Briefing
on the
Proposed Clergy Conduct Measure

This paper examines proposals for a new Clergy Conduct Measure. The initial proposals are set out in a paper to the Church of England's General Synod (report GS 2219), which suggests replacing the Clergy Discipline Measure 2003 with a new Measure that would introduce a distinction between "allegations of misconduct", which would be handled centrally, and "complaints", which would be handled locally.

The Jill Saward Organisation has prepared this briefing because it is concerned that the limited information currently available about the proposed new Measure is silent on some of the fundamental issues of concern in the existing Clergy Discipline Measure.

This briefing, by the Jill Saward Organisation director Gavin Drake, is offered to aid members of General Synod as they consider the proposals.

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The Jill Saward Organisation

Introduction

Jill Saward was one of the UK's most inspirational campaigners for victims and survivors of sexual violence. She was born in Liverpool in 1965. Her father was the Revd Michael Saward, the well-known hymn writer who would go on to become Canon Treasurer of Saint Paul's Cathedral.

In March 1986, Michael and Jill were attacked when burglars broke into the Ealing Vicarage in west London. Michael and Jill's then-boyfriend, who was visiting at the time, were beaten over the head with cricket bats. Both received fractured skulls. Jill, who was 21 at the time, was raped and subjected to further serious sexual assaults.

The case sent shockwaves around the world and led directly and indirectly to a number of changes in the way victims and survivors of sexual violence are treated by the government, the police, the judicial system and even the press. These changes include the legal right to anonymity for victims of sexual violence; a unified way for news media to report cases in a way to prevent "jigsaw identification", and the right to request the Attorney General to review and, where appropriate refer, unduly lenient sentences to the Court of Appeal for reconsideration.

Some of the changes came about quickly – such was the public's revulsion at the sentencing (the burglar who didn't rape Jill received a higher sentence than the burglars who did). While other changes came about through Jill's near 30-year campaign for victims and survivors. She began the campaign in 1981 with the publication of her book, "*Rape: My Story*" and her appearance in an extended television interview with Jenni Murray for the BBC's Everyman programme. The programme carried the subtitle "No Great Trauma", after the words used by the judge in explaining his sentencing decision.

Jill has directly supported thousands of victims and survivors of sexual violence and abuse from around the world. She has helped train police officers, judges, medical staff, forensic investigators, journalists and even members of the British Army; she has spoken in schools, colleges, and universities, and at meetings of Deanery Synods, Mothers' Union, the Women's Institute and other voluntary associations.

Jill's campaign for victims and survivors came to a sudden end when she died on 5 January 2017, two days after suffering a catastrophic stroke at her home in Staffordshire. But while her death brought an end to her campaign; it did not end the need for her campaign. Jill's fight for victims and survivors is being continued by her widower Gavin Drake, through a new organisation set up in her memory: The Jill Saward Organisation.

The Jill Saward Organisation will continue Jill's advocacy. It will campaign for better treatment of victims and survivors; it will engage in public education and awareness raising; and it will continue to campaign for changes in the law to ensure that victims and survivors are afforded the best possible treatment; and that responses to them are built around compassion and justice.

A large focus of its work will be the Church as it develops a project – "*When I Needed A Neighbour*" – that Jill was working on when she died.

Acknowledgments

At the outset, the Jill Saward Organisation would like to thank the Bishop at Lambeth, the Right Revd Tim Thornton, and the members of the Lambeth Working Group, which he chaired, for their work in bringing proposals together. Appreciation also goes to the Sheldon Hub for the detailed and careful work that they have done in researching the effects of the current measure. The Ecclesiastical Law Society's CDM Working Group, under the chairmanship of His Honour Peter Collier QC, also deserve thanks for their thoughtful and detailed consideration of alternative proposals for a replacement system.

The Jill Saward Organisation would also like to thank everybody working to bring about effective safeguarding within the Church. The protection of children and vulnerable adults is not the job of diocesan safeguarding advisers or parochial safeguarding officers: it is the responsibility of all of us within the Church.

The Role of Bishops

We begin this briefing by stressing that we are not anti-bishops – indeed, some of our best friends are bishops! We begin by stressing that because of what follows: in our view, the biggest concern in the current Clergy Discipline Measure, and the way complaints play out, is the role played by bishops.

