

Paper T1

Proposal for work on a redrawn ministerial disciplinary process

Ministerial incapacity advisory group (MIND)

Basic information

Contact name and email address	The Revd John Durell johncdurell@gmail.com
Action required	
Draft resolution(s)	<ol style="list-style-type: none">Mission Council approves the preparation of a new process for dealing with cases of discipline involving ministers and church related community workers, incorporating the changes from the current process enumerated in paper T1 of November 2018. It directs MIND (the ministerial incapacity and discipline advisory group) to proceed with redrafting and to report further to Mission Council in March 2020.Mission Council approves the proposal that scrutiny groups set up by MIND for specific responsibilities in the drafting task should contain members of Mission Council as well as members of MIND and others, as set out in MIND's report. The Officers of Assembly are directed to invite interest from members of Mission Council, make appointments from those volunteering and communicate their names to the Secretary of MIND.

Summary of content

Subject and aim(s)	Redrawing of the ministerial disciplinary process.
Main points	To illustrate (by means of the annexed framework) the advisory group's thinking on a redrawn process; to seek authority to proceed with the drafting task; to seek the inclusion of Mission Council members on scrutiny groups contributing to this task; and to explain the group's thoughts on how the new process can best complement new safeguarding measures being adopted by the Church.
Previous relevant documents	Paper T1 for Mission Council November 2018.
Consultation has taken place with...	A copy of the draft framework was shared with the denominational Safeguarding Adviser whose initial comments

	were communicated to the group, but so far the proposals, draft framework and appendices are the unaided work of this group.
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Summary of impact

Financial	Reduction in volunteers' expenses at one level but possibly increased travel at another; hopefully no major net increase.
External (e.g. ecumenical)	None at this stage, though detailed proposals will concern ministers of other denominations serving in LEPs with the URC.

Proposal for work on a redrawn ministerial disciplinary process

1. MIND reported to Mission Council in November 2018 (paper T1) that it was aware of the concerns raised by those involved in regular operation of the ministerial disciplinary process: concerns which others shared. It indicated a number of changes it proposed to initiate, and asked Mission Council to make its views known if it were not content with that 'direction of travel'. The minutes record no feedback on points of detail, but Mission Council informally indicated support for the redrawing of the process, rather than continuing to amend the existing version.
2. As reported in November, MIND commissioned one of its number to draft a possible replacement process, and the new draft was initially considered at the MIND meeting in January. The Church's Legal Adviser, as a member of the group, has already had some input into the text, as have certain other members. The text has been shared with the Church's Safeguarding Adviser, but until now responsibility for its wording has remained within the group. MIND appreciates, of course, that if the redraft proceeds further, a number of interests outside the Group will need to contribute to refining it to the point where Mission Council and the General Assembly can be invited to adopt it. Input from the safeguarding advisory group will be important in this respect.
3. The redrawn Process consists of a framework and a number of appendices. The Framework in its current version is set out at the end of this paper – not at this stage for approval of the actual text, but because reading it is the best way to appreciate the stages of the process now proposed, and in particular how this text embodies the changes sketched at paragraph two of our November paper. A simple flow chart is also included for illustration of the main stages, though it should be noted this does not give a comprehensive view of every possibility in the suggested process. The framework, it will be seen at once, is considerably shorter than the current process; which the group hopes will render the process easier to follow for those who have to engage with it. The entire process, as drafted, is also shorter than its predecessor, but not radically so since there are 21 appendices at present, and would ultimately be 23. However, both in the drafting task and in later administration of the process, it will only be necessary when considering one topic to refer to the appendix governing that topic.
4. Mission Council is invited to pass the first resolution set out at the head of this paper. Should it do so, MIND proposes to divide its members into 'scrutiny groups'

and allocate appendices, and relevant passages of the framework itself, to each scrutiny group for detailed consideration. Rather than scrutiny groups only consisting of MIND members, it is suggested Mission Council might itself appoint some of its number to strengthen each group (as proposed in the second resolution above), and that certain people might be invited (by MIND's Convenor) to participate from outside. One of these might be a representative of one of the trade unions to which many ministers and clergy now belong, which often offer support to ministers facing disciplinary proceedings as they do to those in other walks of life. The table below lists the three scrutiny groups' proposed remit and membership. The groups' work would be conducted by electronic communication so far as possible, but round table meetings may become necessary.

