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TAKEN BEFORE

THE ECCLESIASTICAL COMMITTEE

CATHEDRALS MEASURE AND DIOCESAN BOARDS OF
EDUCATION MEASURE

TUESDAY 23 FEBRUARY 2021

10 am

Virtual Proceeding

Questions 1 - 14

Oral Evidence

Taken before the Ecclesiastical Committee

on Tuesday 23 February 2021

Members present:

Baroness Butler-Sloss (Chair)
Sir Peter Bottomley
Mr Ben Bradshaw
Fiona Bruce
Dr Lisa Cameron
Miriam Cates
The Earl of Cork and Orrery
Lord Cormack
Baroness Eaton
Lord Faulkner of Worcester
Lord Field of Birkenhead
Sir Roger Gale
Lord Glenarthur
Baroness Harris of Richmond
Baroness Howarth of Breckland
Lord Jones
Lord Judd
Lord Lexden
Lord Lisvane
Rachael Maskell
Baroness McIntosh of Hudnall
Andrew Selous
Jim Shannon
Stephen Timms
Martin Vickers

Examination of Witnesses

The Very Reverend Andrew Nunn, Dean of Southwark; The Lord Bishop of Bristol; Dr Eve Poole, Third Church Estates Commissioner; Eva Abeles, Senior Advisory Lawyer; the Reverend Alexander McGregor, Chief Legal Adviser to the General Synod; William Nye, Secretary General; Christopher Packer, Legislative Counsel to the General Synod; The Lord Bishop of Durham; Clive Scowen, Chair, Revision committee; the Reverend Nigel Genders, Chief Education Officer.

Examination of witnesses

The Very Reverend Andrew Nunn, The Lord Bishop of Bristol, Dr Eve Poole, Eva Abeles, the Reverend Alexander McGregor, William Nye, Christopher Packer, The Lord Bishop of Durham, Clive Scowen and the Reverend Nigel Genders.

Q1 **The Chair:** I am very happy to open the public session of the virtual meeting of the Ecclesiastical Committee, which is entirely virtual. We are looking at two Measures today. First we will consider the Diocesan Boards of Education Measure and then the Cathedrals Measure.

I welcome the representatives of General Synod, who will help us with the Diocesan Boards of Education Measure: the Lord Bishop of Durham, Clive Scowen, and the Reverend Nigel Genders, the Chief Education Officer. I also welcome Mrs Eva Abeles, the Reverend Alexander McGregor, Mr William Nye and Mr Chris Packer, who I think will be helping us with both Measures. Mr Nye, we know very well that you have to go at 11 am. Thank you very much for spending part of the time with us.

If any member of our Committee has any interests to declare in either of the Measures or both of them, please declare it now and do not wait for the second Measure. I will start by saying that I was chair of a Visitation of Exeter Cathedral two or three years ago. Who else would like to declare?

Lord Field of Birkenhead: In case it is necessary, I declare that I chair the Frank Field Multi-Academy Trust.

Lord Cormack: I declare that I am Deputy High Steward of Lincoln Cathedral.

Baroness Harris of Richmond: I declare that I am High Steward of Ripon Cathedral and I have a nephew who is a priest on the Isle of Man.

Baroness Eaton: I am a Lay Canon at Bradford Cathedral.

Martin Vickers: I am a member of the Lincoln Cathedral Council.

Lord Lisvane: I am chair of the Fabric Advisory Committee at Hereford Cathedral, a governor of the Hereford Cathedral Perpetual Trust and a trustee of the Royal College of Organists.

The Earl of Cork and Orrery: I am governor of the Chichester Cathedral Restoration and Development Trust and a trustee of the Chichester Cathedral Millennium Endowment Trust.

Fiona Bruce: I am a Lay Canon at Chester Cathedral.

Stephen Timms: I am a member of the St Paul's Cathedral Council.

Lord Glenarthur: I am chair of the trustees of the Royal College of Organists.

Lord Judd: I declare that some years ago I was chair of the Diocesan Board of Social Responsibility in the diocese of Oxford.

Q2 **The Chair:** Thank you very much. Let us now go to the Education Measure. Lord Bishop of Durham, would you like to begin?

The Lord Bishop of Durham: Baroness Butler-Sloss, members of the Ecclesiastical Committee, it is a pleasure to be introducing the Diocesan Boards of Education Measure to you today. I do so as chair of the National Society. The current 1991 legislation provides the legal framework within which the Church of England's diocese engage and work with church schools.

You are all aware that the education landscape over the last 30 years has changed significantly. It has become increasingly evident that the 1991 Measure needs to be updated as a matter of urgency to confer the functions and powers on diocesan boards of education that they need to play their part in supporting and promoting the development of church schools in the 2020s and beyond. The new Measure updates and replaces the 1991 Measure. The new Measure makes a number of significant changes to reflect the current and anticipated future educational environment in which diocesan boards of education are and will be operating.

The key changes are, first, the new Measure makes suitable provision in relation to academies and multi-academy trusts to reflect the development of the school system since 2010. Diocesan boards of education will still be able to be an independent charity and, like other such charities, be either incorporated or unincorporated.

However, the new Measure will also enable the diocesan boards of education to be a statutory committee of the Diocesan Board of Finance rather than an independent charity. The option to be a statutory committee of the DBF regularises the position for a number of dioceses, which as a matter of practice already have similar arrangements in place which they have found to be a useful governance arrangement.

Thirdly, under the new Measure, each diocesan synod must make a scheme designating a body as the Diocesan Board of Education for the diocese and must send the scheme to the Secretary of State. This simplifies the current system, which requires the Secretary of State's approval. The DfE has been consulted and supports this change.

Fourthly, the new Measure makes express provision for joint diocesan boards of education for two or more dioceses. This will be optional. Although we do not yet know how many dioceses will pursue this option, it was considered important that the new Measure provides explicitly for how such joint boards should be set up, structured and—if necessary—unwound to facilitate more joint boards being set up in the future. I trust the Committee will find the Measure satisfactory.

The Chair: Would somebody else from the Synod like to say anything, Bishop?

The Lord Bishop of Durham: We were just going to take questions, Baroness.

The Chair: Thank you very much. I will go to Lord Jones first, because he

cannot put his hand up. He is on the phone. Lord Jones, do you have a question?

Q3 **Lord Jones:** Thank you, Lord Chair. A key change is local choice. When I chaired the St Asaph Diocesan Board, one did not encounter impediments to local choice for some 10 years. Are we aiming here to compensate for the occasional—occasional only, of course—overmighty bishop? What experience has brought forward this key point in the Measure?

The Lord Bishop of Durham: Are you asking specifically about the role of the bishops?

Lord Jones: I take that as an answer, but you may have some expression on that point.

The Lord Bishop of Durham: The bishops do not have a specific role. The DBE runs itself, but I am quite happy for one of the lawyers to make a comment.

Eva Abeles: The bishop is the chair of the DBE or can appoint someone else as a chair of the DBE. The bishop continues in the same role they were in before. However, it is hoped that there will be more flexibility in the new structure, because it enables the DBE to have an appropriately sized board and to decide in each diocese how many should be elected by the synod and how many should be appointed.

The Chair: Are you happy with that, Lord Jones?

