

Duty to “have due regard” to House of Bishops safeguarding guidance

Background and context

The Safeguarding and Clergy Discipline Measure 2016 imposes a legal duty on the clergy, readers and lay workers, churchwardens and parochial church councils to “have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults”.

Recommendation from the Independent Inquiry into Child Sexual Abuse (IICSA)

In *Anglican Church Case Studies: Chichester/Peter Ball Investigation Report*, IICSA observed that the legal term “have due regard” was not well understood and that there was a need for greater clarity on the nature of the obligation ([paragraph 496 of the Report](#)).

In its [response](#) to the Report the Church of England’s National Safeguarding Steering Group (a committee of the House of Bishops) stated that the Church would consider changing the nature of the legal duty as part of a review of clergy discipline legislation. It went on to say that in the interim, the Church would seek to ensure that the requirements arising from the current legislation were better understood across the Church. This note has been produced to help those who are subject to the duty to have due regard to House of Bishops safeguarding guidance understand the legal nature of that duty.

What does ‘due regard’ mean?

Where legislation – whether an Act of Parliament or a Church Measure – imposes a duty on a person to “have due regard” to guidance of this sort, the law understands that duty in a particular way. The legal duty to have due regard means that the person to whom the guidance is directed is *not free to follow the guidance or not as he or she chooses*. As a matter of law, the guidance should be given great weight and must be followed unless there are ‘cogent reasons’ for not doing so (see below).

What is meant by ‘cogent reasons’?

‘Cogent reasons’ are reasons that are clear, logical and convincing. It will be very rare indeed for there to be cogent reasons for not following House of Bishops guidance on safeguarding. Cogent reasons are likely to arise only where the guidance does not contemplate a particular, unusual situation arising so that it becomes necessary to take a different approach from that set out in the guidance in order to meet the particular circumstances of the case.

When would ‘cogent reasons’ be applied?

A person who is required to have due regard to the guidance should not simply take it on him- or her-self to decide that there are cogent reasons for departing from the guidance. Such a decision should be taken – if at all – *only* after case-specific advice has been obtained from both the diocesan safeguarding adviser and the diocesan registrar.

What are the sanctions for clergy who do not follow 'due regard' guidance?

A failure by a member of the clergy to comply with the duty to have due regard to House of Bishops safeguarding guidance is misconduct under the Clergy Discipline Measure 2003 ('CDM'). Were proceedings under the CDM to involve an allegation of failing to have due regard to the guidance, the onus would be on the member of clergy concerned to establish that he or she had cogent reasons for not following the guidance. A disciplinary tribunal would be likely to scrutinise the reasons given with great care to test whether they were in fact clear, logical and convincing.

What are the sanctions for readers and lay workers, churchwardens and parochial church councils who do not follow 'due regard' guidance?

A failure by a reader or lay worker to have due regard to House of Bishops safeguarding guidance would be grounds for the revocation of the reader's or lay worker's licence by the bishop.

A failure by a churchwarden or parochial church council to have due regard to House of Bishops safeguarding could result in an investigation being carried out by the Charity Commission and the churchwarden or PCC members being disqualified as charity trustees.

Where is more information available?

More information about safeguarding guidance is available from your Diocesan Safeguarding Advisor and on the [Church of England](#) website.

More information about the legal duty of 'due regard' is available from your Diocesan Registrar. Diocesan Registrars may contact the NCI legal office.

The Legal Office of the National Church Institutions
Church House
Westminster

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