



CECA Response to Working Group consultation on reform of the Clergy Discipline Measure

Introduction

CECA is grateful for the energy the Working Group has put into arriving at this point, and for its willingness to listen to our distinctive perspective on these matters including the opportunity to respond in writing to this consultation, and also for the Consultation meeting of 18 December specifically aimed at those coming from a Union perspective. We welcome much in the Interim Report, starting from the recognition of just how unfit for purpose the current Measure and its operation are, and we are glad to see significant changes foreshadowed but we also have a number of important observations to make.

There is a joint CECA/Sheldon Hub response to the separate consultation held by the Ecclesiastical Law society (ELS) on their proposals for CDM reform, which we refer to at various points later in this paper. This response to the Working Group comes from CECA alone, but we are very aware of the parallel Sheldon Hub response, as they are of ours, and it will be seen that in many respects they cover very similar ground. We therefore urge the Working Group to give close attention to both sets of responses.

The following elements of what we jointly wrote to ELS are of such significance that we think it important to repeat them here verbatim.

- *We express our concern that process details are being discussed and consulted upon without prior agreement on the purpose(s) of the replacement to CDM, and proper scoping of how it will relate to existing processes such as Safeguarding and Capability Procedure. Our view is that the new system should replace and simplify all related procedures. Processes should be rooted in restoration of relationship, protection of the vulnerable (who may at times be the clergy themselves), and correction of error where needed. Such process(es) should be managing the lower limit of unfitness to practice ministry, not the human falling short of the highest standards to which those in ministry may aspire.*
- *We continue to call for the establishment of a channel for redress for those whose health and/or ministry has been harmed by a flawed system.*
- *We continue to call for a moratorium on new CDM cases for all but the most serious allegations.*

We would also make the more general point that the Working Group has yet to reach the point where specific proposals, even in draft form, can be contemplated. As so often, the devil may well be in the detail, which is why we have appreciated the ELS approach, which indeed offers more detail, and where our response has been on similar lines.

As a significant group within the life of the church, representing many of its clergy, we would anticipate continued engagement as this process moves from Consultation into Synodical drafting, to ensure our perspectives can continue to be heard before any replacement Measure and accompanying processes reach the point of final decision.

Pete Hobson – chair CECA chair 11th January 2020



Consultation Questions and Responses

These responses both draw directly on discussion from the specific Unite Consultation, whilst also bringing broader perspectives to bear on behalf of members not able to join in with that.

Proposal 1 – Triaging of Complaints

- 1. Do you agree that the proposed triaging process will a) help to ensure Complaints are dealt with proportionately and b) distinguish between grievance and misconduct Complaints? If not, why not?*
- 2. Do you agree with the possible triaging approach which involves, at the outset, both dioceses and the proposed new central office? If not, why not?*
- 3. Do you have any general comments or concerns about this proposal?*

We agree that an initial triaging process is a vital component to resolving how issues can best be addressed. The current effective conflation of Complaint with Discipline is one that must be unpicked in any proposals to be brought forward. Not every matter that raises complaint should be viewed as disciplinary, even where fault may be found. There are many more productive methods for resolving disputes which ought to be explored and written into the church's approach.

We believe that the proposed binary triaging distinction between grievance and misconduct is insufficient, and indeed note some recognition of this in para 22 of the Progress Report. Whilst it should be open to those raising an issue to remove it from formal and statutory process at the outset and pursue other less confrontational options, as para 23 proposes, if this is declined by those raising the concerns, rather than leaving decisions to be made locally we commend the ELS proposals with a three-way triaging distinction for all matters referred.

This sort of triaging means that as well as separating grievance/complaint from potential misconduct, matters relating to misconduct can be further distinguished between those which, if proved, could merit the consequence of a period of prohibition, with attendant loss of livelihood and home for the cleric in question, and lesser matters which whilst amounting to misconduct would not merit such a penalty. There may well be some situations where drawing this distinction is not easy, and the option of the more serious route must remain open at that early stage, but there are clearly others where it can be discounted from the outset. This will remove immense pressure from the cleric concerned and their families.

We commend the ELS group's proposals for how this triaging might be carried out on a regional basis, subject to the comments made in our separate response to that.

It is of vital importance that any cleric accused of misconduct is informed at the earliest possible stage of the process what they are being accused of. It is also important that timeframes set for triage, as for all stages of the process, are not departed from other than out of strict necessity, and that those operating them are held objectively accountable.



Proposal 2 – A Central Office

4. *Do you agree that the proposed central office will help capitalise on a body of expertise in a way that the current arrangement does not allow?*
5. *Do you share concerns expressed by some that delegation of the judicial element of a bishop's disciplinary role is theologically harmful? If so, why? If not, why not?*
6. *Do you have any general comments or concerns about this proposal?*

Consistency across the organisation is crucial, especially in matters where the consequence for clergy is potentially so heavy, and some form of national structural approach would seem to be necessary for this to happen. At the same time existing provincial and regional structures could provide effective geographical delivery of the processes, providing those involved are held accountable for working to common standards.

