

Paper T3

Ministerial disciplinary process and incapacity procedure

Ministerial incapacity and discipline advisory group (MIND)

Basic information

Contact name and email address	The Revd Chris Copley chrismvivan@gmail.com
Action required	Take note. MIND will welcome any comment on detail from members of Mission Council.
Draft resolution(s)	None. The detail of this paper is presently provisional.

Summary of content

Subject and aim(s)	These are the changes to the Incapacity Procedure that would be entailed by the proposed new Disciplinary Process.
Main points	See Paragraphs 7-13 of the introductory section of Paper T1. Paragraph 8 makes clear that the proposals below are provisional in their detail, pending further scrutiny.
Previous documents	See Paper T1.
Consultation has taken place with...	See Paper T1 – although the consultation was not about the detail of this paper.

Summary of impact

Financial	See Paper T1.
External	See Paper T1.

PROCEDURE FOR DEALING WITH CASES OF INCAPACITY INVOLVING MINISTERS OR CHURCH-RELATED COMMUNITY WORKERS

Necessary changes to the Procedure, entailed by the proposed changes to the Disciplinary Process. The numbers below refer to sections and paragraphs of the present Incapacity Procedure.

LP.1 – Replace ‘whilst not’ by ‘whether or not’, and delete ‘nevertheless’.

Insert new provision:

- LP.1A In cases transferred into the Incapacity Procedure by a direction given during the Disciplinary Process after disciplinary allegations have been made against a minister or CRCW, the Review Commission and Appeals Review Commission are also to consider:
- (i) whether incapacity factors could have contributed to any misconduct covered by those allegations (and if so, to what extent those factors may excuse or mitigate such misconduct if proven)
 - (ii) whether incapacity factors prevent the affected minister or CRCW from answering disciplinary allegations.
- LP.4 replace text down to 'commissioning' by the following:
- Although the operation of the Incapacity Procedure is in most cases not based upon disciplinary allegations,
- LP.5 replace 'recommendation from' by 'direction given in'
- A1.1 replace existing definitions (and insert new definition of 'Incapacity factors') as follows:
- 'General Assembly Representative' shall mean the Assembly Representative for Discipline appointed under the Disciplinary Process
- 'Incapacity factors' means the three factors referred to in Paragraph LP1 as potentially rendering a minister incapable of exercising, or continuing to exercise, ministry
- 'Special Appeals Body' means the body appointed to hear appeals under Section H6 against a direction transferring a case into the Disciplinary Process
- 'Synod' means that Synod which in relation to any minister or CRCW would be considered to exercise oversight for the purposes of the Disciplinary Process
- B.6 delete existing text and replace as follows:
- A direction given by a Synod or Assembly Standing Panel, Assembly Commission or Appeal Commission under the Disciplinary Process for the transfer of a case into the Incapacity Procedure and the reasons given for that direction shall have the same effect, and be treated in the same way, as a Certificate of Entry and Commencement Notice respectively.
- E.7 replace 'the issue of a Commencement Notice' by 'a direction given in that Process'.
- F.4.4 replace 'question of whether, based on the criteria set out in Paragraphs LP1 and LP4 the minister is or is not capable of exercising, or of continuing to exercise, ministry?' by 'matters arising for the Commission's consideration under Paragraphs LP1, LP1A or LP4?'
- Insert new provisions:

