberating on this the bishop should be mindful of the Commission’s guidance that a complaint should be dealt with in proportion to the nature and seriousness of the matters raised while avoiding undue expense for the Church.⁵ For a complaint to progress beyond the preliminary scrutiny stage it must allege misconduct which, if true, would merit the imposition of a penalty under the CDM. Consequently, complaints based on disagreements and grievances, however genuine, are not disciplinary matters and the Commission urges bishops to dismiss them, along with complaints alleging acts or omissions amounting to minor misconduct. Bishops are encouraged by the Commission to take a fairly robust approach at preliminary scrutiny stage, and to be alert to the possibility of resolving a complaint – and the troubles or problems behind it – by non-disciplinary means outside the CDM where appropriate. There is, however, a safeguard for the complainant where a complaint is dismissed, in that the complainant has a right under section 11(4) to ask the President of Tribunals to review the bishop’s decision; if the President considers the bishop to be ‘plainly wrong’ then he may reverse the dismissal and direct the bishop to deal with it by following another course under the CDM.

4 Code of Practice, para 34.

5 Ibid, para 15.

One practical problem relating to dismissals at preliminary scrutiny stage was brought before the Commission for its consideration. It concerned the position of the respondent who wished to put his or her version of events on record, especially where there were errors of fact in the complaint, notwithstanding dismissal. Since a dismissal takes place before the stage when the respondent is invited to submit an Answer, the respondent has no opportunity to put his or her position when a complaint is dismissed. This could possibly prove to be unfair. Accordingly, the Bishops of Chester and Guildford wrote to all bishops in February 2012, on behalf of the Commission, explaining that a respondent should be permitted if desired to set out his or her account in writing to the bishop even after a complaint has been dismissed, particularly if it would help to provide a complete picture of what had gone on and avoid issues being misinterpreted in future.

TAKING NO FURTHER ACTION

Where a complaint progresses past preliminary scrutiny stage without being dismissed, the bishop will invite the respondent to put in an Answer. If the bishop considers that the Answer shows that there was no misconduct, or that any misconduct was of a technical or minor nature, he can decide to take no further action under section 12(1)(a). The effect from the point of view of the respondent is the same as for where the complaint is dismissed under section 11(3) – it goes no further. As with dismissals, there is a right for the complainant to seek a review of the bishop's decision by the President where it is contended that the bishop was 'plainly wrong'.

The annual reports of the Commission for the years 2006 to 2012 (see [Table 1](#)) disclose that, when taken together during the whole of that period, 42 per cent of complaints were either dismissed by the bishop under section 11(3) or no further action was taken by him under section 12(1)(a).

REFERRAL FOR CONCILIATION

Perhaps the most disappointing aspect of the CDM in practice has been the relatively rare use of conciliation to resolve complaints. The Commission's annual reports disclose that in the period 2006 to 2012 only six cases were resolved by conciliation under the CDM.

The referral of a complaint to conciliation is an option that the bishop may choose where both parties to the complaint consent. Although the Code of Practice recognises that not all disputes are suitable for conciliation,⁶ it does recommend that a referral to conciliation can be particularly appropriate when

6 Ibid, para 137.

pastoral or personal relationships have been damaged and there appears to be an opportunity for them to be restored through constructive dialogue; the Code further advises that conciliation can be appropriate where the complainant is seeking recognition of error by the respondent and an apology.

One has to wonder why the take up rate for conciliation has been so low. Although conciliations should be conducted only by professionally qualified conciliators,⁷ and therefore may be subject to professional charges and fees, funding should not be a difficulty or barrier. The Church Commissioners are prepared to make funds available to dioceses in connection with the costs of conciliation procedures under the CDM,⁸ and the National Mediation Helpline (working in conjunction with the Ministry of Justice and the Civil Mediation Council) has entered into a scheme with the Church of England to provide, for a fixed fee, a source of accredited conciliators. The reason why conciliation has proved to be so underused may simply be that, by the time a complaint is issued, the parties are past the point of no return – informal attempts at trying to resolve the problem having already failed – and further attempts would be fruitless.

PENALTIES IMPOSED BY THE BISHOP

A bishop may impose a penalty with the consent of a respondent where the respondent admits the complaint or part of the complaint. Annual diocesan returns to the Clergy Discipline Commission reveal that from 2006 to 2012 15 members of clergy have been prohibited for life by consent during that period, 48 have received limited prohibitions by consent and a further 8 have resigned by way of penalty by consent without a prohibition. The number of rebukes during that same period is 12, with a further 10 rebukes where injunctions have also been imposed.

