

The Ministerial Disciplinary Process (see Section O of the Manual)

GUIDELINES FOR THE APPEALS COMMISSION on dealing with a case under the Disciplinary Process

This is an advisory document, made available by the Mission Council's Ministerial Incapacity and Discipline (MIND) Advisory Group. It does not carry the authority of the General Assembly and, in every respect, it is subject to the Disciplinary Process. It takes into account all the changes made to the Disciplinary Process up to and including May 2017

The Disciplinary Process was approved by General Assembly in 1997 in order to provide the Church with a means of resolving issues affecting the conduct of ministers of the United Reformed Church which could not be resolved by any other means. Subsequently Church Related Community Workers have been brought within the scope of the Process.

The minister's/CRCW's conduct is to be judged applying the standard of proof of "balance of probabilities" against the promises made at ordination/commissioning.

A flowchart has been prepared which charts the progress of a disciplinary case from start to finish. This can be found on the Church's website www.urc.org.uk. You will need to include the word "Manual" to access any document relating to the Disciplinary Process.

Note that the Disciplinary Process applies to Ministers of Word and Sacrament and to Church-Related Community Workers (CRCWs). For brevity these notes refer, on the whole, to ministers. You should take it that all such references apply also to CRCWs.

1. Before the Hearing

1.1 Each Appeals Commission set up to hear appeals from decisions of the Assembly Commission under the Disciplinary Process consists of five persons, three of whom are chosen from the members of General Assembly. You have agreed to be one of those persons during your period of service on General Assembly and you are probably anxious to learn more about the role you might be called upon to play. These guidelines are designed to help you.

1.2 The documents which are the tools you will need if you are called upon to serve as a member of the Appeals Commission are:

*an up-to-date copy of the Disciplinary Process (check for changes after every General Assembly and Mission Council).

*an up-to-date copy of the *Basis of Union*

*an up-to-date copy of the *Guidelines for the Assembly Commission*.

*an up to date copy of the *Guidelines for Secretary and Convener of the Assembly Commission*

*an up-to-date copy of the **Incapacity Procedure**

Copies of the **Forms in Group E**

a copy of the **Referral Notice**

copies of any **Cautions** except those successfully appealed against (should the Caution Stage be initiated)

copies of **all the papers in the case** (please refer to the checklist at Paragraph G.8 of the Disciplinary Process)

*and of course an up-to-date copy of **these Guidelines**.

All the documents marked * are available on the Church's website www.urch.org.uk.

*Note for the General Secretary - It is important to ensure that each member of the Appeals Commission has a copy of the latest versions of all the documents marked * above. However, as they are all volunteers, it is not reasonable to expect them to print out these lengthy documents themselves and you should request the Disciplinary Process contact at Church House (currently Vivienne Williams in Ministries) to supply each member with a copy of these documents. Also you need to familiarise yourself with the Group E Forms.*

It goes without saying that, as members of the Commission, you must study all the papers in the case very carefully and that you must put out of your mind any information which may reach you from any outside source.

1.3.1 There are two important reasons why you must also study the Guidelines for the Assembly Commission. First although the two Commissions have quite distinctive roles, the general principles of confidentiality and natural justice which are explained in the Assembly Commission Guidelines apply equally to the conduct of Appeals hearings.

1.3.2 The important distinction between the Assembly Commission procedures and those of the Appeals Commission is that, subject only to one exception (see Paragraphs 3.5 and 3.6 below), there is no re-hearing of the evidence before the Appeals Commission (Paragraph G.10.3 of the Disciplinary Process).

1.4 Secondly, if you are to fulfil your role properly, you must have a comprehensive knowledge and understanding of the principles and procedures which apply at every aspect of the case which the Assembly Commission was called upon to judge, including (i) the criteria against which the Minister's conduct is considered (see particularly the **Basis of Union, Schedule C (Affirmations made by Minister at Ordination and Induction), Schedule D (Statement concerning the nature, faith and order of the United Reformed Church), Schedule E, Paragraph 2 (Ministers' duties in relation to Schedules C and D), Schedule F, Part I (Affirmations made by CRCWs at their commissioning and induction), Schedule F, Part II, Paragraph 2 (CRCWs' duties in relation to Schedule D and Schedule F, Part I)** and of the **Disciplinary Process, Paragraph A.1.4 (reference to Basis of Union)**) and (ii) the detailed Rules contained in the Disciplinary Process which regulate the pre-hearing procedures, the conduct of the Hearing itself and the decision reached by the Assembly Commission.

