

A STATEMENT OF THE PAROCHIAL CHURCH COUNCIL OF THE PARISH OF LULLINGTON WITH ORCHARDLEIGH IN RESPECT OF THE DECISION OF THE INDEPENDENT REVIEWER PUBLISHED ON 7TH JANUARY 2021

The Grievance and the Decision

1.1 On 7th January 2021¹ the Independent Reviewer currently appointed under The *Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014*, Regulation 2 (the ‘Reviewer’) published his decision (the ‘Decision’) in respect of the grievance (the ‘Grievance’) submitted by the Parochial Church Council (the ‘PCC’) of the Parish of Lullington with Orchardleigh (the ‘Parish’) in respect of the omissions, actions and intended future actions of Bishop Hancock, the Bishop of Bath and Wells, and of Bishop Worsley, the suffragan Bishop of Taunton. The PCC submitted that both Bishops had failed in their duties under paras. 17, 22 and 23 of the *House of Bishops’ Declaration on the Ministry of Bishops and Priests* made on 19th May 2014 (the ‘Declaration’) in respect both of past acts and omissions and in respect of their stated intentions as to future actions and omissions.²

The PCC’s relevant theological conviction

2.1 The background to the Grievance was that the PCC considered that it was theologically impossible for a woman to be a priest or a bishop (whilst accepting that a woman might be treated in law as if she were a priest or bishop) and that, therefore, the PCC was unable to receive the ministry of a woman as a priest or as a bishop by reason of this theological conviction. It had made a resolution to this effect under the Declaration.

¹ Although the decision was dated 7th January 2020

² The address of the main web page of the Independent Reviewer is www.churchofengland.org/about/leadershipandgovernance/general-synod/bishops/house-bishops-declaration-ministry-bishops. At the bottom of this page there are links to the Decision, to the main part of the Grievance and to Appendix I of the Grievance. Appendix II of the Grievance contained copies of 259 documents as supporting evidence. At the time of writing Appendix II had not yet been published on the Reviewer’s website.

The purpose of the Declaration

3.1 The Declaration had been made in order to provide protection to parishes, the pccs³ of which could not, by reason of their theological conviction, accept the ministry of women bishops and priests, from having such a ministry imposed upon them.⁴ Under the Declaration, where a pcc makes a Resolution in accordance with its terms the diocesan bishop concerned must make arrangements⁵ *'so that the Resolution can be implemented effectively'*.⁶

The Reviewer's Conclusions

4.1 The Reviewer decided that the Bishop of Bath and Wells had indeed failed in his duties under paragraphs 17, 22 and 23 of the Declaration in respect of his previous acts and omissions and that the Bishop of Taunton had failed in her duty under paragraph 17 in respect of her previous acts and omissions. Crucially, however, he did not uphold the PCC's grievance in respect of the Bishop of Taunton's intended acts and omissions.⁷

The Bishop of Taunton's Proposals

5.1 The Bishop of Bath and Wells had proposed to induct a female, Prebendary Crossman, as Rector of the benefice of which the Parish is part. The Bishop of Taunton, purporting to act under powers conferred on her by the Bishop of Bath and Wells, had indicated that she would proceed with that induction, thus conferring all the legal powers of the Incumbent on Prebendary Crossman, but would not confer on the Parish any legally enforceable protection from Prebendary Crossman exercising her ministry in the Parish.

5.2 Instead of conferring such protection on the Parish, the Bishop of Taunton proposed merely that she, Prebendary Crossman and the PCC would enter into a 'Memorandum of Understanding' (the 'Memorandum') in which 'undertakings'

³ We use pcc without initial capitals to refer to a parochial church council in general as opposed to the Parochial Church Council of the Parish

⁴ See para. 9.1 below

⁵ See the Declaration para. 18

⁶ See the Declaration para. 22. See paras. 6.2 & 6.3 below

⁷ Or in respect of the Bishop of Bath and Wells' intended acts and omissions to the extent that the Bishop of Taunton's intended acts (and omissions) would be made on his behalf

would be given which were specifically not to be legally enforceable. The proposed undertakings were very limited so that even if the Bishop of Taunton and Prebendary Crossman were to keep the undertakings that they would give under the Memorandum, Prebendary Crossman would still be free to exercise most of the functions of the Incumbent in the Parish. Thus the proposed arrangements would provide no protection against the Parish being forced to receive a ministry purporting to be that of a priest from a person who, the PCC held on the basis of its considered theological conviction, was a priest only in law and not in reality.

