

**APPEAL BY MRS APRIL ALEXANDER IN RESPECT OF THE
ELECTION OF MISS JANE PATTERSON AS A MEMBER OF THE
CROWN NOMINATIONS COMMISSION BY THE HOUSE OF
LAITY OF THE GENERAL SYNOD**

Constitution of the Appeal Panel:

Mrs Julie Dziegiel [Oxford]

Mr Martin Kingston QC [Gloucester]

Canon Geoffrey Tattersall QC [Manchester] [Chair]

DECISION

delivered on 6 April 2018

1. This is the decision of the appeal panel appointed to determine the appeal of Mrs April Alexander ["Mrs Alexander"] a member of General Synod representing the Southwark Diocese, in respect of the election of Miss Jane Patterson ["Miss Patterson"], a member of the General Synod representing the Sheffield Diocese, to the Crown Nominations Commission of the General Synod ["the CNC"].

2. At the conclusion of the hearing on 26 March 2018 we reserved our decision and undertook to give our reasoned decision in due course. We now do so and direct that it be published on the General Synod website.

Introduction

3. Standing Order 136 of the Standing Orders of the General Synod ["the Standing Orders"] provides that the functions of the CNC are:

3.1. to consider any vacancy in a diocesan bishopric or either archbishopric and to consider candidates for appointment;

- 3.2. to agree upon the names of two candidates for submission to the Prime Minister, with the names being given in the order decided by the CNC; and
- 3.3. to report to the General Synod from time to time as it deems expedient on matters of general concern within its area of responsibility.

4. As to paragraph 3.2. above originally, following the adoption of the Standing Order, both names were submitted to the Prime Minister but by convention it was the first name that was commended to her Majesty the Queen, albeit that the Prime Minister could recommend either name to Her Majesty. However, the current practice is that only one name is submitted to the Prime Minister by the appropriate Archbishop on behalf of the CNC, with the other kept in reserve in case the preferred choice is unwilling or unable to accept the appointment: see the Archbishops' Report to General Synod dated 21 January 2008. Accordingly the current position is that, notwithstanding the provisions of the Standing Orders, only one name is now submitted to the Prime Minister so that within the framework of Crown Nominations the Church of England is effectively responsible for nominating its diocesan bishops which are formally recommended by the Prime Minister for appointment by Her Majesty: see para 1.1 of *Discerning in Obedience* [GS Misc 1171].

5. In the case of a vacancy in a diocesan bishopric, Standing Order 137 provides that the voting members of the CNC are the Archbishops of Canterbury and York, three members elected by each of the Houses of Clergy and Laity of the General Synod and six members elected by and from the Vacancy in See Committee of that diocese.

6. In June 2017 Dr Jacqui Philips, the Clerk to the General Synod ["the Clerk"], as Presiding Officer, by E(17)4N (reissued) notified all members of the House of Laity of the holding of an election to the CNC, invited nominations for such election and indicated that the term of office for new members of the CNC would be for a fixed term of 5 years beginning on 1 September 2017. Nominations were required to be submitted by 10 July 2017 and the Clerk stated that:

"For the assistance of voters, candidates are *invited* to submit a statement of no more than 100 words for circulation with the voting papers. Candidates are *invited* to include in their statements particulars of present

office and any relevant qualifications and past experience.” [emphasis added]

7. 22 candidates were nominated for election to the CNC and each candidate submitted a statement in support of their nomination. Miss Patterson was one such candidate. Her statement in support of her nomination stated:

“I work as a NHS consultant surgeon and I am involved in medical education. I am a member of a growing church in suburban Sheffield and am a churchwarden. On General Synod since 2010, I have served on the governing body of Cranmer Hall. Since 2012 on the CNC, the potential and challenges of the Church nationally and [t]he nature of the episcopacy have become clear. I am committed to discerning, with others, bishops who will uphold our historic faith, commend it in the public square and lead us all in the mission that grows the Church, as the Good News is shared with the nation.”

8. By email sent to all members of General Synod on 28 July 2017, members were informed that three members of the House of Laity, including Miss Patterson, had been elected to the CNC.

9. We note that at the July 2017 Group of General Synod Sessions, and before the result of the election had been announced:

9.1. Mrs Alexander had asked the Chair of the CNC the following question: “What measures can be put in place in the forthcoming CNC elections to ensure that those standing for election cannot become part of the Church of England process for nominating Diocesan Bishops while simultaneously being actively engaged in a leadership role with congregations outside the Church of England which exist without the permission of persons so nominated and outside disciplines of diocesan life by looking to bishops from other Provinces for Episcopal oversight.”

9.2. The Archbishop of York, as Vice-Chair of the CNC, had answered such question thus: “The eligibility for membership of the ... Commission is set out in the Standing Orders, and information about the elections has been provided to Synod members. Members are encouraged to read the candidates` election statements as they prayerfully consider how to cast their votes in the forthcoming election.”

