

PROGRESS REPORT FROM THE CDM WORKING

Introduction

1. Last year the Bishop at Lambeth convened a Working Group tasked with reviewing the working of the Clergy Discipline Measure 2003 (*the Measure*). This Group's work has been wide ranging, and we have identified some areas which warrant change to the Measure as it currently stands. This change, in our view, is sufficiently significant to warrant replacing the Measure with a new piece of legislation.
2. As members of the Working Group, we are grateful to the Archbishops of Canterbury and York for putting their trust in us in respect of this work. We are grateful to all those individuals and organisations who made time to share with us from their various perspectives. We are particularly grateful to all those who continue to hold the Working Group in their prayers; without your intercessions the work of the Group, in the service of Christ's Church, would not be possible.
3. This paper that follows has been written for two purposes. Firstly, it seeks to act as a formal update of the work and current position of the Working Group. Secondly, it seeks to act as a resource for use at the upcoming national consultations.

A Recognition

4. At the outset, we want to say how moved we were to read the recent report of the Sheldon Community, which detailed in clear terms the hurt that many people, specifically respondent clergy, have spoken about experiencing as a result of the functioning of the Measure. Sadly, this report only served to affirm the stories of many of the individuals and groups the Working Group have spoken with over the last few months.
5. The Working Group has also heard from many individuals and groups who have faced issues with the Measure when trying to initiate Complaints against clergy. These issues have been most pronounced in relation to those who have sought to raise Complaints relating to the safeguarding of children and vulnerable adults. These experiences have been magnified by members of the Working Group who have close connections to the survivor community.
6. We are grateful to those who have felt able to tell their stories, whether respondents or complainants; we recognise that speaking in this way is likely to bring to mind bad memories, and we are particularly grateful that you have told your stories. It is a point of personal sorrow to our Chair that the institutional Church has caused hurt to so many individuals. These experiences of hurt have weighed heavily on the minds of members of the Working Group, and will continue to do so. In moving to replace the Measure in the coming months, we have made it our goal to try our best to prevent these types of stories from being repeatable under new legislation.

The Interim

7. It is recognised that new legislation will take time to develop. It is also recognised that the Church's disciplinary proceedings cannot be suspended while new legislation is developed. As such, the status quo will prevail for some time to come. This is a serious concern when considered in light of the hurt that many have spoken about experiencing under current legislative arrangement.
8. In order to mitigate the legitimate concerns that this situation gives rise to, a number of interim measures have been developed. These are made possible not by change to primary legislation (which requires the following of justifiably time-consuming synodical procedures), but by changes to the Rules and working practices.
9. In short, the changes that have been developed are as follows:
 - a. Regular communication during the investigative and tribunal stages of a Complaint.
 - b. Amendments to the CDM Rules concerning methods of communication, service of documents, cross-examination of vulnerable persons, amendments to allegations and vexatious complainants.
 - c. An online system for the submission of Complaints, Answers and Applications.
 - d. Regular training for key participants in the CDM process.
10. Other changes which might be possible without legislative change are also being explored. We hope, for instance, that a system akin to the triaging protocol used in some dioceses (most notably in the Diocese of Gloucester by means of their 6 Step Process) will become more widely used even before a new legislative system is in place. The Working Group are aware that work on this front is already ongoing in many dioceses, and is keen to support it.
11. The Working Group hopes that some legislative changes may be possible in the interim before a new Measure is developed. These changes will be pursued in response to the recent recommendations made by the IICSA; it is hoped that they will include a change to the current requirement for clergy to merely have *due regard* to safeguarding guidance in responding to allegations of abuse, and the fact that Complaints concerning clergy who fail to have *due regard* are ordinarily time barred at one year. Other recommendations made by the IICSA, including the possible reintroduction of the penalty of *Deposition from Holy Orders* will most likely be considered as part of the longer-term work dealing with replacing the Measure.