Section 1 of the current Clergy Discipline Measure 2003 reads: "*Any body or person on whom functions in connection with the discipline of persons in Holy Orders are conferred by this Measure shall, in exercising those functions, have due regard to the role in that connection of the bishop or archbishop who, by virtue of his office and consecration, is required to administer discipline.*"

In other words, regardless of what the rest of the Measure says, right at the start is stressed the importance of the role of bishops in administering discipline. It would appear that the intention is to carry this through to the new Clergy Conduct Measure, as paragraph 17 of the Lambeth Working Group report states that "*The focus of discipline should be the diocesan bishop, reflecting the theological and historical understanding of the role of the Ordinary.*"

Fortunately, the report goes on to say that "*The Church has always taught that bishops do not act alone but are ministers within the community. Throughout history, structures have developed to assist in the administration of episcopal functions. These have included the designation by the bishop of the practical aspects of discipline to a particular person or body whilst retaining overall authority. The proposals contained in this report recommend the continued and, in places strengthened, assistance to the bishop in the exercise of discipline.*"

The current Measure sets out five options that a bishop can take having considered the written answer from the respondent. These include the option to take no further action. The Measure contains a safeguard against the bishop's misuse of this power (which, with serious allegations, should only be taken if the Bishop decides that there was "*clearly no misconduct*") – a complainant may refer the bishop's decision to the President of Tribunals and request a review.

Since the Clergy Discipline Measure came into force in January 2006, the President of Tribunals has NEVER upheld a request for a review of a bishop's decision to take no further action (see the Clergy Discipline Commission's Annual Report for 2020, GS Misc 1286). It appears that those in charge of reviewing bishops' decisions do not have "due regard" to the bishops' role, but too high a regard for it.

The biggest problem with the role played by bishops in the current system is that they are all individuals. They come to the task with individual understandings of the nature of right and wrong. They have individual understandings of the nature of forgiveness and how that interacts with the role of justice. They have individual views about the primary focus of a bishop's duty, and how to balance their discipline function with their duty to pastor the priests in their care. And, disturbingly, that have individual views of what their duties and responsibilities are under the existing Clergy Discipline Measure. And they have individual understandings of what the Clergy Discipline Measure actually says.

That is the conclusion that the author of this briefing has reached after experiencing the working out of the Clergy Discipline Measure in a variety of ways, including working as part of a diocesan safeguarding crisis team; acting, in effect, as a communications officer for sitting Clergy Discipline Tribunals, supporting victims and survivors who have come forward to make disclosures which have led to formal complaints under the measure; and bringing my own complaints under the Measure.

I am not alone in this finding. The Clergy Discipline Commission report for 2020 (GS Misc 1286) states in paragraph 15 that the former Deputy President of Tribunals, Sir Mark Hedley, in a review for the CDC, "*noted that evidently there were misunderstandings amongst bishops, registrars and administrators about the distinction between a bishop's decision to dismiss and complaint and the decision to take no further action. The former decision (dismissal) is taken upon receipt of the registrar's preliminary scrutiny report on whether the complainant has a proper interest and whether there is sufficient substance in the complaint to justify proceeding with it under the next stage set out in the Measure. It is to be distinguished from the bishop's decision to take no further action at that next stage, which arises only after the respondent cleric has been invited submit an answer in response to a complaint of misconduct.*"

The confusion by bishops is hard to fathom. The power to dismiss is set out in section 11(3) of the current Measure, and reads: "*On receipt of the registrar's report the bishop may dismiss the complaint and, if he does so, he shall give written*

notice of the dismissal to the complainant and the respondent, together with a copy of the report." The power to take no further action is set out in section 12 of the Measure, which begins with the words "If the complaint is not dismissed under section 11(3)…"

The Measure – and the Rules and Code of Practice which accompany it – is set out in a logical and clear way. The confusion as to what the Measure actually says is inexplicable. The administration of discipline, being one of the functions bishops seem to want to maintain for themselves, should be one that bishops are trained in. Every diocesan bishop as the benefit of legal advice from their own registrar and can call upon advice from the Legal Office at Church House, the Provincial Registrar the Clergy Discipline Commission, the Designated Officer and even the President of Tribunals. So how do they keep getting it wrong?

The Sheldon Hub has campaigned for changes to the Clergy Discipline Measure and has published examples of how clergy have suffered from its process. But in the majority of those cases, when explored in detail, it is clear that the problem isn't with the Measure, but the actions of bishops outside the provisions of the Measure.

One example of this is the time taken in initial scrutiny. The Measure is clear and unambiguous. The decision to dismiss a complaint must be taken "on receipt" of the Registrar's Preliminary Scrutiny Report; but many bishops are giving themselves 28 days from receipt of the report to decide whether or not to dismiss. If they do not dismiss, they then give the respondent 21 days to produce a written answer to the complaint; then they give themselves a further 28 days to decide which of the five options specified in section 12 of the Measure.

But what the Measure – which is English statute law – says, is that the bishop has 28 days from receipt of the Registrar's report to decide which of the five options he or she will take. The 21 days for a written answer from the respondent is in the Rules, and is part of those 28 days.

This preliminary step should take just four weeks, according to the law. But some bishops are giving themselves 11 weeks to reach the decision – and that is without any additional delays they decide to give themselves. Those additional seven weeks leads to untold additional misery, pain and anguish not just for victims and survivors, but also for clergy who have been accused.