Lord Jones: I do not wish to ask any more questions. I would simply say that I am grateful, as others may well be, for the excellent Explanatory Notes on the two Measures. Thank you, Lord Chair.

The Chair: Who else would like to ask a question on the Education Measure? No other questions, thank you very much. We are very grateful to the members of the Synod who have taken the trouble to come on this Measure. We will consider whether it is expedient at the end of our discussions. Thank you very much. Perhaps you would like to leave into the virtual waiting room and those from the Cathedrals Measure might like to join us.

The Lord Bishop of Durham: Chair, if it is all right, I will drop off completely. I will not return later, unless you need us later.

The Chair: We shall not need you later. Thank you very much indeed. Perhaps somebody would be kind enough to tell me when the members of the Synod for the Cathedrals Measure have joined us.

Alexander McGregor: We are here, my Lord Chair.

Q4 **The Chair:** Thank you very much indeed. We now consider the Cathedrals Measure. I welcome the representatives of the General Synod: the Very Reverend Andrew Nunn, the Lord Bishop of Bristol and Dr Eve Poole. You are very welcome. We particularly need your help, because this is a complicated Measure about which we have already reflected very carefully.

We are very grateful to you for providing answers to a considerable number of questions that we have already asked in writing. The questions and answers will be read into the transcript [*see addendum below*], which will become public. Would you now like to introduce the Cathedrals Measure? Who would like to do it?

The Lord Bishop of Bristol: My Lord Chair, it is for me to introduce the Measure. English Anglican cathedrals are national treasures, which, as a former dean of both Leicester and then York, I know well. It is both a privilege and a responsibility to care for them. It is vital that the legal framework in which our cathedrals operate facilitates and supports them to function in a manner that is fit for purpose in the 21st century.

In the 1990s, the Howe Commission was set up, following problems in the cathedrals at Hereford and Lincoln, and its work laid the foundation for the Cathedrals Measure 1999. However, best practice in charity governance, safeguarding and the heritage sector has moved on considerably over the last years. It was recognised, following the serious problems uncovered at Peterborough and Exeter Cathedrals, that change was needed.

Therefore, the Archbishops' Council set up the Cathedrals Working Group to consider how the current legislation governing cathedrals was operating and what improvements could be made. The Group's report recommended that significant changes should be made to the governance structure of cathedrals, including changes to the composition of the cathedrals Chapter and the regulation of cathedrals by the Charity Commission.

The General Synod endorsed this report in its recommendations in July 2018 and this Measure gives effect to the recommendations that involved legislative change. Some members of this Committee may recall that there were those in cathedral communities who resisted elements of the Cathedrals Working Group's report. Members of this Committee were helpful in raising their own concerns with us. We have listened carefully to objections from those in cathedrals and consulted with both the Charity Commission and with members of this Committee, and a number of significant changes have been made to the draft legislation during the revision process.

While the Measure you have before you reflects the thrust of the Cathedrals Working Group's report, it has been drafted in a way that is now fully supported by those in the cathedral community. This is clearly evidenced by the strong support the Measure received at final approval, with no members voting against it. We believe that the reforms in the new Measure provide cathedrals with appropriate governance structures, designed to support robust safeguarding, healthy finances, and increased accountability so that our cathedrals can be the beacons of excellence that they aspire to be.

The Chair: Does anybody else from your team, Bishop, want to add to what you have said?

The Lord Bishop of Bristol: I believe at this stage we would like to move to questions.

The Chair: I know there will be a number of questions. I will start with Lord Jones again, just because I cannot see him. Lord Jones, do you have a question?

Q5 **Lord Jones:** I will be brief. I have only visited 19 of the English Anglican cathedrals and they are indeed national treasures. In the crypt at Ripon, which I visited just in passing, there is arguably the finest stone cathedral carving in England. The capital is exquisitely carved. Indeed, it points to vines and fruit, if my memory serves me right. I find the Explanatory Notes excellent, but might one of our synodical representatives speak a little more widely on special provision for Ripon? One knows that Ripon is not a million miles from Leeds. The question comes to mind: is Ripon a downgrade? I know that Leeds United is in the Premier League now. Are Bradford and Ripon simply in the championship, if I may say that?

The Lord Bishop of Bristol: I wonder if Eve Poole might like to respond to that question.

Dr Eve Poole: Thank you. I will pass the buck very quickly on to Eva Abeles, who drafted this bit, and Baroness Harris may like to comment because this is absolutely her bailiwick.

Eva Abeles: This is not a downgrading for Ripon at all. We had additional time at final drafting stage due to the cancellation of the Synod in July. I called the administrator and dean at Ripon. Ripon is a little bit different, for historical reasons, and it was just to check there was nothing in the drafting that may cause them difficulty in their particular structure. They asked to be brought into line with the cathedrals so that they would not have a registered Chapter and a PCC to manage the conflicts of interest and all the difficulties, additional costs and administrative inconvenience that that entailed. This was drafted together with the dean. The PCC and the Chapter both considered it, and I understand were fully supportive of it. Baroness Harris may also want to come in.

The Chair: Baroness Harris, would you like to say anything on this?

Baroness Harris of Richmond: Yes, thank you very much indeed. We certainly do not consider ourselves downgraded to anything. We are a very popular and happy cathedral. Certainly I go along with everything that Eva has said. We did want to merge the PCC and the cathedral to get everything into alignment with other cathedrals. We are very happy with this, and I am sure the dean is. I am, anyway.

The Chair: Thank you very much. Lord Jones, are you content with that?

Lord Jones: Thank you for those answers. I am grateful.

The Chair: I know that Baroness McIntosh wants to ask a question.

Q6 **Baroness McIntosh of Hudnall:** Thank you, Lord Chair. I hope our

witnesses will forgive me if this seems a very naive question, because I am not familiar with cathedral governance, but I am relatively familiar with charity trustee responsibilities. I would be very grateful if you could explain in broad terms, on any given cathedral Chapter, what proportion of the members are non-executive, in the sense that they do not have any executive responsibility for the day-to-day running of the cathedral, and what proportion are executive, in that they do have such responsibilities.

My reasons for asking are twofold. First, my experience of charity trustee boards is that on the whole—I know this may not be universally true—non-executive trustees tend to predominate. Secondly, the issue of the senior non-executive members of Chapters, as proposed in the Measure, is clearly quite important. I wondered if I could understand better about the usual membership of cathedral Chapters.

The Lord Bishop of Bristol: I will pass first to Eva Abeles. If there are outstanding questions about the senior non-executive members of Chapters, I am very happy to follow on.

Eva Abeles: The new Measure makes it clear in Schedule 1 that the Chapter has to have more non-executive members on it than executive members for exactly the reasons that the Baroness is concerned about. In ecclesiastical charities, it is quite common for priests to receive a stipend and to be a trustee of the charity. This was discussed at length with the Charity Commission, and it was happy in this instance that executives who have cathedral duties and may receive a stipend can be trustees. There are various reasons for this, partly because of the way the Chapter needs to function and partly because the stipends are nationally set. The dean, Residentiary Canons who are the commissioner canons are not paid by the cathedral; they are paid directly by the Church Commissioners.

I think the Lord Bishop of Bristol would like to answer the question about the senior non-executive members, because she was deeply involved in this part of the revision committee.