Members of CECA will have a range of theological understanding of the role of a bishop, but we do recognise the ability to delegate exercise of certain of these functions. If it has been duly concluded that the imposition of a penalty is appropriate to established misconduct, it would be proper for this to be carried out by the bishop from whom the cleric holds their authority to minister, but in our view decision-making leading up to that may properly be delegated. A recognition that this is exercised on behalf of the collective episcopate of the House of Bishops will assist in understanding how this can operate.

Any Central Office should be properly resourced for its operations. In terms of functions, the task of investigation of serious allegations to a proper level is distinct from that of presenting evidence gathered to any subsequent forum, and these should be clearly distinguished, in a way which the current Measure does not.

The external monitoring proposed in para 28 is important, but alongside the judicial element it should involve others experienced in the field, for example a body such as ACAS. It would be appropriate that this monitoring include input from any Union to which significant numbers of clergy belong. Any monitoring must also have effective substance to it: a monitoring process that involves only observations or recommendations is at risk of being all substance and no content.



Proposal 3 – Professional Standards

7. *Do you agree that the proposed code of professional standards will assist clergy in ordering their professional lives?*
8. *How do you respond to the idea of clergy being more involved in unions? Is there a place for a professional association for clergy?*
9. *Do you have any general comments or concerns about this proposal?*

A Code of Professional Standards does indeed provide a benchmark against which allegations of misconduct can be tested, and as stated in the Interim Report is used in other professions. However we have reservations about how such a document would be compiled, under whose authority, and how it would be kept appropriately up to date, to remain in line with changing social expectations.

The *Guidelines for the Professional Conduct of the Clergy (2015 edition)* might be seen as occupying that sort of space, but they were not compiled for that purpose and in our view would be seriously inadequate for it. The basic problem is the inconsistency between whether they embody an ideal standard to which all should aspire, or a minimum threshold below which none should fall – and it is clear that different parts of that document read differently in that respect. Indeed its own stated ‘primary aims’ explicitly set out both approaches, alongside three others (relating to clergy and lay welfare, setting boundaries and ministerial development). It would therefore be very unsafe to use anything of this nature for the purpose proposed. CECA would of course be glad to draw on wider Union expertise to assist in the creation of a Professional Standards document better suited to the purpose.

Clearly CECA are very positive about the idea of clergy being members of a Union, and welcome the positive weight given to this in the Interim Report and Consultation. As members will be aware, CECA came into being in 2012 as part of Unite, arising out of just such discussions in the House of Clergy of General Synod of the time. The option of a wholly independent professional association was explored and found to be wanting: the costs involved in setting up such from scratch with the capacity to deliver anything comparable to an existing Union was judged to be prohibitive, and we would be surprised if any other conclusion were to be reached today. Moreover, with over 1,100 members, and growing, CECA already represents a significant number of clergy. Our secure presence within Unite structures enables us to draw on all the benefits of being part of a large and established trade union, with considerable resource behind it, whilst securing enough independence to be able to formulate our own policies and to support our members vigorously as needed, be it in the course of CDM processes, or otherwise.



Questions for general consideration

- 10. Do you have a view on the form that pastoral support ought to take in respect of those involved in the new disciplinary process?*
- 11. Do you have a view on the current functioning of legal aid for Respondent Clergy?*
- 12. 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?*

It should be the responsibility of the diocese to offer pastoral support for clergy undergoing disciplinary processes. Clearly the current CDM arrangements have raised major problems in this respect, and the removal of much of the judicial elements from the diocesan bishop in a replacement system will go some way to redress that, albeit there is now a significant inherited culture of suspicion amongst many clergy of the bishop and 'the diocese'. It would be beneficial for dioceses to be required to offer independent pastoral support and for financial provision to be made to enable that to be consistently provided.

Trade Union reps are not tasked with providing pastoral support to their members, but in practice CECA do often find ourselves operating in that mode – unsurprisingly given that we are all clergy ordained to pastoral ministry – and our members frequently express profound gratitude for this, but of course this is not something the church collectively can or should rely upon, for any number of reasons.

The current functioning of legal aid is woefully inadequate, and often results in individual clergy running up significant personal costs to defend allegations which may, in the event, be found to be groundless. It is clear that the only equitable solution in the event of contested allegations being adjudicated within a legal framework is for the responding party to have equal access to legal support as those prosecuting the matter. There should be an adequate resource base to this end, and any means-testing should set a much lower threshold within which support becomes available. We find the ELS proposals on this matter to offer the basis for a desirable approach.

Unite as a union can and does provide legal support to its members, normally contracted out to firms demonstrating relevant skills, knowledge and competencies. We would welcome constructive engagement that would facilitate Unite's legal advisors functioning well within any new framework of ecclesiastical law.

The other significant matter we would draw to the attention of the Group is the immense damage done by malicious, misplaced, repetitive, frivolous and otherwise vexatious complaints - which even if dismissed nonetheless can still cast an immense cloud over clergy lives to no obvious good. We believe the creation of some form of process which can minimise these, and where necessary impose penalty where there is clear responsibility for such to be allocated, is of great importance. It is not only clergy who should be held to standards of Christian behaviour, and at the very least there should be provision made such that lay office holders within the church can themselves be subject to sanction if found guilty of damaging behaviour of this sort.