



## **A Guide to the Church of England Clergy Discipline Measure**

3rd Edition, 2019

## Preface.

This guide is designed for accredited representatives from the Faith Workers Branch to help them in their work of representing members who have had a CDM complaint made against them. Sections one to four are branch material, sections five to seven, and parts of section eight are annotated official materials<sup>1</sup>, as are the forms in appendices 1 and 2, but they are presented here for ease of access.

**Reps should advise members against resigning, even as a penalty by consent.**

Please contact the faith workers' branch help line for advice and information regarding Church disciplinary measures if you are unsure. Enquiries can also be made directly to the author.

**The branch helpline should be contacted at the end of Stage 2, to notify them that a member will soon need a Unite solicitor to represent them at Stage 3, the Tribunal Stage. The helpline coordinator will advise you how to proceed with accessing Unite legal support via a regional officer.**

<https://www.unitelegalservices.org/services/employment-law>

**When a case proceeds to the Tribunal Stage of the Clergy Discipline Measure special arrangements have been made by Siobhan Endean with EAD Solicitors in Liverpool and the case should be referred via her to them.**

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The Feast of the Ascension, 2017.

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<sup>1</sup> © The Archbishops' Council (less the footnotes).

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## **Section One - How to manage a CDM case.**

### **a) Before meeting the member.**

1. The member will have contacted the branch helpline, most likely in distress because they have been informed that a complaint against them has been made under the CDM. At this stage they are unlikely to know the nature of the complaint, nor even who has complained. They will have received a letter from the bishop or diocesan registrar informing them that there has been a complaint made under the CDM, and the date the complaint was made. No further details are given initially. Alternatively the member may be some considerable way through the process and has only just realised the gravity of their situation.
2. Contact the member and reassure them, say that you will be advising them on their case, or supporting them through the case. Ask for their permission to share their information with the branch helpline and more experienced representatives where you need to take advice.
3. Arrange a meeting<sup>2</sup>, ideally in the Unite regional or district office, and either with their partner present, or a trusted friend and colleague (see 8 below). Reps should not, generally see the member on their own. Rooms in the local Unite office can usually be booked by phone for meetings with members.
4. Ask the member not to communicate with the bishop or diocese or registrar unless you have seen and checked their email or letter.<sup>3</sup> This is so that they do not shoot themselves in the foot.

### **b) When meeting the member.**

5. Check their membership status and when they joined the union. Ensure that they are up to date with their membership fees, encourage them to pay any back fees that are owing<sup>4</sup>.
6. Take notes of the meeting (with the permission of the member).
7. Tell the member that the meeting will be confidential, that you need to take notes for your records<sup>5</sup>, and that it is important that the member tells you the whole truth, as far as they know it, from their perspective<sup>6</sup>.
8. The diocese will probably have told the minister that they must not discuss it with anyone. An appropriate response to this is to remind the member that they have the right to be represented throughout the CDM process.
9. Inform the member that the diocesan bishop can't discuss the CDM case with the minister, and won't even meet them usually, and may cancel existing engagements with them, but must offer pastoral care through a third person, e.g. an assistant bishop. The member should ensure that they have appropriate pastoral care networks in place, via family, friends, a spiritual director, the diocese etc.
10. Events Log. Ask the member to document everything as far back as meeting the person for the first time: every phone call, every meeting, every email, log them all in a diary or events log. NB they may not know who has made the complaint, so they have to imagine who it might be.
11. If the member has already been given a form to respond to the complaint on you can help them complete the form.

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<sup>2</sup> Support via the phone or email is also an acceptable alternative to meeting in person.

<sup>3</sup> You have every right to stop representing a member who refuses to agree to this and undermines his/her own case.

<sup>4</sup> See the case study on page 19.

<sup>5</sup> It is usual to keep records in a locked filing cabinet for 5 to 7 years.

<sup>6</sup> Viewed from another perspective it may well look different, this is normal.

**c) After meeting the member.**

12. Send the member notes of the meeting.
13. If it is found that there is a case to answer try to assist the member in completing the respondent form<sup>7</sup>, in which they reply to the allegations, and either agree that certain facts are true or dispute either the facts or the interpretation of the facts.
14. At the stage of completing and returning the respondent's form, contact the faith workers branch helpline case management officer for advice. **Reps should be able to support members at this stage without expecting regional officer support.**

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<sup>7</sup> <https://www.churchofengland.org/media/51351/form2.rtf>

## Section Two - Introduction to the Clergy Discipline Measure.

### A note on the role of the diocesan bishop.

The diocesan bishop has a disciplinary role in the Church of England, but only with regard to clergy, Churchwardens and others holding the bishop's licence or employees of the bishop in a corporate capacity. The laity do not come under the bishop's disciplinary jurisdiction under the CDM. The bishop's disciplinary role is exercised alongside his/her pastoral role, and this leads to a delegation of pastoral care when preliminary scrutiny identifies that there is a case to answer. A bishop may suspend a cleric at this stage.<sup>8</sup>

### Who does the CDM apply to?

All clergy in the Church of England are subject to the Clergy Discipline Measure (CDM). This includes retired clergy, chaplains, and is unrelated to the office that they hold or their employment status. It is part of the rules of the organisation. The only way for clergy to avoid being subject to the CDM is to relinquish their orders.<sup>9</sup>

Becoming a Roman Catholic, for example, does not remove the cleric from the orbit of the CDM<sup>10</sup>, rather it just gives another grounds for a complaint to be made.

The Clergy Discipline Measure is well documented on the Church of England website<sup>11</sup>, and material in sections 5 (the diagram<sup>12</sup>), 6 (the guide for those complained about<sup>13</sup>) and 7 is taken from there, with added explanatory footnotes for accredited representatives. Reps who are interested in reading about how a complaint is made and originated can read the guide for complainants.<sup>14</sup>

Older clergy may remember the days when clergy could arrange to see their bishop, exhibit symptoms of emotional distress, ask to have their confession heard, kneel in the bishop's study, confess adultery or another sin, be absolved, and go home and carry on being a vicar, curate etc resolved to 'sin no more.' They may also recall clergy who are invited to the bishop's palace for a chat, and who felt obliged to resign before the end of that informal meeting. Those days are gone forever.

The Clergy Discipline Measure provides a legal framework for complaints against clergy to be heard and acted upon. The founding principle of the Clergy Discipline Measure is that clergy should be above reproach and their lives examples for others, and that they should pay a penalty for any misconduct.

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<sup>8</sup> Suspension at an earlier stage is perhaps unusual except in cases where the respondent has either been arrested or where there is an allegation which relates to safeguarding children or vulnerable adults.

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/Vict/33-34/91/schedule/2/crossheading/form-of-deed-of-relinquishment>

<sup>10</sup> See particularly the complaint against Andrew Hawthorne

<https://www.churchofengland.org/media/2147363/hawthorne.pdf>

<sup>11</sup> <https://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline.aspx>

<sup>12</sup> <https://www.churchofengland.org/media/59511/diagram.rtf>

<sup>13</sup> <https://www.churchofengland.org/media/1898141/complaintwhathappensnow.pdf>

<sup>14</sup> <https://www.churchofengland.org/media/1937470/makingcomplainta4.pdf>

## Is a CDM tribunal hearing a court?

The Measure is quasi-judicial but it is not a court of law as such.

Anyone who threatens to disrupt proceedings or who does disrupt proceedings may be removed.

Witness statements are taken under oath and are recorded.

The setting may be in a court hired for the occasion, all of which intimidates and gives the impression of a CDM tribunal hearing being a court.

The burden of proof is 'on the balance of probabilities' rather than the criminal standard of 'beyond a reasonable doubt'.

However this is not the whole story, and the more serious the alleged offence the greater the required burden of proof:

“The level of proof required will vary according to the seriousness of the allegation and the implications for the cleric. Thus, in the most serious cases the standard of proof required will be indistinguishable from the criminal standard—beyond reasonable doubt, rather than on the balance of probabilities. The Ecclesiastical Committee accepted that understanding of the position, and accordingly was content to accept that the adoption of the civil standard of proof was appropriate.”<sup>15</sup>

There *may* therefore be mileage in challenging the level of proof required at the tribunal stages of a Clergy Discipline case, but this is for a union solicitor to consider.

The complainant has the right of appeal. If the appeal is upheld then the bishop has to reactivate the case.

There may be the option for a 'penalty by consent' and this would also be by the consent of the complainant and the respondent (the one complained against), as well as the bishop. The alternative to accepting a penalty by consent is to go to a tribunal with the associated legal costs<sup>16</sup>, delays, stresses and anxieties.

**Accredited Representatives must not advise a member to accept a penalty by consent which includes resignation and or prohibition.**

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<sup>15</sup> <http://hansard.millbanksystems.com/commons/2003/may/22/clergy-discipline-measure> Second Church Estates Commissioner.

<sup>16</sup> £4-5,000 is an estimate of these costs, excluding appeal.



## What is the CDM for?

The CDM is not for matters of doctrine (these fall under the Ecclesiastical Jurisdiction Measure 1963<sup>17</sup>), pastoral breakdown (this falls under the Incumbents (Vacation of Benefices) Measure 1977<sup>18</sup>), capability (there is such a procedure in Common Tenure) or trivial matters. It is mainly for dealing with for allegations of serious misconduct.

### **“The CDM is NOT about:**

- Doctrine, liturgy or ceremonial.<sup>19</sup>
- Grumpy complaints by parishioners or lay leaders who want to bully clergy. Of course there are always some who try to abuse legal systems, but general grumpiness is dealt with outside the measure, usually by conciliation.
- Moving times of services, staring at a member of the congregation from the pulpit or sunbathing in scanty clothing in the vicarage garden. (All these were real complaints; as to the latter the complainant had to stand on tip-toe to peer over a high fence in order to observe the alleged offence!)
- Ability of the clergy to do their job properly.
- Addressing the problem of people not getting on. Pastoral breakdown between clergy and people is serious, but it is not a matter for the CDM to deal with.
- Taking away pastoral responsibility from bishops. Many complaints, after preliminary scrutiny, end up being dismissed by the bishop for insufficient evidence, or for not being a disciplinary matter at all. Complainants can appeal against the bishop’s dismissal, but if the bishop’s decision is “reasonable” and within the law, the appeal would not have much success.”<sup>20</sup>

Part of the unfairness of the CDM is the unequal power held by clergy and laity – the former stand to lose their homes, stipend and pension, the latter have nothing to lose. For that reason the laity are more likely to complain about clergy as part of a campaign of bullying, harassment or discrimination. Clergy need to be both above reproach and above being hurt by malicious or vexatious complaints, which should, at least, be filtered by the diocesan registrar at the preliminary scrutiny stage. Reps can help clergy keep a sense of perspective where the complaint appears to fall under one of the above categories.

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<sup>17</sup> <http://www.legislation.gov.uk/ukcm/1963/1>

<sup>18</sup> <http://www.legislation.gov.uk/ukcm/1977/1/contents>

<sup>19</sup> “These rules apply to proceedings under the Clergy Discipline Measure 2003 alleging misconduct against a clerk in Holy Orders, other than in relation to matters involving doctrine, ritual or ceremonial.” Clergy Discipline Rules 2005 as amended 2013 S.3.

<sup>20</sup> These examples are taken from the President of Tribunals speaking at the Law Society.  
<http://eurobishop.blogspot.co.uk/2010/01/word-about-clergy-discipline-measure.html>

## Informal resolution of complaints

Some complaints may not be sufficiently serious to be considered under the CDM but may be dealt with by the bishop issuing an informal warning, suggesting an apology is in order, or another informal resolution to the problem.

“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.** (*“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”*). 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.”<sup>21</sup>

Ideally at this stage any complaints that are malicious or vexatious will be excluded, but a malicious or vexatious complaint may still be passed on to the registrar.

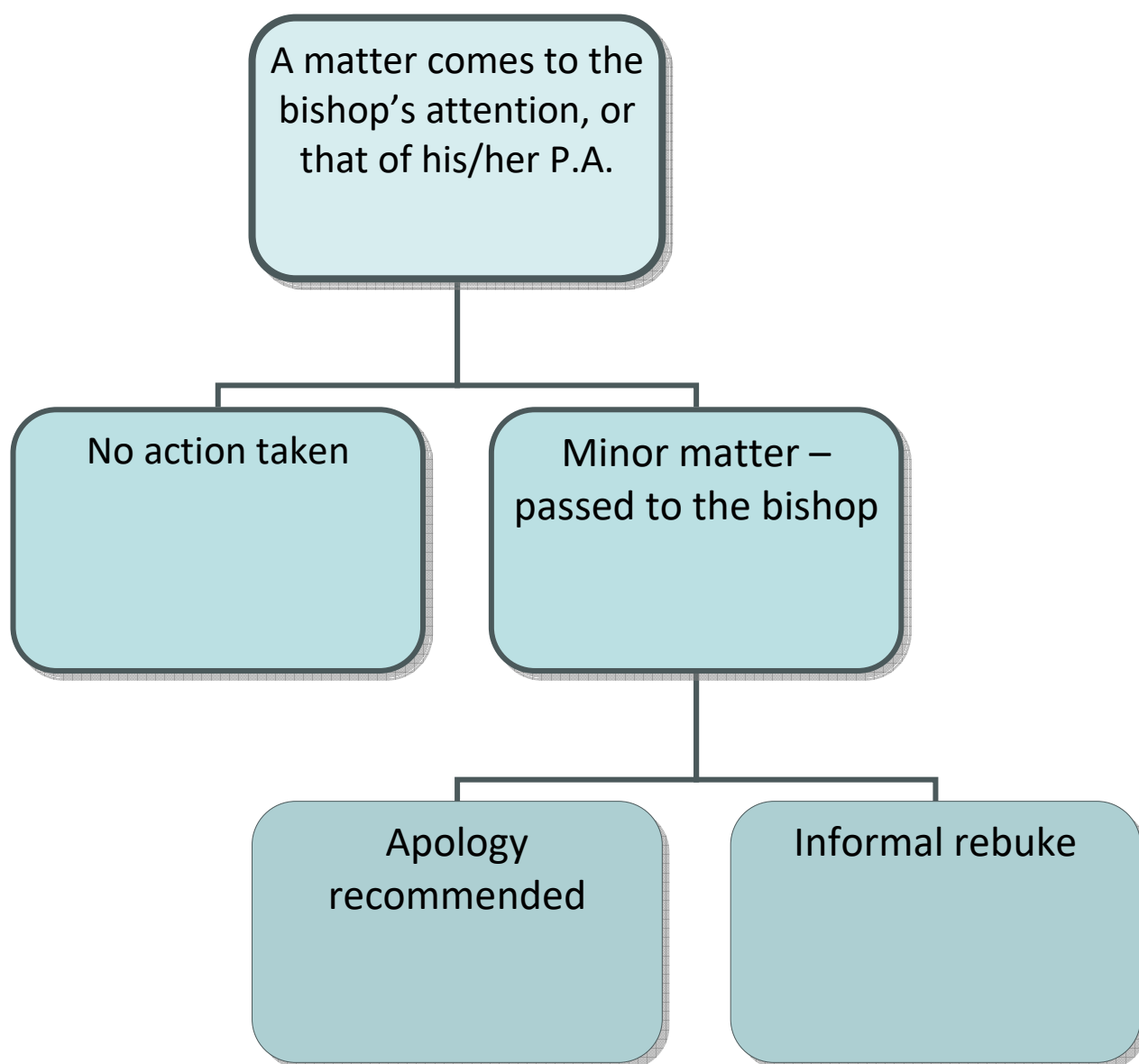
The member may be told that a CDM complaint may be made, perhaps through a third party. It is a time of great uncertainty and upset when the member needs pastoral support and advice.

At this stage, unless the bishop chooses to inform the cleric, no details of the complaint are sent to the cleric and no response is required. The member does not necessarily know what the complaint is, nor who made it.

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<sup>21</sup> CDM Code of Practice S.9.

## Informal Proceedings – Minor matters.



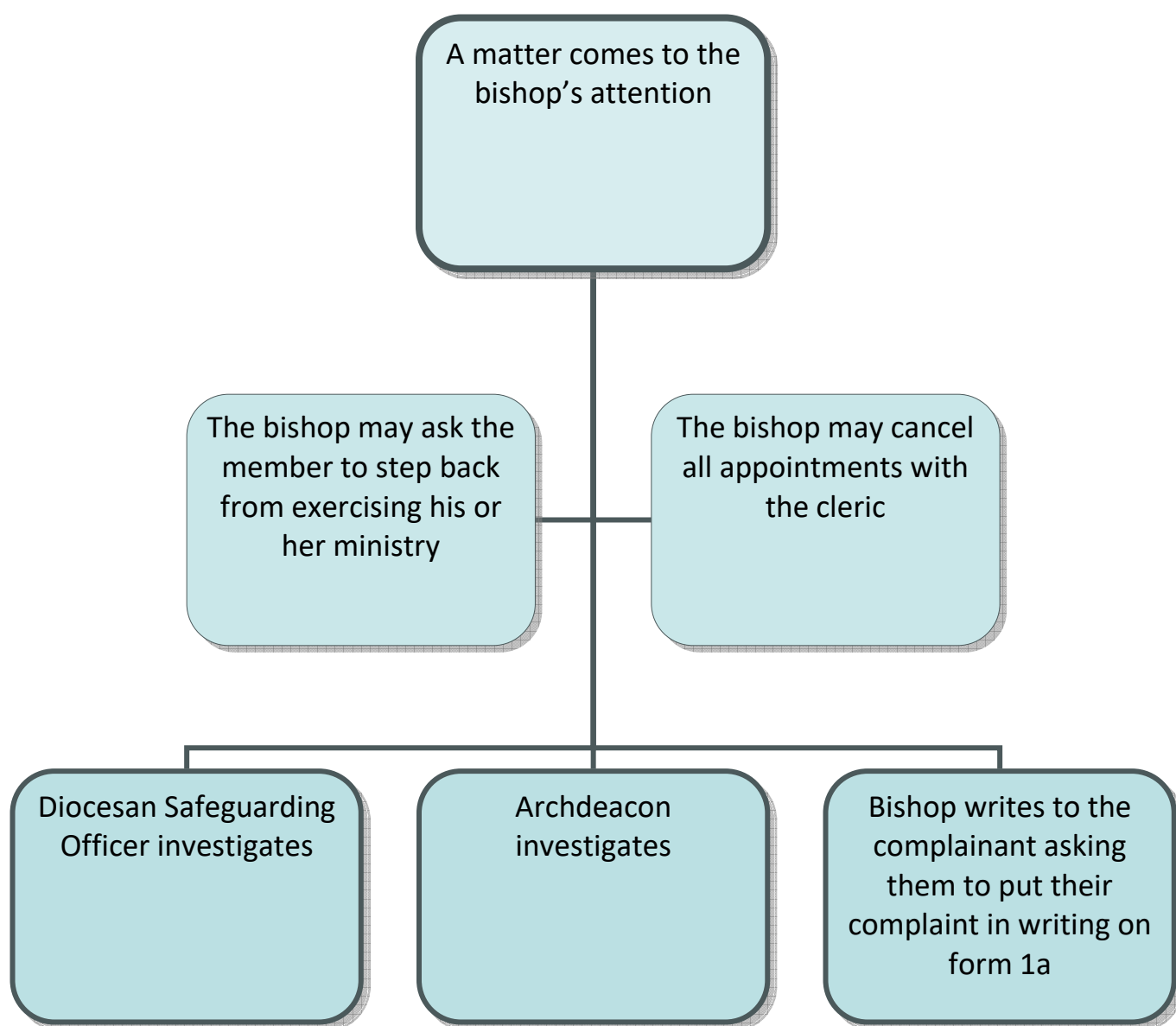
The first stage of the Clergy Discipline Measure is an informal stage. It involves a process of triage: vexatious complaints may be dismissed<sup>22</sup>; minor matters may be dealt with informally by the bishop who may give advice, recommend that the cleric apologises, or rebuke them informally; but serious matters trigger the formal stages of the CDM.

