



The
United
Reformed
Church

Section O: The Ministerial Disciplinary Process

Guidelines for mandated groups

These guidelines have been prepared by Mission Council's ministerial incapacity procedure and disciplinary process advisory group (MIND) to help you to understand the distinctive role which as a member of a mandated group (MG) you will play in the disciplinary process. They take into account all the changes made up to and including April 2011. This is an advisory document; it does not carry the authority of the General Assembly and, in every respect, it is subject to the disciplinary process the text of which always takes precedence over these guidelines. Make sure you have the latest version of the disciplinary process by your side when reading this. It can be found on the Church's website (<http://www.urc.org.uk>).

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.

One member of your group is on the joint panel (JP) and is receiving regular ongoing training from representatives of MIND. S/he will therefore be able to lead you as you embark on this process.

The MIND training team has prepared a number of papers which are used for training purposes and members of the joint panel have copies and will be familiar with them. These cover a range of issues and provide greater detail than is possible in these guidelines. You may find one or other of these papers helpful in the particular circumstances.

In April 2011, a new section AA was added to the process in order to include a caution stage. This is explained in section 3 of these guidelines.

Forms have been specially prepared to help you at the various stages in the process and these have been recently comprehensively updated. The forms for use in connection with the caution stage are all headed AA and the remaining forms are grouped into 5 categories –

A to E, which reflect the chronological sequence through the process. These are shown at appendix III of these guidelines.

The forms in group A (not to be confused with the AA forms – see previous paragraph) relate to the initial enquiry period, so they will be held by the Synod Moderator (or by the General Assembly representative if the case emanates from Mission Council rather than synod). Please obtain Forms A11 and A13 from your synod office (or from the General Assembly representative if applicable – see previous sentence) and be sure to use them because this will greatly simplify your own task and that of the Secretary of the Assembly commission. The remaining forms which you will require will be sent to you at the appropriate stage.

When a case enters the commission stage, the Secretary of the Assembly commission will issue the forms in groups B, C and D as and when appropriate and s/he is the person to contact with any questions regarding the forms. Should a case go to appeal, the forms in group E would apply and these are held by the General Secretary.

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.

The relevant paragraphs in the disciplinary process are shown in brackets in the text of these guidelines.

1. Three Important Principles

- The Church judges its ministers by the promises made at ordination to lead a holy life and to preserve its unity and peace and therefore it does not operate a 'tariff' or offence-based disciplinary system. (A.1.4 and Basis of Union schedule E paragraph 2 (ministers) and schedule F part II paragraph 2 (CRCWs))
- As members of the mandated group, you are simply required to take the disciplinary steps under the disciplinary process in the particular case, and nothing more. (B.8 and B.9 and Section D) You must not be drawn into giving or offering any sort of pastoral assistance, however well-intentioned, although throughout the disciplinary process you must of course act with due sensitivity. Conversely, those with pastoral responsibilities (whether to the minister and his/her family or to an affected local congregation or in the wider councils of the Church) must play no part in the disciplinary process being brought against any minister. (B.1) This separation of authority between the mandated group and the synod (or other council of the Church in whose name you are acting) is crucial for the proper conduct of all disciplinary cases to ensure that the minister receives a fair hearing.

The disciplinary process must only be seen as a last resort. No-one should wish to exert discipline whilst pastoral care might achieve a satisfactory result. However, there is a caveat. In some cases, decisive disciplinary action will clearly be needed in the interests of the Church as a whole. To acquiesce in a

'pastoral fudge' in such a situation would be a mistake which might have long-term consequences. As members of a mandated group, you will always need to balance these two considerations carefully.

2. Definitions

The disciplinary process contains a list of definitions of words and phrases.

(A.5) You must study this list carefully, because every time a defined word or phrase is used it will carry that precise meaning.

3. The Caution Stage

- 3.1 Recently Mission Council approved the addition of a preliminary stage (the caution stage) (A.5) within the disciplinary process to deal with cases falling short of gross misconduct (A.5)
- 3.2 Where the Synod Moderator and those responsible for pastoral care within the synod come to realise, possibly after a period of increasing concern, that, either due to deliberate intent or a blatant lack of care and concern, the minister is failing to live up to his/her ordination promises and that this in turn is causing significant damage to the minister's pastorate and/or other areas of his/her ministry, serious issues of discipline arise even though there is no suggestion of gross misconduct. The caution stage will provide a means of dealing with this problem.
- 3.3 In such a situation the synod moderator will be able to invoke the caution stage by calling in two persons known as the 'synod appointees'. (A.5) This will mark the commencement of the disciplinary process. (AA.2.6). The role of the synod appointees will be to seek – hopefully with the minister's co-operation – to address the perceived shortcomings and to develop proposals as to how these might be overcome. The synod appointees have the power to back up these proposals by issuing a series of sanctions (i.e. initial and final cautions). (A.5)
- 3.4 At the end of the caution stage, if the synod appointees do not consider that the problems have been resolved to their satisfaction despite the imposition of the cautions, they are likely to recommend the Synod Moderator to proceed to the next stage, i.e. to call you in as the mandated group to begin your initial enquiry.
- 3.5 So, if you find yourself dealing with a case which has already passed through the caution stage, you will need to pay very close attention to the wording of the cautions issued and to the report of the synod appointees to the Synod Moderator giving the reasons for their recommendation that the case should go forward.
- 3.6 Having said that, you should remember that, because the caution stage is intended to be a co-operative process, the synod appointees will not necessarily have rigorously tested the information to the extent which you will be required to do, bearing in mind

that in due course you will need to present a cogent case to the requisite standard of proof at a hearing before the Assembly commission. Also, bearing in mind how long a case may take to pass through the caution stage, an appreciable period is likely to have elapsed between the interviews conducted during the caution stage and the time when have to carry out your enquiries and investigations. So, you will understand why it is very important for you to gather all the evidence afresh rather than simply sitting back and relying on the information which led to the issue of the cautions without testing it for yourselves.