Mrs Alexander`s correspondence with Dr Philips

10. By her letter dated 10 August 2017 addressed to the Clerk, Mrs Alexander indicated that she wished to appeal the election of Miss Patterson to the CNC. Until 31 August 2017 Mrs Alexander had been an elected member of the CNC but had been unable to seek re-election because immediately prior to such election she had already served two consecutive five-year terms. Between 2012 and 2017 both Mrs Alexander and Miss Patterson had both been elected members of the CNC.

11. Mrs Alexander`s ground of appeal was that Miss Patterson “has conflicts of interest which she did not declare and of which many of the electors might well have been unaware.” Subsequently in such letter she stated:

“The conflict arises from [Miss Patterson] being the chair of trustees of two congregations which were set up by her and others contrary to the wishes of the then Diocesan Bishop and the sponsoring of an ordination in Kenya to a Kenyan Diocese of the pastor for the second of these, without the knowledge of the Bishops in the Diocese, in 2013. This pastor is still pursuing an ordained ministry in the Diocese without the Diocesan`s permission. [Ms Patterson`s] duty of loyalty to these non CofE congregations, to the associate and sponsoring national organisations to which she belongs and to this pastor could well impinge upon her decision making in the CNC. Trust law requires that a trustee (not to mention a chair of trustees) is obliged to act in the interests of the organisation in question at all times.”

12. It may be observed that at that stage Mrs Alexander`s complaint was that Miss Patterson had failed to disclose her alleged conflict of interest. She did not then contend that at all material times Miss Patterson was not eligible for election to the CNC or that she was disqualified from standing for election to the CNC.

13. Mrs Alexander`s letter went on to identify Miss Patterson as the chair of the trustees of Christ Church Walkley [‘CCW`] which she stated was “a congregation outside the Church of England and which was set up without the permission of the then Diocesan Bishop ... and has not since sought to become part of the Diocese”, that “the congregation was sponsored by Christ Church Fullwood which is a CofE parish church” and that at meetings of the CNC when both Mrs Alexander and Miss Patterson had been elected members, Miss Patterson had failed to declare such conflict of interest.

14. Mrs Alexander referred to the *General Synod Members Code of Conduct* [GS Misc 1162] which stated, inter alia, that:

14.1. “members who contribute to debates or other Synod business should declare any interest which could reveal a conflict of loyalty or which could otherwise affect other member`s ability to form a balanced judgement of their arguments”.

14.2. personal non-financial interests, including those which arise from membership of, or holding office in Church or other bodies (such as acting as a trustee or office-holder of any organisation whose affairs are likely to be affected by the decisions that the Synod takes).

15. We are bound to observe that such Code of Conduct expressly:

15.1. states that it is “a voluntary code, but all members of the General Synod and members of its committees and commissions are encouraged to make themselves aware of this Code and to make every effort to follow it”; and

15.2. recognises that there is no “legal power to enforce it nor any sanction against those who (whether intentionally or unintentionally) infringe it”.

16. Mrs Alexander`s letter had been preceded by earlier correspondence between her and the Clerk.

17. By her letter dated 24 July 2017 to the Clerk, Mrs Alexander had expressed a wish to make a formal complaint about the elections for the CNC. In an obvious reference to Miss Patterson, she stated that her complaint was that “one of the candidates for the CNC:

17.1. has not declared a conflict of interest which arises because she is actively involved as a trustee in an AMiE [Anglican Mission in England] congregation, sponsored by her own CofE parish, which exists outside the CofE and in contravention of the wishes of her own Diocesan (See Church Times 22 February 2013)

17.2. has been a prominent participant in activities which are against Canon Law by sponsoring a priest being ordained in another Province by a Bishop in that Province for service in her own Diocese.”

18. Such letter also referred to the question she had asked at the July 2017 group of sessions [see above] and the contents of her earlier letter. It also referred to the Archbishop of Canterbury` letter to the Primates of the Anglican Communion dated 1 June 2017 in which he referred to the resistance to cross border interventions and ordinations from the earliest years of the universal Church`s existence and that the 1988 Lambeth Conference resolution number 72 had reaffirmed the historical position of respect for diocesan boundaries and the authority of bishops within such boundaries and affirmed that it was deemed inappropriate behaviour for any bishop or priest of the Communion to exercise episcopal or pastoral authority within another diocese without first obtaining the permission and invitation of the ecclesial authority thereof.

19. We note that AMiE is a conservative evangelical organisation which in its own literature:

19.1. describes itself as: “a mission society that seeks to promote gospel growth in England by supporting Anglican churches and individuals that are within, on the edge, or outside the Church of England. AMiE has been authorised and supported by the Global Fellowship of Confessing Anglicans as an expression of authentic Anglicanism. ... AMiE affirms the Jerusalem Statement and Declaration and operates within the Fellowship of Confessing Anglicans UK & Ireland, the local expression of the Global FCA (or GAFCON), initially engaging with the English Provinces as a possible model for other Provinces to follow.”

