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Ministerial Disciplinary Process and Incapacity Procedure

The Clerk and General Secretary, for MIND (Ministerial Incapacity and Discipline Advisory Group)

Basic information

Contact name and email address	Secretary of MIND: the Revd Chris Copley chrismvivian@gmail.com
Action required	Decision by General Assembly in July 2021. Synods to consider Basis and Structure changes, and elect to Standing Panels for Discipline, in Autumn 2021. Names to be proposed by Nominations Committee to Assembly Executive in November 2021. Transitional Provisions for ongoing cases to be considered by Assembly Executive in November 2021. MIND to offer training between November 2021 and July 2022. Basis and Structure changes to be considered for ratification by General Assembly in July 2022, and redrawn Process to come into effect at the close of that Assembly.
Draft resolution(s)	Resolution 39 1. General Assembly adopts the following amendments to the Basis of Union and Structure of the URC: Basis of Union of the United Reformed Church Schedule E, Paragraph 4 – delete the word ‘ministerial’ before ‘rights of membership’. The Structure of the United Reformed Church Paragraph 1(4) – Add heading ‘Definitions’ and reword: 1.(4) Unless otherwise expressly stated or clearly excluded by the context, a) the expressions ‘minister’, ‘ministers’, ‘ministry’ and ‘ministerial’ when used in the Structure shall refer to the ministry of Word and Sacrament;

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- b) the expression 'the Disciplinary Process' shall refer to the Process established by the General Assembly under paragraph 2(6)(xxi), but includes any process so established for similar purposes before the adoption of that provision;
- c) the expression 'the Incapacity Procedure' shall refer to the Procedure established by the General Assembly under paragraph 2(6)(xxiii), but includes any process so established for similar purposes before the adoption of that provision.

Paragraph 2(1) – in function (ix), insert '(subject to paragraph 2(7)(ii))' before 'to suspend or remove names'.

In the Functions of Synods, delete the initial 'A' and the words in brackets.

Function (xvii) – delete existing text and replace with the following:

'To discharge the functions required under the Disciplinary Process to be exercised by the synod, either directly, or indirectly through other officers or bodies, as the Process may provide'.

Function (xviii) – delete existing text and replace with the following:

'To discharge the functions required under the Incapacity Procedure to be exercised by the synod, either directly, or indirectly through other officers or bodies, as the Procedure may provide'.

Function (xxi) after 'Disciplinary Process' delete 'contained in Section O'.

Delete section (B) of the Functions of Synods

Paragraph 2.(5) – In sub-paragraph (A), after 'the following functions', delete the words in brackets.

In the Functions of Ecumenical Area Meetings, Function (viii), delete 'contained in Section O' and the cross-reference in brackets.

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Function (xviii) - delete existing text and replace with the following:

‘To discharge, concurrently with the synod, such of the functions and duties conferred or imposed by the Disciplinary Process or the Incapacity Procedure upon the synod in respect of a minister or Church Related Community Worker (or former holder of either office) serving or resident within the Ecumenical Area, after proceedings involving that person are concluded, as the synod may from time to time request’.

Paragraph 2.(6) – After ‘General Assembly is responsible for exercising the following Functions’ delete the words in brackets.

In the Functions of the General Assembly, Function (xviii), delete the words in brackets.

Functions (xxi) to (xxvii) – delete existing text and replace with the following:

- (xxi) to establish, and from time to time to review, amend or replace a Process for dealing with cases of Discipline involving ministers or Church Related Community Workers;.
- (xxii) to discharge the functions required under the Disciplinary Process to be exercised by the Assembly, either directly, or indirectly through other officers or bodies, as the Process may provide;
- (xxiii) to establish, and from time to time to review, amend or replace a Procedure for dealing with cases of Incapacity involving ministers or Church Related Community Workers;
- (xxiv) to discharge the functions required under the Incapacity Procedure to be exercised by the Assembly, either directly, or indirectly through other officers or bodies, as the Procedure may provide.

Renumber the last two functions (xxv) and (xxvi).

