

# Paper T1

MIND (ministerial incapacity and discipline)  
advisory group

Report on recent work, and  
proposed changes to  
the ministerial incapacity  
procedure

United Church 2016  
Church 2016  
Reformed Church 2016  
Church 2016

# Paper T1



## MIND advisory group

Report on recent work, and proposed changes to the ministerial incapacity procedure

### Basic Information

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<b>Action required</b>	Report is for information; proposed changes require decision
<b>Draft resolution(s)</b>	<b>On the recommendation of the MIND advisory group and on behalf of General Assembly, Mission Council approves the changes to the incapacity procedure shown below with immediate effect:</b>

### Summary of Content

<b>Subject and aim(s)</b>	Changes to the incapacity procedure
<b>Main points</b>	Detail of necessary changes
<b>Previous relevant documents</b>	Ministerial disciplinary process and incapacity procedure
<b>Consultation has taken place with...</b>	Members of the MIND advisory group at its meeting on 13 January 2016. The group represents all aspects of the process

### Summary of Impact

<b>Financial</b>	None
<b>External (e.g. ecumenical)</b>	None.

## MIND advisory group

### Report on recent work, and proposed changes to the ministerial incapacity procedure

1. This is a report from the MIND advisory group to go before the Mission Council meeting in March 2016 and it contains a request that Mission Council should consider and, if thought fit, pass the resolution which appears at the end of this report.
2. During 2015 the advisory group met twice. At the start of 2015 there were no cases within the disciplinary process and no new case reached conclusion in 2015.
3. The one case within the incapacity procedure mentioned in last year's report was resolved through other procedures within the Church and did not therefore need to go forward. It did, however, highlight the need for changes to the procedure which would allow for a case to be adjourned whilst all other avenues of resolving the matter could be fully investigated. The proposed new paragraphs B.3.5.1/4 set out in the resolution below are intended to remove this difficulty. The resolution also brings forward a number of minor changes to the procedure.
4. The advisory group keeps both the disciplinary process and the incapacity procedure under constant review.
5. The training team provides regular training days and guidance in the form of training packs for those involved with those procedures. A training event was held during the year for those involved with the incapacity procedure and two training events were held for the members of the Assembly Commission. Also this year the team has met with members of the pastoral reference and welfare committee (PRWC) and with the synod moderators. Training events are being planned for the members of the joint panel later this year.
6. This level of activity demands a huge amount of time, expertise, patience and good humour from the leader of the training team. We have in Keith Webster someone who possesses all these qualities in abundance and we are indeed fortunate that Mr Webster is in charge of this vitally important aspect of the work of our group.
7. Currently, as a reflection of the modern climate, the group is needing to spend more time considering the various aspects of safeguarding.
8. So, in conclusion, the MIND advisory group formally places before Mission Council the resolution set out below:
9. **On the recommendation of the MIND advisory group and on behalf of General Assembly, Mission Council approves the changes to the incapacity procedure shown below with immediate effect:**
  - 9.1. **Paragraph A.13** Paragraph M.6 is an important paragraph, providing for the review commission to have control of procedural issues. Its mirror image in the disciplinary process comes in Section A of that process. Accordingly bring the text of the current paragraph M.6 into Section A as new paragraph A.13:

**A.13** Where any issue or question of procedure arises whilst the matter is under the jurisdiction of the review commission or the appeals commission, that commission shall resolve each such issue or question and/or give such directions as shall appear just and appropriate in the circumstances.

- 9.2. Paragraph B.2.2** The wording of B.2.2 does not cover the situation where the Church's procedures for ill health retirement do (or might) apply but where the minister has not availed him/ herself of them – possibly because s/he is not prepared to accept that there is a problem and insists on continuing in ministry or, more generally, because of a failure, a refusal or an inability on the minister's part to address the issue of retirement at all. So replace the existing wording of B.2.2 with the following:

**B.2.2** That (i) the Church's procedures for ill health retirement do not apply and that there is no reasonable prospect of their implementation or (ii) the Church's procedures for ill health retirement do or may apply but the minister is unwilling to avail him/herself of them or (iii) the minister has failed or refused or is unable to co-operate in ascertaining whether or not such procedures might apply or is prevented by his/her incapacity from so doing and that, whichever of these situations is applicable, there is no reasonable prospect of the retirement or resignation of the minister.