19.2. “serves:

19.2.1. Anglicans within the structures of the Church of England whose mission is constrained by their bishop or diocese;

19.2.2. Anglicans within the structures of the Church of England in impaired communion with their bishop or diocese;

19.2.3. Anglicans outside the structures of the Church of England;

19.2.4. Anglicans within the structures of the Church of England who wish to express solidarity with those ... above.”

20. In her reply dated 26 July 2017 the Clerk had stated that, for the reasons she set out in some detail, she did not accept that there was any impropriety in the conduct of the election because Miss Patterson would *not* have been under any obligation to disclose the matters complained of and reliance of guidance produced by the Charity Commission on conflicts of interest could not assist Mrs Alexander, given that the General Synod was not a charity. In such circumstances the Clerk concluded that the matters relied upon by Mrs Alexander did not call the propriety of Miss Patterson's election into question.

21. So it was that Mrs Alexander's response, in her letter dated 10 August 2017 to the Clerk after the announcement of Miss Patterson's election, was that she wished to appeal against Miss Patterson's election to the CNC. The grounds of her appeal were as already set out and were essentially that Miss Patterson had "conflicts of interest which she did not declare and of which the electors might well have been unaware." Again Mrs Alexander's case was based on Miss Patterson's alleged failure to disclose her alleged conflict of interest.

22. It was in such circumstances that the members of this appeal panel were appointed to determine Mrs Alexander's appeal. Ordinarily we would have been appointed by the Chair and Vice-Chair of the House of Laity but since the Vice-Chair of the House was, pursuant to Standing Order 135(2), directly concerned in the appeal by reason of her having been a candidate in the election, the Standing Committee of the House appointed Dr Rachel Jepson to act in place of the Vice-Chair and in September 2017 the Chair and Dr Jepson nominated each of us as members of the appeal panel.

The relevant Standing Orders

23. Standing Order 135 deals with appeals "arising from a relevant election" but, apart from determining how the three members of the appeal panel are to be appointed, gives little guidance as to how an appeal is to be conducted save that Standing Order 135(6) requires the appeal panel to "give the parties an opportunity of appearing in person, or with the assistance of another person, while the appeal is under consideration."

24. Given that this appeal does not concern an appeal in respect of a casual vacancy, it is common ground that the relevant Standing Orders in relation to elections are Standing Orders 131, 132 and 133.

25. Standing Order 132 provides that in respect of a relevant election:

- 25.1. the Clerk must circulate to each member entitled to vote an invitation to nominate qualified candidates;
 - 25.2. a nomination must be supported by a proposer and a seconder, each of whom must be entitled to vote in the election;
 - 25.3. a nomination is valid only if the person being nominated confirms his or her willingness to stand;
 - 25.4. a nomination must contain the year of the candidate`s birth; and
 - 25.5. a nomination must be delivered to the Clerk within such period as the Clerk may appoint ... and the period appointed must not be less than 21 days.”
26. Standing Order 131 provides that a relevant election is, inter alia, an election in which one of its Houses constitutes the electorate. This was such an election.
27. Standing Order 133 provides that:
- 27.1. as soon as possible after the closure of nominations, voting papers containing a list of the nominated candidates, and each candidate`s date of birth, must be circulated to the electors;
 - 27.2. a voting paper, marked and signed, must be returned to the Clerk within such period as the Clerk may appoint ... and the period appointed must not be less than 14 days;
 - 27.3. a relevant election is to be conducted by the method of the single transferable vote ...;
 - 27.4. the Clerk must cause the votes to be counted ...; and
 - 27.5. the Clerk must declare the result; and a full return of the result and the result sheet must be sent to the candidates.

Preliminary matters

28. Mrs Alexander made it clear that she wished to appear in person but raised the issue as to whether the hearing would be in public and whether at the hearing she might be permitted to have an advisor *and* a supporter present.

29. In his email sent on 1 November 2017 Mr Stephen Slack, the Legal Advisor to the General Synod, on behalf of the appeal panel, indicated to both parties that, subject to any further submissions made, the appeal panel's preliminary view was that:

29.1. since there was no requirement that the hearing should be in public the hearing should be conducted in private although the determination of the appeal should be made public; and

29.2. at the hearing of the appeal each party was entitled to be accompanied by one other person.

30. Thereafter neither party sought to persuade the appeal panel to reach a contrary view and the appeal proceeded on the basis that it would be heard in private, although the determination of the appeal would be made public, and that each party would be entitled to be accompanied by one other person.

