

From: The Reverend Canon David Smith, BSc MSc, CEng, MRAeS, DipTh

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9th August 2015

Sir Philip Mawer,
c/o Jonathan Neil-Smith
The Office of the Independent Reviewer
Central Secretariat
Church House
Great Smith Street
London, SW1P 3AZ

Dear Sir Philip

I write to express a concern under the terms of Paragraph 27 of the Declaration on the Ministry of Bishops and Priests (Resolution of Disputes Procedure) Regulations 2014, regarding the status of Provincial Episcopal Visitors (PEV).

My specific concern is that there is no adequate publicised source of authority for the work of the PEVs, and thus no basis for a clear understanding of their prerogatives and limitations by people in the wider church with whom they might interact.

The Bishop of Rochester, in introducing GS 1934 to General Synod on 11 Feb 2014, stated:

It is interesting to note that SO 40, which deals with Acts of Synod, comes in that part of the Standing Orders headed 'Other procedures and customs'. Acts of Synod are not forms of legislation and therefore cannot create rights or obligations. They are described in the Standing Orders as a means of giving formal publication to any instrument or resolution of the Synod 'as the embodiment of the will or opinion of the Church of England as expressed by the whole body of the Synod'. They are therefore weighty and significant statements, but perhaps sometimes they are accorded more weight than might be appropriate for the slightly unsatisfactory reason that 'Act of Synod' sounds rather like 'Act of Parliament', when in fact the synodical equivalent of an Act of Parliament is, of course, a Measure.

The Bishop of Rochester went on to explain that:

There are just three points of detail that I want to mention; they are all alluded to in paragraph 23 of the House of Bishops' report (GS 1932). The first is that the sees of Beverley, Ebbsfleet and Richborough exist by virtue of the Suffragan Bishops Act 1988, not because of the Act of Synod. They will therefore continue in existence after the Act of Synod is rescinded. If still in office at that point, the current holders of those posts will remain in office, and if they leave at some later date the relevant Archbishop would then be able to appoint a successor.

Secondly, the title 'Provincial Episcopal Visitor' and the description of the role are currently set out in the 1993 Act of Synod; and of course when the Act is rescinded, if it is, that will no longer be the case. Nevertheless, the House of Bishops sees no reason why the present titles, roles and indeed financial arrangements need to be changed simply because the Act of Synod disappears. As I stated earlier, the sees remain in any case.

The Forward in Faith website currently states that, subsequent to the legislative changes in November 2014, the PEVs will remain:

The Sees of Beverley, Ebbsfleet and Richborough are not mentioned by name in the Act of Synod, but they are named in the Declaration, which notes that they remain in existence. Though the role of Provincial Episcopal Visitor is not mentioned in the Declaration, the House of Bishops has stated:

'The title and role of the "provincial episcopal visitor" are currently set out in the 1993 Act of Synod. There is no reason why these – or the financial arrangements for the three sees – should change when the 1993 Act of Synod is rescinded, given the House's wish for there to be continuity. As noted in paragraph 30 of the Declaration, the three sees and their occupants remain an integral part of the new dispensation.'
(GS 1932, para. 23)

The Bishops of Beverley, Ebbsfleet and Richborough continue with their previous roles and ministries.