4. Your role before Issue of referral notice

- 4.1.1 When the group is called upon in any particular case (B.3 and B.6.1), each of you must act fairly and objectively. You must not serve as a member of a mandated group if you have, or have had, any pastoral or personal involvement with the minister or an affected local congregation or if you know of some other reason why your strict objectivity might be compromised. If this situation should arise, you must immediately declare your interest and withdraw from the mandated group for that particular case. (B.4 and B.5)
- 4.1.2 In the 'pre-referral notice' period, you work with the Synod Moderator (or, very occasionally, the General Assembly representative) in carrying out an initial enquiry to see whether there may be a prima facie case against the minister. (B.8.1)
- 4.2 When the Synod Moderator calls you in to carry out your Initial Enquiry into the allegations of ministerial misconduct, s/he will provide you with a written report explaining the reasons for having taken this step, together with all reports, papers and other relevant documents, as soon as s/he is able to do so. There are two possibilities:
- 4.2.1 The first is that the case has already passed through the caution stage, in which case the Moderator will include with his/her statement copies of any cautions imposed by the synod appointees (as to this expression see Section 3 of these guidelines) and of their report to the Moderator.
- 4.2.2 The second possibility is that, because the papers which you receive may indicate that the minister may have committed gross misconduct, the Synod Moderator will have bypassed the caution stage and called you in directly to carry out your initial enquiry. The most obvious examples would be any abusive conduct, conduct with a sexual connotation, fraud or any conduct which could amount to a criminal offence.
- 4.3 Apart from the Moderator's statement and the synod appointees' report (if paragraph 4.2.1 applies), all the documents received by you from the Moderator will also be copied to the minister at the same time. **Please note the personal file is confidential and everything you receive should therefore be treated with the utmost care to ensure that there is no inadvertent disclosure of its contents to anyone outside the synod appointees.**

- 4.4 At the outset you will need to agree amongst yourselves as to who does what and how you intend to conduct your initial enquiry (your immediate task) and later your more detailed investigation, should you consider it necessary to issue a referral notice. The member appointed to the group from the joint panel will be the most knowledgeable, having already received training and guidance about the process. So that person will be expected to play the leading role and to assist the other two with some preliminary guidance so that they too will be aware of the disciplinary criteria and the procedures and generally what will be expected of them. It is very important that all three of you keep in regular touch and work closely together throughout.
- 4.5 Consistent with a careful and thorough approach, you must move as quickly as possible in the interests of all concerned. You should obtain accurate statements before memories fade. There is no time to be lost. The task at this point is not to conduct a detailed investigation, but to review the situation and simply to decide whether or not the case should proceed.
- 4.5.1 Sometimes as a result of your initial enquiry you may realise that, although the problems are real enough, their root cause does not lie in the disciplinary realm but rather that specialised pastoral help is needed. On other occasions allegations may have been made mischievously or maliciously. In such situations, save in exceptional cases, it would not be appropriate for the group to refer the case into the commission stage, which is the next part of the process and is explained in section 5 of these guidelines. Should you reach this conclusion, you must follow the procedure outlined in paragraph 4.7.1 below.
- 4.5.2 This paragraph contains an important caveat. There may be times when you feel that an informal warning to the minister or the imposition of a particular condition upon him/her would be sufficient. BUT you have no authority to issue such a warning nor to impose any condition on him/her, as this would compromise your own distinctive 'non-pastoral' role within the disciplinary process. (B.8.1, B.8.2 and B.9) Furthermore, it could defeat the object of dealing with the 'initial enquiry' stage expeditiously. Therefore, under no circumstances must you depart from your strict terms of references laid down for mandated groups in section B of the disciplinary process, particularly paragraphs B.8 and B.9.
- 4.6 Both before and after the issue of the referral notice, you will, as a group, need to conduct interviews with the minister and others involved, and the following points should be noted:
- 4.6.1 When requesting anyone to attend an interview, you should make it clear that the person concerned can decline to be interviewed or, if agreeing to attend, that s/he may terminate the interview at any time.
- 4.6.2 At the same time you should also inform the minister or other interviewee that s/he may have a friend present with him/her at any interview. (D.2.2) If interviews have to take place with children, the presence of another party, e.g. parent, guardian, social worker, friend or counsellor, is essential.

Always make sure that you give plenty of notice of this.