31. On 17 November 2017 Mr Slack notified the parties that the appeal panel had made directions for the hearing of the appeal that:

31.1. Mrs Alexander to serve a summary of her appeal by 15 December 2017;

31.2. Miss Patterson to serve a summary of her opposition to the appeal by 12 January 2017; and

31.3. the hearing of the appeal would take place on 22 January 2018.

32. Subsequently such directions were varied because Miss Patterson sought an extension of time to file her response to Mrs Alexander's summary and accordingly the appeal panel varied such directions so that:

32.1. the hearing on 22 January 2018 was vacated;

32.2. Miss Patterson to serve a summary of her opposition to the appeal by 31 January 2018;

- 32.3. Mrs Alexander to serve any response thereto by 14 February 2018;
- 32.4. any documentation relied upon by either party to be served by 14 February 2018; and
- 32.5. the hearing of the appeal to take place on 26 March 2018.

The respective positions of the parties

Mrs Alexander`s appeal

- 33. In the summary of her appeal Mrs Alexander asked the appeal panel to:
 - 33.1. “invalidate the election of Miss Patterson based upon her failure to disclose her positions as trustee of Christ Church Central, Sheffield [CCC] and Christ Church Walkley, Sheffield [CCW] or based upon her irreconcilable conflict of interest in these roles; alternatively
 - 33.2. declare Miss Patterson disqualified based upon this conflict of interest.”

34. This was the first occasion when Mrs Alexander had sought a declaration in respect of Miss Patterson`s disqualification. Indeed, this became the primary submission advanced by Mrs Alexander because it was contended that no disclosure by Miss Patterson of her position as trustee of CCC and CCW would have remedied the “irreconcilable conflict of interest” between those rules and membership of the CNC and that the only remedy was to declare that she was disqualified.

35. The fundamental submission made by Mrs Alexander is that *as a member of the CNC* Miss Patterson owed fiduciary duties to Her Majesty the Queen, as Supreme Governor of the Church of England with responsibility for appointing bishops, and to the government which makes recommendations to the monarch concerning the selection of bishops based upon CNC nominations. It is contended that her position as a trustee of CCC and CCW, churches who had set themselves outside the structure of the Church of England or support those which have done so, placed her in irreconcilable conflict with the performance of such fiduciary duties. In short it is said that Miss Patterson cannot participate in the nomination of bishops as a member of the CNC, given her conflicting loyalties as a trustee of CCC and CCW.

36. Mrs Alexander examples this conflict by citing the fact that in December 2017 Miss Patterson gave one of the readings at the ordination service at which Pete Jackson, one of the leaders of CCW, who had been ordained to the diaconate by two Kenyan bishops in 2013, was ordained a priest in East London by a 'missionary bishop' affiliated with the Anglican Communion in North America and the Anglican Network in Canada [both affiliated with the Anglican Mission in England] when in the preceding month she had participated in the selection of nominations for the Bishop of London, one of the five most senior bishops of the Church of England who has, as a matter of right, a seat in the House of Lords.

37. In support of her submission Mrs Alexander relies on the following matters:

- 37.1. The ordination of Pete Jackson as deacon and priest and his exercise of his orders in the Diocese of Sheffield was in contravention of the Overseas and Other Clergy (Ministry and Ordination) Measure 1967 and Miss Patterson "authorised" them in that as a trustee of CCC and CCW she had "overseen what appear to be direct violations of this Measure and of the canon law that underlies it" and that such activities "are in direct conflict with the principles of governance of the Church of England";
- 37.2. Having regard to the factual matrix Miss Patterson is an agent who acts on behalf of the Prime Minister who recommends the person who will be appointed by the Queen to the office of bishop;
- 37.3. Equity imposes special duties of loyalty, known as fiduciary duties, to guard against any temptation to betray the trust reposed in the agent;
- 37.4. Miss Patterson, as a member of the CNC, is in a position where her knowledge of confidential discussions as to the needs of the diocese, the performance of the former diocesan bishop and other diocesan staff and the consideration of possible candidates for appointment "can be used to benefit CCC and CCW which operate in direct conflict with the principles of governance of the Church of England" and that she "could attempt to influence the outcome [of the appointment of bishops] in ways that benefitted CCC and CCW which were and continue to be in direct conflict with the principles of governance of the Church of England";

- 37.5. It is difficult to see how Miss Patterson`s participation in the selection of the current Bishop of Sheffield could have allowed frank and open discussions of the challenges presented to the diocese by CCC and CCW;
- 37.6. The fiduciary duty of good faith required Miss Patterson not intentionally to further the interests of one principal at the expense of the other and that such conflict of her loyalties was sufficient to disqualify her from her position on the CNC; and
- 37.7. In her statement in support of her candidature for the CNC Miss Patterson “held herself out as a loyal member of the Church of England who would not herself uphold a situation of the kind that CCC and CCW find themselves in: directly in conflict with the Archbishop of Canterbury and the principles of governance of the Church of England”
38. For those reasons Mrs Alexander submitted that Miss Patterson was disqualified to serve as a member of the CNC and asked the appeal panel to either declare her election invalid or make an order removing her from her position as a member of the CNC on the basis of such disqualification.