Insert new paragraph 2(7) as follows:

‘Restriction on exercise of conciliar functions

2(7)(i) As soon as any minister or Church Related Community Worker becomes the subject of a case under the

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	<p>Disciplinary Process or the Incapacity Procedure, no council of the Church shall exercise any of its functions in respect of that person in such a manner as to affect, compromise or interfere with the conduct of that case, save as provided for by the Process or Procedure itself.</p> <p>(ii) The function of the Church Meeting to maintain standards of membership shall not be exercised in a disciplinary context in respect of any member of the local church who is at that time a minister or Church Related Community Worker; nor shall any such member be removed from the Roll of Members or the membership of that person be suspended by the Church Meeting for disciplinary reasons.</p> <p>(iii) The decision reached in any particular case (whether or not on appeal) under the Disciplinary Process or the Incapacity Procedure shall be made in the name of the General Assembly and shall be final and binding, and once so initiated that case shall be resolved only by the steps for which that Process or Procedure provides.’</p> <p>Paragraph 5 - delete existing opening text and replace with the following:</p> <p>5. The procedure for dealing with references and appeals not concerned with the Incapacity Procedure or the Disciplinary Process is as follows:</p> <p>Paragraph 5.4 – delete final sentence and replace with the following:</p> <p>No procedure governed by this paragraph shall be used to review or appeal against decisions reached under the Disciplinary Process or the Incapacity Procedure.</p> <p>Delete paragraphs 6 and 7 in their entirety.</p>
	<p>Resolution 40</p> <p>2. General Assembly adopts the ‘Process for dealing with cases of discipline involving ministers and church related community workers’ (‘Disciplinary Process’) accompanying this Resolution in place of the existing Process.</p>
	<p>Resolution 41</p>

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	<p>3. General Assembly makes the amendments accompanying this Resolution to the ‘Procedure for dealing with cases of incapacity involving ministers and Church Related Community Workers’ (‘Incapacity Procedure’).</p>
	<p>Resolution 42</p> <p>4. (a) The provisions of the new Disciplinary Process concerning appointments to the Assembly and Synod Standing Panels for Discipline, the Disciplinary Investigation and Commission Panels, the Appeal Commissions List and the posts of Assembly Representative for Discipline, Secretary to Assembly Commissions for Discipline and to Disciplinary Appeal Commissions are to come into force at the close of this session of the General Assembly.</p> <p>(b) The Assembly instructs synods to make their appointments to Standing Panels at the earliest opportunity, and instructs Nominations Committee to bring nominations for Assembly appointees under the new Process to the Assembly Executive in November 2021, so that all those appointed can receive initial training in the new procedures before the remainder of the Process comes into force.</p> <p>(c) The new Process is to come fully into force at the close of the meeting of Assembly in 2022 and govern cases coming to the notice of Moderators of synods or the Assembly Representative for Discipline on or after that date, provided that the amendments to the Basis and Structure mentioned in Resolution 1 have by then been ratified. Cases pending under the current Process at that date are to be dealt with as the transitional provisions of the new Process provide.</p> <p>(d) The amendments to the Incapacity Procedure are to take effect at the close of the meeting of Assembly in 2022, provided that the amendments to the Basis and Structure mentioned in Resolution 1 have by then been ratified.</p>

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	<p>Resolution 43</p> <p>5. The Ministerial Incapacity and Discipline Advisory Group to the Assembly Executive (MIND) is instructed to make arrangements to offer the training mentioned in Resolution 4.</p>
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Summary of content

Subject and aim(s)	Redrawing of the Ministerial Disciplinary Process.
Main points	New definition of the basis for discipline; investigation by a team drawn from a denomination-wide panel; <i>prima facie</i> case to be shown to a judicial Standing Panel representative of the synod; option of a negotiated caution in less serious cases; reduction in size of Assembly and Appeal Commissions; new interface between the Process and the Incapacity Procedure.
Previous relevant documents	Paper T1 for Mission Council November 2018 Paper T1 for Mission Council March 2019 Papers T1-T4 prepared for Mission Council March 2020 Papers appended to the report of Mission Council prepared for General Assembly July 2020.
Consultation has taken place with...	Safeguarding Advisory Group; Legal Adviser; Standing Panel for the Incapacity Procedure Also external assistance through Scrutiny Groups, as explained in text below.