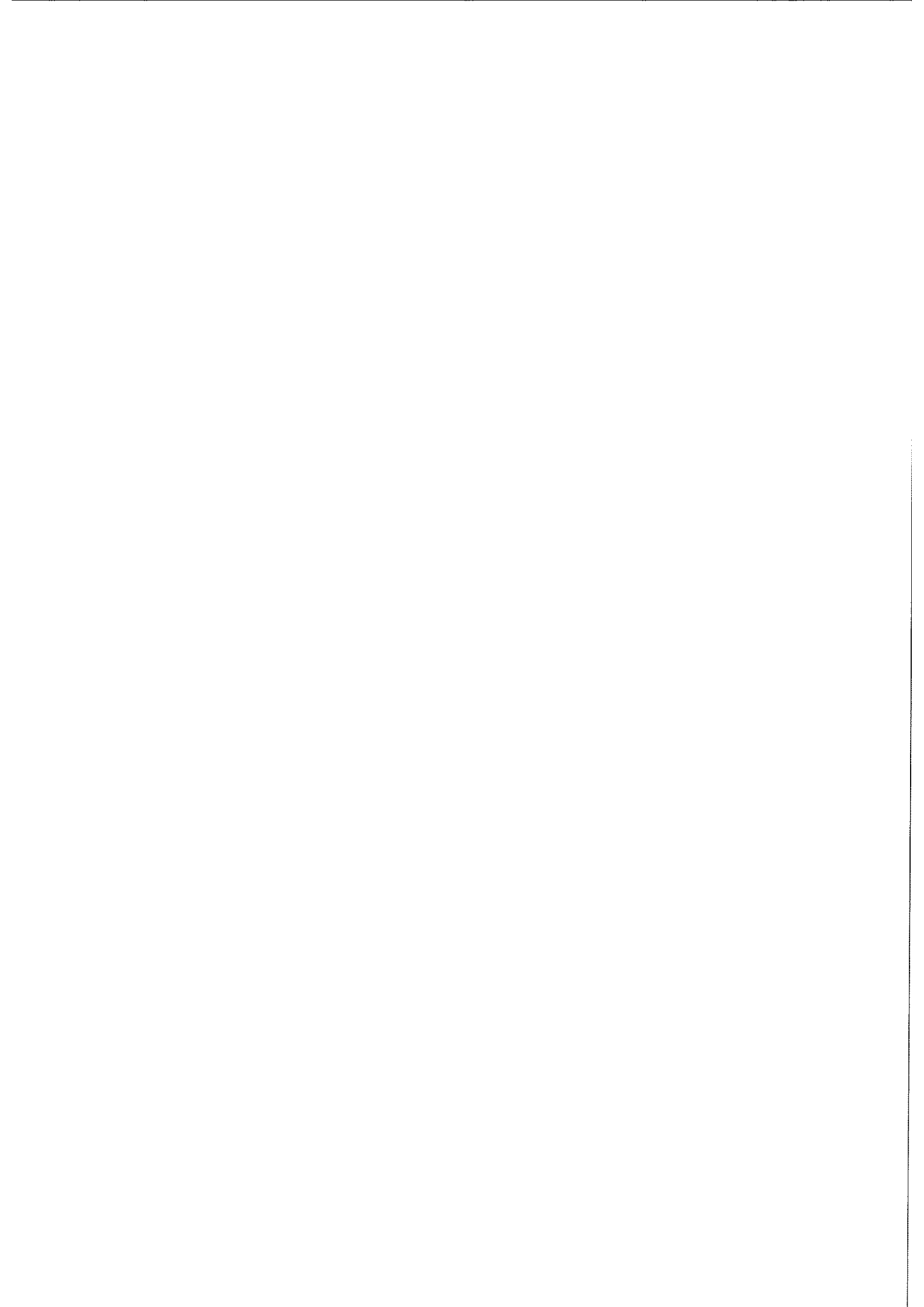
This final sentence from the Forward in Faith website may or may not be completely true but GS1932 cannot, I suggest, be cited as an authority supporting it. As was made clear in General Synod, these three suffragan bishops "*exist by virtue of the Suffragan Bishops Act 1988, not because of the Act of Synod.*" Their rights, privileges, obligations, and limitations, when acting as suffragan bishops, are clearly set out in the canons for all to see, as with any other ecclesiastical office holder. Furthermore, their rights and limitations, when acting outside their own diocese, are also clearly stated, and particularly in relation to any permission or licence required to carry out Episcopal, ministerial, or pastoral duties in another diocese. That is not in question, and is of course true of any bishop. On the other hand, the role of PEV is not covered either by canon, or by a church measure. Instead, the Episcopal Act of Synod required the archbishops to commission these three bishops for their PEV roles, and it is my understanding that it is this commissioning document (of whatever form it takes), and this alone, which provides the authority for these three suffragan bishops to act in their PEV role.