1.5 It cannot be emphasised too strongly that everything which happens throughout the whole process is strictly confidential (see Paragraph A.4 of the Disciplinary process). The Disciplinary Process Hearings are conducted in private (see Paragraph E.12.1) and, while the case is continuing, you must under no circumstances make any

public comment or discuss any aspect of the case with anyone other than your colleagues on the Appeals Commission or the General Secretary in his/her capacity as Secretary of the Appeals Commission. To do so would prejudice the chance of a fair hearing on the Appeal (see Paragraph A.4). Even after the appeal has been concluded unguarded comments can be damaging to people connected with the case and must at all costs be avoided. Paragraph A.11 refers to the relationship between the Church and the media in cases involving the Disciplinary Process, and in particular explains the special role of the Church's Press Officer. How should you communicate amongst yourselves? Conference calls can be helpful. Do not use emails even to one another, unless you are sure that you are using a secure site. only accessible to yourselves.

1.6 Throughout the Disciplinary Process many words and phrases are used which have special meanings in the context of the Disciplinary Process. These are all set out in Paragraph A.5 of the Disciplinary Process and you must study that Paragraph and make sure that you understand those meanings. Several occur in these Guidelines and in the Guidelines for the Assembly Commission, in particular 'Caution Stage', 'Mandated Group', 'Initial Enquiry Stage', 'Commission Stage', 'Referral Notice', 'Parties', 'Assembly Commission', 'Appeals Commission', 'Outside Organisations'. (This last term is defined in Paragraph A.5 as: "anybody or organisation outside the Church by which the Minister is employed or with which the Minister holds any position or post or has any involvement, paid or unpaid, where such body or organisation would have a reasonable and proper expectation of being made aware of the particular step(s) being taken". This will be an organisation with which the minister has a relationship, perhaps directly through the work of his/her church or because s/he is, for example, chaplain to a hospital, school or prison or is involved with any of the uniformed organisations such as Scouts or Guides.)

1.7 The General Secretary, who acts as the Secretary of the Appeals Commission, will have settled with you and with the Minister and the Mandated Group all the arrangements for the Hearing of the Appeal (date, time, venue etc.). S/he will also make sure that everyone involved has copies of all the relevant documents. Apart from these matters there is likely to be very little pre-hearing procedure at the appeals stage of any case.

1.8.1 **Suspension of a minister:** Important changes to the rules regarding the suspension of a minister were introduced in May 2017. Before that date, whenever a Referral Notice was issued to take the case into the Commission Stage, the minister was automatically suspended whether or not s/he had been suspended earlier in the Process.

1.8.2 However, from May 2017 there is no longer a compulsory suspension at that point. Instead, the whole question of suspension is dealt with on an entirely flexible basis. From the outset of the case up to the appointment of an Assembly Commission, the responsibility for deciding whether or not to suspend the minister - and whether, if circumstances so warrant, to remove an existing suspension - rests with the Synod Moderator who will have a general discretion as to whether or not to do so. Suspension will no longer be regarded as "the default position" at any stage in the Process.

1.8.3 As soon as the Assembly Commission has been appointed (which will be shortly after the issue of the Referral Notice), the responsibility for dealing with all matters

relating the imposition or removal of a suspension passes from the Synod Moderator to the Assembly Commission. In the event of an appeal, this responsibility passes to you.

1.8.4 If any questions regarding suspension should require your attention, you are referred to Paragraph 3.1.4 of the Guidelines for the Assembly Commission which gives examples of the issues which you might have to consider.

1.8.5 New forms have been drafted to provide for notice to be given of the imposition/removal of a suspension. The General Secretary has copies of these forms and they should be used to ensure that all who “need to know” are duly informed.