There is not normally any scope for trade union representation at this informal stage, though a process of mediation could be initiated.

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<sup>22</sup> Matters of doctrine, ritual or ceremony should also be dismissed at this stage.

## Before Formal Proceedings – Serious matters.



The bishop may ask the archdeacon to investigate a complaint<sup>23</sup>, or the diocesan safeguarding officer, where the complaint involves a child or vulnerable adult.<sup>24</sup> This could lead to a referral to the police or another statutory agency.<sup>25</sup>

The complainant form, when received, is sent to the diocesan registrar (who may delegate his or her functions to another where a conflict of interest or inability to be impartial is in question).

<sup>23</sup> CDM Code of Practice S.10-11

<sup>24</sup> CDM Code of Practice S.12

<sup>25</sup> As outlined in the Church of England's (2015) Practice Guidance "Responding to Serious Safeguarding Situations" <https://www.churchofengland.org/media/2254740/responding%20to%20serious%20situations.pdf>

A bishop may inform the cleric that a complaint has been made against them and ask him or her to voluntarily stand back from fulfilling the duties of their office, temporarily, as an alternative to suspension.

It is possible that the registrar may formally notify the cleric: at a later stage i.e. “within 7 days of receiving the complaint from the bishop, the registrar shall notify the respondent in writing — (a) that a complaint has been made” CDM Rules S10.

The diocesan bishop need not cut all contacts with the cleric at this stage as no formal complaint has been made. An area bishop will only do so if clergy discipline has been delegated to them and approved by the diocesan synod.

The bishop may invite a complainant who has written to them to lodge a CDM complaint on the proper form. He or she may ask the archdeacon to attend a local Church and invite complaints as part of an investigation.

### **The thorny question of resigning before a complaint is made.**

**Can a resignation happen before a CDM complaint is made?**

**No. Advise the member not to resign because the resignation does not take effect immediately, but at the end of 90 days and if a complaint is made in that time the member will not be any better off than if they had resigned after the CDM complaint was lodged.**

## **Proposals for the better management of Stage One of the Clergy Discipline Measure.**

### **Contents:**

- 1. Introduction*
- 2. Some significant issues affecting how CDM is perceived*
- 3. Means of resolving low-level concerns*
- 4. CDM Stage One and initial investigation.*
- 5. Procedural fairness*
- 6. Conclusion: responding to complaints at Stage One of the CDM.*

### **Appendix - options available to archdeacons.**

- *Pastoral breakdown.*
- *Sexual misconduct.*
- *Safeguarding.*
- *Doctrine, ritual and ceremony.*
- *Divorce.*
- *Church school issues other than Safeguarding.*
- *Matters relating to the employment of others.*
- *Capability.*
- *Politics.*
- *Trivial matters.*
- *Supporting clergy.*

## **1. Introduction**

The Archdeacons' Forum and the Church of England Clergy Advocates (CECA)<sup>26</sup> each bring particular perspectives on the working of the CDM. We have recently been working together to identify ways to improve its operation within the existing Measure, Rules and Code of Practice, in particular in relation to what the Measure identifies as Stage One, and proposals form the basis for discussion with them, with the aim of offering them to the wider Church.

A sizeable number of clergy are already members of CECA, and if issues arise where CECA support is considered useful then it is always possible for a cleric to join, and access at least the limited support of an accredited representative (though not Union legal support for pre-existent issues). Archdeacons may wish to suggest that clergy join Unite as a way of supporting them. However, any references in this document to such support should be taken to be, in principle, extendable to any other suitable person identified as a companion through due process.

## **2. Some significant issues affecting how CDM is perceived**

### **2.1 The importance of trust between clergy and the bishop**

The CDM has created an imbalance between the juridical and pastoral roles of the bishop which undermines trust and is to the detriment of the collegiality which should be experienced between bishop and clergy. Identifying ways in which the bishop can exercise his or her canonical and theological duty of care when a CDM complaint is being considered is an important way of preventing the demotivation that comes from breaches of trust.

### **2.2 Avoiding prejudicial episcopal involvement**

The need to stay separate from the CDM process, once a complaint has been formally made, makes it almost impossible for a diocesan bishop to exercise pastoral care, except vicariously<sup>27</sup> and except by the manner in which the Measure is operated by the bishop and his or her officers and staff. Clause 10 of the Measure specifically highlights this tension even in less formal stages of what may later become a formal complaint. The archdeacon is the usual person to investigate complaints and concerns about clergy except Safeguarding and criminal allegations.

### **2.3 The nature of clergy**

Clergy can be difficult. This may be a conscious behaviour or an unconscious one. They can also be defensive about their rights and legal responsibilities and it can be hard to get them to reconsider their attitudes and actions, especially where a cleric is acting within his or her rights and duties. This can tend to escalate problems and lead to difficulties in relationships. Asking

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<sup>26</sup> CECA was formed in 2012 as part of the Faithworkers Branch of Unite the Union. As such it has access to a network of trained Representatives, all (in Union terms) lay members of the Branch who can accompany members through formal processes, and also provide access to legal advice and representation should that be required.

<sup>27</sup> Those who offer pastoral care to clergy who have a CDM complaint made against them should offer it with a promise to keep matters confidential except when there is a legal duty of disclosure.

and showing an interest in clergy and their problems may defuse situations through identifying the reasons for clergy being difficult<sup>28</sup>.

## **2.4 Complaint or Concern?**

Concerns about clergy come in a range of shapes and sizes, not all of which are disciplinary issues and responding to all such matters by automatically sending the relevant CDM form undermines clergy wellbeing and adds to clergy stress. It would often be helpful to use the broader language of 'concern' to categorise matters raised, to clarify this distinction. Whilst some matters clearly do require formal investigation, others may equally well be dealt with by appropriate explanation or apology, avoiding both distress and lengthy time and energy spent, possibly fruitlessly, on more formal process.

## **3. Possible means of resolving low level problems**

### **3.1 Communication**

The least serious concerns may not need investigating beyond enquiring whether the complainant has spoken to the cleric concerned and a gentle word to the cleric to take the matter seriously and to apologise where appropriate<sup>29</sup>. Formal mediation may also be appropriate, except in cases of bullying harassment and discrimination. CECA representatives are not normally involved in mediation<sup>30</sup> but encourage its use as a means of reducing tensions and promoting well-being and avoiding unnecessary litigation with its associated stress, administrative workload and legal costs – all of which can undermine the mission of the Church and destroy trust and partnership between CECA and the rest of the Church of England.

### **3.2 Mistaken identity**

Occasionally complaints may be made against clergy which are a case of mistaken identity. In such cases archdeacons should try to clarify the identity of the cleric that the complaint is about.

### **3.3 Matters for the PCC**

Some matters may on further investigation be seen to relate to a PCC policy that is being implemented by the incumbent. If the concern is about the policy itself, rather than the manner of its implementation, then it should properly be raised with the secretary of the PCC for consideration by that body.

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<sup>28</sup> Of course personal and structural sin should be considered in this regard.

<sup>29</sup> Or even to apologise when the cleric thinks that he or she has done nothing wrong.

<sup>30</sup> Except when both the person complaining and the person complained against are members, for example in clergy teams or cathedrals.



#### **4. CDM Stage One and Initial Investigation**

This initial stage is referred to in clause 11 of the Measure:

“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.”

This mirrors the investigatory meetings which precede disciplinary proceedings in the ACAS Code of Practice on Grievances and Disciplinary.

Whilst there is no statutory right to accompaniment at this stage for employees, it is a contractual ‘right’ given by the CDM Code of Practice. We would commend the option of both parties agreeing to the presence of a CECA rep as a companion.<sup>31</sup>

The Code of Practice requires the archdeacon to form his or her own opinion on the matter in hand, and determine whether there is prima facie a case to answer under the Clergy Discipline Measure. Pointing a complainant to CDM form 1a is not always the most appropriate initial response.

This document gives some guidance on when a complaint should be immediately escalated to Stage Two of the Clergy Discipline Measure<sup>32</sup>, but the informal stage of the CDM, Stage One, simultaneously presents opportunities for pastoral care and promoting health safety and well-being for clergy, not least through working for reconciliation, referrals to Occupational Health, counselling, mediation, training, mentoring and other support. Identifying appropriate ways and means of supporting clergy, whilst operating the Measure, is a key aim of these proposals.<sup>33</sup>

#### **5. Procedural fairness.**

Archdeacons may from time to time, perhaps from a desire to sort things out informally, fail to work within the procedures set by canon law. This is regrettable and can be experienced by the cleric concerned as bullying, harassment or even discrimination and may be a breach of the Equality Act, 2010. Diocesan Dignity at Work, Clergy Well-being, Bullying, or Equality Policies may all be consulted to highlight the need to follow procedures and the steps required to do so. One key role of the archdeacons is to keep an eye on diocesan policies which affect clergy well-being. This is to make sure that such policies exist and are up to date. CECA reps receive training in all the above areas and such training is available to the wider Church.<sup>34</sup>

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<sup>31</sup> CECA reps are trained in the difference between accompaniment and representation.

<sup>32</sup> For example when there is a clearly identifiable victim and allegations of gross misconduct.

<sup>33</sup> Reintroduction of the contractual right for clergy on freehold to lodge a grievance would instil confidence and build mutual trust between clergy and those in authority above them.

<sup>34</sup> Applications and enquiries should be made to the Director of Education of Unite: [jim.mowatt@unitetheunion.org](mailto:jim.mowatt@unitetheunion.org).

The advice of Human Resources managers and Occupational Health professionals should also be considered alongside the strict operation of the CDM. CECA's experience of the operation of HRM within the dioceses has been 100% positive and CECA welcomes the involvement of Human Resources managers.

Not all archdeacons have overly much experience of the Clergy Discipline Measure and they may be unaware of the range of options that may be open to them when a complaint comes to their attention. The diocesan registrar should be relied upon to assist the archdeacon in adhering to the CDM and its rules.

## **6. Conclusion: responding to complaints at Stage 1 of the CDM.**

A range of responses should be made from the toolkit of policies, procedures, and theological options described in the Appendix which are open to the archdeacon. These are described and evaluated and examples of complaints appropriate for each are given. More than one response may be made simultaneously, though the risk of using multiple procedures is that this might be perceived as bullying, harassment or discrimination and so should be carefully considered.

The informal Stage One of CDM is underused and this can undermine clergy morale and create an adversarial and litigious culture. Using mediation to promote reconciliation, and offering support may restore the imbalance between the juridical and pastoral roles of the diocesan bishop<sup>35</sup>; improve clergy morale; and resolve problems before they get to the more formal stages required by the Clergy Discipline Measure.

This document is presented to the wider Church as a symbol of partnership between CECA and the Church of England and in a Spirit of good will and mutual flourishing.

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<sup>35</sup> At least through the powers delegated by the bishop to diocesan officers.

## Options open to the archdeacon

These include mediation<sup>36</sup>; words of friendly advice to the cleric<sup>37</sup>; involvement of a harassment advisor<sup>38</sup>; offering additional targeted training; referral to an occupational health service; an offer of counselling; appointment of a mentor; or matters may be deferred to the next ministerial review. In addition to this nothing prevents an archdeacon from hearing a cleric's grievance even if he or she is on Freehold not Common Tenure, this may build trust which helps the archdeacon defuse a difficult situation.

### Triage: Presenting Issues and approaches.

A presenting issue may fall under a number of different categories, each of which may trigger support, training, or advice from a diocesan officer<sup>39</sup>.

Nature of concern	Preferred route of response
Conduct not amounting to misconduct	Informal.
Mistaken identity	Clarification.
Properly a PCC matter	Refer to PCC or other relevant body.
Misconduct	CDM.
Serious or Gross misconduct	CDM.
Allegations of Pastoral Breakdown	Ministry review, capability, first informal stage of the I(BV)M, 1977.
Allegations of sexual misconduct	CDM, refer to police if criminal.
Safeguarding Allegations	Safeguarding.
Allegations of criminal behaviour	CDM and police.
Doctrine, Ritual and Ceremony	Ecclesiastical Jurisdiction Measure.
Politics	Pastoral advice, unless relating to a proscribed organisation.
Political extremism.	Prevent / Channel procedures.
Matters relating to the cleric's marriage or civil partnership <sup>40</sup>	Pastoral.
Divorce (but not breakdown of civil partnership)	CDM.
Church School Issues other than Safeguarding	School governors policies.
Relating to the employment of others	HR advice and good practice.
Capability	Capability.
Clergy well-being (including equality issues, bullying, harassment and discrimination)	Refer to relevant diocesan policies.
Training	MDR.
Health and Occupational Health and Safety <sup>41</sup>	Refer to relevant diocesan policies.

<sup>36</sup> For example by a diocesan mediation officer (York diocese is an example of best practice).

<sup>37</sup> Even where the cleric is within his or her legal rights they may not be acting wisely and work on promoting good working relationships may be necessary.

<sup>38</sup> As suggested in diocesan Dignity at Work policies (Worcester diocese is an example of best practice)

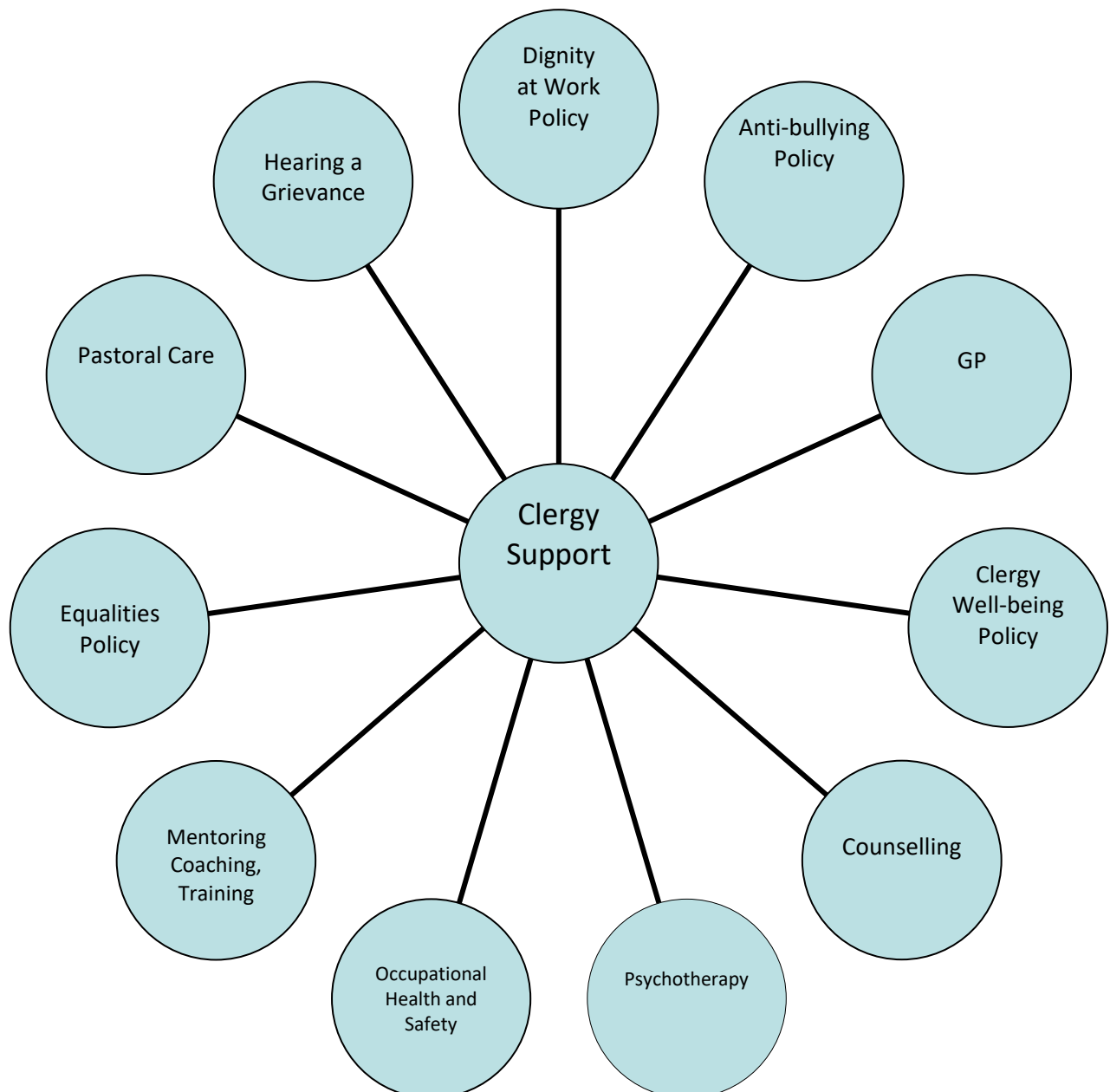
<sup>39</sup> This may include signposting the cleric to an external counselling service.