Summary of impact

Financial	No net increase of cost anticipated in operating the Process, though costs of Mandated Groups now borne at synod level will be replaced by costs of denominational Investigation Teams. Provision is made for certain expenses of parties to a case to be borne from denominational funds if approved by the responsible Commission.
External (e.g. ecumenical)	Please refer to Appendix B to the draft Process (ministers under other denominational jurisdictions).

General comment on the proposed new Disciplinary Process

In May 2019, Mission Council approved the preparation of a new Process for dealing with cases of discipline involving ministers and Church Related Community Workers. It directed MIND to proceed with redrafting. MIND had already identified certain principles to underlie the redrafting, as proposed to Mission Council in November 2018. The first version of the Framework to form the backbone of the new Process was amongst the papers seen by Mission Council at the May 2019 meeting.

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It was indicated that the Framework would be complemented by Appendices, ranking equally with it and giving detail on specific aspects of the Process, whilst the Framework itself would present an overview of the main principles and stages. Since May 2019, the Framework and Appendices have been through the following further stages of revision and improvement:

- a) Summer 2019 – consideration of the Framework and all Appendices then drafted, divided between three Scrutiny Groups comprising members of MIND, volunteer members of Mission Council and individuals with relevant experience from outside MIND.
- b) September 2019 – consideration of the whole Process at a plenary meeting of MIND.
- c) Autumn 2019 – meetings with representatives of the Safeguarding Advisory Group (SAG) and with the Legal Adviser.
- d) January 2020 – MIND resolves to commend the new Process and ancillary proposals to Mission Council for adoption.
- e) March 2020 – Papers circulated to Mission Council members, incorporating further improvements suggested by the Synod Moderators' Meeting, and at further meetings with Ministries Committee and SAG representatives and with the Legal Adviser. Mission Council was unable to meet physically, but comments from members were invited.
- f) July 2020 – The papers were included, with no significant further changes, in the *Book of Reports* for Assembly 2020 (and an online supplement), but it was agreed that the resolutions would be moved by the Clerk and General Secretary since there had been no opportunity for Mission Council to adopt them formally as its own. In the event, this was among the business of Assembly 2020 which had to be deferred to 2021.
- g) September 2020 and Spring 2021 – MIND agreed further minor improvements to its proposals (of a technical or clarifying nature, as indicated below) and substantive change in just one area (Disciplinary Appeal Commissions and their work).

The final version of our proposals (Framework and Appendices) accompanies this report. The Appendices are numbered from A to Z, save that there is no Appendix I. Appendix Z (transitional provisions for cases pending under the current Process when the new Process comes into force) has not yet been completed: a proposal regarding this, which will depend on the stage which proceedings pending under the old Process have reached, will be brought to the Assembly Executive in November 2021.

No attempt is made here to summarise the content of the new Process. It is hoped their effect will be clear from careful reading, although they contain a substantial volume of material. Those members of Assembly who were members of Mission Council in May 2019 will already be familiar with the main principles and stages, but MIND representatives will be glad to offer further explanation as desired at the meeting of Assembly.

We do, however, offer here a brief explanation of changes made since the draft Framework and Appendices were included in the *Book of Reports* for Assembly 2020 and its online supplement. This may save time for all who were on the Roll of that Assembly and so are already broadly familiar with the proposals.

Changes to the draft Process since Assembly 2020

Service of documents: The version prepared for Assembly 2020 required an accused minister and the Investigation Team to send copies of certain documents to each other, at the same time as lodging those documents with the Panel or Commission responsible for the proceedings. The latest version transfers this responsibility for 'serving the other side' to the Panel or Commission Secretary concerned. This is reflected by amended wording in Framework Paragraph 5.3 and in Appendices O/4, O/7, U/4, U/8 and U/10.