During the same period bishops imposed penalties of prohibition or removal from office under section 30 on 18 members of the clergy who had received prison sentences, and on 6 whose marriages had been dissolved on the grounds of their own adultery, unreasonable behaviour or desertion. The low number of penalties imposed following breakdown in marriage is not surprising – it suggests that bishops are heeding the advice given by the Commission in the Code of Practice.⁹

7 Ibid, para 139.

8 Requests for funding should be addressed to the Deputy Official Solicitor at Church House, Westminster.

9 Code of Practice, para 171, states: 'Removal from office or prohibition will not automatically result from a decree absolute of divorce or decree of judicial separation involving adultery, unreasonable behaviour or desertion. Most decrees absolute and decrees of judicial separation are granted as a result of uncontested proceedings on paper so that the evidence in support of the petition is not questioned or tested, although it is accepted by the court. Furthermore, some respondents, recognising

SUSPENSIONS

Where a complaint is not dismissed at preliminary scrutiny stage the bishop has power to suspend the respondent pending resolution of the complaint. The Code of Practice advises that a suspension should be imposed by the bishop only *if necessary*,¹⁰ which is quite a stiff test. 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.¹¹ A suspension does not mean that the bishop has formed any view that the complaint of misconduct is true, or likely to be true, and during the suspension any rights to stipend or housing are unaffected. Figures published by the Commission show that for the period 2006 to 2012 there were 38 priests and deacons who were suspended pending the determination of 328 complaint proceedings – this represents fewer than 1 in 8 cases. During that same period, 40 suspensions were imposed by bishops on clergy following arrest on suspicion of committing a criminal offence.

TRIBUNAL HEARINGS

When the CDM came into force it was anticipated that most complaints would be dealt with by the bishop, and that hearings before a bishop's disciplinary tribunal (the membership of which is drawn from a provincial panel) would take place only in a small minority of complaints. This has indeed proved to be the case. At the time of writing, only 12 tribunals have been convened to deal with complaints against 13 priests (one tribunal dealt with linked complaints against two priests). Of these tribunals, five have been held in the northern province and seven in the south.

All tribunal decisions are published, and are made available on the Church of England's website.¹² The cases that have been dealt with by a disciplinary tribunal broadly fall into three categories:

- i. Eight of the tribunals were concerned with inappropriate intimate relationships or inappropriate sexual behaviour. Penalties were

that their marriage has broken down irretrievably and could be dissolved against their will in any event after a period of 5 years separation, may choose not to contest allegations in a divorce petition, even if not accepted – this avoids legal expense and argument over sensitive and personal issues. The bishop should bear this in mind as a factor when considering what disciplinary action to take.'

¹⁰ Ibid, para 217.

¹¹ Ibid, para 221.

¹² www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline/tribunal-decisions.aspx

imposed ranging from 15 months' limited prohibition to prohibition for life, depending on the nature of the particular misconduct in question and all other material circumstances. At the lowest end of this range was the case of *Rea*. The respondent admitted before the tribunal that while separated from his wife but still married he had entered into an intimate and unprofessional relationship with a member of his congregation. The tribunal noted that the respondent had many specific gifts and hoped that he would return to ministry at the end of the 15-month period of prohibition. At the highest end of the range was *Tipp and Northern*. The respondents were respectively Rector and Associate Rector in the same parish, but they developed an adulterous relationship; they both deserted their spouses and their offices without notice to set up home with each other. The tribunal commented that 'they abandoned their posts and spouses in a most public manner and without making appropriate provision for the parish. Indeed for some while it was not known where they were.' The tribunal found it difficult to discover any mitigation. It prohibited the Rector for life, commenting that he was the more senior and experienced of the two, and had ultimate responsibility for the parish as Rector and Rural Dean – it could see no prospect for him to be rehabilitated into ministry. It prohibited the Associate Rector for 12 years, having considered her behaviour 'both in the commission of adultery and in her desertion of spouse and office to be particularly serious'; nonetheless, the tribunal believed that with appropriate support it was possible that she might resume ministry at some time in the future.