<sup>40</sup> Assuming there is no suggestion of breach of House of Bishop Guidelines.

<sup>41</sup> Unite has expertise it would want to share in this area (see also category k and note 9).

## The range of options available for supporting clergy.

Any of the following may be appropriate ways of supporting clergy who are subject to a CDM complaint. Two main approaches contest: that of counselling and psychotherapy which look to change in the individual so that they can cope better with the situations s/he finds him/herself in; and that of Occupational health and safety which looks to the impact of structural sin upon the individual and seeks to remove it. Dignity at Work policies, Equality policies, Anti-bullying policies and Clergy well-being policies are examples of the latter. Funding counselling, psychotherapy while well intentioned should not be done without looking to remove the causes of stress on the cleric accused of misconduct.



## Ways of Supporting Clergy.

## Section Three – The Stages of the Clergy Discipline Measure.

### How to complain about a cleric.

A CDM complaint has to be made on the proper form as follows:

#### FORM 1a (Rule 4)

#### Clergy Discipline Measure 2003

#### Complaint under the Clergy Discipline Measure 2003 about a priest or deacon

*When your complaint is received by the bishop your name will be disclosed to the person you complain about (“the respondent”), but you may request that your contact details should not be disclosed.*

To the Bishop of .....

My full name is: .....

My contact address, including postcode, is: .....

.....  
.....  
.....

*\*\*Telephone & e-mail details are optional, but it could be helpful to the registrar and bishop to have them.*

\*\*My contact telephone number is: .....

\*\*My e-mail address is: .....

*If you tick the box you must give reasons – your contact details would then be disclosed to the respondent only if the registrar so directed.*

☐

**I request that my contact details should not be disclosed to the respondent for the following reasons:**

.....  
.....  
.....  
.....  
.....  
.....

#### **I wish to make a complaint of misconduct against:**

*State the name of the person you wish to complain about, and the position held by that person at the relevant time.*

Name: .....

Position held: .....

**I am entitled to make this complaint because:**

I have been nominated by the Parochial Church Council of ..... which has a proper interest in making the complaint, and I attach a certified copy of the resolution passed by the Parochial Church Council under section 10(1)(a)(i) of the Clergy Discipline Measure

*or*

I am a churchwarden of the parish of..... which has a proper interest in making the complaint

*or*

I have a proper interest in making the complaint because:

**The misconduct about which I complain took place on the following date(s):**

**The misconduct about which I complain is as follows:**

***If your complaint concerns serious criminal conduct then you should report it to the police or other relevant body. If you do not, the bishop may be under a duty to do so.***

***You must provide evidence in support and send it with the complaint unless the bishop gives permission to send the evidence later. This evidence could be your own signed statement, which can be set out in this form or be in a separate document attached to it. You can also attach signed statements from witnesses. All witness statements should be in form 3 of the Clergy Discipline Rules. Letters or other material such as photographs may be submitted if relevant.***

(Continue on a separate sheet if necessary)

**I believe that the facts of my complaint are true**

*Unless you sign, the complaint cannot be considered.*

**Signed:**

**Dated:**

## The Stages of a CDM Complaint - Preliminary Scrutiny Stage.

The registrar informs the member (usually within 7 days<sup>42</sup>) that a complaint has been made using the pro-forma below:

### *“B4: Pro-forma Registrar’s letter of notification to the Respondent*

*Respondent’s name & address*

#### **Concerning a complaint under the Clergy Discipline Measure 2003**

Dear *[Name of Respondent]*,

The Bishop of *[.....]* has referred to me for preliminary scrutiny a complaint made against you by *[name of complainant]* *[a complainant]*. A copy of that complaint and of the evidence in support is enclosed so that you may be aware of what is happening.

The purpose of the preliminary scrutiny is limited to considering the complaint so that I can send the bishop a written report setting out my views on:

- (i) whether the complainant has, within the meaning of s10 of the Clergy Discipline Measure 2003, a proper interest in making the complaint, and,
- (ii) whether there is sufficient substance in the complaint to justify proceeding with it.

There is no need for you to make any submissions at this stage in response to the complaint. If the complaint proceeds beyond the preliminary scrutiny stage you will have the opportunity to respond in detail with evidence in support within a further 21 day period.

I expect to send my report to the bishop by *[date]*.

While the complaint proceeds you should not discuss it with *[name of complainant]*.”

The registrar exercises his or her judgement to see whether there is a case to answer, and informs the bishop accordingly.

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<sup>42</sup> CDM Rules Section 10(2).



## **Alternative Pastoral Care to be made available by the bishop.**

The bishop should also contact the member to put alternative pastoral care in place for the cleric and may cancel any planned visits and appointments with the member. The following letter should be sent by the bishop to the member.

### ***B5: Pro-forma Bishop's letter to the Respondent***

***Respondent's name & address***

#### **Concerning a complaint under the Clergy Discipline Measure 2003**

Dear *[Name of Respondent]*,

A formal complaint has been made against you by *[name of complainant]*. The details of that complaint are being sent to you by the diocesan registrar so that you may know more about it.

You *[and your family]* may wish to receive care and support at this time, and so I will ensure that you have all the support and care that you may need. I will not personally be able to give it to you, because, under the terms of the Measure, I have a central role as diocesan bishop in the administration of discipline, and I must therefore remain, and be seen to remain, impartial. Consequently, I have asked *[Name]* to provide you with care and support on my behalf, and (s)he will be contacting you very shortly.

Any discussions you have with *[Name]* will be completely confidential. I will not be informed about them unless you so request.

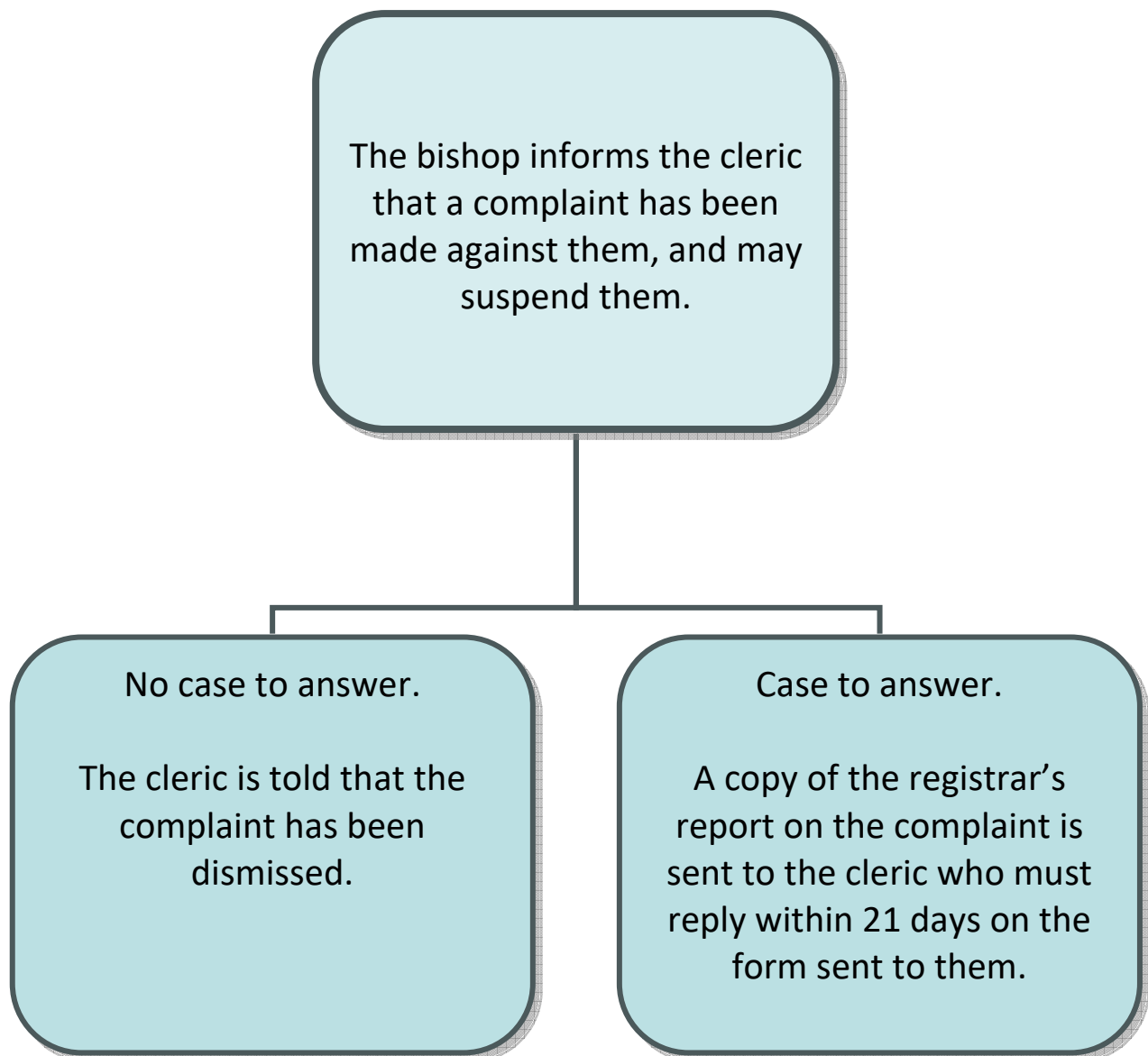
I trust you will get in touch with *[Name]* whenever you need to, and I strongly encourage you to do so. His/her address, phone number and e-mail details are:

*[address etc]*

If you do not believe *[Name]* would be suitable to give you the care and support you need, please let me know and I will ask someone else.

The sentence about confidentiality may be absent, and it is best practise to advise the member that they should not trust the episcopally appointed pastoral carer to maintain confidentiality, unless the disclosure is made to them in the context of the seal of the confessional.

## **Preliminary Scrutiny.**



Cases may be dismissed because the complaint has been made out of time (more than one year from the complained misconduct, except for safeguarding matters), or because the complainant has no proper standing to make the complaint. The final grounds for dismissing a complaint are if the misconduct is not subject to the CDM, or is a trivial matter. Vexatious complaints may not be filtered out at this stage.

## The question of whether a cleric should resign.

The initial reaction of some clergy is a fight or flight response. This reaction may be compounded by them internalising pressure upon them to resign. Leaving the situation may look the easy option, and usually involves resignation, but this is rarely the best option, *even if the cleric is guilty of the misconduct complained about*, since they are not in the best position to make that decision, or to judge what an appropriate penalty might be for their misconduct.

*If the member resigns after a CDM complaint has been made, they will soon discover that this is not a way to resolve their problems.*

**Question: What should I do if the member considers resigning?<sup>43</sup>**

**Answer: Advise the member NOT to resign.**

If a member resigns once a complaint has been the process that takes place involves them being placed on a list of clergy who are prohibited from working in the Church of England, for up to five years (renewable). This is automatic, and although there is an appeal, it is far easier to remain in post while the CDM complaint is heard and dealt with rather than resign and have no income, home or pension. Clergy on the list are no longer able to be appointed to Church of England posts, or any others, which require a bishop's licence.

When a complaint is made under the CDM it must be made on the correct form<sup>44</sup> and be accompanied by a witness statement.<sup>45</sup> The complaint is usually about something that has happened within the last year, though the bishop may "inform the complainant that an application can be made to the President of Tribunals to extend the time for making the complaint"<sup>46</sup>

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<sup>43</sup> Resignation in the Church of England, for most clergy means more than saying 'I resign' – a deed of resignation must be completed, signed, dated and witnessed. This is irrevocable, but is a prerequisite of accepting another office.

<sup>44</sup> <https://www.churchofengland.org/media/1917432/form%201a.docx>

<sup>45</sup> Failure to comply with the requirement to undertake a safeguarding risk assessment is cause for a CDM complaint to be lodged.

<sup>46</sup> CDM Code of Practice section 53

## **The thorny question of whether there is, or should be, a statute of limitations.**

CDM complaints should normally be made within a year of the misconduct, unless there is a valid reason, or unless the misconduct is against children or vulnerable adults. The one year time limit can be extended however.<sup>47</sup>

Examples of justified reasons for making a complaint late:

- “the complainant did not know, and could not reasonably be expected to discover,
- either the material facts of the alleged misconduct or the identity of the respondent, the complainant has been suffering from a significant mental or physical illness or disability during the relevant period
- where the making of the complaint followed the conclusion of criminal proceedings against the respondent”<sup>48</sup>
- Safeguarding and child protection cases

Examples of delays which are prejudicial to justice:

“where a material witness has meanwhile died or has become incapable of giving evidence through infirmity, where a material witness is now overseas or cannot be traced after the lapse of time, where material documents (whether electronic or otherwise) have been lost or destroyed, where a long delay has made it significantly more difficult for witnesses to recall the events in question.”<sup>49</sup>

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<sup>47</sup> CDM Code of Practice sections 53-56.

<sup>48</sup> CDM Code of Practice section 55.

<sup>49</sup> CDM Code of Practice section 55 .

## **The Stages of a CDM Complaint – The member responds to the complaint.**

If there is a case to answer the member is sent details of the complaint and the Registrar's Report and is required to respond to them on the correct form<sup>50</sup>. If there is a complaint to answer the accredited representative has some work to do, helping the member complete the forms and ensuring that they return them within the specified time limit which is usually 21 days.

Points to note:

- A rep should help the member complete the response form and consider mitigating factors for any misconduct which is admitted.
- **The assistance of regional officers and union solicitors is not usually available at this stage.**
- It is important to note the tension between denying the truth of what took place and arguing mitigating factors which would not be relevant if the behaviour did not happen.
- It is important to inform the bishop of all the circumstances, not to do so would make the process unfair.
- The complainant is sent a copy of the response form.
- It is important to differentiate fact and opinion, and "to state the source of any matters of information and belief."<sup>51</sup>

## **Suspension**

The bishop may suspend the cleric at this stage, or may ask them to voluntarily step back from fulfilling the duties of the office they hold. This is not the same as resigning.

If this happens the member will feel aggrieved and probably not understand that 'suspension is a neutral act'. When clergy are suspended they are suspended on full pay and for a period of three months (renewable for another three months)<sup>52</sup>. The suspension may be appealed to the President of Tribunals and reps may assist members in appealing against their suspension.<sup>53</sup> From July 2015 they must not robe or sit in their normal seat in church

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<sup>50</sup> Technically this is not a requirement, though all the information requested on the form must be provided. See Section 17(2) of the CDM rules 2005. There is no obvious advantage in not using the form.

<sup>51</sup> CDM rules S.17(3)

<sup>52</sup> CDM Code of Practice section 215

<sup>53</sup> CDM Code of Practice section 222

Preliminary Scrutiny

Member is sent details of the complaint - if there is a case to answer.

Member responds, admitting or denying its truth or partial truth.

Complainant is sent a copy of the response.

FORM 2 (Rule 17)

Clergy Discipline Measure 2003  
Respondent's answer to a Complaint

**IMPORTANT NOTICE: IF THIS ANSWER IS NOT RETURNED WITHIN 21 DAYS THE BISHOP /ARCHBISHOP MAY NONETHELESS PROCEED TO DETERMINE WHICH COURSE TO PURSUE UNDER THE MEASURE IN RESPECT OF THE COMPLAINT**

*\*Delete as appropriate.*

To the **\*Bishop/\*Archbishop** of .....

My full name is: .....

My contact address, including postcode, is: .....

My telephone number is: .....

*\*\*E-mail address optional.*

**\*\*My e-mail address is:** .....

My place of ministry is: .....

*Enter the name of the complainant and the date the complaint was made.*

I have read the complaint of: .....

dated: .....

*Please tick **one** box only, and enter reasons where appropriate.*

☐

**I admit the misconduct alleged in the complaint**

*or*

*If you admit part but not all the alleged misconduct, please state here the misconduct which is admitted.*

☐

**I admit the following misconduct alleged in the complaint:**

.....  
.....  
.....  
.....

**but deny the other alleged misconduct because:**

.....  
.....  
.....  
.....

*Briefly summarise your reasons for denying the other alleged misconduct.*

*or*

*Briefly summarise your reasons for denying the alleged misconduct.*

☐

**I deny the misconduct alleged in the complaint because:**

.....  
.....  
.....  
.....





**The written evidence in support of my answer is attached, and consists of the following statements and other documents:**

*You may provide evidence in support of your answer. This evidence could be your own signed statement, which can be set out in this form or be in a separate document attached to it. You can also attach signed statements from witnesses. All witness statements should be in form 3 of the Clergy Discipline Rules. Letters or other material such as photographs may be submitted if relevant.*

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....

