

Diocese of York
Safeguarding and Clergy Discipline Measure 2016 and Amending Canon 34
Frequently Asked Questions – clergy

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 the clergy in this diocese, whether beneficed, licensed, holding PTO or retired.

See also other guidance available on the diocesan website:

FAQs – readers and licensed lay workers

FAQs – churchwardens and PCCs

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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 clergy who are authorised to officiate in accordance with the Canons of the Church of England are under a duty to “have due regard” to all House of Bishops’ guidance and policy statements concerning safeguarding. Clergy who are authorised to officiate under the Canons of the Church of England are:

- Incumbents, including team rectors;
- Clergy holding a licence to minister in a benefice as priest in charge, team vicar or assistant curate, including assistant curates whose office is known by another title, such as associate priest, associate minister or pioneer minister;
- Clergy holding a general preacher’s licence, including chaplains;
- Clergy licensed to a bishop’s mission order, including the Leader;
- Clergy with permission to officiate;
- Retired clergy who are invited to minister on an occasional or one off basis with the authority of the incumbent;
- Visiting clergy from another diocese who are invited to minister on one off basis with the authority of the incumbent.

Please contact the Diocesan Registry for advice as to the authority to minister required by others not appearing on this list.

The duty to “have due regard” to House of Bishops’ guidance on safeguarding also extends to diocesan bishops, suffragan or assistant bishops, archdeacons, readers and licensed lay workers, 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 clergy who are authorised to officiate in accordance with the canons of the Church of England 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 is automatically misconduct under the Clergy Discipline Measure 2003 unless you can show that there were exceptional reasons for acting differently in a specific case. A clergy discipline complaint could be made against you and, if that complaint is upheld, a penalty imposed, which may result in your losing your office and even being prohibited from ministry.

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. Incumbents and other parish clergy can take the lead in encouraging good safeguarding practice.

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. Amending Canon 34 imposes a new duty on clergy to participate in safeguarding training. You are expected to complete level 3 safeguarding training for clergy and lay people or to seek exemption from that training from the Archbishop of York.

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?

Amending Canon 34 imposes a new duty on clergy to participate in safeguarding training. A clergy discipline complaint could be made against you if you fail to do so, and, if that complaint is upheld, a penalty imposed, which may result in your losing your office and even being prohibited from

ministry, especially if the failure to participate in training is associated with a failure to have due regard to House of Bishops' guidance on safeguarding of children and vulnerable adults. 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.

9. What are my responsibilities in relation to visiting Anglican ministers?

An Anglican minister may only officiate in your parish if they have authority to officiate under the Canons of the Church of England.

An Anglican minister has authority to officiate in your parish under the Canons of the Church of England if:

- 9.1 the incumbent, priest in charge, team rector or team vicar of the parish:
 - 9.1.1 has given permission for the visiting minister to officiate; and
 - 9.1.2 is satisfied from their own personal knowledge or good and sufficient evidence that the invited minister is of good life and standing;

and
- 9.2 one or more of the following apply:
 - 9.2.1 the visiting minister holds a licence to minister in your parish; or
 - 9.2.2 the visiting minister holds a general preacher's licence permitting them to minister in the diocese as a whole or your part of the diocese; or
 - 9.2.3 the visiting minister holds the Archbishop of York's permission to officiate in the diocese or the Province of York; or
 - 9.2.4 the visiting minister is a member of the York Minster chapter; or
 - 9.2.5 the visiting minister will not minister in the parish for more than seven days in a three month period and
 - 9.2.5.1 holds office as an incumbent in this or another diocese, or
 - 9.2.5.2 holds a licence to minister in this or another diocese, or
 - 9.2.5.3 has permission to officiate in this or another diocese.
 - 9.2.6 the visiting minister is conducting the funeral service at a cemetery or crematorium in the parish of a person who died in, was resident in or on the church electoral roll of the visiting minister's parish

and

9.3 If the minister was ordained:

9.3.1 by an overseas bishop; or

9.3.2 by a bishop of the Roman Catholic Church; or

9.3.3 by a bishop of the Free Church of England; or

9.3.4 by a bishop of the Church of England in South Africa

then they will require in addition the permission of the Archbishop of York in all cases.

An Anglican minister may not officiate or vest in the church or chapel if they do not have authority to officiate (as set out above) or if they are prohibited from ministry or suspended.

