

Independent Reviewer

Notes on the Operation of the Resolution of Disputes Procedure (December 2015)

Introduction

- 1) These notes are intended to help those who want to know more about the procedure for the resolution of disputes relating to the operation of the House of Bishops' Declaration on the Ministry of Bishops and Priests (GS Misc 1076). The procedure itself is set out in The Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014. These notes need to be read alongside those Regulations.
- 2) The notes describe the way in which the procedure works. They are a guide, not a rigid set of rules. How the procedure for resolving disputes is made effective in any particular case will, inevitably and rightly, depend to some degree on the circumstances of that case. Moreover the way in which cases are handled is likely to evolve over time as the Church gains practical experience of how the procedure can best be used to advance rather than hinder its mission and its unity.

The Functions of the Independent Reviewer

- 3) The duties and responsibilities of the Independent Reviewer are set out in The Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014 ('the Regulations'). For convenience, a copy of the Regulations [GS Misc 1087] is attached to these notes.
- 4) The functions of the Independent Reviewer are:
 - a) To consider a grievance brought by a parish against any office holder, within the scope of Regulation 8;
 - b) To consider any expression of a more general concern under Regulation 27; and
 - c) To provide the Archbishops of Canterbury and York with an annual report on the exercise of the Reviewer's functions, as required by Regulations 30 – 31.

Exercise of the Independent Reviewer's Functions

- 5) The Regulations do not prescribe in detail how the Independent Reviewer will carry out the Reviewer's functions. However, they do lay down some requirements and they also include some permissive provisions intended to guide the Reviewer in the task. These are, so far as the consideration of grievances is concerned, set out in Regulations 16-26.
- 6) More generally, Regulation 7 provides that in exercising her/his functions the Independent Reviewer must:
 - a) Act impartially and fairly; and
 - b) Have regard to the 'five guiding principles' referred to in paragraph 5 of the House of Bishops' Declaration on the Ministry of Bishops and Priests (GS Misc 1076) ('the House of Bishops' Declaration').

The Five Guiding Principles

- 7) The ‘five guiding principles’ as set out in the House of Bishops’ Declaration are:
- a) *“Now that legislation has been passed to enable women to become bishops the Church of England is fully and unequivocally committed to all orders of ministry being open equally to all, without reference to gender, and holds that those whom it has duly ordained and appointed to office are the true and lawful holders of the office which they occupy and thus deserve due respect and canonical obedience;*
 - b) *“Anyone who ministers within the Church of England must be prepared to acknowledge that the Church of England has reached a clear decision on the matter;*
 - c) *“Since it continues to share the historic episcopate with other Churches, including the Roman Catholic Church, the Orthodox Church and those provinces of the Anglican Communion which continue to ordain only men as priests or bishops, the Church of England acknowledges that its own clear decision on ministry and gender is set within a broader process of discernment within the Anglican Communion and the whole Church of God;*
 - d) *“Since those within the Church of England who, on grounds of theological conviction, are unable to receive the ministry of women bishops or priests continue to be within the spectrum of teaching and tradition of the Anglican Communion, the Church of England remains committed to enabling them to flourish within its life and structures; and*
 - e) *“Pastoral and sacramental provision for the minority within the Church of England will be made without specifying a limit of time and in a way that maintains the highest possible degree of communion and contributes to mutual flourishing across the whole Church of England.”*
- 8) It is important to note that, in its Declaration, the House emphasises that the five principles *“need to be read one with the other and held together in tension, rather than being applied selectively”*. In relation to the operation of the grievance procedure, the implication of this is that a balanced judgement will be necessary, deriving from the circumstances of each case, as to how the five principles have been *“held together in tension”* in that case.
- 9) The House of Bishops’ Declaration also states that the outworking of the five principles needs to be accompanied by *simplicity, reciprocity* and *mutuality*. If the five principles provide the chief reference point by which the Independent Reviewer must approach her/his functions, these three supporting concepts offer important ancillary guidance on the application of those principles in practice.