Cautions: The Assembly 2020 version indicated that disposal of proceedings by a caution will not normally be appropriate if the minister concerned has already been cautioned for similar conduct under the new Process. The latest version extends this principle to any minister cautioned under the old Process. This is reflected by amended wording in Framework Paragraph 5.4.

Appeals after a minister admits allegations: The Assembly 2020 version suggested that no appeal will be possible if an Assembly Commission disposes of a case without a hearing, after the accused minister has admitted allegations. The latest version makes clear that either party will still, in that situation, have the option of appealing against the sanction imposed by the Commission. This is reflected by amended wording in Framework Paragraph 7.2.

Incompatible roles: The Assembly 2020 version indicated that no person can serve at the same time on more than one of the judicial bodies or 'pools' established for the Process, or as Secretary to such bodies, or in the 'pool' from which Investigation Teams are chosen. However, this was set out at different points in the relevant Appendices, and there was a danger of these provisions saying different things. Also, on reconsideration, provision was made for certain exceptions to the general principle, in the interest of making the best use of available talent when there could be no real incompatibility. The latest version sets out this restriction (and the exceptions) only in the Framework (Paragraph 8.8) and draws attention to it, without repeating it, by amended wording in Appendices F/3, H/5, K/1, N/2, N/5, U/1 and V/2.

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Safeguarding Advice to Assembly Commissions: The Assembly 2020 version allowed a safeguarding professional who had been involved at earlier stages of a case to serve also, in some circumstances, as safeguarding adviser to a Commission when one was needed. MIND agrees with a point made by the Safeguarding Advisory Group that it would be better for a wholly independent person to give advice in this area to the Commission. This is reflected by amended wording in Appendix G/17.

Composition of the Assembly Standing Panel for Discipline: When allegations are made against a minister under Assembly oversight, the ASPD has the same role in the Process as is assigned to the SSPD in respect of ministers under Synod oversight. The rules for both Panels (in Appendices F and H) were designed to ensure that at least one minister and one Elder would serve on each Panel, allowing the third place to be taken by any member of the URC (appointed on the basis of qualifications and willingness). There has been no change to Appendix F since the Assembly 2020 version; but a simpler version of Appendix H has been substituted, which allows the Assembly Representative for Discipline to be selected from the entire membership of the Church, with the other two members of the Panel being ordained.

Appendices' references to the Framework: The Assembly 2020 version of the Appendices sometimes referred to provisions in the Framework as 'Paragraph ... of the Process'. It is felt that such references would be less ambiguous if they referred expressly to the Framework, so the words 'Paragraph ... of the Framework' have been substituted at Appendices H/10, L/2, L/9, M/1, P/3, P/4, S/3, and U/2.

Grounds supporting or opposing an appeal: The Assembly 2020 version of Appendix U indicated that an Appellant from an Assembly Commission decision, and the other party (the Respondent) to that appeal, must respectively provide a summary of the appeal grounds, or of the grounds for resisting it. It made clear that Respondents cannot rely at the appeal hearing on arguments not stated in their written summary; but it did not make this equally clear in relation to Appellants. The latest version therefore makes clear, by amended wording in Appendix U/2, U/4 and U/5, that the rules are the same for both parties (although the Appeal Commission can permit argument on other grounds, in its discretion).

Provisional Appeal Commission decision 'on the papers': The option in the Assembly 2020 version of Appendix U/7 for an Assembly Commission to give a provisional view on an appeal in advance of the hearing, which would make a hearing unnecessary if accepted by both parties, has been deleted in the latest version as making the appeal process unnecessarily complicated. This has necessitated minor changes also to Appendix U/8 and U/9.

Witness arrangements for appeal hearings: An Appeal hearing will not normally hear witnesses or revisit the findings of fact by an Assembly Commission.

Hearing witnesses is only permitted when new relevant facts have come to light since the Assembly Commission decision (Framework 7.4). The latest versions of Appendix U/8, U/9 U/11 and U/12 provide for written witness statements, and allow the Appeal Commission to indicate in advance of the hearing whether or not proposed witnesses should attend. This is designed to prevent wasting the time of witnesses whom the Commission may not feel able to hear.