The Lord Bishop of Bristol: The senior non-executive members are there with two functions. One is to strengthen the link particularly with the bishop, whose seat a cathedral is, but secondly to facilitate good governance, particularly where there are internal conflicts of interest or at least duplication of interest. For instance, there are some Chapters that are also the governing body of their cathedral school. The dean having the dual responsibility as chair of governors and chair of Chapter can lead to difficult overlapping interests. It can therefore be very helpful to have somebody else who is a non-executive to chair Chapter and steer through that point. The same happens, for instance, when there is a discussion about the housing of senior clergy, where there is an obvious interest that has to be resolved by a Chapter, but having an external non-executive can assist in good decision-making.

The Chair: Lady McIntosh, are you content with that or would you like to take that further?

Baroness McIntosh of Hudnall: I should apologise to the Committee for

not having paid sufficient attention to the Schedule to the Measure, otherwise I would have seen what we were told. I am content, but I think the balance between exec and non-exec membership is a matter of some importance.

The Chair: I entirely agree with you. Who else would like to ask a question?

Q7 **Lord Cormack:** Yes. My question is probably directed at Dr Eve Poole. The position of the Charity Commissioners is quite explicit in the Measure, but are you confident, particularly given the recent history, that the Charity Commissioners will be able to play the full and pivotal role that is outlined in the Measure?

Dr Eve Poole: Thank you, Lord Cormack. That is an excellent question. Members of this Committee will know that it is something that we have returned to several times throughout this process. What has been very useful is that we have been able to road test what it will be like working with the Charity Commission throughout this process. As you will know from the exchange which this Committee has seen, we have a very good and positive working relationship with the Charity Commission. We are to agree with it a Memorandum of Understanding—the heads of terms for which you have also seen—to make sure that we are very clear about who is doing what.

As the co-regulator, the Church Commissioners can do quite a lot to address any perceived problems with resourcing. For instance, because we know their workload is pressing, we have already made sure that we have some resource available internally to help cathedrals with revising their constitutions and statutes and with any legal advice they may need to access. We have also recently signed off an additional safeguarding resource to do quality assurance for cathedrals. We are used to working with other bodies such as the Charity Commission, and we have found our working relationship with it to be very positive. We very much hope that will continue.

Once again, I very much invite members of this Committee to let us know if there are things that you want to make sure we include in that Memorandum of Understanding, because we cannot put everything into the legislation, of course, and have deliberately not done so.

The Chair: Are you content, Lord Cormack?

Lord Cormack: I am most grateful. Thank you very much.

Q8 **Rachael Maskell:** I would like to ask a question about matters of discipline. Clearly the Clergy Discipline Measure is currently under review, and this Measure intercepts with it. When are we likely to see those changes and certainly if further change will then be required to the Cathedrals Measure resultant of that?

Lord Field of Birkenhead: Could I put my question with that one, Lord Chair?

The Chair: Yes, go ahead, Lord Field.

Q9 **Lord Field of Birkenhead:** Following Rachael's question, does this Measure just fit in with the Safeguarding and Clergy Discipline Measure or does it change it in any way? For example, if we have changes to the Clergy Discipline Measure, that will apply equally to cathedrals, to every other part of the church. Are there any exemptions to the clergy discipline measure in this Cathedrals Measure?

The Lord Bishop of Bristol: I would like to ask Eva Abeles to respond particularly on the Chapter issues. Alex McGregor may want to take this further with regard to proposals generally for the review of the CDM.

Alexander McGregor: Perhaps I will come in first, if I may, and then go to Mrs Abeles. As Rachael Maskell has said, the legislative framework for the clergy discipline measure is currently being reviewed, and a lot of people have been consulted and their views taken into account. That review is being carried out under the aegis of Bishop Timothy Thornton, who is the bishop at Lambeth. It is intended that in effect a White Paper be brought to the General Synod with policy proposals for the Synod's endorsement this July. Assuming that that is met with approval, legislation will be introduced at the next available meeting of the General Synod.

The new clergy discipline legislation, like the current clergy discipline legislation, will apply to all clerks in holy orders serving in the Church of England, including those in cathedrals. As Lord Field has specifically asked, that will continue to be the case, so cathedral clergy are subject to the same disciplinary framework as parochial clergy and other clergy in the Church of England.

Lord Field of Birkenhead: They will be under the new Measure.

Alexander McGregor: Yes, I can confirm that that will continue to be the case.

The Chair: Did you want to add anything to that, Bishop?

The Lord Bishop of Bristol: Alex McGregor has covered the ground well, unless there are supplementaries from the Committee.

The Chair: Rachael Maskell, did you want to add anything to that?

Rachael Maskell: I wanted to clarify whether that would have any bearing on the drafting of the Cathedrals Measure.

Alexander McGregor: No, it will not, because clergy discipline legislation is freestanding—a separate piece of legislation.

Q10 **The Chair:** While people are reflecting on whether to ask questions, I have two. First, the Charity Commission is not noted for being quick in what it does. If there is an issue that requires a fairly rapid decision by it, have you thought about how that might be dealt with?

Secondly, each cathedral will have to create its own new set-up and will

have to agree that with the Charity Commission. What is the procedure if there is any sort of marked disagreement between the Charity Commission and any individual cathedral?

The Lord Bishop of Bristol: Dr Eve Poole would very much like to answer this question. It is one that we have anticipated.

Dr Eve Poole: I will also pass on afterwards to Eva Abeles, who can tell you the detail of what has been agreed or is in the process of being agreed with the Charity Commission. As many of you will know, because you are very deep in the cathedral world, the Church Commissioners have been regulating the cathedrals for quite some time now. There will be lots of those kinds of decisions that you talked about, which would still be for the Church Commissioners to decide rather than the Charity Commission.

In the last few months, because of Covid we have had to schedule emergency meetings to address some property matters in Chichester, Durham and elsewhere. We have been able to do that incredibly quickly and to get decisions back out to the cathedrals, because a number of those kinds of decisions will still essentially be delegated to the Church Commissioners, not the Charity Commission. We would hope that we can still make those kinds of decisions very expeditiously, and we have been able to through Covid, which has been a real blessing.

As for how we would address any fights that there might be between the Church Commissioners and the Charity Commission, that will be spelled out in detail in the Memorandum of Understanding. Eva Abeles might want to talk about this, because we are in the thick of agreeing that as we speak.

Eva Abeles: I understand your concerns about the speed at which the Charity Commission can work. There may be points that need immediate action, for example, we needed a response to the questions posed by the Committee, and the Charity Commission was able to turn around very quickly and provide a letter with the responses needed. We have developed a very close working relationship. Throughout the drafting of the Measure, when we were talking to the Charity Commission and were hitting deadlines, it responded very quickly when we needed it to.

We now have arrangements in place, such as a standing call with senior staff every fortnight, and we email each other regularly with issues. We have high-level working so that we know when things need to be turned around quickly. In my experience, when something is urgent, the Commission provides an urgent response.

