

Committee on Standards

Oral evidence: Precautionary exclusion, HC 1049

Tuesday 24 January 2023

Ordered by the House of Commons to be published on 24 January 2023.

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Members present: Sir Chris Bryant (Chair); Mrs Tammy Banks; Andy Carter; Alberto Costa; Mrs Rita Dexter; Allan Dorans; Yvonne Fovargue; Sir Francis Habgood; Sir Bernard Jenkin; Dr Michael Maguire; Mehmuda Mian; Victoria Smith; Mr Paul Thorogood; Sir Charles Walker.

Questions 1-61

Witnesses

I: Michael Allen, Detective Chief Superintendent, Professional Standards Branch, Edward Dobson, Senior Advisory Lawyer, Church of England, Sara Jagger, Director of Legal Enforcement, Bar Standards Board.

Examination of witnesses

Witnesses: Michael Allen, Edward Dobson and Sara Jagger.

Q1 Chair: Welcome to the Standards Committee and our inquiry today. We are very grateful to the three of you for joining us. We may be in the Grimond Room, but we don't want to make this grim. Feel free to expand on your answers as much as possible, because I don't think that any of us on the Committee feel we know the answer to all of this today, so any elucidation you can give us will be very gratefully received.

We have our names displayed here, but it would probably be helpful if you introduced yourselves.

Michael Allen: Morning, Chair. I am Michael Allen. I am a detective chief superintendent with the professional standards branch of Greater Manchester police, but I also act as the staff officer for the National Police Chiefs' Council professional standards and ethics portfolio, and also the complaints and misconduct portfolio, leading strategically, with Chief Constable Craig Guildford from West Midlands police, in that thematic area of policing.

Sara Jagger: Hi. I am Sara Jagger. I am the director of legal enforcement at the Bar Standards Board, which is the regulator for barristers in England and Wales. The legal enforcement department carries out investigations and disciplinary action and is responsible for the interim suspension process.

Edward Dobson: Good morning. My name is Edward Dobson. I am a barrister and senior advisory lawyer in the legal office of the Church of England. I oversee the policy and implementation of the Clergy Discipline Measure, which has jurisdiction over priests, deacons, bishops and archbishops in relation to their suspension and investigation of complaints of misconduct.

Q2 Chair: I think formally speaking, under the Clerical Disabilities Act, I am on that list, but not as defrocked; just because I chose to surrender my orders under the 1870 Act—just for full declaration of all interests.

I think you have all seen what the House of Commons Commission has proposed. First, could each of you explain what arrangements you have for something similar to precautionary exclusion?

Michael Allen: From a policing perspective, our suspension regime is within a framework of secondary legislation. The latest statutory instrument, the Police (Conduct) Regulations 2020, commenced on 1 February 2020. In terms of interim suspension, in policing there is no licence to practise, so our suspension regime is effectively for the protection of the public and the workforce while an officer is under investigation. At the conclusion of an investigation, there will be



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disciplinary proceedings, the outcome of which would be, at the top level, dismissal and then, underneath, if a person is of rank, possibly reduction in rank, final written warning and written warning. There can be no suspension from practice, if you like, for police, unless you are under disciplinary investigation.

Q3 Chair: But what happens if a police officer is arrested or charged for a violent or sexual crime?

Michael Allen: Ordinarily, for egregious allegations of that nature, they would be suspended.

Q4 Andy Carter: At what point? When they are arrested or when they are charged?

Michael Allen: Suspension can come at any point. If I deal with your question directly, there are probably some key junctures of suspension. First, there is what I would describe as an indication test, which is a very low threshold that sits below reasonable and objective grounds to suspect. Reasonable and objective grounds to suspect an offence would engage, for example, an arrest, but at a lower threshold, on a mere indication alone, a senior officer of inspector or above may make a submission to, ordinarily, a deputy chief constable for an application to suspend. That is the lowest bar.

The bar above that is when an appropriate authority—that is legal parlance for an inspector or above in professional standards—decides that an officer should be arrested or formal disciplinary proceedings should be commenced. Other junctures are the point of arrest, the point of charge, or the point where we decide internally that there is a case to answer—so when evidence has been collated and a reasonably constituted disciplinary panel could find the case proven. They are all points at which we may take a decision to suspend.

However, under the regulations, the presumptive position is not to suspend. The presumptive position is to suspend only under these circumstances: if an alternative location or duty cannot be found; if it could prejudice the investigation if we didn't suspend; or if it is in the public interest to suspend. When we are looking at the public interest, we will be looking at the purpose of the disciplinary regime—to protect the public, to hold police officers to account and deter misconduct, or to maintain public trust and confidence.

It will not be lost on anybody at the moment that public trust and confidence in policing is being severely damaged by egregious acts that have been reported in the press. For example, I would naturally expect sexual misconduct and predation in the workplace to meet the public interest test. For policing to be effective and meet its primary purposes to prevent crime and disorder, and for public safety, it needs to be efficient and effective. To be efficient and effective, it needs public confidence. So, in the public interest, sometimes we suspend just to meet that test.