- 4.6.3 When making the appointment, you must stress that the whole of the disciplinary process is protected by confidentiality. This is essential in the interests of natural justice in order to ensure a fair hearing for the minister. It should be pointed out when the appointment for the interview is made and repeated at the outset of each interview that discussion of the case with people not directly involved in the disciplinary process might prejudice the chance of a fair hearing. However, you should also inform those being interviewed that anything disclosed during the interview may be presented at the hearing as evidence.
- 4.6.4 When interviewing the minister and other witnesses all three of you (but never less than two) should make every effort to be present. This is to ensure that the record of the meeting is accurate, and to afford protection against any criticism that one member of the Group acting alone might have conducted the interview improperly or misunderstood or misrepresented the evidence given by the person being interviewed.
- 4.6.5 You must be courteous and fair and not intimidatory, your aim being to create a relaxed and informal atmosphere so that the person being interviewed does not feel under pressure.
- 4.6.6 When you interview a person who provides information which in your view supports the case against the minister, you should ask whether s/he would be willing to attend the hearing if required to do so. Unlike the courts of law, there is no power under the disciplinary process to subpoena witnesses to attend to give evidence. Therefore, you cannot fully assess the strength of the case unless you know who will and who will not be prepared to attend the hearing, and it is as well to find this out as early as possible (although it should be noted that witnesses can of course change their minds later).
- 4.6.7 You should prepare a written summary of the discussion and invite the interviewee at the conclusion of the interview to read the statement and, if satisfied with it, to sign it. You should then also sign it. If the interviewee is unwilling to sign the statement, you should invite him/her to state why and, if appropriate make any necessary amendments to resolve any reasonable and proper concerns which s/he may have.

If s/he still refuses to sign, you should add an explanatory note at the end of the statement and then you should sign it, so long as you are satisfied that it represents a fair and accurate summary of the discussion. In the event of an interviewee being unable or unwilling to attend the hearing, the importance of a written statement cannot be over-emphasised.

- 4.7 Bearing in mind what has been said at paragraph 4.5.1, you must aim to bring your initial enquiry to a conclusion as quickly as possible. (B.8) This you will do in one of two ways:
- 4.7.1 If you believe that there are no grounds or insufficient grounds for pursuing the matter further, you must immediately serve on the Synod Moderator (or

other person who called you in) a notice to this effect (called a ‘notice of non-continuance’). (A.5 and B.8.2.1) Once you have served this notice, you are discharged from any further involvement in the matter except that you are required to make a written report of your conduct of the case to the Secretary of the Assembly commission. (B.8.2.1 and H.4) It is the responsibility of the Synod Moderator to tell the minister that the case is not proceeding. (B.8.2.2)

- 4.7.2 If however, you decide that the case should proceed, you must follow the referral notice and suspension procedure explained in section 5 of these guidelines. (B.8.3, B.9.1, B.9.3, B.10.1 and B.10.2)
- 4.8 You may occasionally find yourselves involved in a case where the minister was first considered within the incapacity procedure (section P of the Manual) but later brought within the disciplinary process instead. If so, you are asked to pay careful attention to any special factors which may be present. (D.5.2) If such a situation does arise, the training paper mentioned at paragraph 8.1 of these guidelines is commended to you.

5. The referral notice and suspension of minister

- 5.1 If as a group you believe that there is a prima facie case against the minister you should issue a referral notice using the form provided. (B.9.1, B.9.3, B.10.1, B.10.2 and B.11) The process then moves into the commission stage.
- 5.2.1 When you issue the referral notice you must at the same time suspend the minister (B.9.1) from active involvement within his/her pastorate or other sphere of work within the Church. There is no discretion as to whether or not to suspend. Nor do you have authority to suspend a minister without issuing a referral notice, although in urgent cases you may notify the minister orally of his/her suspension so long as you immediately follow this up by issuing the referral notice and the written notice of suspension. Suspension is regarded as a necessary part of the process and does not carry any pejorative implications. (B.9.2 and Basis of Union schedule E paragraphs 3 and 4 (ministers) and schedule F Part II paragraphs 3 and 4 (CRCWs))
- 5.2.2 You may find that the moderator has already suspended the minister under emergency powers. (B.7.1) In such a case, at the same time as you issue the referral notice, you must also give the minister written notice that his/her suspension will continue during the commission stage (B.9.1)
- 5.2.3 When issuing the referral notice and suspending the minister, you must also inform the person who called your group in (usually the Synod Moderator) and it is his/her responsibility, not yours, to take, or make arrangements for, such pastoral steps as may be appropriate. (B.9.3)
- 5.3 The referral notice must always relate the perceived breaches of discipline to the ordination/commissioning promises and must contain as full a statement as possible of the reasons why you believe that a breach of discipline has or may have occurred. You should also include in this statement a summary of the supporting information which has led you to issue the referral notice (B.10.1), although you do not have to state in

the referral notice the names of the complainant and any other persons who may have supplied the information. This summary will tell the minister at an early stage what allegations are being made against him/her and it might also avoid the need for an application at a later stage to admit information not contained in the referral notice, which in turn might delay bringing the matter to a hearing. Note that you must include on the referral notice details of any outside organisation (A.5) which has been informed of the minister's suspension. (This last term is defined in paragraph A.5 as: "any body 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.) The Synod Moderator (or the person who called you in if this is someone different) will be able to tell you if any such organisation is involved.

- 5.4 For the procedure to run smoothly and promptly, it is essential for the secretary of the Assembly commission to have one, and only one, contact point with the mandated group. For this reason you are asked to state in the referral notice the name and address of the member of the mandated group who will accept service of documents on behalf of the group. As the joint panel member will be playing the leading role in the work of the mandated group, it is expected that s/he will be named as the contact person and that s/he will sign the referral notice. If you fail to include this information, the member of the mandated group who signs the referral notice is the one to accept service of documents. The Secretary of the Assembly commission will liaise with that person. (H.2.2)
- 5.5 In most cases the mandated group will be called in to represent the synod. However the Rules also provide for the calling in of a mandated group on behalf of General Assembly, and if this should apply to your group please note the few minor changes in the procedures. (B.3.2, B.3.3, B.3.5, B.7.2, B.8.2.2 and B.9.3)

6. The commission stage – A. Before the hearing

- 6.1 Once the referral notice has been issued, every case will ultimately be brought to an Assembly commission for decision. You will have the task of investigating the matter (D.1) and then of presenting the case against the minister at the hearing itself. The detailed procedures to be followed are contained in section E of the disciplinary process.