There is a further dimension of note in that, subsequent to the original Episcopal Act of Synod, the bishops of Beverley, Richborough, and Ebbsfleet have also become members of The Society, the ecclesial expression of Forward in Faith at the Episcopal level. Because we have moved into a significantly altered regime following the legislative changes in November 2014, I suggest that it is now even more important to be clear, when interacting with the three individuals concerned, whether they are acting as a bishop, as a PEV, or as a representative of The Society (or indeed any combination of the above). As a minimum, I suggest that it would be helpful for their terms of reference or commissioning document as PEV, (as authorised by the respective archbishop), to be published, so that their mandate is clearly and publicly understood. I have no sight of the current documents, but it may be that such documents would benefit also from being updated to reflect explicitly how the PEVs will contribute to the operation of the House of Bishops Declaration in the context of the five guiding principles, and the associated need for simplicity, reciprocity and mutuality. In particular, if their detailed responsibilities and limitations are more clearly and publicly understood, it will help avoid any offence being given or taken as a result of their PEV activities, as encouraged by paragraph 10 of the House of Bishops Declaration.

In summary, I believe that neither the Episcopal Act of Synod nor GS 1932 provide any authority for activities undertaken by the bishops of Beverley, Richborough, and Ebbsfleet beyond that which is authorised by their being suffragan bishops or by their having licence from other diocesan bishops. If such additional PEV activities are to continue, I suggest it is essential for all concerned that the mandate and authority for such additional activity be published.

Yours faithfully

David Smith



Independent Reviewer
Sir Philip Mawer

25 August 2015

The Revd Canon David Smith
The Rectory
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Dear Canon Smith,

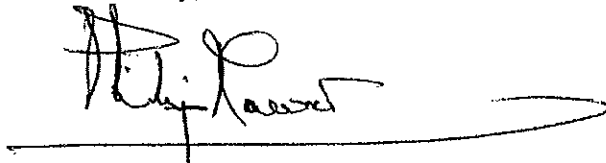
Provincial Episcopal Visitors (PEVs)

In your letter to me of 9 August, you expressed concern that there is “no adequate publicised source of authority for the work of the PEVs” - that is the Bishops of Beverley, Ebbsfleet and Richborough - following the House of Bishops’ Declaration on the Ministry of Bishops and Priests. You subsequently confirmed my understanding that your letter was not intended to express concern about specific acts or omissions by any of the three bishops concerned but was to be seen as a request for clarification of the legal and canonical status of the three bishops following the House of Bishops’ Declaration.