Q5 Chair: Is that publicly known?



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Michael Allen: We would not necessarily proactively advertise that an officer is suspended. I know of instances where we have, to maintain public trust and confidence, but we need to balance that with the prejudicial effect, because suspension is without prejudice and everybody is considered innocent until proven guilty. But in terms of whether it exists there publicly, it is in the conduct regulations and the Home Office statutory guidance, so no secret is made of those tests.

Q6 **Sir Bernard Jenkin:** How fair do police officers feel that the regime for suspension is? One gets the impression that some chief constables suspend almost at the drop of a hat, while others stand by their people.

Michael Allen: It is an extremely difficult question to answer, and my answer touches on the points of your question, in that we have 43 Home Office police forces, each with their own chief constable and their own deputy chief constable, and therefore, while there is regulation and statutory guidance, different tolerances can creep in. That said, from a strategic perspective working within the portfolio, that is not a complaint that has come to my attention. There are complaints about the police regulatory discipline framework in so far as, for example, timeliness is concerned and its complexity to navigate, but in terms of suspension, that is not a grievance that has come to my particular attention or one that is troubling the portfolio at this time.

Q7 **Allan Dorans:** Are there any circumstances in which the Police Federation, on behalf of an officer, appeals a suspension?

Michael Allen: Yes. That is built into the regulations. At the point of suspension, from a regulatory perspective, the officer has to be notified orally immediately, and then not later than three working days. From that point of notification of suspension there is an automatic right of the officer or their Police Federation friend—or police friend—to make representations within seven days. Thereafter, at any point the circumstances change, they can make representations to the authorising officer, ordinarily the deputy chief constable. In any event, every four weeks the suspension has to be reviewed to ensure that those tests that I set out are still being met.

Q8 **Mrs Dexter:** I have two questions. First, did I understand you to tell us that the decision whether to suspend a person is made by a single senior manager?

Michael Allen: Yes. Apologies to the Committee; I probably was not extremely clear on that point. For non-senior officers—from a regulatory perspective, that is chief superintendent downwards to constable—the rank that is the decision maker of suspension is a senior officer, which is an assistant chief constable or above. In practice, across the 43 police forces, that is ordinarily a deputy chief constable or equivalent in the Metropolitan police force.

From a practical point of view, if an investigator of a crime or a disciplinary offence believes that an officer should be suspended, that will be raised to the head of professional standards—in Greater Manchester, that is me. I would then quality-assure whether, in my view, the grounds for



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suspension are met, and then the head of professional standards would brief the deputy chief constable, who would be the decision maker. To cut to the point, yes, it is a single person who decides whether or not to suspend.

- Q9 **Mrs Dexter:** I don't think I was aware of the involvement of professional standards, but I understand that now, so thank you. Should I take it from your answer that HR is not involved in making that decision?

Michael Allen: No. Police officers are not under contracts of employment. Our terms and conditions and our standards of professional behaviour are cemented in regulation. In so far as police officers are concerned, that is an entirely regulated process under the operation of police professional standards directorates.

All the evidence that I have given you today is in relation to police officers. Clearly, with workforce modernisation in policing, there are also police staff. Police staff have contracts of employment, and it is different over the 43 forces. In Greater Manchester, it is still professional standards that will deal with those contracts of employment issues and the police misconduct policy and procedure; in other forces, it may be human resources. It would be extremely difficult to summarise the suspension of police staff, because, effectively, we are reliant on 43 different policies and procedures. I suppose, aspirationally, the wish would be to bring policy and procedure for police staff into one form, but that is work to be done.

- Q10 **Mrs Dexter:** Thank you for that. My second question is about the proposition, which prompted us to talk to you today, that there might be some form of precautionary exclusion here in the House of Commons. The proposition under consideration is that there should potentially be provision to exclude a Member of Parliament from these premises, but not from the other portion of their duties and responsibilities in their constituency. Have you any reflections on that? Are there any parallels in the police, and how well does it work?

Michael Allen: There are parallels. When an officer is suspended, they are suspended really in two terms: first, from the office of constable, so their warranted powers cease—they have no power of arrest and no powers afforded to them by various statutes and legislation—and, secondly, they cease to be a member of their police force, but for employment law and the purposes of disciplinary proceedings. The standards of professional behaviour still apply, so we can still place restrictions on those police officers.

Ordinarily, when an officer is suspended from their office, they will be barred from the police estate and all access to police technology will be removed—because, obviously, police intelligence is the lifeblood of policing—but we can impose restrictions as well. We can restrict them from police functions—not just formal functions, but social functions that might be arranged away from the organisation. That is something that we do. It is something that I have done within the last month, in terms of



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layering restrictions on top of a suspension, because the suspension alone was not sufficient to safeguard against future sexual predation.

We have to balance that with article 8, because we always have article 8 engaged in these circumstances—

Q11 **Chair:** Of the ECHR?

Michael Allen: Yes. But so long as it is necessary and proportionate, and seeks to meet a legitimate aim, that is something we can do.