There is no need for the process to take this long. In cases where serious allegations are denied, the only credible course of action for the bishop is to instigate an investigation by the Designated Officer. I am personally supporting one survivor where the bishop took 116 days from receipt of the preliminary scrutiny report before sending the papers to the Designated Officer for investigation. Those additional three months were unbearable for the victim; and there can be no justification for it. But the bishop decided to play investigator – a role which is not his.

In any replacement for the Clergy Discipline Measure, it is essential that the role of bishops in administering the processes of discipline is removed and handled by an independent body of professionals with consistency across dioceses and provinces.

Transparency and Open Justice

Another problem with the current Measure, which looks to being replicated in the new Measure, is the lack of openness and transparency. When the General Synod debated the Clergy Discipline Measure, there was an element of disagreement over the amount of openness that should be given to Bishops' Tribunals. The Synod finally decided that the tribunal would be held in private, but that any findings would be handed down in public (*section 18(3)(b) of the Clergy Discipline Measure*).

There is a fundamental problem with this: how can a determination be handed down in public if the public – or the press – do not know that a tribunal is taking place in the first place? A tribunal chair can order that the doors be open but those who may have a legitimate interest in hearing the determination – including members of a parish – will not be waiting outside to be let in.

The secrecy around the current system extends to far more than tribunal hearings. Different bishops and dioceses take various approaches to informing parishes that a formal complaint process against their priest is underway. In some cases no information is given at all.

As every Parochial Church Council is its own charity, and its members are trustees with legal responsibility for safeguarding within that charity, it is a dereliction of duty and responsibility that safeguarding concerns

are dealt with by diocesan officials without any reference to them.

Our concern here extends to the revised statutory guidance, dated February 2021, and published by the Clergy Discipline Commission in June 2021. This guidance states, in paragraph 9, that: "*Whilst proceedings are under way, there is normally no good reason for the Church to disclose publicly the existence or details of an allegation of misconduct, and the proceedings should be confidential. Although the media may be particularly interested in allegations of misconduct against the clergy, coverage in advance of a determination can be misleading, unfairly damage the reputations of the parties, and damage the Church both locally and nationally. This is particularly the case where an allegation is without foundation and the bishop either dismisses it or decides to impose no penalty. The public does not need to know that an allegation in any particular case has been presented – it merely needs to know that if one is made, it will be dealt with in accordance with the due process of law.*"

This position conflicts with the fundamental legal principle of open justice, which exists throughout the judicial systems of the UK. This principle was famously expressed by Lord Hewart CJ when he said, in *R v Sussex Magistrates, Ex p McCarthy* [1924] 1 KB 256, 259, that "*it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done*".

That principle was emphasised by Lord Justice Toulson in *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, when he said: "*Open justice. The words express a principle at the heart of our system of justice and vital to the rule of law. The rule of law is a fine concept but fine words butter no parsnips. How is the rule of law itself to be policed? It is an age old question.* Quis custodiet ipsos custodes – *who will guard the guards themselves? In a democracy, where power depends on the consent of the people governed, the answer must lie in the transparency of the legal process. Open justice lets in the light and allows the public to scrutinise the workings of the law, for better or for worse.*"

Lord Toulson went on to become a Justice of the Supreme Court, and he went further than this in the case of *Kennedy v The Charity Commission [2014]* UKSC 20, when he said that "*every public body exists for the service of the public*".

He went on to say that: "*in this case there is an important additional dimension. We are concerned with a public body carrying out a statutory inquiry into matters of legitimate public concern. Over several decades it has become increasingly common for public bodies or sometimes individuals to be given statutory responsibility for conducting such inquiries. They are part of the constitutional landscape. . . It has long been recognised that judicial processes should be open to public scrutiny unless and to the extent that there are valid countervailing reasons. This is the open justice principle. The reasons for it have been stated on many occasions. Letting in the light is the best way of keeping those responsible for exercising the judicial power of the state up to the mark and for maintaining public confidence.*"

This fundamental legal principle is incompatible with the Clergy Discipline Commission's statement that "*The public does not need to know that an allegation in any particular case has been presented – it merely needs to know that if one is made, it will be dealt with in accordance with the due process of law.*"

The Clergy Discipline Commission guidance effectively removes the statutory duty for tribunals to hand down determinations in public. Yes, the decisions are published on the Church of England website and can be read by members of the public or journalists if they know that they are there; but that is quite a different matter from sitting in a tribunal room and hearing the judgment directly.

The guidance makes a valid point that there is no need for publicity "*where an allegation is without foundation and the bishop either dismisses it or decides to impose no penalty.*" It doesn't say so explicitly, but the same argument could be said for the investigative stage too. But there is no good reason why secrecy should extend to cases where a charge has been made – and certainly no reason why secrecy should protect a priest who has admitted a charge but has declined a penalty by consent, thus extending the period – by some months – before his admission to guilt is made known.