The Reviewer's failure to deal with substantive issues

6.1 The Reviewer found that in taking this course of action the Bishop of Taunton would not breach her duty under the Declaration.⁸ In arriving at that conclusion he failed to consider a number of key issues.⁹

The diocesan bishop's duty to make arrangements to implement a pcc's resolution under the Declaration

6.2 It is clear from para. 22 of the Declaration that the purpose of the arrangements that a diocesan bishop must make under the Declaration is that a resolution under the Declaration can be implemented effectively, and that the request for arrangements under a resolution in accordance with the Declaration is to be grounded in the theological conviction¹⁰ that the pcc is *'unable to receive the ministry of women bishops or priests'*.¹¹ Clearly a resolution requesting that arrangements be made for a parish based on the pcc's conviction that it cannot receive the ministry of female bishops or priests cannot be implemented by imposing that ministry on the parish.

⁸ See the Decision para. 202

⁹ In the analysis which follows, we concentrate on the most important issues which the Reviewer either failed to consider at all or considered only inadequately or in part. Many other matters raised in the Grievance received no or no adequate consideration by the Reviewer. See, for example, the matters considered in the Grievance at paras. 26.2.1 – 26.2.8, 29.2.13 – 29.2.32, 31.2.8 – 31.2.11, 31.4.1 – 31.4.7, 34.4.4 – 34.4.6 and 36.2.1 – 36.2.4

¹⁰ See the Declaration para. 20

¹¹ See the Declaration para. 5 which sets out the five guiding principles which are to govern the construction of the Declaration

6.3 This reasoning is clearly set out in the Grievance¹² and yet the Decision does not address it at all.

The meaning of the phrase ‘the ministry of women bishops and priests’

6.4 It is also clear from this that the meaning of the phrase ‘*the ministry of women bishops and priests*’ in paragraph 5 of the Declaration is key to understanding the effect of the Declaration. The Grievance contained extensive argument as to the meaning of this phrase.¹³ The Decision, however, contains no consideration of its meaning whatsoever.

The meaning of pastoral and sacramental provision

6.5 The Decision does purport¹⁴ to consider the meaning of the phrase ‘*pastoral and sacramental provision*’ which is also used in the five Guiding Principles set out in paragraph 5 of the Declaration. In doing so, however, it does not directly address the meaning of the phrase in the Declaration let alone the detailed arguments on the matter which are set out in the Grievance¹⁵ but, after an examination of the history of the making of the Declaration, merely says that the Declaration has not:

‘... conferred on resolution parishes an expectation that women priests and bishops will refrain from carrying out functions which can be carried out by deacons, readers or other authorised lay ministers such as preaching and leading services of the word.’¹⁶

6.6 In order to reach such a conclusion the Reviewer needed first to consider what the Declaration meant where it referred to the ‘*pastoral and sacramental provision*’¹⁷ which is to be made ‘*for the minority within the Church of England*’.¹⁸

¹² See the Grievance paras. 29.1.1 – 29.3.6

¹³ See the Grievance paras. 30.1.1 – 30.2.1

¹⁴ See the Decision paras. 133-149

¹⁵ See the Grievance paras. 30.1.5 & 30.1.6

¹⁶ See the Decision para. 149

¹⁷ See the Declaration para. 5, fifth bullet point

¹⁸ See the Declaration para. 5, fifth bullet point

Priestly functions and roles

6.7 There is in the Decision an unarticulated assumption that the arrangements to be made for a parish need only result in the incumbent refraining from exercising in the parish what the Reviewer calls ‘*priestly functions*’¹⁹ or ‘*priestly roles*’,²⁰ the latter of which he defines as:

‘... *presiding at Holy Communion, conducting baptisms or pronouncing the absolution and priestly blessing.*’²¹

6.8 So, if the Reviewer’s definition of ‘*priestly roles*’ is exhaustive, it seems that he does not accept that the ‘*priestly role*’ of an incumbent includes those other functions which an incumbent has both a duty and a right to perform by virtue of his or her incumbency. What is not stated explicitly in the Decision is whether the Reviewer considers that the meaning in the Declaration of the phrases ‘*the ministry of women bishops or priests*’ and ‘*pastoral and sacramental provision*’ are in some way to be restricted by reference to the Reviewer’s definition of a ‘*priestly role*’. It seems to be implicit in the Decision, although the Reviewer presents no reasoning on the matter and there is nothing in the Declaration to justify the proposition, that the Reviewer considers they are to be so restricted.