5. Scrutiny groups would be asked to focus, as such, only on their own appendices and parts of the framework. Individuals could however make written suggestions to scrutiny groups on which they did not serve. The author of the present draft would not serve on any scrutiny group, but be available to all for explanations or assistance with wording. On completion of the scrutiny groups' work, he would collate the amended sections and produce a complete text which would return to a plenary session of MIND. He will also prepare, for consideration first by the full MIND Group, consequential amendments to the URC's structure and a draft transition timetable, should the Assembly (and, as regards changes to the structure, synods) approve the redrawn process. At worst the aim would be for an encouraging progress report to Mission Council in March 2020; at best it may be possible to submit resolutions then covering adoption of the process, changes to the Structure and transitional arrangements.
6. As indicated in November, one of the key aspects of these proposals is to transfer the personal role of the Moderator of a Synod to a three-person synod standing panel for discipline, whose other members would be chosen by the synod itself. The role of this body would not be investigative but judicial. In the synod's name it would take important initial decisions such as whether a charge was frivolous, whether a minister should be suspended, and finally whether the investigating team had shown a *prima facie* case for the minister to answer. Another key proposal is that the investigating teams should be groups of three drawn from a denominational pool, not therefore requiring volunteers to be found in each nation or province but enabling the appointors to look across the whole Church for people with time, willingness to serve and necessary skills. Assembly and appeals commissions would operate in most respects as they do now, but none would have more than three members. The increase in the number of volunteers attributable to the additional members of synod standing panels would thus be counterbalanced by the smaller pool of Investigators (compared to the present Mandated Groups) and a slightly smaller number of potential commission members. Some members of Investigating Teams would have to travel further in the course of their work, but apart from this MIND does not anticipate the redrawn process causing the Church extra expense.
7. The past cases review learning group, whose report was also received by Mission Council in November (resolution R2), called for steps to ensure that the Church's measures for safeguarding and protecting individuals and for ministerial discipline interact effectively. Resolution R3 approved principles for shaping a new code of practice around vetting, disclosure and barring checks and safer recruitment procedures. MIND welcomes these decisions and is keen for the redrawn process

to be part of a wider exercise, in which policies, binding rules or a code of practice ensure the Church is as sure as it can be of the suitability of candidates before ordination, and that the continuing conduct of ministers under caution or written warning is suitably monitored. The fact, therefore, that the redrawn process refers to safeguarding only in terms of the ‘advice’ necessary at various key stages should not be read as meaning this advisory group is downplaying safeguarding’s importance.

8. It is true, though, that safeguarding and discipline have different goals. Safeguarding is not just about discipline, and discipline is not just about safeguarding. Proof and absolute fairness (so far as this can be achieved) are very important to the administration of discipline, as they are in secular justice; whereas safeguarding sometimes has to take mere suspicion seriously and err on the side of caution. This may mean the Church needs safeguarding rules under which a person’s public ministry can be halted even where no disciplinary basis for doing so exists. To make such rules would raise large questions and be outside the current remit of MIND. Consequently we do not ourselves propose the idea, though we commend it to the safeguarding advisory group for consideration and should be happy for some liaison between them and us. We believe, though, that that would be preferable to weakening the goal of fairness and the need for proof in the disciplinary process.

Proposed scrutiny groups

	Group 1	Group 2	Group 3
Topics	Introductory material Investigation Miscellaneous matters	Agreed cautions The Hearing stage	Allegations Pastoral care Appeals
Framework	Paras. 1-2, 5.1 to 5.3, 8	Paras. 5.4, 6	Paras. 3, 4, 7
Appendices	A E F G Q T V	H J K L M N S U	B C D O P R
Membership	3-4 members of MIND 2-3 Mission Council members 2 members of the Safeguarding Advisory Group appointed by that Group	3-4 members of MIND 2-3 Mission Council members + 1 trade union representative appointed by the Convener of MIND + 1 person combining a legal background with Assembly Commission experience	3-4 members of MIND 3-4 Mission Council members + 1 retired Synod Moderator

Appendices W (interplay with other Procedures) and X (transitional provisions) would be drafted and allocated to Scrutiny Groups at a later date.