Miss Patterson`s response to the appeal

39. Miss Patterson resisted the appeal and submitted that Mrs Alexander`s appeal should be dismissed because it was misconceived, wrong in law and totally without merit.
40. Miss Patterson`s response may be summarised thus:
- 40.1. Miss Patterson was a duly elected member of the House of Laity of the General Synod and it is not suggested that her positions as trustee of CCC and CCW disqualify her from such membership;
- 40.2. Miss Patterson was eligible for election to the CNC, was validly nominated [and signed a statement of willingness to serve as a member of the CNC] and her valid nomination was accepted by the Clerk;
- 40.3. Although Miss Patterson was invited to, and did, put forward a statement in support of her nomination, she was under no “obligation to answer any particular questions or make any particular statements or disclosures”;

- 40.4. Even if, which is denied, Miss Patterson had a conflict of interest, she was under no legal obligation to disclose it in connection with the election to the election to the CNC because the *General Synod Members Code of Conduct* is limited in scope and voluntary in nature and neither the Standing Orders nor the Nomination Form invited, let alone required, disclosure of any conflicts of interest;
- 40.5. Miss Patterson had no conflict of interest because her role as trustee of CCC and CCW did not give rise to any conflict of interest because the work of those churches is not illegal or contrary to canon law and in any event Miss Patterson was not herself subject to canon law; and
- 40.6. It was submitted that reliance by Mrs Alexander on an alleged breach of fiduciary duty was wholly misconceived and merely an attempt to transpose *private* law duties owed in specific contexts into a *public* context which was entirely regulated by the Standing Orders. In particular:
- 40.6.1. Although it is contended by Mrs Alexander that Miss Patterson owed, and owes, fiduciary duties to the Prime Minister or Her Majesty the Queen or alternatively “broader fiduciary duties inherent in her service as a member” of the CNC, Miss Patterson denies that she owed such duties;
- 40.6.2. In any event no complaint of any breach of duty had been made by the Prime Minister or Her Majesty the Queen, let alone on behalf of the CNC;
- 40.6.3. It is not suggested that in standing for election to the CNC Miss Patterson owed any fiduciary duties to the General Synod in general or the House of Laity in particular; and
- 40.6.4. In any event there is nothing in law which states that a fiduciary cannot put herself in a position of conflict of interest: the law simply says that the consequences of doing so gives rise to a claim for breach of fiduciary duty by those to whom such duty was owed and it is not suggested that any fiduciary duty was owed to by Miss Patterson to Mrs Alexander personally.
41. Miss Patterson reminded the appeal panel that the panel was established under Standing Order 135 and submitted that its jurisdiction was derived from, defined by and limited to that which the Standing Orders provided Accordingly she submitted that the appeal panel’s function was to determine whether there

had been compliance with Standing Orders 132 and 133. It had no wider jurisdiction. In particular, it was not entitled to declare that Miss Patterson was disqualified for election to the CNC and it was not part of the appeal panel's function or jurisdiction to itself evaluate whether Miss Patterson's election to the CNC was desirable.

42. Miss Patterson submitted that:

- 42.1. all the requirements contained in Standing Orders 132 and 133 had been complied with;
- 42.2. although they could have so provided, neither the Standing Orders nor the *Code of Conduct* required disclosure of any conflict of interest and it is not for this appeal panel to adjudge whether or not that position is satisfactory;
- 42.3. every part of her election statement was true and accurate and there can be, and is, no suggestion that her election was procured by misrepresentation; and
- 42.4. Mrs Alexander was not personally ignorant of the facts which she complains that Miss Patterson failed to disclose.

Mrs Alexander's response

43. In her Response Mrs Alexander conceded that there was no suggestion that there were any irregularities in the purely process aspects of Miss Patterson's election to the CNC but contended that the issue between the parties were whether:

- 43.1. whether Miss Patterson owed [and owes] a fiduciary duty to the government and the Monarch, based on her membership of the CNC;
- 43.2. whether Miss Patterson's duty as a trustee of CCC and CCW conflict with her duty as a member of the CNC; and
- 43.3. whether that conflict is irreconcilable, could not be discharged simply by disclosure, and rendered her unqualified to hold a position on the CNC or in the alternative, whether, if she could have vitiated the conflict by disclosing it, she failed to do so.

44. Moreover, Mrs Alexander rejected Miss Patterson's contention that she was not obliged to do anything that was not explicitly required by the Standing Orders or that this appeal panel was only permitted to do what was explicitly required and submitted that such positions were overly narrow and formalistic. She submitted that the fact that the Standing Orders did not bar conflicts of interest did not mean that such conflicts of interest were permitted and that a member of the CNC could, accordingly, disregard fundamental principles arising from equity and common law.