Q12 **Chair:** You said that one of the things you would consider first is whether there were alternative duties or alternative places. In those circumstances, somebody might be going to a different police station or doing something that does not interface with the public.

Michael Allen: Absolutely. If we have an officer who we suspect may have committed a data protection offence and may have used our computers improperly, it may be that we restrict them from all local area and access controls, and from operational aspects of the police estate. But we have—while not wishing to be disrespectful—more manual labour jobs that they can purposefully do.

Q13 **Chair:** So you would want to exhaust all those options before you went to a suspension.

Michael Allen: Unless it is in the public interest, and that is a significant factor—more so than ever.

Q14 **Dr Maguire:** I think I know the answer to this question, but if you look at the first stage in the disciplinary process, when a suspension would be an appropriate response, are there particular offences for which there would almost be an automatic suspension?

Michael Allen: There is no indicative list—each case is on its own merits—but I can answer it in this way. Where there are markers for gross misconduct—gross misconduct being a breach of the standards of behaviour that is so serious that dismissal would be justified—we are certainly in the grounds for considering suspension. On duty, those markers would be honesty, integrity and predation. Off duty, they would be dishonesty or a lack of integrity where the public office is still, to a degree, engaged increasingly in sexual misconduct matters. But again, when we start looking at the public interest side and the damage to public trust and confidence, if we are arresting people for misconduct in a public office or police corruption—I forget the Act and section, but if there are those types of offences or serious sexual offences, such as section 1 rape, section 2 digital penetration or section 3 sexual assault, we are seriously in the territory of grounds for suspension.

Q15 **Dr Maguire:** I am thinking about the comment that Rita made, which was in relation to the additional restrictions that might be placed on officers, where sexual offences would be the trigger point. What else would you be thinking about?



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Michael Allen: Again, it is a blank canvas in terms of the restrictions; they can be anything you want them to be. We may restrict an officer from the evidential chain, while suspension is without prejudice.

- Q16 **Dr Maguire:** Take a member of staff, for example. What if there is an assault against a member of staff?

Michael Allen: It may not necessarily result in suspension. We may be able to restrict them from the environment in which that assault came to be, separating the accused in another area of the force. But again, as a trade craft, we would be looking at the weight of the evidence. If we have a criminal offence of assault and the evidence is overwhelming, from a protecting-the-service point of view, I would certainly be looking at restricting the officer from the evidential chain, because, in those circumstances—playing it forward—dismissal would almost be inevitable. Why would I want to keep that officer in the evidential chain, with cases going to court in which he is providing the evidence?

- Q17 **Chair:** Because it might compromise those other cases.

Michael Allen: Absolutely. The guilty may go free and the innocent may be convicted, so there is that duty to preserve ongoing criminal cases.

- Q18 **Chair:** That may be a more difficult parallel with Parliament. Thank you. Can we move on to Sara—what do you do?

Sara Jagger: The context that we work in is very different. We are the opposite; we do regulate by authorising people to practise. They have their authorisation, which we have control over. We do not necessarily have control over what you might look at as their workplace. Our regime is very much aimed at what we do with their practising certificate. It might help to give the context that the practising bar consists of about 80% self-employed barristers and 20% employed. That means that barristers work in chambers or sets. They are all self-employed, but they share the facilities. In lots of chambers there is a constitution. It is run vaguely like a business, but it is not in legal terms a business or an entity. We are regulating the individual barristers in those chambers.

An interim suspension in full, i.e. removing their practising certificate pending the outcome of some disciplinary proceedings, will mean that we have removed their livelihood and their ability to earn. That is different to the police, who continue to be paid. It is a very draconian thing to do, in the context of the bar, to impose an interim suspension. We do it fairly rarely, and we have restricted situations in which we can impose interim suspensions. To put that in context, it is one to two a year. Our regulations are in our BSB handbook—

- Q19 **Chair:** Out of how many barristers?

Sara Jagger: One to two barristers a year.

- Q20 **Andy Carter:** How many are you regulating altogether?

Sara Jagger: Sorry, there are about 17,000 practising barristers. There are very few. The regulations are in our handbook, and they are pretty

restrictive. The circumstances in which we can impose an interim suspension are where a barrister has been convicted or charged with a criminal offence—other than a minor one, such as a fixed-penalty type offence.

Q21 **Chair:** Convicted or charged?

Sara Jagger: Convicted or charged. Other circumstances are if they are convicted by another approved regulator of misconduct, where they have been sentenced to suspension, to removal from whatever their register is or to termination of the right to practise. Another circumstance is subject to an intervention by the BSB, which is where we might go in and intervene in the individual's practice to stop it for some reason. An interim suspension can also happen when necessary to protect the interests of former or potential clients. Those are the only circumstances in which we would look at imposing an interim suspension. We do not have public interest as one of our circumstances. I know you are interested in what problems we have—that is one. We are looking to expand these criteria to allow us to apply for interim suspension in the public interest—to protect the public.