<p>1.</p>	<p>The expectations of ministers</p> <p>At their ordination or commissioning, Ministers of Word and Sacraments and Church-Related Community Workers make affirmations about their Christian belief, about the motives leading them to enter their ministry, and about their future conduct.</p> <p>It is expected</p> <ul style="list-style-type: none"> • that they will make these affirmations honestly • that they will serve in the ministry of the URC only so long as they can still with integrity teach and claim to hold the understanding of the Christian faith expressed in the Basis of Union • that their conduct after ordination or commissioning will accord with the promises then made. <p>It is also expected</p> <ul style="list-style-type: none"> • that, during the process of candidature for the ministry in question, they will not have misled the Church or those who, on its behalf, assessed their readiness for that ministry • that if they are arrested on a criminal charge, convicted of any criminal offence by a court or accept a police caution in respect of such an offence, they will report that fact to the Moderator of the Synod exercising oversight of them. <p>If any of these expectations is not met, there is a possible case for discipline.</p>	<p>The affirmations are set out at appendix A.</p> <p>Throughout this statement of the Process, Ministers of Word and Sacraments and Church-Related Community Workers are both referred to as 'ministers'. The expressions 'ministry' and 'Roll of Ministers' should be construed accordingly.</p> <p>Appendix Q relates to ministers under other denominational jurisdictions.</p> <p>Arrest, conviction or formal police caution has the same consequences whether within or outside the United Kingdom.</p> <p>The synod with oversight is defined in paragraph three. As indicated in that paragraph, the Assembly Representative for Discipline may in certain cases take the place of a Synod Moderator.</p>
<p>2.</p>	<p>The place of the disciplinary process</p> <p>In many cases a pastoral approach can be taken and a matter resolved by informal advice or an apology. But there are cases in which a breach of expectations undermines the credibility of a person's ministry or the Church's corporate witness so seriously that allegations of such a breach call for formal investigation, following the requirements of natural justice, and for possible sanctions if the breach is proved. It is with such more serious cases that this disciplinary process is concerned.</p>	<p>Separate processes concern ministerial capability and Incapacity. Church meetings possess a disciplinary competence over their members, but this will not be exercised over a church member whose name remains on the Roll of Ministers.</p>
<p>3.</p>	<p>Allegations</p> <p>Any allegation suggesting a failure to meet the expectations in paragraph 1 which is serious within the meaning of paragraph two must be referred to the Moderator of the Synod exercising oversight of the minister concerned. Concerns coming to the notice of the Moderator without a report from any complainant may be treated as allegations. A report of a criminal conviction,</p>	<p>A Synod exercises oversight of all ministers serving in its province or nation, and of all ministers resident in that province or nation who are retired or otherwise not serving the Church in a</p>

	<p>arrest or police caution is to be treated as though it were an allegation.</p> <p>The Moderator must call together the synod standing panel for Ministerial Disciplinary Matters ('SSP'). The SSP may dismiss allegations that are, in its view, patently frivolous, malicious or unrelated to the expectations, stating why it considers that to be the case. Otherwise it must pass the allegations and any supporting evidence on for further consideration in the investigation stage.</p> <p>Allegations respecting the General Secretary or the Moderator of a Synod, or a minister who for any other reason falls under the direct oversight of the General Assembly, are to be referred to the Assembly representative for discipline ('ARD') who is to call together the Assembly standing panel for ministerial disciplinary matters ('ASP').</p> <p>As soon as it is aware of the allegations the SSP may suspend the minister, with the consequences set out in the Basis of Union. If satisfied that no reasonable grounds exist for immediate suspension, the SSP may elect not to suspend; but before so electing it must take safeguarding advice. The Moderator may suspend, acting alone, on first receiving the allegations if there is delay in calling together the SSP and the Moderator considers immediate suspension necessary. Decisions to suspend or not to suspend must be accompanied by reasons, and reviewed by the SSP on first convening and regularly thereafter: they may be revised at any time.</p>	<p>stipendiary capacity.</p> <p>Rules on double jeopardy appear at appendix R.</p> <p>The composition of the SSP is set out at appendix B. 'Calling together' does not necessarily imply a physical meeting.</p> <p>The identity of the ARD and the composition of the ASP are set out at appendix C. References to a Synod Moderator and to the SSM apply equally to the ARD and ASP.</p> <p>Rules concerning suspension and extracts from schedules E and F to the Basis of Union, listing its consequences, are set out at appendix D.</p> <p>'Safeguarding advice' is explained at appendix E.</p>
<p>4.</p>	<p>Pastoral care</p> <p>When a minister is suspended (or, if there is no suspension, when allegations are passed on to the investigation stage) the Moderator must arrange as soon as possible for another experienced minister to offer ongoing pastoral care to the accused minister. The pastor so appointed is to operate independently of the Moderator and to have no involvement in any aspect of the process. The Moderator's own pastoral responsibility for the minister is suspended so long as the case remains under the authority of the SSP. The Moderator must also consider what pastoral care is available to the accused minister's dependants, the complainant and others directly affected by the case.</p>	
<p>5.</p>	<p>The investigation stage and its outcomes</p>	
<p>5.1</p>	<p>The purpose of the investigation stage is for the original allegations (and any further allegations which this stage may bring to light) to be fairly and expeditiously investigated by an investigation team, whose findings are to be reported to the SSP. At this stage the team is concerned with three issues: (i) the facts of the case, and in particular whether there is a <i>prima facie</i> case for full</p>	<p>The composition of an investigation team, and of the disciplinary investigation panel from which it is drawn, are set out at appendix F.</p>