The hearing of the appeal

45. At the hearing on 26 March 2018 Mrs Alexander was represented by Dr Scot Peterson and Miss Patterson was represented by Mr Stephen Hofmeyr QC. We are grateful for their detailed written and oral submissions and for the manner in which such oral submissions were made. The appeal panel was given a very full bundle of documentation which consisted of the documents relating to the election to the CNC, both parties' summaries of their respective cases and the documents referred to therein and a large number of authorities which they relied upon.

46. It was not suggested by either party that the appeal panel should hear any evidence and the hearing proceeded with oral submissions being made by Dr Peterson and Mr Hofmeyr. Such oral submissions largely replicated the submissions already made but were interspersed with citations of authority, learned articles and other documents.

Discussion

47. The first issue which we have to address is the jurisdiction which the appeal panel has.

48. Mr Hofmeyr submitted that our jurisdiction was limited to determining whether the provisions of Standing Orders 132 and 133, relating respectively to nominations and the conduct of elections, have been complied. By contrast Dr Peterson submitted that the appeal panel had a much wider jurisdiction which allows us to consider the interests of those to whom any fiduciary duties may have been owed by Miss Patterson. If Mr Hofmeyr is correct then it would not be necessary in disposing of the appeal to consider the broader issues raised by Dr

Peterson. We accordingly first consider the issue of the appeal panel's jurisdiction.

49. We accept Mr Hofmeyr's submission that in the circumstances of this case the appeal panel's jurisdiction is solely to establish whether the election was conducted in compliance with the Standing Orders and that it has no wider purpose or jurisdiction.

50. We are satisfied that Miss Patterson, as an elected member of the House of Laity of the General Synod, was eligible for election to the CNC. This is not in dispute. Moreover, we are satisfied that the fact that Miss Patterson was a trustee of CCC and CCW had no bearing on her *eligibility* to stand for election to the CNC.

51. Standing Order 132 (2)-(7) sets out the requirements for a valid nomination. In short, all candidates, including Miss Patterson, were required to:

51.1. be supported by a proposer and seconder entitled to vote in the election and such support was to be in writing;

51.2. a nomination was only valid if the candidate confirmed their willingness to stand; and

51.3. the nomination was required to contain the year of the candidate's birth.

52. It is conceded by Mrs Alexander that all such requirements were met and that there was no procedural irregularity.

53. The Standing Orders did not require any candidate for election to the CNC to make any declarations of interest or to confirm that he or she had no conflicts of interest.

54. Although the notice of the election for CNC members and the invitation for nominations contained in E(17) 4N (reissued) set out such requirements set out above and **invited** "for the assistance of voters" candidates to submit a statement for circulation with the voting papers and stated:

"Candidates are invited to include in their statements particulars of present office and any relevant qualifications and past experience"

there was no obligation on candidates to submit such a statement, although each in fact did so.

55. We have already set out Miss Patterson's statement. Mr Hofmeyr emphasises that each and every part of such statement was true and accurate. Dr Peterson did not contend to the contrary.

56. Moreover, we are satisfied that neither the Standing Orders nor the *General Synod Members Code of Conduct* required Miss Patterson to disclose any conflict of interest which it is contended by Mrs Alexander that she had by virtue of her being a trustee of CCC and CCW in that:

56.1. No provision of the Standing Orders requires a candidate seeking election to the CNC to disclose any conflict of interest; and

56.2. Whilst declarations of interest are desirable, we agree with Mr Hofmeyr that the Code of Conduct expressly states that it is a "voluntary code".

57. Although at one stage Mrs Alexander relied on guidance given by the Charity Commission on conflicts of interest, we are satisfied that such cannot be applicable on the facts of this case given that neither the General Synod nor the CNC is a charity.

58. It is not the function of the appeal panel to determine whether such a position as to disclosure is satisfactory. We have no doubt that it is theoretically possible for the General Synod to amend its Standing Orders and impose a more onerous Code of Conduct than that which currently exists, for example by requiring candidates to make express disclosure of all organisations of which they are directors or trustees, but in our judgment it is a matter for General Synod, and not this appeal panel, to determine whether such is appropriate. However, as matters currently stand, in our judgment Miss Patterson and all other candidates were entitled to proceed on the basis that there was no requirement on them to make any declaration of interest.

59. That is sufficient to dispose of the appeal. However, lest we are wrong about that aspect we set out below our view with regard to the wider submissions made by Dr. Peterson.

60. We agree with Mr Hofmeyr that it is difficult to discern from the different ways in which Mrs Alexander's case is set out whether any fiduciary duty

allegedly owed by Miss Patterson is a duty owed to Her Majesty the Queen, as Supreme Governor of the Church of England or is owed as an agent of the Church of England or as a member of the CNC to Her Majesty the Queen or is owed additionally to the Prime Minister.

