

NATIONAL SAFEGUARDING STEERING GROUP

POSSIBLE CHANGES TO THE CLERGY DISCIPLINE MEASURE 2003 AND RELATED MATTERS

Summary

This paper describes the work that will be done to develop outline proposals for possible changes to the Clergy Discipline Measure 2003 ('the CDM') and related matters – especially in connection with safeguarding – to enable the House of Bishops to consider the matter at its meeting in May 2019. The views of the Group are invited on both the content of the work programme and the proposed way of carrying it forward.

Background

1. The Group will be aware that, following the expression of concerns in various quarters about the possible need for changes to the Church's legal framework in connection with clergy discipline and safeguarding, a number of pieces of work have been set in hand. They have been as follows:
 - (a) The Archbishops of Canterbury asked the Bishops of Salisbury and Lincoln (the latter of whom is a member of the Clergy Discipline Commission ('the CDC')) to undertake a review of the CDM. That has involved a consultation of all other diocesan bishops, which included questions about how the CDM works in relation to safeguarding cases.
 - (b) The National Safeguarding Team ('the NST') conducted a consultation in October to December 2017 specifically designed to consider the efficacy of the CDM process in regard to safeguarding cases. Responses to the consultation were received from people in many different roles, including archdeacons, bishops, deans, diocesan safeguarding advisors ('DSAs'), registrars, a survivor organisation and the then President of Tribunals.
 - (c) A consultation was carried out with diocesan registrars on behalf of the CDC on the issue of delays in disciplinary proceedings under the CDM.
2. The consultation by the two bishops is almost complete, and it is understood that they will wish to present the result to the House of Bishops at its meeting in May. Although they have not seen a draft of the bishops' report, staff understand that the headline conclusion of the consultation is likely to be that, overall, the CDM deals relatively well with the more serious cases for which it was intended, but that there is a need to find a better way of dealing with less serious complaints.
3. The NST have now completed an analysis of the responses to its consultation, which has been considered by staff (including the Secretary General). It will be appended to the bishops' report and other papers going to the House in May.
4. The CDC has considered the outcome of the consultation with diocesan registrars on delay. The results suggest that, at least in relation to complaints brought against priests and deacons, once a complaint is brought under the CDM, it proceeds reasonably expeditiously, but that there are frequently long delays before the formal CDM process is commenced.

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5. The CDC will continue to monitor the position as regards delay within the CDM process, including at preliminary scrutiny stage in the case of complaints against bishops and archbishops, and, if delays are identified, will seek to identify how they can be mitigated or removed.

Emerging issues for further consideration*General issues*

6. On the positive side, any assessment of the adequacy of the present framework needs to reflect the fact (often overlooked in discussion) that the previous system was so defective as to be unworkable – which the present system certainly is not: it routinely delivers appropriate disciplinary outcomes, fairly, transparently and at modest cost, which is an important consideration. It also triangulates the different interests in play (ie those of the cleric, the wider Church and the public) much more successfully.
7. However, the work that has been done to date has already identified a number of areas in which the current arrangements seem to need improvement. They are as follows:
 - (a) There is a consistent theme in responses of **poor communication** with those who are undergoing discipline, in spite of what the Code of Practice under the CDM says about that. As a minimum, the CDC could emphasise the need for adequate communication, and possibly amend the Code to the same end. But consideration needs to be given to whether the position needs strengthening further, whether by imposing a statutory duty on bishops and others to have ‘due regard’ to the Code, or by imposing some absolute obligations - whether (depending on the context) on the diocesan bishop, the Designated Officer or (in the safeguarding context) any Core Group.
 - (b) There is, similarly, a consistent theme about **the absence of adequate pastoral support** for those undergoing disciplinary processes, notwithstanding what is said about that in the Code. So again the question arises as to whether guidance is adequate or whether similar steps need to be taken to those proposed above in relation to communication.
 - (c) There is a widespread desire for **more developed and extensive guidance and training**. Query whether it would help from that point of view if there were a statutory duty to have due regard to the Code of Practice. But in any event, there seems to be a need for more training for new bishops and archdeacons than is provided at the moment, so consideration needs to be given (taking account of the resourcing implications) to what more could be done from that point of view.
 - (d) More specifically, there is a desire for additional guidance on the issues of how to keep the parish in the loop when one of its clergy is undergoing a disciplinary process.
 - (e) There are then issues about **the system being ‘clogged up’ by too many trivial complaints**. Possible remedies for that perceived problem include the imposition of a further ‘filter’ in addition to the current preliminary scrutiny stage (though it is not clear what form that would take) and the introduction of an informal process for lesser complaints. The latter possibility is plainly worthy of

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further consideration, given that the Diocese of Gloucester has already pioneered such an approach. But it needs to be recognised that its impact would be limited (in the absence of some change to the legal framework), in the sense that a would-be complainant cannot currently be prevented from submitting a complaint under the CDM.

- (f) The issue has been raised as to whether to **widen the range of cases where the time limit for the bringing of a complaint does not apply** (eg in the case of a complaint against a bishop or other cleric for failing to have due regard to the House of Bishops' safeguarding guidance). Whilst the CDC has considered and rejected that particular possibility, it may be desirable to seek the views of others on it.
- (g) There have of course been frequent expressions of concern about **delay** within the CDM process. As noted above, evidence obtained by the CDC suggests that in fact the typical case proceeds reasonably expeditiously and in accordance with the timetable laid down by the Measure. But nonetheless there is a possible need for an increased emphasis by the CDC on the need to comply with the time limits imposed by the CDM and the Rules made under it. There may also be a case for improved guidance to bishops and others of a kind would enable them to take more decisive action.
- (h) One possible reform that could help to reduce the delay that arises in connection with the holding of tribunal hearings would be for **the number of the members of bishops' disciplinary tribunals to be reduced from 5 to 3**; but in considering that possibility account would need to be taken of any possible adverse impact on the interests of justice.
- (i) A suggestion has been made, which seems worthy of further consideration, that the CDM be amended so as to **allow bishops to impose a formal rebuke or other lesser penalty without consent**, subject to appeal to the President.
- (j) Finally, some survivors have raised the question of the **restoration of the possibility of deposition from holy orders** (which is not possible under the CDM, though it was generally possible under the Ecclesiastical Jurisdiction Measure 1963 and remains so following the imposition of the penalty of 'deprivation' for an offence of doctrine, ritual or ceremonial under that Measure). The Archbishops considered this option a few years ago and rejected it (essentially on the ground that it did not add anything in practical terms to what could be achieved by the imposition of a penalty of prohibition for life) but it may be that that possibility merits reconsideration.

The CDM and risk

8. Much criticism has been made of the CDM for failing to provide a satisfactory means of dealing with risk in safeguarding situation. But that criticism is misplaced, overlooking the fact that the system was not intended to achieve that aim but to make provision for a regulatory disciplinary system of the kind that exists in other professions. It therefore primarily looks backwards at misconduct that is alleged to have taken place, rather than forwards as a means of protecting against risk in a safeguarding context (though of course the powers of suspension it confers can be of assistance from the latter point of view). Thus if further measures are required to address questions of risk then they