- ii. Two tribunals were principally concerned with allegations relating to the misappropriation of money. In *Wray* the tribunal held that the respondent in breach of trust had acted dishonestly over a long period of time and prohibited him for life, whereas in *Faulks* the tribunal concluded that there had been no dishonesty but that the respondent's conduct was nonetheless unbecoming because there had been significant and culpable financial inefficiency and incompetence, and it imposed a conditional discharge.¹³
- iii. Two cases related to safeguarding issues. *Robinson* concerned an incumbent who was neglectful in the performance of the duties of his office in failing to follow the House of Bishops' Child Protection Policy when recruiting a member of the congregation to act as a youth worker in the parish. The respondent was rebuked and restrained for five years

13 Section 25 of the CDM enables a tribunal, upon a finding that the respondent has committed misconduct, to impose a conditional discharge where it is inexpedient to impose a penalty having regard to the circumstances, including the nature of the misconduct and the character of the respondent.

from taking part in any appointment process involving work with children. The significance of the case lay in the tribunal's acceptance that the respondent's cure of souls brought duties towards children in his parish, and that these duties included a duty to follow the House's Child Protection Policy, even though the policy was phrased in terms of guidance and was not prescriptive. The other case, *Landall*, concerned a respondent who had been placed on both barred lists under the Safeguarding Vulnerable Groups Act 2006, and who was therefore incapable of performing certain duties of office in relation to children and vulnerable adults; the tribunal prohibited him for life.

PENALTY GUIDANCE

The Commission has a duty under section 3(3) of the CDM to give general advice to tribunals and bishops as to the penalties which are appropriate in particular circumstances. In fulfilment of this duty the Commission issued guidance in March 2006. In giving guidance on penalties, the Commission does not lay down prescribed penalties which must be imposed but seeks to provide guidelines. The Commission recommends that its suggested penalties should be a starting point for deliberations, but a bishop or tribunal can impose a penalty outside the guidelines if satisfied that to do so would be appropriate in all the circumstances.

The Commission's basic premise is that any penalty imposed should be in due proportion to the misconduct, having taken into account and given due weight to all material circumstances. The Commission advises that the period of time that the misconduct has lasted, and whether any harm has been caused, are relevant factors – the longer the period of time during which the misconduct was committed, and the greater the harm caused, the more serious the misconduct becomes. However, if a respondent has readily admitted the misconduct at an early opportunity, and has demonstrated repentance, remorse and a willingness to learn from past errors, then these are important factors in mitigation. The guidance points out that, 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, in performing other duties and in the conduct of their private lives. The Commission advises that gross breaches of trust and serious abuses of office should normally be dealt with by imposing the more severe penalties of removal from office and/or prohibition (either for life or for a limited period).

The Commission's penalty guidance considers types of misconduct under four headings – namely, misconduct involving money, sexual misconduct, misconduct in ministry and misconduct in private life. The guidance does not

attempt comprehensive cover of all possible situations but provides examples of misconduct in each category.

Revisions were made by the Commission to its penalty guidance in January 2009 and April 2012.¹⁴ The first revision added a paragraph dealing with racist conduct, to the effect that intentional racism, whether by word of mouth or deed, is a serious aggravating feature in any case. The revision in April 2012 includes in the section on misconduct in ministry guidance with regard to inappropriate relationships. The new passage refers to the 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 by developing inappropriate relationships with people in their pastoral care. Such relationships include close emotional or intimate relationships falling short of sexual misconduct, and relationships where clergy take advantage of the financial generosity of a person in their care. The Commission advises that, where there are serious pastoral abuses, removal from office and limited prohibition will usually be appropriate.

PRACTICE DIRECTIONS

Under section 4 of the CDM, the President is able to issue practice directions. There have been three practice directions, all issued in 2008.¹⁵

PD 1 (2008) makes it clear that, before imposing an appropriate penalty, a tribunal should hear submissions not just from or on behalf of the respondent but also from the Designated Officer or other person duly authorised by the Designated Officer. This enables the wider picture to be put before the tribunal for consideration, so that regard is had to all those who may be affected by the particular faults and failings in question – whether complainant, the Church, other members of the clergy or the general public.

PD 2 (2008) deals with two linked issues. It provides that, at any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced its determination, any irregularity on the face of the written allegation referred by the President may be cured under rule 103 of the Clergy Discipline Rules.¹⁶ It also provides that, at any stage after the President has referred a complaint to the tribunal and before the tribunal has pronounced

14 Available at <<http://www.churchofengland.org/media/1474847/penalty%20guidance%20rev-d%20april%2012.pdf>>, accessed 12 September 2013.

