

Purpose and scope of proposed replacement of CDM

by Sheldon 8th February 2021

The Clergy Discipline Measure is to be replaced in recognition that it is not fit for purpose. The building of consensus on the scope and purpose of the new Measure is an essential step before bringing forward detailed proposals. “If you don’t know where you’re going, any road will take you there.” (George Harrison)

It is profoundly disappointing that over a year from first raising the need for such a baseline, detailed proposals are being floated in the absence of any published ‘purpose and scope’ paper. We consider this to be dangerously poor practice, replicating the hierarchical and opaque approaches that have contributed to, and delayed the recognition of, the harms of CDM. “We cannot solve our problems with the same thinking we used when we created them” (Einstein)

As neither the Lambeth Working Group nor the Ecclesiastical Law Society Working Party have developed such a document, Sheldon has reluctantly drafted one. We do not consider it the last word on the subject, but hope it will be used as an essential first word to begin to develop consensus. Future proposals can then be assessed against these purposes. Without this we believe there is a real risk that the CDM will be replaced with something even worse.

In the absence of any official consultation process on scope and purpose, this document is posted in the Sheldon Hub for discussion there.

Contents

1. Headline description	1
2. Purposes of new Measure and related processes	1
3. Scope.....	2
4. Essential components	2
5. Process of replacement	4
6. Other principles, qualities and notes.....	4
7. Links to other documents	5

1. Headline description

The system by which any complaint relating to the conduct of any ordained priest or deacon (including SSMs, retired clergy, bishops and other senior staff) is received, assessed and concluded by the institution of the church.

2. Purposes of new Measure and related processes

1. To facilitate constructive relationships at all levels of church life, fostering a culture of mutual respect and appropriate accountability

2. To prohibit from ministry those whose conduct falls below a minimum safe standard of fitness to practice
3. To provide robust protection for people in ministry from the effects of complaints that are trivial, unfounded, unfair, vexatious or malicious
4. To provide routine pathways for restoration to healthy ministry for all those who have temporarily fallen short of reasonably expected standards
5. To support people raising legitimate complaints about unsafe or unreasonable conduct of clergy
6. To engage in restorative justice for those harmed by the shortcomings of the present Measure
7. To provide public witness through congruence with the faith we profess “To act justly and to love mercy and to walk humbly with your God” (Micah 6.8)

3. Scope

1. **Comprehensive** – ensuring there are no loopholes for bypassing the system with ‘irregular discipline’
2. Explicitly checks complaints for potential root cause of **capacity** (mental or physical health), and includes channels for proper care when identified
3. Incorporates (replaces) all complaints against clergy related to **Safeguarding** including non-statutory ‘core groups’.
4. Is clearly integrated with the **holding of PTO** and the Public Database of Clergy (2021) such that PTO may not be withheld without due process and mechanism for appeal
5. Clear pathways for integration with ministerial review and access to training where issues of **capability** may be involved. Makes the current Capability Procedure redundant
6. Clear process before, during and after any **suspension** with safeguards, right of appeal, and regular review based on objective assessment of future risk
7. Include potential **consequences** (with right of appeal) for lay complainants (such as rebuke, costs, barring from holding office such as Churchwarden, memberships of PCC) in such cases that emerge as malicious, vexatious or trivial complainants
8. **Compatibility** with Human Rights Act, Equality Act and employment law and informed by familiarity of issues such as coercive control, bullying and harassment, grooming, moral injury, etc.
9. **Clarity** on relationship (or not) to other resources and commitments such as Covenant for Clergy Care and Wellbeing, Issues in Human Sexuality, Guidelines for the Professional Conduct of Clergy, etc.

4. Essential components

[with explanatory notes especially as they concern the efforts to avoid replication of the specific issues that create some of the harms of the existing CDM]

1. Speed, consistency, simplicity and proportionality. *[CDM fails on all counts]*
2. The nature of ministry as a complex and subtle exercise of skills and personal qualities to be clearly articulated within the system design. *[It is not the nature of ministry that it can be codified into rules of behaviour and codes of conduct against which people should be judged. This is different from agreed good practice.]*
3. The nature and purpose of the complex and significant bishop/clergy relationship to be well articulated within the system design. *[Where the stakes are high – risk to home and livelihood – the bishop needs to be free to be fully pastoral and ‘have the back’ of the respondent which is achieved by delegating formal investigation and trial to central system.]*

Removing this high level threat as exercised in CDM is expected to clear the way for significant improvement in the quality of these relationships to constructively manage misconduct-less-than-serious. The bishop cannot function in their role if all their oversight functions are removed to a central office.]