Bringing a Grievance

- 10) The procedure for bringing a grievance is set out in Regulations 9 - 15. It is important to note that a grievance can only be brought by a PCC if authorised by a resolution passed at

a meeting of the PCC by one of the majorities specified in Regulation 11.¹ The Independent Reviewer will always seek confirmation that the requirements of the Regulations in this respect have been met.

- 11) Regulation 9 also requires that, before bringing a grievance, a PCC has given the office-holder in respect of whom it wishes to bring a grievance a reasonable opportunity to address the grievance. Again, the Independent Reviewer will want to see evidence that this has been done.
- 12) In considering a grievance, it is the concerns of the parish as expressed by the PCC – not the concerns of any third party - which will be paramount. Correspondence about a grievance should primarily come from the PCC concerned. Whilst it will always be open to a PCC, if it wishes, to seek advice from others in framing its grievance, interested third parties should not seek to interpose their views on those of the PCC.
- 13) A grievance must relate to an act or omission by the office-holder against whom the grievance is being brought (Regulation 8). That act or omission will have arisen in relation to the passing of a resolution in the form set out in paragraph 20 of the Declaration. Underlying the passing of the resolution will be a theological conviction, which paragraph 22 of the Declaration recognises will vary according to the tradition of the parish concerned. When considering a case to which it is relevant, the Independent Reviewer will expect the PCC to describe clearly the nature of the theological conviction which underpinned its request for arrangements to be made for it under the House of Bishops' Declaration, setting that conviction in the context of the tradition of the parish.
- 14) The grievance procedure is not an opportunity for a PCC disaffected with its diocese for other reasons to seek a new means of expressing that disaffection or a different form of episcopal oversight. It cannot relate to something other than a specific act or omission in relation to the outworking of the arrangements for parishes set out in paragraphs 16 - 29 or 33 of the House of Bishops' Declaration.
- 15) A grievance must normally be brought within three months of the act or omission in question (Regulations 12 – 13). However, Regulation 13 gives the Independent Reviewer discretion to allow a PCC to bring a grievance beyond that three month period in exceptional circumstances and provided he or she is satisfied that there is good reason to do so. The Independent Reviewer would therefore expect clear reasons to be given in respect of any request to admit a grievance after the normal three month period had elapsed.
- 16) Regulation 14 provides that a PCC which wishes to bring a grievance must specify:
 - a) The office holder in respect of whom the grievance is brought;
 - b) The nature of the act or omission in question; and
 - c) The nature of the PCC's grievance in relation to that act or omission.
- 17) Given what is said earlier in these notes, it will also be helpful if the PCC supplies:

¹ In the context of the Regulations the expression 'PCC' includes not just a parochial church council of a parish but also the guild council of a parish church and the governing body for any non-parochial place.

- a) The resolution expressing the grievance passed by the PCC, along with confirmation that it was passed at an appropriately constituted meeting of the PCC, in accordance with the requirements of the House of Bishops' Declaration and the Regulations.
- b) Where they are relevant to the Independent Reviewer's understanding of the grievance, a clear statement, within the context of the tradition of the parish, of the grounds of theological conviction which underlay the PCC's earlier request for arrangements to be made for the parish under the House of Bishops' Declaration, as this request was conveyed to the diocesan bishop or other office-holder involved.
- c) A full account of the steps taken, prior to and following the passing of the resolution by the PCC authorising the bringing of the grievance, to communicate with and to reach a mutually satisfactory understanding with the diocesan bishop – or in the case of a dispute with another office-holder, the office-holder concerned – as to the arrangements for ministry and oversight to be made for the parish.

18) Regulation 20(b) provides that, subject to the requirements of the general law, the Independent Reviewer may disclose to all the parties any information, documents or other materials which have been disclosed by any of them. Those submitting material to the Independent Reviewer will need to have in mind the likelihood that what they submit will be shared with the other parties and, if it is material to the Independent Reviewer's decision on the case, is likely to be disclosed by the Independent Reviewer in her/his published report on that grievance. It is important to ensuring the just handling of a grievance and to establishing confidence and trust in the disputes procedure that those involved have an opportunity to answer any concerns that may have been expressed about their conduct and that, other than in exceptional circumstances, all the evidence material to the Independent Reviewer's decision on a case is capable of being published along with her or his decision.