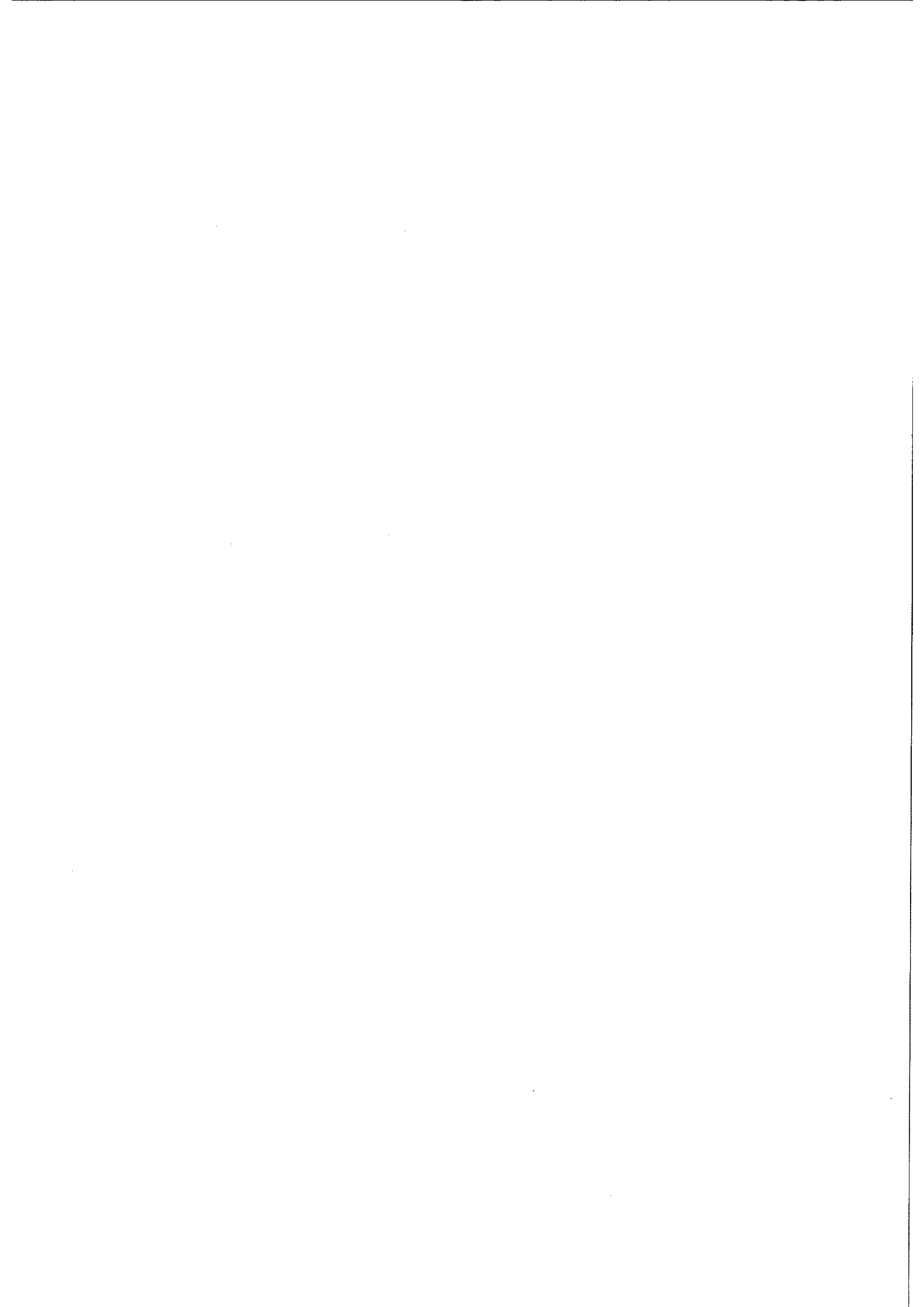
I am accordingly sending you with this letter a note in which, on the basis of careful and authoritative legal advice, I set out my understanding of the position. I do not intend to make the note more generally available immediately but, in due course, may append it as I hope a useful piece of clarification to my first annual report, which I expect to be published next year.

More immediately, I am copying this letter and yours of 9 August to the three bishops concerned as well as to your own diocesan bishop. Since it is based on published texts, I do not think anything it says will come as a surprise to the bishops concerned but no doubt if they wish to send me any comment, they will do so. I am also copying it to the Bishop of Maidstone designate, as it is of potential relevance to him also.

Yours sincerely,



Sir Philip Mawer



House of Bishops' Declaration on the Ministry of Bishops and Priests

Note on the Legal and Canonical Status of the Provincial Episcopal Visitors

- 1) This note responds to a request to clarify the legal and canonical status of the Provincial Episcopal Visitors (PEVs) – that is the holders of the sees of Beverley, Ebbsfleet and Richborough – following the House of Bishops' Declaration on the Ministry of Bishops and Priests. By extension, it also describes the status of the Bishop of Maidstone once he has been consecrated and taken up office.¹
- 2) The note is confined to setting out the legal and canonical basis of the bishops' ministry. It does not attempt to describe the nature of the ministry the bishops have in practice undertaken in any particular context.