‘Mutual flourishing’: balancing the rights of the incumbent against the protection of the Parish

6.9 The Reviewer seems to ground his decision on the implicit assertion that providing legally effective protections for a parish against the imposition of the receipt of the ministry of women bishops and priests would in some way conflict with the guiding principle that the arrangements must contribute to ‘*mutual flourishing across the whole Church of England*’.²²

¹⁹ See the Decision paras. 152, 154, 192 and 201

²⁰ See the Decision para. 148. These phrases are not used in the Declaration at all so it is unclear why the Reviewer considered them relevant to the matter

²¹ See the Decision para. 148. It seems that the Reviewer considers that all the acts listed are acts which only a priest can perform. Deacons however can baptise in the absence of a priest and, in certain circumstances, so can laymen (see Mark Hill’s *Ecclesiastical Law* 4th Edition para. 5.12 OUP 2018)

²² The Declaration para. 5 bullet point 5. See for example the Decision paras. 145, 150, 155 and 222

6.10 The Reviewer nowhere gives reasons as to why this is so nor does he consider how conferring legal rights and powers on a female by inducting her as the incumbent of a benefice without conferring any balancing legally enforceable protections on a Resolution Parish within the benefice against the imposition of that female incumbent's ministry is consistent with this principle of mutuality. The Reviewer's failure to address this question of how such an imbalance of legal rights and legal protections could contribute to mutual flourishing was all the more surprising in view of the fact that the PCC put this very point to him in correspondence on the Bishop of Taunton's response to the Grievance saying:

' ... [the Bishop of Taunton does not explain] why conferring legally enforceable protections on the Parish is inconsistent with the balance which [she claims] to wish to achieve. When she is inducted to the Benefice Prebendary Crossman will have conferred on her legal rights to exercise her ministry, which if unfettered, will allow her to impose the receipt of her ministry on the Parish. Bishop Worsley does not explain why it is appropriate to confer those legal rights on Prebendary Crossman without conferring balancing legal protections on the Parish.'

The substance of the Declaration's decision is flawed

6.11 The substance of the Decision's argument therefore is clearly inadequate and flawed.

Methodology

7.1 The Reviewer's methodology also displays features of concern.

Conclusions on preliminary matters of law

7.2 Various legal issues were of relevance to the matters which were the subject of the Grievance. As the Reviewer himself admits in his Decision²³ he has no legal qualifications and, therefore, could not properly, without specialist advice, come

²³ See the Decision para. 138. The Reviewer's errors on legal matters and his failure to address the relevant issues set out at paras. 6.2 – 6.10 above demonstrates the unwisdom of the decision to appoint persons who are not lawyers to the post of Independent Reviewer

to a conclusion on the preliminary legal questions at issue in the matter but, should, properly have taken of advice on such matters.

- 7.3 There are a number of points in the Decision, however, where the Reviewer makes statements on legal matters without stating that in doing so he relies on advice.²⁴ For example, he draws conclusions as to the interpretation of the Equality Act 2010²⁵ which he is not qualified to make. Although he correctly draws the conclusion that in respect of this matter the Diocesan '*registrar rather muddled things up*'²⁶ he himself garbles his summary of the Registrar's opinion.²⁷
- 7.4 He also gives an inaccurate and outdated summary of the principles of statutory construction referring to a case decided in 1992 in terms which show clearly that he has not understood its context or its significance.²⁸

Breaching the rules of natural justice

- 7.5 On other legal matters²⁹ he relies on the opinion of the Chief Legal Adviser to the Church of England, Alex MacGregor, who, he admits,³⁰ gave advice which in part led to the decisions of the Bishop of Taunton which are the subject of the Grievance. This reliance on the Chief Legal Adviser's advice was, therefore, clearly in breach of the rules of natural justice.