1.9 At any point in the process, whether or not a Hearing has taken place, you may need to consider whether the case ought properly to be dealt with through the Incapacity Procedure. If so, you must study the incapacity criteria set out in Paragraph LP.1 of that Procedure and come to a view as to whether it would be appropriate for the case of the particular minister to be handled within that Procedure, rather than through the disciplinary measures of the Disciplinary Process. Should you so decide, your course of action would be to refer the case back to the person who initiated the Disciplinary Process with the recommendation that s/he consider whether or not the case should be dealt with under the Incapacity Procedure (see Paragraphs E.5.3.1 to E.5.3.21 of the Disciplinary Process). The case will stand adjourned pending the outcome of that referral.

1.10 If you should decide to refer the case back as explained in the last paragraph, the General Secretary will need to pay particular attention to Paragraphs E.5.3.1/21 of the Disciplinary Process which set out the detailed procedure to be followed. S/he will also find paragraph 3.14 of the Guidelines for the Assembly Commission helpful.

1.11.1 During the period leading up to the Hearing of the Appeal, you may from time to time need to provide directions or clarification regarding some procedural issue. You have authority to do this either on your own initiative or as a result of an application from the minister or the Mandated Group. Sometimes the Convener (possibly having consulted the General Secretary and/or the legal adviser) will feel able to act alone. At other times the Convener may wish to share the matter with you all.

1.11.2 Experience has shown that in one important area you may feel the need to clarify your role and to make clear to the parties that this is quite different from that of the Assembly Commission. To assist you in this, a short explanatory paper is being prepared and will be made available to you by the General Secretary.

2. At The Hearing

2.1 The responsibility for the detailed practical arrangements for the hearing itself and for making sure that things get under way smoothly falls upon the Convener and the General Secretary. You will need to listen carefully to the information and instructions which are given so that you fully understand the nature of the proceedings in which you have an important part to play. It would be sensible for the two of you to make a last-minute check to ensure that all procedural matters have been dealt with and that everything is ready for the Hearing to proceed.

2.2 As members of the appeals Commission, it would be sensible for all of you to have a short private discussion before the Convener opens the Hearing to remind yourselves of the salient features of the case and to make sure that you are all in agreement about the manner in which the appeal should be handled.

2.3 The hearing of the Appeal proceeds in a set order. First of all the Convener will explain his/her role and s/he will then introduce you as the other members of the Appeals Commission and explain the role that you will collectively fulfil in hearing the appeal and making the decision. S/he will then explain the functions of the General Secretary and the Church's legal adviser, who will also be present.

2.4 Following these introductions the order of procedure will depend upon whether the Appeal has been lodged by the minister or the Mandated Group. The Convener will invite the minister or his/her accompanying person (if the minister has lodged the appeal) or the spokesperson for the Mandated Group (if the Mandated Group has lodged the appeal) to address the Appeals Commission and present the case for the appeal to be allowed. When that presentation has been completed, the Convener will then invite the spokesperson for the Mandated Group or the minister or his/her accompanying person as the case may be to present the case for the appeal to be rejected.

2.5 During either of these presentations it is open to any of you to interject with any comments or questions. In all probability the Convener will ask you to channel your questions etc through him/her so as to avoid too many interruptions from different people to the detriment of the smooth running of the proceedings.

2.6 When both parties have made their representations to the Appeals Commission the Hearing is concluded and everyone else retires, including the General Secretary and the legal adviser, leaving the five of you who constitute the Appeals Commission in the room alone. You then have the task of considering and arriving at your decision (which may be unanimous or by a majority vote).

2.7 The parties will of course want to know the decision as soon as possible, but it is important that you as members of the Appeals Commission have as much time as you need to consider fully and meticulously the grounds on which the appeal has been lodged (which should fall within Paragraph G.9 of the Disciplinary Process), the papers which have been placed before you and all you have heard at the Hearing in order to reach the correct decision in accordance with Paragraph G.11.1/7. Too much is at stake for you to be hurried! So before they leave the room the Convener will announce that the decision will not be given that day but that written notification will be given to both parties within 10 days of the decision being reached (see Paragraphs G.1.3, E.18 and F.5.1 of the Disciplinary Process).

3. Decisions Open to the Appeals Commission

3.1 Please refer to Paragraph G.11 of the Disciplinary Process which sets out for you all the decisions open to an Appeals Commission. You should check through this list and apply it to the appeal which you are hearing to see which ones might be appropriate to it. You should carefully study Section 5 of the Guidelines for the Assembly Commission which analyses in some detail the criteria against which the minister's

conduct is to be judged and the way in which the Assembly Commission should approach the task of assessing the evidence and reaching its decision.