As for disagreement with the new set-up, all the way through this we have tried to anticipate where these difficulties may lie and then agree how we are going to deal with them. Under the new set-up we will have a registration protocol. That will set out the nuts and bolts of how we are going to manage to this process between the Church Commissioners and the Charity Commission. We are in the middle of a pilot on the registration process with four different types of cathedral at different levels of readiness

and different sizes, and the Charity Commission has provided due diligence questions which our cathedrals have responded to.

It is enabling us to work out where those pinch points are now and work out how we support the cathedrals as much as possible to make it quick, easy and painless for them so that the registration protocol that emerges is not just an idea of how we would like it work but reflects our learning from this pilot process. We hope that if there are disagreements we will know how they are going to be dealt with before we start.

The Chair: I am very relieved, but I must say I wish you luck. It is not going to be entirely easy.

Q11 **Lord Cormack:** The words “urgent” and “expeditious” were mentioned recently in answers to questions, but I am very troubled about the speed in which the Church of England does not move in certain important matters. It could be said that the one thing the Church of England has in common with the Almighty is that it moves in a very mysterious way. In Lincoln, we have just had a bishop suspended for 20 months. I do not want to make any comments on the details and all the rest of it, but it is a denial of natural justice for a case to drag on for as long as that.

Can I be assured that procedures under the Measure we are discussing today will not take so long? It is very important. The reputation of the Church of England is at stake here. There are many people who are very disillusioned. I am one. I have been an Anglican all my life, I have served on General Synod and I have been a church warden of three different churches for a total of 36 years. I am troubled by the speed, or lack of speed, with which things are dealt.

The Lord Bishop of Bristol: Lord Chair, I wonder if William Nye—if he is still on the call—might begin to cover this question. I am very happy to follow on after that.

The Chair: William Nye should still be with us. He was going to be with us until 11 am.

William Nye: My Lord Chair, I am. Thank you, Lord Cormack, for raising that. You will understand that I cannot comment substantively on the reason for the Bishop of Lincoln’s suspension, but I can understand and sympathise with his and your concern about the time taken for the process. This is a complex issue and I cannot really go into the details, but it involves not just the Church of England’s procedures but the procedures of the statutory authorities and how they interact.

As regards the Church of England’s procedures, as Alex McGregor said earlier, we are looking at a process of review of the Clergy Discipline Measure to see what can be done to improve and, where appropriate, consistent with natural justice, expedite its procedures. We will certainly try to learn from that case, as well as others, but other aspects relating to the activities of the statutory authorities are not entirely within our control.

Lord Cormack: I hope I made plain that I do not want this to be a

discussion about the Bishop of Lincoln; I am delighted that he is back and I wish him every success in resuming his pastoral responsibilities within the diocese. Nor do I want to say anything else about that, save to say that you talk about other statutory authorities, and I know you include the police in that. I know of a number of cases where the police have indicated that they had no further interest and it has still dragged on for months and months. The reputation of the Church of England is at stake here. We have to be pastoral, we have to be just, we have to be efficient, we have to be compassionate and empathetic. At the moment we could be held up to censure on a number of those counts.

The Chair: Do the representatives of General Synod want to add anything to what has already been said?

Lord Field of Birkenhead: We have been told the Clergy Discipline Measure, which is not what we are discussing today, is being revised. That will come back to us, and next time we clearly have to do a better job on it than we did last time.

The Chair: I do not know how you feel, Bishop, but we might do what Lord Field said and leave it to when that Measure comes before us.

Baroness Harris of Richmond: I understand exactly what Lord Field has just said. Nevertheless, I want to support Lord Cormack in what he is saying. The point is that we must understand what these arrangements are going to be before the Measure comes to us. Frankly, I would prefer that we talked about it before it went to Synod. I have a case that I have been watching for the last two years, and the disciplinary measures are absolutely something that we need to talk about and discuss, because it is unconscionable that the Church carries on in the way it has been doing.

The Chair: Bishop, picking up from what Lord Cormack and Lady Harris have said, it might be very helpful for you, as well as for the Ecclesiastical Committee, if any draft Measure about to go to Synod was seen by us individually for any comments which members of the Committee would like to make. It would not be appropriate for the Committee to discuss, but it might be helpful when you bring it to Synod, bearing in mind that you will have to get it through Parliament eventually. What do you think?

The Lord Bishop of Bristol: That is a good idea. Our experience of conversations about the Measure we are considering today have meant that we have had to think harder, and hopefully the passage of this Measure will subsequently be much smoother. I am particularly concerned about the revision of the CDM and have contributed to discussions about it. I am also involved in safeguarding issues, and I know that we have some very hard process questions to answer.

The form of this Measure for cathedrals is designed precisely to facilitate rapid responses where rapid responses are needed. Through the pandemic, cathedrals have been exemplary in their rapid responses to ongoing change in order to continue their ministry for the future.

The Chair: I will bring this particular aspect of our discussion to an end. I would add that I personally have been involved in this with the Catholic Church as well as the Anglican Church. I share the concerns of Baroness Harris and Lord Cormack. I would find it very helpful if we were able to talk individually at a relatively early stage about what our concerns might be.

Before we move on to more specific cathedral issues, does anybody else wish to ask a question? It looks as though witnesses' answers to our preliminary questions have been extremely successful.

Q12 **Lord Cormack:** I am sorry to take up more time, but we have not touched on the abolition of the Cathedral Councils. I understand the background. I served on the Cathedral Council in Lincoln, although I was then living in Staffordshire—a Lincolnshire man—at the very beginning of the century. I saw that they had a value. I know there is an opportunity for individual cathedrals to establish a body, but I would like to feel that there was some effective replacement, because it does bring in a slightly wider group of people. I know one of our colleagues today, Martin Vickers, occupies the place on the Council that I occupied over 20 years ago, and then we had Edward Leigh between us. Would our witnesses like to say anything about the demise of Cathedral Councils?

The Chair: Perhaps I ought to add to my interests. For nine years I was Chairman of St Paul's Council, so I know exactly what Lord Cormack is talking about, as indeed Mr Vickers does. Who would like to respond on why you are getting rid of Councils?

The Lord Bishop of Bristol: Dr Eve Poole might start off. It would also be interesting to have a response from Andrew Nunn, who is Dean of Southwark.

Dr Eve Poole: Thank you, Lord Cormack, for that challenge, which again is one that we have discussed quite a lot with members of this Committee, because so many of you have been involved in Councils.

Our general approach to this Measure was to try to make it as flexible and enabling as possible, because every cathedral is very different. While the role of a Measure like this is to try to establish some commonality on the real key points of governance that must be agreed across all cathedrals, we wanted to allow cathedrals some leeway, because we know that some cherished the Councils but, for others, the Councils were not working well as a mechanism.

As you will see, we have been round the houses a bit in the drafting. The Councils will no longer have the trustee responsibility that you could argue they have at the moment. What they will have—I think there are a number of cathedrals that are intending to keep them—is absolutely the status they have at the moment as the wise counsel for the Chapter and cathedral, a way of making sure that all the various people from the counties, the cities and the communities that cathedrals serve are represented and can be drawn into the life of the cathedral in a formal way.

As you see from the drafting, we have made it very clear that we would invite cathedrals to configure a council if they do not have one. It is just that their status will change under this Measure because of what we are trying to do to make it very clear where the trustee responsibility lies.