The Working Group

12. The Working Group's initial terms did not stretch to allow the Working Group to embark on a wholesale replacement of the Measure. However, a paper presented by our Chair to the House of Bishops earlier this year recommended that the Measure be replaced. The House unanimously committed to the Working Group doing further work to reach this aim. It is on this footing that the Group have now broadened its scope to work towards replacing the Measure. The Group's terms are being updated, and will be published in due course.
13. It is also noted that the Working Party Convened by the Ecclesiastical Law Society has produced significant output of a helpful nature. Although there is divergence between the two groups on a number of key points, we continue to work together. Representatives of both groups met in late September and had constructive conversation. The same group will meet again later this year.

Consultations

14. Before proceeding to draft new legislation for consideration at a meeting of the General Synod, the Working Group considers it important to consult widely on the proposed direction of travel, so that many people who have experience of the Measure (from a variety of perspectives), or simply have an interest in the functioning of the Measure, can respond to the proposals of the Working Group.
15. It is noted that to date, many people and organisations have very helpfully contributed their experience of how the Measure does *not* work. There is general unanimity among all the Working Group have spoken to that the Measure is not effective in many regards. These consultations will of course provide opportunity to reinforce this recognition, but it is hoped that they will also provide opportunity to respond critically to proposals for forward travel (in light, of course, of past experience). It is also hoped that these consultations may provide an opportunity for people to identify what they believe *does* work about the current system.
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Proposals

17. The Working Group has developed three main proposals, which it hopes will in due course be translated into legislation. There will be opportunity to respond to each proposal individually during the Consultation process.

Proposal One – Triaging of Complaints

18. The Working Group notes that currently all matters referred to a Bishop or Archbishop under the terms of the Measure are handled in the same way. The Complaint is escalated into the same legislative track, without regard for the subject matter or apparent seriousness of the allegations being made.
19. It is suggested that this process is ineffective in many ways. It risks causing emotional and financial upset to Respondents whose alleged misconduct is not particularly serious. It fails to recognise that some types of Complaint are better handled using a process different to

that in the Measure, such as mediation or other form of alternative dispute resolution; the adversarial method is often not helpful in cases of pastoral breakdown for instance. It also fails to recognise when a Complaint is being made for purely punitive reasons by, for example, a vexatious litigant or a begrudging parishioner.

20. The Working Group has been inspired by dioceses where concerns about alleged misconduct are processed at the outset in accordance with the seriousness of the allegation. As has been mentioned already, the Diocese of Gloucester is notable in this regard. It is recognised however that the extent to which one can do this, particularly when a *Complaint* has been made, is severely limited by the current legislative arrangements.
21. It is proposed that new legislation will mitigate against these concerns by having an inbuilt process of triaging. By triaging, we mean a system which involves assessing Complaints when they are initially received to ensure they are dealt with according to a method that is in proportion to the seriousness of the alleged misconduct. For more serious Complaints, this method may look similar to what currently exists, albeit with more investigation at what currently constitutes the Preliminary Scrutiny stage particularly in cases where allegations of a safeguarding nature are made. For less serious Complaints, this method may look like a process of mediation, or a less formal conversation with a Bishop (in the case of a Complaint against a Priest). For Complaints that are completely unfounded or which are vexatious, the possibility of summary dismissal will exist; this will help to minimise the impact on clergy of baseless Complaints.
22. It is also proposed that those *Complaints* which are made under the terms of the measure, which point not towards misconduct but towards another legitimate issue (pastoral breakdown not arising from misconduct for example, or a situation where someone takes issue with a matter not arising from conduct of a clergyperson) will not get caught in this formal triaging process, but will be referred to the diocesan officer most suited to dealing with such matters. It is hoped that in making this distinction, the Working Group are signifying our desire to move away from the current use of the term *complaint* as a catch all term.
23. The question still exists as to whether the process of triaging should take place at a Diocesan level, or whether it should be conducted centrally. It has been suggested that one possible avenue could work as follows: (i) When the complainant issues an allegation, they are required to *indicate* on the form whether it is a grievance or serious misconduct. (ii) That is then assessed in the Diocese. (iii) Where the Dioceses agree that it is a grievance, they accept jurisdiction and the process is run at diocesan-level. (iv) If the complainant has ticked 'serious misconduct' then it is referred the central office. (v) Where the Dioceses are unsure if it is either a grievance or serious misconduct (regardless of the indication on the form) then it is referred to the central office who review it and can then send it back with a direction that it be dealt with in the diocese if a grievance or keep it to be dealt with centrally if serious misconduct is viably alleged