15 See <<http://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline/directions.aspx>>, accessed 12 September 2013.

16 Under rule 103, where there has been an irregularity or error of procedure, the President, the Registrar, the Chair or the tribunal may give directions to cure or waive the irregularity.

its determination, the Registrar or Chair may give directions under rule 30¹⁷ that the descriptive particulars in the written allegation be amended to meet the circumstances of the case. The general test to be applied is that any amendment to the written allegation is necessary for the just disposal of the proceedings in accordance with the overriding objective and meets the circumstances of the case, and that the amendment can be made without injustice either to the respondent or to the complainant having regard to the merits of the case.

PD 3 (2008) is concerned with rights of attendance at a tribunal hearing when it is heard in private. Under rule 47(f) only certain specified persons are entitled to be present, but the tribunal may give permission to any other person to attend. The practice direction enjoins a tribunal to give permission to a person nominated by the bishop to attend in his place unless there is good reason not to do so – this is because under section 1 of the CDM the tribunal has to have due regard to the role of the bishop, who, by virtue of his office and consecration, is required to administer discipline; indeed, tribunals are described as ‘the bishop’s disciplinary tribunal’ for the particular diocese in question.

REVISIONS TO THE CODE OF PRACTICE

In October 2008 the Commission released a consultation paper setting out its views on certain issues relating to the CDM and its day-to-day operation. The paper was circulated for comment to diocesan bishops, diocesan registrars and secretaries, archdeacons, chairs of diocesan houses of clergy and laity, tribunal chairs, the provincial registrars, the Dean of the Arches and Auditor and the Vicars-General. A key part of the consultation paper was in respect of the distinction between a bishop’s pastoral and disciplinary functions, and the provision of suitable pastoral care for a respondent in disciplinary proceedings. The Commission considered all submissions made to it in the course of the consultation, both on this issue and on other issues raised in the consultation, and published a response to the consultation in June 2009.¹⁸ The next month the General Synod passed a motion in the following form:

That this Synod, whilst recognising the need for discipline in the exercise of the ordained ministry,

- (a) note the concerns that exist about aspects of the Clergy Discipline Measure 2003 (especially as regards the perceived pastoral implication of the Code of Practice made under it);

17 Under rule 30, directions may be given with or without a hearing by the Registrar or the Chair at any stage for the just disposal of the proceedings in accordance with the overriding objective.

18 See <<http://www.churchofengland.org/media/39695/gsi747b.pdf>> (accessed 12 September 2013).

- (b) welcome the response by the Clergy Discipline Commission to the consultation on aspects of the Measure (circulated as GS 1747B); and
- (c) invite the Archbishops' Council to seek a report from the Commission before the end of the quinquennium on whether there is a case for bringing forward, early in the lifetime of the next Synod, draft legislation to amend the Measure or amendments to the Code of Practice.

The Commission thereafter duly assessed what amendments to the CDM and the Code were needed and reported to the Archbishops' Council, and its proposals for amendment of the Code of Practice were debated and approved by Synod in February 2011, coming into force with immediate effect.

The aspect that had raised concerns (as identified in paragraph (a) of the Synod's motion) was the stress that had been laid in the Code on the need for a clear distinction between the bishop's disciplinary function and his pastoral function – there were suggestions that some clergy might feel isolated from their bishop when a complaint was made. The Commission noted that the requirement to keep the disciplinary and pastoral functions distinct from one another did not derive from the CDM itself but from general principles of law, embodied both in English common law and in Article 6 of the European Convention on Human Rights. Essentially the principle that had to be observed was that the bishop, as decision-maker in the disciplinary process, must neither be biased nor appear to be biased: that is, as Article 6 puts it, the bishop must be 'independent and impartial'.

While continuing to recognise the importance of this principle, the Commission acknowledged that parts of the Code had sometimes been interpreted in ways that were not intended and with too little regard to the practical ways in which the disciplinary and pastoral functions could be kept apart. It therefore introduced amendments to the Code containing practical guidance on how to keep the bishop's two relevant functions distinct, and why it is important to do so while ensuring that appropriate care and support is provided for the respondent. The revised Code explains that the bishop is chief pastor of all within the diocese – laity and clergy alike – and must not appear to take sides. It makes it clear that the bishop should ensure that appropriate care and support will be provided for those who need it, that such help is given expressly on the bishop's behalf and that the respondent should receive a letter from the bishop about this at the outset when being notified that a complaint has been made. The revised Code confirms that the bishop may meet a respondent or complainant when he is considering the complaint and that he is not therefore cut off from the parties, but makes it clear that any such meeting is to discuss the complaint and is not a pastoral meeting. The revisions to the Code explain that the bishop has a wide discretion in deciding who is suitable to provide care and support for the respondent, and makes

recommendations as to who those persons could be. The revised Code makes it clear that the proposed pastor must not otherwise be involved in the complaint and must be acceptable to the respondent, and that all pastoral discussions are completely confidential and will therefore not be reported back to the bishop unless the respondent expressly desires that they should be.