Consideration by the Independent Reviewer of a Grievance

- 19) The process for consideration of grievances by the Independent Reviewer is set out in Regulations 16-21. In practice it is likely to fall into the following stages:
- a) Initial Consideration – including whether the grievance falls within the scope of the Regulations and whether the requirements of Regulations 9, 11, 12 and 14 have been met. During this stage the Independent Reviewer may seek clarification of various matters from the PCC concerned.
 - b) Preliminary Inquiries – of the office-holder(s) who is the subject of the grievance and of any other interested parties.
 - c) Further Consideration – in the light of the outcome of those inquiries, during which the Independent Reviewer may seek supplementary information and, if appropriate, may speak to the PCC and visit the parish concerned.
 - d) Preparation of a Report – during which the Independent Reviewer may share a draft of the report, or sections of it, with the parties with whom the Reviewer has been in touch, in particular to ensure the accuracy of the factual account of the evidence on which the Reviewer's decision will be based.
- 20) Where possible, the Independent Reviewer will try to resolve a grievance on the basis of her/his consideration of the relevant correspondence and papers submitted to the Reviewer, supplemented as necessary by telephone conversations or e-mail exchanges with the parties concerned. On occasion, however, it may be necessary for the

Independent Reviewer (or, exceptionally, a person acting on the Reviewer's behalf) to visit the parish whose PCC has instituted the grievance for the purpose of assessing the position at first hand.

The Independent Reviewer's Decision on a Grievance

- 21) In assessing a grievance, the key consideration will be whether the office-holder who is the subject of the grievance, the parish concerned and any other relevant parties have acted in accordance with the House of Bishops' Declaration. Crucial to the way in which the Independent Reviewer will assess this are the five guiding principles. The Independent Reviewer will also have in mind the three supporting concepts mentioned in the Declaration and referred to in paragraph 9 above.
- 22) The Independent Reviewer will have in mind too the following observation from paragraph 9 of the Report of the Steering Committee on the legislation (GS 1924):
"It is important to underline that a review process of this kind is about ensuring that the relevant provisions of the House's Declaration were followed. It is not for the Reviewer to substitute his or her judgement for decisions which it was properly for the bishop or other [office holder] to take. His or her role is to check process and fairness."
- 23) The Independent Reviewer's principal aim throughout will be to achieve a resolution of a grievance through ensuring that the terms of the House of Bishops' Declaration have been met. Consistent with Regulation 21, the Reviewer's concern will be to seek to promote a mutually acceptable working relationship between the parties to the grievance. This may involve the use of mediation². On occasion it may be necessary for the Independent Reviewer to pass judgement on the appropriateness within the context of the Declaration of an act or omission of one or more of the parties to a grievance. However, in the interests of the unity and mission of the Church, it is the (re)establishment of a mutually acceptable pastoral relationship - consistent with the arrangements instituted by the Synod and the House of Bishops and consistent also with the underlying theology and ecclesiology of the Church of England - which must be the primary aim.
- 24) Regulation 19 of the Regulations provides that the Independent Reviewer must complete the review of a grievance within two months of receiving the written notice of the grievance from the PCC. If the Reviewer cannot do so, he or she must explain why to the parties and complete the review as soon as possible thereafter. In order to achieve this, the Independent Reviewer is likely to set deadlines for the receipt of material the Reviewer requests during the inquiry. If there is unreasonable delay in meeting these deadlines by one or more of the parties to the grievance, the Reviewer may make reference to this in her/his report.

² The precise form that such mediation may take will depend on the circumstances of each case. Dioceses may, however, wish to give thought in advance to how mediation may best be made effective in their own particular context.