The Secretary of the Assembly commission is appointed by the General Assembly to deal with the procedural and administrative aspects of disciplinary cases. S/he is not a member of the Assembly commission, and his/her task is to see that the correct formalities are complied with. S/he is the mandated group's link with the Assembly commission in the steps that have to be taken prior to the hearing.

At the outset of the commission stage, an Assembly commission consisting of five persons will be appointed from the commission panel to hear the case. (C.2) You and the minister both have the right to object to the appointment of any of the proposed appointees to the Assembly commission or to its secretary on the ground of personal or pastoral involvement. (C.3) (See also paragraph 4.1 of these guidelines).

- 6.4 Natural justice demands that the minister should be made fully aware of the accusations laid against him/her; that s/he should have the opportunity to answer those accusations and that s/he should receive a fair hearing. All these matters have been taken into account in deciding the timescale for the steps leading up to the hearing. The result is that several months may elapse between the date of the referral notice and the date of the hearing. This allows time for the proper appointment of the Assembly commission, for the pre-hearing procedures to be dealt with and for both parties to prepare for the hearing. (E.3 and E.4)
- 6.5 In conducting your investigation you must always act in a fair-minded way without any prejudice for or against either the minister or those making the allegations and your enquiries during the commission stage will need to be detailed and painstaking. In your investigation of the facts and your presentation of the case at the hearing you must not be aggressive towards the minister or his/her witnesses. Nor should you only carry out a desultory or superficial investigation and ignore important facts or shy away from sensitive areas because, for example, you might feel sorry for the minister or his/her family and/or be apprehensive about the upheaval and resentment which detailed personal questioning might cause. You should also bear in mind that if information comes to light which may assist the minister this should be passed on to the minister via the Secretary of the Assembly commission. Objectivity, fairness and thoroughness must be the hallmarks of your work.
- 6.6.1 You should concentrate on the matters referred to in the allegations contained in the statement of reasons set out in the referral notice. It is not part of your brief to investigate other aspects of the minister's life. However, if in the course of the questioning other facts emerge which you believe might have a bearing on the case (including any such occurring during the commission stage), you may approach the secretary of the Assembly commission to ask the commission to exercise its discretion to allow consideration of these matters as part of the case. (E.16.3)
- 6.6.2 Sometimes it may seem to you both before and during the commission stage, and even at the hearing itself, that the minister is acting in an uncooperative or unacceptable manner, either in relation to the disciplinary process itself or more generally. If so, your spokesperson is entitled when presenting your case to ask the Assembly commission to take such conduct into account when considering its decision. The minister has reciprocal rights against a mandated group which s/he believes to be similarly infringing the Rules of Procedure contained in the Process. (E.8)

6.7 You need to be aware of the issue of defamation. Some of the statements made about the minister or other persons involved in the disciplinary matter could in themselves be defamatory and, if untrue, could lay the person making them open to an action for defamation. The statements are protected if made without malice and for the sole purpose of the disciplinary process.

Criminal cases. (E.7) Cases will sometimes come into the disciplinary process where a minister is subject to criminal investigation, and in some cases criminal charges may have already been brought against him/her. In these situations, there could be serious consequences if you do not follow the correct procedures which are explained in detail in appendix I of these guidelines. Please study both appendix I of these guidelines and paragraph E.7 of the process itself with especial care.

Having carried out a detailed investigation, you should prepare for the hearing by examining all the information which has been gathered. You will need to consider the reliability of each item of information and how pertinent it is to the case against the minister. There are many reasons why evidence might not be reliable. A few examples might be:

- a person's emotional state, some degree of personal animosity, inconsistencies in information supplied, a witness quite simply saying that, whilst believing that such-and-such happened, s/he cannot be absolutely sure.

6.10 The burden of proving the case falls on the mandated group (E.16.1.1) and the standard of proof required is the civil standard of 'balance of probability', not the criminal standard of 'beyond reasonable doubt'. (E.16.1.2)

6.11.1 Having carefully examined all the information and discarded any which you consider to be unreliable or irrelevant, you should then consider the inferences to be drawn from the reliable, relevant evidence. Do they, in your view, lead to a conclusion on the balance of probability that the minister has broken the promises made at ordination to lead a holy life and to preserve the unity and peace of the Church? (A.1.4 and Basis of Union schedule E paragraph 2 (ministers) and schedule F part II paragraph 2 (CRCWs)) This is the first principle stated in section 1 of these guidelines. If you do reach that conclusion you have a further question to consider. Do you believe that the breach of discipline is sufficiently serious to justify deletion from the Roll (A.1.1) or would a written warning be sufficient? (A.1.1) The final decision rests with the Assembly commission, but you should ensure that your spokesperson fully expresses your view on the seriousness of any perceived breach of discipline at the hearing.

6.11.2 As stated in the last paragraph, the conduct of the minister is to be judged in the light of the promises made at ordination. What if the conduct complained of occurred prior to ordination? In that situation the issue is whether that conduct was disclosed to those responsible for assessing him/her as a candidate for ministry (A.1.5).