- 9.3. Paragraph B.3.1.1** The existing B.3.1 to become B.3.1.1.

- 9.4. Paragraph B.3.1.2** Add a new B.3.1.2 as follows:

**B.3.1.2** In the event that the convenor of the PRWC is prevented from exercising any of the functions allotted to him/her under this Procedure for any of the reasons specified in paragraph A.11, the other members of the PRWC shall appoint one of their number to act as deputy to the convenor to exercise those functions and to receive notices in his/her place and shall forthwith give notice to the secretary of the Review Commission of such appointment.

- 9.5. Paragraph B.3.4** After the word 'procedure' on line 2 insert 'set out in Paragraph D.3.4'.

- 9.6. Paragraphs B.3.5.1/4** The purpose of these new paragraphs is explained at Paragraph 3 of the above report:

**B.3.5.1** If, following receipt of the Certificate of Entry but before the Review Commission has been constituted, the secretary receives written information that any of the conditions set out in Paragraph B.2 has not, or may not have been, satisfied, s/he shall consult with the members of the Consultation Group and may on their authority adjourn the proceedings within the incapacity procedure pending the resolution of the matter.

**B.3.5.2** If during any period of adjournment referred to in paragraph B.3.5.1 matters resolve themselves without the case needing to proceed within the incapacity procedure, the Moderator of the Synod or the General Assembly representative shall send or deliver to the secretary of the Review Commission a Notice of Satisfaction signed by the convenor of the PRWC certifying that for the reasons stated therein no further steps need to be taken within the incapacity procedure, whereupon the secretary shall send or deliver to the minister and to the persons to whom s/he gave

notice under paragraph B.3.3 a further notice to the effect that the incapacity proceedings have been withdrawn in accordance with this paragraph B.3.5.2.

**B.3.5.3** If during the said period of adjournment the PRWC is satisfied that the conditions set out in paragraph B.2 have been satisfied and that the case should therefore proceed within the incapacity procedure, the Moderator of the Synod or the General Assembly Representative shall send or deliver to the secretary of the Review Commission a notice signed by the convenor of the PRWC re-affirming the contents of the Certificate of Entry and Commencement Notice, whereupon the secretary shall send or deliver to the minister and to the persons specified in paragraph B.3.5.2 a notice to the effect that the adjournment is at an end and that the incapacity procedure case is being re-activated. The secretary shall also proceed with the required steps as to the appointment of the Review Commission and the calling in of the Commission officer.

**B.3.5.4** An adjournment under this Paragraph B.3.5 shall not exceed eighteen months from the date of receipt by the secretary of the Review Commission of the Certificate of Entry and Commencement Notice under paragraph B.3.2, If at the end of that time the Secretary has not received a Notice under either paragraph B.3.5.2 or paragraph B.3.5.3, the incapacity procedure case shall be deemed to be withdrawn and the secretary shall send or deliver a notice to that effect to the minister, the persons specified in Paragraph B.3.5.2 and the convenor of the PRWC.

- 9.7. Paragraph D.1** The problem here relates to the words **‘whether as a member of any local church or Synod connected with the case’**. It is clear that no-one who is a member of the same local church as the minister could play any part in the case. The juxtaposition of local church and synod might give the impression that membership of the same synod would have the same effect. However, this is not necessarily so. The test would be whether, in the particular circumstances, involvement in the affairs of Synod had brought that person into sufficient contact with the minister to give rise to a conflict of interest. So remove the words **‘or synod’**.
- 9.8. Paragraph D.1.** On the penultimate line, remove the words **‘hearing of the’**. The restrictions in D.1 apply to the whole of the case, not just the hearing.
- 9.9. Paragraph D.1** Add the following sentence at the end of the paragraph:
- ‘The restrictions contained in this paragraph apply equally to the Commission Officer and to any person appointed to assist him/her under Paragraph F.1.’**
- 9.10. Paragraph D.3.2** Remove the words **‘and any supporting documentation’** and replace the words **‘a written response’** with **‘any preliminary comments’**.
- 9.11. Paragraph D3.3** After the words **‘supporting documentation’** insert **‘and any preliminary comments from the minister (as and when received)’**.
- 9.12. Paragraph D.3.4** After the words **‘supporting documentation’** insert **‘and any preliminary comments from the minister (as and when received)’**.