We also have a power of immediate suspension. That means literally once that is imposed the person is suspended from that time on. If they have clients they are representing the next day, they would not be able to do so. Again, it is used in only the most extreme circumstances. The criterion for that is to be satisfied that such a course of action is justified having considered the risk to the public if an interim suspension was not implemented. The reality is that most interim suspensions are imposed because there has been some form of conviction. Immediate interim suspension is most likely to be used where we find that a barrister has been imprisoned and still has a practising certificate. We would take action there.

Immediate interim suspension is a decision made by the chair of our independent decision-making body, which is a body that we appoint consisting of barristers and laypeople to take a range of decisions, and this is one of them. It generally looks at referrals to tribunal following an investigation. The chair can impose that, but, as I said, it is very rare that that happens. All other decisions are taken by panels appointed by an independent body called the Bar Tribunal and Adjudications Service. That is independent of the Bar Standards Board. We would make a referral if we thought any of these criteria were met. It would then be for a panel of three to make a decision on that. That panel, at the first instance stage, is chaired by a KC and must include at least one lay person, and it can potentially go down to two if somebody needs to recuse themselves or they are not available.

However, all those decisions are made by a panel. Even in an immediate interim suspension there is a requirement to get that suspension in front of a panel; the immediate interim suspension lasts for a maximum of four weeks and then it must go in front of a panel. There is an ability to have those decisions reviewed. I can come on to that if you want more detail.



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So there will be a hearing of some sort. The barrister is usually required to attend; they can be represented. The panel will hear the evidence and then make a decision. They can suspend the full certificate and in our case it is not for a specific period of time; it is until the tribunal proceedings are concluded.

The panel can also place conditions on the practising certificate, so rather than ordering a full interim suspension it can place conditions. And it can also remove part of the barrister's authorisation, in the sense that barristers are authorised to practise generally and some also have the ability to provide legal services by public access—so, direct to clients, as opposed to through a solicitor. I am not sure if you are all aware that the barrister—

Q22 Chair: I don't think we need to delve into that.

Sara Jagger: The panel can restrict a barrister's ability to do public access work. Also, some barristers apply for authority to conduct litigation, and that can be restricted as well. In the main, those are the powers that the panel has.

Q23 Chair: That is primarily, as you said, on conviction.

Sara Jagger: Primarily on conviction, but we have the power on charge. The point at which we would consider an interim suspension is the minute the information comes in front of us, and then we would apply to the panel. And an interim suspension hearing must take place between 14 and 21 days from the date that we refer it to the independent body.

Q24 Mr Thorogood: Am I right to understand that this is only to do with the ability to practise and so you do not have the power to remove somebody from a place of work to protect culture?

Sara Jagger: No, we do not have any powers to stop them from working in their chambers. Chambers is not a workplace in that traditional sense, because it is a group of barristers who are—

Q25 Mr Thorogood: I understand that it is 80% self-employed.

Sara Jagger: Yes.

Q26 Mr Thorogood: So how are complainants or fellow workers protected in cases of sexual harassment, bullying, etc. where the barrister has not been charged? Can they continue to go to chambers and continue to work? How are people who have made the complaint protected?

Sara Jagger: It depends if they are still working within chambers, so it is a chambers-to-chambers environment. A lot of the reports that we receive do not relate to the workplace; they have occurred outside the workplace, in terms of general reports about conduct of barristers. Where there has been an allegation—say, of sexual misconduct—against another barrister or of people within the chambers, if we consider that they are vulnerable we will, during the investigation process, refer to our supervision team, who will contact the chambers to talk to the appropriate person and ask,



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"What measures have you put in place?" And it will very much depend on the circumstances and who they are, but we will work with chambers.

We do not have the powers to force chambers to do that, but we will work with them. If the parties are in chambers together, there may be some restrictions that the chambers would agree on, in terms of where people encounter each other.

Q27 **Mr Thorogood:** So that is the responsibility of the chambers and HR department, and their policies and procedures?

Sara Jagger: Yes. Chambers will not necessarily have an HR department in that way, but some of the bigger chambers will have the equivalent in terms of looking after people. It is not an employment relationship in the same way that you might get in other professions.

Q28 **Chair:** But in chambers, let's say—I do not know how many—you might have 20 barristers, or more, I guess.

Sara Jagger: More, yes.

Q29 **Chair:** I am guessing that at some point there might have been an instance where one junior member feels bullied or sexually harassed by a senior member of chambers. Where would that be dealt with? In a meeting of chambers?

Sara Jagger: There will be two situations, or they could run in parallel. There is the chambers and its ability to deal with reports and complaints about what is happening within chambers. And then there is reporting to the regulator. Chambers have their own powers within—I mean, they can, as a chambers, choose to suspend somebody from their own chambers, but that is not suspending them from practice.

Q30 **Chair:** No. I understand that, but they could—

Sara Jagger: Within chambers, they can make choices as to what they want to do, but when they come to us—when it is reported to us as a regulator—our powers are in relation to their practising certificate. You are right that chambers can be very big, with 80 to 100 members or more, but they can also be very small, and some will have very different procedures and processes in place from others in terms of individuals and safeguarding. There are certain requirements that we put on chambers as such, for them to have certain policies and procedures in place to deal with things. We have no control over them actually safeguarding within chambers, but we do work with them where we can.

