

Sheldon response to Lambeth Working Party proposals for replacement of CDM.

January 2021.

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Overview

This is Sheldon’s response to public consultation on the Lambeth Working Group proposals for replacement of the Clergy Discipline Measure. We have already responded to the proposals from the Ecclesiastical Law Society on the same subject.

For reference we include links to

- [all the public documents from the Lambeth Working Group](#)
- [all the public documents from the Ecclesiastical Law Society’s Working Party](#) (*including detailed response jointly prepared by Sheldon and Church of England Clergy Advocates*)
- [The Sheldon Hub Project CDM, including emerging findings from academic research](#)

Sheldon has no affiliation with either the Lambeth or the ELS working group. We have shared our thinking with CECA and although our views are very similar we decided to make our responses separately on this occasion. Sheldon’s interest in the subject arises from having had more in depth pastoral contact with clergy Respondents than any other organisation. We also host the online support forums of [The Sheldon Hub](#).

Overall Sheldon’s recommendation is that the document be considered in line with its title, namely as a Progress Report. The presentation of Proposals and the offer of Consultations on these Proposals is premature.

Our strong suggestion is for the Lambeth Working Group to slow the process down, publish the overall purpose of instituting the new system, consider the ELS proposals carefully, and then publish revised Proposals with much greater detail. We consider that it would be unsafe to progress these Proposals direct to Synod in February as they represent a significant risk of jumping out of the frying pan into the fire. We outline our reasons for this conclusion below.

The Lambeth Working Group proposals

Direct quotes from the Lambeth document have been reproduced in grey italic

Proposal One: Triaging

We consider good triaging to be an essential component of any replacement of the CDM. The Lambeth proposals use the language of 'triage' but fail to demonstrate an actual framework for a safe and effective triaging process.

“Para 21. It is proposed that new legislation will mitigate against these concerns by having an inbuilt process of triaging. By triaging, we mean a system which involves assessing Complaints when they are initially received to ensure they are dealt with according to a method that is in proportion to the seriousness of the alleged misconduct. For more serious Complaints, this method may look similar to what currently exists, albeit with more investigation at what currently constitutes the Preliminary Scrutiny stage particularly in cases where allegations of a safeguarding nature are made. For less serious Complaints, this method may look like a process of mediation, or a less formal conversation with a Bishop (in the case of a Complaint against a Priest). For Complaints that are completely unfounded or which are vexatious, the possibility of summary dismissal will exist; this will help to minimise the impact on clergy of baseless Complaints.

“Para 22. It is also proposed that those Complaints which are made under the terms of the measure, which point not towards misconduct but towards another legitimate issue (pastoral breakdown not arising from misconduct for example, or a situation where someone takes issue with an matter not arising from conduct of a clergyperson) will not get caught in this formal triaging process, but will be referred to the diocesan officer most suited to dealing with such matters. It is hoped that in making this distinction, the Working Group are signifying our desire to move away from the current use of the term complaint as a catch all term.

“Para 23. The question still exists as to whether the process of triaging should take place at a Diocesan level, or whether it should be conducted centrally. It has been suggested that one possible avenue could work as follows: (i) When the complainant issues an allegation, they are required to indicate on the form whether it is a grievance or serious misconduct. (ii) That is then assessed in the Diocese. (iii) Where the Dioceses agree that it is a grievance, they accept jurisdiction and the process is run at diocesan-level. (iv) If the complainant has ticked 'serious misconduct' then it is referred the central office. (v) Where the Dioceses are unsure if it is either a grievance or serious misconduct (regardless of the indication on the form) then it is referred to the central office who review it and can then send it back with a direction that it be dealt with in the diocese if a grievance or keep it to be dealt with centrally if serious misconduct is viably alleged”

We identify major shortcomings in these triaging proposals

1. The process of triaging is muddled with the processes into which the triaged complaints are subsequently channelled. This distinction matters.
2. Complainants and respondents both benefit from speedy and robust assessment based on objective evidence in order to effect triaging.

3. There is scant indication on the basis on which a triaging decision would be made or by whom. Specifically there is no suggestion of any trained/objective investigation or fact finding at this stage.
4. The document implies that “completely unfounded or vexatious” complaints will be summarily dismissed, but nobody knows at that stage to which category a complaint belongs. That is the point of a proper process of fact finding and triage.
5. Para 22 appears to suggest routes for bypassing the triaging process altogether but with no objective criteria. Given the significant problem of ‘irregular discipline’ being enacted in the penumbra of the CDM we consider this proposal unsafe.
6. The Working Group express the desire “to move away from the current use of complaint as a catch all term” but offer no clarity on what terms they proposed or how they define them.
7. Para 23 appears to show the triaging process as being “assessed in the Diocese” with no indication of by whom or under what criteria.

