

## Diocese of York

### Safeguarding and Clergy Discipline Measure 2016 and Amending Canon 34 Frequently Asked Questions – readers and licensed lay workers

Wide ranging changes have been made to the law relating to safeguarding matters concerning the Church of England. These frequently asked questions are intended to give general guidance as to those changes and how they may affect you and your parish. Each individual case is different and the correct safeguarding steps will depend on the risks identified in the particular circumstances. You should always seek advice in relation to specific safeguarding concerns from the diocesan safeguarding advisor, the diocesan registrar or your archdeacon. Contact details can be found at the end of these FAQs.

These FAQs relate to readers and licensed lay workers in this diocese.

See also other guidance available on the diocesan website:

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**1. The new law requires “a relevant person” to “have due regard” to guidance issued by the House of Bishops on matters relating to the safeguarding of children and vulnerable adults. Who does this apply to?**

All readers and licensed lay workers who are who hold a licence in the diocese are under a duty to “have due regard” to all House of Bishops’ guidance and policy statements concerning safeguarding.

The duty to “have due regard” to House of Bishops’ guidance on safeguarding also extends to diocesan bishops, suffragan or assistant bishops, archdeacons, priests and deacons, churchwardens and PCCs. The diocesan safeguarding advisor is able to provide support to everyone under this duty. Any safeguarding concerns should be discussed with the diocesan safeguarding advisor at the earliest opportunity.

**2. What exactly does the duty to “have due regard” to House of Bishops’ guidance on safeguarding children and vulnerable adults mean?**

Codes of Practice and guidance are issued in relation to many areas of secular law, such as employment law, to supplement and explain the strict law as it is set out in Acts of Parliament and statutory instruments. Codes of Practice and similar guidance do not have the force of law made by Parliament and are intended to give an indication as to good practice in a given situation. They can be updated quickly as and when required and more flexibly than the legislative process. The courts have made clear decisions that, where a duty to “have due regard” to a Code of Practice or guidance exists, a failure to follow that Code of Practice or guidance is treated in the same way as a breach of the law, unless the person who has acted in a way that is contrary to the Code of Practice or guidance can show an exceptional reason for departing from it.

All readers and licensed lay workers holding a licence in the diocese are under a duty to “have due regard” to all House of Bishops’ guidance and policy statements concerning safeguarding. This

means that you are required to follow that guidance in all cases, unless you have exceptionally good reasons for not doing so. In practice, the first step in relation to any safeguarding concern is to take the advice of the diocesan safeguarding advisor.

**3. What happens if I don't "have due regard" for the House of Bishops' guidance on safeguarding children and vulnerable adults?**

A failure to "have due regard" to House of Bishops' guidance on safeguarding may result in the Archbishop of York withdrawing your licence to minister.

If, in an exceptional case, you believe that you should depart from House of Bishops' guidance on safeguarding, you should always seek the advice of the diocesan safeguarding advisor before doing so. You should keep a detailed written record of the reasons why you decide to act in a way that is contrary to the guidance.

**4. What is the definition of "children" for the purposes of the House of Bishops' guidance on safeguarding children and vulnerable adults?**

A "child" is any person aged under 18. Whilst primary objective of the safeguarding guidance is to protect children against sexual abuse, it also extends to exploitation, violence of a non-sexual nature and neglect. If you have any concerns about a child, however unsure you are about whether or not a safeguarding issue is involved, you should contact the diocesan safeguarding advisor for advice.

**5. What is the definition of "vulnerable adult" for the purposes of the House of Bishops' guidance on safeguarding children and vulnerable adults?**

A "vulnerable adult" is a person aged 18 or over whose ability to protect himself or herself from violence, abuse, neglect or exploitation is significantly impaired through physical or mental disability or illness, old age, emotional fragility or distress, or otherwise; and for that purpose the reference to being impaired is to being temporarily or indefinitely impaired.