*(Continue on a separate sheet if necessary)*

**I believe that the facts of my answer are true**

*You must sign your answer.*

**Signed:**

**Dated:**

## **CDM Flowcharts: The bishop decides.**

Once the response form has been completed the bishop may meet with the respondent and the complainant to help assess the evidence. The following letter from a diocesan registrar explains the process:

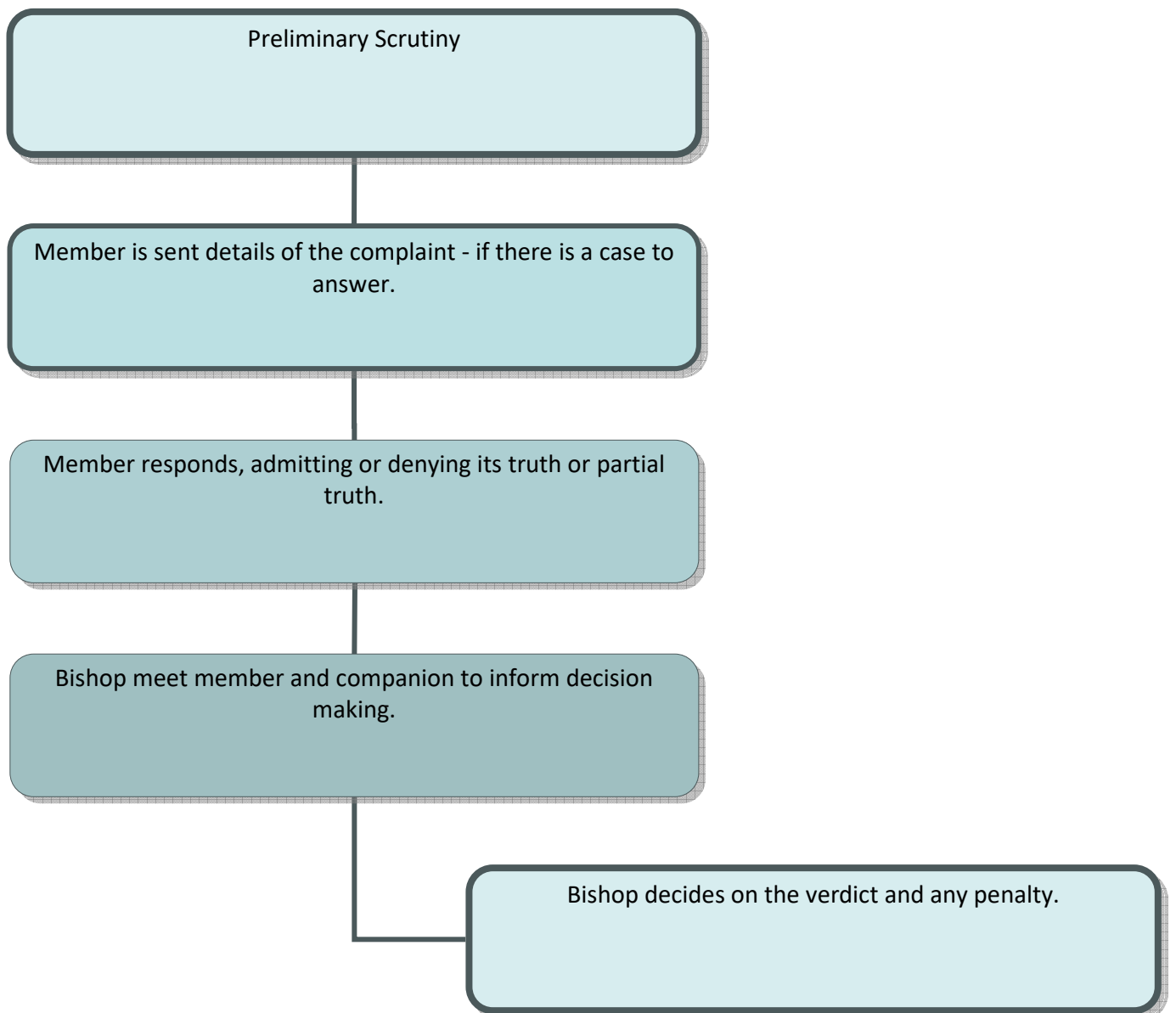
“If the Bishop concludes that an Answer should be filed by a Respondent to a complaint it is his practice to offer the opportunity to the Respondent to meet with him to discuss any issues raised in the documentation and to clarify any matters that he or indeed the parties wish to raise.

The meeting is recorded usually by me and the minutes of that meeting are circulated.

I must emphasise that the Bishop has not reached any conclusions or determination on the complaint nor has he decided that the complaint is well founded or a penalty is appropriate. After a meeting the Bishop may decide to take no action or he may offer a penalty which, as you are aware, can only be imposed with consent. The Bishop has accepted at the moment is that there is sufficient substance to require that an Answer to the complaint should be filed and that is all.

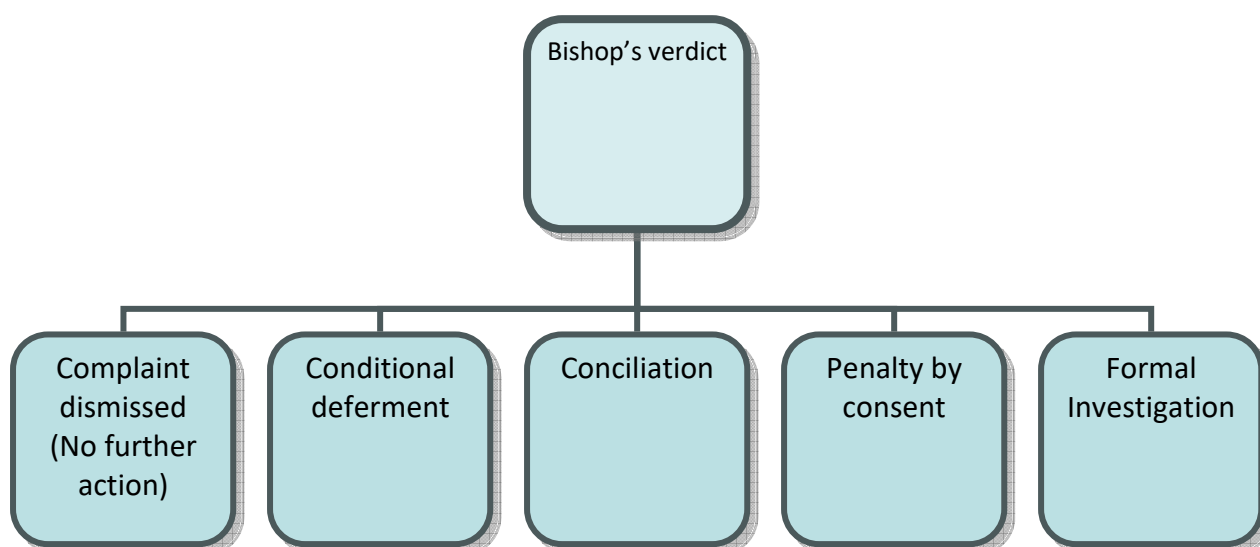
When I spoke to N. I emphasised that he is not compelled to attend a meeting with the Bishop but it is an opportunity to meet with the Bishop on the basis outlined above and that is all. I also said that he should not feel under any pressure to attend the meeting and of course he can be accompanied if he chose to do attend.”

The bishop, together with the diocesan registrar, may meet with the complainant and respondent to help him or her make up his or her mind. This is not a legal requirement for the bishop or the member, but if the member is invited to a meeting its purpose should be clear.



## CDM Flowcharts: The bishop's verdict.

Once the bishop has decided the verdict he or she decides whether a penalty is appropriate and what that penalty might be. This is communicated to the respondent in writing. The respondent may consent to any such penalty as is suggested or chance his or her luck on a tribunal. The bishop follows one of these courses of action: dismiss the complaint, issue a conditional deferment, suggest conciliation, suggest a penalty with the consent of the member, or proceed via a formal investigation to a tribunal.



### Penalties

Penalties by consent include the full range of penalties under the CDM and one or more of the following:

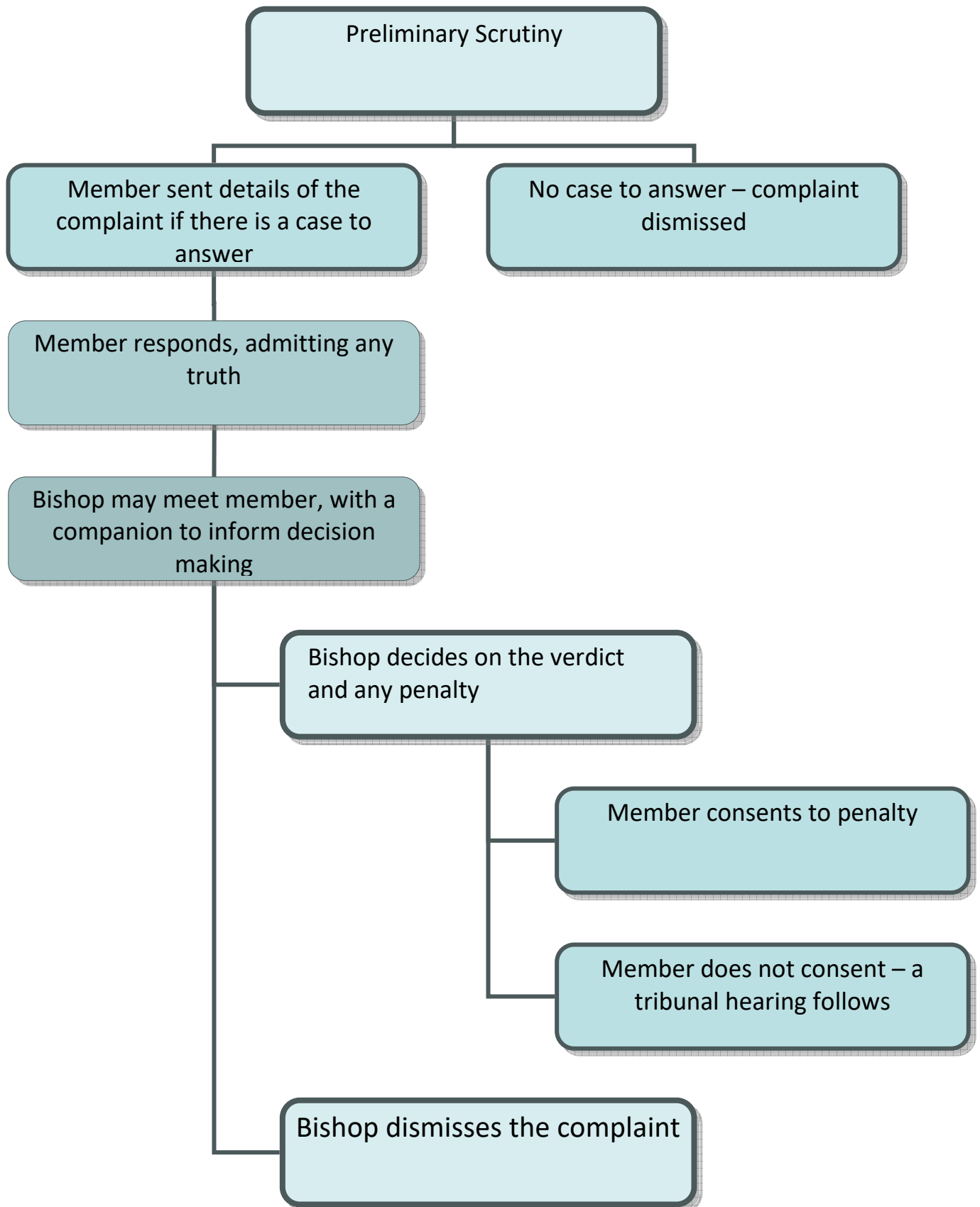
- (a) prohibition for life,
- (b) limited prohibition, that is to say prohibition for a specific time from exercising any of the functions of his Orders;
- (c) removal from office<sup>54</sup>
- (d) revocation of the licence;
- (e) injunction, that is to say, an order to do or to refrain from doing a specified act;
- (f) rebuke.

### Notes:

- **Reps should advise members not to accept a penalty of resignation by consent and or prohibition.**
- The bishop functions as judge and jury. Failure to admit misconduct, or failure to consent to the suggested penalty will lead to a formal investigation.
- Conditional deferment is a good result, if the complaint was valid, since it gives the member another chance, and if they avoid improper conduct for the requisite period (e.g. 5 years) the complaint will never be heard.

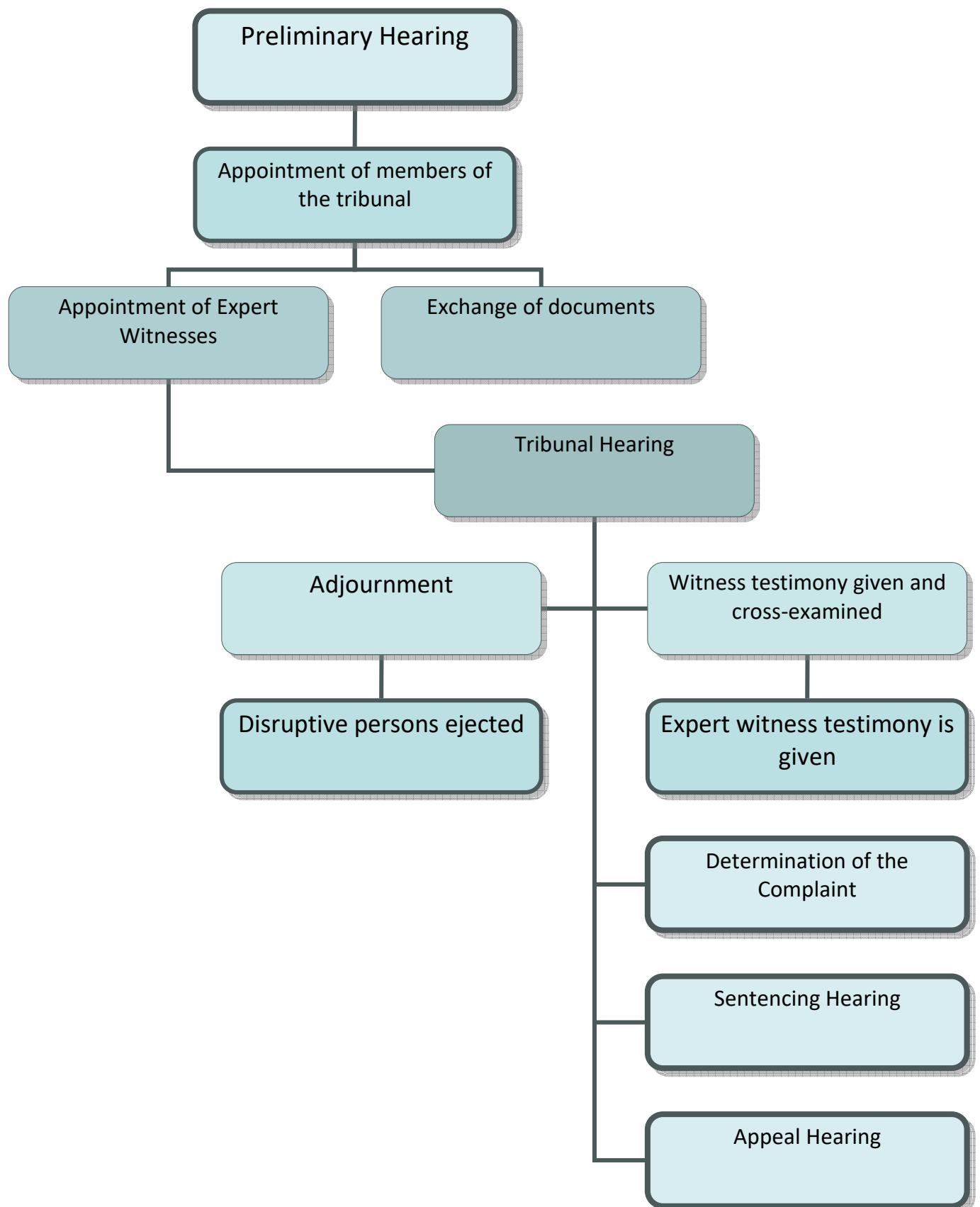
<sup>54</sup> In this instance the cleric and bishop both agree that the cleric should resign. CDM rules S.27(5).

## Summary of the CDM stages dealt with by the bishop.



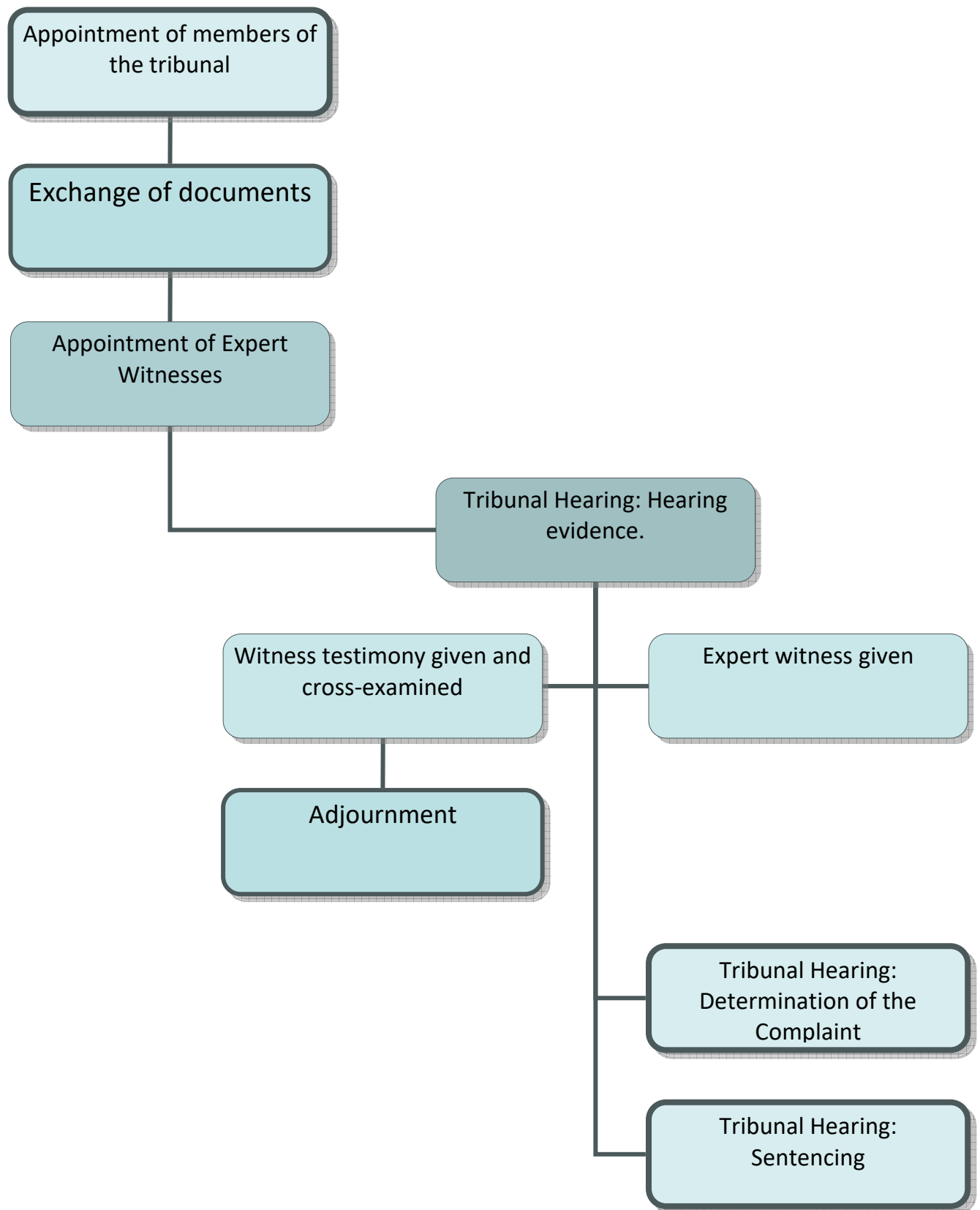
## Summary of the CDM stages dealt with by a tribunal.

