



HOUSES OF PARLIAMENT

TRANSCRIPT OF ORAL EVIDENCE

HOUSE OF LORDS
HOUSE OF COMMONS
MINUTES OF EVIDENCE
TAKEN BEFORE
THE ECCLESIASTICAL COMMITTEE

ORAL EVIDENCE: CHURCH OF ENGLAND (MISCELLANEOUS
PROVISIONS) MEASURE
CHURCH OF ENGLAND PENSION (APPLICATION OF CAPITAL
FUNDS) MEASURE

TUESDAY 21 NOVEMBER 2023

10.40 am

Evidence heard in Public

Questions 1 - 7

Oral Evidence
Taken before the Ecclesiastical Committee
on Tuesday 21 November 2023

Members present:

Baroness Butler-Sloss (Chair)
Sir Peter Bottomley
Mr Ben Bradshaw
Fiona Bruce
The Earl of Cork and Orrery
Lord Cormack
Lord Dannatt
Lord Field of Birkenhead
Baroness Harris of Richmond
Lord Jones
Lord Lisvane
Lord Ponsonby of Shulbrede
Andrew Selous
Sir Desmond Swayne
Sir Stephen Timms
Martin Vickers

Examination of Witnesses

The Lord Bishop of Chichester; Morag Ellis KC, Dean of the Arches; William Nye, Secretary General of the General Synod; Alexander McGregor, Chief Legal Adviser to the General Synod; David White, Deputy Director of Finance, National Church Institutions; Chris Packer, Legislative Counsel to the General Synod.

Examination of witnesses

The Lord Bishop of Chichester, Morag Ellis KC, William Nye, Alexander McGregor, David White and Chris Packer.

The Chair: I need to start by asking committee members to express their relevant interests.

Sir Peter Bottomley: I am parliamentary warden of St Margaret's, Westminster Abbey.

Baroness Harris of Richmond: I am high steward at Ripon Cathedral and I have a nephew who is a priest in the Isle of Man.

Lord Lisvane: I am married to a Church of England priest and rural dean who is also chair of the diocesan board of finance. I chair the fabric advisory committee of Hereford Cathedral, and I am a churchwarden.

Fiona Bruce: I am a lay canon of Chester Cathedral.

Lord Dannatt: I am a trustee of Norwich Cathedral Trust and churchwarden of the parish of Intwood-cum-Keswick in the Diocese of Norwich.

The Earl of Cork and Orrery: I am a governor of the cathedral restoration trust at Chichester and trustee of the friends of St Laurence Church in Lurgashall.

Lord Cormack: I am deputy high steward of Lincoln Cathedral.

The Chair: I have a lot of past interests. I was former chair of a visitation to Exeter Cathedral, and I did an informal inquiry into Chichester. I was chair of St Paul's advisory council and on the reference panel of Westminster Abbey.

Lord Dannatt: You have just reminded me that I was also on the council of reference of Westminster Abbey.

The Chair: You certainly were, yes.

Q1 May I welcome the Bishop of Chichester, the Dean of Arches, Mr William Nye, who I know is the secretary general, Mr Alexander McGregor, who is the chief legal adviser, Mr David White and Mr Chris Packer? I am very grateful that you have all come.

Before you address us, we have one rather practical issue about which we are concerned. We have decided in private that it does not need to cause any problems today. It is really an issue for the future. This is 50 pages of a quite complicated legislative process. As I remember the Archbishop of Canterbury telling me, you are very keen to tidy up the church legislature, but all we are getting are basically what the amendments are. We are not seeing below that.

We feel—I will ask others if they want to add to this—that on another occasion when you get a Bill that has as much as this and is varied, where

we are only seeing the tip of it, it might be helpful for such of as are interested to have an informal discussion, as we heard earlier this morning, on governance. It is entirely a matter for the Church, but if you want us to see it through easily, we need to know in future rather more about what lies below this than perhaps we are getting today. Would you like to add anything, Lord Cork?

The Earl of Cork and Orrery: I cannot add very much. That was beautifully summed up, as I would expect. There are issues here, as we have said, going forward. We have a very good summary paper, which came to us as part of the previous discussion. The most useful bit of that was the glossary, which explains what all these various terms mean, because it is quite difficult for us to penetrate all this. It is reasonable for us to assume that those who produced the papers in the first place have done all the checking work to make sure that the correct references are in the right places and that the amendments apply in the right order, but we do not know what that is, and so an earlier briefing on an informal basis for something like this would be very helpful.