²⁴ See the Decision paras. 89, 90, 91 (there is a reference in para. 91 to the Reviewer also being 'advised' without any previous reference to advice), para. 173 (there is a reference to advice in para. 172 but para. 173 seems to record the Reviewer's own opinion on a legal matter) and para.174. If, in spite of the fact that the Reviewer does not say so, he did actually take advice on the following two issues the Reviewer has either misunderstood the advice he has received or the advice itself was incorrect

²⁵ See the Decision para. 90

²⁶ See the Decision para. 91

²⁷ See the Decision para. 91

²⁸ See the Decision para. 140 where the Reviewer refers to the case of *Pepper v Hart* [1992] 3 WLR 1032. This is indeed an important House of Lords decision on statutory construction but the Reviewer seems not to be aware that the Courts willingness to prefer wide purposive constructions over narrowly literal ones has developed considerably since 1992 and that the case was primarily concerned with the question of whether the Courts could have regard in construing legislation to Hansard's record of the parliamentary debate on the legislation concerned; a narrow issue of no relevance to the questions of construction at issue in the matters considered by the Reviewer

²⁹ See the Decision paras. 91, 172, 204 and 214

³⁰ See the Decision footnote 28

7.6 The danger of bias, conscious or unconscious, which this reliance created are shown in the Appendix to the Decision which contains an opinion given to the Reviewer by the Chief Legal Adviser on the extent of the powers conferred on the Bishop of Taunton by the Bishop of Bath and Wells on which the Reviewer relies in the main body of his decision.³¹ The Chief Legal Adviser's opinion incorrectly summarises the argument advanced by the PCC on the matter³² and reaches its conclusion on the construction of an instrument made in 2015 on the basis that it uses the word 'necessity' in a sense which it bore in 17th century usage and which is now archaic;³³ a startlingly unrealistic assertion which is clearly an exercise in special pleading.

A fundamentally unsound Decision

8.1 The Decision is, therefore, fundamentally unsound and, were there an appeal procedure, would be likely to be overturned on appeal on the grounds both of substantive error and of procedural unfairness. The Regulations, however, provide no mechanism of appeal against a decision of the Independent Reviewer. There is no practical remedy available to the PCC which now faces the imposition on the Parish of the receipt of the ministries of a female 'bishop' and of a female 'priest' in spite of its theological conviction on the matter which it is the purpose of the Declaration to protect.

8.2 Decisions of the Independent Reviewer are not, of course, in a legal sense binding precedents. In practice, however, the Reviewer is unlikely to depart in future cases from the erroneous principles that he has determined in this matter and it may well be that his successors will also follow those erroneous principles.

Emptying the Declaration of practical effect

9.1 The effect of the Decision, therefore, will be to empty the protections offered to the theological minority by the Declaration of any practical effect. At the time the Bishops and Priests (Consecration and Ordination of Women) Measure 2014 was considered by General Synod, the Synod had a number of members, not all

³¹ See the Decision paras 182-188, 203 & 204

³² See the Decision Annex C para. 8 and the Grievance para. 24.3.2

³³ See the Decision Annex C para. 10

of whom were themselves part of the theological minority which could not receive the ministry of women bishops and priests, who were unwilling for the theological conviction of that minority simply to be over-ridden. The Declaration was offered to that group of Synod members as a means of obtaining their votes in favour of the 2014 Measure which was duly passed. As the Reviewer's predecessor explained in the *Matter of the Nomination to the See of Sheffield and Related Concerns*:³⁴

'The Five Guiding Principles, and the House of Bishops' Declaration of which they form part, focus on protecting the minority because that was their purpose. The majority in the Church achieved the passage of the 2014 Measure. The Five Guiding Principles and the Declaration were intended to answer the question, being asked by the minority, as to whether, if the Measure was passed, they could trust the majority to continue to accord them an honoured place in the Church of England.

*The Five Guiding Principles and the Declaration were not hastily drafted and were not imposed on the Synod. However, it is fair to say that they were a solution to a political problem. To the minority, they offered the prospect of a continued place of honour in the Church. To the majority they were the price of getting the 2014 Measure through.*³⁵

9.2 As we have seen,³⁶ however, the protections offered by the Declaration have now proved to be illusory and those whose votes were obtained in favour of the 2014 Measure have proved to have been duped. The question posed by the previous Independent Reviewer in the *See of Sheffield* decision has been answered resoundingly in the negative. The 2014 Measure having been passed, it is now clear that the theological minority cannot 'trust the majority to continue to accord them an honoured place in the Church of England'.

³⁴ *Decision of the Independent Reviewer in the Matter of the Nomination to the See of Sheffield and Related Concerns*

³⁵ *Decision of the Independent Reviewer in the Matter of the Nomination to the See of Sheffield and Related Concerns, paras. 155 and 156.*

³⁶ See para. 9.1 above

A disaster for the Church of England

10.1 The publication of the Decision was, therefore, not only a sad day for our Parish, but also a shameful betrayal of the undertakings made to the theological minority and a disaster for the whole Church of England.

The Parochial Church Council of Lullington with Orchardleigh

22nd January 2021