(A) With separate preliminary, sentencing and appeal hearings.



## Summary of the CDM stages dealt with by a tribunal.

*(B) Without separate preliminary, sentencing and appeal hearings.*



## **Tribunal Proceedings**

**If the case does go to a tribunal advice should be sought from the relevant Unite regional officer and from EAD Solicitors.<sup>55</sup>**

The rep still has a role in ensuring that the case proceeds smoothly, advising our member and occasionally in advising the regional officer.

**In order to seek legal advice from Unite; the member will receive a legal assistance pack which may be adapted for the branch.**

**It is a condition of legal assistance being granted that members maintain membership** of the Union and that contributions are up to date. If our member fails to do so, legal assistance may be withdrawn or annulled.

If, after consideration of the case, the Union agrees to provide legal representation, it is on the following conditions:

- 1) that members provide all relevant information to the Union's solicitors or any expert instructed by them; that our member co-operates fully with them in preparing the case and that the member will act in accordance with their advice relating to the conduct and/or the settlement of proceedings. If the member fails to do any of these things or if they provide false or misleading information, the Union may withdraw any further legal representation or assistance or it may annul legal assistance completely;
- 2) that legal assistance may be withdrawn if it becomes apparent that the case does not have reasonable prospects of success or if there are other reasons why the Union considers that it is inappropriate or not in the interests of the wider membership of the Union to pursue the claim further;
- 3) the member is responsible for legal costs incurred in connection with the case but, as long as our member is covered by the Union's legal assistance, the Union will indemnify the member against those costs;

Members are free at any time to withdraw this authority but if they do so or if the Union withdraws or annuls its legal aid to the member, the Union's solicitors will be unable to continue to act for them. The member will then be free to instruct other solicitors to conduct the case but they will be responsible for their costs and the costs of any other party to the case which they may be ordered to pay.

If a solicitor is consulted, other than a union solicitor, the rep should notify the regional officer and the branch helpline and withdraw from the case.<sup>56</sup> The union will not pay for any solicitor other than one that is arranged by the regional officer.

## **The Purpose of a CDM tribunal hearing.**

The hearing shall be conducted "in the manner it considers most appropriate to the issues... and to the just handling of the complaint"<sup>57</sup>

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<sup>55</sup> This requires that the member is up to date with their subscriptions, has been a member for a month, and that it is not a pre-existing problem that predates their joining the union. See section eight for more details.

<sup>56</sup> This protects the union if bad advice is given by the member's solicitor.



## **The Stages of a CDM Complaint - The preliminary hearing.**

One or more preliminary hearings may be held "to identify the issues and give directions"<sup>58</sup>

## **The Stages of a CDM Complaint: Setting the date, time and place.**

After asking about the possible duration of the hearing the chair of the Tribunal will set a date, time and place, with not less than 14 days written notice to the complainant, the respondent and the Designated Officer.<sup>59</sup>

## **The Stages of a CDM Complaint: Exchange of documents.**

Before the tribunal a bundle is prepared which includes all the relevant documents. Witness statements and bundles of documents "intended to be relied upon in the final hearing"<sup>60</sup> shall be exchanged as directed prior to the hearing.

## **The Stages of a CDM Complaint: Agreeing an Expert Witness.**

Only a single joint expert witness is allowed except in exceptional circumstances, and that only with the permission from the chair of the tribunal or the "Registrar of Tribunals."<sup>61</sup>

## **The Stages of a CDM Complaint - The tribunal hearing.**

The tribunal follows the procedures of a criminal trial, and may include a preliminary hearing, a tribunal hearing and sentencing hearing, but instead of a jury of peers there is a panel of a judge, and two clergy and two lay representatives from the same province.<sup>62</sup>

- The respondent may be legally represented.<sup>63</sup>
- The hearing may be adjourned "from time to time if necessary"<sup>64</sup>
- The permission of the tribunal is required to attend hearings in private except for the complainant's legal representatives.<sup>65</sup>
- Failure to attend will not prevent the hearing from continuing.<sup>66</sup>
- More than one complaint against a respondent may be considered at the same hearing, though not all parts of a complaint need be considered at the same hearing.<sup>67</sup>
- Witness testimony is given under oath and recorded.<sup>68</sup>

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<sup>57</sup> CDM Rules S.39

<sup>58</sup> CRM Rules S.30

<sup>59</sup> CDM Rules S.38

<sup>60</sup> CDM Rules S.33(1)(b)

<sup>61</sup> CDM Rules S.36

<sup>62</sup> Some might consider that this is a jury of peers.

<sup>63</sup> CDM Rules S.30(4)

<sup>64</sup> CDM Rules S.40

<sup>65</sup> CDM Rules S.47

<sup>66</sup> CDM Rules S.42

<sup>67</sup> CDM Rules S.33(1)(i-l).

<sup>68</sup> CDM Rules S.45

- "At the hearing, subject to rules 35, 36 and 39, the complainant and the respondent are entitled to give evidence, and the Designated Officer and the respondent are entitled to call witnesses, to question any witnesses who give oral evidence, and to address the tribunal on evidence, the law and on the issues generally."<sup>69</sup>
- Witnesses, including expert witnesses, may be required to attend.<sup>70</sup>
- Disruptive" persons may be excluded - including those who threaten to disrupt proceedings - as may those who "interfere with the administration of justice."<sup>71</sup>
- The verdict and sentence may be given at the end of the tribunal hearing.

At the hearing the prosecution team will give an opening statement, followed by an opening statement by the defence, then the prosecution will outline their case, which can be cross-examined by the defence, then the defence outline their case, and are cross-examined by the prosecution, then closing statements are made by the prosecution and the defence. Witnesses may be called as part of either case.<sup>7273</sup>

## Amendments to the complaint.

Note that the accusation can be amended during the tribunal<sup>74</sup>, for example an accusation of adultery can be amended to that of an improper and intimate relationship.

### Example under paragraph 6 of the Practice Direction:

*The following allegation of misconduct is referred to the tribunal: that the alleged conduct of the respondent was unbecoming or inappropriate to the office and work of a clerk in Holy Orders in that he had an adulterous relationship with [name], a married parishioner, between about 1<sup>st</sup> January 2007 and 31<sup>st</sup> December 2007 .*

If the evidence adduced falls short of proving adultery with the named parishioner, but proves that there was nonetheless a close relationship with the married parishioner which was unbecoming or inappropriate within the meaning of s8(1)(c) of the Measure, provided the test in paragraph 7 of the Practice Direction is satisfied the Registrar or Chair may direct that the particulars describing the relationship be amended to meet the circumstances of the case by substituting 'unprofessional and intimate' for 'adulterous'.

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This is very difficult to defend against, since the member may have admitted some behaviour which amounts to an intimate relationship whilst denying adultery.

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<sup>69</sup> CDM Rules S.44

<sup>70</sup> CDM Rules S.46

<sup>71</sup> CDM Rules S.48

<sup>72</sup> CDM Code of Practice Section 191

<sup>73</sup> Not all witnesses will be called, and if this were a trial this might call into question the human right to a fair trial.

<sup>74</sup> Practice Direction 2, 21/5/2008. <https://www.churchofengland.org/media/51369/pd2.rtf>

<sup>75</sup> <https://www.churchofengland.org/media/51369/pd2.rtf>

The hearing panel then make their decision on guilt which may take place at the end of the tribunal hearing or in a separate determination hearing. If the respondent is found guilty then the sentence is pronounced either during the tribunal hearing or at the sentencing hearing.

### **The Stages of a CDM Complaint - The determination hearing.**

The verdict may be given separately or may be given at the end of the tribunal hearing itself.

### **The Stages of a CDM Complaint - The sentencing hearing.**

The sentencing hearing may be dispensed with in favour of dealing with sentencing in the tribunal hearing along with the determination.

## Arguing Mitigation.

After the determination, and at the sentencing stage, the rep and the defence counsel still have some work to do in arguing for mitigating factors. It is important that anything that could have had any bearing on the case should be considered.

The following areas might be considered:

- Physical or mental ill-health or disability<sup>76</sup>;
- Domestic worries, for example marital difficulties or caring responsibilities;
- Money worries<sup>77</sup>;
- Personality clashes;
- Discrimination or harassment<sup>78</sup>;
- Boredom or inactivity at work;
- Incompatibility;
- Problems with pay, pension, housing, holidays;
- Poor supervision or training;
- Misunderstanding of instructions;
- Inconsistent application of rules.

Note that documentary evidence should be provided where possible.

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<sup>76</sup> Fit notes from the GP, or psychiatrist would be needed

<sup>77</sup> Bank or credit card statements would be evidence of this

<sup>78</sup> Police crime reference numbers and copies of statements to the police would evidence harassment or discrimination

## Section Four- Allegations of Criminal behaviour.

CDM complaints that allege criminal behaviour are challenging for both member and rep. The CDM code of practice gives the following guidelines<sup>79</sup>:

“59. Any criminal matters should be investigated and resolved by the relevant secular authorities (e.g. the police, child protection agencies, the Inland Revenue) before any related disciplinary proceedings under the Measure are resolved.

60. If a complaint is made to the bishop which concerns<sup>80</sup> serious<sup>81</sup> criminal conduct, but no one has so far alerted the secular authorities, the bishop should encourage the complainant to report the matter to the appropriate authority. The bishop should also indicate that if the complainant does not produce within 14 days written confirmation from the appropriate authority that it has been reported, then it would be the bishop’s duty as a member of the public to report it.

61. If a complaint is made against a priest or deacon concerning matters in connection with which he or she has already been arrested on suspicion of committing a criminal offence, it would normally be appropriate to await the outcome of any criminal proceedings before dealing with the complaint.”<sup>82</sup>

Section 9(1A) of the CDM Rules specifies that a CDM complaint may be delayed: “Where a complaint alleges misconduct which might constitute a criminal offence, the acknowledgment shall state that resolution of the complaint under the Measure may be postponed to await the outcome of police or other investigations.”

It is not a rep’s responsibility to inform the police, but note the obligation in section 60 upon the bishop as a member of the public to report serious criminal conduct to the appropriate authority. If a CDM case is lodged which includes an allegation of serious criminal behaviour the member can expect the matter to be reported to the police by the complainant or by the bishop.

The consequence of this is likely to be the suspension of the CDM proceedings until the criminal investigation and possible trial is concluded. The bishop may suspend the cleric if they are arrested<sup>83</sup> and the cleric has a responsibility to inform the bishop within 28 days that they have been arrested.<sup>84</sup>

Note that being interviewed by the police in connection to an allegation is not the same as being arrested, and being arrested is not the same as being charged with an offence let alone with being convicted.

A CDM process **can** proceed at the same time as criminal proceedings:

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<sup>79</sup> Note the contradiction between paragraphs 59 and 60.

<sup>80</sup> Should the section read ‘alleged’ serious criminal conduct? Not to include ‘alleged’ appears to be prejudicial to the case.

<sup>81</sup> Serious is not defined here, but examples are given: “e.g. drug trafficking offences, terrorist activity, corruption, tax evasion, burglary and theft, fraud, forgery, and counterfeiting, product piracy, illegal deposit taking, blackmail and extortion,” Guidance to the Money Laundering Regulations 1993 (SI 1993/1933). A serious crime may be one for which a lengthy custodial sentence is the norm, and this includes murder and manslaughter, drug offences, sexual offences, terrorism offences and people trafficking. The Church’s definition will vary according to the judgement of the Registrar concerned.

<sup>82</sup> CDM Code of Practice Sections 59-61.

<sup>83</sup> CDM Code of Practice Sections 109

<sup>84</sup> CDM Code of Practice Sections 168

“At times, it is necessary to steer CDM in the midst of complex parallel proceedings of a civil<sup>85</sup> or criminal jurisdiction”<sup>86</sup>

**but** this is rarely good practice and reps should try to ensure that this does not happen because of the additional pressure upon clergy which almost guarantees that the process will be unfair, and the cleric disadvantaged in each jurisdiction – civil or criminal and ecclesiastical.

Reps can ask for the CDM process to be suspended pending the outcome of civil or criminal proceedings, in the interests of justice and the member’s human right to a fair trial. The member may end up suspended for longer, if the CDM process is put on hold, but the delay is in the interests of justice and there is no harm in asking. This suggestion could be better coming from a union solicitor, but it is worth making in any case.

The burden of proof at a criminal trial is higher than that at a CDM hearing, and acquittal in a criminal trial is by no means a guarantee of acquittal in a CDM tribunal. Section 167 of the Code of Practice gives two examples of this, one involving acquittal for theft:

“In a criminal trial for theft of money from the church collection plate, a priest or deacon could admit taking the money, but contend that it was to meet an urgent personal debt and that the money was going to be paid back when he or she was able to do so. If the prosecution results in an acquittal, a complaint under the Measure alleging theft by the respondent may well not succeed. However, a complaint made by a churchwarden that, in breach of trust, the priest or deacon had used the church’s money for private purposes, would succeed under the Measure.”

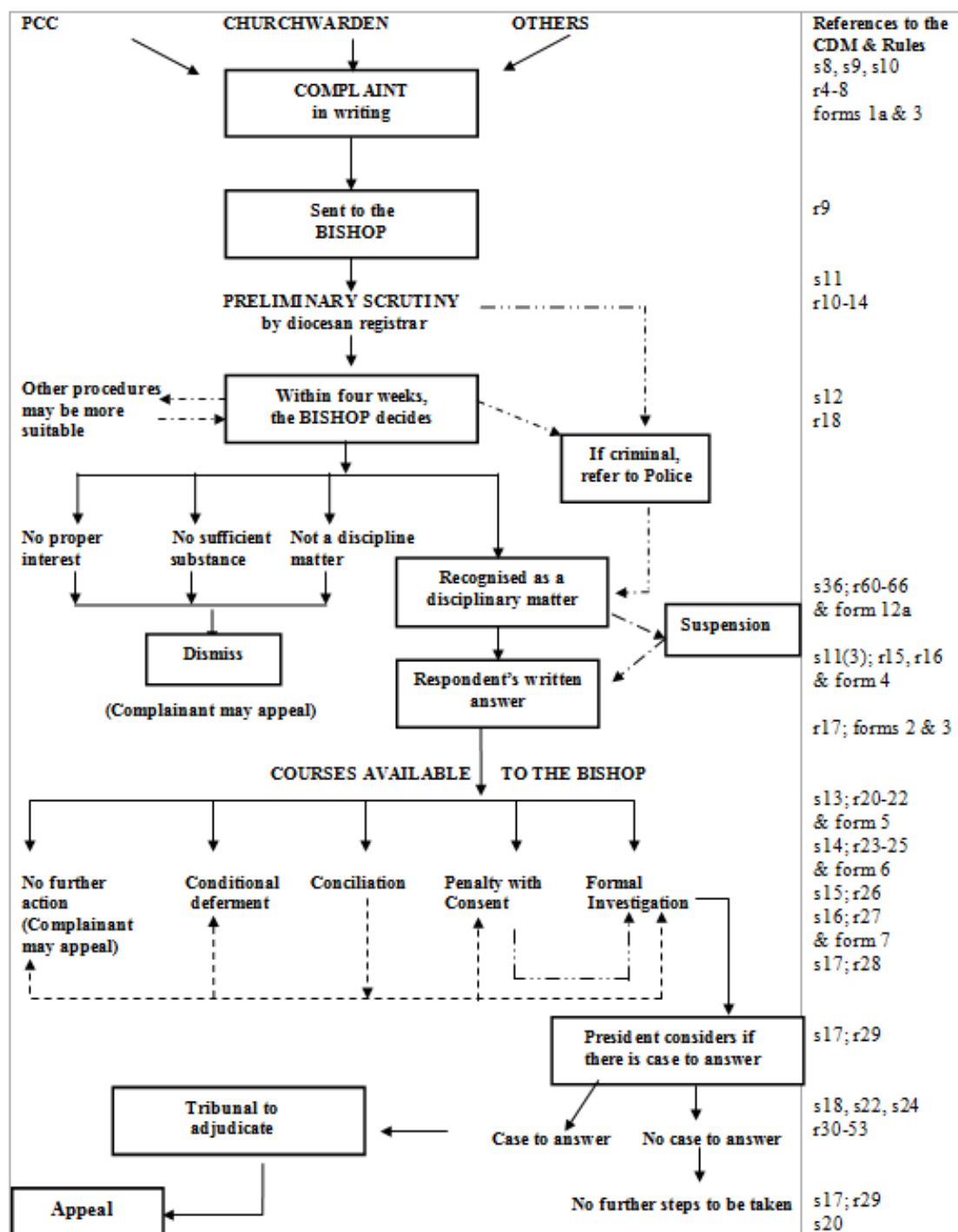
Case law is as important in establishing precedent in canon law as it is in civil law.

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<sup>85</sup> Divorce proceedings on the grounds of adultery, abandonment or unreasonable behaviour may give rise to a simultaneous CDM complaint.

<sup>86</sup> <http://eurobishop.blogspot.co.uk/2010/01/word-about-clergy-discipline-measure.html>

## Section Five - C. of E. diagram of the CDM.



## Section Six – C. of E. Introduction to the CDM.<sup>87</sup>

### Making a complaint

The disciplinary process is started by a formal written complaint<sup>88</sup> of misconduct, which is made to the bishop (or archbishop, as the case may be).<sup>89</sup> There are four grounds on which misconduct may be alleged, namely: acting in breach of ecclesiastical law; failing to do something which should have been done under ecclesiastical law; neglecting to perform or being inefficient in performing the duties of office; or engaging in conduct that is unbecoming or inappropriate to the office and work of the clergy.