3.2 Although you will not have had the benefit of actually seeing and listening to the witnesses you will have all the relevant papers (as to which, see Paragraph G.8 of the Disciplinary Process) and you should study both these and the record of the Assembly Commission's decision. As an Appeals Commission your task is to compare the statements and documents and the notes of the evidence with the Record of the Hearing and the Notice of the Decision. You may not necessarily agree with the conclusions reached by the Assembly Commission on the evidence. This in itself is not sufficient reason for interfering with their finding and indeed you should not lightly set aside the decision of the Assembly Commission. Remember - you have not had the benefit of hearing the evidence yourselves.

3.3 As a general rule it would not normally be appropriate for you to challenge the body of evidence as set down in the Record of the Hearing before the Assembly Commission. On the basis of that evidence you may regard the decision reached by the Assembly Commission as surprising or even, possibly, flawed. You may consider, for example, that on the evidence as recorded the conclusion that a breach of discipline had occurred was too harsh and did not merit the minister's removal from the roll or even the issue of a written warning. Conversely you may feel that the Assembly Commission was too lenient towards the minister and that its decision should have been more severe.

3.4.1 The range of decisions open to you as the Appeals Commission is set out at Paragraph G.11 of the Disciplinary Process. Your attention is drawn to an important change which was made in May 2017. In a case where you decide to allow the name of the minister to remain on the Roll but to give the minister a Written Warning, you are now able to add to that warning a Direction addressed to the Synod Moderator to enable the synod to monitor the minister's conduct and put in place procedures to help the minister overcome his/her existing difficulties. Note: you can only issue a Direction if you also issue a written warning. The Assembly Commission may have already issued a Direction as part of its decision and this would come within the scope of the appeal. Further information about written warnings and directions is given in the Guidelines for the Assembly Commission.

3.4.2 Paragraph G.11 of the Disciplinary Process allows you to reverse the Assembly Commission's decision either way. However, if you are contemplating this, you must bear in mind that, unlike the decision of the Assembly Commission, there is no appeal against your decision. In particular, if you are thinking about reversing an Assembly Commission decision that the Minister's name should remain on the Roll and replacing it with a decision to delete his/her name, you should consider very carefully before doing so because your decision would be the first and only ruling to that effect and one against which the minister would have no right of appeal.

3.5 You may even reach the conclusion that the Assembly Commission has made a serious mistake either in misunderstanding or overlooking some aspect of the procedures or in drawing what appear to you to be wrong conclusions from the evidence. Sometimes new evidence may come to light after the Assembly Commission Hearing which, in your view, might have had a bearing on the case. If the case falls into any of these categories, you have the option of referring it back to be heard by another duly constituted Assembly Commission.

3.6 If your decision is to refer the case back then the newly constituted Assembly Commission will have the opportunity to rehear all the evidence, including any new evidence which may have come to light since the first Hearing. Although the 'reference back' procedure is bound to involve additional time and expense and to drag out the whole business for everyone, it is better to take this course than to perpetrate a miscarriage of justice because the procedures before the first Assembly Commission have been flawed and never put right.

3.7 It is of the utmost importance that you should fully understand all the procedures which govern the conduct of the Appeal so at any time during the hearing of the Appeal you are free to seek clarification, guidance or advice on any aspect of the case from the General Secretary and/or the Legal Adviser. This applies even after the parties have left and you are deliberating alone. The General Secretary and the legal adviser will not be in the room with you at this point but they will remain in the building so as to be available for consultation on any aspect of procedure. So, at any time during your private discussion, you can (and indeed are encouraged to) call either or both of them in to ask for clarification and guidance on any particular point.

3.8 You are particularly referred to the whole of Section 5 of the Guidelines for the Assembly Commission which explains how the members of that Commission should conduct their deliberations in order to reach their decision. Although as has been pointed out there are some important differences between your role and that of the members of the Assembly Commission, you must have a thorough understanding of how they have (or should have) gone about reaching their decision so that you can be satisfied as to whether they have followed all the correct procedures.