Chair: I understand that.

Q31 **Alberto Costa:** I have a couple of questions, but I just want to take the Chair's questions further. Ultimately, barristers in chambers self-employ; there will be contractual agreements between the various parties involved in chambers, some of whom may have their own equity structure within chambers, so it is actually quite comparable with here, in that the individuals are self-employed. You mentioned at the end there that you



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have some policies, but ultimately, it is a contractual arrangement between the individuals within chambers. Is that correct?

Sara Jagger: The way that chambers operate, it is with them, yes. We do not regulate that as a workplace.

Q32 **Alberto Costa:** So there could be a lacuna in terms of workplace exclusion, because the very individual who might be accused of having breached a rule or is alleged to have committed an offence might be an equity individual, and there might not be any policy available to exclude that individual. Your organisation would have no say on that. Is that correct?

Sara Jagger: From chambers, no. We would have no say on that individual decision.

Q33 **Alberto Costa:** Thank you; that is very helpful to clarify. Can I just turn to two other points I had? At the outset of your evidence, you made a distinction between your organisation and the police when you said that in effect, when police are suspended, they continue to be paid. You used that as an example of your organisation having nothing to do with the monetary transactions between employer and employee: it is a regulatory body, and it is about restricting.

That is an interesting differentiation, because currently when we suspend Members, we also suspend their salaries, and that is something this Committee might be looking at in terms of disciplinary processes. When you talk about interim suspension of certificates, is the individual subject to that suspension able to challenge it through an appellate body within your organisation and externally through judicial assistance? In other words, is it a justiciable decision?

Sara Jagger: Yes. Within the regime, as I said, all decisions other than the immediate interim suspension—which is something that lasts for only a very short period—will be taken by independent panels, so you have the first interim panel that will make the initial decision. There is also a right to review; that right goes throughout the process if there is a change in circumstances that could impact on whatever action the interim panel has decided is appropriate, and there is also an automatic right to appeal. Once an interim panel has made a decision, the barrister can appeal that because they do not like the decision, as opposed to because there has been a change in circumstances or for some other good reason. So the right to review runs throughout, and the appeal is after the first decision to suspend or to impose conditions.

Q34 **Alberto Costa:** And there is the ultimate recourse to the courts for the individual who has had their certificate suspended. Is that correct?

Sara Jagger: No, there is no direct recourse in that. I mean, they might be able to seek judicial review of the decision taken by one of the panels.

Alberto Costa: Sorry, by that, I meant judicial review. There is judicial review, so it is justiciable in that sense.



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Sara Jagger: There is a potential to judicially review, but—

Q35 **Alberto Costa:** Do you have examples of where individuals have referred the matter to judicial review?

Sara Jagger: Not in my experience, no. It is rare that we have review panels, or even appeal panels.

Q36 **Alberto Costa:** I should have also asked Mr Allen that question. Is there an internal appeal mechanism for any decision to suspend a police officer, and can it be referred to the courts?

Michael Allen: No, the first instance decision is by the senior officer that I described. There is no appellate body built into the regulations; the independent investigatory authority—so, the Independent Office for Police Conduct—is not an appellate body or a body that makes a decision in matters such as this. The regulatory regime is a regulatory framework, so ultimately it could be subject to judicial review in the High Court, but certainly for suspension, I cannot think of one example myself where it has been challenged in the High Court.

Q37 **Alberto Costa:** But it could be.

Michael Allen: It could be. It goes back to the question on whether the suspension has been challenged, and perhaps points towards the fact that police officers are suspended on full pay, so there is no fiscal penalty in that regard.

Alberto Costa: That is very helpful; thank you.

Chair: Rita, and then we need to move on to the Church of England.

Q38 **Mrs Dexter:** Based on what you have explained to us, is there the possibility that a barrister has been arrested and is under investigation—let us say for serious sexual offences—and the Bar Standards Board is just completely unaware of that and so, for that reason, fails to give consideration to the possibility of interim suspension? We have had in the House here—

Sara Jagger: There is a possibility, unless somebody has told us or it has hit the press in some way, that that could happen and we would not be aware of it. There are no mechanisms for us to be informed that a barrister is being arrested for offences.

Q39 **Chair:** Would the chambers be aware?

Sara Jagger: They might not even be aware. The point at which they would be under an obligation is the charge; if they are charged, they are obliged to inform us—whether they do or not, they are obliged. On arrest, no, so I think we could have that situation.

Q40 **Mrs Dexter:** Either you or Michael might know the answer to this. I realise that I had no idea of the typical time elapsed between arrest and charge. Might somebody be charged with something serious and keep it to him or herself for a very long time?



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Michael Allen: In policing, there is a standard of professional behaviour under duties and responsibilities where a police officer must inform the professional standards body or a senior officer of any criminal or disciplinary action taken elsewhere, outside of their own force. If an officer is the subject of a criminal investigation, that is something they must draw to the attention of the employing force.