Proposal Two – A Central Office

24. The Working Group notes that currently Complaints against deacons and priests are dealt with by the relevant bishop, and Complaints against bishops are dealt with by the relevant Metropolitan. It is also noted that Complaints against archbishops are dealt with by the archbishop of the other province.
25. It is suggested that this situation is inadequate for two significant reasons.
- a. Firstly, because many dioceses process a very small number of Complaints under the Measure annually, they do not build up the expertise necessary to conduct proceedings under the terms of the Measure effectively. This could, among other things, lead to erroneous application of the law and a disparity of application across different dioceses.
 - b. Secondly, in making the bishop, in effect, the administrative and judicial officer in relation to proceedings, his or her relationship with any given respondent clergy person can come to be skewed towards their judicial position to the exclusion of the rest of their pastoral responsibility. This recognition is made not from the erroneous perspective which considers pastoral care as separate from the disciplinary responsibility of the bishop. Rather it is made from the legitimate perspective that the institution of formal legal proceedings in which the bishop is the judge tends to make it impossible for a bishop to exercise any pastoral care *apart* from that concerned with the judicial element of the proceedings.
26. It is proposed that new legislation will mitigate these concerns by processing (investigating, and bringing to tribunal etc, and possibly triaging) all Complaints of serious misconduct at a central office. This will have the benefit of allowing a number of centrally employed officers to develop the expertise and experience required to administer Complaints efficiently and uniformly. It will also help free bishops to provide non-judicial pastoral support to respondent clergy at what is widely recognised to be a time of notable personal and professional stress.
27. We are grateful to many who have raised legitimate concerns about the *removal* of episcopal disciplinary power from bishop, and the impact this has on the Church of England's understanding of episcopal ministry (as described in the Ordinal). We would initially suggest that what is being suggested is not a removal but a *delegation*. We disagree with suggestions that the delegation of much of the bishop's judicial function represents a change so drastic as to change the Ordinal's ontological understanding of episcopal ministry. Rather, it represents a delegation of some of the Bishop's disciplinary function; delegation of functions ordinarily exercised by a bishop is not a new concept. Such delegation is exemplified for instance by the national system of Bishop's Advisory Panels, where recommendations to the bishop are made by trained advisers at a central level. Consideration of how bishops can delegate confirmations or ordinations to their suffragans, or admission of Churchwardens to whomsoever they choose further upholds this view.

28. Such an independent office, it is proposed, will be positioned within the National Church Institutions. Although it should be obvious, it must be stated that its staff will not however be tasked with protecting the Church's interests. The balance required to ensure this will be the utilisation of a system of external judicial monitoring akin to the current 'President of Tribunals' system. This 'in but not of' approach serves to allow enough independence from the institutional Church to inspire the confidence of those who are being regulated by this office, and those who report alleged misconduct on the part of regulated professionals.
29. Alongside hearing responses to this proposal, the Working Group would like to listen to people's views on the possible composition of this central office, and to what extent bishops should be part of this composition.

Proposal Three – Professional Standards

30. The Working Group notes that currently it is difficult to determine what exactly constitutes *misconduct*, despite this being what must be proved (on the balance of probabilities) or admitted for a penalty to be imposed under the terms of the Measure. Generally, the assessment of whether alleged behaviour constitutes misconduct is considered in the Preliminary Scrutiny Report, with its author determining this question in reliance on a number of diverse legal sources.
31. It is suggested that this situation is inadequate primarily because it leads to confusion. This confusion is encountered on the part of the Complainant who might seek to bring a Complaint concerning behaviour which although he considers it to amount to misconduct, actually doesn't. This confusion is also encountered on the part of Respondent clergy who can legitimately argue that they have no clearly defined parameters within which to conduct their professional lives.
32. The Working Group 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 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.
33. 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.