3.9 That section of the Assembly Commission Guidelines also contains valuable information which will help you as you begin your own deliberations and consider your own decision in the Appeals Hearing. Paragraphs 5.5, 5.6 and 5.7 are the key paragraphs which remind you of the fundamental issues which have to be taken into account in arriving at your decision. Paragraphs 5.8 and 5.9 explain the procedure by which you, as a Commission, can if you wish attach a written warning to the decision and the scope which you have to append guidance to the decision. Paragraph 5.10 describes in detail the scope of the Direction which can now be given to the Synod Moderator whenever a written warning is appended to a decision (see Paragraph 3.4.1 of these Guidelines). Paragraph 5.11 summarises the decisions which are open to the Assembly commission and Paragraph 5.12 explains that, should you decide to delete the minister's name from the Roll, you may append guidance as to any restrictions which ought to be placed on the minister becoming involved in any activities after deletion.

3.10 In particular please pay careful attention to Paragraphs 5.13, 5.14 and 5.15 of the Assembly Commission Guidelines which explain both how the decision should be recorded and the procedures to be followed when you deliberate in private at the end of the hearing. These two paragraphs apply equally to you as the Appeals Commission and are fundamental to the way in which you should reach and record your decision.

3.11 The Legal Adviser will always be present at the Hearing in appeals cases. Reference has been made earlier to his/her role in assisting and advising you throughout the proceedings. Without wishing to detract in any way from his/her

importance at every stage, there are two areas where you should seek his/her advice as a matter of course.

3.12 The first relates to your power to refer a case back to be re-heard by a different Assembly Commission (see Paragraph 3.5 above). If you are considering this the legal adviser will be able to clarify for you the special rules which apply.

3.13 The second instance relates to the making and recording of your decision. As has been stressed at Paragraph 3.7 the decision is yours alone and the legal adviser plays no part in it. However, once you have reached your decision, it is strongly recommended that you call in the legal adviser (a) to confirm that in every respect the decision itself and any written warning, directions or guidance which you intend to add to it comply fully with the Disciplinary Process and (b) to assist you in wording the record of the decision to ensure that that too fully complies with the Disciplinary Process.

3.14 As has already been stated, the General Secretary and the legal adviser remain on hand throughout the Hearing to assist you. However - and this cannot be stressed too strongly – neither of them has any part to play in the reaching of the actual decision. This responsibility is yours – and yours alone!

3.15 In preparing the Record of your Decision, it is important to bear the last sentence of Paragraph G.13.5 of the Disciplinary Process in mind. Even in a case where you are simply upholding the decision of the Assembly Commission and supporting any written warning or guidance issued, all this should be repeated in the Record of your Decision as it is very important, for the avoidance of confusion, that there should be one reference point only for the decision and everything appended to it. Also it is important that your decision addresses each and every ground of appeal, together with your reasons for accepting or rejecting each such ground and relating all to the ordination/commissioning promises.

3.16 The making and recording of your decision as previously explained conclude your involvement subject only to any issues re DBS compliance – see Paragraphs 3.17.1/5.

3.17.1 The Safeguarding Vulnerable Groups Act (2006) (SVGA 2006) provides that, where an individual(s) is found to pose a risk of harm or to have caused harm to a child or vulnerable adult and is removed from regulated activity following investigation and evidence, a referral must be made to the Disclosure and Barring Service (DBS) (or any successor body). No referral should be made without a decision having been made by the Disciplinary Process to remove the individual from the Roll of Ministers. The decision as to whether an individual might be placed on a barred list (for children and/or adults) is one that the DBS makes alone to prevent that individual from having further contact with children or vulnerable adults.

3.17.2 Any information provided by the Church to the DBS is in confidence. After referral the DBS liaises with the Minister/CRCW or others as required.

3.17.3 The SVGA 2006 provides that a referral to the DBS **must** be made in a situation where as a result of the Church's Disciplinary Procedure it is decided that a Minister/CRCW has behaved in an inappropriate way towards a child or vulnerable adult and that a sanction has been applied. Alternatively, if the Disciplinary Process has not established on the evidence available that the alleged inappropriate behaviour has

occurred but nonetheless the Assembly Commission or the Appeals Commission have concerns about the behaviour of the Minister/CRCW towards a child/vulnerable adult, a **Voluntary Referral** can be made.

3.17.4 Inappropriate behaviour is anything of an emotional, psychological, physical or sexual nature and (in the case of a child) also neglect and (in the case of a vulnerable adult) financial or verbal in nature which is considered to be harmful or whether the Minister/CRCW has caused, attempted to cause or has incited harm to a child or vulnerable adult.