Appeal Commission composition: This is the main area of substantive change in the Advisory Group's proposals since last year. The Assembly 2020 version of Appendix V provided for Appeal Commissions to be composed, as those under the old Process were, of a past or present Moderator and one other current member of the General Assembly, together with a convener who would have 'appropriate experience' (though the nature of that experience was not stated). Since an Appeal Commission has considerable freedom to reverse or alter the decision of an Assembly Commission, whose members will have given considerable time to a case and had the benefit of training in their role, it is now felt that an Appeal Commission should be at least equally well-qualified to take the important decisions entrusted to it. The latest version of Appendix V therefore provides for the selection of Appeal Commission members from a List drawn up ahead of any case. The Appeal Commissions List is analogous in this respect to the Commission Panel from which members of Assembly Commissions are selected; but there are more stringent qualifications for inclusion. These include legal or judicial experience, and/or relevant experience (which is more closely defined) in the URC along with a willingness to undergo training.

Some *typographical errors*, mostly affecting cross-references, have been corrected.

Comment on the proposed changes to the Incapacity Procedure

The current Disciplinary Process provides for ministers facing disciplinary proceedings to be referred into the Incapacity Procedure instead, or *vice versa*, if the situation appears to justify this. The new Process therefore also needed to make some corresponding provision; but in the course of drafting this, it became clear some changes of substance might be called for, rather than merely carrying over the existing rules. MIND's proposals are contained in Appendix W to the draft Process, and in a set of proposed changes to the rules of the Incapacity Procedure itself. There has been no change at all in this area to the proposals set out in the 2020 *Book of Reports*.

To give a brief summary of the main changes currently proposed as regards the interface:

A case may be transferred from the Disciplinary Process (DP) to the Incapacity Procedure (IP) if the disciplinary forum (Synod Standing Panel, Assembly Commission or Appeal Commission) currently responsible for the case believes that an incapacity factor

- a) may have contributed to, and may possibly excuse, the alleged misconduct; or
- b) may render the minister incapable of exercising, or continuing to exercise, ministry even if he/she is innocent of culpable misconduct; or
- c) may prevent the minister from answering disciplinary allegations.

But it will be possible for the case to be returned to the DP if the Review Commission considering it under the IP concludes that none of these situations in fact exists.

A case which begins in the IP may only be transferred to the DP if the Review Commission suspects misconduct and is persuaded that none of the three situations just outlined exists or, having examined the possibility of mitigation due to an incapacity factor, still considers the minister may have a disciplinary case to answer.

Since a case will only enter the IP by the 'normal' route (ie with no disciplinary issues) after consideration by the Pastoral Reference and Welfare Commission (PRWC), which itself will have looked into the possibility of retirement on ill-health grounds recognised by the Church's pension scheme, corresponding provisions have been inserted into the Procedure for cases which reach the IP through the DP. However, since the circumstances of such cases could vary greatly, a measure of discretion has been built in, that discretion being conferred on the IP Review Commission, which can (but does not have to) make a reference to the PRWC and can (but does not have to) approve a final outcome in the form of ill-health retirement. As in the DP, there is a provision that the Procedure will not end merely because a minister purports to resign (unless that is a resignation or retirement approved on incapacity grounds).

The Special Appeals Body which, under the current IP, can reverse a Review Commission's decision to refer a case into the DP, will continue to exist. But there will be no corresponding Appeals Body empowered to reverse a DP judicial forum's decision to refer a case into the IP.

Comment on the proposed changes to the Basis of Union and Structure of the URC

There has been no change at all in this area to the proposals set out in the 2020 *Book of Reports*.

At present the Structure of the URC contains a number of references to the Disciplinary Process (DP) and Incapacity Procedure (IP), but does not contain an express power for the General Assembly to make disciplinary and incapacity rules in the first place. MIND accepts there are various constitutional 'pegs' on which the current Process can be argued to 'hang', but suggests that a provision

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devoted specifically to rule-making in this area is desirable, especially if the general powers of church councils are themselves going to be limited, and their functions expanded, by reference to the rules so made. On the other hand, MIND suggests the overall length of the Structure can be reduced, and duplication avoided, if detailed provisions of the DP and IP are not repeated in Structure paragraphs. Such repetition brings the risk that later changes to DP or IP will also necessitate a Structure change, taking up further time of Assembly and synods on something which may be quite minor and technical.