61. Dr Peterson conceded that for Mrs Alexander's appeal to succeed he had to establish each of the following, namely that:

61.1. a fiduciary duty was owed to the Prime Minister and Her Majesty the Queen;

61.2. there was a breach of such fiduciary duty;

61.3. Mrs Alexander has standing on behalf the Prime Minister and Her Majesty the Queen to complain that Miss Patterson had breached such fiduciary duty owed to them; and

61.4. the remedy for such breach of fiduciary duty was disqualification.

62. Although Dr Peterson also relied upon a fiduciary duty being owed by Miss Patterson by virtue of her membership of the CNC, we accept Mr Hofmeyr's submission that any fiduciary duty owed only by virtue of Miss Patterson's membership of the CNC - inevitably after the election - can have no relevance to an appeal relating to the election process which pre-dates such membership.

63. In her initial submissions summarised at paragraphs 33 to 38 above Mrs Alexander addressed the basis on which she contended that Miss Patterson was under a fiduciary duty in a fairly oblique way. Having inferentially described Miss Patterson as an agent, she stated:

"The conferral of actual authority entails a delegation of the principal's autonomy; the agent is placed in a position of power and the principal is rendered correspondingly vulnerable. Even where the agency is gratuitous, equity imposes special duties of loyalty (known as 'fiduciary duties') to guard against any temptation to betray the trust reposed in the agent."

64. However in her response to Miss Patterson's summary of case Mrs Alexander put her case more clearly as follows:

“A fiduciary duty and its attendant duty of loyalty arise because an agent (under private or public law) has power to make decisions on behalf of a principal by exercising the power of choice when the principal has delegated the power of doing so to the agent.”

65. In support of such proposition Dr Peterson relied upon a passage in an article by Professor Lionel Smith *Fiduciary relationships: ensuring the loyal exercise of judgement on behalf of another* [2014] Law Quarterly Review, 608 at 610:

“Fiduciary relationships are characterised by the holding of discretionary power by the fiduciary. ... By contrast, a requirement of loyalty is juridically relevant where there is authority for some choice to be made, among a range of *authorised* options. It is a requirement, therefore, that governs the exercise of judgement.”

66. However, Mr Hofmeyr correctly reminded the appeal panel that in the introduction to his article Professor Smith had stated:

“In this article I present a theory of fiduciary relationships. This is a field characterised, in the law reports and in the law reviews, by disagreement, uncertainty and controversy. ... My account aims to identify the features that are common to all fiduciary relationships, and to understand why the law reacts as it does to the presence of those features, by the imposition of certain rules and duties according to articulable legal principles. *The argument in this article is restricted to fiduciary obligations in the strict sense, as they are found in private law: my account, however, is one that resonates beyond private law and across a range of legal fields.*” [emphasis added]

67. Mr Hofmeyr observed that whilst it was possible that Professor Smith’s argument may resonate beyond private law, his article, as such, provides no authority for the proposition that fiduciary duties may be owed outside private law. We agree.

68. Dr Peterson also relied upon the decision of Rowlatt J in *Attorney General v Goddard* (1929) 98 LJKB 743, at 744 where it was held that when a police officer was employed to make confidential enquiries for the Home Office, such employment created a fiduciary relationship in which he was under an obligation to use the information received for the purpose of his employer and was not to use it for his own profit.

69. We do not think that reliance on *Goddard* assists Dr Peterson in establishing that a fiduciary duty was owed by Miss Patterson on the facts of this case. It is, we think, common ground that in private law a person becomes under a fiduciary duty when he or she is obliged to act in the best interests of another and that such a fiduciary duty exists in private law by reason of various relationships, for example, trustee and beneficiary, agent and principal, solicitor and client and employer and employee, as was the case in *Goddard*. We accept the view that as such the decision can be explained on the ground that the relationship of employer and employee in private law gave rise to such fiduciary duty.

70. By contrast Mr Hofmeyr submitted that reliance by Mrs Alexander on an alleged breach of fiduciary duty was wholly misconceived because the examples referred to above constituted *private* law duties owed by reason of such relationships and Mrs Alexander was impermissibly attempting to transpose such private law duties into a *public* context which was entirely regulated by the Standing Orders.