- 6.11.3 It cannot be stressed too strongly that, in presenting the evidence before the Assembly commission at the hearing, you should make every effort to ensure that your witnesses are there at the hearing in person. This will give you the opportunity of taking them through the evidence thoroughly and will also enable the minister or his/her spokesperson to ask them questions and, if appropriate, to challenge their version of events. Also it will give the members of the Assembly commission the chance to assess their credibility as witnesses. All this is important in ensuring that the minister receives a fair hearing.
- 6.11.4 There may be exceptional circumstances where it is impossible or very difficult or, in your opinion, inadvisable for you to bring a particular party to the hearing. In this event, you should contact the Secretary of the Assembly commission, explain the reasons and ask the Assembly commission for special permission to dispense with that person's attendance and allow a written statement or video or other type of recording to be accepted instead (E.5.1 and E.5.1.2) (This links with paragraph 4.6.7). However, even if the Assembly commission agrees to dispense with the person's attendance, it is unlikely to attach as much weight to evidence which relies on written statements etc. as to that given first hand by a witness who attends the hearing.
- 6.12.1 After you have carefully assessed the information and weighed up both its reliability and its pertinence to the central issue of whether or not the minister has committed a breach of discipline, you will then need to prepare a list of witnesses and make sure that those persons will be able to attend the hearing in person.
- 6.12.2 Your correspondent (see paragraph 5.4 above) must in advance of the hearing lodge with the Secretary of the Assembly Commission copies of the documents, statements and information to which you intend to refer at the hearing (E.2.2.2 and E.3.1) and a list of the witnesses you intend to call to give evidence (E.2.2.3 and E.3.1). The statement which you provide to the Assembly Commission should include an account of material events related to the case covering both the chronology and the location of incidents. This will provide a framework for the evidence which you will present.
- 6.13.1 An important step which you have to take before the hearing is to appoint a spokesperson to present the case against the minister to the Assembly commission at the hearing. You will most likely choose one member of the Group to perform this task but you may instead appoint a separate spokesperson if you so wish. Prior to the hearing date you must inform the secretary of the Assembly commission of the name and status of your spokesperson. (E.2.2.4 and E.3.3) You must not appoint anyone to act as spokesperson who could not serve as a member of your mandated group for the reasons explained in paragraph 4.1 of these guidelines. (B.5.2)
- 6.13.2 When all the investigation work has been completed, the spokesperson should prepare for the hearing itself by spending some time reading all the statements and papers, 'mulling over' the salient facts and considering the sort of questions which s/he should put to the witnesses in evidence at the hearing.

- 6.14 Sometimes there may seem at first sight to be a strong case, but when you investigate further it may become apparent to you that the evidence is unreliable or not substantial enough to support a case that the minister has committed a breach of discipline. In this event, you may give written notice to the secretary of the Assembly commission in advance of the hearing that as a result of your investigation you do not intend to press the case against the minister. The Assembly commission will then in consultation together and entirely at its own discretion decide whether the formal hearing should nonetheless take place or whether it can be dispensed with. In the latter case the Assembly commission's ruling would be that no breach of discipline had occurred and that the minister's name be retained on the Roll. (E.9.2)
- 6.15 The Assembly commission must disregard any information based on previous allegations against the minister which may have been considered by an earlier Assembly commission, unless at that previous hearing a written warning was issued which related to those issues. (E.16.2)
- 6.16 Wherever possible, documentary evidence should be provided at the hearing in relation to all matters which can be clearly established as purely factual, e.g. the minister's terms of settlement, copies of relevant minutes of elders'/church meetings, numbers of services conducted by the minister during any given period, etc. These are just some examples – the list is not exhaustive.

7. The commission stage – B. The hearing itself

- 7.1 The convenor of the Assembly commission will formally open the hearing by introducing himself/herself and the other members of the Assembly commission and explaining the roles of the secretary and the legal adviser to the commission (if present). S/he will then explain the purpose of the hearing, the procedure to be followed during the hearing and what will happen after the hearing itself has been concluded and the parties have withdrawn. S/he will then invite the spokesperson for the mandated group to make the opening statement and the hearing will continue as set out in detail in the process itself. (E.13 to E.18) For more information as to the procedure which will be followed at the hearing, please refer to Section 4 of the guidelines for the Assembly commission which can be found on the Church's website.
- 7.2 Just as you, as members of the mandated group, will have been working together during the investigation, so you should if possible all be present at the hearing since you may need to consult and to instruct your spokesperson as matters unfold during the day itself. If this is not possible, it is strongly recommended that at least two of you should be there. At the other end of the spectrum, a spokesperson who is not a member of the mandated group cannot conduct the case adequately without at least one member of the Group being present for consultation.
- 7.3.1 The remarks here in paragraphs 7.3.1 and 7.3.2 are specifically directed to the spokesperson. You must not 'lead' the mandated group's witnesses. You must not ask questions which set out the evidence and merely require the witness

to confirm, i.e. simply put words into his/her mouth. On the other hand, you may ask leading questions in cross examination of the minister or his/her witnesses because they have the opportunity to deny any allegations which are made, but you must not harass any witness, adopt an aggressive attitude or ask questions unrelated to the case. Everything revolves round the issues of objectivity, fairness and relevance.

7.3.2 The same applies to the closing speech where you should concentrate on the evidence presented earlier and the inferences to be drawn from that evidence in the light of the criteria for judging cases against ministers (see section 1 of these guidelines).