4. The initial triaging process to serve as the gateway to different higher level processes but otherwise be completely independent of them *[This is essential to meet the key criteria of 'only referred into a system that could result in loss of home and livelihood when the allegation, if proved, would warrant this. A key driver of suicidal levels of stress in the CDM appears to be this high level threat coupled with professional shame and the lack of practical information and pastoral support at early and critical points in the process]*
5. Clear entry points to the different processes so a respondent always knows which system they are in and why. No possibility of escalating from one process to another unless new evidence comes to light and clear gateway criteria are met. *[The messy maze of CDM creates multiple uncertainties and exposure to risk of escalation – this drives up both stress and financial costs.]*
6. Complaints handled by church processes only ever be assessed on the basis of observable conduct supported by sworn witness statements, never character attacks, gossip or hearsay. Alleged criminal misconduct would be investigated by the police using their own criteria.
7. Focus always on restoration of healthy ministry in misconduct-less-than-serious AND after any prohibition that is not permanent *[the determination of the case is not the end for the respondent – they may well need practical and psychological support in the aftermath but CDM makes no provision for this]*
8. Clear timelines rigorously applied for the speediest possible resolution consistent with due process *[complaints should be regarded as a pastoral emergency and specified timeframes should be rigorously applied and where possible improved on]*
9. Fully funded legal aid for everyone facing a complaint where home or livelihood is at risk.
10. A system in which clergy who need legal support can be appropriately represented by employment or union lawyers of their choice and not one in which ecclesiastical law specialists are needed *[the CDM has created a system which appears nepotistic and with conflicts of interest for a small number of specialists – it should not be normal to draw on pro-bono advice or be represented by a diocesan registrar.]*
11. The ability for respondents to self-refer into the system as a way of calling out threats of complaints
12. Proper confidentiality afforded to participants, especially respondents, with clear consequences for complainants or people administering the system who break confidentiality *[Status and relationships rely on knowing who knows what about you, consequences for failure to comply with data privacy laws]*
13. Professional respect for the role/office of clergy such that low level complaints are not entertained and clergy not expected to enter mediation on an equal footing with complainants unless there is a clear evidence based reason for doing so.
14. No access to the system to complain about the handling of a complaint. All oversight of the system and appeals (by respondent or complainant) of failure to apply the process correctly to be built into the system itself. *[Elimination of CDM's perverse incentives to 'throw people under the bus' to avoid a complaint against oneself.]*
15. Clear integration with and/or cross-referencing to other related complaints systems including those applicable to clergy employed in sector ministry and to lay people in church employment at local, diocesan and national level *[level playing field provision as far as reasonably possible].*

16. Built-in oversight of process and gathering of data for monitoring, case management and oversight of the system as a whole. *[include a database driven dashboard to facilitate case managers in tracking complaints through to end of follow up after determination – severe absence of data in CDM led to failures to see what was going wrong in a timely manner.]*
17. Clarity on the distinction between responding to a complaint found to be of substance, and carrying out of risk assessment based on allegations untested *[the burden of proof for risk assessment is often perceived to be much lower than that for evidence of misconduct which can result in an unfair perception of fault on the part of clergy where no fault can reasonably be found.]*
18. Careful consideration on the use and practice of ‘out of time’ complaints *[what threshold of severity should hang over a bishop, priest or deacon for the rest of their career and even into PTO retirement?]*
19. Explicit recognition of the needs of families with impact assessment *[the church and community relationships of partner, children, other members of household]*

5. Process of replacement

Recognition of the importance of the process of arriving at a replacement. Need to rebuild lost confidence in competency, professionalism and conduct of those running the systems.

1. Regular and clear signalling of understanding the need for accountability and scrutiny
2. The skills range of the people closely involved with generating proposals *[essential to have core input from people outside existing church/CDM circles]*
3. Full transparency with routine publication of meeting minutes
4. Formal consultation to all clergy through diocesan channels when proposals are framed *[perhaps consult with Law Commission on good practice for doing this]*

6. Other principles, qualities and notes

1. Biopsychosocial stress arises from impact to Status, Certainty, Autonomy, Relatedness, Fairness (SCARF). Everyone involved in administering the system needs a basic understanding of these and how to explicitly mitigate. High stress stops people thinking straight and risks their physical and mental ill health. *[A new process should be person-centred not concentrating on the driving of a complex legal system]*
2. Being complained about is hard whether innocent or guilty. Explicitly develop a culture of treating respondents with kindness and using SCARF to mitigate the impacts. Presumption of innocence unless or until proved guilty *[75% of CDM complaints eventually resulted in a ‘not guilty’ outcome. All this requires careful use of language, attitude of respect, not isolating respondents – this starts with the naming of the new Measure and the word ‘discipline’ needs to be excised completely]*
3. Early opportunity for respondent to state their case as fully as they wish *[CDM only allows for narrow reply to the specifics of the complaint, not context – status and autonomy requires opportunity to be heard on things that have personal impact]*
4. A safe balance to avoid the pitfalls of centralisation while ensuring all those administering the system handle enough cases to warrant the investment in good training and oversight. Any embedding of a ‘professional code of conduct’ in a system of complaints should be subjected to a serious risk assessment. However good the initial intention, could there ever be robust enough safeguards to prevent a central office eventually succumbing to the temptation to become a ‘Lambeth Inquisition’?

5. Consider the scope of risk assessments for respondents found to be guilty. *[Such risk assessments should be made by people qualified to perform them, a different function from fact-finding after weighing evidence.]*
6. Facility within the system to designate someone a vexatious litigant such that they cannot lay another complaint without specific permission to do so from the future equivalent of the President of Tribunals or future equivalent.
7. The replacement of the CDM is a matter of some urgency and cannot wait for what has rightly been identified as the need for underlying culture change in the church. However, there needs to be recognition that legal Measures will not of themselves be sufficient, and longer term attention also needs to be paid to culture within the organisation.

7. Links to other documents

1. Sheldon 'roadmap' [open letter to the Bishop at Lambeth](#) January 2020
2. [Emerging findings from research](#) into the lived experience of CDM commissioned by Sheldon in partnership with Aston University July 2020
3. [Lambeth Working Group](#) published documents with responses from Sheldon and CECA
4. [ELS Working Party](#) published documents with responses from Sheldon and CECA

Sheldon, Sheldon Lane, Doddiscombsleigh, Exeter EX6 7YT
www.sheldon.uk.com www.sheldonthub.org sarah.horsman@sheldon.uk.com
The Society of Mary and Martha, registered charity 327394