Consideration of a Concern about the Operation of the House of Bishops' Declaration

- 25) Regulation 27 of the House of Bishops' Regulations provides that:
“Any person may raise a concern, in writing, with the Independent Reviewer in relation to any aspect of the operation of the House of Bishops' Declaration. Any such concern may relate to more than one act or omission under the House of Bishops' Declaration and to more than one parish or diocese.”
- 26) This provision is cast in broad terms. It allows for “any person” to raise a concern relating to “any aspect” of the operation of the House of Bishops' Declaration. This may relate to one act or omission under the Declaration or to more than one. It may also relate to one or more parish or diocese.
- 27) In providing for the Independent Reviewer to consider such a concern, the Steering Committee on the legislation suggested that the threshold for intervention “*should be reasonably high*” (paragraph 75 of GS 1924). Consistent with that approach, Regulation 28 gives the Independent Reviewer a wide discretion as to whether or not to conduct an inquiry into a concern and how to go about doing so.
- 28) Anyone seeking to raise a concern will be expected to provide details of the precise nature of the concern raised and of the specific act(s) or omission(s) under the House of Bishops' Declaration which has given rise to it. General expressions of unease will not suffice. To be capable of consideration by the Independent Reviewer, an expression of concern, like a grievance, must be founded upon hard evidence. And as with a grievance, that evidence must be capable of being shared with the other parties concerned.
- 29) Apart from saying that the Independent Reviewer may undertake an inquiry into the subject matter of a concern or concerns (paragraph 28), the Regulations say little in detail about how such an inquiry should be conducted. As with a grievance, the Independent Reviewer will have regard not only to the five principles but to the other well-trying principles of natural justice in pursuing his inquiries. The stages through which an inquiry will pass are likely to be similar in broad terms to those in respect of the handling of a grievance (see paragraph 19 above), with this distinction: that because of the breadth of the discretion given to the Independent Reviewer under Regulation 28, the Reviewer is likely in the initial stages to focus significantly on the question whether or not to exercise the discretion to investigate.

Review and Assessment of the Outcome of Cases

- 30) Having issued a report, the Independent Reviewer will require the parties to a grievance or an expression of concern to report the action taken in response to any finding or recommendation the Reviewer may make when issuing a decision on that grievance or concern.
- 31) For the purpose of preparing an Annual Report to the Archbishops, the Independent Reviewer will maintain a record of the number of grievances and expressions of concern received and of their outcome, together with such other statistical information on the operation of both the House of Bishops' Declaration and the Regulations as seems relevant to the discharge of the Reviewer's responsibilities.

Publication of Information about Grievances or Concerns

- 32) The Independent Reviewer will confirm in response to inquiries if she/he has received notice of a grievance or concern and whether or not he or she has begun a review of it. However the Reviewer will not at any time discuss the details of a review or inquiry, or disclose correspondence received in the course of a review or inquiry, until that review or inquiry has been completed.
- 33) In accordance with Regulation 26, the Independent Reviewer will publish a report setting out the Reviewer's decision on a review and the evidence which underpins it unless the Reviewer considers that there are good reasons for not doing so.

The Independent Reviewer's Annual Report

- 34) The Independent Reviewer will also summarise in the Reviewer's Annual Report to the Archbishops the outcome of the cases considered in the year covered by the report. The report will include the information required by Regulation 31, viz. –
- a) grievances with which the Independent Reviewer has declined to deal;
 - b) grievances in respect of which the Independent Reviewer has carried out reviews;
 - c) decisions (including recommendations) made by the Reviewer following such reviews;
 - d) the extent to which any recommendations made have been acted upon;
 - e) concerns (within the meaning of Regulation 27) received by the Independent Reviewer about the operation of the House of Bishops' Declaration; and
 - f) inquiries undertaken by the Independent Reviewer as a result of the expression of such concerns.
- 35) Under Regulation 32, arrangements for the publication of this report are for the Archbishops, with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod, to determine.

Conclusion

- 36) These notes will be reviewed from time to time by the Independent Reviewer. If anyone has any comments on them which they would like to draw to the attention of the Independent Reviewer, or any questions about their application, they should contact the Reviewer at:

Church House
Great Smith Street
London
SW1P 3AZ

December 2015

GENERAL SYNOD

**THE DECLARATION ON THE MINISTRY OF BISHOPS AND PRIESTS
(RESOLUTION OF DISPUTES PROCEDURE) REGULATIONS 2014
Regulations made by the House of Bishops under Canon C 29**