The fact that a deacon, priest or bishop has been "charged" by the President of Tribunals should be made public, and tribunals should be open to the press and public to observe their workings – subject to standard reporting restrictions, as exist in civil and criminal courts; and the right of the tribunal chair to add additional reporting restrictions to protect vulnerable witnesses.

Section 18(3)(c) of the Clergy Discipline Measure gives a tribunal panel the power to direct that the hearing shall be in public "if satisfied that it is in the interests of justice to do so". Despite this power, the author of this briefing is not aware of any bishop's tribunal being held in public.

Similar disciplinary tribunals in other areas of public life are far more transparent:

- **The Military Court Service** publishes weekly or fortnightly listings. The press and public are entitled to attend. Results are published online.

- **The Teaching Regulation Agency** publishes details of hearings at least 10 days in advance. The press and public are entitled to attend unless excluded by the panel on three grounds. All decisions are announced in public and published online.

- **The Medical Practitioners Tribunal Service** (which holds hearings for the General Medical Council) publishes details of current and upcoming hearings (61 at the time of writing). Members of the press and public are entitled to attend. Recent tribunal decisions (currently 351) are published online.

- **The Bar Tribunals and Adjudication Service** (which holds hearings for the Bar Standards Board) publishes a calendar of forthcoming hearings. Members of the press and public are entitled to attend unless there has been a specific order that a particular hearing is held in private. Decisions are published online.

- **The Health and Care Professions Tribunal Service** (which holds hearings for the Health and Care Professions Council) publishes a hearings calendar of forthcoming hearings. All hearings are held in public, except in limited circumstances. Panel decisions are published online.

This is all in stark contrast to the Clergy discipline system which operates in almost complete secrecy – leading to accusations of cover-ups and lack of transparency. Any system which replaces the current Clergy Discipline Measure must increase the level of transparency and openness. The default should be open justice – with appropriate safeguards in place.

Clergy Conduct Measure – Timing

The Church of England General Synod is rarely accused of acting in haste! But in this case, the Jill Saward Organisation questions the timetable that has been set for progressing the proposed new Measure.

In its report to Synod, the Lambeth Working Group list as one of its purpose and scope of role as being "to consider whether safeguarding matters relating to discipline should be dealt with outside of the existing CDM processes". In a separate report to this group of sessions (GS 2215), the National Safeguarding Team and Lead Bishops for Safeguarding report on progress towards the creation of an Independent Safeguarding Board. They expect that the ISB Chair and the Survivor Advocate will be appointed in late July or early August; with the third ISB member appointed in September.

The new ISB must be allowed to settle in and develop its way of working prior to any significant development of safeguarding policy and practice – especially developments that involve the creation of new statutes. A failure to allow the new ISB to contribute towards the creation of the new Measure, and the interaction between the Measure and safeguarding matters, will impair the quality of the wisdom they may wish to bring to it.

Clergy Conduct Measure – Comments on the Proposals in GS 2219

Complaints' Track

The Jill Saward Organisation is concerned with safeguarding, and how the new Clergy Conduct Measure deals with safeguarding issues. But it is necessary first to address the issue of the twin-track approach.

The most significant difference between the existing Clergy Discipline Measure and the proposed Clergy Conduct Measure is the separation of "Complaints"

from "Allegations of Misconduct", with each type following a separate track.

Unfortunately, the report does not give examples of what may constitute a "Complaint". But it is difficult to see how the Church can legislate for complaints which do not amount to misconduct.

Clergy – the majority of parochial clergy at least – have always considered themselves to be office holders rather than employees, with high degrees of autonomy over how they fulfil their duties. This ancient and historic status has been upheld by the courts even in recent years. Asking office holders to account for themselves without allegations of misconduct poses a dangerous risk to this autonomy – especially since the report suggests that such Complaints are dealt with regionally across dioceses.

More details about what constitutes a Complaint under the proposed Measure is needed for a definitive response; but the author of this briefing is aware that bishops frequently receive complaints along the lines that "the vicar won't let us sing *'I vow to thee my country*', '*Jerusalem*', or '*Onward Christian soldiers'*". "The vicar has displayed a poster for a political party in the vicarage window". "The vicar won't let me put artificial flowers or a wind chime on my child's grave". "The vicar won't let us say our own vows at our wedding."

Such complaints are not misconduct. The priest is entitled to make those decisions – and in some cases has no choice but to make those decisions. Anybody making such a complaint should be left in do doubt, at a very early stage, that a priest is entitled to make such decisions. Complaints such as these do not need an unwieldy regional operation. They are best dealt with through a sympathetic ear, an honest explanation, and attempts at reconciliation where that would be helpful.