7.4 It is understandable that the parties will wish to know the decision as quickly as possible but it is even more important that the members of the Assembly commission should have as much time as they need to weigh the evidence fully and meticulously and reach their decision. Too much is at stake for them to be hurried! So, immediately following the closing speeches, the convener of the Assembly commission will announce to the parties that the decision will not be given that same day but that written notification will be issued to both parties within 10 days of the decision being reached. (E.18 and F.5.1) S/he will then ask the parties to leave. The secretary of the Assembly commission and the legal adviser (if present) will also leave the room, although they will remain in the building in case the commission wishes to consult them on a technical point. The members of the Assembly commission will then deliberate in private in order to reach their decision.

8. Incapacity procedure

8.1 You may feel that the minister's perceived failure to honour his/her ordination promises stems not so much from a deliberate breach of discipline as from some medical and/or psychiatric illness and/or psychological disorder and/or addiction, thus removing the element of 'blameworthiness' which is an essential feature of a disciplinary case. A separate procedure known as the Incapacity procedure exists to deal with such cases and is set out in full in section P of the Church's Manual.

If you believe that the incapacity procedure might be relevant to the case, you need to pay close attention to paragraph E.5.3 of the disciplinary process and also to appendix II of these guidelines which provides a detailed explanation of the distinction between the disciplinary process and the incapacity procedure and their relationship with each other.

9. Appeals procedure

9.1 Either party is entitled to lodge an appeal against the decision of the Assembly commission. (F.6.2.1/4) Any notice of appeal must be served on the secretary of the Assembly commission no later than 21 days from the date of service of the decision of the Assembly commission on the party wishing to appeal. (A.3 and G.1.1)

- 9.2 Except where obviously inappropriate, the rules set out in section E of the disciplinary process relating to cases going before the Assembly commission will also apply to the appeals procedure. (G.1.3)
- 9.3 However, there are two important differences between the procedures. Although the appeals commission will have all the papers available to the Assembly commission and the Record of its hearing, it must not rehear any of the evidence, nor can further evidence be introduced, except where the appeals commission considers that it may need to order a re-hearing of the case by a new Assembly commission. (G.10.3)

10. Confidentiality and publicity

- 10.1 The confidentiality of the disciplinary process is regarded as of prime importance and consequently members of the public do not have access to formal hearings (E.12.1) nor should you as members of the mandated group comment publicly or privately about any aspect of the case, either to the press or to friends or acquaintances inside or outside the Church. This applies equally both during the case and after it has been concluded.
- 10.2 Throughout the whole conduct of a case passing through the disciplinary process, the emphasis is on the need to ensure that the minister receives a fair hearing and that only the evidence which is properly presented before the Assembly commission has any bearing on the final decision. To indulge in unguarded comments outside the confines of the disciplinary process can easily prejudice the conduct of the case and might even affect the result, thus doing a grave disservice to the minister or the Church or members of the community who place their trust in the Church – or all three!
- 10.3 Strict confidentiality is equally important for another reason. The purpose of having a disciplinary process is not to punish the minister but to protect the Church and to preserve its highest standards of care. Those who operate the process have no desire to see the reputation of the minister – or anyone else for that matter – gratuitously undermined. We emphasise this to show that your sole task in presenting your evidence is to enable the Assembly commission to reach a well informed decision and that once that has been done the purpose of that evidence has been served.
- 10.4 Following on from this, great care must be exercised to protect the confidentiality of all e-mail correspondence in which you may be involved within the process. Consequently, it is strongly recommended that you should each use a dedicated e-mail address available only to yourself for such correspondence.
- 10.5 In a case where the Assembly commission finds that there has been no breach of discipline or where it decides that the breach does not merit deletion from the Roll but simply a written warning, any ill-advised leaking of information is bound to damage the reputation of the minister and to make his/her future ministry more difficult to exercise.

- 10.6 The Press Officer at Church House is responsible for dealing with the media, both national and local, on all matters affecting the Church, including the disciplinary process. (A.11) This is a task which demands a high degree of skill and experience. Therefore, please do not be prevailed upon to offer any comments about any case in which you are or have been involved. If the media should approach you simply refer them to the press officer.

11. General points

Although these guidelines have been specially prepared to assist you, they provide general guidance only. In dealing with actual cases, you may require some specific help. So long as this relates to purely procedural points, you may refer to the Secretary of the Assembly commission. In turn s/he may consult the Church's legal adviser. However where the help required goes beyond this and relates to the conduct of the particular case, neither the Secretary nor any member of the Assembly commission nor the legal advisers to the commission can advise you because all these people have objective roles to play in the disciplinary process and it would be unfair to the minister if they were to assist you in any way in the conduct of your investigation or in the handling of a case itself.

You may feel the need to talk to some knowledgeable person to receive informal guidance as to a procedural matter arising under the process or to help to clarify some issue regarding the manner of your investigation. Mission Council has recognised the usefulness of this and has appointed such a person to provide this help. The Revd Alison Davis is currently serving in this capacity [contact details in the Year Book or from the secretary of the Assembly commission]. However, you must understand that s/he is not authorised to give legal advice. For your information, the Revd David Skitt has been appointed by Mission Council to perform the corresponding role for the assistance of the minister.