1. The House of Bishops makes these Regulations under Canon C 29.

Appointment of Independent Reviewer

2. The archbishops must appoint a person to act as Independent Reviewer for the purposes of these Regulations. The appointment must be made with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod.
3. The archbishops may also appoint one or more persons to act as Deputy Independent Reviewers for the purposes of these Regulations, with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod. If any Deputy Independent Reviewer is appointed, he or she will perform such of the Independent Reviewer's functions as the Independent Reviewer may from time to time determine. Any Deputy Independent Reviewer will also undertake the functions of the Independent Reviewer in the event that he or she is unable to do so for any reason.
4. The Independent Reviewer, and any Deputy Independent Reviewer, shall hold office for such period as the archbishops may determine, with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod.
5. The Independent Reviewer, and any Deputy Independent Reviewer, may be removed from office by the archbishops, with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod, only on grounds of incapacity, misconduct or other good cause.
6. Subject to Regulation 5, the terms on which the Independent Reviewer, and any Deputy Independent Reviewer, will hold office shall be determined by the archbishops.

Exercise of the Independent Reviewer's functions

7. In exercising his or her functions, the Independent Reviewer must:
 - (a) act impartially and fairly; and
 - (b) have regard to the 'five guiding principles' referred to in paragraph 5 of the House of Bishops' Declaration.

Scope of the grievance procedure

8. A grievance may be brought in relation to any office holder in respect of:
 - (a) any action taken by the office holder under paragraphs 16 to 29 inclusive or 33 of the House of Bishops' Declaration; and
 - (b) any failure on the part of the office holder to act in accordance with paragraphs 16 to 29 inclusive or 33 of the House of Bishops' Declaration.

Bringing a grievance

9. Before bringing a grievance a PCC must give the office holder in respect of whom it wishes to bring a grievance a reasonable opportunity to address the grievance.
10. A PCC may bring a grievance by giving written notice of its desire to do so to the Independent Reviewer.
11. The bringing of a grievance must be authorised by a resolution of the PCC passed either:
 - (a) by a majority of those present at a meeting at which at least two-thirds of the members of the PCC who are entitled to attend are present; or
 - (b) by a majority of all the members of the PCC.
12. A PCC may normally bring a grievance only if it does so within three months of the action or omission in question.
13. In exceptional circumstances, and if he or she is satisfied that there is good reason to do so, the Independent Reviewer may allow a PCC to bring a grievance where the action or omission in question took place more than three months previously.
14. The notice given by the PCC of its desire to bring a grievance must specify:
 - (a) the office holder in respect of whom the grievance is brought;
 - (b) the nature of the act or omission in question; and
 - (c) the nature of the PCC's grievance in relation to that act or omission.
15. The PCC must send a copy of its notice to:
 - (a) the diocesan bishop; and
 - (b) (if different) the office holder in respect of whom the grievance is brought.

Consideration of grievances by the Independent Reviewer

16. The Independent Reviewer may decline to deal with a grievance if, in his or her opinion:
 - (a) it does not fall within Regulation 8;
 - (b) it is vexatious or malicious; or
 - (c) there has been undue delay in bringing it.

17. If the Independent Reviewer declines to deal with a grievance, he or she must provide the parties and the diocesan bishop (if he or she is not one of the parties) with a written explanation of the reasons for that decision.
18. Once the Independent Reviewer has accepted a grievance he or she must carry out a review to decide whether the grievance is justified, partly justified or unjustified.
19. Subject to Regulation 21, the Independent Reviewer must either complete his or her review within two months of receiving the written notice from the PCC or, if he or she is unable to do so, must give the parties reasons for his or her inability to do so and complete the review as soon as possible thereafter.
20. The process for a review will be as follows:
 - (a) The Independent Reviewer must decide what further information (if any) he or she needs in order to be able to conduct the review. Subject to the requirements of the general law, the Independent Reviewer may require the parties, within such reasonable period as he or she may specify, to:
 - (i) provide such information, documents or other materials; and
 - (ii) answer such questionsas he or she thinks fit.
 - (b) Subject to the requirements of the general law, the Independent Reviewer may disclose to all the parties any information, documents or other materials which have been disclosed by any of them.
 - (c) The Independent Reviewer may at any time give the parties the opportunity to comment on representations received.
 - (d) The Independent Reviewer may hold an oral hearing.
 - (e) The Independent Reviewer may appoint one or more experts to advise him or her.
21. The Independent Reviewer may at any time seek to achieve a settlement of the grievance which is acceptable to the parties, by some means other than the completion of the review (whether through a process of mediation conducted by some other person or persons or otherwise).