Lord Lisvane: For heavily amended passages, it might be worth considering a Keeling schedule, which would set out exactly what the text would look like if amended.

Lord Cormack: I speak as one who served on General Synod for 10 years and has now been in Parliament for 53 years, with over 40 years on this committee. There is a tendency—I want to underline that—to take Parliament for granted and just to assume that everything will be deemed expedient, and that is an unfortunate attitude. What has been advocated today would help address it, to a degree.

The Chair: I am not certain that every member of this committee entirely agrees with Lord Cormack, but the essence of what he is saying is worth the Church reflecting on.

Having said that, we will go ahead and deal with this. We would be very grateful if the Bishop of Chichester was kind enough to give us a brief opening. As I say, we have done our homework.

The Lord Bishop of Chichester: Just in response to the observation that you have made, that is a point well made, and certainly received gladly by us. There might be many members of the General Synod who would echo something of what you have said, but an immediate response might well be that marked-up texts could be provided, and that is something that could be discussed between the Clerks of this body and the synod.

Coming on to the first measure in front of us, it is, as you will be aware, the thirteenth in a series of miscellaneous provisions measures, and I do not propose to say very much more about the content, except in one respect, and that is item 2, the legislative reform and the removal of the sunset clause.

I would just underline the note that is made in the explanatory text that this has been done by measure rather than by the route originally

envisaged in the 2018 measure, simply for the sake of efficiency, but, again, picking up the point of the seriousness with which the Ecclesiastical Committee is taken, it does mean that the reference now is being made to the Ecclesiastical Committee to consider the indefinite extension of the power, and that is something that would not have happened had the other opportunity been used. Apart from that, we are open to questions.

The Chair: I have just a few. Regarding the safeguarding codes, I think you have a review of safeguarding at the moment. Will these codes be part of that review? I have to say that, in a number of the involvements I have had in working with different dioceses over the years, I have not been entirely happy with the advice that I have received from the national safeguarding board.

The second point is that I see under Section 6(1) a delegation by the archbishop to a suffragan. I wondered what sort of delegation that was likely to be. Those are my two points.

William Nye: Because this is a miscellaneous provisions measure, it tends to pick up relatively small items. Clearly this measure is not proposing any major changes in the safeguarding arrangements for the Church of England.

You referred to a review going on, and there are a number of bits of work that can be described as a review going on. One in particular is that the archbishops and the Archbishops' Council have asked Professor Alexis Jay, the former chair of the independent inquiry into child sexual abuse, to look at safeguarding in the Church of England and to provide some recommendations in the area of independence and independent scrutiny of the Church's safeguarding work.

If that leads to proposals for legislation, of course that will come through the General Synod and the committee in due course, and that is precisely the kind of thing where I am sure we would be delighted to brief the committee informally in advance.

The Chair: I should be very interested if you did that. Thank you very much.

William Nye: I may just take the opportunity to say that, in response to the points you made, in general terms I would be very happy to provide more informal presentations and briefings on the legislation at an earlier stage.

Turning back to the specifics of your question, this change is about the details of how, when approving what are called codes of practice for safeguarding, which are, in effect, secondary legislation to ensure that parishes, cathedrals and other churches abide by the Church's national safeguarding rules, the arrangements for consultation on those are done in detail.

The measure concerned provides that the Church can bring forward codes of practice. Within those codes of practice, what is compulsory and what is

simply advice is clearer than it was in the past. Previously, it was felt—indeed, IICSA made this point—that reliance on the idea that everyone should have due regard to guidance from the House of Bishops, although well understood in legal circles and no doubt in parliamentary circles, was not necessarily well understood by people in ordinary parishes, so we now have these codes of practice that make much clearer what is compulsory and what is guidance.

In order to give appropriate democratic oversight of that, those codes of practice are approved by the General Synod, and indeed the first such code of practice was approved by the General Synod at the July meeting of the General Synod this year. This section simply changes the arrangements for small revisions to those codes of practice so as to ensure that, every time we make a small change that does not affect the substance, it does not have to go back through the General Synod again for reapproval.

The Lord Bishop of Chichester: On item 6 and the interesting point of delegation, Alexander McGregor will respond.