71. Referring to *Equity: Doctrines and Remedies* by Meagher, Gummow and Lehare's [5th edition], Mr Hofmeyr referred to the categories of fiduciary duty which exist in private law. Whilst he noted that the assertion that fiduciary duties were recognised in public law was said to be supported by the decisions:

71.1. of the Court of Appeal in *Prescott v Birmingham Corporation* [1955] Ch 210 where Prescott sought to judicially review Birmingham Corporation's decisions to provide free travel for certain classes of old persons and fund the cost out of the general rate fund; and

71.2. of the House of Lords in *Bromley London Borough Council v Greater London Council* [1983] 1 AC 768 where Bromley LBC sought to judicially review a decision of the GLC to use a precept to all London boroughs to finance the cost of reducing bus and underground fares by 25%

Mr Hofmeyr submitted that such support was misconceived because although in *Bromley* various members of the House of Lords had used the language of fiduciary duty [see Lord Wilberforce at 815, 818 and 820, Lord Diplock at 830 and Lord Scarman at 837-839, 842-843 and 845-846], the rationale of each of such decisions was that the body whose decision was sought to be impugned lacked

the vires to make the decisions purportedly made so that their decisions were thus quashed.

72. Moreover, he relied upon the criticism of such analysis by Justice Paul Finn in *Public Trusts Public Fiduciaries* [2010] Federal Law Review 335, at 346. He further submitted that such decisions were founded on the premise that, unlike the present position, a public body will be characterised as being in a fiduciary relationship with a person [or in each case a section of the public] if it is so circumstanced in discharging some statutory function, power or purpose capable of affecting the interests of that person [or section of the public] so that the public body can be expected to act in that person's interests in discharging that function or will act fairly if the public body has to act in the interests of groups of persons who have different rights and interests.

73. Mr Hofmeyr also relied on:

73.1. what *Bowstead & Reynolds on Agency* [21st edition para 6-026] described as the reluctance to extend the concept of fiduciary duty in public law;

73.2. the fact that none of the major textbooks on public law [*English Public Law* [Professor David Feldman QC], *Judicial Remedies in Public Law* [Sir Clive Lewis] or *Actions against Public Officials* [Richard Moules]] made reference to fiduciaries unlike *English Private Law* [Professor Andrew Burrows] which dealt with fiduciaries extensively; and

73.3. the fact that the section on 'Elections and Referendums' in *Halsbury's Laws of England* did not suggest that a person standing for election was under a fiduciary duty to disclose conflicts of interest.

74. In so far as it was ever suggested that Miss Patterson's membership of the CNC made her an agent of the Prime Minister and Her Majesty the Queen, we reject such submission. Miss Patterson was merely one member of the CNC who made a recommendation for episcopal appointment.

75. For these reasons we accept Mr Hofmeyr's submission that the reliance on an alleged breach of fiduciary duty was misconceived. We do not accept that as a result of her membership of the CNC Miss Patterson became under a fiduciary duty to Her Majesty the Queen or the Prime Minister.

76. Moreover, even if we were wrong in so concluding, the appeal panel has to ask whether Mrs Alexander is entitled in law to seek to enforce compliance of such fiduciary duty in any way, including seeking Miss Patterson's disqualification from election to the CNC, or whether only the person to whom the duty is owed can seek to enforce compliance.

77. In support of his submission that Mrs Alexander was do entitled, Dr Peterson relied on *R v Inland Revenue Commissions ex p National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 and *R v Her Majesty's Treasury ex p Smedley* [1985] QB 657. In each of these cases the issue was whether the applicant for judicial review had a "sufficient interest" within the meaning of Order 53 Rule 3 of the Rules of the Supreme Court to enable him to apply for judicial review.

78. In *National Federation of Self-Employed and Small Businesses Ltd* the House of Lords concluded that the National Federation did not have a sufficient interest to judicially review the decision of the Inland Revenue to grant what amounted to an amnesty in respect of unpaid tax. In *Smedley* the Court of Appeal concluded that the applicant had a sufficient interest, if only in his capacity as a taxpayer, to challenge the laying of a draft Order in Council before both Houses of Parliament relating to a payment to be made to the European Community.

79. In our judgment whether a person has a sufficient interest in bringing proceedings for judicial review is a wholly different issue to whether a person, whom it is admitted is not owed a fiduciary duty, is entitled to seek remedies for an alleged failure to comply with such a fiduciary duty.

80. We agree with Mr Hofmeyr that if any fiduciary duty was owed, whether to Her Majesty the Queen, the Prime Minister and/or the Church of England, Mrs Alexander has no sufficient locus standi to complain about any breach of such duty.

81. Accordingly in the event that we had found that Miss Patterson owed a fiduciary duty to Her Majesty the Queen or the Prime Minister, we would have concluded that, since it is not contended by Mrs Alexander that any fiduciary duty was owed to her personally, she was not entitled in law to seek to enforce compliance with such duty.

Conclusion

82. For the reasons set out at paragraphs 47 to 81 above we dismiss Mrs Alexander`s appeal.

83. It is not necessary for the appeal panel to determine whether, if a fiduciary duty was owed and Mrs Alexander was entitled to secure its compliance, there was any breach of any such fiduciary duty because, even if we been required to consider that broader issue, we would still have dismissed the appeal for the reasons set out above.