The revisions of February 2011 included a new section on the relationship between the CDM and capability procedures. Since the Code had been first issued at the beginning of 2006, legislation in respect of clergy terms of service had been passed, including, under the Ecclesiastical Offices (Terms of Service) Regulations, provisions introducing a capability procedure to improve the performance of clergy who fail to meet the minimum standards required of them. One of the grounds for bringing a complaint under the CDM is neglect or inefficiency in the performance of the duties of office, so guidance was now needed in the Code on the relationship between the capability procedure and disciplinary proceedings. This new guidance highlights the different aims of capability and disciplinary proceedings – the first being concerned with improving performance where it falls below an acceptable minimum standard, the second with taking disciplinary action in respect of misconduct. The revised Code recommends that there should be flexibility between the two procedures so that cases are dealt with in the most appropriate way, but subject to the qualification that disciplinary proceedings are only appropriate if the alleged misconduct is potentially sufficiently serious for referral to a bishop's disciplinary tribunal. The Commission's approach in providing this guidance was that it should not be prescriptive but that cases should be considered on an individual basis according to their respective merits.

There were various other revisions to the Code in February 2011, most of which were for the purposes of clarification, including further guidance on resignations. There had been cases where a respondent had resigned in response to a complaint with no intention of returning to ministry but the resignation had been refused by the bishop and the bishop then imposed a suspension on the respondent until the complaint had been dealt with under the CDM. The consequence was that the parish could not take steps to fill the position that was effectively vacant, the respondent was not released to undertake secular employment elsewhere, and stipend continued to be paid in respect of duties that were not being performed. The Code was clarified to distinguish between resignations made outside the CDM and resignations made under the CDM. The revised text of the Code explains that a respondent is entitled to resign when a complaint is made but that the bishop should warn the respondent that the circumstances of the resignation will be entered in the Archbishops' list under section 38(1)(d) of the CDM as a resignation following the making of a complaint, and that a penalty could still be imposed unless the resignation takes effect as a penalty by consent under the CDM (which necessarily requires the bishop to decide

that resignation is a suitable penalty and that a period of prohibition is not appropriate).

Further revisions to the Code of Practice were proposed by the Commission and approved by the General Synod in July 2013. These were mostly consequential upon amendments to the CDM made by the Clergy Discipline (Amendment) Measure 2013, but the Commission also revised and clarified guidance as to when complaints can be pursued under the CDM and upon what basis following an acquittal in a criminal court. This was in response to a request for further guidance on this issue made in the interim report of the Archbishop of Canterbury's Commissaries following a visitation to the diocese of Chichester.

THE CLERGY DISCIPLINE (AMENDMENT) MEASURE 2013

As noted above, in accordance with the motion approved by the General Synod in July 2009 the Commission reported to the Archbishops' Council on whether there was a case to amend the CDM. This led to the introduction of the Clergy Discipline (Amendment) Measure, which received final approval in Synod in July 2012 and Royal Assent in 2013. Consequential amendments were required to the Clergy Discipline Rules 2005 and to the Clergy Discipline Appeal Rules 2005, as well as to the Code of Practice, and these were approved by General Synod in July 2013. At the time of writing, the statutory instruments amending the Rules and the Appeal Rules have both been laid before Parliament, and the Clergy Discipline (Amendment) Measure and the latest revisions to the Code of Practice are expected to come into force in the near future.

The principle amendments to the CDM made by the Clergy Discipline (Amendment) Measure are as follows:

Section 8: The absolute bar in section 8(3) against proceedings based on unbecoming conduct in respect of lawful political opinions or activities is modified. A new section 8(4) provides that it shall be unbecoming or inappropriate conduct for a cleric to be a member of, or to promote or express or solicit support for, a political party or other organisation whose constitution, policies, objectives, activities or public statements are declared in writing by the House of Bishops to be incompatible with the teaching of the Church of England in relation to the equality of persons or groups of different races. Any declaration of incompatibility will require a two-thirds majority in the House, and will not come into force until the General Synod has had the opportunity to debate it – and cannot come into force if Synod rejects it. This provision is in response to a resolution of the General Synod in February 2009 which called for the House of Bishops to formulate and implement a policy that would prevent clergy (and certain other representatives of the Church) from being members of organisations whose constitutions, aims, objectives or pronouncements contradicted the general duty to promote race equality.