Alexander McGregor: On Section 6 and the new Section 14A that it inserts into the Dioceses, Pastoral and Mission Measure, subsection (1) is designed to cover the situation where, as it says in the provision, the archbishop is unable to exercise any of the archbishop's functions. It is not a general ability for the archbishop to give away a power and not have anything to do with it any more. It is to cover the situation where the archbishop may be abroad, unwell, on compassionate leave or something like that, and it is necessary to have someone else exercise a particular discretion that is given to the archbishop under a piece of legislation, rules and so on.

There are lots of examples of those. Taking decisions about what happens in the General Synod on an urgent basis is a good example of that. It was considered that it would be helpful to enable an archbishop to be able to delegate those functions if he or she was unable to exercise them himself or herself. One would normally expect the archbishop to choose a senior diocesan bishop, but it was thought that it would not be a good idea to confine it in that way because, if it was something relatively minor, it might be appropriate, for example, for the archbishop to delegate it to the Bishop of Dover, who is the Archbishop of Canterbury's own suffragan. That is an example, if that is helpful.

Q2 **Lord Jones:** Regarding judges' training in new Section 21A at Section 10(1), who might be able to say what might be the sort of training for an ecclesiastical judge?

Morag Ellis: Training has been provided to chancellors on an informal basis for many years. We believe that that started in the 1980s, at which stage chancellors were responsible not only for the faculty jurisdiction but also for clergy discipline. The training is and always has been organised by the Ecclesiastical Judges Association, but there is also a very active Ecclesiastical Law Society, of which the Bishop of Chichester is president—

I think that is the correct term—which also provides a very full programme of lectures and events.

After Covid, the training has taken the form of mixed-mode sessions on a Saturday, dealing with a varied programme of topics. We have one coming up this Saturday, for example, when we are going to be looking at churchyards and trees. The chancellors have been doing a lot of work looking at memorials, particularly in churchyards, in the wake of a case in the Court of Arches, and reviewing all the different churchyard arrangements and regulations across the country to see whether greater alignment is necessary, or whether there is scope for some modernisation and a little moving with the times. Trees are quite complicated legally, and always very emotive. That is just an example of what we happen to be doing this coming Saturday.

We have had other recent sessions on the net zero rules, trying to help churches to become smaller generators of carbon, and on contested heritage, which is a hot topic. Next January, we are holding a very important session on unconscious bias and diversity training, and Bishop Rosemarie Mallett, the Bishop of Croydon, will be giving us an adapted version of the training that bishops and other senior clergy and church leaders receive.

We will also have a paper given by two of our number on equality law, so the secular equality law, and how that relates to the Church context. We are also hoping that a High Court judge who is involved with secular training will come and give us a talk on judgecraft, again very much with diversity in mind. The association now includes clergy discipline chairs, so they will be receiving training as well.

I hope that answers your question, but I am very happy to answer follow-up questions.

Lord Jones: I am grateful for such information.

Q3 Mr Bradshaw: Congratulations on getting to unconscious bias before Parliament is anywhere near it.

I would like to ask about the background to the liberalisation, as it would seem to be, of the ease with which non-ordained and non-theologically trained people can become residential canons at cathedrals.

Alexander McGregor: This arose initially out of a specific case where it was desired by St Paul's Cathedral and the Bishop of London, with agreement of the Crown, to appoint an experienced lay reader, who is a prominent New Testament scholar, to a canonry at St Paul's Cathedral, so that that person could then be the lead education and theologian canon in the cathedral.

The law, as it stands, meant that that person could not be appointed to a residentiary canonry in the cathedral, so what happened was that the individual had to be made a lay member of the chapter and an honorary lay canon, and then the stipend had to be found from somewhere else than

from the usual funds that can fund residentiary canonries, so it was very complicated. Some sort of appointment was made, but it was far from ideal. The individual concerned still is not a residentiary canon, but they do their best to make the arrangement work.

Having consulted other cathedrals, in particular the deans, the response was that cathedrals would, if possible, like to have the flexibility to include provision in their constitutions to enable lay residentiary canons to be appointed.

If you look at Section 7 and the new Section 14A on lay residentiary canons, and you go down to subsection (2), you will see that a lay residentiary canon has to be a reader or lay worker, and that means a person holding a specific office under the canons of the Church of England, for which approved training is required in theology, pastoral work, liturgy and so on. I hope that gives Mr Bradshaw the reassurance he needs, but if there are further questions, I will do my best to answer them.