- F 4.5 What safeguarding considerations are raised by the possible incapacity factors engaged in the case, and what safeguarding advice should the Commission take before reaching a final decision on possible deletion from the Roll?
- F 4.6 Should the PRWC be invited to consider a case transferred from the Disciplinary Process and make recommendations to the Commission? (This step may also be taken at a later stage, before a final decision whether deletion from the Roll is or is not appropriate; but will not normally be appropriate if the Commission anticipates the possible return of the case to the Disciplinary Process.)
- H.1 and H2 delete existing text and replace as follows:
- H.1 If it considers that, in a case within the Incapacity Procedure, the minister may be guilty of misconduct as defined in Paragraph 2 of the Disciplinary Process, the Review Commission may, at any time during the Incapacity Procedure and whether or not a Hearing has taken place, adopt the procedure set out in Paragraphs H2 and H17 to transfer the case into the Disciplinary Process.
The Review Commission must not, however, direct such transfer if, or so long as, it believes (or considers further investigation may show) that:
- (i) any of the factors listed in Paragraph LP1 may have contributed to, and may possibly excuse, the suspected breach of expectations;
 - (ii) any such factor may render the minister incapable of exercising, or continuing to exercise, ministry even if the minister is guilty of no such breach; or
 - (iii) any such factor may prevent the minister from answering disciplinary allegations.
- H.2 It shall instruct the Secretary of the Review Commission to inform the minister by written notice of its decision to direct a transfer of the case to the Disciplinary Process, stating its reasons for such recommendation. This notice shall contain a statement of its reasons for reaching its decision and it may indicate what papers, if any, should be passed to the body responsible for conduct of the case within the Disciplinary Process. The notice shall inform the minister that she or he may within a period of twenty-one days from the receipt of the said notice give written notice to the Secretary of the Review Commission of his/her intention to appeal against the proposed direction. If at the end of the period no such notice of intention to appeal has been received (time being of the essence for this purpose) then the procedure set out in Paragraphs H.14 and H.17 shall be followed. The notice shall draw the attention of the recipient to the strict time limit for serving a Notice of Appeal.
- H.11 replace 'person to whom the reference back will be made' by 'body responsible for conduct of the case within the Disciplinary Process'.
- H.13 replace 'reject the proposed reference back' by 'cancel the direction for transfer'.

H.14 and H17 to H20 delete existing text and replace as follows:

- H.14 If the decision of the Special Appeals Body is to reject the appeal and to uphold the direction for transfer, or if there is no appeal against the direction, the Secretary of the Review Commission shall send to the minister:
- (i) a notice advising him/her of that fact
 - (ii) a copy of the notice of the decision and the statement of reasons appended to the decision
 - (iii) a copy of the direction for transfer and
 - (iv) copies of any papers being sent with the direction in accordance with Paragraph H.2 or Paragraph H.11 as the case may be.
- H.17 If the decision is to reject the appeal and uphold the direction for transfer, or if there is no appeal against the direction, the Secretary of the Review Commission shall forthwith send or deliver to the Moderator of the Synod having oversight of the affected minister (or, if the minister is under the direct oversight of the General Assembly, to the ARD), for the attention of the Synod or Assembly Standing Panel for Discipline as the case may be,
- (i) a written notice setting out the decision of the Review Commission, or in the event of an appeal, the Special Appeals Body, incorporating both the Review Commission's direction and (where applicable) the order of the Special Appeals Body dismissing the appeal, together in either case with the reasons given, and
 - (ii) such other papers (if any) as are referred to in Paragraph H.2 or Paragraph H.11 as the case may be.
- H.18 In the event that a case transferred into the Incapacity Procedure by direction of an Assembly Commission or Appeals Commission is transferred back, the notice is to be sent instead to the Secretary of Assembly Commissions for Discipline or to the Secretary of Disciplinary Appeal Commissions, as applicable.
- H.19 The Secretary of the Review Commission shall at the same time send copies of the direction for transfer (but not the accompanying documentation) to the Moderator of the Synod of the province or nation where an affected minister under direct Assembly oversight resides, the Synod Clerk, the General Secretary, the Press Officer, the Secretary for Ministries and the Convener of the PRWC.
- H.20 As soon as the direction for transfer has been sent in accordance with Paragraph H17, the Review Commission shall declare the case within the Incapacity Procedure to be concluded and no further action shall be taken in respect thereof.

Delete H22 and H23 in their entirety.