	<p>investigation; (ii) the seriousness of the allegations if proven, and (iii) (only if the allegations are admitted by the minister), whether the case can be appropriately disposed of by a caution. It may also, at any time, recommend the suspension of the accused minister or the lifting of a current suspension.</p> <p>Based on the team's report and the accused minister's response, the SSP (acting in the name of the synod) decides, giving reasons, whether to end the process, initiate proposals for an agreed caution, or send the case to the hearing stage.</p> <p>The role of the SSP during this stage is judicial. As such it takes no part in the investigation but weighs impartially the facts and arguments presented by the investigation team and by the accused minister.</p>	<p>The work of the investigation team is explained at appendix G.</p>
<p>5.2</p>	<p>If the investigation team concludes that the allegations against a minister do not amount to a <i>prima facie</i> case, or that even if proven they would not merit formal disciplinary sanctions, the team may report accordingly to the SSP. On receiving such a report the SSP must take safeguarding advice, and must then declare the process and any suspension terminated from that point, save that it may refer the report back to the team on one occasion for reconsideration.</p>	<p>'Safeguarding advice' is explained at appendix E. There is one exception, set out in appendix E, to the obligation to take safeguarding advice at this and later stages of the process.</p>
<p>5.3</p>	<p>If the investigation team believes its investigation into allegations against a minister reveals a <i>prima facie</i> case, which if proven would be sufficiently serious for formal disciplinary sanctions to be considered, the team may report accordingly to the SSP. The accused minister is to receive a copy of the team's report and to be advised of the time allowed for for a written answer.</p> <p>On considering the report and any answer the SSP must either (i) refer the report back to the team on one occasion for reconsideration and further investigation, (ii) declare the process and any suspension terminated from that point, if (after receiving safeguarding advice) it does not agree that the report supports the team's conclusions, (iii) (after receiving safeguarding advice) propose an agreed caution in accordance with paragraph 5.4, or (iv) pass the report, any answer and all supporting evidence on for consideration at the hearing stage.</p>	<p>The time allowed for the minister's answer is to be 14 days unless another period is set by the SSP when the copy report is delivered.</p>
<p>5.4</p>	<p>An agreed caution may be an appropriate outcome in disciplinary cases where ministers accept the allegations against them, display convincing remorse and are willing to undertake appropriate precautions against recurrence. A caution may be considered at the close of the investigation stage if the investigation team recommends this in its report, or if the SSP, on receiving that report and the minister's answer, proposes a caution of its own motion. Safeguarding advice must be taken on the terms of a caution as finally negotiated.</p>	<p>Appendix H sets out how a caution is to be drafted, negotiated and finalized</p>