There are various places where, with the laudable aim of separating the Assembly's judicial functions exercised through Commissions from its (or a synod's) executive and legislative roles, the Structure currently spells out that neither level of council should intermeddle in disciplinary or incapacity cases, save as the DP or IP provides. MIND suggests it will be adequate for this to be stated in one place only. On the other hand, the Structure does not at present (but, MIND suggests, it should) make clear that a Church Meeting's disciplinary authority (to remove an individual from the membership roll or to suspend membership, in the exercise of its concern for membership standards) is not to be exercised in respect of a member who is on the Roll of ministers or of CRCWs. The rationale behind this is that, if a disciplinary issue arises concerning a minister or CRCW, it should be handled first with the additional safeguards of the DP.

MIND also proposes a minor change to the functions of an Ecumenical Area Meeting in the disciplinary context. Such a meeting does not have any direct function in ministerial discipline, but may need to bring Assembly Commission recommendations regarding a former minister deleted from the Roll to the notice of appropriate people. The suggested changes are intended to make clear that, although an Ecumenical Area Meeting may share in this task of passing on recommendations, the primary responsibility for so doing will always lie with the Synod.

Finally, there is one proposed change to the Basis of Union Appendix E, which deals with suspension of ministers pending disciplinary investigation. It is currently stated that such a suspended minister 'may not exercise the *ministerial* rights of membership of any council of the Church' (emphasis added). MIND suggests removing the word 'ministerial', so that during suspension all rights of membership are suspended. The chief right of membership which a minister may have, but which is not 'ministerial', is the right to attend, speak and vote at the Church Meeting of which he/she is a member. It seems to MIND that it may be counter-productive, if a minister is suspended (for example) in order to prevent undue contact with witnesses in a case, for the Structure to give that minister the right to attend the Church Meeting. Basis of Union Appendix F – the corresponding provision for CRCWs – does not contain the word 'ministerial' at this point, and thus already prohibits a suspended CRCW from such attendance.

Comment on the Resolutions and the timing of their implementation

MIND hopes it will be possible to work towards the redrafted Process superseding the current Process with effect from the close of the General Assembly's 2022 session. The goal is for any allegations of misconduct which reach Moderators after that date to be dealt with completely under the new Process by judicial fora, Investigation Teams and officers appointed under it. This means that the members of Synod Standing Panels, the Assembly Standing Panel, the Disciplinary Investigation Panel and the Commission Panel will need to be named and receive initial training between the Assembly sessions of 2021 and 2022. This, in turn, calls for the Assembly of 2021 to give as much certainty as possible to the content of the Process, and to instruct synods and the Nominations Committee to make the necessary appointments in time for this to happen.

The changes to the Basis and Structure, however, cannot be finalised in 2021, since they will have to be referred to synods under paragraph 3 of the Structure and reconsidered for ratification at Assembly 2022. MIND hopes this is the last time that alterations in the Disciplinary Process will call for changes at the level of the Church's constitutional texts.

Accordingly MIND is grateful for the willingness of the Clerk and General Secretary to propose five resolutions to the 2021 General Assembly. The first will represent the first stage in making the desired changes to the Basis and Structure; the second will adopt the new Disciplinary Process; and the third will make the Incapacity Procedure changes.

The changes made by the second and third resolutions will, however, be deferred until the close of the meeting of Assembly in 2022 and will then be conditional on the Basis and Structure changes having been ratified. This is set out in the fourth resolution. An exception is made for those provisions of the Process under which appointments take place: those provisions, it is proposed, should come into effect on 13 July 2021, so that Autumn meetings of synods can make Standing Panel appointments, and names for other roles can be brought by Nominations Committee to the Assembly Executive in November 2021.

The individuals so appointed can then be offered training in the new Process before their duties commence at the close of Assembly 2021. The fifth resolution calls on MIND to offer such training.