The proposals, at paragraph 30, pretty much says this, by indicating that "some very low-level complaints" may be resolved with "a simple conversation with the bishop, either with both parties present, or separately". But the report goes on to say that "the use of this option would not preclude moving onto step 2 if the matter was not resolved" – and thus, complaints which do not amount to misconduct become swept up into a bigger thing than is necessary.

Other Complaints would be dealt with through regional assessors who would prepare a report for the bishop with non-binding recommendations for the resolution of the Complaint. Outcomes range from no further action to a formal written warning. There would be no right of appeal or review and matters would be on the priest's blue file.

The report is silent on what happens if a priest receives a number of formal written warnings. It is also silent on how a process which can lead to formal written warning being included in, what is in effect, a personnel file, is compliant with the Human Rights Act when such a process includes no right of appeal.

The Lambeth Working Group need to provide more details on what would constitute a Complaint under this track. If it extends the power or reach of a bishop or the Church regionally or nationally to control or interfere with the legitimate but controversial decisions or actions of priests, then its validity will soon be called into question and complaints about the way clergy are treated by this Measure will soon rise in the way that they have with the existing Measure.

It is also worth commenting on the language being used. Members of the public will not understand the difference between a "Complaint" and an "Allegation of Misconduct". In the ordinary English definition of the words, members of the public will bring allegations of misconduct to the attention of a bishop through a complaint. If a two-track approach is to be adopted, better descriptions or names will be required so that people can use normal language without being corrected because their complaint is not a "Complaint" but an "Allegation of Misconduct".

Policy Intention

The imposition of statutory duties to ensure professional support is in place for survivors, victims and complainants, as well as effective pastoral support for respondents is to be warmly welcomed; but the Jill Saward Organisation would argue that such a statutory duty already exists:

- The statutory Clergy Discipline Measure Code of Practice states, at paragraph 98, that "*the bishop should ensure that appropriate care and support is provided for all those who need it.*"

- The House of Bishops' safeguarding guidance document "*Responsibilities of Church Office Holders and Bodies*" states in section 2.1 that a diocesan bishop has responsibility to "ensure that the diocese provides arrangements to support survivors of abuse".

- The House of Bishops' safeguarding guidance document "*Responding to, assessing and managing safeguarding concerns or allegations against church officers*" says that it is the duty of a diocesan bishop "*to ensure that the care of the victim/survivor and the respondent follows both secular and ecclesiastical legislation and guidance.*"

- Section 5 of the Safeguarding and Clergy Discipline Measure 2016 places a legal obligation on bishops to "*have due regard to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults.*"

Therefore, such a legal duty already exists; but we are aware of cases where this isn't followed. And so we welcome an explicit and unambiguous legal requirement to provide such support. The Measure should go further than imposing such a duty – it should set out consequences for failing to fulfil the duty. Without specifying consequences for failing to comply with a statutory duty, the duty effectively ceases to have force.

The independent oversight of disciplinary functions is also welcomed; but the Jill Saward Organisation would push for the Church to go further; and we call for the independent *administration* of discipline. Under the heading "*Transparency and Open Justice*" (above) we have given examples of some other disciplinary bodies. In the majority of those cases, separate independent tribunal services have been set up to ensure that the process is carried out at arms-length from the organisations themselves.

The pool of experienced ecclesiastical lawyers is fairly small. It is not unusual for a registrar in one diocese to be retained personally by a priest or bishop in another diocese facing complaints under the existing Measure. Ecclesiastical lawyers act as Registrars to tribunals and advisors to the Clergy Discipline Commission and the President and Deputy President of Tribunals. This leads to a power-imbalance for victims and survivors who are generally not legally represented; and where they are represented, they are usually unable to obtain the services of experienced ecclesiastical lawyers because of conflicts of interest.

The administration of disciplinary functions should be done at arms-length from the episcopal leadership of the Church to ensure a consistency of approach between dioceses and to remove the appearance of bias.

Clergy Discipline Commission

The Jill Saward Organisation welcomes proposals to reform the Clergy Discipline Commission; but we are concerned that the proposed membership does not create a body that is too weighted towards ecclesiastical lawyers and bishops. The precise purpose, remit and powers of a reformed Clergy Discipline Commission needs to be spelled out in more detail.

In the current system, there is no oversight given to bishops and their advisors in their handling of cases under the Clergy Discipline Measure. And there are no consequences for a failure to follow statutory obligations or guidance unless an aggrieved party brings their own complaint under the Clergy Disciple Measure. Many of the examples of poor practice highlighted by the Sheldon Hub and others have come about because bishops are acting outside the requirements of the Measure, Rules and Code of Practice. And the Clergy Discipline Commission seemingly has no power, or willingness, to act.