This definition is very wide indeed. It is not limited to people who are permanently in a vulnerable state, such as an elderly person suffering from dementia. It includes people who are vulnerable temporarily, such as a person who is emotionally fragile because of bereavement or divorce or because they are dealing with a difficult personal situation. It includes people who are suffering from illness that may make them temporarily vulnerable, who are in a vulnerable state whilst

convalescing or who suffer temporary bouts of depression. A person may be vulnerable because of the nature of their relationship with another person because of the balance of power between them, such in a pastoral, mentoring, teaching or supervisory relationship. Whilst the need to protect vulnerable adults from being sexually exploited is a primary objective of the guidance, it also extends to financial abuse or exploitation, violence of a non-sexual nature and neglect.

If you have any concerns about an adult, however unsure you are about whether or not a safeguarding issue is involved or whether they are a vulnerable adult, you should contact the diocesan safeguarding advisor for advice.

## **6. What duties are imposed on a PCC?**

PCC members are under a collective and individual duty to “have due regard” to House of Bishops’ guidance on safeguarding children and vulnerable adults. It is not sufficient for individual members of the PCC to rely on the parish safeguarding officer or the incumbent to take responsibility for safeguarding matters. Every PCC member, whether clergy or lay, is personally responsible for ensuring that the parish follows safeguarding guidance.

With effect from the 2017 annual report, PCCs are required to include a statement in their annual report as to whether the parish has complied with the duty to “have due regard” to the House of Bishops’ guidance on safeguarding children and vulnerable adults. This means that the PCC must be able to say whether the PCC as a whole has had due regard to the guidance. It must identify any concerns about particular aspects of safeguarding, including concerns about individual PCC members, clergy or lay, who are have not complied with their duty to have due regard to the guidance or have failed to undertake any required training applicable to them.

Any concerns about a failure of a PCC or individual PCC member to comply with safeguarding guidance should be discussed within the PCC and that individual in the first instance as soon as they arise. If those concerns are not addressed satisfactorily, they should be raised with the archdeacon.

## **7. The House of Bishops’ guidance on safeguarding children and vulnerable adults seems to contain a great deal of information. How am I going to be able to get to grips with it sufficiently to ensure that I “have due regard” to it?**

To have due regard for guidance, you need to know what it says. The guidance is drafted in a readable way and there is no substitute for keeping the guidance to hand and reading it. If there

are any aspects of the guidance that are not clear, the diocesan safeguarding advisor, the diocesan registrar and the archdeacons are happy to discuss them with you.

Training is provided by the diocese. The aim of the training is to give practical advice as to how to recognise safeguarding situations and best practice in addressing those situations. Further guidance will be issued from time to time by the diocese as to key safeguarding issues. Diocesan bishops are required to be satisfied that a reader or licensed lay worker has undergone suitable training in matters relating to the safeguarding of children and vulnerable adults before issuing a licence to minister.

If any safeguarding concern arises you should always contact the diocesan safeguarding advisor for advice, whether or not you have been able to participate in training or refresher training.

#### **8. Where do I stand if I can't attend safeguarding training or I am too busy to get round to it?**

You should give safeguarding training your first priority. If you have a good reason for being unable to participate a specific safeguarding training session, you should arrange to attend an alternative safeguarding training session. A failure to participate in safeguarding training on an ongoing basis may result in your licence being withdrawn.

#### **9. When can a reader or licensed lay worker be suspended or disqualified from exercising their ministry?**

A reader or licensed lay worker may be suspended from exercising their ministry:

- when they are arrested on suspicion of committing an offence mentioned in Schedule 1 of the Children and Young Persons Act 1933; or
- when the bishop of the diocese is satisfied on the basis of information provided by a local authority or the police that they present a significant risk of harm.

A "significant risk of harm" includes a significant risk that person may harm, attempt to harm, cause to be harmed, put at risk of harm or incite another person to harm a child or vulnerable adult.

A suspension lasts for a maximum of three months and each suspension can be renewed for successive periods of up to three months each.