Mr Bradshaw: Why would someone choose not to be ordained if they wanted to be a residentiary canon? Does that mean that they are not subject to the normal clergy discipline process and rules? If they were to be in a same-sex marriage with their partner, they could do that. I am just interested in the psychology as to why someone would want to be a residentiary canon yet would not want to put themselves forward for ordination.

The Lord Bishop of Chichester: This probably sits in the broader remit of the Church of England's work, instigated by a report entitled *Setting God's People Free*, which saw that laypeople have invaluable contributions to make at every level of the Church's life. Without wanting to eradicate the importance of the ordained, complementing it by the distinctive experience and skillsets that laity have was thought to be very important.

This sits within that general development. It is not in any way wanting to undermine the standards of discipline, the commitment or participation in the lives of the cathedrals so that laity are seen as a second-best, but it is a sense of wanting to harness the value and contribution that laypeople can make at every level.

It is outside the interest of this group, but I have recently returned from the synod in Rome, where the Roman Catholic Church is looking at precisely this kind of development of its own canons. It has not made any decisions and, unlike ours, that synod is not a legislative body, but it is very interesting to me that many of the questions and much of the discussion focused on precisely this kind of development. It is something that is in tune with the way in which the Church is seeing the value and importance of laity.

Mr Bradshaw: You could have a situation where two canons were subject to different rules.

The Lord Bishop of Chichester: That may well be the case, certainly, but each cathedral would have the capacity to decide that on the basis of its own statutes and constitution.

William Nye: It is important to note that anyone in an appointed office in the Church of England is subject to, for example, safeguarding rules. There are rules that apply to churchwardens. There are rules that apply to members of a PCC. There are rules that apply to canons of cathedrals and all kinds of appointed officers, who have to follow the safeguarding codes of practice that we were discussing a little while ago, regardless of whether they are lay or clergy.

Q4 **The Chair:** Thank you all very much, indeed. I am very grateful to you for your help.

We now have a second measure, the Church of England Pensions (Application of Capital Funds) Measure. That, I see, is extremely short. Would somebody like to explain it to us?

The Lord Bishop of Chichester: In the light of the view expressed by the Ecclesiastical Committee in 2002, all subsequent extensions of the power to resort to capital have been made by specific measures extending the power by seven years at a time, and the same approach is adopted in this current measure. That is as much as I would wish to say by way of introduction.

The Chair: Would anybody like to ask a question on this? I have to say that I find it difficult to ask a question myself on this one, but there may be somebody who has a point they want to raise.

Q5 **Sir Stephen Timms:** What are the sources of the capital that is being applied in this way? I was not quite sure of the distinctions being drawn.

David White: The source is the Church Commissioners' general fund and those of the predecessor bodies of Queen Anne's Bounty and the Ecclesiastical Commissioners. Does that answer your question?

Sir Stephen Timms: Presumably, then, the measure involves reducing the Church's capital in order to pay current pensions. Is that right? That seems like it is not a good arrangement for the long term. I am just wondering what the thinking is here.

David White: At one level, you are right. You can spend capital only once and then it is gone, but there is a very strict actuarial discipline assessing the commissioners' overall spending, so the pensions are a time-limited obligation. We do not know quite how long that will last, but it is in respect only of service up to the end of 1997. Pensions after that are funded in a separate funded scheme. There is a strict actuarial assessment, a full review every three years, an update every one year, and that discipline also goes to the other spending, so it is recognised that the pensions are time-limited. That part of the commissioners' spending does not need or seek to be sustainable, but the rest of the fund is looked at on a sustainable basis.

Sir Stephen Timms: How much in capital is expected to be spent in this way over the seven-year period?

David White: At the moment, it is running at around £130 million a year, so that is around £900 million.

Q6 **The Earl of Cork and Orrery:** Is the commissioners' fund in any way regulated by law? In other words, is it an endowment fund or does it have freedom of action to use its own capital in the way it wants to?

David White: The fund is governed by measure and, in effect, set up as a permanent endowment, so the purpose of this measure is to get specific approval for spending what will amount to a fixed amount of capital. We do not know exactly how much that will pan out to be over the specific period, which is one of the reasons for coming back every seven years so that Parliament and synod can scrutinise it. It needs that specific permission to spend capital, alongside the total return order that came from the Charity Commission back in 2012. That is used for the more general expenditure.

Q7 **Sir Peter Bottomley:** In essence, this is renewing, for a limited period, both restrictions and permissions.

David White: Yes, that is correct.

The Chair: Thank you all very much for your help. We will now go into private session.