

**Comparison of Clergy Discipline Frameworks  
based on ELS second public consultation**

	<b>Current CDM Process</b>	<b>ELS Proposals</b>	<b>Lambeth Group Proposals</b>
Initial response to complaints (consultation questions 1-7)	<p>The bishop refers the formal complaint to the diocesan registrar who has 28 days to prepare a preliminary scrutiny report (PSR) setting out whether there is sufficient substance to justify proceeding under the Measure. The bishop can then either dismiss the complaint outright or has a further 28 days to decide how to proceed. The respondent is only formally contacted to answer the substance of the complaint at this stage.</p>	<p>Every complaint would be referred to an independent assessor, who are organised in regional panels and trained nationally under the supervision of the Clergy Discipline Commission (CDC). The assessor would investigate and attempt to facilitate reconciliation where appropriate; the respondent would be informed of the substance of the complaint and invited to provide a written answer at the outset. The assessor would also identify whether the complaint constituted misconduct and, if so, whether it is serious misconduct. They would report their findings to the diocesan bishop within 28 days.</p> <p>‘Misconduct’ would be behaviour that attracts disciplinary action and official censure from the Church in the form of a penalty. Misconduct that if proven or admitted could result in a penalty of removal from office and/or</p>	<p>All complaints would go through an initial triaging process, with the complainant indicating whether they consider the matter to be a grievance or serious misconduct. The diocese will then carry out a preliminary assessment of the substance of the complaint: if it is agreed as a grievance it will be dealt with locally; if they are unsure whether it is a grievance or serious misconduct then it will be sent to a central agency for review.</p>

		<p>prohibition would be classed as 'serious misconduct'.</p> <p>Cases involving misconduct raised by safeguarding or criminal investigations could potentially bypass this initial assessment and move straight to the serious misconduct process, or they could still be referred to an assessor to be considered on the papers.</p>	
<p>Bishop's consideration of the initial investigation (qq. 8-12)</p>	<p>Following consideration of the PSR and the respondent's answer, the bishop must decide whether to (1) take no further action (2) record the matter conditionally on the cleric's file (3) recommend conciliation (4) impose a penalty by consent (5) refer the matter to the Designated Officer (DO) for formal investigation</p>	<p>If the assessor's report says that the complaint is without substance or vexatious then the bishop should dismiss it giving reasons, subject to a right of review. Meanwhile any report of a grievance will indicate whether resolution has been achieved or if the bishop may need to intervene to resolve the matter.</p> <p>If conduct which is less than serious has been identified then the bishop would summon the respondent to a disciplinary meeting and could impose a penalty as explained below.</p> <p>If serious misconduct has been identified then the bishop should</p>	<p>All complaints that are identified as serious misconduct will be referred immediately to the central agency before any investigation takes place.</p>

		<p>refer this immediately to the central agency for a directions hearing before a tribunal judge UNLESS the respondent admits the serious misconduct; then the bishop sitting with a tribunal judge should impose an appropriate sentence following penalty guidelines issued by the CDC.</p> <p>The assessor may also identify capability issues falling short of misconduct which can then be addressed with appropriate training and support through diocesan capability procedures.</p>	
Cases of less than serious misconduct (q. 19)	The diocesan bishop can impose a penalty with the consent of the respondent, but if the penalty cannot be agreed then the matter must be referred to the DO for formal investigation.	If misconduct that is less than serious has been identified then, following further representations by the respondent at a disciplinary meeting, the bishop should be able to impose a sentence of rebuke or injunction without the consent of the respondent, subject to a right of review.	[The Lambeth group's interim report only identifies two types of complaint: grievances, which are handled locally without penalty; and serious misconduct which is immediately sent to be handled by the central agency]
Contested serious misconduct cases (qq. 14-18)	The DO must first investigate any case referred for formal investigation before referring it to the President of Tribunals, who	At the initial directions hearing the respondent would have the opportunity to challenge the assessor's finding of serious	[Not considered in detail in the Lambeth group's interim report, other than to say that once the central agency has concluded its

	<p>must determine whether there is a case to answer before a disciplinary tribunal. A preliminary hearing may then be held to identify the issues of the case and give directions.</p> <p>The case is heard by a panel of five – a legally-qualified chair, two lay and two clerical members. The DO appears before the tribunal to present the complainant’s case.</p> <p>Clergy subject to criminal investigations and proceedings are currently dealt with primarily through the imposition of a suspension following arrest and automatic liability for a penalty of removal from office or prohibition following conviction.</p>	<p>misconduct; if this did not happen or the challenge was unsuccessful the main issues of the case would be identified and directions made for the gathering and exchange of evidence. A date for the final hearing would be set within six months of that initial hearing. The DO would prepare the ‘prosecution’ case and would brief an external barrister to appear before the tribunal.</p> <p>The case would be heard by a panel of three – an experienced secular trial judge, and one lay and one clerical member.</p> <p>In the case of parallel criminal investigations/proceedings the church disciplinary process could, in appropriate cases, move forward according to its own rules and standards without waiting for the conclusion of the criminal process.</p>	<p>investigation in serious misconduct cases then it will continue to bring cases to tribunal as in the current system]</p>
<p>Appeals against penalty in serious misconduct cases (q. 13)</p>	<p>An application for leave to appeal is heard jointly by the Dean of Arches and one other judge, the full appeal being heard by a panel of five.</p>	<p>The respondent’s application for leave to appeal (whether of a sentence imposed by a tribunal or by the bishop following admission of serious misconduct) would be heard by the Dean of Arches</p>	<p>[This is not dealt with in the Lambeth group’s interim report]</p>

	<p>The DO has no right of appeal against penalties imposed by a tribunal.</p>	<p>sitting alone, and the full appeal would be heard by a panel of three.</p> <p>A right of appeal would also lie with the DO in cases where the penalty was argued to be unduly lenient with respect to the penalty guidelines.</p>	
Ecclesiastical Legal Aid (qq. 20-21)	<p>A respondent can only receive advice and representation under ELA following a successful application for funding, which is based on fixed rates that do not reflect the amount of work which goes into preparing clergy discipline cases. There are often delays in awards being made as the Legal Aid Commission expects to see evidence of every piece of work being invoiced.</p>	<p>Legal aid should be available generally to all who face accusations of serious misconduct, with funding for initial advice and representation at the directions hearing immediately available and a speeded-up process for applying for full funding based on a realistic assessment of the work required from the tribunal judge's directions.</p> <p>The CDC should maintain a register of solicitors and barristers who are prepared to advise and represent clients in such cases.</p>	<p>[This is not dealt with in the Lambeth group's interim report though one of its 'general' consultation questions asks for views on the current functioning of ELA]</p>
Professional Standards	<p>The <i>Guidelines for the Professional Conduct of the Clergy</i> are currently not prescriptive but is used by</p>	<p>The <i>Guidelines</i> would be revised and enhanced to provide a clear and useable guide for clergy in the</p>	<p>The Church of England's understanding of clergy discipline would be recast around a</p>

	<p>diocesan registrars and the DO as the basis for establishing unbecoming or inappropriate conduct, or neglect or inefficiency in the performance of the duties of office.</p>	<p>ordering of their lives and ministry. Similar to now, they would provide a benchmark for establishing misconduct and serious misconduct for assessors, the DO and the tribunal panel.</p>	<p>‘professional standards’ model, with an extensive code of standards which would regulate the professional lives of clergy. The basis of discipline would be breach of the code, rather than misconduct which is assessed against any professional conduct guidelines.</p>
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**Ecclesiastical Law Society**  
**Working Party on the CDM**  
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