- 11.3 Once a case has been completed either when the decision of the Assembly commission has been given and the time for appeal has expired or when it is clear that there can be no appeal (F.7.2) or, if an appeal is lodged, when the decision of the appeals commission has been given, you will need to prepare a written report of your conduct of the case and send it to the Secretary of the commission. (H.4) Then your file can be closed. Arrangements have been made for the confidential custody of the Assembly commission's closed file, which will include all the papers lodged with the Secretary of the Assembly commission in the course of the proceedings both by you and by the minister. (J.4)
- 11.4 The question then arises as to what you should do with your own file of papers, i.e. the papers which you will have accumulated as the case proceeds ('your working papers'). Here a distinction needs to be drawn between the majority of cases where, once the case has been completed, whatever the outcome, the evidence is 'spent' and cannot be used again in a future case involving the same minister and those cases where the evidence needs to be preserved in case the minister should come into the disciplinary process again.

- 11.5 The cases which fall into this second category are (i) those where the Assembly commission/appeals commission has issued a written warning (F.2.2 and G.11) and (ii) those where the mandated group has issued a notice of non-continuance at the conclusion of its initial enquiry (B.8.2.1). In either of these events, you should place your working papers in a sealed envelope which you should then hand over to the synod moderator to be placed in the minister's file. In all cases other than those falling within either (i) or (ii) above, it is suggested that you retain your papers for a period of twelve months and then destroy them by means of shredding.

Appendix I

See paragraph 6.8 Cases where there is a criminal investigation of the minister – Rule E.7

1. Whilst the case of a minister is in the hands of the police, the joint panel member of the mandated group will act as the police liaison officer, unless (which is unlikely) the group shall itself decide that one of the other members will act in that capacity. The police liaison officer will be the sole point of contact from the United Reformed Church with the police.
2. Disciplinary proceedings may sometimes be brought or contemplated against a minister who is or becomes subject to criminal investigation. In some cases s/he may already be facing criminal charges. In cases involving any of the matters set out in Rule E.7 (E.7.2), it would be wrong for the Assembly commission to conduct its own hearing and attempt to reach a decision based on evidence still *sub judice* in a criminal court. In such a situation you must notify the secretary of the Assembly commission who will then adjourn the Church's disciplinary proceedings and await the outcome of the criminal process. As to precisely what this involves in relation to the disciplinary case, see paragraphs 6/9 below. (E.7.1)
3. The Secretary of the Assembly commission will notify the parties of the compulsory adjournment (E.7.3), and during the same period you must also suspend your investigation of any matter which might bear relation to the criminal proceedings, subject only to observing the criminal trial as a necessary step in your investigation of the case. (D.4) The purpose of the adjournment is to allow the criminal prosecution (if it proceeds) to take its course.
4. In criminal cases, the courts have the power to subpoena witnesses to attend court in person to give evidence. Furthermore, in cases involving physical abuse or violence, the police will most likely have carried out a detailed investigation, possibly involving medical examinations of witnesses. It must also be remembered that the standard of proof in criminal cases is 'beyond reasonable doubt' rather than 'the balance of probabilities' which is the civil standard adopted by the Church for the disciplinary process. (E.16.1.2) Therefore if a guilty verdict is reached against a minister in a criminal case, the conduct which constituted the offence resulting in that guilty verdict is, for the purposes of the disciplinary process, taken as having been committed. This applies even if the minister asserts before the Assembly commission his/her innocence

of the criminal charge. As a result you do not have to prove to the Assembly commission the facts which led to the criminal verdict. (E.7.5)

5. Having said that, however – and this is extremely important – the Church’s disciplinary code is quite distinct from the criminal proceedings. Therefore, even though a minister may be found guilty on a criminal charge (so that, for the purpose of the disciplinary process, certain conduct would be assumed to have been committed), this does not of itself automatically lead to a decision to delete the name of the minister from the Roll under that process. Conversely, if the minister is acquitted on a criminal charge, this does not mean the end of the case against him/her under the disciplinary process. The reason for this is that the criminal law is not founded primarily on a code of Christian ethics, but on the need to protect law-abiding members of society and to provide a sanction against those who break the law. On the other hand the Church’s disciplinary process is directly based on the minister’s promise at ordination to lead a holy life and to preserve the unity and peace of the Church. (A.1.4 and Basis of Union schedule E paragraph 2 (ministers) and schedule F part II paragraph 2 (CRCWs))
6. Therefore, once a criminal case has been resolved, whether because following an investigation the police or the Crown Prosecution Service decide not to prosecute or because a case once started is withdrawn or because the criminal proceedings eventually come to trial and a verdict is reached one way or the other, the Church’s proceedings must be resumed, your investigation continued and the case brought to a hearing before the Assembly commission.
7. If the criminal case proceeds, then, unless the minister appeals against the criminal verdict (in which case see Paragraph 8 below), when the verdict is given or the charges are withdrawn (if such be the case), it is your responsibility to obtain an appropriately certified Court record or memorandum of the verdict of the criminal court or written confirmation of the withdrawal of the charges (whichever is applicable) and lodge it with the Secretary of the Assembly commission as soon as possible. (E.7.4)
8. If the minister decides to appeal against the criminal verdict, s/he must lodge with the Secretary of the Assembly commission written evidence that s/he has duly lodged the appeal (note that s/he has up to 28 days from the passing of the sentence to decide whether or not to appeal against the verdict), in which case the adjournment of the Disciplinary case continues until the verdict on the criminal appeal is given, following which the disciplinary case will be re-activated. (E.7.4)

Appendix II

See paragraph 8.1

Relationship with the incapacity procedure – see rule E.5.3

1. In 2008 General Assembly introduced a procedure (known as the Incapacity Procedure and to be found at section P of the Manual) to be used as a last resort in the handling of cases of incapacity involving ministers and CRCWs "who are regarded as being

incapable of exercising, or of continuing to exercise, their respective ministries on account of; (i) medical and/or psychiatric illness and/or; (ii) psychological disorder and/or; (iii) addiction" (Paragraph LP.1 of the incapacity procedure to be found at section P of the Church's Manual). That procedure is quite distinct from the disciplinary process at section O in that it does not imply any blame on the part of the minister/CRCW.