An example of this is the statutory process that should be in play in the preliminary stage of the complaint, as set out in sections 11 and 12 of the current Clergy Disciplinary Measure. The first decision a bishop has to take is whether or not to dismiss a complaint under section 11 of the Measure. The decision to dismiss should be taken – and can only be taken – if the complainant doesn't have a proper interest or if the complaint has no substance. That decision should be taken *on receipt* of the Registrar's Preliminary Scrutiny Report (section 11(1)(3)). But, as we have stated, we are aware that a number of bishops – and their registrars – say that a bishop has 28 days to make this decision.

The next decision that a bishop has to take – if the complaint has not been dismissed – is which one of five steps specified in section 12 of the Measure should be taken. The Measure says that the bishop should make that decision within 28 days of the Registrar's Preliminary Scrutiny Report; and the Rules are clear that those 28 days include 21 days for the respondent to provide a written answer. But, again, some bishops and registrars say that the 28 days for a section 12 decision begins after receipt of the written answer. That is not what the law says.

In relation to complaints about sexual abuse and serious safeguarding matters, the five options specified in section 12 can be split into three groups:

A penalty by consent (section 12(1)(d) is only applicable if the respondent admits guilt. Conditional deferment (section 12(1)(b)) and conciliation (section 12(1)(c)) are not appropriate. This leaves a decision to take no further action (section 12(1)(a)) or formal investigation (section 12(1)(e)).

The Rules and Code of Practice make clear that taking no further action is only applicable in cases where "there is clearly no misconduct". The Church of England must surely now understand – from the myriad independent lessons learned reviews it has commissioned – that it is not acceptable to dismiss allegations of sexual assault and abuse without an investigation. Taking no action is not appropriate following allegations of sexual misconduct by a priest.

So investigation is the only lawful and appropriate step to take in such cases. Despite this, bishops are taking months to reach such a decision, often conducting their own investigations ahead of the statutory investigation by the Designated Officer.

A reformed Clergy Discipline Commission should have, as one of its statutory duties, responsibility to ensure that bishops and their advisors are complying fully and appropriately with the new Clergy Conduct Measure. And, in appropriate cases, they should have the power to intervene, to instruct a bishop to follow a specified process, and – in extreme cases – to remove a bishop from the process and appoint a Commissioner to act in place of the bishop.

Allocation of complaints and allegations of misconduct

This briefing has already covered the difference between "complaints" and "allegations of misconduct" in the proposed Clergy Conduct Measure; but we must draw attention to a sentence in paragraph 23 of the Lambeth Working Group report: "*The evidence received by the Working Group is that engaging with the person raising the complaint and in particular asking what outcome they seek makes for improved decision-making*". This is not our experience of nearly three-decades of working with victims and survivors.

Questions such as this can make victims and survivors feel that their motives are being questioned. When they come forward to report abuse or assault, they do so with the assumption that a laid-down process will be followed; and now they are being asked what they think the outcome should be; and can lead to them asking questions about whether there is actually a process in place.

In many cases, victims and survivors are still trying to come to terms with the fact that they have finally made their disclosures; and they are now being asked to think about the outcome.

We would advise great care should be taken around such questions.

We welcome the Lambeth Working Group's decision that, in most cases, the safeguarding process should run alongside the disciplinary proceedings; but there should be transparency in this process. The required confidentiality required for the management of individual safeguarding cases should be balanced with a need for openness and transparency about the processes being followed, not least to reassure victims and survivors about that process.

We would also argue that Parochial Church Councils should play a greater role in safeguarding matters – especially when a deacon or priest in the parish is the subject to safeguarding procedures. As charity trustees, PCC members are legally responsible for ensuring safeguarding in their churches. They cannot do this effectively if safeguarding processes are taking place without their knowledge.

Safeguarding in the Church of England cannot be done remotely by diocesan officers in secret, with those directly and legally responsible for safeguarding in a particular parish kept in the dark. Proper processes should be adopted to enable Parochial Church Councils – charity trustees – to fulfil their legal obligations.

The new Independent Safeguarding Board has a key role here in formulating a process by which a safeguarding process and a disciplinary function can go hand in hand. A difficult balancing exercise needs to be undertaken: safeguarding procedures should not unfairly disadvantage an accused priest facing a disciplinary process; and the disciplinary process should not prevent the introduction of necessary safeguarding measures in a particular parish. But in carrying out this balancing exercise, priority must be given to the protection and safety of children and vulnerable adults in particular.

As already stated, we also welcome the explicit statutory duty to ensure appropriate support is put in place for "complainants/victims and respondents". We have seen too many cases where an accused perpetrator is afforded professional support while victims and survivors are left floundering.

The use of ISVAs (Independent Sexual Violence Advocates) is welcome; but it should be remembered that the role of ISVAs is to accompany a victim or survivor and to help them find appropriate support and to provide information about the legal processes. In effect, an ISVA is a befriender.