Q41 **Chair:** What does “subject of a criminal investigation” mean? When would you know whether you were the subject of a criminal investigation?

Michael Allen: It is when you know. Clearly, the investigating body might want to keep its powder dry to secure, preserve and control evidence. For example, in the north-west region, if Merseyside police were investigating a Greater Manchester police officer covertly, they would make notification to ourselves. A police officer must, when they know, inform their employing force that they are under investigation. If they do not, that would be a matter of serious misconduct and may result—could likely result—in their dismissal for that fact alone.

Sara Jagger: In relation to us, as I said, barristers are obliged to report that they have been charged. They also have a general obligation to report professional misconduct by themselves. Now, it is a moot point at the moment whether or not that would apply between arrest and charge, on the basis that if they admitted to it and said, “Yes, I have done that”, they would be under an obligation to report it. At arrest, they may be denying that they even did it, so that would not trigger an obligation to report professional misconduct. But on charge, yes, they would need to.

Q42 **Chair:** I do not know who I am asking this question to; it may be somebody here, rather than there. Do the police have to report to Mr Speaker or somebody or other if an MP is arrested or charged?

Sir Charles Walker: It used to be the case that MPs were named at the point of arrest.

Chair: That is by the Speaker, but does the Speaker get notified?

Sir Charles Walker: The Clerk of the House is notified, aren’t they?

Mrs Dexter: When they are arrested?

Q43 **Chair:** When they are arrested or charged? Somebody will come back to us on that. Shall we move on to the Church of England?

Edward Dobson: The authority to suspend a clergy parson rests under the Clergy Discipline Measure 2003. That was a piece of primary legislation supplemented by the Clergy Discipline Rules 2005, which set out the procedure and how that happens. It broadly reflects the canonical and scriptural duty placed on bishops to administer discipline firmly but with compassion, and suspension falls within that general jurisdiction.

The Measure and the rules apply to all clergy in the Church of England, right through from deacons to archbishops whether you are in active public ministry or not. It includes all retired clergy, and you become

subject to the Measure at the moment of your ordination and thereafter forever, save and except if you divest yourself of the legal character of your orders through a deed.

Q44 **Chair:** I presume there are very few.

Edward Dobson: There are very few.

The power to suspend rests primarily with the bishop of the diocese. Most suspensions are imposed against priests or deacons. If a bishop, or indeed an archbishop, were to be suspended, it would be imposed by the other archbishop, if that makes sense, with the consent of the two most senior bishops in that province—either the Province of Canterbury or the Province of York.

There are about—this is a very broad figure—20,000 or so clergy in the Church of England subject to the Measure. Last year, there were 27 suspensions of priests or deacons, and the year before there were 23. To my knowledge, there has been only one suspension of a bishop under this regime.

Q45 **Chair:** The Bishop of Lewes?

Edward Dobson: No, the Bishop of Lincoln, for the public domain.

There are five grounds for suspension that can be imposed. The first is that a complaint in writing has been made against clergy—for the moment, I will use that term—under the Measure. That is a formal process of issuing proceedings because this is ultimately a court process that could end up before a disciplinary tribunal. That complaint could be on any subject.

The right to suspend kicks in after a preliminary scrutiny stage where the bishop could summarily dismiss the complaint if it was completely without substance or was vexatious. If that doesn't happen, in principle, the bishop could suspend. I might come on to talk a little about thresholds in a moment.

It also kicks in—a ground for suspension—where a priest or deacon is arrested on suspicion on any offence, either in England or anywhere else in the world. They are under a canonical duty to inform their bishop as ordinary that they have been arrested. Failure to do so would, in and of itself, be, in principle, a ground for misconduct.

The third is if someone is convicted of an offence that is not a summary offence, so an offence that is triable either way on indictment only, or an offence for which they received a sentence of imprisonment, either immediate or suspended. If they are included on a barred list—those statutory lists mainly dealing with children and vulnerable adults—they can be suspended, or, and this is the most commonly used ground, if the bishop of the diocese is satisfied on the basis of information provided by the local authority or the police that that person poses a significant risk of harm to a child or vulnerable adult.



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- Q46 **Chair:** I hope this isn't going to be too theological a question, but there are two elements of being a clergyperson. One is, to use the theological term, ontological—that is, whether you are a deacon, priest or bishop. The other is whether you hold the job of prison chaplain, armed forces chaplain, curate of the parish or whatever. Those two, as I understand what you're talking about, are primarily there in respect of the former; in other words, you are suspending them from being a deacon, priest or bishop. Separate is whether they have a licence to officiate. Thirdly, they might be employed by the local hospital.

Edward Dobson: Yes, indeed. Let me break those down slightly. There can be no suspension of the ontological state of being a priest because that is forever. You can divest somebody of the legal character of those orders, but you cannot suspend from that state. The suspension operates as to suspend the clergyperson from any rights or duties of or incidental to the exercise of their ministry or their office.