10. When would a visiting Anglican minister be considered to be officiating?

A visiting minister is officiating if they undertake any form of public ministry during the service other than sitting in the pews with the other members of the congregation, even if that activity is something that could have been carried out by a lay person and even if they are not robed. It includes:

- presiding at the service
- taking the sermon or giving an address
- administering communion
- participating in a service of marriage

A minister without authority to officiate or who is suspended or prohibited from minister may not vest in the church or chapel, even if they only process with the clergy and take no further part in the service except as a member of the congregation.

If you are unsure whether a visiting minister is appropriately authorised, please contact the diocesan registrar or your archdeacon for advice.

11. How do I establish that a visiting minister is of good standing?

If the visiting minister holds office or permission to officiate, that person should have undergone a safer recruitment process in accordance with the House of Bishops' guidance, involving a DBS check, confidential declaration form and references. You should establish whether the visiting minister holds office or PTO elsewhere and ask for evidence of that authority. In addition, it is best practice to check with the diocese in which office or PTO is held to ensure that there are no known safeguarding considerations and that they are not under suspension or prohibition. You should keep a written record of the enquiries you have made and the outcome of those enquiries or, if you have

personal knowledge of the circumstances of the visiting minister, of the reasons why you know that they are of good standing.

If you know that the visiting minister is suspended or prohibited from exercising their ministry, you must not permit them to officiate or robe in any church or chapel in your parish.

If you are uncertain as to whether a visiting minister is of good standing please seek the

12. What will be the consequences if a visiting minister is permitted to officiate or vest in a church or chapel in my parish when they do not have authority to minister under Canon?

You will be in breach of canon law if you have not taken reasonable steps to establish the visiting minister's authority to minister and good standing before giving them permission to officiate or vest in a church or chapel in your parish. A clergy discipline complaint could be made against you and, if that complaint is upheld, a penalty imposed, which may result in your losing your office and even being prohibited from ministry.

In addition, the visiting minister will also be in breach of canon law and a clergy discipline complaint may be made against them.

13. When can a minister be suspended or prohibited from exercising their ministry?

A member of the clergy may be suspended from exercising their ministry in the following circumstances:

- 13.1 when a complaint is made against them under the Clergy Discipline Measure 2003 and the Registrar has written the Preliminary Scrutiny Report under the Measure; or
- 13.2 when they are arrested on suspicion of committing a criminal offence; or
- 13.3 when they are convicted of a criminal offence; or
- 13.4 when they are included on the barred list; or
- 13.5 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; or
- 13.6 when a complainant seeks the permission of the President of Tribunals to bring a disciplinary complaint out of time.

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 member of the clergy can only be prohibited from exercising their ministry following the imposition of a penalty of prohibition in disciplinary proceedings. A prohibition may be for life or for a limited period of time.

14. Is there a right of appeal against a suspension or prohibition?

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.

There is a right of appeal to the Chancery Court of York against a penalty of prohibition imposed by a disciplinary tribunal.

15. Who is told about a suspension or prohibition?

Notice of suspension is normally given on a confidential basis to the relevant suffragan bishop, the archdeacon of your archdeaconry, rural dean of your deanery, clergy of your parish and churchwardens of your parish and the diocesan registrar. Others may be informed if the Archbishop of York considers it appropriate. The relevant Chief Constable of Police, local authority designated officer and diocesan safeguarding advisor will always be told in safeguarding cases.

The reason for the suspension will sometimes be withheld for reasons of confidentiality. This will depend on the circumstances of the case.

All penalties of prohibition are recorded on the Archbishops' List circulated to bishops.

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

Readers, licensed lay workers, churchwardens and PCCs are all under the same duty as the clergy to have due regard for House of Bishops' guidance on safeguarding of children and vulnerable adults.

With effect from 1st January 2017 churchwardens, PCC members, PCC secretaries and treasurers and district church council members became subject to similar suspension provisions as the clergy in relation to safeguarding matters. They 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. Readers and licensed lay workers are already subject to similar provisions and are prohibited from vesting in a church or chapel during divine service whilst suspended or disqualified from exercising their ministry.

With effect from 1st January 2017, 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.

17. Contact details

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

Diocesan Safeguarding Advisor
Diocese of York
Amy Johnson Way
Clifton Moor
York
YO30 4XT

Telephone: 01904 699500
Email: safeguarding@yorkdiocese.org
Web: www.dioceseofyork.org.uk/safeguarding/contact

Diocesan Registrar:
Stamford House
Piccadilly
York YO1 9PP

Telephone: 01904 623487
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