A key aspect of an ISVA's role is their independence; but if they are to be an effective provider of information about processes, they need to understand those processes. The reformed Clergy Discipline Commission should be required to commission training modules that ISVAs can undertake to be accredited to work with victims and survivors engaged in Clergy Conduct Measure complaint processes.

It should also be understood that ISVAs are not counsellors – their role is to signpost other support options rather than to provide it themselves. Funding – and clear processes for accessing that funding – should be made available for professional counselling or psychiatric support, should that be needed.

Allegations of misconduct

This Briefing has already given its limited views on the two-track system; and as The Jill Saward Organisation is primarily concerned with this proposed new Measure from a safeguarding perspective, we will skip the section of the Lambeth Working Group's report headed "Stage 2a – Complaints".

With regard to the Stage 2b – Allegations of misconduct, we welcome the proposals that the proposed new Measure will bypass the preliminary scrutiny stage in the current Measure. The excessive delays and extensive bureaucracy involved in deciding *whether* to investigate a complaint in the current Measure is unnecessary and leads to untold additional stress for both complainants and respondents – especially where registrars use the full allocation of time to prepare preliminary scrutiny reports or where bishops carry out their own mini-investigations before deciding whether or not the complaint should be properly investigated by the Designated Officer.

The experience of the Church of England in recent years, the IICSA hearings and countless Lessons Learned reviews all point to the same direction:

There can be no excuse for complaints of sexual abuse to be dismissed without investigation.

If that is the starting point, which it should be, there can be no justifiable reason to spend several months deciding whether or not such complaints should be investigated. They should be investigated.

Clearly, the scope of such an investigation will be guided by the evidence available and the credibility of witnesses. In some cases the investigation may legitimately be a short one. In other cases there may be a lengthy and complex investigation. But decisions about that should be in the hands of the investigator – with appropriate oversight.

In paragraph 40 of their report, the Lambeth Working Group say that the Church is able "to draw upon the expertise of fully qualified people to exercise this role [of investigator]"; and it gives as an example, the Diocesan Safeguarding Adviser/Officer. This paragraph goes on to say that "in appropriate cases independent professional investigators will be used from a list maintained by the Clergy Discipline Commission".

The Jill Saward Organisation would urge the Church to go further. Investigations into sexual abuse should not be carried out by Diocesan Safeguarding Advisors/Officers. Their primary role is to help ensure good safeguarding in a diocese, to train clergy and others in safeguarding policies and practice, and to carry out risk assessments and safeguarding activity. They are also responsible for the practical aspects of ensuring that the respondent, complainant and victim or survivor is receiving appropriate pastoral support.

This is a different role and skillset from that of investigators. Victims and survivors will generally feel that any support is compromised if it is organised by the people who are investigating their complaint; especially in cases where the investigation looks into the credibility of the complainant.

If financial offences are suspected, it is usual for an independent forensic accountant to be brought in to carry out an investigative audit. The same principle should apply to offences of sexual misconduct. Diocesan Safeguarding Advisors/Officers do have a role to play in the process – not least in managing any safeguarding risk – but they should not be leading investigations into wrongdoing.

One of the most significant changes in the proposed Clergy Conduct Measure as opposed to the process in the Clergy Discipline Measure, is in the way bishop's penalties are handed down.

Currently, the bishop consults with the respondent, complainant, and Designated Officer, with an indication his proposed penalty. The bishop then writes to the respondent only with his final decision on penalty and awaits the respondent's consent. If the respondent does not consent the matter is referred to a Tribunal to decide penalty only.

This step in the current Measure introduces a very significant delay to the proceedings. And, with the current statutory guidance issued by the Clergy Discipline Commission, bishops may decide not to inform parishes that a priest has admitted misconduct, leading to continued turbulence in the parish – especially in cases where a priest is suspended, and parishioners are aware that their priest is subject to a complaint.

By introducing a system where the bishop can impose a penalty, subject to a right of appeal, this revised step will end this delay. The wording of the Measure needs to be clear that such a process should follow the existing practice in terms of penalties imposed by tribunals: in other words, the penalty should be made public and take immediate effect; subject to the right of appeal.

Tribunals and Appeals

Paragraph 41 of the Lambeth Working Group's report says that t he forum for determining allegations will remain the Bishop's Disciplinary Tribunal. The Jill Saward Organisation would urge that a new name is found for these tribunals. The reality is that a bishop has very little input into these tribunals – bishop's do not decide whether a case gets to a tribunal as that is a matter for the President of Tribunals; bishops do not present allegations at tribunals as that is done by the Designated Officer; and bishops do not decide the outcome or penalty at tribunals as that is the job of the tribunal panel.

The name "Bishop's Disciplinary Tribunal" has an effect on victims and survivors who, in most cases, are generally unlikely to be familiar with the church's systems. This name gives the impression that it is the bishop who controls what happens at a tribunal and – falsely – gives the impression of a conflict of interest. Complainants should not be made to think that it is the bishop who will decide the outcome of a complaint against their own clergy.