Independent Reviewer's decision on a review

22. On the conclusion of his or her review the Independent Reviewer will issue a decision. The decision must be in writing and give the reasons for it.
23. Before issuing a decision, the Independent Reviewer may send a draft of it to the parties for the purpose of enabling them to identify any errors of fact or making representations as to the practicality of any recommendation the Independent Reviewer proposes to make.
24. If the Independent Reviewer considers that the grievance is justified or partly justified, he or she may include in the decision recommendations for addressing the grievance.
25. The Independent Reviewer must send a copy of his or her decision to each of the parties and to the diocesan bishop (if he or she is not one of them).

26. The Independent Reviewer must publish his or her decision on a review (including any recommendations he or she has made) unless he or she considers that there are good reasons for not doing so. Decisions may be published in an anonymised form if the Independent Reviewer considers that to be in the interests of the parties or any other person.

Raising of concerns about the operation of the House of Bishops' declaration

27. Any person may raise a concern, in writing, with the Independent Reviewer in relation to any aspect of the operation of the House of Bishops' Declaration. Any such concern may relate to more than one act or omission under the House of Bishops' Declaration and to more than one parish or diocese.

Undertaking of inquiries

28. Following the raising of one or more concerns under Regulation 27, the Independent Reviewer may undertake an inquiry into the subject matter of such concern or concerns.

29. When conducting an inquiry under Regulation 28, the Independent Reviewer may:

- (a) require any office holder, subject to the requirements of the general law and within such reasonable period as he or she may specify, to:
 - (i) provide such information, documents or other materials; and
 - (ii) answer such questions as the Independent Reviewer thinks fit; and
- (b) appoint one or more experts to advise him or her.

Independent Reviewer's annual report

30. Following the end of each calendar year the Independent Reviewer must provide an annual report to the archbishops on the exercise of his or her functions during that year.

31. The annual report must contain information about:

- (a) grievances with which the Independent Reviewer has declined to deal;
- (b) grievances in respect of which the Independent Reviewer has carried out reviews;
- (c) decisions (including recommendations) made by him or her following such reviews;
- (d) the extent to which any recommendations made by him or her have been acted upon;
- (e) concerns received by the Independent Reviewer about the operation of the House of Bishops' Declaration; and
- (f) inquiries undertaken by the Independent Reviewer as a result of the expression of such concerns.

32. The annual report must be published, in such manner as the archbishops, with the concurrence of the Chairs of the Houses of Clergy and Laity of the General Synod, may determine.

Interpretation

33. In these Regulations:

- (a) 'the archbishops' means the Archbishops of Canterbury and York;
- (b) 'the diocesan bishop' means the bishop of the relevant diocese;
- (c) 'the House of Bishops' Declaration' means the House of Bishops Declaration on the Ministry of Bishops and Priests made by the House of Bishops on 19th May 2014, as from time to time amended;
- (d) 'the Independent Reviewer' means the person appointed by the Archbishops of Canterbury and York under Regulation 2 to act as the Independent Reviewer;
- (e) 'office holder' means any archbishop, bishop, archdeacon, rural dean or minister having the cure of souls;
- (f) 'PCC' means:
 - (i) the parochial church council of a parish (other than a parish of which a cathedral is the parish church);
 - (ii) the guild church council of a guild church; and
 - (iii) the governing body for any non-parochial place; and
- (g) 'the parties' means (i) the PCC bringing the grievance and (ii) any office holder in respect of whom it is brought.

34. Functions conferred upon the archbishops under these Regulations must be performed by them jointly, save that:

- (a) in the event of one of the archbishops being incapacitated through illness; or
- (b) during a vacancy in one of the sees

the functions may be performed by the other of the archbishops.

These Regulations were made by the House on 17th November 2014.