Sheldon considers that the single most important way of reducing risk to clergy mental and physical health is to ensure that no cleric is in a process that risks their home and livelihood unless the allegation, if proved, could warrant temporary or permanent prohibition. The Lambeth proposals completely overlook this.

The ELS proposals envisage regional panels of clergy and lay people appointed and trained by CDC to carry out initial interviews with both complainant and respondent and make an evidence-based triage within a specified time frame to one of the following independent processes

- Dispute resolution attempted locally and/or complaint dismissed
- Serious misconduct – misconduct of a severity which, if proved, would potentially warrant penalty of temporary or permanent prohibition (ie loss of home and livelihood. Refer to national system with proper legal aid and judicial process and safeguards.
- Misconduct (less than serious). Refer to bishop for process which prioritises restoration of ministry and has tools and penalties such as training, apology, rebuke, time out, etc.

We refer the reader to the [Sheldon/CECA comments on the ELS proposals](#) for triaging. We consider these to be much safer, albeit subject to the reservations set out about them

Proposal two: A central office

“Para 26. It is proposed that new legislation will mitigate these concerns by processing (investigating, and bringing to tribunal etc, and possibly triaging) all Complaints of serious misconduct at a central office. This will have the benefit of allowing a number of centrally employed officers to develop the expertise and experience required to administer Complaints efficiently and uniformly. It will also help free bishops to provide non-judicial pastoral support to respondent clergy at what is widely recognised to be a time of notable personal and professional stress.

“Para 28. Such an independent office, it is proposed, will be positioned within the National Church Institutions. Although it should be obvious, it must be stated that its staff will not however be tasked with protecting the Church’s interests. The balance required to ensure this will be the utilisation of a system of external judicial monitoring akin to the current ‘President of Tribunals’ system. This ‘in but not of’ approach serves to allow enough independence from the institutional Church to inspire the confidence of those who are being

regulated by this office, and those who report alleged misconduct on the part of regulated professionals.”

1. We completely support the objectives of developing central expertise and freeing bishops for pastoral care of clergy. However, we do not consider the role and purpose of the central office as set out is the best way of achieving these important goals.
2. Again the lack of detail with regard to the triaging process is worrying. Triaging needs to be an independent process undertaken completely separately from a central office or the home diocese and we favour the ELS proposal for trained regional panels.
3. *“its staff will not be tasked with protecting the church’s interests”*. It would be helpful to know what they would be tasked with. And Sheldon makes the a priori assumption that delivering good justice is, in fact, in the church’s interests.
4. A *“system of external judicial monitoring akin to the current ‘President of Tribunals’ system”* is proposed. Light touch external monitoring is no substitute for a robust, evidence-based judicial process at the heart of any such system. No such system has been detailed.
5. The failure to include a *“Misconduct (less than serious)”* channel has the effect of
 - a. Increasing the size and reach of a central office
 - b. Removing an important and legitimate part of a bishop’s role
6. Para 29 solicits views on *“the possible composition of this central office, and to what extent bishops should be part of this composition”*. We do not support the proposal for a central office as it currently stands, and see no possible role for bishops in it. We suggest that even asking the question demonstrates that these proposals have not adequately considered the position of the bishop in the whole process.

We do not support the proposals for a central office of this nature. We would refer to the ELS proposals which point to a smaller and more focused national function to ensure justice for those facing only the most serious allegations. We consider this more proportional to the task and a better use of resources.

Proposal three: Professional standards

We have significant concerns about the way the concept of professional standards is being described here, and how it might be used.

“Para 33. It is for this reason that it is being proposed that the Church of England’s understanding of Clergy Discipline should be set within the broader context of professional standards. This will serve to provide a clear code according to which regulated professionals should seek to order their lives. It will ensure that all deacons, priests, bishops (and archbishops), are held to the same common standard. This codified standard will make clear the professional expectations placed on clergy.

“Para 34. This proposal also has a logical impact in terms of unions. In other spheres, regulated professionals tend to become members of a union, so they have adequate protection from the arbitrary exercise of power on the part of their employer or regulator. Although it is noted that some clergy are already part of a union, it is proposed that this should happen on a larger scale. This does of course raise questions about whether there is a sufficiently broad choice of unions for clergy to join.

“Para 35. Setting clergy discipline within the context of professional standards will allow for the rectification of issues in a case-specific and proportionate way. It will allow for

the distinction between capability and misconduct to be more finely tuned, and response to be made accordingly.”