The Status of the Sees

- 3) The sees of Beverley, Ebbsfleet and Richborough, like that of Maidstone, exist by virtue of the Suffragan Bishops Act 1888. The legal mechanism by which these sees were brought into being was under that Act rather than the Priests (Ordination of Women) Measure 1993 or the Episcopal Ministry Act of Synod 1993. It follows that the sees continue in existence in spite of the repeal of the Measure and the rescinding of the Act of Synod.
- 4) Decisions about appointments to these sees are made by the relevant archbishop since they are suffragan sees within the diocese of Canterbury or, in the case of Beverley, York. The responsibility for drawing up the role description rests with the archbishop of the province and the Dioceses Commission now has the same role in scrutinising any proposal for filling a vacant see as it has for all other suffragan sees.
- 5) The occupants of these sees are members of the College of Bishops of the Church of England. They also have a right to attend and speak (but not vote) at meetings of the House of Bishops, as do the eight elected female regional representatives who have attended meetings of the House since 2013.
- 6) In paragraph 30 of the House of Bishops' Declaration, the House affirmed the importance of there continuing to be consecrations of bishops which would enable appropriate ministry to be provided – consistent with the terms of the Declaration – to parishes which have passed (or are to be treated as having passed) the resolution under paragraph 20 of the Declaration.
- 7) Paragraph 30 of the Declaration continues:

¹ At its meeting in December 2014 the Dioceses Commission agreed that the see of Maidstone – which had been vacant since 2009 - could be filled. Part of the rationale was to provide a member of the College of Bishops who held a conservative evangelical position on headship and whom diocesan bishops could, as appropriate, invite to exercise episcopal ministry following a resolution passed by a PCC under the House of Bishops' Declaration.

"The fact that the sees of Ebbsfleet and Richborough in the diocese of Canterbury and Beverley in the diocese of York remain in existence will provide one of a range of means by which the Archbishops will ensure that a suitable supply of bishops continues where it would not be secured in other ways."

The Source of the PEVs' Canonical Authority under the 1993 Act of Synod

- 8) The Episcopal Ministry Act of Synod 1993 provided for three types of arrangements for episcopal ministry carried out under its provisions - diocesan, regional and provincial. The PEVs were the means by which the last of these types of arrangements were made, the PEVs being *"commissioned by the archbishop of the province to carry out, or cause to be carried out, for any parish in the province such episcopal duties ... as the diocesan bishop concerned may request"*. But the source of a PEV's legal authority within any diocese was not the commissioning by the archbishop but the canonical authority conferred subsequently by the relevant diocesan bishop for the purposes of Canon C 18.3 (which provides that a diocesan bishop's jurisdiction as Ordinary *"is exercised by the bishop himself, or by a Vicar-General, official, or other commissary, to whom authority in that behalf shall have been formally committed by the bishop concerned"*).
- 9) This latter principle – that the source of a PEV's legal authority within any diocese is conferred by the relevant diocesan bishop for the purposes of Canon C 18.3 – is reflected in the variety of the provincial arrangements which existed prior to the rescinding of the Act of Synod and have continued to exist following the Declaration. In the Province of York, the Bishop of Beverley is an assistant bishop in every diocese, other than Blackburn. Arrangements are more varied in the Province of Canterbury, where the Bishops of Ebbsfleet and Richborough are assistant bishops in a number of dioceses but have the equivalent of a permission to officiate in others.²

The Source of the Bishops' Canonical Authority under the House of Bishops' Declaration

- 10) Following the rescinding of the Act of Synod, the House of Bishops' Declaration has confirmed the fundamental principles that (a) the selection of the bishop(s) who will provide episcopal ministry in accordance with the Declaration within a particular diocese is a matter for the relevant diocesan bishop and (b) the source of the three bishops' legal authority – or indeed of any other bishop's legal authority – in providing episcopal ministry in accordance with the Declaration within a particular diocese is the canonical authority conferred on them by the relevant diocesan bishop.
- 11) The Declaration provides that where a parish passes (or, under the transitional arrangements provided for in the Declaration, is to be treated as having passed) a resolution under paragraph 20, that resolution should be sent to the diocesan bishop (paragraph 20 of the Declaration). Before *"clergy are appointed to the parish or a bishop chosen by the diocesan bishop to provide oversight"* (emphasis added), there should be consultation between the bishop and the parish (paragraph 22).