The complainant must produce written evidence in support of the complaint, and verify the complaint by a statement of truth. The complaint and evidence in support are referred by the bishop to the diocesan registrar<sup>90</sup> for advice on (1) whether the complainant has a proper interest in making the complaint, and (2) whether the allegations are of sufficient substance to justify proceedings under the Measure. This is the 'preliminary scrutiny' stage.

### Bishop's decision

Having received the registrar's advice, the bishop may decide that it should be dismissed, in which case it will proceed no further under the Measure. If on the other hand the bishop considers that the complainant has a proper interest in complaining and that the complaint deserves further consideration, he will invite the priest or deacon about whom the complaint is made ('the respondent'), to send a written answer verified by a statement of truth, together with evidence in support. The bishop will then decide which of five possible courses of action available to him under the Measure is the appropriate one to pursue<sup>91</sup>. He<sup>92</sup> can:

1. take no further action;
2. record the complaint conditionally for a period of up to five years, such that if another complaint is made within that time and is dealt with under paragraphs c, d or e below, the two complaints may then be dealt with together;
3. refer the complaint to a conciliator in an attempt to obtain agreement between the complainant and the respondent as to how the complaint should be resolved;
4. impose a disciplinary penalty (but only with the consent of the respondent); or
5. require the complaint to be formally investigated by the Designated Officer, a barrister employed in the Church of England Legal Office.

### Bishop's disciplinary tribunal

The vast majority of cases will be dealt with by the bishop of the relevant diocese. In the small minority of cases where the Designated Officer is asked to investigate, a report will be produced for the President of Tribunals, who will then decide whether there is a case to answer before a bishop's disciplinary tribunal. Tribunals consist of two members in Holy Orders and two communicant lay members, plus an experienced lawyer in the chair. If a complaint is proved, the tribunal can impose the same range of penalties that a bishop can impose by consent, ranging from a rebuke to lifelong prohibition from exercising any ministerial functions.

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<sup>87</sup> <https://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline/cdmprocess.aspx>

<sup>88</sup> Who can complain? Only four grounds give someone the right to complain: a witness to the behaviour, a Churchwarden, a Church Council member designated by the PCC to complain, and the Archdeacon.

<sup>89</sup> If an oral complaint is made, or if the complaint is not made on the proper form they may be invited to complete their complaint in writing on the proper form so that it can be considered.

<sup>90</sup> The diocesan registrar can and may refer the matter to another diocesan registrar for consideration, and this is regularly done where the registrar knows the member and could be accused of bias.

<sup>91</sup> He/she can also ask to meet with the respondent before a decision is made.

<sup>92</sup> Or she



## **The Archbishops' list**

Where a penalty is imposed under the Measure, either by the bishop or by the bishop's disciplinary tribunal, it will be recorded in the Archbishops' list, which is maintained at Lambeth Palace. The respondent will be informed of the particulars to be recorded, and may request the President of Tribunals to review the entry.

## **Proceedings in secular courts**

The Measure provides a separate procedure under which a member of the clergy who commits a criminal offence may be liable to a penalty of removal from office, or prohibition from exercising any functions. A similar procedure is available if a respondent has had a decree of divorce<sup>93</sup> or an order of judicial separation made against him or her and has committed adultery, behaved unreasonably or deserted the former spouse.

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<sup>93</sup> See section 170 of the Code of Practice: "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"

## Section Seven - C. of E. guide for Clergy (annotated).

### A complaint has been made about me – what happens now?

#### Introduction

As befitting their calling, clergy are expected to maintain high standards of conduct<sup>94</sup> and behaviour at all times. From time to time, however, there may be occasions when individuals appear to fall below those standards. Sometimes this can lead to a complaint being made by members of the church community or the public if they have a proper interest. The purpose of this leaflet is to provide you with some preliminary help and guidance if you are the subject of a complaint, whether informal or formal, genuine or unfounded.

#### Informal complaints

Two sorts of complaint, the informal and the formal, may be made against members of the clergy. An informal complaint, which may be made orally or in writing, is likely to relate to alleged misconduct that is not serious. The person making the complaint may have no wish to invoke formal procedures. You should nonetheless take the complaint seriously and deal with it promptly, since delay can often exacerbate a problem.

You should be prepared to offer an explanation for your actions, and where appropriate an apology. An offer to meet and discuss the complaint may be helpful<sup>95</sup>, and it might be advisable to arrange such a meeting in the presence of a third party<sup>96</sup> (who should of course be acceptable to both you and the person making the complaint). Although you and the complainant are free to choose whomever you wish, you may wish to consider your rural or area dean or the lay chair of your deanery synod in this capacity.

#### Formal complaints

The remainder of this leaflet deals with formal complaints made under the Clergy Discipline Measure 2003, and is intended as introductory guidance only. It is no substitute either for the detailed information provided in the Code of Practice, or for independent professional legal advice. The Code, the Measure, the Rules (including all the standard forms) and other supporting material are available on the Church of England website: <http://www.churchofengland.org/about-us/structure/churchlawlegis/clergydiscipline.aspx> If you are unable to access the website, you can contact the Bishop's office for help in obtaining these documents.

Formal complaints, in contrast to informal complaints, must be made in writing, and follow the procedures laid down under the Clergy Discipline Measure. The Measure is intended for dealing with allegations of serious misconduct only. Just because a formal complaint has been made against you does NOT mean that you have committed misconduct or that the Bishop will assume that you have. Experience shows that many complaints are without substance, but whatever happens, the Bishop will ensure that throughout the process you are not on your own and that you will receive appropriate pastoral care and support. A complaint cannot be brought more than one year after the alleged misconduct unless the complainant has first obtained permission from the President of Tribunals; if this applies in your case, the President will consult you before making a decision whether or not to allow the complaint to be made.

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<sup>94</sup> See for example the professional code of conduct for clergy second edition.

<sup>95</sup> Clergy who have been the victims of bullying harassment or discrimination should never meet the perpetrator if they have made a CDM complaint against them. It would be unwise to meet the complainant except through a process of mediation (e.g. through ACAS, or through another independent intermediary).

<sup>96</sup> Clergy who have had complaints made against them (even informal complaints) would be badly advised to meet the complainant on their own as they would be making themselves vulnerable, especially if the complaint is one of sexual misconduct or similar.

## Who will provide pastoral care and support?

A formal complaint under the Measure can be stressful for all parties concerned and you will understandably experience a range of emotions. Your family may also be affected. As a matter of priority the Bishop will ensure that you receive appropriate care and support. Because the Bishop has a central role under the Measure in the administration of discipline and must be seen to be impartial, he cannot personally provide pastoral care and support for you whilst formal proceedings are under way, but he will make sure that suitable arrangements are made for your care and support which are acceptable to you, and also for the care and support of your family. Any pastor appointed by the Bishop will be specifically acting on his behalf, but all pastoral care and support will be completely confidential, so nothing discussed in a pastoral meeting will be reported back to the Bishop without your consent.

You may of course wish to turn to family, close friends or fellow clergy for additional informal support. It is worth bearing in mind the obvious point that the more people you tell about a complaint, the greater the danger of confidences being breached and stories getting distorted.<sup>97</sup>

## Who can provide legal advice?

If you are asked to respond to a complaint (or to an application for permission to make a complaint) you are strongly recommended to seek legal advice before you do respond.<sup>98</sup> Because the Diocesan Registrar acts as the Bishop's legal adviser in matters relating to the Measure and in particular to potential complaints under it, he or she will not be able to advise you but instead can provide you with contact details of Registrars in neighbouring dioceses who can advise you. You can also obtain such details from the Secretary to the Church of England Legal Aid Commission<sup>99</sup> (see below), *or alternatively you could seek independent legal advice from a solicitor in private practice.*<sup>100</sup>

If you are asked by the bishop to respond to a complaint under the Measure, legal aid may be available from the Church, subject to financial assessment and certain restrictions. The Secretary to the Legal Aid Commission will be able to advise you on eligibility and how to apply. It is important that you contact the Secretary at the earliest opportunity, because legal aid certificates cannot be backdated.

If you are a member of a union you may also wish to explore the possibility of obtaining legal, financial or other assistance from the union.

## What should I do?

You will be notified in writing by the Diocesan Registrar if a formal complaint is made against you. Your first response should be to compile a file with written details of the complaint and any correspondence or other relevant information. The Registrar will provide you with copies of the complaint and evidence in support, but you do not need to answer the complaint at this stage: the Bishop may decide that the complaint should be dismissed, in which case it will proceed no further under the Measure. The alleged misconduct<sup>101</sup> giving rise to a formal complaint must constitute one or more of the following:

- i. an act in breach of ecclesiastical law;
- ii. a failure to do an act required by ecclesiastical law;
- iii. neglect or inefficiency in the performance of the duties of office;
- iv. conduct unbecoming or inappropriate to the office and work of the clergy.

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<sup>97</sup> Hmm, what's their motivation for saying this? Damage limitation?

<sup>98</sup> Since you can end up on the dole, and homeless because of a vexatious complaint which is mismanaged.

<sup>99</sup> This may be taxable..

<sup>100</sup> How many clergy can afford that?

<sup>101</sup> "Complaints concerning matters of doctrine, ritual or ceremonial are not dealt with under the 2003 Measure, but continue to be subject to the provisions of the Ecclesiastical Jurisdiction Measure 1963."

The Registrar will usually scrutinise the complaint within 28<sup>102</sup> days and advise the Bishop in writing as to whether the person bringing the complaint is eligible to do so, and whether the alleged misconduct is sufficiently serious to warrant disciplinary proceedings under the Measure. Upon receipt of that written report, the Bishop will decide whether or not to dismiss the complaint. Where the Bishop does not dismiss the complaint but decides that it should proceed to the next stage, he will write to you and ask you to answer the complaint within 21 days. You may request the Bishop to allow more time if you need it.

### **How do I answer a formal complaint?**

Your answer to the complaint should be in writing on Form 2, containing a signed statement of truth and detailing which allegations are contested by you and which are not. Any witness statements should be submitted on Form 3 at the same time as your answer, and accompanied by any further evidence such as photographs or literature. Remember, you are strongly recommended to seek legal advice before submitting your answer.

### **Completing the forms**

The standard forms all contain helpful guidance notes in the margin and these should be read and followed carefully. You may find the following additional advice useful:

- before doing anything else, collect all your evidence together;
- group the evidence together in order of date and time;
- prepare a first draft of your answer and statement in your own words;
- write in paragraphs numbered consecutively and in date and time order;
- state if parts of your statement are not within your own personal knowledge (for example because you have been told about them by someone else) and, if so, identify the sources of your information;
- if you accept any part of the complaint you should provide details of anything that may help to explain or mitigate your actions;
- read your draft over and then put it to one side for several hours or longer to give you time to reflect on what you have written;
- return to your draft and re-read it. Make any necessary alterations so that it is as accurate as you can make it;
- complete the final version of the answer and statement, copying from the draft;
- make sure all the evidence you want to rely on is attached to your answer and statement (for example, statements in support from other people, or copies of letters or emails);
- keep a copy of your answer and evidence in support.

If you need help to complete the forms please contact one of the diocesan volunteers appointed to provide free confidential assistance. However, please note that the diocesan volunteers are not acting in a legal capacity and will not be able to give you legal advice or advise you on the merits of your answer or on the seriousness or implications of the complaint. Such advice must be obtained from your legal adviser.

### **What happens next?**

When you are ready, your answer and all supporting evidence should be sent to the Bishop. The Bishop may wish to meet you and your adviser to talk about the complaint and your answer. If he considers that the misconduct is of a minor or technical nature or that there was no misconduct at all he may decide to take no further action. Alternatively, and only with your consent:

the complaint could be conditionally deferred for up to five years; this means that if no other valid complaint is made during that time then no further action will be taken;

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<sup>102</sup> This is usually, but not always, the case. This waiting is very difficult for the member.

- the complaint could be referred to a qualified conciliator to see if it can be resolved by agreement between you and the complainant;
- one or more of the following penalties could be imposed: a rebuke, an injunction, revocation of any licence you have to serve in the diocese, removal from any preferment you hold, prohibition from ministry for a specific time or prohibition for life.

If the Bishop considered a complaint could not be dealt with satisfactorily by any of these means he could refer it for formal investigation by the Designated Officer. The Designated Officer would look into the complaint and prepare a report for the President of Tribunals, who would decide if the complaint should be heard by a Bishop's Disciplinary Tribunal. A tribunal would consist of five members from outside the diocese, with a legally qualified chair, two members of the clergy and two communicant lay members. It would hear evidence from both sides before making a decision, and if it concluded that the complaint was proved then it could impose penalties similar to those above. If the President decided that the complaint should not be heard by a tribunal, then no further action would be taken on it under the Measure.

## Section Eight – Unite Legal Support and C of E Legal Aid

### Unite Legal Support.

Members are entitled to legal support from Unite if they have been members for 1 month and if it is not a pre-existing problem. They also need to be up to date with their membership subscription. A union solicitor will normally be appointed at the Tribunal Stage only.

### Church of England Legal Aid.

If the member does **not** qualify for Unite legal aid then - and **only** then – s/he should apply for legal aid from the C of E. It may be taxable, so it is best to go with Unite's legal service which is not taxable.

Official Instructions below:

“Clergy who are the subject of disciplinary proceedings under the Clergy Discipline Measure 2003 or who are party to certain other proceedings before Church courts and tribunals are eligible to apply for financial assistance towards their legal costs from the Legal Aid Fund established under the Church of England (Legal Aid) Measure 1994. Further details about the proceedings for which legal aid is available can be found [here](#).

Grants from the Legal Aid Fund are discretionary and decisions are made by the Legal Aid Commission. The Commission will have regard to all the circumstances of the case and, in particular, is required to consider the following:

- the financial resources of the applicant and his or her spouse or civil partner; and
- whether the applicant has a reasonable case for taking or defending the proceedings (as the case may be).

A copy of the application form for legal aid, including further details of the grant-making process, can be downloaded [here](#). When completed, the form should be sent to the Secretary to the Legal Aid Commission, Mr Stephen York, at the Legal Office, Church House, Great Smith Street, London SW1P 3AZ (email [stephen.york@churchofengland.org](mailto:stephen.york@churchofengland.org)). The form may be returned by email provided that a signed copy is also sent by post.

If you have any questions about the application form or any other aspect of the legal aid process, you are most welcome to contact the Secretary by email or telephone (+44 (0)20 7898 1703).”

Officially the role of a rep does **not** include giving emotional support, but reps who are appropriately trained and supervised may wish to offer a member some pastoral care, or to accompany them to a CDM tribunal hearing to support them even if a Unite solicitor or regional officer is managing the case. The rep should make clear that they are not running the member’s case.





## **Members' Guide to the Church of England Clergy Discipline Measure.**

3<sup>rd</sup> Edition © Adrian Judd/ Unite the Union, 2019



Dear Colleague,

Unite the Union is sorry to hear that you have had a CDM complaint made against you. This can be a very worrying time and it can be hard to remember all that is said to you. This guide is designed to help you at this uncertain time. CDM cases can be separated into two categories: serious allegations which could go to a tribunal (in the worst cases); and trivial matters, which probably won't get beyond the first informal stage of the CDM. This guide is designed to help you respond to any allegations made against you but is secondary to the advice which will be given to you by your accredited representative. This short guide should be read in conjunction with the advice that you get from your rep who will accompany you to formal meetings with management.

## **Do not resign.**

Never get out of the boat – don't resign; don't say you will move; don't say you will resign; and don't say you will look for another post. Don't resign – you are not in the best position to decide what penalty is appropriate, even if you are guilty of misconduct.

## **Your rep will advise you not to resign - even as a penalty by consent.**

I have heard of people going to see their bishop for an investigation meeting and being presented with a deed of resignation, and feeling forced into signing it. This is inappropriate. The process is in place to ensure that justice is done for all parties, and this includes you. Do not resign, do not say you will resign, and do not say that you will move out of the vicarage/ rectory/ deanery etc. Tell your rep if the bishop or archdeacon presents you with a deed of resignation at the investigation meeting, or at any other time prior to a meeting with the bishop and registrar to discuss possible penalties. This would be something that Unite would wish to discuss with the Church of England at the highest level.

## **Do not go to your bishop and make a confession**

Do not make a confession to your bishop. That would not be helpful to you or to your bishop. It will limit how the truth is portrayed and because you are under stress this could cause you additional problems. If asked questions about your case prior to receiving a "Form 2" (see the next section for what this looks like), be wary of doing so unless you have an accredited representative present, which is your right under the Code of Practice. Your rep is best placed to advise you how to present your case, not least because they are trained to recognise some of the additional factors which could be used as mitigation and because they know at what stage to present these.

## **Keep good records**

In the meantime, keep good records of conversations, emails, letters etc. from the diocesan registrar as your accredited representative will need to see these. Prepare a timeline of what happened when and who was involved – with names of bishops, archdeacons, other clergy, wardens, P.C.C. members as appropriate and as mentioned on the timeline or in the complaint.

## **Do not appoint a solicitor**

You may feel that you need to engage your own solicitor at the initial stages of a CDM complaint but Unite accredited representatives can assist in completing the response forms and letting you know what might happen next. A union solicitor would normally be provided by Unite at the Tribunal stage of the CDM.<sup>103</sup> If you choose to engage your own solicitor that would be as an alternative to being represented by the union and Unite would not be able to support you further and would have to withdraw from your case. Not all solicitors are experienced in canon law and you may incur unnecessary expenses.

## **If you wish to appoint your own solicitor read the information from your bishop very carefully and investigate at what stage legal aid from the Church of England may be available**

Although legal aid from the Church of England may be available to you, this can not be approved retrospectively, so you could end up incurring significant cost thinking that it would be reimbursed, but this is not how it works. Therefore, Unite the Union thinks that you do not need to consult a solicitor at this stage.