	<p>A caution is not appropriate where a minister denies all allegations; nor, normally, in the case of a second offence similar to a former offence dealt with under this process.</p> <p>If a caution is agreed by both parties and the SSP, delivered formally by the SSP and acknowledged by the minister, the process and any suspension are terminated from that point.</p> <p>If a caution is recommended by the investigation team or proposed of the SSP's own motion, but the SSP is satisfied it will not be possible to reach agreement on a caution in appropriate terms and within a reasonable time, then the SSP must pass the team's report, any answer and all supporting evidence on for consideration at the hearing stage. Correspondence entered into (subsequent to the team's report) in connection with the proposal and attempted negotiation of a caution is not to be passed on, and will not be admissible at the hearing stage.</p>	
6.	The hearing stage	
6.1	<p>As soon as the SSP passes a case on to the Hearing Stage, an Assembly commission is constituted to oversee and hear the case. Once a commission is in being for a particular case, authority over that case passes from the synod to the General Assembly, in whose name the commission acts. Any procedural directions, or decisions regarding suspension of the accused minister, are thereafter to be given by the commission (after receiving safeguarding advice in respect of any lifting of suspension).</p>	<p>The composition of an Assembly commission, and of the commission panel from which it is drawn, are set out at appendix J.</p>
6.2	<p>Having satisfied the SSP of a <i>prima facie</i> case against the accused minister at the close of the investigation stage, the task of the investigation team in the hearing stage will be to present the evidence in such a way as to satisfy the Assembly commission of the truth of the allegations on a balance of probabilities, and to make submissions regarding the seriousness of the case and an appropriate sanction. Unless the team abandons the allegations, its investigation will continue for this purpose until either it notifies the Secretary of Assembly Commissions (SAC) that it is ready for the hearing, or the commission sets a hearing date of its own motion.</p>	<p>Rules for the timetable of the hearing stage are set out at appendix K.</p> <p>Abandonment of allegations during the hearing stage is governed by appendix U.</p>
6.3	<p>If, at any time after the appointment of an Assembly commission, the accused minister notifies the SAC of a desire to admit some or all of the allegations under investigation and to submit to the imposition of a sanction, the commission may accede to the request after considering a response from the investigation team.</p>	<p>Rules for the admission of allegations are set out at appendix S.</p>
6.4	<p>The Assembly commission is to hear the case presented by a single member of the investigation team or by another person appointed by the team for that purpose. The accused minister has the right to be present and to reply.</p>	<p>Rules concerning procedure at hearings, reception of evidence given other than verbally,</p>

	Witnesses may be called on behalf of the team and by the minister, and cross-examined by them or by any member of the commission. The commission may sit with Assessors to advise on theological questions, issues of disability or cultural sensitivity, safeguarding issues or other matters on which it considers impartial specialist advice to be essential, but assessors are to have no vote in commission decisions.	representation, persons permitted to accompany the accused minister or witnesses and the role of Assessors are set out in appendix L.
6.5	At the conclusion of the hearing the Assembly commission is to determine, on the balance of probabilities, whether any or all of the allegations made against the minister have been proved. In respect of any proven allegation, it must decide either to impose no sanction, or that the accused minister should receive a written warning, or that his or her name should be deleted from the Roll of Ministers. If the accused minister is the subject of an earlier written warning which remains current, the Assembly commission must take that into account. A written warning may be accompanied by directions regarding the minister's future conduct.	Rules for written warnings and directions, and concerning deletion from the Roll are set out in appendix M.
6.6	If the Assembly commission determines that none of the allegations made against the minister has been proved on the balance of probabilities, it must so declare. If there is no appeal, the process and any suspension will terminate from the end of the last day for lodging an appeal under paragraph 7.1.	
6.7	The Assembly commission is to prepare a written statement of reasons for reaching its decision. The decision and reasons are to be circulated subsequently. In this statement it may make recommendations concerning the future activity of any accused person whose name is deleted from the Roll, or (if allegations are not proved) for precautions which might reduce the risk of future allegations of a similar nature. Such recommendations are of an advisory nature and not subject to appeal.	Appendix N also sets out rules for the circulation of written reasons.
7.	The appeal stage	
7.1	Notice of any appeal must be lodged, with a summary of the appeal grounds, within twenty-one days of the handing down or circulation of the Assembly commission's written statement of reasons.	
7.2	Either the accused minister or the investigation team or both may appeal, but only on the ground of (i) a material failure to comply with rules of the disciplinary process, (ii) a breach of the rules of natural justice, (iii) a serious misunderstanding by the Assembly commission of the facts before it, or (iv) new evidence which could not reasonably have been presented to the Assembly commission and could credibly be expected to affect the outcome. In addition, where some or all of the allegations against a	Rules concerning the timetable for, and procedure and evidence at appeal hearings, are set out in appendix O.