Section 16: As amended this will enable a bishop and respondent to agree a penalty by consent even after the complaint has been referred to the Designated Officer or has been referred by the President of Tribunals to a disciplinary tribunal.

Section 20: Any appeal by the respondent or the Designated Officer will in future require leave to appeal from the tribunal or the appellate court. An application to an appellate court for leave to appeal will be determined by the Dean of the Arches and Auditor sitting with one other person appointed by the President of Tribunals from the relevant provincial panel; the court may deal with the application in writing. If leave to appeal is granted, the tribunal or court may direct that the issues to be heard on the appeal be limited. This process of seeking leave to appeal will enable unmeritorious appeals to be disposed of efficiently and speedily; where leave is granted, it will enable the real issues to be identified at an early stage, allowing the appellate court to deal with the case more effectively.

Section 30: The bishop's powers to impose a penalty under section 30 following conviction for a criminal offence are being extended. Hitherto, a bishop could impose a penalty without further proceedings only where the criminal court had passed a sentence of imprisonment. This attracted strong criticism where, under criminal sentencing guidelines, cases of serious criminal misconduct (such as possessing obscene material in relation to children) resulted in non-custodial sentences. In future the bishop will be able to impose a penalty under section 30 following conviction for any offence other than a summary offence, even where there is no prison sentence. The bishop will also be able to impose a penalty under section 30 on any person who has been included in a barred list under the Safeguarding Vulnerable Groups Act 2006.

Section 36: In future a bishop will be able to suspend a priest or deacon after conviction while the bishop considers whether to impose a penalty under section 30. Until now, a suspension has had to end when related criminal court proceedings have been concluded. The bishop will also in future be able to suspend a cleric when he or she is put on a barred list under the Safeguarding Vulnerable Groups Act while the procedure for removal from office is pending.

AMENDMENTS TO RULES

As noted above, amendments to the Clergy Discipline Rules and the Clergy Discipline Appeal Rules were required as a consequence of the Clergy Discipline (Amendment) Measure. At the same time the Rule Committee took the opportunity to revise the existing rules and forms in various other respects, including in relation to the withholding of contact details.

In future, complainants will be able to request that their contact details (ie their address, telephone number and email address) should be withheld from

the respondent. If they do make such a request, they will need to give reasons; thereafter their contact details will not be disclosed to the respondent unless the diocesan registrar directs that they should be disclosed. If the diocesan registrar does direct that the complainant's contact details should be disclosed, the complaint will lapse unless the complainant informs the registrar that he or she wishes the complaint to proceed even though contact details will be disclosed to the respondent. A similar principle will apply in respect of the disclosure of contact details in witness statements in support of a complaint.¹⁹ The Rule Committee explained to Synod that it was making these amendments because normally there is no need for a respondent to be informed of the contact details of a complainant or witness (usually a respondent only needs to know the name of the complainant, which will always be disclosed), whereas disclosing contact details could unfairly deter victims from making complaints if they are fearful of the respondent.

FURTHER POSSIBLE AMENDMENTS TO THE CDM

Just one month after the Clergy Discipline (Amendment) Measure received final approval in the General Synod the Archbishop of Canterbury's Commissaries published their interim report following the visitation to the diocese of Chichester. The timing was unfortunate, through no one's fault, because there were recommendations in the report which, if implemented, would require further amendment of clergy discipline legislation. These recommendations included a proposal to extend the bishop's powers of suspension so that a suspension could be imposed at an earlier stage than at present, and the removal of the limitation period for bringing a complaint relating to sexual abuse. These and many other recommendations in the report are, at the time of writing, the subject of a consultation being conducted by the Archbishops' Council before a final view is reached on what form any future draft legislation should take. It is anticipated that draft legislation further amending the CDM will be put before the General Synod in the course of 2014.

And so the wheel turns, again.

19 The maker of a witness statement in support of the respondent's Answer will also be able to request – with reasons – that his or her contact details should be withheld, in this case from the complainant. If the diocesan registrar, notwithstanding the request, directs that the witness's contact details should be disclosed to the complainant, the witness statement will continue to be used in the proceedings, in contrast to the position concerning witness statements that support a complaint. The Rule Committee made the distinction because it would not be in the interests of justice if a witness statement in support of an answer were to be withdrawn. A complainant generally has an option to withdraw from complaint proceedings and might choose to do so if a witness does not wish his or her contact details to be disclosed to the respondent; a respondent, however, has no similar option to withdraw from complaint proceedings.