Andrew Nunn: I think it is very important for cathedrals that external voices get heard in their processes. I am not sure that Cathedral Councils did that as effectively as they could have. From our own context at Southwark, we are looking forward to being able to establish a body that will probably be called a council, which will bring people together from our south London constituency, which will help us to reflect on what we are doing.

The clarity of governance which the new Measure will bring will be very important, because at the moment it is disparate and shared, which does not help cathedrals to function as we should. I think bringing people together, such as on this screen, is very important in the life of the cathedral. Getting the right people on to Chapter and then the right people on to council, and listening well in both those settings, is the way forward.

Martin Vickers: I am a member of the Lincoln Cathedral Council. In response to what has just been said, I have to say that getting the right people will be very difficult. Cathedral Councils bring in a broader perspective from the wider community, which is perhaps helpful to deans and Chapters. In the same way as the Lords can put their hands on the collars of MPs occasionally and say, "Think again", perhaps the Cathedral Councils perform that rather discreetly and it is valuable in difficult circumstances.

Lord Field of Birkenhead: I chaired the Cathedral Fabrics Commission, so I had an idea of how all cathedrals were operating. My experience was that the cathedrals that were operating well had superb Cathedral Councils. The Cathedral Councils of those who were a bit ropy behaved less well and were less integrated. My fear is therefore that the cathedrals that are very smart and are doing an incredibly good job will re-establish their Councils, but the cathedrals that really want the Councils will not re-establish them.

The Lord Bishop of Bristol: I understand the concerns. As the discussion went on through the Measure, I became more convinced, not least by the contributions of Chairs of Council who wanted their position to be clarified. Listening to them, we went in the direction we went in. I know from my experience in York that the council was invaluable in all the ways that Lord Cormack, Martin Vickers and others have said, but when I was in Leicester in a smaller cathedral, and perhaps not so much on the public stage, I know that it was very difficult to recruit those who wanted to contribute to that body. It felt to those who had executive responsibility that there was a duplication and a confusion of governance, as Dr Poole has said, that was weighty, and I have to say that I have discovered something very similar in Bristol.

Despite what Lord Field has said, it is not just between the cathedrals that are performing well and those that are performing badly. It is between the

cathedrals that have good resource and those that have less resource. That is what has caused the difficulty in the past. I do hope that cathedrals will continue to keep councils of reference, but with greater clarity about their function.

The Chair: Could I add to this? I thought that the Council that Lord Field served on with me at St Paul's worked well. I got on extremely well with the dean. That seemed very important to me: that the chairman and the dean were close together. What is worrying me a little is that, if you do not have councils, the expertise that some members of an advisory council can offer may be lost. How do you think cathedrals will be able to access that sort of help if they do not have the advisory council?

Dr Eve Poole: A lot of charitable bodies are finding it harder to recruit trustees because of the rather more onerous responsibilities they now have. One of the things that we found with cathedrals that struggled to find resource was that it was slightly harder to get volunteers who were willing to put their necks on the line in that legal way. We are hoping that Councils not being such a statutory part of the governance structure will free cathedrals to ask a whole range of different people who might want to get involved across a whole range of their responsibilities, given that they sit between church and state and have such important roles, which also vary by location. Eva Abeles can say a bit more about the whole range of governance, guidance, best practice and training that will accompany this Measure.

However, one of the things we will be doing is making strong recommendations about what we think best practice would be. Certainly our experience in speaking to cathedrals is that it would be a very unwise chapter that did not have something a bit like a council. We know that many of the council chairs have already been approached about becoming the senior non-executive member of the Chapter, for the reasons that you talk about. This is not supposed to be a denial of that very important rootedness and communities of advice, practice and support. It is a way of enabling and strengthening those by removing some of the burdens that might otherwise have prevented people from feeling free to volunteer for them.

I am aware that there are many of you on this call who have been on very successful Councils, and are therefore possibly overrepresented. A number of cathedrals have really struggled with the confusion of power and responsibility between Chapters and councils. We hope that the clarity of this Measure, while it will not please everyone, will be the best compromise and the best of all possible worlds for cathedrals that want to make as much use of advisory groups as possible.

The Chair: Lord Cormack, Mr Vickers, Lord Field, do any of you want to come back on what Eve Poole has said?

Lord Field of Birkenhead: Just that I was very happy with the discussion. Thank you very much.

Martin Vickers: It is encouraging to note that the feeling is that some form of advisory council should continue. I hope that guidance will be passed through to deans, Chapters, bishops and down the lines.

The Chair: I agree very strongly with Mr Vickers on that.

Lord Cormack: So do I. I am disappointed that there is no statutory body like a council and that it is up to the cathedral itself to decide. We must hope that this works, but we could be losing a lot. I am troubled, I have to say. I will not seek to obstruct the Measure being expedient when we come to have our discussions and debate in Parliament, but we have to keep our eyes very carefully on these are issues.

If I am fortunate enough to be able to speak when we debate this Measure on the Floor on the House, this is one issue that I will almost certainly raise, as I will the question of the senior non-executive person, because this is an extremely sensitive appointment. It has within it the seeds of dispute if the cathedral is not being properly run. I have made the point. I hope it is taken by our visitors and I hope that it will be kept very carefully under review.

The Chair: Lord Cormack, do you want Eve Abeles to explain some of the guidance behind it, or are you content for the moment?

Lord Cormack: I am content for the moment.

The Chair: Any other questions from any member on a different subject?

Baroness McIntosh of Hudnall: May I ask a question that is related on this subject, please?

The Chair: Yes, indeed, Lady McIntosh.

Q13 **Baroness McIntosh of Hudnall:** This has occurred to me only as the discussion has unfolded. Again, I may have missed something in the papers, so apologies in advance if that is the case.

With regard to the recruitment of non-executives, whether to councils—should they survive—or indeed to a Chapter, there is an expectation from the Charity Commission and more widely that recruitment processes will be open, transparent and wide-ranging. Could we have one sentence from our witnesses on the way that will be carried forward?

Dr Eve Poole: Thank you, Lady McIntosh. You will note that there is something in the Measure called a nominations committee, which will have that responsibility. We are already drawing up guidelines for how that committee might be constructed. It will also have responsibility for keeping an eye not only on the skillset, abilities and competence of members of the Chapter, but on the diversity of Chapters. We have spent quite a lot of time in the revision stage trying to get those relationships absolutely right, because we agree that these appointments must be transparent and rigorous and there must be ways to keep checking back on the Chapter to make sure that it continues to perform well.

The Chair: Do we have any other questions? I have absolute silence and no questions. Have we asked our visitors sufficient for the time being?

The Earl of Cork and Orrery: May I make one comment? Having spent several years on a pretty dysfunctional Cathedral Council, I have to admit that I agree with the Lord Bishop that smaller cathedrals find it quite difficult to avoid the conflict of interest that inevitably occurs between the responsibilities of Council and chapter. I think that stripping out the governance responsibility from council and leaving it free to operate as an advisory body is an extremely good idea and is one that we should all support.

Q14 **Andrew Selous:** Forgive me if I have missed it in the briefing. I wanted to pick up on Dr Poole's point about the nominations committee. Will there be a separate nominations committee for each cathedral, and who appoints them, please?