- 9.13. **Paragraph D.4.3** Add a new paragraph as follows:
- ‘When the fifth member of the Review Commission has been identified under Paragraph D.4.1, the secretary shall, as regards that person, follow the same procedure as that set out in Paragraph D.3.3 regarding the four members of the Standing Panel.’**
- 9.14. **Paragraph F.1** Include a new second sentence in this paragraph as follows
- ‘The Review Commission may, if it sees fit, accede to any request from the Commission Officer for the appointment of any person or persons of suitable experience to assist the Commission Officer in the gathering of information and the conduct of the investigation in any particular case.’**
- 9.15. **Paragraph F.8** The first part of this paragraph duplicates Paragraph D.3.4 except that in D.3.4 the secretary supplies the CO with this paperwork at the outset, whereas in F.8 the RC only supplies it when it has carried out its initial review. D.3.4 is preferred as the CO should be brought into the picture as soon as possible, even though s/he must await instructions from the Review Commission. So remove the first sentence of F.8 and re-order the remainder of the text so that the paragraph will read as follows:
- F.8 The Review Commission must make clear to the Commission Officer the issues identified by the Review Commission to which it wishes the Commission Officer to direct his/ her enquiries so that there is consistency and an avoidance of duplication in the gathering of information. Consideration of any specific advice or guidance as mentioned in Paragraph F.4.4 is particularly pertinent in this respect.**
- 9.16. **Paragraph J.2.1** End the first sentence at the word **‘private’**. Then begin a new sentence to read as follows: **‘The Review Commission shall be in charge of the conduct of the hearing, including the control of all procedural matters, and only the following persons ....etc.’**
- 9.17. **Paragraph K.8.1** On the penultimate line change **‘not less than’** to **‘not more than’**.
- 9.18. **Paragraph K.8.3, K.9.1 (new), K.9.2 (new), L.11.3 (changes to existing paragraph) and M.7 (new).**

The reasons for the remaining changes as set out below are (i) to provide for the Review Commission (or the Appeals Review Commission) to present an anonymised report after each case to assist the MIND advisory group in improving the procedure and provide training and (ii) to state when the IP proceedings are concluded. So:

- 9.19. **Paragraph K.8.3** Add the following sentence at the end of the paragraph:
- ‘The Review Commission shall thereupon comply with the provisions of paragraph M.7.’**
- 9.20. **Paragraph K.9.1** Add this new paragraph as follows:  
**In the event of the Review Commission deciding not to delete the minister’s name from the Roll of Ministers, the Incapacity procedure case shall be regarded as concluded on the date of the Hearing.**
- 9.21. **Paragraph K.9.2** Add this new paragraph as follows:



In the event of the Review Commission deciding to delete the minister's name from the Roll of Ministers and there being no appeal against that decision under paragraph L.1.1 within the period allowed under paragraph K.8.1, the incapacity procedure case shall be regarded as concluded on the first day after the expiration of such period.

- 9.22. **Paragraph L.11.3** After the words 'the decision' insert 'by the Appeals Review Commission' and change the words 'under N.2' to 'under paragraphs M.7 and N.2.' Add the following sentence at the end: 'Also the incapacity procedure case shall be regarded as concluded on the day of the Appeals Hearing.'
- 9.23. **Paragraph M.6** To be transferred to Section A as new A.13.
- 9.24. **Paragraph M.7** The existing M.7 becomes M.6. Add a new M.7 as follows:
- M.7.** Within one month of the conclusion of each case as provided in either paragraph K.8.3 or paragraph L.11.3, the Review Commission or the Appeals Review Commission (as the case may be) shall prepare a written report of its conduct of the case and submit it to the secretary of the Review Commission, who shall, in order to preserve confidentiality, remove from the report the name and address of the minister, the name of the minister's church(es) and any other information which might lead to the identification of any of the individuals involved in the case. The purpose of the report shall be to help those charged with the ongoing review of the operation of the incapacity procedure and thus to ensure that appropriate training and assistance are provided and that the highest standards are maintained.
- 9.25. **Appendix** At the end of the Appendix, under the words 'Convenor of PRWC' add the words 'or his/her duly appointed deputy (see paragraph B.3.1.2).'
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