A reader or licensed lay worker may be disqualified from exercising their ministry:

- if they are convicted of an offence mentioned in Schedule 1 of the Children and Young Persons Act 1933
- if they are included in a barred list.

For further information about the offences set out in Schedule 1 of the Children and Young Persons Act 1933 please contact the diocesan registrar or the diocesan safeguarding advisor.

#### **10. Is there a right of appeal against a suspension?**

There is the right of appeal to the President of Tribunals against each suspension. The suspension remains in place until the appeal has been decided.

#### **11. Who is told about a suspension?**

Notice of suspension is normally given on a confidential basis to the suffragan bishops, the archdeacons, rural dean of your deanery, clergy of your parish, the churchwardens of your parish, the diocesan registrar and the diocesan safeguarding advisor. Others may be informed if the Archbishop of York considers it appropriate and he will usually notify the relevant Chief Constable of Police and local authority designated officer.

The detailed reason for the suspension will usually be withheld for reasons of confidentiality, depending on the circumstances of the case.

#### **12. When can a disqualification be waived?**

The bishop of a diocese may waive a disqualification so as to permit a person who would otherwise not be capable of being licensed as a reader or licensed lay worker to be given a licence. The bishop must give reasons for deciding to grant a waiver. The circumstances in which a waiver will be granted will vary, but are likely to arise where the situation giving rise to a disqualification occurred in the distant past and is not likely to recur. For example, a teenager who gets into a fight with another teenager may be guilty of assaulting a minor and convicted of an offence under Schedule 1 of the Children and Young Persons Act 1933. It may be appropriate to disregard that conviction if the person has led an exemplary life as an adult. Once a disqualification has been waived, it takes effect in all dioceses.

**13. What is the effect on my ministry if I am suspended or disqualified?**

A reader or licensed lay worker who is suspended from ministry must not exercise their ministry in any way and must not vest in a church or chapel during divine service during the period of their suspension.

A reader or licensed lay worker whose licence is revoked following disqualification must not exercise their ministry and must not vest in a church or chapel during divine service at any time.

**14. What other recent changes in the law relating to safeguarding have been made?**

All bishops, archdeacons, clergy, readers, licensed lay workers, churchwardens and PCCs are subject to the duty to have due regard for House of Bishops' guidance on safeguarding of children and vulnerable adults.

There are new rules in relation to visiting clergy. Visiting clergy may not officiate or robe in a church or chapel in the parish unless they have authority to minister under the Canons of the Church of England and the minister in charge of the parish is satisfied from their own personal knowledge or good and sufficient evidence that the invited minister is of good life and standing.

With effect from 1<sup>st</sup> January 2017:

- clergy, churchwardens, PCC members, PCC secretaries and treasurers and district church council members will be subject to similar suspension provisions as readers and licensed lay workers in relation to safeguarding matters
- churchwardens, PCC members, PCC secretaries, PCC treasurers and district church council members may also be disqualified from holding office if they are on the barred list, subject to a power for diocesan bishops to waive any such disqualification in appropriate cases
- the one year time limit for bringing disciplinary proceedings will be removed where the misconduct complained of is conduct of a sexual nature towards a child or vulnerable adult.

It is expected that in March 2017 there will be new regulations and guidance relating to the appointment of diocesan safeguarding advisors and in relation to risk assessments in safeguarding cases. Further guidance will be issued in relation to these matters in due course.

## 15. Contact details

If you have any safeguarding concerns, no matter how small they may seem, you should seek advice.

Diocesan Safeguarding Advisor *There is a vacancy in this post at present. Please seek advice from any of the persons named below. They will be able to refer you to the person appointed to give safeguarding advice during the vacancy.*

Diocesan Registrar:

Caroline Mockford

Stamford House

Piccadilly

York YO1 9PP

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Email: [registryork@luptonfawcett.law](mailto:registryork@luptonfawcett.law)

Archdeacon of Cleveland

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Archdeacon of the East Riding

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