Broadly speaking, to give you a practical example, if you are—this is the most common example—the priest of a parish somewhere, and the bishop is given information from the local authority and the police that that person represents a significant risk of harm to a child with respect to information they have been given, a core group is set up. The local authority designated officer is investigating, and the police are investigating. The bishop could suspend that person. The way that would operate would be to mean that they could not take any services, go into their church or, in a general sense, exercise the functions of their ministry.

- Q47 **Chair:** They would stay in the vicarage and still be paid.

Edward Dobson: Yes, they would keep their stipend and have a right to remain in the vicarage.

- Q48 **Chair:** Let us say—because there are lots of specialist ministries now with lots of clergy—that you are the hospital chaplain. What happens there?

Edward Dobson: In relation to a hospital chaplain, if they are employed by a hospital or school, let's say, there will be a separate employment contract that the Church, not always but normally, would not be a party to. The suspension from that job would be a matter for the employer—let's say a school that employs a chaplain.

Clearly, I think the Church would say that to be a school chaplain you have to take services, and if you are suspended from carrying out that function, you cannot operate in any event. It crosses the jurisdiction somewhat, but ultimately if you are employed in a non-church private setting, that is a separate consideration.

- Q49 **Chair:** What happens if the school takes a more severe—or less compassionate, to use the term you used at the beginning—position than the Church of England?

Edward Dobson: If the school were to take the view that the person should be suspended from their job but the Church of England would take a different view, in principle there would be a difference in terms of the



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exercise of that ministry. However, I do not know whether that would commonly occur.

- Q50 **Alberto Costa:** Correct me if I am wrong: did you say that there were more than 20,000 practising vicars and deacons who might come under this regime? Is that right?

Edward Dobson: All clergy, so not just practising—anybody who is subject to the measure.

Alberto Costa: What was the number?

Edward Dobson: How many were suspended?

Alberto Costa: No.

Edward Dobson: Sorry—20,000.

- Q51 **Alberto Costa:** Out of 20,000, you mentioned a figure of 27 who were suspended. That is an incredibly low figure; that would be very commendable among the profession. Either that, or it is a very lax system. One of the criteria is their being arrested abroad. That would indicate to me that there is a degree of self-reporting.

Edward Dobson: There is not at the moment a lawful requirement for self-reporting, although the Committee may be aware that the Church of England is currently completely redrafting its disciplinary measures to come to the General Synod later this year. There will be a self-reporting or self-referral function into the disciplinary regime.

- Q52 **Alberto Costa:** How would you know, otherwise, if somebody has been abroad on holiday, has been arrested and might be subject to suspension? You are expecting an element of self-reporting—you are expecting these individuals to fess up.

Edward Dobson: As a matter of, as it were, honour, indeed yes. It is reliant upon the clergyperson referring it to the bishop.

- Q53 **Alberto Costa:** Could that perhaps be why it is such a low figure, at 27?

Edward Dobson: Honestly, I could not answer the question of whether that is causative of the lower figure. There are a range of reasons why a suspension is imposed. Primarily, it is to do with serious financial misconduct, the misappropriation of parish funds, or sexual misconduct in terms of both criminal offences and non-criminal consensual adultery within the parish setting—that would normally be a ground for suspension as well.

Alberto Costa: Thank you.

Edward Dobson: There was a question earlier about appeals. There is an appeal process, to a person called the president of tribunals or one of her delegates. That is currently a judicial office holder who is a Court of Appeal judge. Ordinarily she will, on paper, without a hearing, determine appeals from the cleric—there is an automatic right of appeal against the



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suspension. Suspension last three months, albeit it is either three months or at the end of the disciplinary proceedings. It is rare that disciplinary proceedings are concluded within three months, unfortunately, so they tend to be longer.

- Q54 **Sir Francis Habgood:** Can I explore how you use the proportionality test in relation to the weight of evidence? For the police, I get it because you are doing the criminal investigation and you are doing the misconduct investigation, so you have access to all the evidence. For the Bar, you are on conviction for the vast majority of cases, so the evidence has already been tested.

As you described it, Mr Dobson, you might consider suspension at quite an early stage in the investigation, when you do not necessarily have access to all the evidence because some of it might be investigated criminally. How do you deal with that proportionality test and how do you get access to the weight of evidence to help you on that?

Edward Dobson: It may well be that the answer to that question is probably found in the fact that the vast majority of suspensions take place on a referral from the local authority or the police, who refer the matter to the Church and say, "We are currently looking at this." They will come with a degree of evidence.

It is correct to say, and it is one of the problems of the system that is going to be addressed, that there is no necessity test in anything in the statute. There is no, at the end of the statute, "and it is necessary in all the circumstances of the case" or "and it is necessary and proportionate to suspend." Inevitably, although there is no legal requirement for the bishop to consult, he or she would almost always consult both their registrar, which is their legal adviser, and the diocesan safeguarding adviser, if it is matter that concerns safeguarding children or vulnerable adults, which would address those issues of proportionality and the evidence. However, you are right to say that, probably reflecting the nature of public ministry and the office that clergy hold, it can be imposed at a very early stage without that weight of the evidence having come forward yet.