² It is also envisaged that the Bishop of Maidstone would be an assistant bishop in a number of dioceses in both provinces.

12) Paragraph 26 of the Declaration states:

"The choice of a bishop to undertake ministry in respect of a parish which has passed a resolution is for the relevant diocesan bishop to make, again with a view to avoiding conflict with the theological conviction on this issue underlying its [the parish's] resolution. In all cases the choice should be made from among the male bishops who are members of the House of Bishops of the diocesan synod of that or another diocese of the Church of England."

13) Paragraphs 27 and 28 of the Declaration emphasise:

- a) The desirability of achieving, so far as is reasonably practicable, parity of treatment between parishes which pass the resolution under paragraph 20 in one part of the country and those in another.
- b) The diocesan bishop's obligation to seek to ensure that pastoral and sacramental ministry is provided in accordance with the guiding principles set out in paragraph 5 of the Declaration.
- c) The need for the diocesan bishop and the bishop invited to minister to the parish to explore how they can best cooperate in a variety of ways to contribute to its welfare, resourcing and mission and in its relationship with the diocese.

14) Paragraph 29 again underlines the key role of the diocesan bishop when it says:

"The precise extent of the ministry entrusted to the bishop is for the diocesan to determine and is likely, for practical reasons to vary according to the pattern of episcopal ministry in that diocese and the extent of the bishop's other commitments. But the expectation is that there will be many similarities with the range of responsibilities carried by any suffragan bishop within a diocese."

It is also confirmed by paragraphs 14-17 of the Guidance Note issued by the House on the Declaration (GS Misc 1077).

15) Paragraph 30 of the Declaration – the key part of which is quoted in paragraph 5 of this note – then follows. The fact that the sees of Beverley, Ebbsfleet and Richborough continue to be seen as a valuable part of the range of possible episcopal provision available to diocesan bishops when making arrangements for parishes which have passed a resolution is confirmed by that paragraph and was also confirmed by the House of Bishops in paragraph 23 of GS 1932, in which the House stated:

"The title and role of the 'provincial episcopal visitor' are currently set out in the 1993 Act of Synod. There is no reason why these- or the financial arrangements for the three sees- should change when the 1993 Act of Synod is rescinded, given the House's wish for there to be continuity. As noted in paragraph 30 of the Declaration the three sees and their occupants remain an integral part of the new dispensation."

Conclusion

16) Drawing these provisions together, the following principles emerge as forming the basis of the legal and canonical status of the holders of these suffragan sees under the House of Bishops' Declaration:

- a) The legal mechanism by which the suffragan sees of Beverley, Ebbsfleet and Richborough were brought into being was under the Suffragan Bishops Act rather than by the Episcopal

Ministry Act of Synod 1993. The sees continue in being in spite of the rescinding of the Act of Synod. Decisions about appointments to them and about the role description are for the relevant archbishop. The Dioceses Commission also has to be consulted before vacancies are filled, as with all suffragan sees

- b) The occupants of the sees and the forthcoming occupant of the see of Maidstone are members of the College of Bishops of the Church of England.
 - c) As with any other bishop, the precise legal authority they have within any diocese is a consequence of the authority granted them by the relevant diocesan bishop.
 - d) Where a PCC passes (or is to be treated as having passed) a resolution under paragraph 20 of the House of Bishops' Declaration, it is for the relevant diocesan bishop to decide, after consultation with the parish concerned, how episcopal ministry in accordance with the five guiding principles in the Declaration is to be provided to the parish and who is to provide it.
 - e) The Bishops of Beverley, Ebbsfleet and Richborough are a valued part of the range of provision available to a diocesan when considering how and by whom such ministry is to be provided. The Bishop of Maidstone will further increase the options available to diocesans.
- 17) It follows from this analysis that the question as to the precise scope of the legal authority enjoyed by the Bishops of Beverley, Ebbsfleet, Richborough or Maidstone or any other bishop who is exercising episcopal ministry in a particular diocese under the House of Bishops' Declaration is a question properly addressed in the first instance to the diocesan bishop concerned.

25 August 2015