	<p>minister are found proven, an appeal may be lodged against the decision on sanction without reopening any issue of fact. In such an appeal the investigation team may present the case for a sanction or for additional or varied directions to accompany a written warning; the accused minister may present the case against a sanction or for variation or cancellation of directions accompanying a written warning.</p> <p>No appeal may be lodged in respect of allegations abandoned by the investigation team under paragraph 6.2 or admitted by the accused minister under paragraph 6.3.</p>	
7.3	<p>As soon as an appeal is lodged, an appeal commission is constituted to oversee and hear the case. Once a commission is in being for a particular case, authority over that case remains with the General Assembly, but the appeal commission now acts in the Assembly's name and gives any procedural directions, or decisions regarding suspension of the accused minister.</p>	<p>The composition of an appeal commission is set out at appendix P.</p>
7.4	<p>An appeal is heard in the presence of both parties, the cases for the appellant and respondent being heard in that order. There is to be no rehearing of the case, nor any reception of fresh evidence unless the appeal commission is satisfied (i) that there is new evidence which could not reasonably have been presented to the Assembly commission and could credibly be expected to affect the outcome, and (ii) that it can hear such evidence fairly, and that this would be more convenient than for a fresh Assembly commission to hear it.</p>	
7.5	<p>At the conclusion of the appeal hearing, the appeal commission may dismiss the appeal, may substitute its own decision for any decision which the Assembly commission could have made (including varying directions or recommendations), or may quash the previous decision and remit the case for full re-hearing by a fresh Assembly commission. Unless it remits a case for re-hearing, the decision of the Appeal commission is final, the process and any suspension terminating when it is announced.</p>	<p>The rules in appendix K set out the procedure if a case is remitted for rehearing; in which case the rules in appendices L-N also apply.</p>
8	<p>Miscellaneous provisions</p>	
8.1	<p>The disciplinary process may continue notwithstanding the fact that an accused minister declines to co-operate, fails to appear at a Hearing or declares (or implies by conduct) his or her resignation from the ministry or from the United Reformed Church, and also notwithstanding the non-appearance of any potential witness.</p>	<p>Appendix T sets out the consequences of non-co-operation and similar conduct, and of a potential witness declining to appear.</p>
8.2	<p>The process may be halted by a reference into the ministerial incapacity or capability procedure, and rules governing those procedures may provide for a case commenced under one of them to be referred into this process. A notice of reference into this process from either procedure will have the status of a disciplinary allegation</p>	<p>Appendix W provides in detail for the transfer of cases from this process to the incapacity or capability procedure</p>

	and be acted upon as provided in paragraph three.	
8.3	Directions may be given by the panel or commission under whose authority a case currently falls covering matters of evidence, timing or procedure not otherwise provided for, if it considers this conducive to the fair, effective and expeditious operation of the process. But the time allowed for lodging an appeal may only be extended if an extension is sought before the current time limit expires.	
8.4	Information about a case heard or investigated under the disciplinary process is confidential, save as the process itself provides.	Appendix V sets out rules regarding sharing of information and retention of records.
8.5	The costs incurred in the work of a SSP shall be charged against funds of the Church controlled by the synod. The costs incurred by an ASP, an Investigation Team, the SAC, the General Secretary or any Commission in operating the Process and the reasonable expenses of any witness attending a hearing shall be charged against funds of the Church under the control of the General Assembly. The costs of an investigation team for this purpose shall not include costs of preparing the case, nor costs of representation.	
8.6	The 'commencement date' on which this process will replace the disciplinary process formerly in operation ('the Old Process') is to be determined by resolution of the General Assembly or Mission Council.	Appendix X sets out transitional provisions relating disciplinary cases still pending under the old process at the commencement date

Ministerial disciplinary process redraft, May 2019