- Q55 **Chair:** The other thing that we talked about earlier with the police and so on was the possibility of moving somebody to other duties. I guess you could argue that the Church has done that a bit too much in the past—moving people from working as a chaplain in a prep school to parish ministry, and actually that has not really dealt with the issue.

Edward Dobson: No. I know of no circumstances where it really would be feasible to do so. If you are exercising parish ministry in a place, to put you in a different parish or the bishop's office or something like that would probably not be appropriate, first, from a confidence point of view but also from a safeguarding point of view if it were a safeguarding matter. It does not happen.

- Q56 **Chair:** So it is pretty much career-terminal.

Edward Dobson: It is all or nothing in relation to the suspension, although the Church is very clear in the legislation, and the code of



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practice that accompanies the legislation sets out that it is an interim measure without prejudice to the finality of either a conviction in the criminal courts or disciplinary proceedings within the Church.

Chair: Thank you.

- Q57 **Sir Bernard Jenkin:** Very briefly, can each of you summarise? The suspension of a police officer, a lawyer or a cleric is a very reputationally damaging thing. How much does your system recognise that? That actually trashing someone's reputation by suspending them has to be entered into—

Chair: Advisedly.

- Q58 **Sir Bernard Jenkin:** Yes—advisedly, not wantonly and lasciviously, to use the 1662. In politics, there is a terrible tendency to say nothing should happen unless the threshold is very high because the reputation of an MP is everything and suspension usually means a free-for-all in the press, as it does in all your professions. How do you balance that?

Edward Dobson: It is a difficult issue. I suspect the position of clergy, particularly within their community, would be akin to that of a local MP.

Chair: Very similar.

Edward Dobson: There is a—"battle" is perhaps too strong a word—an issue between, on the one hand, keeping confidentiality, which is very important, not least because of the wish to not prejudice proceedings that are happening, and on the other, the legitimate interest of parishioners, the local public and the community to know why their vicar is not there on a Sunday morning. When they are not there, potentially what is happening will be evident.

The Clergy Discipline Commission, which is the commission chaired by the president of tribunals, issues statutory guidance that sets out the bounds and expectations of confidentiality in relation to those involved in the disciplinary procedures, and who may or may not report. Ultimately, it is guidance and not legally enforceable in the same way that a statute would be, but it sets out that expectation.

As another quick aside, the decision-making process on suspension is entirely with the bishop, subject to an appeal, but the bishop thereafter has no role in the determination of the complaint whatsoever, which is a large change from what used to happen before. That is entirely separate, so there is a delineation that assists with that to a certain extent, but it is difficult. A common problem that the Church has when it suspends a cleric is the desire of the local population, the parish and the press to want to know more.

Sara Jagger: Simply for us, a reflection is the fact that we do it rarely, and usually it is in circumstances, as has been said, where there is something independent that has already been determined somewhere. So

yes, there is reputational damage, but it has probably already occurred in some of our cases.

When we publish interim suspensions on our website, we don't say exactly what they are for. We just say that the person has been suspended until disciplinary proceedings have concluded. We think our regime is probably a little bit too restrictive and we are looking to widen it, so we may be encountering some of the same issues that you are grappling with.

Michael Allen: It is a heavy burden. Decisions are difficult. You can put in the statutory guidance that it is without prejudice, but clearly, because of human nature, bias will be formed. Generally, suspension is above a mere assertion alone. It can be reputationally damaging, but we have to balance that against the damage to the reputation of the police service and its standing within the community, which must come first for it to be effective.

Since 2016, as a result of the Police (Conduct) (Amendment) Regulations 2015, for matters of gross misconduct, our tribunal and disciplinary hearings have been in public. Whether or not the proceedings are in public, under regulation 43 of the regulations, the determination and reasons for finding are published on force websites for a minimum of 28 days, so the record can be corrected in public if the individual is ultimately found to be innocent.

Chair: Two final questions, the first from Charles.

Q59 **Sir Charles Walker:** Just to clarify, suspects are named at the point of charge and not at the point of arrest, aren't they?

Michael Allen: That is correct, yes.

Q60 **Sir Charles Walker:** And if you name them at the point of arrest, would you be outside the law?

Michael Allen: I do not know the law in that respect, so forgive me, but I know there is strong guidance from the perspective of the National Police Chiefs' Council.

Q61 **Sir Charles Walker:** We used to name MPs at the point of arrest and we were written to by the police to say, "This puts us in a very difficult position because it puts us outwith the law if you name them at the point of arrest." Suspects are named at the point of charge.

Michael Allen: Yes.

Chair: Although it is quite common for people to know when someone has been arrested—

Sir Charles Walker: They can guess, but suspects are named at the point of charge.

Chair: Except when the police advertise and get the press along to witness the arrest, but I don't think any of us is in favour of that.



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Thank you very much to the witnesses. That has been very helpful. Three very different sets of circumstances, but each of them has some implications for us, so they are really helpful.