2. Nevertheless, in 'borderline' cases, doubts may emerge as to whether the matter is being handled through the correct process/procedure. Accordingly, although there is no body within the incapacity procedure comparable to the mandated group in the disciplinary procedure, it is necessary for both you and Assembly/appeals commissions to be aware of the Incapacity Procedure and to know how to take the appropriate action if it is felt that a minister/CRCW currently within the disciplinary process would more appropriately dealt with in the incapacity procedure. This is why it is important to be aware of the 'incapacity' criteria quoted above.
3. The procedures which are in place to deal with this situation (E.5.3) apply once a referral notice has been issued and the case has entered the commission stage. These presuppose the existence of an Assembly commission and are explained later at paragraphs 7/9.
4. But what happens if you take the view during the initial enquiry that the case should be handled within the Incapacity Procedure rather than through the disciplinary process? If you do not consider the latter process to be appropriate, it is self-evident that you cannot issue a referral notice alleging a breach of discipline. To attempt to write into the disciplinary process a special procedure for setting up an Assembly commission during the initial enquiry stage to resolve this one problem would greatly increase the complexity of the process and be virtually unworkable in practice. So the question has to be left for discussion and resolution with the synod moderator, who remains with you during the initial enquiry. The Synod Moderator, with his/her more detailed knowledge of the background, has already taken the view that the disciplinary process is appropriate by the very fact of calling you in and so is unlikely to be easily moved away from this position. If s/he can demonstrate that s/he has considered the options and gives for the reasons for the conclusion that to proceed with the case in the disciplinary process is the correct course, this might satisfy you.
6. But if not, what then? If you still believe that the case is not a disciplinary one, you have no option but to issue a notice of non-continuance. The moderator will then, at the very least, have to monitor the situation very carefully. Future developments may well dictate that some action has to be taken and help to determine which of the two procedures is appropriate. If a disciplinary case does not proceed farther than the initial enquiry, the evidence gathered is not 'spent' and can be used in a subsequent case involving the minister in either procedure/process.
7. We now consider the position should the issue arise during the commission stage and we once more draw the attention to the 'incapacity' criteria quoted above which are to be found at paragraph LP.1 of the incapacity procedure. If, having considered those

criteria, you feel that the minister's case should be considered within the incapacity procedure rather than the disciplinary process, you should make a written request to this effect to the Assembly commission stating the reasons for making the request.

8. If the Assembly commission, either of its own accord or in response to your request, considers that the case does fall within the ambit of the Incapacity Procedure, the secretary of the Assembly commission will notify you and the minister of the Assembly commission's decision to refer the case back with the recommendation that the incapacity procedure be initiated. You have 21 days within which to appeal against that decision (time being of the essence for that purpose). (E.5.3.1) You should note the relevant paragraphs as to the E.5.3 appeals procedure. (E.5.3.2/14)
9. If the appeal is successful, the Assembly commission's decision to refer is overturned and the case continues within the disciplinary process. (E.5.3.10) If there is no appeal or if any appeal is unsuccessful, the secretary of the Assembly commission will send a written notice to the person who called you in setting out the commission's decision to refer the case back with a recommendation that the incapacity procedure be initiated, with a statement of reasons. (E.5.3.14) That person (normally the Synod Moderator) then follows a consultation process under the incapacity procedure to decide whether the reference into that procedure should be accepted.
10. Whilst this consultation procedure is continuing, the disciplinary case stands adjourned until it is known whether the reference has been accepted or rejected. (E.5.3.11 and E.5.3.15) If it is accepted then the matter continues entirely in the incapacity procedure and the disciplinary case is concluded. (E.5.3.17) If it is rejected then the disciplinary case is resumed. (E.5.3.19)
11. The incapacity procedure contains a precondition that, before a case can enter that procedure, General Assembly's pastoral reference and welfare committee shall have been involved and shall have reached the point where it finally declares that it can do no more. This requirement will mean that the adjournment of the disciplinary case is likely to be a lengthy one.
12. The converse can also occur. A case which begins in the incapacity procedure can be referred into the disciplinary process. (A.16.2, B.3.4 and D.5)
13. So, bearing in mind that the reference back procedure can operate either way, you need to be aware of situations within the disciplinary process which might fall within the ambit of the incapacity procedure and also of the particular aspects of cases reaching the disciplinary process from the incapacity procedure. It is essential that in these situations the most searching and careful study of the relevant paragraphs should be carefully understood and meticulously followed.

Appendix III

See the opening section of these guidelines:

Categories of Forms for use in the process Category

Stage of Process

Initial enquiry Stage

AA caution stage

B Commission Stage prior to the hearing

Procedure for Notification of Assembly commission's decision

Procedure of referral back with recommendation to commence the incapacity procedure

Appeals Procedure

Effective from November 2013