Dr Eve Poole: I will get Eva Abeles to answer on the detail, but we, in concert with the cathedral community, are already drawing on things like expert panels with the Association of English Cathedrals. We are working on the talent pipeline for church trusteeship more generally, and we are trying to amass pools of people who might be available to cathedrals up and down the country in the future. If I may, I will pass to Eva Abeles on the detail of the nominations committee and how will that work.

Eva Abeles: Each cathedral will have its own nominations committee and it will be appointed by the Chapter. The statutory obligations of that committee are set out in the Measure and it is very clear what they have to do.

Andrew Selous: Brilliantly clear, thank you.

The Chair: I think we may have come to the end of the questions. Thank you very much indeed to the members of Synod who have taken the trouble to come today, not only for giving answers to our previous questions but for taking the barrage of questions that we have had so far today.

Cathedrals Measure

Full list of answers to questions from the Chair and other members
of the Ecclesiastical Committee concerning the Cathedrals Measure

Q1. How does clause 7(1) (statutes) work? How can a canon or the dean be sacked or suspended other than in safeguarding issues, such as financial misbehaviour? Is it easier to sack a non-executive or lay canon than a residentiary canon?

A1. Clause 7(1) is a restatement of section 11(a) of the Cathedrals Measure 1999. It is concerned with how particular cathedral dignities and other offices – e.g. precentor, treasurer, chancellor – are created, abolished or put into suspension. It is not concerned with the appointment to, or removal from, office of an individual office holder. Residentiary canons' tenure of office – including the grounds on which their tenure comes to an end – is provided for in section 3 of the Ecclesiastical Offices (Terms of Service) Measure 2009. A residentiary canon holds office until he or she resigns, retires or dies, or where a fixed-term appointment comes to an end, or where the individual is removed from office for misconduct under the Clergy Discipline Measure 2003. The Clergy Discipline Measure also makes provision for suspension while disciplinary proceedings are pending. Clause 42 makes additional provision in ecclesiastical law for the removal from office of a dean or residentiary canon in circumstances where that individual is disqualified from being a charity trustee under the Charities Act 2011. The non-executive members of the Chapter will hold office in accordance with the provisions of the Constitution required to be made under clause 5(1)(c). They are subject to removal on the same basis as the trustees of other charities, i.e. the exercise by the Charity Commission of its protective powers.

Q2. Clauses 9 and 10 (Review and Visitation) – what is envisaged as the difference between a Review and a Visitation? Does the bishop attend Chapter other than occasionally?

A2. A Review is envisaged as being less formal and less onerous than a Visitation. A Review may make recommendations to which the Chapter must have due regard (clause 9(9)). A Visitation, by contrast, is a quasi-judicial proceeding that determines legal questions as to the construction of and compliance with the constitution and statutes (clause 10(2) and (7)). A Visitation may result in a determination being made and directions given. The Chapter and other persons who exercise functions under the Measure are legally obliged to act in accordance with a determination made, or direction given, on a Visitation (clause 10(5)).

The bishop is required to attend the annual special meeting of the Chapter held in accordance with clause 11(2). There is no provision for the bishop to attend meetings of the Chapter on other occasions.

Q3. Clause 10 (the Visitor): the role of the bishop as the Visitor. What assurance can be given that this position will be simply that, and there will be no intention of interfering in the work of the dean/Chapter when he or she attends meetings as a Visitor?

A3. Clause 10 restates provision currently contained in section 6 of the Cathedrals Measure 1999. The bishop's position as Visitor does not give the bishop a role in the regular work of the cathedral or of the Chapter. The role of Visitor comes into operation only if a formal Visitation is instituted, and only then during the period of the Visitation.

Q4. Clause 19 deals briefly with an important element of cathedral life. As regards the accountability of the management group to the Chapter, how is it likely to work in practice? Will the management group be subject to detailed regular scrutiny, or operate more freely under the general oversight of the Chapter?

A4. Clause 19 deals with the matter of the senior management group briefly, without being prescriptive. It will be for each cathedral to decide how precisely to arrange its affairs in this regard, with provision as to the functions and accountability of the senior management group being made in the cathedral statutes. The Church Commissioners' template for cathedral statutes will include provision which cathedrals will be able to adopt. Guidance on accountability arrangements will be provided by the Church Commissioners under clause 12(8) and (9). That material is still to be worked up by the Commissioners.

Q5. Schedule 1, paragraph 5(1) (senior non-executive member of Chapter): What is the role of the "senior non-executive member"? The position is nominated by the bishop and could be seen to be overseeing the work of the cathedral - and reporting back. Is this what is intended? If so, doesn't it indicate interference in cathedral matters. Why is it deemed necessary?

Q6. Please could a clearer explanation be provided of the role of the Senior Non- Executive Member (see para 160 of the Comments and Explanations)? The dean needs to be able to lead the Chapter. Could this new role undermine the relationship? Why is this new role necessary?

A5/A6. The role of "senior non-executive member" represents a development of what was originally envisaged by the Cathedrals Working Group in its 2018 report as the role of "Vice Chair". The report explained that the Vice Chair would provide a link between the diocese and the Chapter and would keep the bishop informed about the work of the Chapter. But the report made it clear that as a member of the Chapter, the Vice Chair would be required to act at all times in the best interests of the cathedral in line with the usual requirements for trustees, and could not act under the direction of the bishop or any other member of the Chapter.

Paragraph 160 of the Comments and Explanations describes how the Revision Committee for the Measure considered that the term "Vice Chair" had resulted in misunderstanding and decided that the role should be that of "senior non-executive member". This was based on the well-established role on company boards of a "senior non-executive director" who supports and acts as a sounding board for the chair and as an intermediary for other non-executive directors when necessary. The senior non-executive director of a board also leads the non-executive directors in ensuring that the division between executive and non-executive responsibilities is maintained. The senior non-executive member of the Chapter is envisaged as having a similar role in relation to the Chapter. The bishop is required to consult the Chapter before appointing a person to this role (Schedule 1, paragraph 3(5)), as the relationship is one of mutual co-operation rather than a person being imposed on the Chapter by the bishop.

Q7. Clauses 36 and 37 (disqualification and suspension of Chapter members) – the procedure isn't clear where there is no prosecution, but sufficient concern raised by clause 37 (2). The burden of proof is balance of probabilities. How is a conclusion reached which might require dismissal? Is it to be found elsewhere – if so there is no reference to it in the Measure?

Q8. Under the Cathedrals Measure, how will cathedrals deal with a case where serious allegations against the dean or a canon have been made but they are not dealt with by the police? Presumably there would be an inquiry which would make findings on the balance of probabilities (rather than the criminal standard). Please could you explain what provision there is for such an inquiry in the Cathedrals Measure, including what would happen if there were a finding, on the balance of probabilities, that the allegations were substantiated?

A7/8. Clauses 36 and 37 supplement general safeguarding legislation and operate alongside legislation concerned with misconduct by the clergy (the Clergy Discipline Measure 2003) and with misconduct by charity trustees (sections 76 to 83 of the Charities Act 2011).