34. This proposal also has a logical impact in terms of unions. In other spheres, regulated professionals tend to become members of a union, so they have adequate protection from the arbitrary exercise of power on the part of their employer or regulator. Although it is noted that some clergy are already part of a union, it is proposed that this should happen on a larger scale. This does of course raise questions about whether there is a sufficiently broad choice of unions for clergy to join.
35. Setting clergy discipline within the context of professional standards will allow for the rectification of issues in a case-specific and proportionate way. It will allow for the distinction between capability and misconduct to be more finely tuned, and response to be made accordingly.

The Proposals in their entirety

36. It is our view that when considered as a package, the proposals represent a significant shift away from the current legislative framework. This shift marks a move towards a more holistic system of professional standards and regulation, which will be enforced by officers of the Church who are independent of the dioceses, freeing bishops into a different pastoral relationship with respondent clergy than is currently possible. It will allow for allegations to be responded to proportionately and efficiently. In turn this will allow for the resolution of situations rather than the current imposition of discipline often without concern for the broader context in which such discipline is imposed, and for what reasons.

Joining a Consultation

37. Because of the restrictions we are currently living under, plans to hold in-person consultations have been abandoned. Consultations will now be held digitally. Depending on your position within the Church, there are a number of different time slots available. If demand exceeds the planned number of consultation slots currently planned, more will be arranged. If you would like information about these Consultation meetings, or to indicate you are going to join a meeting, the dates of which are set out at Appendix One, please contact Mr Adam Hobson at adam.hobson@lambethpalace.org.uk.
38. We also welcome written responses to these proposals, and would appreciate if such responses could address the questions set out in Appendix Two. Such responses should be sent to adam.hobson@lambethpalace.org.uk by 20 December 2020.

The Clergy Discipline Measure Working Group

04 December 2020

Appendix One – Consultation Meeting Dates

	Constituency	Date	Time
1	Clergy	Wednesday 09 December	10.00 – 11.40am
2	Clergy	Wednesday 09 December	2.00 – 3.40pm
3	Clergy	Thursday 10 December	2.00 – 3.40pm
4	Clergy	Thursday 10 December	6.00 – 7.40pm
5	Clergy	Monday 14 December	10.00 – 11.40am
6	Other interested parties	Monday 14 December	2.00 – 3.40pm
7	Other interested parties	Tuesday 15 December	10.00 – 11.40am
8	Senior diocesan staff	Tuesday 15 December	2.00 – 3.40pm
9	Senior diocesan staff	Wednesday 16 December	10.00 – 11.40am
10	Senior diocesan staff	Wednesday 16 December	2.00 – 3.40pm
11	Senior diocesan staff	Thursday 17 December	10.00 – 11.40am
12	Senior diocesan staff	Thursday 17 December	2.00 – 3.40pm
13	Unions	Friday 18 December	4.00 – 5.40pm
14	Clergy Discipline Commission	TBC in conversation with the CDC	TBC in conversation with the CDC

Appendix Two - Questions

Proposal 1 – Triaging of Complaints

- a. Do you agree that the proposed triaging process will a) help to ensure Complaints are dealt with proportionately and b) distinguish between grievance and misconduct Complaints? If not, why not?
- b. Do you agree with the possible triaging approach which involves, at the outset, both dioceses and the proposed new central office? If not, why not?
- c. Do you have any general comments or concerns about this proposal?

Proposal 2 – A Central Office

- d. Do you agree that the proposed central office will help capitalise on a body of expertise in a way that the current arrangement does not allow?
- e. Do you share concerns expressed by some that delegation of the judicial element of a bishop's disciplinary role is theologically harmful? If so, why? If not, why not?
- f. Do you have any general comments or concerns about this proposal?

Proposal 3 – Professional Standards

- g. Do you agree that the proposed code of professional standards will assist clergy in ordering their professional lives?
- h. How do you respond to the idea of clergy being more involved in unions? Is there a place for a professional association for clergy?
- i. Do you have any general comments or concerns about this proposal?

Questions for general consideration

- j. Do you have a view on the form that pastoral support ought to take in respect of those involved in the new disciplinary process?
- k. Do you have a view on the current functioning of legal aid for Respondent Clergy?
- l. Do you have any other views about the Progress Report, or the work of the Working Group more generally that you feel need to be taken into account?