3.17.5 See Paragraph A.14 of the Disciplinary Process and Appendix I of these Guidelines for further details regarding the DBS. If additional information is required refer to the DBS's Referral Guidance which can be accessed on the DBS's website.

DBS Referral Guidance - Referral Policy (re Children)

TYPE OF HARM TO CHILDREN	MEANING	EXAMPLES
Emotional/ Psychological	Action or inaction by others that causes mental anguish	Emotional harm is the emotional ill-treatment of a child such as to cause severe and persistent adverse effects on the child's emotional development. It may involve conveying to children that they are worthless or unloved, inadequate, or valued only insofar as they meet the needs of another person. It may feature age or developmentally inappropriate expectations being imposed on children. It may involve causing children frequently to feel frightened or in danger, or the exploitation or corruption of children. It may involve children witnessing aggressive, violent or harmful behaviour such as domestic violence. Some level of emotional harm is involved in all types of ill-treatment of a child, though it may occur alone. Grooming. Harassment. Inappropriate emotional involvement.
Physical	Any intentional physical contact that results in discomfort, pain or injury	Physical harm may involve assaults including hitting, shaking, throwing, poisoning, burning or scalding, drowning, suffocating, or otherwise causing physical harm to a child. Physical harm may also be caused when a parent or carer feigns the symptoms of, or deliberately causes ill health to a child whom they are looking after. This situation is commonly described using terms such as factitious illness by proxy or Munchausen syndrome by proxy. Supply drugs to children. Inappropriate/unauthorised methods of restraint.
Sexual	Any form of sexual activity with a child under the age of consent	Sexual harm involves forcing or enticing a child or young person to take part in sexual activities, whether or not the child is aware of what is happening. The activities may involve physical contact, including penetrative (e.g. rape or buggery) or non-penetrative acts. They may include non-contact activities, such as involving children in looking at, or in the production of, pornographic material or watching sexual activities, or encouraging children to behave in sexually inappropriate ways. Downloading child pornography. Taking indecent photographs of children. Sexualised texting.
Neglect	Failure to identify and/or meet care needs	Neglect is the failure to meet a child's basic physical and/or psychological needs, likely to result in the serious impairment of the child's health or development. It may involve a parent or carer failing to provide adequate food, shelter and clothing, failing to protect a child from physical harm or danger, or the failure to ensure access to appropriate medical care or treatment. It may also include neglect of, or unresponsiveness to, a child's basic emotional needs.

DBS Referral Guidance - Referral Policy (re Vulnerable Adults)

<u>TYPE OF HARM TO VULNERABLE ADULTS</u>	MEANING	EXAMPLES
Emotional/ Psychological	Action or inaction by others that causes mental anguish	Inflexible regimes and lack of choice. Mocking, coercing, denying privacy, threatening behaviour, bullying, intimidation, harassment, deliberate isolation, deprivation.
Financial	Usually associated with the misuse of money, valuables or property	Unauthorised withdrawals from vulnerable adult's account, theft, fraud, exploitation, pressure in connection with wills or inheritance.
Physical	Any physical action or inaction that results in discomfort, pain or injury	Hitting, slapping, pushing, shaking, bruising, failing to treat sores or wounds, under or overuse of medication, un-prescribed or inappropriate medication, use of restraint or inappropriate restraint, inappropriate sanctions.
Sexual	Coercion or force to take part in sexual acts	Inappropriate touching. Causing bruising or injury to the anal, genital or abdominal area. Transmission of STD.
Neglect	Failure to identify and/or meet care needs	Untreated weight loss, failing to administer reasonable care resulting in pressure sores or uncharacteristic problems with continence. Poor hygiene, soiled clothes not changed, insufficient food or drink, ignoring resident's requests, unmet social or care needs.
Verbal	Any remark or comment by others that causes distress	Demeaning, disrespectful, humiliating, racist, sexist or sarcastic comments. Excessive or unwanted familiarity, shouting, swearing, name calling.

The above Guidance is no substitute for a careful study of the Basis of Union, Schedules C, D, E (Paragraph 2), F (Part II Paragraph 2) and the Disciplinary Process.