So far as the dean and residentiary canons are concerned, where there is no prosecution, or a prosecution and an acquittal, following information being provided by the police or the local authority that the individual presents a safeguarding risk, proceedings may nevertheless be instituted – if appropriate – under the Clergy Discipline Measure 2003. The 2003 Measure provides for the determination of allegations of misconduct by a bishop's disciplinary tribunal. If a cleric is found to have committed misconduct, the tribunal may impose one or more of various penalties that include removal from office. The canons also make provision for safeguarding risk assessments to be carried out in respect of individual members of the clergy where necessary, at the direction of the bishop.

So far as other members of the Chapter are concerned, the position would be as for trustees of other charities: if there were no prosecution it would remain open to the Charity Commission to institute an inquiry and, if appropriate, remove an individual as a trustee.

Q9. Clause 37 (suspension) enables a bishop to suspend a member of the Chapter. What happens following a suspension?

A9. The matter is dealt with in accordance with statutory guidance issued under section 5 of the Safeguarding and Clergy Discipline Measure, either at diocesan level or, if it concerns the dean, by the Church's National Safeguarding Team. That process involves, among other things, notifying the police and other statutory agencies as appropriate. If criminal proceedings are brought, a suspension will usually continue until the conclusion of those proceedings, which could result in the individual being convicted and disqualified under clause 36. Alternatively, they could result in acquittal followed by subsequent assessment of the safeguarding risk, if any, presented by the individual.

Where it is considered that the individual presents a significant risk, the matter can be formally referred to the Charity Commission (see the final paragraph of Answer 6, above). If, following consideration of the matter in accordance with the statutory guidance, it was not considered that the individual presented a significant risk, the matter would be concluded for the purposes of clause 37(7)(b), the suspension would end and the individual would be able to resume exercising duties as a member of the Chapter.

Q10. Under clause 42 (removal from cathedral office) – after disqualification as a charity trustee there can be removal – what is the procedure for misbehaviour by the dean or a canon, whether safeguarding or for instance financial, which requires dismissal?

A10. Removal from office for misconduct is provided for in the Clergy Discipline Measure 2003. See the answer to questions 5 and 6 above.

Q11. Para 154 (e) of the Comments and Explanations refers to the "longstop" date when all Chapters must be brought within the Charity Commission regulatory jurisdiction. At first it was 31 March 2023 but, according to paragraph 173, it was agreed with the Charity Commission that the longstop date should be extended to three years after Royal Assent (because the pandemic and financial crisis resulting from it would make it difficult for all cathedrals to be ready to register with the Charity Commission by the 2023 date) – so sometime in 2024. See section 46(3)(e). What would happen if a cathedral were not in a position to meet that deadline?

A11. The Church Commissioners will work with cathedrals to ensure that they are in a position to meet the deadline. Among other things, the Commissioners will provide cathedrals with template constitutions and statutes and provide cathedrals with assistance with finalising those documents and with undertaking the registration process with the Charity Commission.

In the unlikely event that, in spite of the active support of the Church Commissioners, a cathedral unreasonably delays revising its constitution and statutes in readiness for the implementation of the new Measure, clause 46(6)

provides the Commissioners with a reserve power to step in and revise the cathedral's constitution and statutes themselves, so that the Measure can be implemented in respect of the cathedral.

Q12. Clause 46 (preparatory steps by councils), clause 46(6) makes provision for the Church Commissioners to take the place of the Council of a cathedral where there is an unreasonable delay in securing the objective under subsection (1). What happens if the Church Commissioners are unable to secure the objective? Could there be a situation where a cathedral is not certified by the "longstop" deadline in clause 36(4)(b), in which case, what would happen to that cathedral? During the transitional period (ending after three years after RA), cathedrals will secure the objective at a differing pace (it is assumed) – does this mean that during this period, different cathedrals will be subject to different regulatory systems, depending on whether they have been certified? What assurance can be given about the maintenance of proper financial oversight and handling of safeguarding matters during this period?

A12. The Church Commissioners do not consider that, in the unlikely event that they had to exercise their powers under clause 46(6), they would be unable to secure the objective of reviewing a cathedral's constitution and statutes in readiness for the application of the Measure to the cathedral in question. The Commissioners will oversee the process of cathedrals carrying out what is required by clause 46, as explained in more detail above.

The Measure will apply to different cathedrals on different dates. This is intentional and follows the precedent of previous cathedrals Measures. Until a cathedral's new constitution and statutes come into operation, and the new Measure applies to the cathedral, its current constitution and statutes will continue to have effect. The Chapter is responsible for financial and safeguarding matters, with oversight being provided by the Church Commissioners and diocesan and national safeguarding officers and bodies.

Q13. Para 7 of the Comments and Explanations refers to a Memorandum of Understanding being developed between the Charity Commission and the Church Commissioners. Please could you provide a progress report, and a timeline, on the MoU, with an assurance that an agreement will be reached in accordance with the required timeline?

Q14. Please could the Committee be provided with a copy, whether in draft or final, of the Memorandum of Understanding?

A13/14. The following Heads of Terms for the content of the MoU have been agreed between the Charity Commission and the Church Commissioners:

Heads of Terms for a Memorandum of Understanding between

the Church Commissioners and the Charity Commission on co-regulation of cathedrals Approved 24 Sept 2020

1. *The Charity Commission and the Church Commissioners:*
 - a. *have a mutual interest in increasing public trust and confidence in cathedrals as charities, and in ensuring the efficient and effective functioning of cathedrals in furthering their religious and other ancillary charitable purposes for the public benefit;*
 - b. *expect and will support all cathedrals to comply with their legal obligations as charities and cathedrals and to follow all relevant Charity Commission and Church Commissioner guidance, and will work to ensure that any that do not will be held to account appropriately;*
 - c. *will be at liberty to apply their own policies and procedures in any relevant case, but will discuss and seek to agree adaptations to these if necessary and appropriate to deal with specific issues - there will be a designated process for any conflict identified;*
 - d. *will liaise with each other where necessary and appropriate in order to carry out their respective functions as regulators of charities and cathedrals and will have regard to the views of the other as necessary in making decisions with respect to cathedrals; but each will be free to make such decisions as it considers appropriate in any given case or matter, in accordance with their respective legal duties and obligations and those of any other relevant parties concerned;*
 - e. *will work together to develop an operational approach to regulation and oversight which embodies the above principles, with clear processes and responsibilities set out.*
2. *Cathedral Chapters are to be regulated by the Charity Commission in the same way as any other charity, subject to any specific requirements of or restrictions in the relevant legislation.*
3. *The MoU is separate from and in no way affects the relationship between the Charity Commission as regulator of charities and the Church Commissioners as a registered charity.*

Work is progressing well on agreeing the detailed content of the MoU and there is a good working relationship between the Church of England's Legal Office and officials at the Charity Commission. This is also the view of the Charity Commission, set out in their letter dated 11 February 2021 to Eva Abeles of the Legal Office of the National Church Institutions (copy provided). The Charity Commission states: "The Commission and the Church Commissioners are working closely together in support of the proposals in the Measure, with the intention of agreeing both the Registration Protocol and the Memorandum of Understanding at the earliest opportunity".

Drafts are not yet at a stage where they are available for sharing with the Committee.

Q15. What is the scope of the role of the Charity Commission under the Cathedrals Measure – the extent of its remit – and how it interrelates with the Clergy Discipline Measure and other clergy disciplinary provision. How will the two regulatory systems operate together, especially with regard to safeguarding?