## **Your accredited representative**

Rely instead on your accredited representative whose details are below:

Name:

Email:

Phone number:

He/she will want to either meet you or talk with you before you complete your response form, and you are advised to listen carefully to the advice that you are given. Your responsibility to keep the matter confidential does not apply to your rep or union solicitor.

## **Pastoral Support**

Pastoral support will be available from the individual designated by your diocesan bishop. This should be confidential, but you may wish to get reassurance in writing from them that confidentiality will be respected. Pastoral support is also available from the Sheldon Hub forums, one of which is for people who have a CDM complaint against them.<sup>104</sup> It is not within the role of a rep to give pastoral support, though some may do so.

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<sup>103</sup> You must be a member in good standing of one month's membership or longer and it must not be a pre-existing issue.

<sup>104</sup> <https://www.sheldonthub.org/>

## **Confidentiality matters:**

### **Family, CECA Rep, and GP**

You should discuss your CDM case with your spouse if you have one. It will be difficult to discuss it with your spouse, but easier than doing so once the CDM complaint reaches a later stage. You should feel free to discuss it with your GP or psychiatrist, psychologist, or counsellor.

### **Friends**

You should keep the matter confidential and should not discuss it with 'friends' in the parish. Neighbouring clergy *might* be considered friends and capable of keeping the matter confidential, but identifying who you can trust in this situation is not easy.

### **Confidentiality has limitations**

Although you are advised to keep the matter confidential, your own interests should be paramount. Do not assume that if you keep matters confidential that the archdeacon or bishop will. Instances of an archdeacon going to Church and announcing that a complaint has been made against the vicar are not unknown, and they may even solicit complaints against you when making that announcement.

### **Penalties by consent and tribunal findings may be published**

In addition to this you need to be aware that some dioceses publish CDM judgements made by the bishop on their websites, and that CDM tribunals always publish their judgements. In addition to this, your response may be shared with the complainant, and there is no guarantee that they will keep the matter confidential.

### **Living in the vicarage and stipend**

You have the right to continue living in the tied accommodation that comes with your post. You will also be continued to be paid stipend as previously, from the first investigation meeting all the way through, until the date of your resignation coming into effect, or until your removal from office (if that happens). Stipend is not payable once you have resigned or after you have been removed from office. There is a short period of grace during which you, and/ or your family may still live in the vicarage etc, but you can not continue to live in the tied accommodation if you do not hold the office to which it is tied. It will be needed for your successor. For example, you will not be able to rent the vicarage or live in it free of charge if you are no longer the vicar.

## **References for secular posts**

A reference for a secular post may or may not be available. If you are suspended from your clerical post, or have been asked to 'step back from ministry', then you may not be in a position to accept a job (though this is a technical area and it depends on individual circumstances – accepting a job as a school crossing patrol person would be a disciplinary matter in its own right).

## **References for clerical posts**

The CCSL (Clergy Current Status Letter) required to be sent from your bishop as part of a reference for any post that requires a licence or Permission to Officiate, asks the bishop to declare whether a Capability Procedure, Safeguarding matter, or CDM complaint has been made against you and is pending action.

## **What if I have already resigned and accepted another clerical job?**

You may have to ask permission to withdraw your resignation from your current post (if applicable) and your acceptance of a new post (if appointed but not yet licensed). The usual advice given is not to resign, but if you are in between appointments when the CDM complaint is made, your position may be very difficult indeed. Bishops have been known to allow members to withdraw their resignation from their current post, so that the CDM complaint can be heard, though it will necessarily also involve withdrawing acceptance of a new clerical post.

If you are part of a married clergy couple / couple in civil partnership, take advice from your accredited representative if you find yourself in this position.

## **A final reminder:**

**Do not resign, do not say you will resign, do not say you will move or look for another job.**

The following pages are from the Church of England and are presented here to assist you

FORM 2 (Rule 17)

Clergy Discipline Measure 2003  
Respondent's answer to a Complaint

**IMPORTANT NOTICE: IF THIS ANSWER IS NOT RETURNED WITHIN 21 DAYS THE BISHOP /ARCHBISHOP MAY NONETHELESS PROCEED TO DETERMINE WHICH COURSE TO PURSUE UNDER THE MEASURE IN RESPECT OF THE COMPLAINT**

*\*Delete as appropriate.*

To the **\*Bishop/\*Archbishop** of .....

My full name is: .....

My contact address, including postcode, is: .....

My telephone number is: .....

*\*\*E-mail address optional.*

**\*\*My e-mail address is:** .....

My place of ministry is: .....

*Enter the name of the complainant and the date the complaint was made.*

I have read the complaint of: .....

dated: .....

*Please tick **one** box only, and enter reasons where appropriate.*

☐

**I admit the misconduct alleged in the complaint**

*or*

*If you admit part but not all the alleged misconduct, please state here the misconduct which is admitted.*

☐

**I admit the following misconduct alleged in the complaint:**

.....  
.....  
.....  
.....

**but deny the other alleged misconduct because:**

.....  
.....  
.....

*Briefly summarise your reasons for denying the other alleged misconduct.*

*or*

*Briefly summarise your reasons for denying the alleged misconduct.*

☐

**I deny the misconduct alleged in the complaint because:**

.....  
.....  
.....  
.....



**The written evidence in support of my answer is attached, and consists of the following statements and other documents:**

*You may provide evidence in support of your answer. This evidence could be your own signed statement, which can be set out in this form or be in a separate document attached to it. You can also attach signed statements from witnesses. All witness statements should be in form 3 of the Clergy Discipline Rules. Letters or other material such as photographs may be submitted if relevant.*

1. ....
2. ....
3. ....
4. ....
5. ....
6. ....
7. ....
8. ....

*(Continue on a separate sheet if necessary)*

**I believe that the facts of my answer are true**

*You must sign your answer.*

**Signed:**

**Dated:**

## **The following is advice from the Church of England:**

### **How do I answer a formal complaint?**

Your answer to the complaint should be in writing on Form 2, containing a signed statement of truth and detailing which allegations are contested by you and which are not. Any witness statements should be submitted on Form 3 at the same time as your answer, and accompanied by any further evidence such as photographs or literature. Remember, you are strongly recommended to seek legal advice before submitting your answer.

### **Completing the forms**

The standard forms all contain helpful guidance notes in the margin and these should be read and followed carefully. You may find the following additional advice useful:

- before doing anything else, collect all your evidence together;
- group the evidence together in order of date and time;
- prepare a first draft of your answer and statement in your own words;
- write in paragraphs numbered consecutively and in date and time order;
- state if parts of your statement are not within your own personal knowledge (for example because you have been told about them by someone else) and, if so, identify the sources of your information;
- if you accept any part of the complaint you should provide details of anything that may help to explain or mitigate your actions;
- read your draft over and then put it to one side for several hours or longer to give you time to reflect on what you have written;
- return to your draft and re-read it. Make any necessary alterations so that it is as accurate as you can make it;
- complete the final version of the answer and statement, copying from the draft;
- make sure all the evidence you want to rely on is attached to your answer and statement (for example, statements in support from other people, or copies of letters or emails);
- keep a copy of your answer and evidence in support.

If you need help to complete the forms, please contact one of the diocesan volunteers appointed to provide free confidential assistance. However, please note that the diocesan volunteers are not acting in a legal capacity and will not be able to give you legal advice or advise you on the merits of your answer or on the seriousness or implications of the complaint. Such advice must be obtained from your legal adviser.



## Best practice in disciplinary and grievance policies – ACAS

The 'gold-standard' in assessing best practice in disciplinary and grievance policies is from ACAS. It is the yard-stick against which such policies may be measured. As a Code of Practice, it has the same force in law as the CDM Code of Practice, within the jurisdictions to which they may variously apply. It can be ignored, but should only be treated that way for good reason. As best practice it might be regarded with moral validity, since its principles seek to ensure fairness for employers and employees alike, in how the employment relationship is mediated by grievance and disciplinary procedures. Similarly, the default theological position should be to try to abide by its guidance, while remaining within the strictures of canon law.

1. Rules and procedures for grievances and disciplinaries should be "in writing, specific and clear" (ACAS, CoP1, s.2)
2. Employees and their representatives should be involved in their development – where appropriate (ACAS, CoP1, s.2)
3. Rules and procedures should be accessible and how they are to be used should be explained (ACAS, CoP1, s.2)
4. Employers should deal with grievance and disciplinary matters promptly (ACAS, CoP, s.4) and without unreasonable delay (ACAS, CoP1, s.4)
5. Investigatory meetings may be needed to deal with matters promptly (ACAS, CoP1, s.5)
6. Employers may allow accompaniment at investigation and grievance meetings (ACAS, CoP1, s.7)
7. Different managers should deal with investigation and discipline meetings 'where practicable' (ACAS, CoP1, s.6)
8. Suspension, if "necessary...should be as brief as possible" (ACAS, CoP1, s.8)
9. Employers should act consistently (ACAS, CoP1, S.4)
10. Employees should be informed of the nature of the problem (ACAS, CoP1, s.4)
11. Employees should be allowed to be accompanied at formal disciplinary meetings (ACAS, CoP1, s.4), though employees should request this in good time giving the name of the companion (ACAS, CoP1, s.37)
12. There should be the opportunity for employees to put their case (ACAS, CoP1, 4)
13. The disciplinary action should have a limited duration (ACAS, CoP1, s.21)
14. There should be an appeal (ACAS, CoP1, s.4) against both disciplinary and grievance decisions (ACAS, CoP1, s.41)

## Questions:

1. If a trade union representative does not know the difference between representation and accompaniment, would you explain the difference or just explain that they are not allowed to be present as a trade union representative?
2. Does the CDM Code of Practice allow accompaniment at the investigation stage?
3. What might prevent grievance or disciplinary matters from being dealt with promptly?
4. Do you always inform the cleric of the nature of the problem when asking to meet them to discuss disciplinary matters?
5. Is it possible to work collegially as archdeacons so that different archdeacons deal with matters, for example another archdeacon with the investigation, and the priest's own archdeacon with the disciplinary process, under or prior to the CDM? Could the area deans have a role in initial investigation perhaps?

## Comment:

It is not always possible to deal with matters promptly, but sometimes matters are dealt with after undue delay.

Generally speaking, the same principles apply for grievances and disciplinaries, this is because of the desire to keep the relationship between employers and employees equitable. These principles may be applied to the informal stage of the Clergy Discipline Measure, 2003, and to the formal stages, though those are outside the remit of this training.

## A Reminder of the CDM Code of Practice:

### **BEFORE FORMAL PROCEEDINGS ARE INSTITUTED; “Stage 1”**

9. 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.** (*“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”*). 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.
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.
12. If the archdeacon considers that it should be dealt with on a disciplinary level, but no formal complaint is likely to be made by any one else, then the archdeacon should consider acting as complainant and making a complaint under the Measure; to avoid compromising the bishop’s position in any subsequent disciplinary proceedings, he or she should not discuss it with the bishop, except to notify the bishop what action has been taken.
13. Where no formal complaint under the Measure has yet been made but the bishop receives information about the conduct of a priest or deacon which, if true, would involve the welfare of any child or vulnerable adult, the bishop should ask the diocesan child protection or safeguarding officer to investigate it; these investigations would usually be in co-operation with other relevant bodies, and may need to take place initially without informing the priest or deacon.

## Summary:

The Code of Practice says the following about the informal stage of the Clergy Discipline Measure, calling it “Stage1 Before Formal Proceedings are Instituted.” This can confuse.

Minor complaints should not be the subject of discipline (CDM CoP, s.9) instead “an apology or informal rebuke may be all that is required” (CDM CoP, S.9).

Clergy should handle complaints and grievances “sensitively and without delay” (CDM CoP, s.9)

If there is are rumours of an allegation which would be “serious misconduct” the bishop should ask the archdeacon or another to investigate (CDM CoP, s.10), this will avoid the bishop’s position being compromised (CDM CoP, s.12). Archdeacons expect that they will be asked.

When an archdeacon is investigating normally the cleric should be told why and allowed to be accompanied (CDM CoP, s.11). We will come back to this issue when discussing the ACAS Code of Practice. An archdeacon may act as complainant on two conditions: if the archdeacon thinks that it “should be dealt with on a disciplinary level” (CDM CoP, s.12), and if no one else is likely to make a formal complaint (CDM CoP, s.12).

Safeguarding and child protection investigations are the responsibility of the Diocesan Child Protection Officer – in cooperation with relevant bodies – and may / should take place “without informing” the cleric concerned (CDM CoP, s.12).

## Comment:

These sections of the CDM Code of Practice seem to introduce the concept of triage: separating cases into different categories at the earliest possible stage, rather like having a nurse at the entrance to Accident and Emergency, telling some people to go to the chemist, or to their GP, before they even step inside and are able to speak to the receptionist.

In the context of the CDM the following categories of discipline seem to apply:

- Safeguarding and Child protection cases which should be escalated
- Allegations of serious matters which should be investigated
- Matters which if proven would not be serious, which can be dealt with informally through an apology or rebuke

This principle of triage is further developed in the Church of England Clergy Advocates (CECA) Guide to the Informal Stages of the CDM which was written in conjunction with the Archdeacons Forum.

## Case Study 1

A member has been on pastoral leave, during which he has not been required to live in the vicarage, he now decides to ask a solicitor “I have been asked not to live in the vicarage while I am on pastoral leave. Is there anything in canon law preventing me from doing so?”

Typical Answer:

You are *required* to live in the vicarage under canon C25.

This may not be the whole story however, and where there are possible safeguarding issues, there may be a very good reason for not wanting the member to reside at the vicarage, not least for their own well-being.

### Questions:

1. What support could you put in place for this cleric even if there are safeguarding allegations?
2. Clergy occasionally pretend to have received advice from trade union representatives or canon lawyers. How could you identify such a scenario?

### Comment:

This is just the tip of a very big iceberg. Look for clues of what is beneath the surface. Trade Union Representatives (‘reps’) would be trained to ask: ‘Is there anything that you haven’t told me that would be embarrassing for me not to know?’ and “What else do I need to know for me to represent you effectively?”

“Pastoral leave” is akin to “Garden leave” – the latter reflects that, in employment law, an employer need not require an employee to fulfil the duties of his employment contract. The former reflects a concern for the individual by the bishop.

Reps are also trained to ask the member for their permission to contact the faith organisation (e.g. diocese or Methodist Chair of District) to ascertain what the issues are as the diocese/ bishop/ chair sees them.

## Case Study 2

Fr Giorgios is rector of St Athanasius, Swineford, in the Diocese of Lyndsey. When he arrived in the parish the liturgy was the Roman Missal. Recently, you have received a letter from a parishioner complaining that he has changed to the new Roman Missal, which is very unpopular.

Fr Giorgios is unrepentant, saying that the Statement of Needs from his appointment stated that the Roman Missal was in use, and he sees no need to change that now, though as he explains, the old Missal is now illegal, so he has moved to the new one.

You ask him to meet you at the diocesan offices on Monday at 9am to discuss the situation, and at that meeting warn him that if he does not change to Common Worship you will be obliged to lodge a CDM complaint against him.

Fr Giorgios complains that you did not tell him the purpose of the meeting in advance, and that not doing so constituted bullying behaviour and is contrary to the Diocesan Dignity at Work policy. He says that he will contact his union the next day so that they can deal with you.

### Questions:

1. Is this a CDM matter? Why?
2. How else might it be dealt with?
3. Who is responsible for ensuring that the diocesan policies (e.g. Dignity at Work, Anti-Bullying, Clergy Wellbeing) are up to date and available on the diocesan website or intranet, or in hard copy to clergy?
4. Have you ever asked clergy to attend meetings without telling them the reason why? (Other than Safeguarding meetings).
5. What Measure does this act fall within?

### Comment:

Trade union representatives are trained to work in partnership with dioceses, but there is a range of personalities with different operating styles.

## Case Study 3

The Reverend Sheila Bartlett is precentor and chaplain of the Cathedral of St Ignatius in the Diocese of Wessex. She is responsible to the Dean of the Cathedral, and has responsibility for overseeing the work of the Cathedral Visiting Team, and the boys, girls and adult choirs. She is a governor of the Cathedral Academy and is very imaginative in her use of liturgy. She is very popular with the congregation, being extravert and sociable. Unfortunately, she has rubbed the Dean, Vice-Dean and Chapter up the wrong way. They may be jealous of her popularity, but they have noticed that her notion of working collegially does not include doing what she is told. The chain of command in a cathedral is clear to the Dean, and Sheila decides to contact the bishop of Wessex as cathedral visitor asking her to intervene to stop the campaign of bullying. She introduced shaking hands at 'the peace', and was soundly rebuffed by a residentiary canon at the first Eucharist at which she attempted to shake his hand. She regards this as 'unChristian' behaviour and speaks to the Dean about the 'conduct unbecoming' of the residentiary canon. She suspects that the problem might stem from her gender, and the recent discovery made public in the newspaper that she was registered with the name 'Alvin' at birth, and has undergone gender reassignment.

### Questions:

What is the red herring in this case study?

What are the main issues in this case study?

Is she responsible to the Dean (or Vice-Dean in his absence) and line managed by him?

Is the refusal of the residentiary canon to shake her hand at the peace a discriminatory act?

How might the team dynamics be improved, presuming that the clergy who hold office at the cathedral are a team?

### Comment:

People disagree on the issue of line management in cathedrals. How would you cope with a subordinate who did not regard you as their line manager, were you to be a Dean of a cathedral?

## Case Study 4

Fr Giorgios remains in post, despite receiving a telling off from the Archdeacon of Lindsey. Unfortunately, you have heard from Mrs Bessie Yewell, whose daughter lives in the diocese, in the parish of Lynton on the Marsh, with a serious complaint about Fr Giorgios.

He has been very rude to Mrs Yewell's daughter, Katherine, when she contacted him to book a christening. This is his email:

Dear Katherine,

I am sorry but we can't do the Christening on the 1<sup>st</sup> Sunday of Lent, and it is parish policy to do Christenings in the Sunday service. It is normal to check with the vicar about the date of the Christening before booking the hotel.

I advise you to speak to the vicar of your own parish and to be flexible about the dates.