1. The Working Group tell us they “have been inspired by many secular institutions which maintain a system of professional regulatory standards”. However, none are referenced.
2. Our understanding is that such regulatory standards properly relate to the fitness to practice of professional work such as law, social work, medicine etc, Such codes have been developed over many decades on foundations of explicit principles relating human rights and professional integrity for example.
3. In the context of a process where home and livelihood are at risk, the only purpose of such a code should be to set out the threshold of conduct below which someone should be considered unfit to practice ministry.
4. The proposal includes the phrase “*clear code according to which regulated professionals should seek to order their lives*”. This conflates the highest standards to which clergy may aspire in their personal lives, with the lowest bar for standards of behaviour considered for fitness to hold office. It might well be that such a proposal would make clergy more vulnerable.
5. There is no sample of such a code, no indication of who would be tasked with compiling it, what it would reference, what it would need to dovetail with, how it would be agreed and subsequently reviewed. These omissions are significant red flags and are the basis for our overall disinclination to support the proposals.
6. The lack of detail, including standards, assessment process and so on renders unhelpful the suggested consultation question “*do you agree that the proposed code of professional standards will assist clergy in ordering their professional lives*”?
7. We see no line of connection between “setting clergy discipline in the context of professional standards” and “rectification of issues in a case-specific and proportionate way”. Neither is there any indication how this would assist with finely tuning the distinction between capability and misconduct.
8. Sheldon respects the excellent work of CECA within Unite the Union. However, we have major concerns about para 34. The framing worryingly implies that union membership should be relied on for “adequate protection from the arbitrary exercise of power”. It is the new Measure itself which should provide that protection unless a model like the Medical Defence Union is proposed under which membership with its associated insurance cover is a requirement for the practice of ministry. We understand CECA membership currently stands at 5 – 10% of clergy. The Working Group “*proposes that this should happen on a larger scale*”. Does this envisage compulsory membership for all who could be subject to a complaint (ie including self-supporting and retired clergy)? If not compulsory then what sort of scale is considered large enough, and to serve what purpose? If we were to stray into cynicism we would suspect this proposal of being a way to avoid the issue of making adequate church-funded legal aid available to clergy.

Questions for general consideration

j. Do you have a view on the form that pastoral support ought to take in respect of those involved in the new disciplinary process?

At this stage the most important focus should be on crafting a system for handling complaints that does justice well. It is always going to be stressful being on the receiving end of a complaint – that is

understood. Sheldon's experience is that the CDM itself unnecessarily magnified inherent stresses and created new ones. If there is a good system of justice, properly placed within the institution, then normal routes for pastoral care and accessing support will be restored. It is the cutting off from normal sources of support that makes the CDM so damaging. There may still be a place for a formal pastoral support safety net within the complaint system, but it should never be (mis)used to attempt to mitigate flawed process.

k. *Do you have a view on the current functioning of legal aid for Respondent Clergy?*

The current system is hopelessly inadequate. We commend the ELS proposals. The only people who should need legal aid are the minority facing the risk of loss of home or livelihood and for this group legal aid should be fully funded from central sources.

l. *Do you have any other views about the Progress Report, or the work of the Working Group more generally that you feel need to be taken into account?*

1. The authority of the Working Group remains unclear Para 12 states *"The Group's terms are being updated and will be published in due course"* but we have not seen these.
2. We deeply regret the continued language of "discipline" which seems to us wholly anachronistic for what is a new system of handling complaints.
3. The lack of transparency of the Working Group over the past 18 months. Considering that this is an attempt to replace a flawed, harmful and widely discredited Measure, there has been remarkably little attempt to build trust and confidence through engagement and transparency.
4. On an issue of this level of importance for the welfare of clergy and the whole church, it is extraordinary that the development process is so poor. There has been no published scoping/overview, no clarity on the purpose(s) of the new Measure.
5. Some process of restorative justice should be put in place for those who have been harmed by the flaws of the old CDM.
6. The consultation process should now, at minimum, involve publicity to all clergy in a manner similar to the handling of the reform of marriage legislation.
7. There is a strong impression of a rush to meet the arbitrary deadline of the February Synod when the realities of the time of year and the pandemic have made this unrealistic.
8. There is surely scope now to place a moratorium on all new CDM cases which do not meet the threshold of "if proved would warrant prohibition".
9. CDM reform continues to be approached in a context heavily skewed towards safeguarding, sexual misconduct and in the shadow of the IICSA report. This will inevitably lead to an unbalanced replacement.
10. We note the [recommendations we made in January 2020](#)

The proposals in their entirety

"Para 36. It is our view that when considered as a package, the proposals represent a significant shift away from the current legislative framework. This shift marks a move towards a more holistic system of professional standards and regulation, which will be enforced by officers of the Church who are independent of the dioceses, freeing bishops into a different pastoral relationship with respondent clergy than is currently possible. It will allow for allegations to be responded to proportionately and efficiently. In turn this will allow for

the resolution of situations rather than the current imposition of discipline often without concern for the broader context in which such discipline is imposed, and for what reasons.”

We deeply regret that we see no evidence to support this optimistic conclusion. In our view the ELS proposals provide a much safer starting point for developing a replacement of the CDM. The writing of this consultation response was interrupted to respond to yet another near-miss CDM suicide. Getting it right is a most urgent matter if the Church is to avoid repeating the harms done over the past two decades.

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