A15. The role of the Charity Commission in respect of cathedrals will be as set out in the Charities Act 2011 and will be the same as for other charities such as the Church Commissioners, diocesan boards of finance and parochial church councils. Accordingly, the Charity Commission will be responsible for registering cathedrals as charities and will receive annual reports and accounts from cathedrals which will be published on the Charity Commission's website. The Charity Commission will have the power to provide the Chapter with assistance by, for example, making schemes and giving statutory advice. It will also have its usual protective powers, such as the power to issue official warnings, to institute inquiries, and to suspend and remove trustees.

The application to cathedral clergy of the Clergy Discipline Measure 2003 will be unaffected. Matters amounting to misconduct under that Measure will continue to be subject to the Church's disciplinary processes. A dean or residentiary canon who was removed from office under those processes would automatically cease to be a member of the Chapter and a charity trustee for the cathedral.

In the unlikely event that the Charity Commission were to exercise its protective power to remove a dean or residentiary canon as a charity trustee, the bishop would remove the dean or residentiary canon from ecclesiastical office in accordance with provision that is to be inserted in the Ecclesiastical Offices (Terms of Service) Measure 2009 by clause 42.

The Chapter (as is already the case with parochial church councils) will be under a duty to have due regard to statutory guidance on safeguarding issued by the House of Bishops (see clause 35). As the charity trustees and as the relevant body under ecclesiastical law, the Chapter will be responsible for ensuring that safeguarding practice in the cathedral operates as it should. In the event of a failure adequately to meet that responsibility, the Chapter could be subject to a Review or a Visitation by the bishop. They could also be subject to an investigation by the Charity Commission. The dean and residentiary canons might also be liable to proceedings under the Clergy Discipline Measure. It is not considered that there would be any legal conflict between these jurisdictions as they are not concerned with the same things: an investigation under the Charities Act would be concerned with whether trustees were properly exercising their duties as trustees; a review or visitation, and proceedings under the Clergy Discipline Measure, would be concerned with breaches of ecclesiastical law.

Q16. Is the Charity Commission is satisfied that concerns they have

raised about the need for improvements in governance and safeguarding processes with respect to each cathedral have been, or are being, addressed?

A16. The Charity Commission has stated in its letter dated 11 February 2021 (copy provided) that it is "satisfied that work is under way by the Church Commissioners to address governance and safeguarding concerns in respect of cathedrals and welcomes the seriousness and rigour with which the Church Commissioners are addressing these issues."

As also stated in the letter, "the [Charity] Commission anticipates more fully assessing progress on governance and safeguarding matters, as well as other issues of regulatory concern to the Commission, as it engages in detailed scrutiny of each individual cathedral's arrangements in due course, following the anticipated implementation of the Measure. It will only be when each cathedral applies to register that it will be able to demonstrate to the Commission that it has fully addressed these concerns, and the Commission will be better placed to assess this as it moves to engage with cathedrals individually."

Q17. There is concern about the adequacy of resources within the Charity Commission to carry out the volume of this new area of work. What assurances can be given that the Charity Commission will have the resources to carry out this new function?

A17. While the Church Commissioners cannot give assurances on behalf of the Charity Commission, our experience of working with the Commission to prepare for the proposed extension of the Commission's role to cathedrals has demonstrated that the Commission is able to devote the necessary resources this area of work and leads us to believe that they will continue to do so. This view is supported by the letter from the Charity Commission to the Legal Office of the National Church Institutions dated 11 February (previously provided to the Ecclesiastical Committee) which refers to the Commission investing its own funding to support this work and to its continuing to make resources available once the Measure has been passed.

Q18. What are the financial implications of the new governance arrangements under the Measure for the Charity Commission, and is it anticipated that the Church will pay any reasonable additional costs arising from the new arrangements and incurred by the Charity Commission?

Q18. Although Baroness Stowell [Chair, Charity Commission] did initially raise the possibility of the Church Commissioners meeting the Charity Commission's costs, it turns out that the Charity Commission do not have the necessary legal power to recover costs from charities they oversee; and the Church Commissioners do not have the necessary legal power to make payments to the Charity Commission. The Charity Commission are no longer suggesting this so far as we are aware. I would add that joint work we have recently done with DCMS and the Charity

Commission has resulted in the extension until 2031 of the period during which the approximately 10,000 parochial church councils with incomes under £100,000 p.a. are excepted from registration with the Commission. The exception was to have expired at the end of March this year, with 10,000 parochial church councils being legally obliged to apply to be registered this April. The burden that would have imposed on the Charity Commission's resources – far greater than that of taking on 42 cathedrals – has therefore been alleviated.

Q19. Will the Charity Commission have time to gain knowledge and an understanding of the cultural background to the new relationship?

A19. We believe that much has already been achieved in this regard and that the letter of 11 February supports this. We hope the fact that the Church Commissioners will continue to work closely with the Charity Commission in the implementation of the Measure will provide further reassurance about this aspect.

Q20. Would the report of the Cathedral Working Group have been different had the impact of the COVID-19 pandemic been known at the time, and if so how?

A20. We do not believe so.

Eva Abeles
The Legal Office of the National Institutions of the
Church of England

Charity Commission
PO Box 211
Bootle
L20 7YX

Sent by email only

Date: 11 February 2021

Dear Eva,

Cathedrals – Registration with the Charity Commission

I write following your request for comment in response to queries from the Ecclesiastical Committee of Parliament.

As you know, the Charity Commission has worked closely with the Church Commissioners during the course of the preparation of the proposed Measure. The Commission's Board has considered this regularly during the course of the matter, and approved Heads of Terms for a Memorandum of Understanding between the Commission and the Church Commissioners in September 2020. Commission officers are now in discussion with officers of the Church on the preparation of the Memorandum of Understanding itself, together with a protocol to cover the steps necessary to achieve registration of cathedrals as charities following the implementation of the Measure.

The Commission and the Church Commissioners are working closely together in support of the proposals in the Measure, with the intention of agreeing both the Registration Protocol and the Memorandum of Understanding at the earliest opportunity.

The Commission is satisfied that work is under way by the Church Commissioners to address governance and safeguarding concerns in respect of cathedrals and welcomes the seriousness and rigour with which the Church Commissioners are addressing these issues. The Commission is investing its own funding to address areas in individual cases where further development is required. The Commission considers this development work essential to the successful implementation of the Measure, and the supporting mechanisms of a final Memorandum of Understanding and Registration Protocol, each of which needs to be informed by ongoing discussions between the Commission and the Church Commissioners.

The Commission has made and continues to make resources available commensurate to these tasks and will continue to organise its resources accordingly once the Measure has been passed as we anticipate. Further, the Commission anticipates more fully assessing progress on governance and safeguarding matters, as well as other issues of regulatory concern to the Commission, as it engages in detailed scrutiny of each individual cathedral's arrangements in due course, following the anticipated implementation of the Measure. It will only be when each cathedral applies to register that it will be able to demonstrate to the Commission that it has fully addressed these concerns, and the Commission will be better placed to assess this as it moves to engage with cathedrals individually.

Yours sincerely,

Helen Earner
Director of Regulatory Services