I am happy to do the christening, because of your connection to the parish, but as you are not on the electoral roll and do not attend Church, I ask you to attend Church two or three times first before we can discuss the date.

Kind regards,  
Adrian

### Questions:

1. Is this a matter of doctrine, ritual or ceremony?
2. When does rudeness become 'conduct unbecoming'?
3. Is this a serious matter?
4. Would conducting the christening be a disciplinary offence? Under what circumstances?

### Comment:

Although Fr Giorgios will christen anything that moves, including teddy bears for the school services, he does ask parents to attend Church two or three times before booking the Christening. He might still get in trouble for doing the Baptism if she does not apply for membership of the electoral roll.



## Case Study 5

Fr Giorgios turns up at the 8am Mass slurring his speech and nearly falls over at one point. He struggled to make it through the service then asked his assistant priest, Fr Robert, to conduct the 10am Mass while he went home to bed. He was okay for the Monday mass, but people have started talking about his behaviour and he has been known to drop the water and wine cruets on occasion.

### Questions:

1. What more information would you need to discover before lodging a CDM complaint against him for drunkenness?
2. Would you go to the Church on Sunday and invite parishioners to write to you with their complaints about him?
3. If this was not a one-off would it make any difference?
4. Would it make any difference if he was still driving himself to Mass?

### Comment:

Seeing his situation from a range of different perspectives might be needed before making a judgement on this matter. It is potentially very serious, but not necessarily in a straightforward manner.

## Case Study 6

Fr Robert has decided that he ought to spread his wings a little. He is a self-supporting priest, 50 years old, and in the 3<sup>rd</sup> year of his term of office as assistant curate.

He approached Fr Giorgios for advice about this, during one of their occasional staff meetings, only to discover that a letter had been written to Fr Giorgios complaining about the 10am Mass that Fr Robert took when Fr Giorgios was unwell the other week. The complaint, is that it was the 60<sup>th</sup> wedding anniversary of Dorothy and Benjamin Schiller, and they had planned to have a wedding blessing during the Mass, which went okay, except that Fr Robert did not include their wedding hymn (Dear Lord and Father of Mankind) in the wedding blessing itself, but announced it as the Offertory hymn. Dorothy and Ben are very upset, as it is their favourite hymn, and they had arranged it all specially with Fr Giorgios. It turns out that Fr Giorgios is rather annoyed at losing 'his curate' when he has gone to so much effort to train him, which wasn't easy, and Fr Robert presented this as a *fait accompli* to him at the staff meeting. To make matters worse he had heard in advance from the IME4-7 officer, and it had come as a surprise to him. You suspect, but have no proof, that the complaint against Fr Robert is a vexatious complaint made solely because his training incumbent was cross at him, so he got some of his parishioners to make the complaint to get him into trouble and to try to stop him leaving.

### Questions:

1. How would you deal with this matter, when it is referred to you by Fr Giorgios?
2. Is it a serious matter?
3. Where is the boundary between day to day acceptable abruptness and unacceptable and improper rudeness? Does swearing automatically count as conduct unbecoming?
4. Would an apology suffice? Can you instruct him to offer one?
5. What other informal resolution might be acceptable instead?
6. What make a complaint a 'vexatious' one?
7. Should vexatious complaints be considered under the CDM?

### Comment:

If Fr Robert, when Dorothy and Ben complained during the Mass, had told them "I'm sorry, I'm taking mass, I'm too busy to listen to me now, but come and talk to me afterwards and tell me all about it", would this make any difference?

## Case Study 7

Mother Sue works in the Diocese of Lindsey as Area Dean of the Deanery of Lindholme and Ashwick. She is a Team Rector appointed under Common Tenure. She has an establishment of three clergy of incumbent status to service 12 Churches, over 45 square miles. She gets on well with her colleagues, except for the Team Vicar of St Orinoco's, Lower Mossbury, who is an army chaplain in his spare time and who has special responsibility for St Orinoco's in Mossbury. The Reverend Sean Shaw-Smith is a retired teacher in an independent school, and refuses to work across the team, citing his licence which gives him pastoral responsibility for Mossbury. Mother Sue is disappointed that he will not tell the Team Administrator his availability for funerals, that he finds 9am on Saturday morning an uncondusive time for staff meetings, and he does not agree with Sue calling herself "Mother" calling it an abomination. Matters come to a head when Mother Sue asks Sean to take a service in one of the other team churches, but he declines saying that he has very important army chaplaincy business to attend to that Sunday. She contacts the archdeacon in tears saying that she is fed up with being bullied by Sean and finds his manner off-hand and officious.

You agree to cover the service for Sean as Mother Sue is so short-staffed, and while you are there are approached by the district church treasurer who asks to come and see you to talk about the parish finances. The district church treasurer informs you that there are two sets of accounts being kept by the team treasurer: one for the diocese and the annual parochial church meeting (APCM) and the other is kept internally by the PCC. The two sets of accounts differ by tens of thousands of pounds, but it is not initially clear where the additional money is being generated from.

### Questions:

1. What are the issues in this case?
2. What are the responsibilities of Reverend Sean to work across the Team?
3. Does he have to share his diary with the team administrator?
4. What is 'bullying'? Does Reverend Sean's behaviour constitute bullying?
5. What would constitute discrimination in his speech or behaviour towards her?
6. What is the cause of the falling out between the team clergy?
7. Who would you approach when thinking about the allegation to do with finances?
8. What procedure could be used to get to the bottom of the poor working relationship between clergy?

## Case Study 8

Fr Giorgios's campaign to make Fr Robert's life a misery is continuing, and Fr Robert has sent in a 1 month 'Fit note' to the Diocese which says that he is suffering from work-related stress. You meet Fr Robert, visiting him at home, unannounced, to check up on him and see how he is doing. He tells you that he has been subject to constant bullying by Fr Giorgios since arriving in the parish, but he did not like to mention it because of his loyalty to his training incumbent. He asks whether you are in a position to stop the bullying from happening. This is what you are told:

"Fr Giorgios is rude to me and always criticises my sermons and sermon preparation. He does not like how I lead worship. He disapproves of Bible Study Groups, and says that he will only have to carry them on when I am gone. He calls me an idiot, particularly because of some of my theology. He complains about how I lead worship, and has specific complaints that I don't always tell him straight away when I book a funeral in on his day off. He says that I do not tell the organist promptly what the hymns are for the service, and I once forgot to book the sexton for an interment of cremated remains, so dug the hole myself and claimed the digging fee from the treasurer. He has been emailing me at all times of day and night with instructions on what to do and how to do it, but he refuses to look at the competency matrix for assistant curates, and will not train me how to do the things I need to learn to take on an incumbent-level post. He laughs at me and calls me 'Ginger', making fun of me because I have ginger hair, he also jokes about me eating deep fried mars bars as I am Scottish."

### Questions:

1. Which of these behaviours are contrary to the diocesan Dignity at Work or Anti-bullying policies?
2. What would be the advantages and disadvantages of suggesting mediation might be appropriate as a way of dealing with this situation?
3. When does bullying stop being something subjective and become objectively harassment or discrimination?
4. What might you say to Fr Giorgios to moderate his behaviour?
5. How can you support Fr Robert? Would you seek to move him, or support him in post?

### Comment:

There is a fine line between bullying and harassment and discrimination. Does Fr Robert have protected characteristics under the Equality Act 2010, or similar European law, and is any of the behaviour prohibited under that Act?

## Case Study 9

The bishop's personal assistant is opening the post one morning when she sees a letter from Major D.I.S. Astor, the patron of the parish of St Athanasius, in the Diocese of Lindsey. She reflects on the letter for a few moments and tried to decide what to do about it. This is the letter:

Dear Bishop Rolo,

It was good to see you at the meeting of the local Rotary group the other night. Unfortunately, I feel that I should contact you as you suggested, because of my concern for the people of St Athanasius. I was at home at Dunstable Hall on Sunday and went to Church, and was disappointed to find that the service had changed from the one we had used since my late mother was patron. I am not keen on such sudden change, and I hope that you will address this issue promptly, so that when I am back home later in the year, and if I take my wife with me, she will not be upset and spend the next few weeks moaning to me that I have no control over what happens at St Athanasius. As you know I am chair of the Friends of St Athanasius, and we have a significant sum of money to be distributed to the Church, which has historically paid for the restoration of the East window, the tower and supported the Church School.

As ever, Dick

### Questions:

1. Which pile should this be put on:
  - Bin (as with all crank letters and emails)
  - Reply but take no action
  - Reply with a promise of action by the archdeacon
2. Would it make any difference if the author of the letter was not also patron of the parish and chair of the Friends of St Athanasius?
3. What offence under ecclesiastical law might have been committed?
4. Would it make any difference if the 'Parochial Church Council' had asked for and approved this change and if the vicar had opposed it?

### Comment:

Some matters should be referred to the Secretary of the Parochial Church Council. Is this one of them?

Is it still possible – as in the 1980s – to bin crank letters and emails? Do you need an audit trail of action?

## Case Study 10

The PCC of St Athanasius have control of significant funds, and access to other funds due to sale of the Church hall and some bequests, including from Lady Astor, the present patron's mother. However, they do not pay their parish share in full, even though they are one of the few parishes that can afford it easily. You look through the spreadsheets of common fund contributions from the last five years and spot a pattern. The decline in payment of parish share coincided with the arrival of the present incumbent, who does not have freehold, but is on Common Tenure.

You decide to discuss this with Father Giorgio at the next Ministerial Development Review meeting.

### Questions:

1. What would you say to him? Is an informal rebuke appropriate?
2. Is the withholding of payment the responsibility of the vicar in his personal or corporate capacity as chair of the Parochial Church Council, or of the PCC as a whole?
3. If Fr Giorgios is subject to a Capability Procedure – as all clergy on Common Tenure are – could this be a Capability matter, and if so, how would you address it?
4. Who should you work with?

### Comment:

The Diocesan HR advisor has a particular role in overseeing matters of capability within each diocese. Especially where the diocesan bishop has appointed a third party to exercise pastoral care, due to a CDM complaint being lodged, an HR advisor could offer continuity of oversight over wider issues including capability, safeguarding and discipline.

Sometimes decisions are the responsibility of the PCC, rather than the incumbent. When should you approach the PCC, rather than the incumbent?

What if the incumbent is upholding a PCC policy, for example a no-videos in Church during services policy? Is that a disciplinary matter for the incumbent, or an issue for the wider PCC?

## Case Study 11

The Reverend Denise Atherton is married to the Reverend John Atherton. They have been appointed as the new priest in charge and associate priest of St Athanasius, Swineford, subsequent to the early retirement of the incumbent due to a massive stroke caused by atrial fibrillation.

They have been appointed but not yet inducted and installed or licensed, when you receive their blue files from the Diocese of Wessex, where they served previously, together with an urgent email from the Bishop of Wessex, informing you that an allegation has been made against Denise, of a Safeguarding nature.

You feel that you should delay the licensing until the matter has been concluded, rather than postponing her installation but going ahead with his licensing.

### Questions:

1. Who would you take advice from immediately?
2. If they have not moved yet, what advice would you seek in that regard?
3. If the service is postponed, would the sending diocese pay their stipend(s) until the date of the rearranged licensing?
4. If Denise has admitted the relationship, under the seal of the confessional, or otherwise, is there any chance of her being appointed to the new position?

### Comment:

The Safeguarding concern turns out to be admission of an affair between Denise and a choirgirl (who is over 18), in their current parish. She might be advised to request to withdraw her resignation from her current post and her acceptance of the new living.

Which diocese is responsible for their pastoral care and discipline prior to the acceptance of the new office?

If their current bishop does not permit the withdraw of resignation, they could be homeless with no income. Is there a way of avoiding this situation?

## Case Study 12

You are about to go on holiday at the end of July when you hear from a Church member in Malta. She is very upset because the chaplain has opened a tea room with the help of some of his friends who do not attend the chaplaincy and are not known to Church members. The chaplain has decided that she does not need to work with the members of the Church, and has asked for the keys to the parish room from the Churchwarden so that she can ask others to open up and lock up daily. There is also a separate bank account that the funds from the cream teas are paid into, though the expenses for making the scones and cakes are claimed through the treasurer. This is upsetting to him and he resigns, since he thinks he should be accountable for the money that belongs to the Church. The wider Church committee are also upset at being excluded from the decision-making process, and you decide to contact the chaplain to hear her comments.

The chaplain is pleased to hear from you because she has been bullied by the members of the committee. They criticised her at a PCC meeting, making her cry, saying that she has to work with them and can't just make decisions on her own. They have written to her demanding the keys back. They have said that she should close the bank account and pay the money into the Church account. They have said she is irresponsible in handling money in the first place, saying she should keep distance between her and any money, and needs to let others handle it. The volunteers that she has helping could be anyone, they have no standing in the local expatriate community, but the chaplain says that it is all about mission, and she thinks that they are fine.

### Questions:

1. There appears to be a poor working relationship between the chaplain and the local Church community and PCC.
2. What reasons can you think of for the poor relationship between chaplain and chaplaincy?
3. Is 'mission' a good enough excuse for the behaviour?
4. What procedure might you use to try to sort out the problems?

### Comment:

This is one of the few instances when an archidiaconal visitation might be instituted by the bishop. Note the possible safeguarding issues and the behaviours that make the chaplain vulnerable.



## Case Study 13

You have taken advice from the Diocesan Safeguarding Advisor about a recent allegation, and you have set up a core group to manage the allegation process into the behaviour of Fr Robert.

He has let a 'friend' stay in the curate's house with him, and the friend has a criminal record. His friend would not be given a clean DBS certificate, if one were requested, because of offences that he committed against children. Fr Robert is open about his sexuality. The friend shares his life and he lets him sit in on meetings of the Church choir and Sunday School. Fr Robert is open about this and says it is part of the rehabilitation of offenders and insists that if anything is said or done he will lodge a grievance under the Ecclesiastical Offices (Terms of Service) Regulations.

When you phone to make an appointment for him to come and see you, he says that he is unwell and is suffering from anxiety and depression, and that he has an appointment booked to see his GP.

### Questions:

1. On a scale of 1 to 10, where would you put this allegation?
2. How would you respond to the allegation?
3. Who would you take advice from?
4. What support would you put in place for him?
5. What other options might you consider, even if you choose to turn them down?
6. What role would suspension play in your thinking? Would you ask him to step back from ministry prior to suspension?
7. What if anything would you do about his 'friend' living in the curate's house?
8. If he were in your diocese, how fit for purpose is your Grievance Procedure? Is it in line with the ACAS Code of Practice 1 on Grievances and Disciplinarys?

### Comment:

This is a serious allegation on one level, though there is no suggestion that he has directly caused harm to children.

There may be no official concept of 'stepping back from ministry' but it is one that is understood to have a role and place to play in sorting situations out.

## Case Study 14

The Reverend Father Jonathan Plum is rector of St Henry Bollingbrooke on the Marsh, in the Diocese of Lindsey. The patron of the parish is the Crown, due to the ancient history of the parish. It is a listed building and is Anglo-Catholic, under the oversight of the Provincial Episcopal Visitor. Jonathan is also the assistant director of ordinands and has a shared office in the diocesan offices.

A complaint has been made against Jonathan alleging that he made inappropriate remarks to female members of staff at the diocesan offices. The gist of it was that he wanted to have a threesome with the two members of staff that he made the remarks to. You contact him and he says that it was just a matter of friendly 'banter', and that conversation in the diocesan offices was often of a sexual nature. Because the misconduct occurred at the diocesan offices, you decide that he should be dealt with under the staff disciplinary policy, rather than the CDM. A written warning eventually follows a formal disciplinary hearing at which he was represented by his trade union representative.

Unfortunately, despite banning him from working at the diocesan offices, for a period of three months, and requiring him to work from home, in order to protect the female members of staff that he sexually harassed, the week that he returned to work there, he contacted one of the members of staff, in clear contravention to instructions not to do so without contacting the diocesan secretary first.

The nature of this communication was lewd and harassing. He does not deny the behaviour, saying that his comments were meant in jest and are indicative of a friendly extravert nature rather than anything else.

## Questions

1. Is this a matter for the Diocesan Safeguarding Advisor?
2. Should a Safeguarding Risk Assessment be required? What is the benchmark for this?
3. Would you invoke the CDM or use a staff disciplinary procedure again?
4. What are the proper limits on banter in the workplace?
5. Can 'banter' ever be just banter and not sexual harassment if it is of a sexual nature?
6. If he had agreed not to contact the third party as part of an agreement with the Diocesan Safeguarding Advisor, what would be the next step to take?
7. To what extent is the vulnerability / 'at risk' status of the third party relevant to your decision making?

## Case Study 15

The Bishop of Wessex has been approached by the Diocesan Secretary and Chief Executive who is unhappy about Father Giorgios's latest antics and makes himself perfectly clear over an unplanned lunch in the staff canteen that the situation needs to change. The Bishop is rather annoyed at being ambushed this way and takes out his frustrations on the Archdeacon of Lindsey.

You are the Archdeacon of Lindsey and are initially somewhat unclear about what the problem is, but you do know the bishop does not like surprises and especially not ones which affect the complex balance of power with the Diocesan Secretary and Chief Executive. You decide to sort out the situation before it gets any worse so contact the Chief Executive for a briefing and then phone Father Giorgios to vent your frustration.

Father Giorgios has a chequered history within the Diocese of Wessex, not least for his pastoral insensitivity. He has a history of refusing to do funerals on Fridays, and especially for former Church members who no longer live locally or attend the Church. He reluctantly agreed to do a funeral of a young man of 21 years old, which was well attended, but unfortunately he made no reference to the deceased's passion for rugby, despite being asked to do so by the family who stressed what an important part of his life it had been. The funeral was awful, with a number of people walking out, and others refusing to shake his hand at the end.

Father Giorgios was unconcerned at the upset that he has caused – including to the sister of the Chief Executive, who was present at the funeral, but he changes his tune when you speak to him becoming very anxious and visibly upset. He complains that you are bullying him and goes home only to end up in hospital with a (non-prescription) drug overdose having attempted to commit suicide.

## Questions

1. What offence if any, under the CDM has been committed?
2. What is the main issue in this case study?
3. How might you respond to these issues?
4. How can you support Fr Giorgios?