This report refers to the "independent scrutiny of allegations" carried out by the President of Tribunals. This is one of the troublesome aspects of the current system.

The President of Tribunals is not independent. They are appointed by the Appointments Committee of the Church of England. They decide whether or not to submit a case to a tribunal based on a confidential report – that neither complainant nor respondent see – prepared by the Designated Officer – an employee of the Church of England's legal office.

Any replacement system for the Clergy Discipline Measure needs to introduce an element of wider scrutiny to this stage of the process. There is currently no appeal mechanism for complainants or victims / survivors in cases where the President of Tribunals decides not to refer a case to a tribunal, even where the Decision Notice includes erroneous statements of fact. And while it is important that a process isn't created that lasts forever, it is important that justice is done properly.

It is wrong in principle to give unchallengeable power to a single individual to decide, on a report that hasn't been seen, whether or not an allegation goes to a tribunal. Proper safeguards need to be introduced to this stage in the process to ensure that such power is not abused or used incorrectly.

The re-introduction of the penalty of deposition from holy orders is welcome. In serious cases of abuse, it is right and proper that the Church is able to say that such a person's ordination is revoked.

The Jill Saward Organisation also welcomes the use of special measures for vulnerable witnesses. In addition to the use of screens, video-based evidence, and a ban on direct-cross examination by the accused; such measures should also include a right for a complainant or potential complainant to request an anonymity order from the President of Tribunals for victims, survivors, or vulnerable witnesses at a preliminary stage of a complaint; including an interim order prior to the commencement of issuing of a complaint.

Under the current system, Rule 49 allows a tribunal to order that the name and any other identifying details of any person involved or referred to in the proceedings must not be published or made public if it is desirable to protect the private life of any person, to protect the interests of any child, or is in the interest of the administration of justice.

In the criminal law, it used to be the case that a victim of sexual violence could not be identified once a person had been charged.

Under those rules, in Jill Saward's case, The Sun newspaper was able to publish a full-length front-page photo of Jill walking to church on the Sunday following the attack. The newspaper printed the photo with a black bar across her eyes. Despite widespread condemnation, The Sun had not broken the law.

As a result, Parliament passed the Sexual Offences (Amendment) Act 1992 which gave automatic life-long anonymity to victims. This applied the moment a complaint was made. The thinking behind the law is that there is no point granting anonymity to a victim at a point *after* they have already been subjected to widespread publicity.

The same thinking should apply to the Church's disciplinary process. Those people who may benefit from an anonymity order – whether victims, witnesses, or respondents – should be entitled to it from an early stage.

We therefore recommend that the power to grant anonymity orders should be strengthened and moved from the Rules to the face of the Measure. The new Measure should include the right for people to be able to apply for such an order from the President of Tribunals as a preliminary step to bringing a complaint.

Paragraph 45 of the Lambeth Working Group report indicates that the existing right to appeal would remain in the new Measure. In the interests of equitable treatment between complainant and respondent, we would argue for the introduction of a similar right for complainants, victims, and survivors.

Final Comments

Within this briefing, the Jill Saward Organisation is exploring proposals for the new Clergy Conduct Measure and highlighting failures in the processes and implementation of the existing Clergy Discipline Measure. It is inevitable that in doing this, the focus will be on things that have gone wrong.

Similarly, media coverage of safeguarding within the Church of England tends to be on its failures rather than its successes.

We would want to end this briefing by highlighting the significant safeguarding efforts made by laity, clergy, bishops and officers in parishes, dioceses and national offices across the Church of England.

Safeguarding is the responsibility of everybody in the Church. The good work can be found in safe recruitment practices, effective monitoring, compassionate responses to disclosures, and diligent following of rules, regulations and guidance.

But such work is undermined by those bishops and dioceses which ignore or bend the rules and impose their own procedures on top of, or instead of, the statutory procedures.

The new Clergy Conduct Commission should have procedures in place to ensure a zero-tolerance approach to such bishops and dioceses. A few bad apples cannot be allowed to continue to spoil the whole barrel of good fruit.

The majority of Church of England parish churches are safe places. But that cannot be taken for granted. Abusers are predatory and seek out victims. Children and vulnerable adults can be found in our churches and so abusers will attach themselves to churches in order to find their victims.

Effective safeguarding is necessary. And effective safeguarding needs to run alongside effective discipline and sanction.

The Jill Saward Organisation will monitor developments with the proposed new Measure closely and will seek to offer constructive feedback and suggestions as the legislative procedures get underway. But we urge that the new Independent Safeguarding Board be permitted to play its full part in ensuring that the new Measure is fit for purpose as far as safeguarding is concerned.

Feedback

The Jill Saward Organisation hope that you find this briefing useful. We welcome feedback by email: briefing@saward.org or by post:

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